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Good Governance of the Security Sector in Southeast Asia: What Role for Parliament?

Mario J. Aguja and Hans Born (Editors)

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Good Governance of the Security Sector in Southeast Asia: What Role for Parliament?

Mario J. Aguja and Hans Born¹

Introduction



In a democracy, parliaments play an important role in national life. As representatives of the people, the public expects them to be actively involved in shaping national policies and continuing to serve as stewards to ensure that institutions of democracy continue to be vibrant. This includes the need to play a critical role in the governance of the coercive instruments of the state: the security sector. By its nature, mission and traditions, the security sector continues to be the most secretive, expensive, prone to human rights violations,

and simultaneously highly consolidated public institution around the word. Current events are replete with narratives of intense debate between members of parliaments and the security sector, especially the military, police and intelligence services, on the best way to govern the sector. The debates range from technical issues, such as the budget and arms procurement, policies relating to community policing, observance of the rule of law and respect for human rights, and to ideological debates relating to the very concept of security - national versus human security. These debates contribute to enhancing the role of parliaments and establishing the parameters for good security sector governance (SSG), thereby contributing to the strengthening of democratic institutions.

Security sector governance

SSG is a relatively new paradigm and has made, since its inception in the 1990s, an extraordinary progression in both policy and academic discourses. It broadened the narrow spectrum of civil-military relations to cover the entire security sector, including the armed forces, police, intelligence services, border security and private security companies and militias. Along with the security sector, the need for democratic accountability and civilian control of the security sector has also widened and currently includes all management and oversight institutions, such as the executive, legislature, judiciary, independent oversight bodies and civil society.

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While there is no ‘one size fits all’ approach, good SSG is based on the idea that the security sector should be held to the same high standards of public service delivery as any other public sector. If the security sector is well governed, it can be characterised as an effective and accountable sector capable of fulfilling its mandate to protect society against internal and external threats while respecting the rule of law and human rights. On the other hand, a poorly governed security sector is characterised by multiple security and accountability deficits, including: over-inflated security establishments that are difficult to support financially, but frequently constitute a major political and economic force; lack of transparency and accountability; inadequate defence planning, poor management and budgeting capacity in both civilian and military institutions; a long history of human-rights abuses by security forces and a tendency for security forces to act with impunity; corruption; an insufficient number of civilians capable of managing and providing oversight of security matters; and inadequate professional development. Furthermore, political interference by the security forces and politicisation of security forces by civilian actors are two sides of the same coin, reflecting major deficiencies in a security sector.

Democratic accountability can be achieved through a plurality of methods. Mechanisms of democratic control vary according to a number of factors, such as the country’s historical context, cultural traditions, form of government (i.e. monarchy, parliamentary republic or presidential system), constitutional-legislative framework, and socio-economic conditions. Across this diversity of political systems, it is possible to identify numerous actors performing similar types of oversight activities. They traditionally include various executive, legislative, judicial and independent state bodies, along with non-state actors from civil society.² The table below provides an indicative overview of possible oversight actors and activities, which might take place in a given country.

² Marc Bantinck and Hans Born, *Parliamentary Oversight of the Security Sector* (Brussels: European Parliament, 2013).

Table 1: Indicative overview of the security sector oversight levels, actors and activities

Level of oversight	Oversight actors	Oversight activities
Executive	Head of state, ministers and their ministries, security-coordinating executive bodies, and specialized executive oversight bodies for the security sector	Ultimate command authority, setting policies and priorities, promulgating subsidiary legislation and regulation, budget management, investigation powers, appointment of main commanders, proposing laws and arms procurements, and international negotiation
Legislature	Parliament, parliamentary standing committees, ad hoc inquiry committees, parliamentary staff units, and research services	Law-making and amending, budget control, oversight and scrutiny, and confirmation and election of top security sector officials
Judiciary	Civil, criminal and military courts and tribunals	Adjudicating cases against security institutions/staff, reviewing the constitutionality of laws, safeguarding the rule of law and human rights, monitoring special powers, and reviewing security policies in the context of prosecutions
Independent oversight bodies	Ombuds institutions, human rights committees, and audit offices	Receiving complaints and investigating abuses and failures, raising awareness on human rights, and verifying compliance with the law and correct use of public funds
Civil society	Advocacy organisations, research institutes and think tanks	Informing the public, investigative reporting, providing in-depth analysis and expertise, dissemination of alternative views, recommendations, lobbying, monitoring, and addressing issues through the judiciary and the media
Security sector	Internal management of security-providing institutions (such as armed forces, police, intelligence services, and border security)	Internal mechanisms of supervision, review, monitoring, complaints, discipline, codes of conduct, freedom of information, and human resources

Role of parliament in security sector governance

Since effective governance and civilian oversight of the security sector are essential for peace, democracy and development, members of parliament, as representatives of the people, play an important role in the good governance of the security sector through its five generic functions: legislative, oversight, budgetary control, representative and elective functions. Table 2 gives an indicative overview of the possible application of these functions to the security sector.

Table 2: Indicative overview of the application of the five generic functions of parliament to the security sector

Function	Application to the security sector
Legislative	Initiating new laws pertaining to the security sector, reviewing and amending laws proposed by the executive, existing laws and secondary legislation, and reviewing if international obligations related to the security sector are reflected in domestic law
Oversight	Conducting routine oversight activities of the security sector, including hearings, inspections and visits to headquarters, stations, exercises, deployments abroad, and ad hoc oversight activities, including inquiries
Budgetary control	Reviewing executive budgetary proposals pertaining to the security sector, scrutinising past expenditures of the security sector and costly security projects, and conducting security oversight related to procurement
Representative	Organising hearings and meetings with representatives of civil society and experts to hear their views and concerns related to the security sector and meeting with constituencies for dialogue and exchange of views concerning the security sector activities and policies
Elective	Reviewing high level government and security officials and confirming high level government and security officials

The effective application of these functions to the security sector is hindered by various legislative challenges. Some of the most urgent issues are related to the secrecy of information in the security sector, including classified parts of the security sector budget and procurement details. While some parliaments have set up mechanisms for dealing with classified information, others are still determining how to deal with secrecy. A second challenge is the lack of expertise on SSG-related matters among members of parliament and parliamentary staff. Some parliaments have remedied this problem by exposing members of parliament and staff to capacity-building activities and specific training programmes, as well as international experience-sharing. A third challenge is party politics, which prohibits or complicates effective parliamentary oversight of the security sector. Other parliaments, in particular ‘young’ parliaments of countries in democratic transitions, are still in the process of establishing committees and accountability and liaison mechanisms for effectively dealing with the security sector. In these emerging democracies, parliaments are also facing the political prerogatives of the security sector that are often negotiated during the democratic transition, which excludes parliamentary and sometimes even executive civilian oversight of the security sector.

Therefore, the reality on the ground is that not all parliaments equally, if not effectively, perform all of the five generic functions in relation to SSG. The strength of democracy in a particular country appears to have an overall impact on the role of parliaments in the governance of the security sector. There is clearly no ‘blueprint’ for the role of parliament in SSG. Generally, it is the prerogative of each individual parliament to take up the challenge, with consideration of its own strengths and weaknesses, as well as the specific political environment in which it operates

Southeast Asia

Southeast Asian countries are considered as young, if not struggling, democracies with mostly

tainted pasts of dictatorship, which continue to shape their agendas of strengthening its democratic institutions. Osborne described it as a “region marked by some notable unities and containing great diversity.”³ The Economist Intelligence Unit’s ‘Democracy Index 2015’⁴ highlights one of the diversities of the region when it categorized and ranked Association of Southeast Asian Nations (ASEAN) member states from flawed democracies⁵ to hybrid⁶ authoritarian regimes⁷. While parliaments in countries categorized as flawed democracies and hybrid regimes have generally progressed in undertaking their general roles as representatives of the people, the area of democratic oversight of the security sector remains contentious, if not limited, and therefore problematic. It also continues to be a source of tension between security sectors and democratically elected governments.

This is exemplified by the recent military coup in Thailand and the difficult balance maintained by the elected government in Myanmar with the powerful military establishment. The deficit in the existing political environment, due to current socio-economic and cultural dynamics, coupled with limited expertise among parliamentarians, continues to impede progress in the democratic oversight of the security sector of the Southeast Asian countries. Osborne concluded that the most serious problem facing the region are those “associated with achieving and maintaining national unity.”⁸ Unfortunately, for the longest time in the not so distant past, it was security sector actors, primarily the military, that served as glue in ‘maintaining national unity’, thereby delaying the march to democratisation.

Role of parliaments in security sector governance in Southeast Asia

If the topic of parliaments in Southeast Asia is rather neglected in scholarship,⁹ specific literature on parliaments and SSG is even scarcer.¹⁰ In order to fill this gap, this book focuses on how selected parliaments in Southeast Asia fulfil their functions as applied to the governance of the security sector and how they have found solutions for various obstacles ranging from a lack of

³ Milton Osborne, *Southeast Asia: An Introductory History* (New South Wales: Allen and Unwin, 2013), p. 16.

⁴ The Economist, “Democracy Index 2015: Democracy in an Age of Austerity”, The Economist Intelligence Unit, 2016, accessible at: www.eiu.com/democracy2015.

⁵ These countries also have free and fair elections and, even if there are problems (such as infringements on media freedom), basic civil liberties are respected. However, there are significant weaknesses in other aspects of democracy, including problems in governance, an underdeveloped political culture and low levels of political participation.

⁶ Elections have substantial irregularities that often prevent them from being free and fair. Government pressure on opposition parties and candidates may be common. Serious weaknesses are more prevalent than in flawed democracies – in political culture, functioning of government and political participation. Corruption tends to be widespread and the rule of law and civil society are weak. Typically, there is harassment of and pressure on journalists, and the judiciary is not independent.

⁷ In these states, state pluralism is absent or heavily circumscribed. Many countries in this category are outright dictatorships. Some formal institutions of democracy may exist, but these have little substance. Elections, if they do occur, are not free and fair. There is disregard for abuses and infringements of civil liberties. Media are typically state-owned or controlled by groups connected to the ruling regime. There is repression of criticism of the government and pervasive censorship. There is no independent judiciary.

⁸ Osborne, *Southeast Asia: An Introductory History*, p. 248.

⁹ For example: Jürgen Rüland, Clemens Jürgenmeyer, Michael H. Nelson and Patrick Ziegenhain, *Parliaments and Political Change in Asia* (Singapore: ISEAS Singapore, 2005); Zheng Yongnian, Lye Liang Fook, Wilhelm Hofmeister (eds.), *Parliaments in Asia Institution Building and Political Development* (London: Routledge, 2014).

¹⁰ As an example of some of the few sources on this topic, the publication section of the IPF-SSG includes some case studies on various aspects of the role of parliaments in SSG in Southeast Asian countries, see: <http://ipf-ssg-sea.net/ipfm-publication-6>.

legal powers and expertise and incomplete access to information to a lack of resources and staff. The following chapters present various case studies on the role of parliament in the good governance of the security sector from selected ASEAN member states in Maritime and Mainland Southeast Asia. While the depth of democratisation in these selected countries varies, they nevertheless represent the most vibrant, if not considered ‘noisy’ parliaments in the region. Their members are mostly vetted in highly contested elections, with the exception of Myanmar where 25 per cent of the members of parliament are still appointed by the military.

This is the 10th Anniversary Workshop publication of the Inter Parliamentary Forum on Security Sector Governance in Southeast Asia (IPF-SSG). The Forum promotes ongoing dialogue and exchange of good practices among members of parliament in Southeast Asian countries. It aims to enhance civilian oversight and national parliamentary involvement in SSG and features regular workshops, publications and its own website, as well as activities of national initiatives in participating countries. Participants include parliamentarians and staffers, as well as government officials and members of security forces, academic experts and civil society representatives from several ASEAN member states. It is supported by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Friedrich Ebert Stiftung (FES). Since the first workshop took place in Siem Reap, Cambodia in 2006, the IPF-SSG has been hosted every year in a Southeast Asian state, and returned to Siem Reap on the occasion of its tenth anniversary.

The case studies were commissioned from different experts in the region and presented at the 10th Anniversary Workshop on September 15-16, 2016. The Workshop was organised by the Cambodian Institute for Cooperation and Peace (CICP) with the support of DCAF, FES and the Swiss Development Corporation (SDC). It examined the role of parliaments in the good governance of the security sector in Southeast Asia and drew on experiences made in and lessons learned from Southeast Asian countries. In particular, it served as a platform to exchange experiences and foster a dialogue about strengthening the role of parliaments in SSG. The Workshop also focused on how lessons learned at the regional level can be implemented at the national level through national activities. Special attention was given to the current status and future developments within ASEAN as the prime framework for intra- and inter-regional dialogue for security in Southeast Asia.

The case studies included in this book capture the variety of government forms and nature of parliaments in Southeast Asia. These differences also pertain to parliamentary oversight of the security sector. **Indonesia** has a unitary presidential system of government with two legislative chambers: the Indonesian Regional Council (DPD/*Dewan Perwakilan Daerah*) consists of provincial representatives and the House of Representatives (DPR/*Dewan Perwakilan Rakyat*). The joint session of the two chambers is called the People’s Consultative Assembly (MPR/*Majelis Permusyawaratan Rakyat*). **Malaysia** is a federal system with a constitutional monarchy and a bicameral parliament: the House of Representatives (*Dewan Rakyat*) and the Senate (*Dewan Negara*). The **Philippines** has a unitary presidential system of government with a bi-cameral congress composed of the House of Representatives and the Senate. **Cambodia** is a unitary parliamentary system with a constitutional monarchy where legislative power is exercised by a bi-cameral parliament, the National Assembly (*Radhsaphea*) and the Senate (*Protsaphea*). Finally, **Myanmar** has a unitary presidential system with a bi-cameral parliament known as

Pyidaundsu Hluttaw and composed of the House of Representatives (*Pyithu Hluttaw*) and the House of Nationalities (*Amyotha Hluttaw*). These counties also share commonalities. Each of these countries emerged from a turbulent past where the military played a critical role in nation-building. These young democracies, ‘noisy’ as they may be, remain to have a large security sector whose reform is wanting. It is in the variety of these case studies that we wish to draw lessons from on the role of the parliaments in the good governance of the security sector in the region.

Overview of chapters

The different parts of the book are written to illustrate the various means and ways that parliaments in Southeast Asia contribute to the governance of the security sector. The case studies from Indonesia, Malaysia, and the Philippines from Maritime Southeast Asia and Cambodia and Myanmar from Mainland Southeast Asia were include in the book. In the conclusion, we highlight the lessons learned from the different case studies and the best practices, amidst challenges. The contributions to this volume are organised in two parts: this introduction, examining the role of parliaments, as representatives of the people, in the governance of the security sector; and five case study chapters on Cambodia, Indonesia, Malaysia, Myanmar and the Philippines, describing the role of parliaments in SSG. These case studies are written by experts in the region: Pou Sothirak and Paul Chambers (Cambodia); Iis Gindarsah (Indonesia); Rastam Mohd Isa, Nurul Izzati Kamrulbahri, and Mohd Syahir Naufal Mahmud Fauzi (Malaysia); Yin Myo Thu (Myanmar); and Aries A. Arugay (Philippines).

Pou Sothirak and Paul Chambers discuss the role of parliament in SSG in **Cambodia** and advance the argument “that although Cambodia’s parliament is supposed to play a role in assuring an effective and accountable security sector, this function has faced numerous obstacles.” The Cambodian case study analyses these obstacles and recommends, inter alia, that parliamentarians might consider to form informal blocks and champion an effective and accountable security sector in Cambodia, through, for example, the hosting of “public seminars and the publication of literature that is easily accessible to the public.” They also conclude that “[i]t would be beneficial for good governance if parliament could work more closely with the executive to ensure that the security sector is effectively monitored. Though it possesses few effective SSG oversight powers, parliament should continue trying to efficiently carry out this monitoring role. One way to do this is for parliamentarians to cooperate more effectively and openly with civil society groups, expressing their own SSG agenda and concerns through the media.”

As we know from previous workshops of the IPG-SSG, “Indonesia has seen great success in its security sector reform. In the early 2000s, Indonesia commenced reforms in the security sector, which were largely focused on putting in place the necessary legal and political mechanisms to enable civilian and democratic control over the military. In particular, an outstanding measure was the official military withdrawal from political affairs. During this period, the emergence of an active parliament drove reforms towards effective civilian oversight and parliamentary control.”¹¹

¹¹ IPF-SSG, “Security sector reform and democratisation in Southeast Asia: What role for the parliaments?”, Report of the 11th Workshop of the IPF-SSG, Bangkok, Thailand, 15-16 June 2013, p. 4, accessible at: <http://ipf-ssg-sea.net/event-pevent-3>.

SSG in Indonesia “has been focusing on depoliticising the military, to separate law-enforcement from the military and to curtail the role of the military in business and to ensure that the government is free from undue interferences from the security sector.”¹² Against this background, Iis Gindarsah details that “[i]n **Indonesia**, the House of Representatives (*Dewan Perwakilan Rakyat*, DPR) has three main functions, namely law making, budgeting, and oversight.” He highlights “the parliament’s Code of Conduct in 2015”, which regulates the budget control function.

Rastam Mohd Isa, Nurul Izzati Kamrulbahri and Mohd Syahir Naufal Mahmud Fauzi conclude on **Malaysia**: “parliament plays a crucial role in public life. It has functions other than making laws. Parliament debates on control over national finances (which includes the national budget and taxation), discusses important matters of the day and scrutinises the work of the central administration.” At the same time, there is “an apparent lack of interest among the majority of members of parliament in Malaysia to discuss security matters.” In their conclusions, the authors emphasise the absence of a parliamentary committee dealing with the security sector, and, exactly because most members of parliament are preoccupied with ‘bread and butter’ issues, there is little political incentive to set up such a parliamentary committee for the oversight of the security sector, while such a committee is important for SSG. The authors mention that such a parliamentary committee “could potentially curtail parliamentary supervision of and control over corruption and abuse of power, thus eroding the degree of the public’s trust of the government.”

Yin Myo Thu underlines the importance of SSG for the further democratisation of **Myanmar**. Within the context of the good governance of the security sector, she concludes that currently “[n]either of the country’s two legislative *Hluttaws* (chambers) at the union or state/region levels are currently capable to oversee or carry out SSG in case of structural reforms in the Myanmar Police Force (MPF).” Furthermore, she concludes that “[t]he concept of parliamentary oversight of the security sector or SSG is to a certain extent strange for members of parliament in both *Hluttaws*.” She highlights that “[t]he most important attitude in security sector oversight is establishing a ‘culture of compromise’ among the three branches of governments, different committees and commissions in both *Hluttaws*, political parties, media and civil society.”

Aries A. Arugay concludes in the case study on **the Philippines** that “[w]ith the aid of donors and champions in and out of government, security sector reform (SSR) has found its way into official governmental documents. In particular, the inclusion of the concept of SSR in Philippine peace and security policy represents a major achievement.” He states that the government has a robust legal framework in place and a clear delineation of responsibilities exists among formal institutions mandated to manage and hold the security sector accountable. However, research from his own Institute for Strategic and Development Studies (ISDS) reveals that the capacity and effectiveness of these institutions, including parliament, is limited. From this point of view, the author recommends the careful appointment of chairs of congressional committees that

¹² IPF-SSG, “Learning from national approaches to security sector governance in Southeast Asia”, Report of the 10th Workshop of the IPF-SSG, Manila, Philippines, 6-7 October 2012, accessible at: <http://ipf-ssg-sea.net/event-4>.

oversee the security sector (and setting up a new congressional committee on intelligence), as well as capacity-building of committee members and staff.

Preliminary conclusions

The following preliminary general conclusions pertaining to the role of parliament in SSG can be drawn from these country case studies:

1. The case studies illustrate the scarce insight into the role of parliament in SSG in a comparative perspective. More comparative in-depth research is necessary in order to generate sound policy advice for parliaments in Southeast Asia.
2. SSG is important for the consolidation or further democratisation of countries in Southeast Asia. Both democratisation and SSG processes are highly political and not linear; ‘u-turns’ and reversals are possible and occur throughout the region.
3. There is no single model for uniquely prescribing and describing the role of parliament in SSG. Different countries have followed different paths of institutionalising parliament.
4. While all authors acknowledge the importance of the role of parliament in SSG in Southeast Asia, its actual role differs from country to country. In some countries, parliaments are still debating or trying to debate on strengthening their own roles, while others have started to establish rules of procedure, parliamentary committees and other infrastructure for security sector oversight. Another group of countries has a parliamentary system of oversight already in place and is currently focusing on capacity-building.
5. Finally, the cases demonstrate that further sharing of experiences among Southeast Asian lawmakers and experts is needed in order to fully profit from the already implemented good practices of parliamentary oversight of the security sector in the region.

The Role of Parliament in Security Sector Governance: The Cambodian Case

Pou Sothirak and Paul Chambers¹

Introduction



Over the past several decades, Cambodia has been confronted with critical challenges, most notably a civil war during the first half of the 1970s, followed by mass atrocities committed by the Khmer Rouge regime, foreign intervention and occupation, armed clashes and human right violations. Since the early 1990s, the country has been struggling with the process of democratic institution-building, whereby legitimate civilian authorities are properly created in accordance with the rules-based liberal system of checks and balances. The legislative branch of government

has become part of this process.

One area of responsibility that members of parliament have is oversight of the security sector. Overall, this responsibility has not been taken very seriously, despite good progress on the economic aspect. Security sector governance (SSG) remains weak and deeply problematic in Cambodia, partly because parliamentary oversight of the armed forces remains extremely weak. This ongoing challenge needs to be overcome. If the country wants to achieve sustainable development and move toward democratic consolidation, security sector reform (SSR) must be taken seriously. Stakeholders in this process must address critical issues that prevent the system of checks and balances from working effectively. The legislative branch of government must not only be given the responsibility to draft, review and approve legislation and deal with other policy matters such as the national budget but must also be able to play an effective role in overseeing the roles, responsibilities and activities of the armed forces. To effectively play this role, this branch of government should be able to acquire necessary information and develop technical expertise that enable it to ensure that the security forces fulfil their responsibilities in conformity with the Constitution and the will of the people.

The case of Cambodian SSG is important given the dynamic relationship between security sector actors and their various operational, management and oversight roles. Meanwhile, effective efforts to reform the security sector – which includes the Royal Cambodian Armed Forces (RCAF), the Royal Cambodian Police (RCP), the Royal Gendarmerie of Cambodia and

¹ This paper is a product of the Cambodian Institute for Cooperation and Peace (CICP) and was authored by Pou Sothirak, Executive Director, and Paul Chambers, Senior Research Fellow.

associated paramilitaries – are essential for the state to ensure effective and efficient delivery of security to the Cambodian people by enhancing parliamentary oversight of these institutions.

This study thus examines Cambodia's legislative management function to monitor the country's security forces. It seeks to answer two important questions: What is the role of parliament in holding the security forces accountable for their actions and has this role been effective enough? The study argues that parliament is supposed to play a crucial role in guaranteeing an efficient and transparent security sector; in reality, however, its performance has proved to be far from satisfactory. To advance this argument, the chapter is organised into six parts. First, it examines Cambodia's security sector accountability framework in terms of a) strengths, weaknesses and gaps, b) the role of internal control mechanisms, and c) the role of management and oversight control mechanisms. Second, it examines the parliamentary functions with relation to the security sector: law-making, oversight and budgetary capacities. Third, it focuses on Cambodia's legislative committees in terms of their mandated powers vis-à-vis the security sector, as well as the procedural and practical aspects of their work on the issue. Fourth, it scrutinizes how parliament addresses security sector issues in relation to independent oversight institutions, civil society, and local government representatives. Fifth, it offers concluding remarks based on lessons learned from the Cambodian case, and policy recommendations.

Cambodia's security sector accountability framework

There is a broad spectrum of actors and legal mechanisms within Cambodia's security sector. This structure involves a security sector accountability framework to ensure inclusive and all-embracing SSR planning that derives from the active participation of various security sector stakeholders. Security sector accountability refers to the level of compliance by state security, public safety and justice actors with robust monitoring mechanisms, legal regulation, and transparency, as well as the ability of non-state actors to publicize alleged wrongdoings of security agents and effective judicial redress of grievances against security officials for alleged criminality.² Security sector accountability thus expands 'ownership' over the security sector from only state actors to other domestic actors. 'Local ownership' in SSR "means that the reform of security policies, institutions and activities in a given country must be designed, managed and implemented by domestic actors rather than external actors."³

In the case of Cambodia, since 1993, the country has attempted to reconstruct a security sector that guarantees peace and internal stability by dealing with such issues as the disarmament, demobilization, reintegration of the armed forces, control over small arms and light weapons, clearance of anti-personal landmines, and establishing the rule of law over security forces. In the early 1990s, priority was given to disarmament and demilitarization of the warring factions. However, the refusal of the Khmer Rouge's National Army of Democratic Kampuchea (NADK) shattered efforts by the United Nations Transitional Authority in Cambodia to maintain and

² Lisa Schirch and Deborah Mancini-Griffoli (eds.), "Security Governance, Accountability and Performance," in *Handbook on Human Security* (The Hague: Alliance for Peacebuilding, the Global Partnership for the Prevention of Armed Conflict, and the Kroc Institute for International Peace Studies, 2016), p.291.

³ Laurie Nathan, "The Challenge of Local Ownership of SSR: From Donor Rhetoric to Practice," in Timothy Donais (ed.), *Local Ownership and Security Sector Reform* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, LIT, 2008), p.21.

build peace. Aside from the NADK, the different armed factions were incorporated into the RCAF and were supposed to be apolitical. However, in reality, divisive partisanship among soldiers continued. The NADK finally collapsed in 1998, a year after a disastrous armed clash in July 1997 between the two military factions of the two respective prime ministers.⁴

Although the government of Cambodia has shown the political will to pursue reform in the security sector, SSR efforts have remained modest. Cambodia's security sector accountability framework originally derives from its 1993 Constitution, which placed the military under the control of the civilian king (Article 23). Since 1999, the Cambodian state has vocally supported SSR efforts aimed at demobilization and a "more streamlined and effective organisation [in terms of] robust command, control and communications."⁵ It has implemented some reforms at the RCAF general headquarters and increased coordination at all levels of the RCAF. Meanwhile, to increase professionalism and efficiency, the government has improved training and education. Cambodian security personnel have participated in both domestic and foreign-led SSR trainings and workshops in Cambodia and abroad.⁶

Over the last 27 years, Cambodia has seen a growing number of seminars and workshops on SSR. Members of the military, police, relevant ministries, political parties, parliament, academia, media, and non-governmental organisations (NGOs) – the relevant stakeholders who exert local ownership over SSG in Cambodia – have attended such meetings. Agreements about what is lacking in the security sector have been reached. For example, a 2012 workshop noted that the government still lacks a comprehensive SSR policy, relevant security actors are still not sufficiently engaged in the subject and resources seem to be insufficient for Cambodia to pursue SSR. In general, however, the workshops have simply led to an increasing number of workshops and continuous recommendations. Moreover, the few solid recommendations have contributed to sparse reforms. In addition to a dearth of effective workshops, the government has been slow to implement reforms in the security sector. While the current Minister of Defence has appreciated the need for SSR, he has appeared unwilling to do anything. He asserted that: "If it isn't broken, why fix it?"⁷ As a result of this attitude, Cambodia has been unable to establish any security sector accountability framework that could effectively institutionalize civilian control over the entire security forces.

The strength of SSG in Cambodia is that the military is formally under civilian rule. Given that the current Cambodian Prime Minister is a strong leader, he has been able to tighten his control over the security forces. Yet, this has presented a challenge for SSR, because no other civilian institutions have been able to effectively manage the security forces. This has contributed to an enormous gap in Cambodia's security sector accountability framework: the gap between existing law and law enforcement. Thus, though civilian supremacy over the armed forces is formally

⁴ Sorpong Peou, *Intervention and Change in Cambodia: Towards Democracy?* (Singapore: National University of Singapore Institute of Southeast Asian Studies, 2000), p. 300.

⁵ Paul Chambers, "Neo-Sultanistic Tendencies: The Trajectory of Civil-Military Relations in Cambodia", *Asian Security*, vol. 11, no. 3, 2015, p.196.

⁶ An early example of such a workshop is a workshop held in 2002 which led to the publication of Kao Kim Hourn (ed.), *Civil-Military Relations in Cambodia: Issues, Challenges and Prospects* (Phnom Penh: Cambodian Institute for Cooperation and Peace, 2002).

⁷ Chambers, "Neo-Sultanistic Tendencies: The Trajectory of Civil-Military Relations in Cambodia", p.197.

enshrined into law, only the Prime Minister has enough (informal) influence over the military and police to guarantee their subservience.⁸

Internal control mechanisms within the security institutions were established during the restructuring of the RCAF and RCP in 1993. Each service has an internal office of the inspector general tasked with investigating irregularities or wrongdoings by security officials. However, such investigations are closed to the public, and there is insufficient transparency to establish the number of investigations and cases that have resulted in convictions.⁹

In terms of executive management institutions, the Cambodian monarch formally exerts civilian control over the military as head of state. Article 21 of the 1993 Constitution mandates that the monarch signs “decrees transferring or ending the mission of military officials.”¹⁰ Articles 23 and 24 appoint the King as the Supreme Commander of the RCAF and Chairman of the Supreme Council for National Defence, which is formally intended to oversee and manage all security-related state activities.¹¹ Yet, this authority is widely acknowledged as merely ceremonial. The Prime Minister acts as the Vice Chair of this Council and among the Council’s members are the Minister of Defence, Minister of Interior, Minister in Charge of the Council of Ministers, Minister of Foreign Affairs and International Cooperation, Minister of Economy and Finance, and the Commander-in-Chief of the RCAF.¹²

Outside of this Council, the security forces appear to be under the control of the Prime Minister through personalized and informal channels and remain loyal to the ruling Cambodian People’s Party (CPP). Indeed, law forbids active-duty security officials from engaging in “any activity for supporting or opposing any political party.” Moreover, a political party must not “organise its organisational structure inside the [...] Royal Cambodian Armed Forces and in the National Police Forces.”¹³ Nevertheless, there have been reports of active-duty soldiers supporting the CPP during the election period. These loyal soldiers were promoted, while the recalcitrant soldiers were sanctioned. Consequently, the party has successfully been ensuring that soldiers are well connected with the ruling party. A deputy commander in the RCAF, General Chea Dara, said in 2015: “I speak frankly when I say that the army belongs to the Cambodia People’s Party.”¹⁴ Ultimately, any attempts at civilian control of Cambodia’s security forces are often linked to demonstrating loyalty to the party leadership and line rather than the law.

Meanwhile, judicial and independent oversight bodies have had little influence in the management of security forces, though the Appellate Court and Supreme Court formally

⁸ Chambers, p.199.

⁹ Transparency International, “Cambodia 2015: Government Defence Anti-Corruption Index,” available at: <http://government.defenceindex.org/countries/cambodia/>.

¹⁰ Kingdom of Cambodia, *Constitution of 1993* (Phnom Penh: Kingdom of Cambodia, 1993), accessible at: https://www.constituteproject.org/constitution/Cambodia_2008.pdf?lang=en.

¹¹ Ibid.

¹² See The Constitutional Council of the Kingdom of Cambodia, “CASE N° 197/001/2013”, February 12, 2013, accessible at: <http://www.ccc.gov.kh/english/decision/2013/Dec%20126.pdf>.

¹³ Kingdom of Cambodia, “Article 15”, in *Law on Political Parties* (Phnom Penh: Kingdom of Cambodia, 1997), accessible at: <http://www.refworld.org/docid/3ae6b51414.html>.

¹⁴ Joshua Lipes, “Cambodia’s Armed Forces ‘Belong’ to The Ruling Party: Four-Star General,” Radio Free Asia, July 29, 2015, accessible at: <http://www.rfa.org/english/news/cambodia/military-07292015145855.html>.

exercise appellate jurisdiction over cases in military courts. Additionally, judges are officially appointed to their posts by the Supreme Council of Magistracy, which is presided over by the King. However, this Council usually approves judicial nominations made by the Ministry of Justice, which is part of the executive branch. For this reason, “it is difficult for judges to impartially monitor the armed forces, since they themselves are easily controlled by the dominant political party.”¹⁵

As for ‘independent’ oversight bodies, an anti-corruption unit (ACU) was established in 2010 following passage of the Anti-Corruption Law. It was hoped that the ACU would vigorously prosecute cases of bribery, extortion and fraud against individuals in the civilian and military sectors. However, the ACU has been accused of abandoning investigations, partisanship and even trying to influence the military when the ACU chief gave soldiers envelopes in April 2016.¹⁶ Another independent commission is the Cambodian Human Rights Committee (CHRC), established in 1998 and reporting directly to the Council of Ministers. It is tasked with investigating complaints on human rights violations, ensuring the enforcement of human rights and organising trainings and publishing information about its activities. In this capacity, the CHRC only indirectly pertains to security force activities. The director is a senior member of the CPP, and the institution is not actually independent from the executive branch. The CHRC is not even accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.¹⁷ The fact that these two institutions are not independent undermines their oversight roles.

Finally, parliament’s role in overseeing security forces is limited. The three political parties in parliament are the ruling CPP, the Cambodian National Rescue Party (CNRP) in the Lower House, and the Sam Rainsy Party (SRP) in the Senate. In the Lower House, the CPP and CNRP respectively hold 68 and 55 seats. There are 61 seats in the Senate and the ratio between the two parties is 46 (CPP) to 11 (SRP), along with four independents (two from the King). Regarding SSG/R, the ruling party’s role is generally to actively support the agenda of the Prime Minister. The CNRP and SRP have not been able to play any meaningful role in parliament because, as minority parties, they have never had sufficient numbers to challenge the CPP and the executive branch dominates SSG/SSR policy regardless.

The exceeding majority of members of parliament are business-people and former bureaucrats, though some are former journalists, NGO workers and academics. Some members of parliament have a security sector background. Following the 2003 national legislative election, 13 of 123 representatives in the National Assembly had military backgrounds, and all were affiliated with the CPP. This proportion grew to 16 of 123 following the 2008 election. The figures are higher

¹⁵ Chambers, p.197.

¹⁶ Mech Dara and Chheng Niem, “Asking about RCAF envelopes could be crime, says ACU boss,” The Phnom Penh Post, April 27, 2016, accessible at: <http://www.phnompenhpost.com/national/asking-about-rcaf-envelopes-could-be-crime-says-acu-boss>; Transparency International, “Cambodia: Corruption Concerns Amid Hope for the Future,” Transparency International, February 20, 2014, accessible at: http://www.transparency.org/news/feature/cambodia_corruption_concerns_amid_hopes_for_the_future.

¹⁷The Cambodian Human Rights and Development Association, *Cambodia: Symbolic Institutions Are No Substitute*, (Phnom Penh: ADHOC, 2015), pp. 2-3, accessible at: <https://www.forum-asia.org/uploads/wp/2015/09/2-Cambodia-FINAL-03-Aug-2015.pdf>, pp.2-3.

for the Senate. In the latest Senate term beginning in 2012, 31 of 61 members, though civilian, are former security officials.¹⁸

Ultimately, although a legal basis for a Cambodian security sector accountability framework exists, it remains fluid and subject to the influence of powerful individuals within the executive. Even though control over security forces is formalized under the monarch and the executive, legislative and judicial branches and oversight agencies within the security sector have monitoring functions, these mechanisms are not sufficient to ensure partisan accountability for the security sector. Instead, members of the security forces often hesitate to defy orders issued by members of the executive branch because of personal loyalty to party leadership.

Generic parliamentary functions applied to the security sector

The formal role of Cambodia's parliament is principally to make laws and scrutinize the government. As mentioned, the Cambodian parliament plays a role in security affairs because legislatures in general act as law-making bodies responsible for oversight and budgetary functions related to defence matters. Oversight capacities relating to security matters are formally under the purview of a parliamentary committee in each house, which are discussed in detail in the following section.

Legislative law-making regarding security issues is at most indirect. Article 26 of the 1993 Constitution (as amended in 1999) grants both houses a role in approving all treaties and conventions, including those relating to the military.¹⁹ Article 90 (as amended in 2006) mandates the National Assembly to adopt a law on the declaration of war or giving general amnesty. Article 24 allows the King to declare war with the approval of the National Assembly and Senate.²⁰ Finally, during a state of emergency and when an election cannot be held, Articles 86 and 102 require that the National Assembly and Senate cannot be dissolved until the emergency expires.²¹

Finally, in terms of budgetary matters, the 1993 Constitution mandates that the government must prepare an annual budget in cooperation with the ministries, including the Ministry of Defence, and the National Assembly must vote on this budget.²² Nevertheless, the defence budget tends to be generally controlled by the Ministry of Defence, which is under the executive scrutiny of the prime minister.

Legislative authority regarding the defence budget is only in reaction to prior executive decision-making. The Ministry of Economy and Finance (MEF) is in charge of the annual budgetary process from the beginning to the end of each fiscal year. The Ministry of Defence prepares its draft budget, which must be then sent to the MEF for approval. However, if rejected by the MEF, the Ministry of Defence can appeal the decision with the Council of Ministers, chaired by

¹⁸ Chambers, p.189.

¹⁹ Kingdom of Cambodia, *Constitution of 1993*.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

the Prime Minister. In November of each year, the budget bill is submitted to the National Assembly and then to the Senate. The budget bill is first sent to the Permanent Committee of the National Assembly (PCNA). The PCNA sends the draft to the Committee of Economy, Finance, Bank and Audit for specific scrutiny, which examines it, makes a conclusion and sends it back to the PCNA. Members of the PCNA must then scrutinize the proposed budget, though executive branch officials have the right to defend it. Thereupon, the draft budget, modified or not, goes before the National Assembly. If adopted by the lower house, it goes to the Senate in a similar process, arriving at legislative committees before an overall vote on the budget is held by the upper house.²³

Both houses must have adopted the budget bill by December 25 for it to become law. Upon passage by the lower house, the Senate's vote reflects the upper chamber's review powers under Article 113 of the 1993 Constitution.²⁴ However, expediency is an important factor given that there is generally a one-month period during November-December for both houses to decide on the budget bill. Parliament also simultaneously considers other bills in addition to the budget bill. Moreover, if the Senate wants to modify the bill and send it back to the National Assembly for a vote, the entire process must be carried out in the short duration. In the end, the final votes in both houses on the draft budget bill are required to be open majority votes, which require parliamentarians to disclose their identities. This process disadvantages the role of parliament in the budgetary process because the executive branch and the CPP are constantly pressuring members of parliament to pass the budget and members of parliament themselves generally lack sufficient time, expertise, and information to effectively scrutinize the budget. In 2015, Cambodia was rated to have the eighth least transparent budget in the world, more opaque than that of China.²⁵ Cambodian law does not even require the executive branch to consult parliament prior to spending contingency funds not identified in the overall budget.²⁶ Such funds have been especially critical for defence spending.

The parliament's role in budgetary matters is not supposed to be limited to simple approval. In addition, the legislature has the power to monitor how the executive, including the Ministry of Defence, effectuates the budget. However, in all budgetary matters and especially those related to security, parliament faces enormous obstacles. First there is limited control over government spending, especially defence budgeting. The National Audit Committee (NAA) is supposed to monitor government spending but, to date, exercises this authority with limited success. Second, members of parliament have little or no access to information related to security issues, given that the government often regards these as classified national security matters. Third, many CPP or ex-military parliamentarians sometimes favour executive or military interests. Fourth, members of parliament have little or no expertise in defence matters. Fifth, members of parliament really only have the power to consider the overall budget rather than the individual defence budget. Sixth, as demonstrated above, parliament has a relatively brief period of time to

²³ Im Sithol and Chap Sotharith, "Role of Parliament in Defence Budgeting in Cambodia," Paper presented at the 4th Workshop of the Inter-Parliamentary Forum on Security Sector Governance (IPF-SSG) in Southeast Asia on "Defence Budgeting in ASEAN Member States: Parliamentary Perspectives", Phuket, Thailand, May 23-24, 2008.

²⁴ Kingdom of Cambodia, *Constitution of 1993*.

²⁵ International Budget Partnership, "Open Budget Survey: Cambodia", 2015, accessible at: www.internationalbudget.org/wp-content/.../OBS2015-CS-Cambodia-English.pdf.

²⁶ Ibid.

discuss and vote on the budget. Seventh, the legislature lacks a budget research office, and, indeed, there is no legislative pre-budget debate.

Ultimately, Cambodia's parliament offers only "weak oversight during the planning stage of the budget cycle and limited oversight during the implementation stage of the budget cycle."²⁷ This situation has made the legislature quite feeble when it comes to oversight of security budgeting. As a result, parliament generally 'acquiesces' to the Ministry of Defence on budgeting control of the security forces.²⁸

Parliamentary committees

There are ten 'expert' committees in the lower and upper houses of Parliament. Both houses play roles with regard to scrutiny of government affairs and researching and acting as a focal point between the executive and legislative branches. Since the 1998 election, the CPP's electoral victories have permitted the party to numerically dominate all mandates and parliamentary committees. However, given the party's narrow victory in the 2013 election, its members today chair the five most important Lower House committees while the other five are chaired by the CNRP. Each National Assembly committee consists of nine members. The committees chaired by the CPP are composed of five CPP members (a president, a secretary and three normal members) and four CNRP members (a vice-president and 3 normal members). This formula is the same in the committees chaired by the CNRP.²⁹ Meanwhile, as a result of the CPP's large majority in the Senate (46 to 11), CPP members of parliament chair eight of the ten Upper House committees, while the SRP chairs only two.³⁰

Regarding security matters, each house possesses a committee on interior affairs, national defence, investigation, clearance and civil service. During the current electoral mandate, a member of parliament from the CPP chairs each committee, and the majority of the committees' members are from the CPP. Members are intended to act as 'gate-keepers' concerning laws related to security budgeting, declarations of war and monitoring of security behaviour. Specifically, according to Article 97 of the 1993 Constitution, these committees (as with all legislative committees) have the power to summon an executive ministerial representative to clarify issues related to a particular minister's responsibility.³¹ They can also examine bills emanating from the ministries of defence and interior, as well as request information and monitor officials from and examine irregularities relating to these ministries. Additionally, the committees receive and investigate proposals concerning issues of administration and national security. In their work, the committees are allowed to visit the armed forces and report back to the National Assembly and the various ministries.³² Two other committees in each house have peripheral connections to security issues: the Committee on Human Rights, Complaints and

²⁷ International Budget Partnership, "Open Budget Survey: Cambodia".

²⁸ Chambers, p.194.

²⁹ National Assembly of the Kingdom of Cambodia, "National Assembly Homepage", accessible at: <http://www.nac.org.kh/group-article/30>.

³⁰ Senate of the Kingdom of Cambodia, "Senate Homepage", accessible at: <http://www.senate.gov.kh/home/index.php?lang=en>.

³¹ Kingdom of Cambodia, *Constitution of 1993*.

³² Kingdom of Cambodia, *The Internal Rules of Procedure of the National Assembly* (Phnom Penh, Kingdom of Cambodia, 1993), accessible at: http://sithi.org/temp.php?url=law_detail.php&id=50.

Investigation, and the Committee on Investigation and Anti-Corruption. The latter only became operational in 2014.³³ Their committee meetings are held behind closed doors. In order to perform their functions, members of all of these committees are supposed to have necessary resources as well as cooperation from the executive branch and the security forces.

Despite their formal powers in security affairs, these committees have proven mostly ineffective in practice. First, in terms of expertise, members of parliament often do not have enough knowledge about security matters to adequately make decisions.³⁴ Second, parliamentarians often lack sufficient time in a legislative session to examine a bill or conduct an investigation to ascertain any extensive findings. Third, even though the committees can summon ministerial and other officials, it is often quite easy for an official to find excuses to avoid or even ignore a summons. Fourth, the committees lack the power to approve or disapprove the defence or interior budgets and can only review draft budgets, make necessary observations and present their findings or recommendations to the full house for further debate and vote. Consequently, committee members, as part of parliament, can only vote on the entire national budget. Fifth, committees have no role in establishing security policy, Cambodia's involvement in United Nations peace-keeping missions, or deciding on security forces' size and the appointment of security officials at the position of brigadier-general or higher.³⁵ Sixth, committees have few financial resources for investigations. Seventh, committees concerned with defence matters, such as Committee Four, are headed by (and contain majorities of) members of the ruling party, which is a situation that may hinder any critical inquiries by the committees. Finally, committees have access to limited information about the security forces, especially since they receive little cooperation from the executive branch.³⁶ Ultimately, parliamentary committees have been rather weak in the oversight of Cambodia's security forces.

Relationship with other overseers and civil society

Independent oversight institutions can be divided into national and international agencies. Examples at the national level are the Anti-Corruption Commission and the judiciary, which have never been utilized by parliament for purposes that might conflict with executive interests due to the executive's power over these institutions.³⁷ At the international level, Cambodian parliamentarians have worked on a variety of issues (including Cambodian security matters) with international non-governmental organisations such as Transparency International and the International Commission for Jurists and intra-governmental organisations such as the International Court of Justice, the International Criminal Court, and the International Labour Organisation.

³³ Sovuthy Khy, "Assembly Rules Amended In First Bipartisan Sitting," *The Cambodia Daily*, August 9, 2014, accessible at: <https://www.cambodiadaily.com/archives/assembly-rules-amended-in-first-bipartisan-sitting-66102/>.

³⁴ Personal interview with National Assembly member and Cambodian National Rescue Party spokesperson Yim Sovann, November 15, 2014.

³⁵ Chap Sotharith, "An Assessment of Parliamentary Roles on Security Sector Governance in Cambodia," *Cambodian Institute for Cooperation and Peace*, Working Paper, no. 15, 2007, pp. 13-8.

³⁶ Chambers, p.194.

³⁷ Renu Baghat, "Separation of Powers without Checks and Balances in Cambodia," *Journal of Alternative Perspectives in the Social Sciences*, vol. 6, no.4, 2015, pp. 389-401.

Civil society groups (CSOs) did not begin to work with parliamentarians until the mid to late 1990s. The Cambodian Institute for Cooperation and Peace (CICP) has been active in this regard. CICP has conducted workshops independently and in conjunction with groups dedicated to SSR and published research concerning SSR.³⁸ Since 2015, relations between the legislature and certain CSOs have been particularly strained due to a desire by the state to exert more control over CSOs appearing to be against the government or collaborating with opposition political parties. As a result, parliament passed a new law aiming to constrain civil society activities deemed as too negative about the government. In July 2015, both houses approved the Law on Non-Government Organisations and Associations (LANGO). The law 1) permits the deregulation of domestic and international NGOs if the state perceives them to not be 'politically neutral'; 2) makes domestic associations and NGOs criminally liable without registration; and 3) grants complete discretion to the Ministry of Interior to (on general grounds) deny registration to an organisation if that entity is perceived as harming peace, stability and national unity and security.³⁹ The legislature overwhelmingly passed the law given that a majority of the members of parliament in each house were members of the CPP. CPP parliamentarians are aligned with a series of pro-government NGOs, such as the Association of Youth for State Reform. Opposition members of parliament from the CNRP, on the other hand, champion the causes of civil society groups that are typically more critical of the state, such as the Cambodian Human Right and Development Association. Since the passage of LANGO, the government has increased the control of anti-CPP NGOs.⁴⁰ The state has not used LANGO penalties against those NGOs walking a fine line between the CPP and CNRP.

Finally, relations between parliament and commune leaders are extremely distant. Although decentralization efforts began in 1993, greater political autonomy for *sangkats* (communes) only occurred in 2001, eventually leading to the 2008 Organic Law on more formal decentralization. Parliamentary connections with local officials are primarily based around the former's budgetary authority over governors and other local level entities through the Law on Public Finance Systems. In all other aspects, the executive branch, through its National Committee for Democratic Development of Subnational Administrations exercises the final authority over communes.⁴¹ Meanwhile, at least during times of emergencies, security officials at the provincial level exert enormous informal power and parliament tends to have little control over them.⁴²

Conclusion

This study has advanced the argument that, although Cambodia's parliament is supposed to play a role in assuring an effective and accountable security sector, this function has faced numerous obstacles. The legislature is tasked with making laws for budgeting and monitoring security forces. Nevertheless, some members of the security forces might occasionally side-step the law,

³⁸ See, for example, the aforementioned book edited by Hourn, 2002.

³⁹ Roseanne Gerin, "Cambodia's Senate Passes NGO Law despite Ongoing Protests Against it," Radio Free Asia, July 24, 2015, accessible at: <http://www.rfa.org/english/news/cambodia/senate-passes-ngo-law-despite-ongoing-protests-against-it-07242015164044.html>.

⁴⁰ Shaun Turton and Mech Dara, "LANGO Looming in ADHOC Rearview," The Phnom Penh Post, May 3, 2016, accessible at: <http://www.phnompenhpost.com/national/lango-looming-adhoc-rearview>.

⁴¹ Tariq Niazi, *Deconcentration and Decentralization Reforms in Cambodia: Recommendations for an Institutional Framework*, (Mandaluyong City: Asian Development Bank, 2011).

⁴² Chambers, p.191.

find other sources for their own income, and escape legislative scrutiny either because parliamentarians lack expertise about security sector issues, have insufficient parliamentary oversight powers or are reluctant to engage in serious monitoring.

It is important that parliament upholds its primary functions to provide effective and legitimate oversight for security institutions and monitor and control both their financing and activities. Parliament must attempt to ensure that the military and other security institutions are held accountable, socialized with norms of good governance through classes at military and police academies, as well as at lower level trainings for security officials, and adhere to the principle of political neutrality while performing their intended duties. In a democratic system, parliamentary oversight is designed to carry out the critical function of ensuring that the security sector is held accountable to the needs and priorities of both the state and the public.

Therefore, in term of recommendations, parliament should consider the following six steps to strengthen its oversight with regard to SSG:

1. Parliament should try to exercise its authority to debate and enact legislation supporting SSR independent of the executive. For example, it would be useful for some parliamentarians to establish an informal bloc to promote SSR, attempt to speak out on the subject or try to amend the constitution to improve parliamentary power regarding SSG. Related to this, parliament should seek to publicize and popularize relevant norms related to good governance, democratic accountability, peaceful conflict resolution, and human rights protection to promote social cohesiveness and harmony. This can be achieved with public seminars and the publication of literature that is easily accessible to the public.
2. Parliament should ensure that laws regarding security forces are simple, clear and easy to enforce, allowing parliament to effectively scrutinize security officials without any political interference or consideration of any party loyalty.
3. It would be beneficial for good governance if parliament could work more closely with the executive to ensure that the security sector is effectively monitored. Though it possesses few effective SSG oversight powers, parliament should continue trying to efficiently carry out this monitoring role. One way to do this is for parliamentarians to cooperate more effectively and openly with civil society groups, expressing their own SSG agenda and concerns through the media.
4. In post-conflict countries such as Cambodia, the role of parliament is to enhance national unity and build public trust in security institutions. Parliament must debate and negotiate the proper balance between transparency and the secrecy of national security.
5. All elements of SSG for core security actors should be mirrored with corresponding training for and capacity-building of parliamentarians. External donors should aim to build and support the capacity of parliamentary members. Legislators should receive more education about Cambodia's security issues and the security-related roles of parliament. There should be more nationally and internationally sponsored trainings related to security and defence matters that parliamentarians can attend. Donors should provide technical and informational assistance to enhance the ability of members of parliaments to successfully conduct parliamentary oversight in support of SSG.

6. Parliament should collaborate closely with both domestic and international organisations working on improving transparency and accountability in the security sector.

A final point on the lessons that the Cambodian case offers for SSG and parliament is necessary. First, in countries where the security forces have historically played a stronger, dominant role, it is difficult for the legislature and civil society to hold them accountable. Second, to seriously reform the security forces, parliament must obtain greater cooperation from members of the executive branch, including from security officials. Parliament can only then begin to play an effective management role and enhance SSG.

The Role of the Indonesian Parliament in Security Sector Governance: A Case Study of Defence Budgeting

Iis Gindarsah¹

Introduction



Parliament plays a strategic role in enforcing civilian control over defence and security establishments. In several democratic states, that role is not only ensured by regulations but also governed in detail within various policies mutually agreed with the

government. However, considering political traditions and unique local social conditions, the implementation of parliament's role varies between countries. While some parliaments could effectively perform the legislative role, there are also those who only act as a 'rubber stamp' or simply provide legitimacy on government policies. In Indonesia, the House of Representatives (*Dewan Perwakilan Rakyat* or DPR) has three main functions, namely law-making, budgeting, and oversight. Specifically, the Parliament's Code of Conduct in 2015 regulates that the budgeting function comprises drafting and allocating the state budget, as well as reviewing all reports relating to state finance and government expenditures. Its oversight function includes supervising the implementation of the constitution, budgeting, and government policies. Therefore, it is prevalent for parliament to receive serious attention from all sides interested in security sector governance (SSG).

The role of parliament in security sector governance

Parliament principally oversees several aspects related to the compatibility between defence policy and planning for defence programs and projects. It may perform one or a combination of several forms of audit, specifically financial, compliance, and performance (value for money) audits. In practice, each audit may be executed through obligation-based, cash-based, or accrual-based appropriations carried out by parliamentary auxiliary bodies such as a defence commission, joint commission, and/or sub-commission. The key objective of defence policies is to strengthen deterrence strategy against perceived threats. On the one side, the credibility of deterrence policy requires a government to convey clear intentions and determination to take necessary actions. On the other side, some states rely on 'strategic uncertainty', particularly with regard to their

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military capabilities, to deter any external aggressions. Given such concern, there are thresholds in the application of openness or transparency in defence policy-making.

In many developing countries, parliamentary oversight of the defence sector tends to work with 'limited openness' and 'limited transparency'. While the former takes form in a sub-commission with restricted membership to regularly review defence policy, the latter often represents parliamentary mechanisms to access information relating to defence budgeting and arms procurement. Limited transparency is typically driven by certain requirements such as the government's limited options due to shortage in weapons system suppliers. The government often requires longer deadlines in making inquiries (shopping around) for weapons manufacturers before the purchase decision. The high dependency on foreign loans is one of the factors that has necessitated such differences in the authorization approach of defence procurements.

In that reflection, there are at least three mechanisms for an effective parliamentary mechanism on defence policy-making. First, the parliamentary budget review must be arranged and carried out according to definite procedures from the defence system management (the attribution between budget allocation for large weapons purchases are based on life-cycle cost, performance indicators, second contract, routine purposes and development). Second, it is imperative to provide harmony and balance between military information secrecy and public defence funding control. This process typically consists of three expenditure categories: (a) general/public budget; (b) classified expenditure on specific capital acquisition and operations given only to bipartisan commission on budget and specific military budget; and (c) top secret, given only to a small number of parliamentarians. Third, in most cases, it is necessary to form a parliamentary audit commission involving independent, non-governmental technical experts.

The command system and the secrecy tradition in the military bureaucracy

Bureaucracy traditionally works to implement a political agenda that has been set by policy/decision-makers. Compared to civilian bureaucracy, the military organisation is unique due to several issues related to military tradition. First, the military command hierarchy system tends to also automatically be employed in the management of the military budget. This lengthy bureaucratic chain causes languidness and inflexibility, which contradicts the objective need of defence actions, speed and flexibility. Second, bureaucracy operates and finds unlimited power in information control. This condition tends to reinforce itself in the strong secrecy tradition of the military bureaucracy. There is no doubt that secrecy is crucial in maintaining state security. However, when that tendency flows into budget management, the repercussion is a strong objection to the transparency required in every state's financial management. Thus, it comes as no surprise that transparency and accountability, the two universally accepted fundamental principles in state financial management, are neglected. Efficiency and effectiveness, the expected positive impacts from modern bureaucracy, are also in serious trouble.

Observing the characteristic of defence tasks, the tangle between the command system-hierarchy, as the primary requirement for a working modern bureaucracy, and the demands of state finance management with different sets of requirements has posed a serious risk. Strong

ministerial turnover, as seen when bureaucracy takes over the decision making function that should have been carried out by political officials. Even more significantly, this propensity can easily trigger an internal bureaucratic disintegration. Jealousy and conflict between sides inside the bureaucracy has become an underground phenomenon causing major impediment.

The role of parliament in Indonesia's security sector governance

According to the Indonesian constitution, the House of Representatives in general has law-making, budgeting, and oversight roles. These roles are highly relevant to the defence sector. Arguably, the budgeting role is an important aspect for parliamentary oversight of the executive and military that is reinforced by regulations. These regulations do not only cover the legalized budget amount and allocation but also the requirements to obtain government information on defence policies. The parliamentary oversight of the defence budget usually considers aspects such as the relationship between the defence budget and the inflation rate, the limit of the budget surplus or deficit and mechanisms/regulations to compensate the budget deficit/surplus for other sectors. However, parliament members face many challenges to oversee defence budgeting. The first challenge is political constraints. In many cases, the party leadership tends to control the orientation of parliamentary oversight, including defence budgeting. Outspoken legislative members, specifically on the allocation of the defence budget for weapon systems procurement, are often side-lined because of political deliberation or party pressure. This situation may also be caused by the ambiguity of the parliamentary system, in which the outspoken members of parliament are also under the auspices of the political party with members in the government cabinet. As a result, there is a constant power struggle between political interest and legislative oversight of defence budgeting.

The second constraint is the general lack of parliamentary defence expertise. It is common that the government usually has the advantage in terms of expertise on technical and operational issues, especially if the government is unforthcoming in conveying other information related to certain aspects of defence budgeting. Members of parliament frequently receive only partial information on the main equipment and weapon systems procurement from the government. Additionally, there are very few parliamentary experts in the operational aspects of defence. These factors render the oversight function of the Indonesian parliament inefficient, notably in the aspect of goods and services procurement. However, the members of parliament could efficiently access information on the defence equipment or weapon systems from a variety of other sources, such as universities, research agencies, or defence researchers. They can also gain information from international defence publications, such as Jane's magazine, Asia Pacific Defence Reporter, Military Balance, and Strategic Survey, to gain insight into the performance of a particular weapon system and an area's strategic dynamics. All of these sources are freely accessible. Meanwhile, information on the price of a particular vital equipment and weapon system can be obtained from various weapons exhibition events. Even if the prices in exhibition events do not reflect the total cost of systems transaction involving many institutions and actors, such information can be used as comparative and benchmark factors, as well as the grounds for arguments on the cost of goods or services proposed by the government to parliament. This process is time and cost-efficient compared to performing costly comparative overseas studies.

The third problem is the lack of law enforcement for the alleged misused defence expenditure by the State Audit Agency. Currently, there is no legal consequence for discrepancies in the budget approved by the members of the DPR. This leads to ineffective parliamentary oversight to ensure a transparent and disciplined budgeting system.

The fourth factor is the misperception of the correlation between transparency and secrecy. There is an assumption that detailed defence budgeting transparency will disturb the secret nature of the defence sector. However, with today's free access of information with regard to defence forces' performance and numbers, secrecy is futile. Military secrecy typically relates to code, operational strategy, and tactics. This issue can be resolved by researching information from available sources and increasing defence sector expertise. Therefore, the argument on secrecy has very little substantial grounds. If any, there has to be a regulating law to govern the distinctive situation or aspect that necessitated the need of secrecy. In general, the House of Representatives is responsible in overseeing weapons acquisition. The defence sector is one of the sectors funded by the public fund through the state tax system, as determined by political decisions. Consequently, there must be a strong argument, with due legislative accountability, for the amount of public funds allocated to the defence sector to prevent their misappropriation. Another consideration is that weapons procurement should not financially overburden the state in the short- or long-term and lead to cutbacks in sectors that are for the people's direct interest. Parliament must analyse the financial impact and burden of weapons procurement for the people. This is to ensure a balance between the cost of weapons purchased and the needs of social and other non-military sectors. Thus, legislative transparent and accountable oversight of weapons procurement may hinder corruption, dissipation, and misuse of public funds. Typically, the House of Representatives is required to obtain information or acquire access on all defence budget documents. In the case of secrecy, it is necessary to form a special defence commission and/or sub-commission that is comprehensively briefed on defence budget documents.

Lastly, the House of Representatives often finds difficulties in performing defence budgeting oversight due to the presence of off-budget funds or income sources. Typically these funds are obtained from various business or economic activities of the military. Whilst these activities should be held accountable to parliament, this is never the case in practice. Similar to this situation is the possible presence of defence budgets from other ministerial posts or departments.

Conclusion

The solution to all these issues is still unclear. In terms of policy accountability, the weakness of civilian capacity in defence matters is most likely the main obstacle. Meanwhile, with regard to operational accountability, the biggest problem is the large number of personnel with military backgrounds in the Ministry of Defence. Culturally, they tend to bring forward arguments to defend the secrecy of the military organisation in formulating and executing public policy, which ideally requires transparency and public accountability. Civilianising the ministry will likely face numerous hindrances in the future due to limited defence expertise and slow bureaucratic reform. Moreover, the military bureaucratic character will most likely impede internal oversight for several years ahead.

The Role of Parliament in Security Sector Governance in Malaysia

Rastam Mohd Isa, Nurul Izzati Kamrulbahri and
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Introduction



Malaysia is a parliamentary democracy with a federal system of government. This paper seeks to examine the role of the parliament in security sector governance (SSG) in Malaysia. As a place where laws are debated and passed by elected representatives, it is critical for parliament to understand the

significance of its power in influencing good governance, including within the security sector. Before delving deeper into the discussion, prior understanding of good governance would be helpful. Good governance comprises eight major characteristics: participation, consensus-oriented approaches, accountability, transparency, responsiveness, effectiveness and efficiency, equitability and inclusiveness, and accordance with the rule of law. Overall, good governance simply implies the processes of decision-making and the implementation (or lack thereof) of these decisions.²

SSG includes five main aspects: the presence of a constitutional and legal framework and civilian, parliamentary, judicial and public control. Contrary to the normative mindset, discussions on SSG are not limited to the provider of security, such as the military or the police, but are extended to the wider narratives defining security.³ Governance allows for greater public participation, directly or indirectly, as a checks and balance system and a means to motivate greater transparency in decision-making in the security sector.

The narrative of reforming the security sector has also been at the centre of the main discourse relating to the security sector. Proponents have consistently pushed for good governance

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² Yap Kioe Sheng, "What is Good Governance?", United Nations Economic and Social Commission for Asia and the Pacific, accessed on 13 August, 2016, accessible at: <http://www.unescap.org/sites/default/files/good-governance.pdf>.

³ Heiner Hänggi, "The Concept of Security Sector Governance," in *Special issue on "Parliamentary Accountability and Security Sector Governance in Southeast Asia*, (Singapore: Friedrich Ebert Stiftung, 2006), pp. 5-14.

practices within the sector to establish elected representative oversight of all security institutions that is independent and executes fair checks and balances, as well as provides affordable security to the public.⁴ The “Handbook of Parliamentary Oversight of the Security Sector” provides a comprehensive discussion on the role of parliamentary control in SSG.⁵

In the context of Malaysia, parliament plays a crucial role in public life. It has functions other than making laws. Parliament debates on control over national finances (which includes the national budget and taxation), discusses important matters of the day and scrutinises the work of the central administration. It also conforms to the feature of Westminster-style legislatures, which reflect the policy and decision-making of the government of the day. In other words, in Malaysia, parliament is an essential avenue for members of parliament to discuss and engage the government on emerging issues concerning the country.

Parliamentary system in Malaysia

Malaysia is a federation comprising 13 states and the federal territories. The parliament is one of the legislative authorities in Malaysia, as provided for in the Federal Constitution. The Constitution also recognises state legislative assemblies.⁶ The legislative power of these bodies is constitutionally limited and closely resembles the features of the Indian and Australian parliaments, meaning that they are not sovereign as in the British parliament.

The composition of the Malaysian parliament, as defined by Article 44 of the Federal Constitution consists of the *Yang di-Pertuan Agong* (the King) and two houses known as *Dewan Negara* (Senate or the Upper House) and the *Dewan Rakyat* (House of Representatives or the Lower House). The Malaysian parliament is essentially a bicameral legislative body. However, the Dewan Rakyat ultimately holds a more important role, with almost all bills originating in the upper house.

Currently, the Dewan Rakyat comprises 222 members of parliament who are elected in the general elections held once every five years. There are 70 members in the Dewan Negara, 44 of who are appointed by the Yang di-Pertuan Agong pursuant to Article 45 of the Federal Constitution. State legislative assemblies elect the rest of the members. They serve for a term of three years and may be reappointed once. Usually, the parliamentary session continues for a period of five years from the date of its first meeting, unless parliament is dissolved and new elections are held.

Parliamentary proceedings are governed by each Standing Order. Standing Orders are derived from Article 62(1) of the Federal Constitution, which essentially grants each house power to

⁴ Andrzej Karkoszka, "The concept of security sector reform," in *Security Sector Reform: Its Relevance for Conflict Prevention, Peace Building and Development*, (Geneva: United Nations Office at Geneva, 2003).

⁵ Hans Born, Philip Fluri and Anders Johnsson, *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices* (Geneva: Geneva Centre for the Democratic Control of Armed Forces, 2003).

⁶ Government of Malaysia, "Articles 73-74", in the *Federal Constitution of Malaysia* (Kuala Lumpur: Government of Malaysia, 1957), accessible at: [http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20\(BI%20text\).pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Constitution%20(BI%20text).pdf).

regulate its own procedure. The Standing Orders of the Dewan Rakyat provide for the establishment of select parliamentary committees.

Parliament and its legislative function

In theory, legislation is the main function of parliament and the executive has no law-making powers of its own except in the event of an emergency. This is clearly stated in the Federal Constitution pursuant to Articles 150(2B) and 66. Ideally, a bill may not be passed without parliamentary scrutiny. The procedure is administered by Article 66, which states that the legislative law-making power shall be exercised by passing bills in both houses and consent of the Yang di-Pertuan Agong. Consistent with the Westminster parliamentary system, every bill must be read three times in each *Dewan* (house) before it can be passed in the Malaysian parliament; the first reading is merely a formality, the second reading is intended for scrutiny and the third reading is another formality. However, in reality, the second reading is deemed the most crucial part of the procedure, as the bill is circulated to members of parliament for debate. During this stage, members of parliament may raise some issues. The bill then goes through a committee stage where it is determined if the bill needs to be referred to a select committee for further scrutiny. The bill subsequently moves to the Dewan Negara where it follows similar procedures as in the Dewan Rakyat. The Yang di-Pertuan Agong, if His Majesty so pleases, assents the bill, which would consequently become law after being published in the government gazette.

Parliamentary committees and their oversight functions

In the Malaysian parliament, there are two types of parliamentary committees. The first type review bills and are generally known as the committee of the whole house, which examines a bill after a second reading, and a select committee on a certain bill. The second type scrutinise the central administration, known as the Joint Committee (comprising both houses),⁷ sessional select committees⁸ and special select committees.⁹

The formation of the Select Committee for Bills is almost universal elsewhere and is intended to inquire and deliberate on matters determined by the House. During an ordinary process of legislative enactment, the committee stage has occasionally been used to scrutinize important bills.¹⁰ For instance, select committee was recently formed to examine bills that ultimately became law, such as the Criminal Procedure (Amendment) Act 2006.

Admittedly, the most crucial committees of the Dewan Rakyat are the sessional select committees. The members of a sessional select committee are nominated by the Committee of Selection and may elect their own chairman. Such committees are appointed at the beginning of each session and are active until the end of the session. There are currently five select

⁷ Government of Malaysia, "Standing Order Nos. 87-88".

⁸ Ibid., "Standing Order Nos. 76-80, 82-84, and 86".

⁹ Ibid., "Standing Order No. 81".

¹⁰ Ibid., "Standing Order Nos. 81-88".

committees, namely: Committee of Selection, Public Accounts Committee¹¹, Standing Order Committee, House Committee, and Committee of Privileges. Such committees, except for the Public Accounts Committee, are mirrored in the Dewan Negara. The formation of select committees, except for the Public Accounts Committee, is intended for members of parliament to discuss and decide parliamentary procedures.

Pursuant to Order 81 of the Parliamentary Standing Order, power is granted to the Dewan Rakyat to establish a select committee other than the existing committees. The practice of the establishment of such committees is on an ad hoc basis for specific purposes. For instance, a few select committees have been formed to examine various issues such as integrity, ethics of members of parliament and unity and national service. In 2011, after a demand for free and fair election from the public, the Prime Minister announced the creation of a select committee to explore the possibility of free and fair elections.¹² However, he then stated that the next general elections may be held soon, and parliament and the select committee were soon dissolved.

Parliamentary oversight of the security sector

In Malaysia, the parliament does not have distinct oversight of the security sector through any of its committees, which contrasts with some other Commonwealth countries such as Ghana and the United Kingdom. Ghana achieved independence in 1957, the same year as the Federation of Malaya (later becoming Malaysia in 1963). After a period of military rule, Ghana's current political and institutional systems are now based on a separation of powers between the executive, legislative and the judicial branches of government. Given the role that the security sector played in Ghana's turbulent politics in the past, the statutory security sector – particularly the military – is now increasingly willing to subject itself to democratic, civilian oversight.¹³ The 1992 Republican Constitution of Ghana is one of the sources of law in the country. It stipulates the extent of oversight of the security sector, a role that is played by the Parliamentary Select Committee on Defence and Interior. Ghana has obviously taken the initiative to implement checks and balances on its security sector, which suggests that Ghana is more transparent in respect to the parliamentary role on SSG as compared with Malaysia.

In the United Kingdom, the presence of inclusive and comprehensive security-related committees within the parliament is reflected in the reformed Intelligence and Security Committee. The reform, which took place under the purview of the Justice and Security Act 2013, provides oversight of the Counter-Terrorism Department of the Home Office¹⁴. This allows the parliament to enhance their authority in recognizing and formulating a comprehensive

¹¹ The role of the Public Account Committee is to review and report on the public accounts of Malaysia and examine the auditor general's report. Currently, the Committee consists of 14 members of Parliament from both the opposition and the ruling government.

¹² Office of the Prime Minister of Malaysia, "PM Announces Parliamentary Select Committee on Electoral Reform", 16 August 2011, accessed on 10 August 2016, accessible at: http://www.pmo.gov.my/home.php?menu=newslist&news_id=8289&news_cat=13&cl=1&page=1731&sort_year=2011&sort_month= (accessed as at 10 August 2016).

¹³ Dr. Kwesi Aning and Ernest Lartey, *Parliamentary Oversight of the Security Sector: Lessons from Ghana*, accessed on 2 September 2016, accessible at: http://www.agora-parl.org/sites/default/files/lessons_from_ghana.pdf.

¹⁴ Parliament of the United Kingdom, "Intelligence and Security Committee of Parliament", accessed on 20 August 2016, accessible at: [http://isc.independent.gov.uk/..](http://isc.independent.gov.uk/)

policy against critical security issues such as terrorism, which has been one of the United Kingdom's top security priorities post-9/11. This mirrors a level of democratic maturity and thorough understanding of the necessity of parliamentary involvement in good SSG, including transparency. The practices in the United Kingdom would be worth emulating for other Commonwealth parliaments, including in Malaysia.

Within Southeast Asia, some lessons could be learned from Indonesia, where the security sector experienced a significant transition following the 1998 Reformasi. During Suharto's administration, the Indonesian military held power beyond its conventional role. It possessed as much political authority as President Suharto and, through its power projection, prevented other security sector actors in the country from exercising their functions broadly and effectively. Following 1999, SSR has been conducted in several stages of the transition, with the latest and most comprehensive one being implemented in 2002. Two of its latest legislations on SSR touch on the superiority of parliament in matters involving the deployment of the military and the appointment and dismissal of the Indonesian National Armed Forces.¹⁵ The Indonesian parliament set up its own National Defence Committee to act as an oversight body of national defence policy. This committee is intended to frequently interact with the Ministry of Defence and the national police, as well as security experts, on matters concerning national defence and security and to scrutinize its budget.

In Malaysia, it is apparent that members of parliament from the opposition party always echo the alternative voices. Despite the lack of alternative policies, the opposition numerously urged for the presence of greater checks and balances on the executive's influence on security and defence matters. If Malaysia were to decide on changing its posture on SSG, a framework could be developed by referring to the above-mentioned nations that have successfully understood the essence of parliamentary power in exerting influence and control over the security sector.

The security sector in Malaysia

There is no single fixed definition available to characterise a 'security sector'. Nevertheless, it is understood, in accordance with the 2012 Report of the Secretary-General of the United Nations on Security Sector Reform, as broadly encompassing the structures, institutions, and personnel responsible for the management, provision, and oversight of security in a country and generally including defence, law enforcement, corrections, intelligence services, border management institution, customs, and civil emergencies' institutions.¹⁶

In Malaysia's case, the Royal Malaysian Police (RMP) and the Malaysian Armed Forces (MAF) dominate the security sector. The former wields more influence and presence in the public eye given its existence since 1807 when Malaya was still under British rule. The security sector has always been under civilian control, even during the brief period when parliamentary rule was

¹⁵ Rizal Sukma, "Security sector governance (SSG) and conflict management in Indonesia: The Aceh case," in *Asia Security Initiative Policy Series*, Working Paper No. 21 (Singapore: RSIS Centre for Non-Traditional Security Studies, 2012).

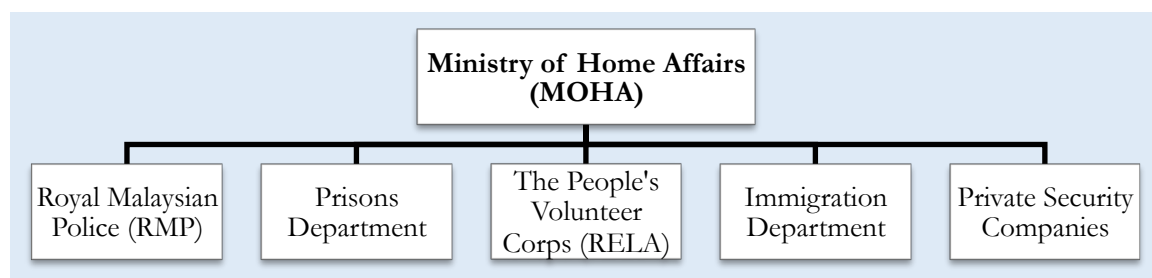
¹⁶ Security Sector Reform Unit, United Nations Department of Peacekeeping Operations, *The United Nations SSR Perspective* (New York: United Nations Department of Peacekeeping Operations, 2012), accessible at: http://www.un.org/en/peacekeeping/publications/ssr/ssr_perspective_2012.pdf.

suspended following the riots and disturbances of May 1969. The RMP's powers and duties currently fall under the mandate provided by the Police Act 1967 and all its subsequent amendments.¹⁷ With the increased public attention as a consequence of numerous corruption cases within the RMP, the Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police was introduced in 2004. Yet, it failed to achieve its goals after the suggestion of establishing an independent oversight body, the Independent Police Complaints and Misconduct Commission (IPCMC), was heavily objected by the RMP itself.¹⁸ The RMP is responsible to the Ministry of Home Affairs (MOHA).

The MAF has its root in the establishment of the Malay Regiment in 1933 and underwent a significant expansion in the late 1970s in response to changing international strategic conditions.¹⁹ The MAF is responsible to the Ministry of Defence (MINDEF) and is equipped with its own integrity unit to oversee the administration of the armed forces personnel, including the administration staff and the operational units. In terms of command, discipline, and administration matters, the MAF Council is the responsible body under Article 137 of the Federal Constitution.

It is, however, important to note that the government has initiated over the years the establishment of various other security actors in response to the evolving security climate in the country. Most of these departments and agencies are subordinate to the MOHA, as their functions are mostly geared towards internal security and public order. As the ministry in-charge of addressing internal security, MOHA's scope of functions extends widely from ensuring public order to facilitating physical, on-the-ground involvement of security agencies on a day-to-day basis.

Figure 1: Security agencies under MOHA



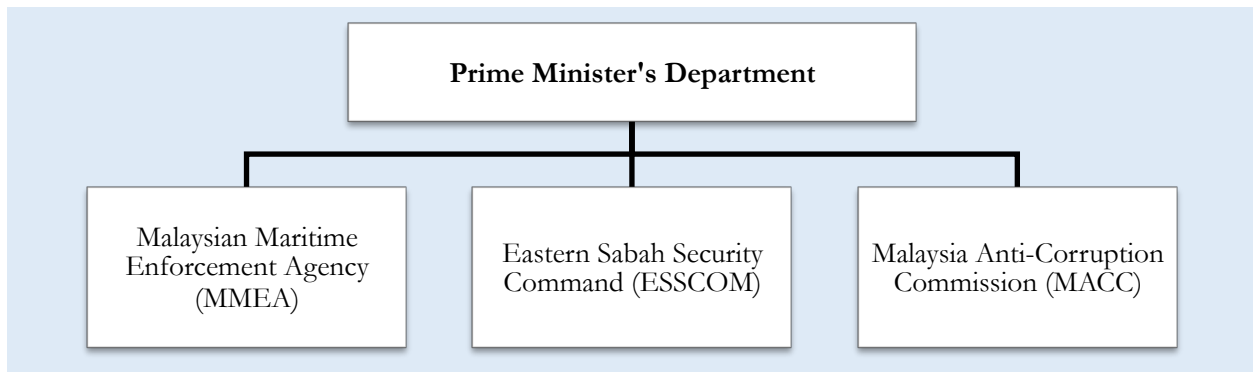
At the same time, some other prominent security actors are subordinate to the Prime Minister's Department. Most of the agencies under this department deal directly with security issues that are of great priority to the Malaysian government. Hence, their funding and management are planned and coordinated closely with the Prime Minister.

¹⁷ The Commission of Law Revision, Malaysia, "Laws of Malaysia: Police Act 1967", accessed on 21 august 2016, accessible at: http://www.mylawyer.com.my/pdf/Police_Act.pdf.

¹⁸ Center for Public Policy Studies, "CPPS Policy Factsheet: Police," accessed on 21 August 2016, accessible at: <http://www.cpps.org.my/downloads/factsheets/Police%20factsheet.pdf>.

¹⁹ Chandran Jeshurun, *Malaysian Defence Policy: A Study in Parliamentary Attitudes 1963-1973* (Malaysia: University Malaya, 1980).

Figure 2: Security agencies under the prime minister's department



Parliamentary committees and their relationship with other oversight bodies and civil society groups

Malaysia's security sector budget

In Malaysia, the nature of security sector oversight has primarily focused on matters of procurement. Most of the time, the discourse situates defence and security spending at the core of the discussion, mainly because the type, cost and size of weapons and equipment procured by the security agencies generate interest among the public. As part of the top five priorities in the annual government budget, the allocation for security and defence has always been one of the highlights of Malaysia's five-year development plans, alongside other important sectors such as health and education. The security sector budget has fluctuated depending on the security environment. In the first development plan (1955-1960), the security sector received USD35 million or 3.4 per cent of the total budget. It witnessed a 75 per cent increase in the second plan (1961-1965) because of the Communist insurgency and confrontation with Indonesia. There were subsequent increases, except for in the fifth plan (1986-1990) when recession hit the world in the final quarter of the decade. Recent plans have included high allocations for security and defence, with USD23 billion and USD17.7 billion allocated specifically for defence.²⁰ In 2016, the Malaysian government allocated a sum of MYR 17.304 billion (USD four billion) for the security sector budget.²¹

The public accounts committee and other oversight bodies

The concept of subjective democratic control of the armed forces was first coined by Samuel Huntington in 1957 to explain the maximization of civilian power, which is influenced by three major factors: governmental system, social class, and ethnic groups.²² The first factor is relevant for parliamentary oversight because it emphasizes the existence of oversight bodies for the armed forces initiated by the government or independent bodies. This argument limits the

²⁰ Kua Kia Soong, *Questioning Arms Spending in Malaysia* (Selangor: SUARAM Komunikasi, 2010).

²¹ Government of Malaysia Ministry of Finance "2016 Budget", accessed on 9 August 2016, accessible at: http://www.bn.m.gov.my/files/Budget_Speech_2016.pdf.

²² Carolina G. Hernandez, "Security Sector Reform in Southeast Asia: From Policy to Practice," in Felix Heiduk (ed.), *Security Sector Reform in Southeast Asia: From Policy to Practice* (New York: Palgrave Macmillan, 2014), pp. 23-53.

definition of actors in the security sector to the military. To ensure the concept's relevance to Malaysia, its scope needs to be widened to take into account other important local security sectors that carry as much, if not more, responsibility for Malaysian security as the military.

In response to increasing public demand for greater governmental transparency, the government directed its focus towards enhancing accountability under numerous national plans such as the Prime Ministers' Directive No. 1 issued in 1998, the National Integrity Plan (NIP) in 2004, the Ministerial Key Performance Indicators (MKPIs) in 2009, and the Government Transformation Programme (GTP) in 2010. As the most updated plan on integrity, the GTP covers six key results areas (NKRA) that include initiatives to fight corruption.²³

The Malaysian parliament is equipped with a public accounts committee (PAC) to oversee the budget and financial flows of security sector procurement. Its main task is to examine and respond to misappropriation of public funds and monitor government efficiency and effectiveness. The PAC and its members work closely with the National Audit Department, which audits financial reports of government agencies and annually submits the Auditor General's Report to parliament. Fundamentally, the PAC is currently the only oversight body within the Malaysian parliament. There is no specific oversight committee for the security sector, and there appear to be no plans yet for such an establishment. The PAC's jurisdiction is provided in Articles 96 to 112 of the Federal Constitution, which emphasize financial matters. This allows for little contestation from any interested stakeholders if the PAC decides to issue an outstanding query on any reports tabled by the AGD. Once the PAC has decided that the grounds for an investigation are strong, it will set up an examination of the matter, with responsibility conferred to them under Rule 77 of the Standing Orders of *Dewan Rakyat* and Article 304(a) Treasury Order (Amendment 2008).²⁴

Thus far, the PAC has only shown credible reliability in ensuring transparency in response to existing misappropriations since its power in scrutinizing SSG is limited to procurement matters. As of today, the investigation of the Sentul District Police Headquarters in Kuala Lumpur is the only security sector procurement case that has ever been investigated by the current PAC. Under this investigation, the PAC interacts closely with the MOHA, the responsible agency supervising the RMP to obtain important documentation on the project, further proving its independence vis-à-vis the security sectors and any of its patrons.

Notwithstanding the absence of a parliamentary security sector oversight body, the sector is accorded with numerous oversight mechanisms that are mainly subordinated to the MINDEF and MOHA. The Internal Audit and Investigation Unit of MINDEF possess similar traits to the PAC in parliament. It is responsible for detecting financial misappropriation and has developed a web-based system (AIMS) for awareness-raising. AIMS strives to raise awareness among three main targets – the Responsibility Centre, the Cost Centre and the Defence Attaché Office under

²³ Zakiah Salleh and Haslida Abu Hasan, "The Role of the Public Accounts Committee", in Zahirul Hoque (ed.), *Making Governments Accountable: The role of public accounts committees and national audit office*. (New York: Routledge, 2015).

²⁴ Parliament of Malaysia Public Accounts Committee, "Report on The Construction of the Sentul District Police Headquarters (IPD) Kuala Lumpur, Ministry of Home Affairs & the Public Works Department", (Kuala Lumpur: Parliament of Malaysia, 2014), accessible at: <http://www.parlimen.gov.my/pac/review/docs-87-84.pdf>.

the Ministry – to execute self-internal audit in the hope that it will encourage better accountability in their day-to-day tasks.²⁵

Meanwhile, under the Prime Minister's Directive No. 1 Plan, the efficiency of its core committee, the Special Cabinet Committee on Government Management Integrity (SCCGMI), was further strengthened by the establishment of the Committee of Integrity Governance at both federal and state levels. The SCCGMI specifically deals with managing disciplinary cases, corruption, abuse of power and malpractices of public service and the government administration.²⁶ At the same time, the Malaysian Anti-Corruption Commission (MACC) is tasked as a joint secretariat to this committee to oversee and promote integrity under this plan alongside the Malaysian Administrative Modernisation and Management Planning Unit. The MACC has initiated collaboration with the East Sabah Security Zone through the East Sabah Security Commission (ESSCOM) to prevent corruption and abuse of power. In order to achieve an ideal outcome in the long run, a few MACC staffers are already stationed in Lahad Datu in Sabah to thoroughly oversee the ESSCOM administration.²⁷

Yet, as mentioned previously, SSG needs to be understood as a system that is inclusive and consistent. As the aforementioned committees do not have a direct relationship with the parliament, parliament could only effectively impose little control on the individuals in question.

The roles of civil society groups

Civil society groups and non-governmental organisations (NGOs) in Malaysia have increasingly issued loud and persistent calls for parliament to be more active and thorough in discussing governance in the public sector. Through the Parliamentary Reform Proposal Coalition (GCPP), ten groups have joined to push for immediate and effective parliamentary reform.²⁸ In one of its reports²⁹, GCPP recognized five main discrepancies within the parliamentary system and provided recommendations in addressing the identified issues. Their main recommendation is to re-introduce the Parliamentary Services Act, which was observed by the speaker of the Dewan Rakyat, Tan Sri Pandikar Amin Mulia, in early 2016. This Act, repealed more than 30 years ago,

²⁵ Government of Malaysia Ministry of Defence, "Background: Accountability Index Monitoring System", accessed on 14 August 2016, accessible at: <http://aimsweb.mod.gov.my/en/introduction-of-aims/background.html>.

²⁶ Office of the Prime Minister of Malaysia, "An Initiative to Consolidate the Integrity Management System of Malaysian Government Administration: Establishment of Committee on Integrity Governance (CIG)", *Prime Minister's Directive No. 1 of 2009* (Kuala Lumpur: Government of Malaysia, November 2009).

²⁷ Press statement, "SPRM Sedia Bantu ESSCOM Tingkat Integriti, Banteras Rasuah," 2015, accessed 14 August 2016, accessible at: http://www.sprm.gov.my/images/SPRM_SEDIA_BANTU_ESSCOM_TINGKAT_INTEGRITI_BAN_TERAS_RASUAH.pdf.

²⁸ GCPP consists of Akademi Belia Malaysia (ABM), Coalition for Clean and Fair Elections (BERSIH), Institute for Democracy and Economic Affairs (IDEAS), Political Studies for Change (KPRU), Society for the Promotion of Human Rights (PROHAM), Projek Beres, Tindak Malaysia, Undi Malaysia, and ENGAGE Malaysia and is supported by the Global Movement of Moderates (GMM) Malaysia and the Bar Council.

²⁹ Report: *GCPP: Ke arah Parlimen Berpusatkan Rakyat* ("Towards A Parliament Centred Upon the People"), 12 September 1959, accessed on 27 October 2016, accessible at: <http://www.bersih.org/wp-content/uploads/2016/05/GCPP-Proposal-BM.pdf>.

would help to strengthen the institutional separation between the executive and the legislature, as well as allow for greater numbers of select committees to be established in the future.³⁰

GCPP and civil society groups such as the G25 Malaysia³¹ are pushing this reform largely to avoid parliamentary bias and partisan parliamentary decisions, which could impede enhancing governance at all levels, including the security sector. Although the discourse on SSG is still relatively limited in Malaysia, academics, journalists and some security experts, together with GCPP, have tirelessly expressed their concerns through forums and journals and in both the mainstream and alternative media.

Conclusion and recommendation

Ensuring good security governance does not necessarily suggest the obligatory formation of a parliamentary oversight committee. However, the absence of such a committee could potentially curtail parliamentary supervision of and control over corruption and abuse of power, thus eroding the degree of the public's trust of the government.

Outside of parliament, there are a few committees and agencies that oversee transparency and accountability of the Malaysian government, namely the MACC, the Enforcement Agency Integrity Commission, the Institute of Integrity Malaysia, the Governance and Integrity Committees, and the Integrity Unit. The last two committees are compulsory in all ministries. As the functions of these committees tend to be too general and broad in nature, they commonly respond to financial and budget related matters rather than thoroughly overseeing decision-making processes from their inception.

There is also an apparent lack of interest among the majority of members of parliament in Malaysia to discuss security matters, further giving the government little incentive to seriously consider creating a security oversight committee. In most instances, the members' political interests are geared towards real 'bread and butter' issues that directly concern their constituents, which more often than not determine their political future, rather than issues of foreign, security or defence policy.

Everyone should contemplate the following question: why is parliamentary involvement crucial? The Malaysian public's concern about and scrutiny of SSG are limited and inconsistent. This phenomenon minimizes the incentive for the security sector to be more open in their endeavours, creating further incongruity in the development of transparency. With new approaching threats, the security sector should be able to execute itself efficiently with better guidance from the people's parliamentary representatives. In this case, frameworks for upholding good governance in the security sector should be continuously discussed to ensure a sustainable security atmosphere in Malaysia.

³⁰ Shad Saleem Faruqi, "Restoring Parliament's eminence," *The Malaysian Bar*, 14 April 2016, accessed on 15 August 2016, accessible at: http://www.malaysianbar.org.my/legal/general_news/restoring_parliaments_eminence.html.

³¹ G25 Malaysia is a group of retired civil servants.

The Role of Parliament in Security Sector Governance in Transitional Myanmar

Yin Myo Thu¹

Introduction



It is important to design effective reform in order to develop a democratic transition in which comprehensive security sector reform (SSR) enhances security sector governance (SSG) to create more avenues for participation of concerned executive agencies, legislative bodies and the general public at all levels of implementation. Myanmar, a country that embarked on a unique path to democracy in 2010, has inevitably needed to fulfil such significant democratic benchmarks as transparency, accountability, good governance and clean government. In order to attain these democratic norms, which are mostly conceived from neo-liberalist ideas, SSG needs to be discussed by relevant stakeholders such as corporations, governmental bodies and civil society. Neither of the country's two legislative *Hluttaws* (chambers) at the union or

state/region levels are currently capable to oversee or carry out SSG in case of structural reforms in the Myanmar Police Force (MPF) with regard to crowd management and community policing. The 2008 Constitution is in dire need of a separation of power and checks and balances among the branches of government and the different levels of government. Legislative oversight of security agencies in terms of making bills and laws and amending provisions does not always apply under the 2008 Constitution. Within this context, this chapter highlights the potential legislative strengths and existing limitations in SSG.

Research question and methodology

The meaning of SSG for Myanmar needs to be clarified since 'security' is a politically sensitive concept. The first part of this chapter accentuates the legislative powers and functions, including oversight and representation. It is subsequently necessary to examine how to achieve effective and accountable SSG by analysing the strengths and limitations in implementing effective

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parliamentary oversight, especially SSG. Besides the role and power of the *Pyidaungsu Hluttaw* (Assembly of the Union), legislative committees and commissions need to be explained. This chapter then reviews the major areas of SSG that have been implemented: provisions of the 2008 Constitution, a bill introduced on the National Defence and Security Council (NDSC) and discussed on 21 December 2015² during the first regular session of the Pyidaungsu Hluttaw, and the formation of legislative oversight of the NDSC. It also analyses the creation of the state counsellor position.³ Taking the historically strong role of the *Tatmadaw* (Myanmar Defence Forces or MDF) into account, its formation is beneficial for parliament in terms of the pragmatic oversight of the security sector and necessary to create a balance between parliamentary oversight and the military without impeding civil-military relations. The chapter also explores the importance of legislative oversight by applying either ‘proactive’ or ‘reactive’ SSG. It is impossible to deny that well-established legislative institutions with the power to oversee policies and their implementation can lead to good SSG.

This chapter is primarily descriptive and qualitative in nature, focusing on published official governmental and parliamentary documents such as books, newspapers, and periodicals. It also includes reliable articles and opinion papers published by private journals and broadcasting services in Myanmar. The theoretical observations on SSG highly rely on the source jointly published by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Inter-Parliamentary Union in 2003, which provides an overview of different security sectors and reform processes. The publication also refers to state-building efforts in the form of ‘soft power’ by the European Union (EU) in some Eastern European countries. Academic books are also referenced in this paper. To enhance the chapter’s empirical validity, interviews were conducted with officials of executive agencies to determine their perspectives and opinions on SSR. Their answers are referred to anonymously in the chapter.

The experience of democratic reform and security sector governance in Myanmar

Observations from historical records published by the Myanmar History Commission in 1999 highlight the important role of parliament in national security and political environs during the Anti-Fascist Peoples’ Freedom League (AFPFL). Although the rules and regulations were approved by the parliament, it has been proven that deadlock between political and security actors, trust between the majority and minorities, power politics and security-centric military forces were important elements in the democratic transition in Myanmar and are still prevailing factors today. It was a short breath of democracy for the people of Myanmar without any constitutional or informal focus on good democratic governance. Mutual trust, empathy and compromise have been basic factors in the political development of Myanmar since its independence.

Elections in 1990 were viewed as the most free and fair elections in Myanmar’s history. Yet, the transfer of power, the main objective behind elections, was neglected due to a lack of trust,

² Republic of the Union of Myanmar, *Constitution of the Republic of the Union of Myanmar 2008* (Yangon: Ministry of Information, Printing and Publishing, June 2012), pp. 76-77.

³ The Global New Light of Myanmar, “Edition: 22 December, 2015”, The Global Light of Myanmar, 22 December 2015, accessible at: <http://www.burmalibrary.org/docs21/GNLM2015-12-22-red.pdf>.

continued confrontation led by political parties against the Tatmadaw, an unreliable constitution and competing stances between the security sector agencies, particularly the Tatmadaw, and the elected political parties. Violent and confrontational approaches by political parties, on the one hand, and persistent suppression by security sector agencies, on the other, caused severe mistrust in the initial stage of Myanmar's democracy movement. It is unclear if considerations on democratic governance and SSG were initiated in 2010, though frictions between President U Thein Sein's cabinet and the Speaker of the Pyidaungsu Hluttaw, Thura U Shwe Mann, led to the power struggle inside the Union Solidarity and Development Party (USDP) in late 2014.

Legislative structure and power under the 2008 constitution

A well-known initial stage in Myanmar's political development, the 'Seven-Points Road Map' was laid down on 30 August 2003 with the aim to support the country's future democratic transition. These steps are:

- Step 1:** To hold a national convention with different representatives, including representatives from political parties in 1990;
- Step 2:** To adopt detailed basic principles for drafting the constitution;
- Step 3:** To draft a state constitution;
- Step 4:** To hold a national referendum;
- Step 5:** To hold a multi-party democratic general election in 2010;
- Step 6:** To prepare for the transfer of political power to the winning political parties; and
- Step 7:** To form a democratically-elected government.

The representation at different levels of legislative assemblies is outlined in the 2008 Constitution. When the multi-party general election in 2010 was successfully held with many questionable issues, the constitutional Hluttaws at all levels were consequently established. Elective representation through elections and the appointments of the commander in chief at all Hluttaws is a significant feature of the Constitution. The procedure and process of delineating constituencies, stipulated in sections 109 and 141 of the 2008 Constitution, are based on the population size for the *Pyithu Hluttaw* (House of Representatives) and equal representation of the constituency for the *Amyotha Hluttaw* (House of Nationalities). The General Administration Department's gazette issued an increase of the total number of constituencies from 325 to 330, including the new capital of Nay Pyi Taw, in September 2009, raising the seats in the Pyithu Hluttaw to 330. The constituencies for the Amyotha Hluttaw are formed by combining townships into a single constituency or splitting a township into two constituencies, taking into account their respective populations in order to form twelve constituencies in each region or state. There are a total of 168 constituencies for the Amyotha Hluttaw and 673 for state/region Hluttaws.

Remarkable provisions in Sections 109(b) and 141(b), prescribed for the legislative defence service personnel, were a significant feature of the 2010 multi-party democratic elections. In each Hluttaw, one-third of representatives were constitutionally composed of defence service personnel, appointed by the commander in chief of the MDF. In effect, the total number of representatives-elect and military appointees reached 1163 constituencies. The following table shows the ratio between representative-elects and military appointees to the respective Hluttaws.

Table 1: Designated number of constituencies and seats in the three Hluttaws⁴

	Elected seats	Military appointees	Total
Pyithu Hluttaw	330 (1 constituency for each of the 330 townships)	110	440
Amyotha Hluttaw	168 (12 for each region/state Hluttaw)	56	224
Pyidaundsu Hluttaw	498 (Total elected seats)	166 (Total military appointees)	664

As provided for in Region or State Hluttaw Law and Section 161 of Chapter IV of the 2008 Constitution, there are two constituencies for each township. The Union Elections Commissions designated a total of 636 constituencies for region/state Hluttaw. As stipulated in the Region or State Hluttaw Law, one-third of military appointees from the total number of representatives-elect are added to the respective region/state Hluttaws with a total of 222 seats. Thus, the total number of representatives-elect and military appointees in all state/region Hluttaws, including the Self-Administered Area and Division, is 887. The following table shows the number of seats in the region/state Hluttaws after the 2010 and 2015 elections. A total of 6189 candidates competed in the 2015 elections.⁵

Table 2: Number of constituencies in region or state Hluttaws⁶

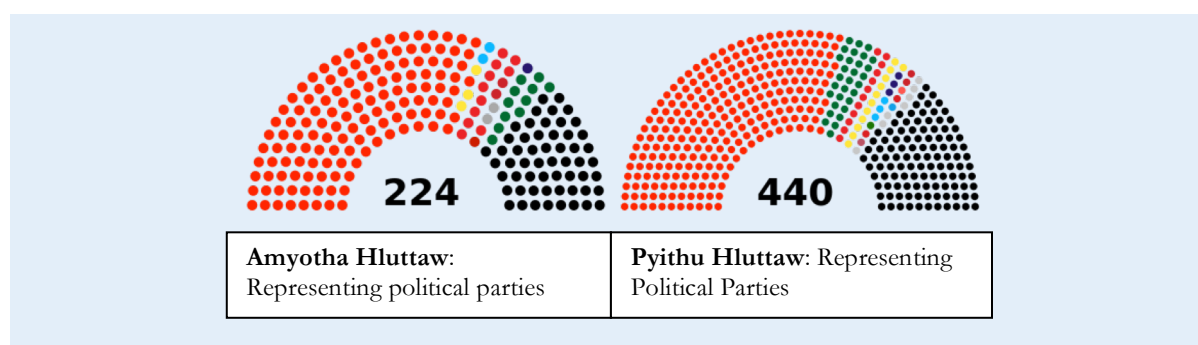
Region/ state	No. of elected seats	No. of military appointee seats	No. of additional minority seats
Ayeyawady	52	18	2
Bago	56	19	1
Magway	50	17	1
Mandalay	56	19	1
Sagaing	74	*25	2
Tanintharyi	20	7	1
Yangon	90	31	2
Kachin	36	*13	4
Kayin	14	*6	3
Kayah	14	5	1
Chin	18	6	-
Mon	20	*8	3
Rakhine	34	12	1
Shan	102	36	7
Total	636	222	29
Grand Total	887		

⁴ The New Light of Myanmar, "Edition: 12 August 2012", The New Light of Myanmar, 12 August 2012, accessible at: <http://www.burmalibrary.org/docs13/MA2012-08-12.pdf>; *News Watch Journal*, Vol. 10, No. 45, 15 March 2016; Parliament of Myanmar, "Parliament of Myanmar", accessible at: www.myanmarparliament.gov.mm.

⁵ Out of a total of 6189 candidates, 5866 candidates were nominated from 92 parties, while 323 candidates ran as independent candidates.

⁶ Parliament of Myanmar, "Parliament of Myanmar"; Richard Horsey, "Countdown to the Myanmar Elections", Social Science Research Council, Briefing Paper for the Conflict Prevention and Peace Forum, 15 August 2010, pp. 11-13, 25; *News Watch Journal*, Vol. 10, No. 45.

Diagram 17: NLD-led Pyithu Hluttaw and Amyotha Hluttaw structure after 2015 elections⁸



The power vested in the legislature is prescribed in chapter 3 of the 2008 Constitution. The Pyidaungsu Hluttaw is responsible for the executive through the Presidential Electoral College under Section 60. The constitution permits all elected and appointed representatives to elect or propose three vice presidents from or outside of the elected representatives. Collectively, they vote for one of the three vice presidents to assume the presidency.⁹ On 31 March 2011, U Thein Sein of the USDP became the first president under the 2008 Constitution, and, on 22 February 2016, U Htin Kyaw of the NLD became the first civilian president.¹⁰

Similarly, the head and deputy head at the different levels (Pyidaungsu Hluttaw, Amyotha Hluttaw, Pyithu Hluttaw and Region/State Hluttaw) are to be elected to supervise and conduct respective Hluttaw sessions according to section 75. They are referred to as speakers and deputy speakers of the Pyidaungsu Hluttaw, Pyithu Hluttaw, Amyotha Hluttaw and Region and State Hluttaws.¹¹

Under Section 95, members of parliament serve three types of law-making functions: bills, motion and proposals. A draft bill originating from an executive agency or a member of parliament can be discussed in either the Amyotha Hluttaw or Pyithu Hluttaw before approval. There are three possible outcomes in approving bills as laws: agreement on the bill, disagreement on the bill, and agreement on the bill with amendments if the two Hluttaws or the President's comments disagree with it. If such bill is approved at either Hluttaw, it is deemed that the combined Pyidaungsu Hluttaw will approve it as law. The President has to sign and re-submit the bills with or without comments to the Pyidaungsu Hluttaw within 14 days to promulgate it as a law. The Union Legislative Assembly can move on with or without consideration to the President's comments. Thereafter, it is then necessary to re-send the bill to the President, who has to sign the re-submitted bill. It is clear that the Union Legislative Assembly, as legislative

⁷ Parliament of Myanmar, "Parliament of Myanmar".

⁸ For Amyotha Hluttaw, red represents NLD (135), green represents USDP (11), and black represents Tatmadaw (56), with other parties representing ANP (10), SNLD (3), TNP (2), ZCD (2), MNP (1), NUP (1), PNO (1) and Independents (2). For Pyithu Hluttaw, red represents NLD (255), green represents USDP (30), and black represents Tatmadaw (110), with other parties representing ANP (12), SNLD (12), TNP (3), ZCD (2), MNP (2), NUP (2), PNO (1), KDUP (1), WPD (1) and Independents (1) and vacant (1).

⁹ Republic of the Union of Myanmar, *Constitution of the Republic of the Union of Myanmar 2008*, pp. 24-25.

¹⁰ The New Light of Myanmar, "Edition: 1 April 2011", The New Light of Myanmar, 1 April 2011; *News Watch Journal*, Vol. 10, No. 45.

¹¹ Republic of the Union of Myanmar, p. 27.

body, has the power in making and approving laws necessary to regulate the functions of executive agencies, as in other democratic countries.

The legislature can provide oversight of the executive branch through submitting a bill in the Pyidaungsu Hluttaw. Section 96 of the 2008 Constitution clearly stipulates that the legislature has the power to enact laws relating to 11 sectors, including the security and financial sectors. The lists for the defence and security sector include the following:

“(a) Defence of the Republic of the Union of Myanmar and every part thereof and preparation for such defence; (b) Defence and Security industries; (c) Arms, ammunition and explosives including biological and chemical weapons; (d) Atomic energy, nuclear fuel and radiation and mineral resources essential to its production; (e) Declaration of war and conclusion of peace; (f) Stability, peace and tranquillity of the Union and prevalence of law and order; and (g) Police force.”¹²

The above stipulation outlines the security sector under the 2008 Constitution, covering defence forces, including the police forces, as agencies regulated by the Pyidaungsu Hluttaw.

In the context of legislative approval of the budget, section 103 of the constitution outlines the legislative power in submitting the Union Budget Bill for salaries, expenditures and allowances for Union-level heads, members and organisations. This also pertains to debts, expenses and loans for which the Union government is liable, expenditures required to satisfy judgment, decree and order of any court or tribunal, and expenditures arising from existing national or international law. More significantly, the Pyidaungsu Hluttaw is empowered to approve, refuse or curtail any other expenditure under the Union Budget Bill with the majority consent of the Pyidaungsu Hluttaw.¹³ Therefore, the government has to perform in accord with the Union Budget Law and Supplementary Appropriation Law with the majority consent of the Pyidaungsu Hluttaw.

The first six months of the NLD-led government under President U Htin Kyaw faced consecutive economically stagnant and fiscal challenges. In that case, the President took the chairmanship of the Financial Commission to reform the monetary sector and revise the budget deficit. The new government has been criticized by domestic and international partners due to a lack of clear economic policy and anti-business approaches.¹⁴ This was the first time that the NLD-led government used the term ‘reform’ in the public media. The numbers of ministries were reformed from 37 to 22 ministries and the Union Budget Bill was consequently amended at the second regular session of the Pyidaungsu Hluttaw and will be submitted to the third regular session of the Pyidaungsu Hluttaw at the end of November 2016. Therefore, all government ministries have to wait to spend the respective revised budget, in turn affecting the domestic market and causing an economic imbalance.

It is clear that major members of parliament from the NLD in both legislative bodies are crucial in advancing reforms such as SSR since Myanmar’s political development has been dominated by

¹² Republic of the Union of Myanmar, p. 180.

¹³ Ibid., pp. 36-37.

¹⁴ The Global New Light of Myanmar, “Edition: 1 Novemer 2016”, The Global New Light of Myanmar, 1 November 2016.

the military. As provided in Sections 122 and 153, defence service personnel, as representative of both houses, are appointed with the approval of the commander in chief.¹⁵ This caused frictions in the first regular sessions of both houses over approving the State Counsellor Bill, the cancellation of Overnight Registration Law and the amendment of the Peaceful Assembly Law between March and May 2016. There are many criticisms of the speakers of both Hluttaws, who are trying to limit or ban some motions, proposals, and questions from members of parliament on restricting access for the NLD-led government during legislative sessions. Theoretically, democratic consolidation increases in momentum only when the separation of powers and checks and balances among the branches of government are strong enough. It is important to channel SSG through the strong legislature.

There have been many passive, as well as sensitive, security issues in the reform process since 2010. The current NLD-led government has avoided the term ‘reform’, instead favouring ‘change’. Most bilateral and multilateral donors have recognized the importance of security and development in Southeast Asia in recent years, including economic and financial security as well as democratic and socio-economic development of Myanmar.¹⁶ It is factual that both the ‘reform’ articulated by the previous U Thein Sein administration and ‘change’ expressed by the U Htin Kyaw administration on SSG focus on institutional development for defence forces, police accountability and armed groups. Both administrations decisively emphasize the need of effective SSG or security institution reform.

In short, legislative constitutional power and functions are vested in both houses to issue decrees and ordinance, promulgate laws, control the budget and oversee the executive. The foremost reforms in the security sector have been carried out during the previous administration with the support of the EU and its parliament, which conducted projects on police accountability, crowd management and community policing. Budgetary control over the security sector is not yet clearly outlined and articulated in the Hluttaws, though the Finance Commission revised the Union Budget Bill on 1 November 2016. Moreover, representatives of both Houses are now facing the pressure of civil society organisations (CSOs) and activists on rule of law for the promulgation of Right to Recall Law at the Union Legislative Assembly.

Legislative committees and commissions on security sector governance

For SSG, such security actors as the Tatmadaw and the MPF should be overseen by the legislature. Additionally, ethnic armed organisations (EAOs) that have or have not signed the National Ceasefire Agreement (NCA) and the Border Guard Force (BGF) are important for security sector stability. On the side of the legislature, standing committees and commissions are important for oversight of these security actors. Sections 115(a) and 147(a) of the 2008 Constitution stipulate that the Pyithu Hluttaw and the Amyotha Hluttaw each form a bill

¹⁵ Republic of the Union of Myanmar, p. 45 and p. 55.

¹⁶ Chaw Chaw Sein, *A Mapping Study on Community Policing, Crowd Management and Police Governance in Myanmar: Support to reform of the Myanmar Police Force in the areas of community policing and crowd management* (Yangon, 17 September 2014), p. 10 and p. 17.

committee, public accounts committee, Hluttaw rights committee and government's guarantees, pledges and undertakings vetting committee.¹⁷

For each Hluttaw, there were one standing commission and 15 committees during the first sessions (2010-2015). Of the 15 committees, the committees on bills, the budget, government's guarantees, pledges and undertaking vetting, international relations, social and educational promotion, ethnic affairs, and the economy are set up with each member representing state/region constituencies and military representatives. Joint committees are also formed to carry out legislative functions in both Hluttaws, with an equal number of representatives from each house. The formation of the Commission for Legal Affairs and Special Issues in the Pyithu Hluttaw is significant because it primarily focuses on special cases in law enforcement and SSG under Section 134 of the 2008 Constitution. The military committees in both houses have not been set up as provided for in Sections 115(b) and 147(b), which stipulate the following:

“When the occasion arises to have studies made and submitted on defence and security matters or Military affairs, the Pyithu Hluttaw shall form the Defence and Security Committee with the Pyithu Hluttaw representatives who are the Defence Services Personnel, for a limited time. The Defence and Security Committee so formed may, if necessary, be included suitable Pyithu Hluttaw representatives who are not the Defence Services Personnel in accord with the volume of work.”¹⁸

“When the occasion arises to have studies made and submitted on defence and security matters or Military affairs, the Amyotha Hluttaw shall form the Defence and Security Committee with the Amyotha Hluttaw representatives who are the Defence Services personnel, for a limited time. The Defence and Security Committee so formed may, if necessary, be included suitable Amyotha Hluttaw representatives who are not the Defence Services personnel in accord with the volume of work.”¹⁹

It is clear that the National Security and Defence Committee headed by the President is the only security and defence body dealing with national security issues, taking place outside of the realm of legislative oversight to some extent. The first meeting has held on 11 November 2016 after the terrorist attacks on police outpost near the Myanmar-Bangladesh border, which are a threat to national sovereignty and the existence of statehood. In short, Myanmar has limited experience in parliamentary oversight of the security sector since military operations have only been a means to consolidate national security. This was especially the case under the government of the Burma Socialist Programme Party (BSPP), during which a total of 742 military operations were launched against ethnic armed groups without legislative approval.

The National Convention of the SPDC drafted the controversial 2008 Constitution nearly 20 years earlier before the referendum was held on 4 May 2008. Most of its articles seem to be interpretations of articles in the American Constitution, with the exception of the presidential veto power, and some salient points in the Pakistani constitution. Although many constitutional experts criticise the provisions of the 2008 Constitution, it is now a functioning constitution in Myanmar's democratization process.

¹⁷ Republic of the Union of Myanmar, p. 41 and p. 53.

¹⁸ Ibid., p. 41 and pp. 53-54.

¹⁹ Ibid.

In the context of SSG, two main institutions (MDF and MPF) have been primarily emphasized since the 1988 students' uprising. More attention on the questionable incidents during the 2007 Saffron Revolution and the 2013 students' strike against the National Education Law shed light on the importance of accountability and transparency in SSG of Myanmar. Asking to accelerate the prevalence of rule of law and reform for security institutions are the popular debate at all works of life among people.

Myanmar defence forces

There is no separation of power among the three branches of government, as the country was ruled by notifications and orders issued by the SLORC and SPDC until 2010. Out of two security institutions, the MDF has no doubt been influential in Myanmar's politics since independence. After a brief period of democracy between 1948 and 1958, Myanmar was under military rule for more than six decades, even though the BSPP government evolved as a regularly-elected government until 1988. The role of the MDF was strong and unable to be neglected after 1988, because the former SLORC and SPDC governments controlled the bureaucracy and all big businesses and enterprises. The MDF enlarged from 200,000 to 400,000 forces from 1988 to 2010.²⁰ Military expenditure during these years exceeded over 48 to 52 per cent of gross domestic product, without the approval of parliament. In fact, the SLORC and SPDC lacked separation of power among the three branches of government, as the chairmen of both military governments were five-star commander-in-chiefs and the highest figures as the head of state representing the executive and legislature. A 'proxy' head for the legislative body was formed under the attorney general, while a chief justice was also appointed to highlight judicial independence. A total of 37 ministries were composed of more than one deputy minister.

Prior to the 2010 elections, more complex administrative and military structures were established. For the administrative structure, Myanmar was composed of seven states and seven divisions²¹ each headed by a state or division administrative officer. At the same time, 14 military commands²² were established as a parallel administrative structure. Each command was headed by a regional commander directly appointed by the commander-in-chief and every regional command commander had the power to approve, decide and administer all administrative and business matters, including judicial issues, to a certain degree. Each commander was responsible for the state or region they were assigned to and directly reported to the commander-in-chief.

Evidence of the MDF's substantial influence could be found in domestic politics. It created complex and overlapping administrative mechanisms carried out by the ministries and subordinate agencies, especially those relating to regional development plans. In the Wa and Kokang regions, which were under the dual administration of the regional command commander and ethnic leaders, it was difficult to identify who controlled political authority in

²⁰ The Global New Light of Myanmar, "Inaugural Address of the Commander-in-Chief Delivered on the Occasion of 67th Armed Force Day", The Global New Light of Myanmar, 28 March 2013.

²¹ The seven Divisions are: Magwe, Mandalay, Bago, Yangon, Ayeyarwady, Tanintharyi and Sagiang. The seven states are: Kachin, Kayin, Kayah, Chin, Mon, Rakhine and Shan.

²² The 14 commands were Northern, Northeastern, Shan (North), Shan (South), Shan (East), Golden Triangle Command, Southeast, Southern, Southwest, Western, Northwest, Coastal Command (Tanintharyi), Coastal Command (Rakhine) and Mideast Command.

practice. The National Security and Defence Council (NSDC) was composed of the commander-in-chief, deputy commander-in-chief, joint chief of staff for the army, navy and air forces, chief of staff for the army, and the rear admiral and chief of staff for the navy. Prior to 9 October 2004, the head of military intelligence was a powerful figure in the NSDC. Many civilian posts in executive agencies were filled up with retired or current military officials. The decade-long system of a paternalistic mechanism and top-down administrative structure severely hampered some civilian-led administrative structures for many years. For instance, military personnel occupied the senior-level posts of the MPF under the Ministry of Home Affairs, even though the nature of the police and defence forces were quite different. The political power in the control of military elites resulted in illegal business conducts and deep-rooted corruption, especially in natural resource-rich areas of ethnic minorities in the Kachin, Rakhine and Shan states. To maintain peace and stability in border areas, 1 armed ethnic groups concluded ceasefire agreements, including the Mong Tai Army.²³

Apart from political power, the financial power of the MDF was established under the title of the Union of Myanmar Economic Holding (UMEHL). Under UMEHL, all foreign direct investments were monopolized without much accountability and transparency. Besides, it is undeniable that the role of the military in the civil administration was very influential and independent, causing a tough mindset to operate the civilian-controlled bureaucracy. In fact, the MDF was independent in its administration, politics and economics prior to 2010, as no oversight mechanism or regulations were stipulated. Expose facto law to protect state agents from suits against actions performed during their official duties is clearly outlined in the 2008 Constitution.

However, since the 2010 election, the MDF has been under the control of the hybrid civilian government. There have been no significant changes in the MDF's organisational structure. The commander in chief was ranked as the third highest position of the NDSC during U Thein Sein's presidency. However, when the NLD-led government accepted the transfer of power after the election in 2015, the state counsellor position was created, and the size of the NDSC is being expanded to 12 instead of 11 members. Before 2015, the commander in chief, defence minister, home affairs minister and border areas development minister were also included in the cabinet. The appointment of these three ministries requires the approval of the commander in chief. The NDSC's first meeting after the 2015 election was convened following the terrorist attack against outposts of the MPF in the Northern Rakhine State near the Myanmar-Bangladesh border on 9 October 2016.²⁴

The Pyidaungsu Hluttaw carries out its oversight power on security sector agencies in four areas: democratic civilian control over military and security forces, budget control, reviewing draft laws, and awareness on security concerns of citizens.²⁵ It is necessary to consider how to amend undemocratic provisions in the 2008 Constitution as an entry point to establish SSG and

²³ Maung Pho Shok, *MTA; What is Kbu Sa and Where to?* (Yangon: Government Printing Press, 2005), p. 28.

²⁴ The Global New Light of Myanmar, "Edition: 12 October 2016", Global New Light of Myanmar, 12 October 2016.

²⁵ Hans Born, Philipp Fluri and Anders Johnsson (Eds), *Parliamentary Oversight of the Security Sector; Principles, Mechanisms and Practices* (Geneva: DCAF, 2007) (2007), p 69 and p. 188.

specifically parliamentary oversight and how to extend the current parliamentary oversight of the NDSC. Without amending a single provision in the 2008 Constitution, the NDSC, which is currently composed of 12 members²⁶ and headed by the president, has been formed with the inclusion of the state counsellor. The problem is the inclusion of members in the NDSC who are not elected but appointed by the commander-in-chief. Institutions inside and outside of Myanmar have criticized the NDSC as a non-democratic institution and process. The legislature, as well as politicians, needs to understand the strategies and policies relating to security and defence institutions, whereas defence forces in domestic political control can destabilize the country in the long term.

Parallel implementation of security and development concepts in the short and long term is needed, as the two concepts are two sides of the same coin for good security governance. A limitation in this matter is the low degree of public awareness on the parliamentary oversight of the security sector in Myanmar. Only ten per cent of the general population acknowledged the important role of members of parliament in law-making. Only 6 per cent of the population knew that parliament has the power to oversee executive agencies through asking questions and testimonies.²⁷

Amending or deleting the sections of the 2008 Constitution that are contrary to democratization is a positive way for parliament to gain effective control and oversight of the laws drafted by executive actors. Generally, it is vaguely stipulated that the 2008 Constitution is, to some extent, composed of many undemocratic drawbacks, particularly in chapter five. The chapter stipulates the power and functions of the executive and the formation of the National Defence and Security Committee, reflecting a controversial opinion on democratic norms. There are at least 88 sections in the 2008 Constitution that need to be amended due to inconsistencies with democratic rules and regulations. The most distinctive provisions that are difficult to be relevant for democratic norms are the parliamentary military representatives and their role in selecting the vice president. Moreover, as many critics have pointed out, four ministries directly relating to national defence and security are under the control and direct appointment of the commander-in-chief under article (20)(b).²⁸

There is a strong provision on state of emergency in Chapter XI. Although the president has the power to declare a state of emergency with the approval of the NDSC in time of crisis, the commander-in-chief has the power to dissolve both legislative assemblies in order to issue emergency ordinances and decrees and transfer administrative power from the president. Sections 417 and 419 stipulate the following:

“The Commander-in-Chief of the Defence Services to whom the sovereign power has been transferred shall have the right to exercise the powers of legislature, executive and judiciary. The Commander-in-Chief of the Defence Services may exercise the legislative power either by himself or by a body including him. The

²⁶ Tagaung Institute of Political Studies, *Observing National Security and Defense Council from Democratic Civil-Military Relations* (Yangon: Tagaung Institute of Political Studies, 2016), p. 17 (source translated from Burmese).

²⁷ People's Alliance for Credible Elections, *Public Opinion on General Elections and Their Expectation on Newly Elected Government* (Yangon: People's Alliance for Credible Elections, 2016), p. 62 (source translated from Burmese).

²⁸ Republic of the Union of Myanmar, p. 6 and p. 20.

executive power and the judicial power may be transferred to and exercised by an appropriate body that has been formed or a suitable person.”

Legislative oversight of the judiciary can also be traced in Sections 298 and 299.²⁹ They elaborate the power vested in the legislature to appoint the chief justice of the Union upon the nomination of the president. Both Hluttaws have no right to refuse the person nominated by the president. However, controversial legislative decisions have been carried out in the Pyidaungsu Hluttaw in 2014 and 2016. In 2013, there was a ‘tug-of-war’ over the definition of the term ‘union level’ between the Pyidaungsu Hluttaw and the Constitutional Tribunal, the highest constitutional institution. President U Thein Sein offered to solve this issue through an impeachment process or reconciliation. Upon deciding on the impeachment process by the Pyidaungsu Hluttaw, all members of the Constitutional Tribunal resigned from their duties. Since then, the Constitutional Tribunal has been defunct in carrying out its constitutionally vetted power. In 2016, when there was another attempt to impeach three members of the Myanmar National Human Rights Commission in cases of human trafficking and slavery committed by Ava Tailoring the members resigned again from their duties. In both cases, the Pyidaungsu Hluttaw clearly intervened through impeachment procedures, which is a form of legislative oversight. It is necessary to understand the checks and balances among the three branches of government. Furthermore, it can be said that an independent judiciary is important for SSG. If the Constitutional Tribunal is defunct due to excessive legislative oversight, SSG will be frail.

Myanmar police force

Aside from the MDF, there was another security force that needed to be reformed by the EU starting in 2010. In 1948, the MPF consisted of civil and military police, which were formed into battalions. Two or more British officers were attached to each battalion, in which Myanmar nationals were being employed before World War Two. After 1988, changes in Myanmar’s administrative and political system had a profound impact on police governance, force set-up, and the role and mandate of the MPF. It was reorganised with several significant changes to its personnel and structure because military officers occupied many senior and top positions. However, its ability to operate community policing and credibility has grown. Expanding and modernizing the MDF had been left far behind and the MDF increased its recruited members from 200,000 to 400,000 between 1988 and 2002. Upgrading and modernizing the MPF remained as a low priority, even though the majority of the general public and local community were trapped in civil clashes and ethnic insurgent fighting.

In practice, police cadet candidates who joined the MPF voluntarily were limited in their professional and career development. Instead of operating as an independent civilian institution, several police mandates and intelligence functions continued to still be handled by the military in terms of training and equipment allocations. In 2004, following the purge of military intelligence, the MPF regained its greater independent intelligence and internal security role in Myanmar.³⁰ A police colonel with a military officer background heads the MPF. There are a total of 73 specialized police forces in Myanmar. Since 2007, 821 local police stations have operated in various locations for public safety. The ratio between the police forces and the public is now 1 to

²⁹ Republic of the Union of Myanmar, p. 127.

³⁰ Chaw Chaw Sein, *A Mapping Study on Community Policing, Crowd Management and Police Governance in Myanmar*, p. 15.

1248, which is an immediate limitation in introducing community policing. The MPF headquarters is principal in distributing detailed instructions on the implementation of plans to regional commands. In the headquarters, there is a complaint centre for the public.

A parliamentary committee on rule of law enforcement, headed by Daw Aung San Suu Kyi, is concerned with oversight activities and a channel for complaints to parliament. There is a committee to investigate problems, which will bear to post the complaint letter from the persons seeking an explanation from the police.³¹ The MPF is quite different from the MDF in terms of its political and financial power, though military officials control the top level of the police. This caused mixed feelings among the police forces, whose major background focuses on police professionalisation.

Legislative power and functions to oversee security sector governance

The Pyidaungsu Hluttaw (a combined body of the Amyotha and Pyithu Hluttaws) decides between three vice presidential candidates. The Amyotha Hluttaw, Pyithu Hluttaw and legislative military representatives, who are not elected members of parliament, each propose one of the candidates to the Pyidaungsu Hluttaw. The proposed candidate who obtained the highest score in each representative group is elected as vice president.³² In this scenario, it can be observed how the military participates in the role of the executive; the deputy executive or vice president definitely represents the Tatmadaw, in line with the constitutional provision. The vice president is also a member of the NDSC, headed by the president.

Apart from selecting the president, the Pyidaungsu Hluttaw has the power law-making. Legislative power is entrusted to the Union Hluttaw (Pyidaungsu Hluttaw) and the state/region Hluttaws under section 188. More specific law-making processes have are prescribed under sections 188 to 196. There is a constitutional provision on sharing power between the Union and State/Region governments. The list of bills that is permitted to be submitted to the Pyidaungsu Hluttaw has only been described under schedule one of the 2008 Constitution. The list of bills that is vested in state/region Hluttaws has only been described under schedule two. All bills concerning the powers mentioned under article 190(a) shall be submitted to state/region Hluttaws in the prescribed manner, either by an elected member of parliament or a group of members of parliament. This means that there are two levels of submitting bills at the Union and state/region levels. Similarly, all bills concerning the powers vested in the Union Hluttaw shall be submitted to either the Amyotha Hluttaw or Pyithu Hluttaw by either any member of parliament or any executive agency. Besides, there is the same manner in submitting bill in the government of Self Administered Areas.

It cannot be denied that there have been unavoidable fractions in SSR between minority appointed military representatives and majority elected representatives in promulgating laws referring to the 2008 Constitution. These fractions have even occurred after the NLD gained the overwhelming majority in parliament in 2015. Clashes between the fractions have occurred

³¹ Chaw Chaw Sein, p. 23 and p. 27.

³² Lima Allmark, "Burma's Pyidaungsu Hluttaw; A Young Legislature in Changing State", *Journal of Legislative Studies*, Vol. 18, No. 2 (2012), p. 2.

frequently in relation to the state counsellor and peaceful assembly laws, abolishing the Visitors' Overnight Registration Law and traveling permit, approving the law concerning the formations of Committee on Counter-demonstration and Riot Control and Advisory Commission on Rakhine State.³³ All of these legislative attempts have directly or indirectly involved good SSG.

Civil society in security sector governance

In some cases, attempts at SSR can be contradictory. This is an important matter for armed ethnic groups or, what Ulrich Schneckner points out, armed non-state actors³⁴ in failed states. Ethnic armed group leaders held a three-day workshop on SSR in Myanmar in August 2016 in the Thai city of Chiang Mai.³⁵ Major participants were the United Nationalities Federation Council (UNFC), the All Burma Students' Democratic Front, the National Union and previous government officials under U Thein Sein's administration. Major discussions have focused on disarmament, demobilization and reintegration (DDR) as a component of SSR, which was demanded by the MDF during the peace process and with respect to armed ethnic groups. Armed ethnic groups responded with the demand for reform of the Tatmadaw, including the formation of federal army that incorporates ethnic armed groups. This is quite contrary to the formation of the BGF under the NCA principles.

It is important not to trap SSR in a legislative nightmare, particularly in the context of materializing parliamentary oversight in the area of SSG. The voices of ethnic minorities need to be considered for the long-term sustainability of SSR. The power and ability of parliament to oversee SSG/R seems to be incomprehensible after the Mai Ja Yang Conference, held by ethnic armed organisations (EAOs) in July 2016. EAOs held five conferences held before the Peace Process of 21st Century Panglong Conference on 31 August 2016 (two conferences each in Lai Zar in Kachin State and in Lawkheelar in Kayin State). UNFC also held a separate conflict-resolution meeting with the ethnic groups who failed to sign the Nationwide Ceasefire Agreement (NCA) with the previous government.

As a preliminary meeting for the Peace Process of 21st Century Panglong Conference, the Mai Ja Yang Conference focused on four main topics: the approval of the Panglong charter, basic principles for a federal democratic constitution, basic principles for national security and defence, and renewing a framework for political dialogue.³⁶ At the conference, ethnic nationalities discussed and submitted some specific principles regarding a federal democratic constitution and basic principles for national security and defence in the context of DDR as a component of SSR. EAOs steadfastly uphold the UN-proposed Tripartite Political Dialogue, which includes 'government-military-parliament', the EAOs and all registered political parties.

³³ The Global New Light of Myanmar, "Edition: 11 July 2016", The Global New Light of Myanmar, 11 July 2016.

³⁴ Ulrich Schneckener, *Fragile Statehood, Armed Non State Actor and Security Governance* (2014), p. 27.

³⁵ The Irrawaddy, "Ethnic Armed Group Leaders Discuss Security Sector Reform", The Irrawaddy, 9 August 2016; Democratic Voice of Burma, "Union Army should be under civilian jurisdiction, says Majayang delegates?" Democratic Voice of Burma, 29 July 2016.

³⁶ The Shaw Herald Tribune, "Realization of Comprehensive Panglong Convention Needs Tatmadaw's Open-minded Endorsement", Opinion paper, The Shaw Herald Tribune, 26 August, 2016.

Although peace-making and the rule of law are two priorities of the NLD-led government, the crime rate is increasing and there are questionable crime prevention measures. On 24 August 2016, lawmakers of the Pyithu Hluttaw debated amendments to the Peaceful Assembly and Procession Law proposed by the Amyotha Hluttaw. The Pyithu Hluttaw approved the draft law to amend the Peaceful Assembly and Peaceful Procession Law, including the Freedom of Association Law.³⁷ At the same time, lower house member of parliament, U Win Myat Aung (Debayin constituency), asked for the government's plan to form a committee on supervising prisons and taking care of inmates. Therefore, a series of lengthy reform measures are necessary for effective and proactive legislative oversight of SSR. Oversight of SSR needs more democratic oversight not only from the legislative but also from community participants in order for the process to be transparent and accountable as much as possible.

SSR in the context of independent institutions or actors monitoring

Apart from proactive legislative oversight of the security sector, the role and oversight of independent institutions, the media and CSOs is effective in reactive oversight focusing on democratic investigations and finding solutions to SSR-related issues. These institutions and CSOs provide complaint mechanisms for the general public in the form of national commissions formed by executive or legislative bodies and with independent autonomy, which are important for effective democratic oversight of the security sector. Normally, these cases range from minor instances of public dissatisfaction to bribery, corruption related to the national budget, consistency of governmental policies, investigations into the rule of law, independent investigations among the general public and executive agencies concerning human rights and education campaigns on human rights.³⁸ CSOs such as think tank organisations, non-governmental organisations (NGOs) and responsible media are the primary oversight bodies of SSR through the dissemination of security policy and the persuasion to observe the publication of reports for the general public and from members of parliament.

Through these CSOs, national defence policy and the diverse nature of the security needs of the population can be observed and lead to effective oversight of SSG. The emergence of genuine CSOs and community-based organisations is an important matter because it is vital to prioritize public interests. For instance, the Myanmar Women's Organisation (MWO), once established along the Myanmar-Thai border as an informal CSO, is now accepted as a formal women right's group in empowering women and specifically female members of parliament and providing relief assistance to internal-displacement camps in Kachin and Rakhine states. Some active NGOs, such as Equality Myanmar with the National NGOs Network, have highlighted inconsistencies in provisions concerning voluntary registration of associations under the Freedom of Association Law, Right to Peaceful Assembly Law and Peaceful Procession Law.³⁹ This was also observed with regard to transitional justice, leading former activists and political prisoners to now take a

³⁷ The Irrawaddy, "Edition: 27 August 2016", The Irrawaddy, 27 August 2016; Libby Hogan, "Rights Groups Assemble to Debate Freedom of Assembly Law", Democratic Voice of Burma, 19 August 2016.

³⁸ Tagaung Institute of Political Studies, *Introduction to Security Sector Reform* (Yangon: Tagaung Institute of Political Studies, 2016), p. 15.

³⁹ EU Burma Office, *Rights groups assemble to debate Freedom of Assembly Law*, 6 February 2015.

role in identifying the norms and models of transitional justice in a democratic transition.⁴⁰ The campaign against child soldiers by the Tatmadaw, budget allocations for the national defence sector and the suspension of the Myitsone Dam Project, campaigned for by environmental CSOs and NGOs, are also the good results of independent institutions oversight of security sector.

However, there is still limited room for the participation of think tanks and CSOs in some security-related issues such as the homicide of two Kachin voluntary school teachers in 2015, communal clashes in Rakhine state, the cancellation of the Ta'agn Palaung National Liberation Army press conference arranged by the Ta'ang Women Organisation in Yangon on 26 July 2016⁴¹ and the death of journalist Ko Par Gyi, which highlights the importance of professional and responsible journalists in crisis areas. SSR in Myanmar has to balance oversight measures in order to not derail conservative attitudes on reform. Therefore, it can be suggested that, in order to have a national reconciliation that can sustain SSR in Myanmar, the formation of a national ombudsman commission and an official state apology are necessary. For instance, the commissioners or the public complaint committees in Nigeria and Indonesia were successful in dealing with armed forces and person suffered from past account.⁴²

Conclusion

The concept of parliamentary oversight of the security sector or SSG is to a certain extent strange for members of parliament in both Hluttaws. It is important for legislative houses and their representatives who will play the oversight role in the security sector to have sufficient efficiency in drafting and passing more laws, rules and regulations on the basis of decentralization in order to create more avenues for the security sector to carry out the interests of the country's citizens. At the same time, too much oversight of the security sector or the executive is dangerous for countries in transition to democracy, especially when the government adopts a more conservative attitude that encompasses only a minor shift. While budget control is an effective oversight mechanism of SSR, the modernization of the security sector is also crucial, especially in cases of threats to national sovereignty and statehood existence. Controlling the budget and expenditure of the security sector is a 'soft' approach since investment in the security sector is economically non-productive. Currently, another soft approach, the implementation of the Extractive Industries Transparency Initiative, could encourage the Myanmar government in its budget and revenue allocations through budget committees in both Hluttaws.

The most important attitude in security sector oversight is establishing a 'culture of compromise' among the three branches of governments, different committees and commissions in both Hluttaws, political parties, media and civil society. Conflict between the Tatmadaw and the government, on the one hand, and rivalries among fighting ethnic groups has severely

⁴⁰ *Justice, Democracy and Constitutionalism: Reflecting on the Experiences of Asia* (Yangon: Australia-Myanmar Constitutional Democracy Project, December 2015); Myanmar Post Global, "Edition: 6 May 2016", The United Media Group, 6 May 2016.

⁴¹ The Irrawaddy, "Rangoon Authorities Ban Press Conference on Burma Army Torture", The Irrawaddy, 27 June 2016.

⁴² Born, Fluri, and Johnsson, *Parliamentary Oversight of the Security Sector: Principles, Mechanisms and Practices*, p.90; Jiwun Suh, *Politics of TJ in Post Suharto Indonesia* (Columbus: Ohio University Press, 2012), p. 8.

deteriorated mutual trust and confidence between the groups, which has blocked compromise culture in Myanmar's political development. The empowerment of legislative representatives who will oversee SSR should be farsighted and prudent in considering long-term national security and defence interests and efficient in exploring a more legally decentralized avenue for effective SSG. Myanmar's political as well as ethnic and defence leaders should have to cooperate through formal dialogue and negotiation or informal debates in the near future.

SSR 2.0 in the Philippines: The Legislature's Role in Upgrading Security Sector Governance¹

Aries A. Arugay²

Introduction



The Philippines continues to face a plethora of challenges related to implementing good security sector governance (SSG). While significant progress has been achieved in the past few years, a lot of work still needs to be undertaken not only to sustain momentum but also to accelerate the pace for meaningful change. With the aid of donors and champions in and out of government, security sector reform (SSR) has found its way into official governmental documents. In particular, the inclusion of the concept of SSR in Philippine peace and security policy represents a major achievement.³ This is laudable especially in a region where fostering SSR has been an uphill battle.⁴

This, however, must be seen as a primary step in the longer journey toward good SSG. Sole reliance on this accomplishment would mean adopting a limited understanding of the complexity behind the concept

of SSR. The extant literature importantly distinguishes between ‘first generation’ and ‘second generation’ SSR. Influenced by the literature on civil-military relations, first generation SSR is concerned with the establishment of new constitutional and legal frameworks, institutions, structures, clear lines of responsibility, and accountability for the security sector.⁵ The more

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³ SSR is one of the elements of the National Security Policy 2011-2016. See Republic of the Philippines, *National Security Policy 2011-2016: Securing the Gains of Democracy* (Manila: Republic of the Philippines, 2011), accessible at: <http://www.gov.ph/downloads/2011/08aug/NATIONAL-SECURITY-POLICY-2011-2016.pdf>.

⁴ According to the Geneva Centre for the Democratic Control of Armed Forces (DCAF), SSG refers “to the structures, processes, values and attitudes that shape decisions about security and their implementation while Security Sector Reform aims to enhance SSG through the effective and efficient delivery of security under conditions of democratic oversight and control.” It is further stated that SSR provides “a framework for conceptualizing which actors and factors are relevant to security in a given environment as well as a methodology for optimizing the use of available security resources.” DCAF, *SSR Background: Security Sector Governance and Reform* (Geneva: DCAF, 2009).

⁵ Ann Fitz-Gerald, “Security Sector Reform: Streamlining National Military Forces to Respond to the Wider Security Needs”, *Journal of Security Sector Management*, vol. 1, no. 1 (2003), pp. 1-21.

challenging aspect of SSR is the reforms associated with second generation SSR. This encompasses “the consolidation of the first generation reforms as well as ensuring the effective operation of institutions, development of expertise and knowledge, the diffusion of reform commitments from lower-level officials and other actors, and the engagement with non-state actors on SSR issues such as civil society.”⁶

This chapter argues that Philippine SSG is currently situated between the first and second generation. To a large extent, the government has a robust legal framework and clear delineation of responsibilities among the network of formal institutions mandated to manage and hold the security sector accountable. However, research from the Institute for Strategic and Development Studies (ISDS) revealed in 2011 that there are limitations in the capacity and effectiveness of these institutions, as well as in the faithful implementation of relevant laws.⁷ Civilian oversight of the security sector remains difficult due to the lack of oversight capabilities, the politicization of this function, and the lack of willingness to hold core security forces accountable. Failure to institutionalize good practices also results in the erosion of progress in the reform process. Finally, the lack of participation from and openness to all relevant stakeholders in the security sector makes such SSR unsustainable since it becomes the exclusive purview of a select group of political actors.

Nevertheless, the Philippine legislature is an important pillar in the network of institutions responsible for SSG. Their functions relate to assessing performance, approving promotions and appointments of uniformed officials, controlling budgets, and reviewing security policy. These responsibilities constitute their mandate as agents of civilian oversight. If oversight is conducted in accordance with the principles of SSR, members of the legislature can meaningfully contribute to the good governance of the security sector. Although a set of rules, functions, and formal institutions oriented toward ensuring effectiveness and accountability of the security sector exists in the Philippine Congress, the legislature continues to have limitations and weaknesses in meaningfully practicing its mandate. The aforementioned 2011 study revealed that there is much to be desired in the realm of knowledge, awareness, and capacity of oversight institutions, including the Philippine legislature.⁸

This chapter argues that pursuing SSR in the Philippines requires going beyond the realm of formal laws and institutions. As a young democracy, the main problem is the government’s ability to impartially implement principles of good SSG that form part of second generation SSR. Critical to this is recognizing the negative impact of informal norms and institutions that limit the effectiveness and negatively affect the quality of parliamentary oversight. Examples of these informal practices and institutions are: patronage, politico-military networks, the reliance on the military for security or defence expertise, and corruption. Political reforms aimed at building strong representative institutions, such as parties, can improve legislative oversight in the

⁶ Timothy Edmunds, “Security Sector Reform: Concepts and Implementation,” in Philipp Fluri and Miroslav Hadzic (eds.), *Sourcebook on Security Reform* (Geneva: DCAF, 2004), pp. 50-53; Islam Yusufi, “Understanding the Process of Security Reform in Southeastern Europe,” *Journal of Security Sector Management*, vol. 2, no. 2 (2004), pp. 5-6.

⁷ ISDS, *Developing A Security Sector Reform Index in the Philippines Towards Conflict Prevention and Peacebuilding*, (Quezon City: ISDS, 2011), accessible at: <http://www.ombudsman.gov.ph/UNDP4/wp-content/uploads/2013/03/SSRI-Pre-Publication-LATEST.pdf>.

⁸ Ibid.

Philippines. Harnessing the expertise and assistance of civil society, research institutions, and other private actors to contribute to the reform is equally important.

The next section discusses the framework of SSR accountability in the Philippines. The chapter also examines the existing types of parliamentary oversight, as well as their practical issues in the country, including their organisation, composition, and relationship with relevant actors in relation to pursuing SSR. In conclusion, the chapter provides policy recommendations on improving the quality of civilian oversight in the Philippines and on the role that the Philippine Congress can play in enhancing SSG.

Security sector accountability framework

The 2011 ISDS study concluded “there is a present and adequate constitutional legal and institutional framework for democratic SSG in the country”.⁹ The 1987 Constitution explicitly provides for democratic principles to govern the security sector. Statutes, executive decrees and pronouncements by government agencies support this fundamental document. Constitutional bodies, constitutional by-laws or the security sector institution concerned can create oversight institutions.

The legal framework of the country is also explicit in defining the responsibilities of the security sector agencies. Even though practice is still far from legal intention, the country’s legal framework makes it clear that there needs to be both an institutional and functional separation between the military and the police. Additionally, specific governmental agencies in the executive, legislative and judicial branches are mandated with the task of civilian oversight of the security forces. The legal framework also clearly provides the process of exacting accountability. For instance, Republic Act 3019 (Anti-Graft and Corrupt Practices Act) and Republic Act 6713 (Code of Conduct and Ethical Standards for all Government Officials and Employees) detail how government officials, including those in the security sector, could be held accountable and sanctioned if proven guilty of any violation. Internally, the military has a comparatively stricter code of ethics than the code for public officials. The Philippine National Police (PNP) lead various programmes and activities, such as the Moral Recovery Program and the PNP Ethical Doctrine Manual, to provide for moral and ethical guidelines for all members of the police force.

Independent bodies also exercise accountability within the security sector. For example, the Office of the Ombudsman has a special deputy ombudsman in charge of the military and other law enforcement agencies. This institution is mandated by the Constitution to act on complaints against officers or employees of the government and enforce their administrative, civil, and criminal liability in order to promote efficient government service.¹⁰ It is specifically stated that the ombudsman shall give priority to complaints filed against high-ranking government officials and complaints involving grave offenses and large sums of money and/or properties.¹¹ The

⁹ Ibid, p. 26.

¹⁰ Republic of the Philippines, “Article XI, Section 12”, in *The Constitution of the Republic of the Philippines* (Manila: Republic of the Philippines, 1987), accessible at: <http://www.gov.ph/constitutions/1987-constitution/>.

¹¹ Philippine Congress, “Section 15”, in *Republic Act No. 6770: An Act Providing For The Functional And Structural ation Of The Office of the Ombudsman, And For Other Purposes* (Manila: Republic of the Philippines, 1989), accessible at: http://www.ombudsman.gov.ph/docs/republicacts/Republic_Act_No_6770.pdf.

creation of the National Police Commission (NAPOLCOM) seeks to ensure a more efficient administration and supervision of the police force. A major legal constraint in ensuring transparency, however, is the absence of a law that provides details on public rights to information. Congress has yet to pass such a law that will empower citizens to demand access to information from the government. This is particularly significant for information regarding the security forces since they are conventionally perceived to be a very secretive part of government.

Another independent institution created by the 1987 Constitution is the National Commission on Human Rights (CHR). One of the Commission's functions is strengthening the "capacities of actors in the security sector, the justice system, front line service providers, and decision and policymakers."¹² As its core strategy, the CHR adopts the Human Rights Protection Program to ensure that the public is informed of their rights and its application to their personal and public lives. This includes the operation of the National Monitoring Mechanism, a collaboration among the CHR, civil society organisations, government agencies, and the security sector that aims to address complaints of violations and, ultimately, end impunity.¹³

Given the principle of separation of powers within the Philippine presidential system, there is limited connectivity and interface between institutions of accountability outside the security sector and the internal mechanisms of accountability of, for example, the core security forces such as the armed forces and the police. Internal accountability is often exercised by the Office of Military Affairs under the Office of the President and the Undersecretary for Internal Control of the Department of National Defence for the military and the National Police Commission (NAPOLCOM). These are the government agencies tasked with receiving complaints and dealing with other related matters involving the military and police personnel, respectively. However, they often function separately from the ombudsman, CHR, and the legislature. This incongruence often results in limited effectiveness, inefficiency, and unclear lines of responsibility for the security sector.

While formal accountability is exercised through institutions with official mandates, there are also mechanisms of accountability that include non-government organisations. The Constitution and its by-laws generally provide voice to the public and organised groups in the country to participate in affairs related to the security sector. One example is the People's Law Enforcement Board (PLEB), which was instituted by the Department of Interior and local government through the reorganisation of the Philippine National Police (PNP). According to Section 43 of RA 6975, the PLEB shall have jurisdiction to hear and decide citizen's complaints or cases against erring officers and members of the PNP.¹⁴ The membership of the PLEB is entirely civilian since it includes one member of the municipal or city council, the *barangay* captain, and three respected members of the community chosen by its local peace and order council.¹⁵

¹² Republic of the Philippines Commission on Human Rights, "Who We Serve", [http://www.chr.gov.ph/MAIN %20PAGES/contact_us.htm](http://www.chr.gov.ph/MAIN%20PAGES/contact_us.htm).

¹³ Ibid.

¹⁴ Republic of the Philippines, "Section 43", in *Republic Act No. 6975: An Act Establishing the Philippine National Police Under A Reorganized Department of the Interior and Local Government, And For Other Purposes* (Manila: Republic of the Philippines, 1990).

¹⁵ Ibid.

Generic functions of parliament applied to the security sector

The Philippine Congress is empowered by the 1987 Constitution to formulate, amend, or repeal legislation related to the security sector.¹⁶ Although law-making is not straightforward given the specific political context and juncture, there is an overall impression that law-making tends to be a protracted, tedious, painstaking, and, to some, frustrating process. The weakness of the political party system, prevalence of patronage and horse-trading, and divided government contribute to this assessment. The co-equal nature of the country's bicameral legislature adds to the difficulty of enacting legislation.

Congress is also mandated to carry out oversight functions mainly through its investigatory powers in aid of legislation, as well as its role in confirming appointments and promotions of officials from the core security forces.¹⁷ It can furthermore review the implementation of existing defence and security policy with respect to important events. In addition, it can formulate bills in light of the findings of its investigatory hearings or make recommendations to the executive through its relevant congressional committees.

Finally, budget control is a critical generic function of the Philippine Congress.¹⁸ By enacting an annual General Appropriations Act, it is able to mandate officials from the core security forces, as well as other oversight institutions in the executive, to report on their own performance, justify funding requests, and even answer relevant questions from members of the congressional committees tasked to approve the budget.

Given these generic functions: how are they actually carried out? The performance of civilian oversight institutions with regard to implementing SSR does not necessarily follow the clear and robust legal-institutional framework of the Philippines political system.¹⁹ There are deficiencies in the realm of knowledge, awareness, and capacity of oversight institutions in the country. Some institutions are even unaware that they have an important role in the oversight of the security sector. This is an automatic 'dead-end', as being uninformed of their functions may also imply that these oversight institutions do not have nor developed any capability to perform such a mandate. Another challenge for them is making of the complex inter-relationship between these oversight institutions. A coordinated network of institutions that shares information in order to produce effective and democratic oversight is an important best practice in SSG.

The Philippine Congress is generally empowered by laws and its own rules in order to perform oversight.²⁰ Under Resolution No. 5 or the Rules of Procedure Governing Inquiries in Aid of Legislation, the Senate or any of its committees may conduct formal inquiries or investigations in

¹⁶ "Article VI", in *The Constitution of the Republic of the Philippines*.

¹⁷ "Article VI, Section 21" in *The Constitution of the Republic of the Philippines*, and "Article VI, Section 18", in *The Constitution of the Republic of the Philippines*.

¹⁸ "Article VI, Section 24", in *The Constitution of the Republic of the Philippines*.

¹⁹ ISDS, *Developing A Security Sector Reform Index in the Philippines*. See also: INCITEGov, *Transformation: A Security Sector Reform Reader* (Pasig: INCITEGov, 2011).

²⁰ "Article VI, Section 21", in *The Constitution of the Republic of the Philippines*.

aid of legislation in accordance with the Rules of the Senate.²¹ There is little opportunity for being arbitrary because specific protocols or guidelines need to be followed. While it has its own rules on conducting investigations or hearings, it is another issue if these are faithfully implemented.

Second, since there is no formal network of oversight institutions in both chambers of Congress, the performance of their functions is inefficient, repetitive, and redundant. The two chambers of the legislature also do not coordinate on conducting investigatory hearings, which is important since legislation requires the concurrence of both. There is also no legal basis on joint congressional hearings, as stated in their respective internal rules. Instances of coordination are rare, as demonstrated by the small figure in the available cumulative statistics of recent reports on the Senate's performance.²² This could stem from the fact that each legislative chamber jealously guards its independence and co-equal character from one another.

Third, there are gaps in civilian oversight, such as the exemption of PNP officials from being confirmed by the Commission on Appointments (CA). Moreover, Congress lacks a formal oversight function with regard to the AFP's foreign peacekeeping missions. Congressional oversight is not routine or subject to a regular procedure because the legislature is prone to only examining 'controversial' issues that implicate the security forces instead of exercising oversight across the various tasks and activities performed by the security forces. As an example, legislative inquiries have become a staple activity in both houses after allegations of corruption and misuse of organisational funds haunted the AFP, as well as allegations of the Ombudsman's betrayal of public trust.²³

Some observers have noted that the legislators' investigative power is often exercised for personal and political motivations and, therefore, prone to abuse.²⁴ The efficiency of these investigations have also been questioned, as evidenced by the low percentage of the delivered proposed bills compared to the number of investigations conducted. Even though not all are related to the security sector, a report showed that out of the 13 inquiries probed between July 2010 and January 2015, the Senate has only produced three reports.²⁵

²¹ Republic of the Philippines Senate, "Section 1, Resolution No. 5", in *Rules of Procedure Governing Inquiries in Aid of Legislation* (Pasay: Republic of the Philippines Senate, 2010).

²² Republic of the Philippines Senate, *15th Congress Performance Report* (Pasay: Republic of the Philippines Senate, 2013); Republic of the Philippines Senate, *16th Congress Performance Report* (Pasay: Republic of the Philippines Senate, 2016).

²³ Aries A. Arugay, "The Philippine military: Still politicized and increasingly autonomous", in Marcus Mietzner (ed.), *The Political Resurgence of the Military in Southeast Asia: Conflict and Leadership* (London: Routledge, 2011); Paul Hutchcroft, "The Arroyo imbroglio in the Philippines", *Journal of Democracy*, vol. 19, no. 1 (2008), pp. 141-155.

²⁴ Bartolome C. Fernandez, Jr., "Legislative inquiry is but a fact-finding exercise," *Philippine Daily Inquirer*, November 22, 2014, accessible at: <http://opinion.inquirer.net/80332/legislative-inquiry-is-but-a-fact-finding-exercise>; Joel M. Sy Egco, "IBP scores senators 'abuse of power'," *The Manila Times*, October 19, 2014, accessible at: <http://www.manilatimes.net/ibp-scores-senators-abuse-power/135535/>.

²⁵ Darlene Cay and GMA News Special Assignments Team, "Only 3 of 13 Blue Ribbon inquiries ended with proposed bills," *GMA News Online*, modified January 22, 2015, accessible at: <http://www.gmanetwork.com/news/story/413560/news/specialreports/only-3-of-13-blue-ribbon-inquiries-ended-with-proposed-bills>.

In other words, oversight through congressional inquiries tends to be reactive rather than periodically or routinely exercised. As with other hearings, they tend to cater to the personal and career interests of politicians rather than to SSR goals, given that media frequently covers them.²⁶

Fourth, there is a big gap between expectations and capability among civilian oversight institutions. Lack of human, financial, and technical resources has been the weakness that all civilian institutions often state in validation meetings. For example, the Committee on National Defence and Security of the House of Representatives has 93 members with eight 8 subcommittees but only seven staff members. There was even an instance when the Senate Committee on Public Order and Safety had only one staff member, who was also its secretary. Beyond the shortage of staff members, a more pressing concern is the development of skills for members of Congress, their personal staff, and the committee staff for civilian oversight through education and training, especially in relation to their security oversight functions.

Parliamentary committees

There are several committees within the House of Representatives and the Senate. Committees are permanent, ad hoc, or joint between the two chambers. In the House of Representatives, the following are the standing committees that have functions relevant to the security sector²⁷:

- **Good Government and Public Accountability:** This committee deals with all matters directly and principally relating to malfeasance, misfeasance and nonfeasance in office committed by officers and employees of the government and its political subdivisions and instrumentalities inclusive of investigations of any matter of public interest on its own initiative or upon order of the House of Representatives.
- **Human Rights:** This committee covers all matters directly and principally relating to the protection and enhancement of human rights, assistance to victims of human rights violations and their families, the prevention of violations of human rights, and the punishment of perpetrators of such violations.
- **Justice:** This committee addresses all matters directly and principally relating to the administration of justice, the judiciary, the practice of law, the integration of the Bar, legal aid, penitentiaries, reform schools, adult probation, impeachment proceedings, registration of land titles, immigration, deportation, naturalization, and the definition of crimes and other offenses punishable by law and their penalties.
- **National Defence and Security:** This committee deals with all matters directly and principally relating to national defence and national security, the armed forces, citizens' army, selective services, forts and arsenals, military bases, reservations and yards, coast and geodetic surveys, and disaster relief and rescue.
- **Public Order and Safety:** This committee pertains to all matters directly and principally relating to the suppression of criminality, including illegal gambling, private armies,

²⁶ This included the issues of the misuse of AFP funds by some military personnel, especially from the Office of the Comptrollership (J6). It even allegedly benefitted family members with anomalous bank accounts and frequent travels abroad.

²⁷ Republic of the Philippines House of Representatives, "House Committees", accessible at: <http://www.congress.gov.ph/committees/>.

terrorism, organised crime and illegal drugs, regulation of firearms, firecrackers and pyrotechnics, civil defence, private security agencies, and the PNP.

- **Veterans Affairs and Welfare:** This committee is tasked with all matters directly and principally relating to the welfare of war veterans, veterans of military campaigns, military retirees, and their surviving spouses and other beneficiaries.

In the Senate, the following are the standing committees have responsibilities related to the security sector²⁸:

- **National Defence and Security:** This committee addresses all matters relating to national defence and external and internal threats to national security; the Armed Forces of the Philippines; pension plans and fringe benefits of war veterans and military retirees; citizens army selective service; forts; arsenals; military camps and reservations; coast, geodetic and meteorological surveys; civil defence; and military research and development
- **Justice and Human Rights:** This committee is in charge of all matters relating to the organisation and administration of justice, civil courts, penitentiaries and reformatory schools; probation; impeachment proceedings against constitutional officers and other officers legally removable by impeachment; registration of land titles; immigration and naturalization; the implementation of the provisions of the Constitution on human rights; and all matters pertaining to the efficiency and reforms in the prosecution service.
- **Peace, Unification and Reconciliation:** This committee deals with all matters relating to peace, internal armed conflict resolution, political negotiation, cessation of hostilities, amnesty, rebel returnees, integration and development, national unification and reconciliation
- **Public Order and Dangerous Drugs:** This committee is responsible for all matters relating to peace and order; the Philippine National Police; the Bureau of Jail Management and Penology; the Bureau of Fire Protection; private security agencies; the use, sale, acquisition, possession, cultivation, manufacture and distribution of prohibited and regulated drugs and other similar substances as provided for under pertinent laws, and the prosecution of offenders, rehabilitation of drug users and dependents, including the formulation of drug-related policies.
- **Accountability of Public Officers and Investigations (Blue Ribbon):** This committee pertains to all matters relating to, including investigation of, malfeasance, misfeasance and nonfeasance in office by officers and employees of the government, its branches, agencies, subdivisions and instrumentalities; implementation of the provision of the Constitution on nepotism; and investigation of any matter of public interest on its own initiative or brought to its attention by any member of the Senate

An example of a joint congressional oversight committee is the one created for the Armed Forces of the Philippines Modernization Act. There are currently no standing or ad hoc committees related to the intelligence sector in both house.

²⁸ Republic of the Philippines Senate, “Rule X, Section 13”, in *Rules of the Senate of the Philippines*, accessible at: <https://www.senate.gov.ph/about/rules.asp>.

Critical to the dispensation of the responsibilities of these congressional committees is the appointment of the chair of the standing committees. The majority coalition often decides on the chairs of the committees. Prevalent practice has been the assignment of the chairmanship and even membership of committees related to national defence or public order to former military and police officials. This is one practice that further empowers politico-military networks among individual politicians and both active and retired uniformed officials. It also erodes and undermines the independence and impartiality of civilian oversight. Political bonds defined by patronage, accommodation, and even settling old disputes could potentially define how these committees perform their functions rather than the autonomous oversight of the effectiveness and accountability of core security forces.

Nevertheless, one of the most important congressional committees relevant to the security sector is the joint CA made up of members in the House of Representatives and the Senate. They have the power to confirm executive appointments such as cabinet secretaries and bureaucratic officials, as well as military and police officials. There is an opinion that there is “much politicking and horse-trading that take places within this institution among civilian politicians and uniformed officials.”²⁹ This is also where networks between these two sets of political actors develop and could prove useful for personal advancement. It is not surprising for example that as military and police officials rise in the ranks, they are often supported and coddled by civilian politicians. There is also no clear sense of the accepted informal norm of appointing retired military officials in the bureaucracy. Politicians as overseers do not raise this as an issue, and retired military officials believe that they are capable of rendering public service beyond retirement in civilian posts. Existing literature on civil-military relations does not confirm the ‘civilianization’ of members of the armed forces after retirement. Apart from retaining their own network of loyal military officials, the military mindset remains and guides the performance of their individual functions even as civilians. There are even attempts to institutionalize this process through the introduction of legislative bills that automatically make retired military officials civilian a few years after their retirement.

Another powerful committee pertains to the approval of the defence and police budgets within the Philippine Congress. It is a big committee that is divided into subcommittees, some of which specifically focus on security sector institutions. This is the opportunity for politicians to question the top ranks of the military and the police since these security actors need to justify their budget requests to the committee. Members of the legislature frequently use this as a ‘discipline and punish’ mechanism against core security forces, which can be effective oversight if carried out within the parameters of good SSG. However, if oriented towards political vendettas and personal agendas, it becomes a bitter informal norm that disorients SSR.

Relationship with other overseers and civil society

The Philippine Congress has yet to fully realize that it can be an important pillar in the network of oversight institutions in the security sector. Given the principle of separation of powers and parliament’s mandate to check executive power, there is less motivation to pool resources and

²⁹ Mario Aguja, “Key Took for Oversight: Parliamentary Committees of the Philippine Congress,” in Axel Schmidt (ed.), *Dialogue + Cooperation* (Friedrich Ebert Stiftung, 2006).

undertake joint initiatives with executive and judicial institutions to exercise and/or improve civilian oversight. It has also thus far not coordinated oversight functions with independent institutions such as the Commission on Human Rights and the Ombudsman. These are lost opportunities to pool resources, share research and information, and provide an atmosphere of impartiality in the conduct of civilian oversight.

The legislature has additionally not fully utilised academic institutions and civil society as sources of informal oversight. The executive and the military itself have done a better job of consulting and conducting dialogues with civil society organisations. For example, multi-sectoral advisory boards within the military were formed to serve as important linkages between the military and society. Congress can follow suit by forming a multi-sectoral group to advise or assist in SSR-related matters and benefit from some of civil society's wealth of expertise on SSR.

Lastly, there are deficits in transparency, particularly regarding the availability of information for the interested public. Media practitioners have complained that the security forces, particularly the military, have not been forthcoming in making basic information available to the public. Without reliable and updated information, no genuine oversight is possible.

Conclusion

As the Philippines attempts to upgrade its reform efforts to encompass what is known as second generation SSR initiatives, all relevant stakeholders need to exert more effort, resourcefulness, and political will. The entry of SSR ideas into mainstream policy-making is a necessary but insufficient condition for fostering good SSG. It must undertake the transition toward capacity-building, institutionalizing good practices, and engaging the wider society. In this regard, one might view SSR as a broader, 'whole of society' approach rather than as the current 'whole of government' or 'whole of nation' approaches.³⁰

Critical policies that can be recommended relate to the careful consideration in the appointment of the leadership behind congressional committees related to the security sector to ensure their independent and civilian character. Investment in skills development and research capacity is also critical among the legislative members, their personal staff, and the staff within standing committees. The last group is important since the staff act as the Congress' bureaucracy, given their security of tenure. Moreover, a committee on intelligence is urgently needed. Finally, the public should have access to information related to the performance and functioning of these congressional oversight committees in the interest of transparency. This can also help research organisations, as well as civil society groups, in performing an informal civilian oversight role.

Congress is a critical institution that could upgrade SSR in the Philippines. Yet, the nature of the institution, the fluidity of its political configurations, and the members' lack of knowledge on SSR present challenges toward achieving this goal. Current SSR champions within the legislature need to reach out to the more influential members of this body. Another vital consideration is determining how to address the informal norms and institutions that are embedded within the

³⁰ Carolina G. Hernandez, "Security Sector Reform in Southeast Asia: From Policy to Practice," in Felix Heiduk (ed.), *Security Sector Reform in Southeast Asia: From Policy to Practice* (London: Macmillan, 2014).

institutional and legal framework of SSG in the Philippines. Good SSG on paper will likely remain only on paper without effective implementation propelled by a genuine willingness to change. This is where political leadership, one that is oriented toward building strong institutions that could withstand the fluidity of Philippine politics, is needed

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This publication is a result of the 10th anniversary of the Inter-Parliamentary Forum on Security Sector Governance (IPF-SSG) workshop on “Good Governance of the Security Sector in Southeast Asia: What Role for Parliaments?” that took place in Siem Reap, Cambodia from 15th- 16th September 2016. It was organised by the Cambodian Institute for Cooperation and Peace (CICP), in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF), and the Friedrich Ebert Stiftung (FES), with the support of the Swiss Agency for Development and Cooperation (SDC). The case studies of this volume were commissioned from the experts in the region, and these were presented during the workshop. The IPF SSG provides a platform for members of parliament, parliamentary staffers, government and security officials as well as representatives of civil society and academia from several ASEAN member states to exchange experiences, best practices and ideas concerning the role of parliament in security sector governance.