

DCAF PARLIAMENTARY PROGRAMMES

Parliamentary  
Powers in  
Security Sector  
Governance

Teodora Fuior

# **Parliamentary Powers in Security Sector Governance**

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of Armed Forces  
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The Geneva Centre for the Democratic Control of Armed Forces is one of the world's leading institutions in the areas of security sector reform (SSR) and security sector governance (SSG).

DCAF provides in-country advisory support and practical assistance programmes, develops and promotes appropriate democratic norms at the international and national levels, advocates good practices and makes policy recommendations to ensure effective democratic governance of the security sector.

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Geneva, 2011

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# FOREWORD

Parliamentary oversight of the security sector is of utmost importance for a young democracy, as the security sector poses a challenge to governance in many developing countries. The introductory text on parliamentary oversight will help parliamentarians and non-parliamentarians alike understand what the powers of an ambitious, competent and well-prepared parliament and its committees can be and what good they can do.

Similarly, the 'self-assessment' kit will help parliamentary and non-parliamentary security and governance experts understand where their parliament stands and what further improvements could be made in the light of 'best practices.'

DCAF greatly welcomes the opportunity to make these handy and well-written essays available to a larger public.

Philipp Fluri, Ph.D.  
Deputy Director DCAF

Geneva, January 2011



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# Parliamentary Oversight of Security Sector

An effective parliamentary oversight is essential for the quality of a democracy. Parliaments are performing their oversight role in a variety of ways. This study offers information about the purpose and the nature of parliamentary oversight, it details the procedural stages in which oversight activities take place (plenary sittings, committees and MPs individually) and it gives examples of good practices, with a focus on parliamentary oversight of security sector.

## General Considerations about Parliamentary Oversight

### The Relevance of Parliamentary Oversight for Democracy

The last two decades have seen many countries officially opting to follow a democratic system of government.<sup>1</sup> This democratic transition mainly translates into the organisation of regular, free and fair elections within an environment of political freedom and pluralism.<sup>2</sup> Even as more governments are chosen through competitive elections than at any time in history, governance institutions in many democracies have weakened – a pair of contrasting trends that are challenging the popular Western assumptions about the inevitability of democratic development. Democratically elected governments are not immune to authoritarian behaviours, abuses of power or the promotion of illiberal standards and values that undermine the substance of democracy.<sup>3</sup>

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<sup>1</sup> We do not benefit of a precise definition of democracy, instead there is an elusive consensus about the minimal features of a democracy: free and fair elections, political pluralism, government based on majority rule and the consent of the governed, rule of law, respect for human rights, protection of freedom and minorities.

<sup>2</sup> Freedom House defines this minimal model of democracy as “electoral democracy.” In 2009, 119 states were classified as electoral democracies (62% of the total) comparing with 69 (41% of the total) in 1989.

<sup>3</sup> According to recent findings from Freedom in the World, Freedom House’s annual survey, political rights and civil liberties have suffered a net global decline for three successive years, the first such deterioration since the survey’s inception in 1972.

Elections are the direct mechanism through which citizens hold their rulers accountable, because they offer people an opportunity to choose between alternative sets of rulers and commitments, to express individual preferences and political loyalties. But the simple existence of an electoral cycle does not tell us anything about the substance of a democracy. An absence of institutional accountability during the years between two elections leads to repressive and arbitrary governance, mismanagement and rampant corruption.

The quality of democracy<sup>4</sup> is given by the relation between citizens and rulers before and after the episodic event of elections. Citizens must be provided with the ability to hold decision-makers to account for the power that has been delegated to them; the decision-makers have the obligation to reveal, explain and justify for their policies and actions in the act of government. Democracy requires a hard and continuous work for building and rebuilding mechanisms for accountability, for checking how the electoral pledges are respected and for facilitating the public interest during the whole duration of the electoral cycle.

The first responsibility for this hard work belongs to parliament. People have to rely upon their elected representatives for a constant and specialised vigilance on how the government rules. Parliament has to guard that government policy and actions serve national interests and people's needs, and to exert a constant pressure on government officials to be efficient, to avoid mismanagement, waste and abuse. This is the essence of the oversight function of parliament. No other institution can play this role, so essential for a governance that is democratic not only in form but in substance. As the elected representatives of the people, parliaments are at the heart of the democratic system, the effectiveness of their oversight being crucial for the political health of a nation.

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Freedom House, Radio Free Europe/Radio Liberty, and Radio Free Asia undertook an examination of the new updated ways of authoritarian regimes in the 21<sup>st</sup> century, the report being available at <[www.underminingdemocracy.org](http://www.underminingdemocracy.org)>. See also UNDP, Human Development Report 2002 "Deepening Democracy in a Fragmented World," available at <[http://hdr.undp.org/en/media/hdr\\_2002\\_en\\_overview.pdf](http://hdr.undp.org/en/media/hdr_2002_en_overview.pdf)>.

<sup>4</sup> The best-known measure of democracy is the index produced by the US-based Freedom House organisation, based on 25 political freedom and civil liberties indicators. The index is available for all countries, and stretches back to the early 1970s. See Freedom House, "Democracy Overview," available at <<http://www.freedomhouse.org/template.cfm?page=15>>.

**Box 1. Background on Parliamentary Oversight**

The International Parliamentary Union uses the following working definition of parliamentary oversight: “the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation,” and details as follows the key functions of parliamentary oversight:

- 1) to detect and prevent abuse, arbitrary behaviour, or illegal and unconstitutional conduct on the part of the government and public agencies. At the core of this function is the protection of the rights and liberties of citizens;
- 2) to hold the government to account in respect of how the taxpayers’ money is used. It detects waste within the machinery of government and public agencies. Thus it can improve the efficiency, economy and effectiveness of government operations;
- 3) to ensure that policies announced by the government and authorized by parliament are actually delivered. This function includes monitoring the achievement of goals set by legislation and the government’s own programmes;
- 4) to improve the transparency of government operations and enhance public trust in the government, which is itself a condition of effective policy delivery.

Source: International Parliamentary Union, *Tools for Parliamentary Oversight* (2008), p.9. Available online at [www.ipu.org/PDF/publications/oversight08-e.pdf](http://www.ipu.org/PDF/publications/oversight08-e.pdf).

**The Place of Parliament in Different Political Systems**

The specific mechanisms and historical trajectories for parliamentary oversight depend first of all on the political system implemented in each state. The very existence of the parliament derives from the constitution which stipulates the fundamental powers of state institutions and the relationship between them. There are three major models of constitutional design, that structure differently the relations between the executive and the legislative power, between the citizens and their representatives, and between the representatives themselves: presidentialism, parliamentarism and semipresidentialism.

In a *presidential system* the president is directly elected by the people and enjoys strong executive prerogatives, among which a special role in foreign affairs and matters of national security. As both head of state and head of government, he appoints the government and exercises direct executive control. There is a clear separation of powers and personnel between executive and legislative, who have each their own source of electoral legitimacy. Parliamentary autonomy, influence and criticism to executive’s proposals are strong.

The United States has a presidential system and a long tradition of separation of powers. The US Congress is well known for its strong position vis-à-vis the ex-

ecutive, especially when the opposition has a majority in one or in both Houses, and it can substantially obstruct presidential policy. The United States is the most visible example of presidential system, but presidentialism is predominant in Latin America, large parts of Africa and in the non-Baltic former Soviet countries, being also met in Indonesia, Philippines or South Korea.

*Parliamentarism* prevails in most European countries. The clear separation between executive and legislative branches does not exist in this model, where the executive is chosen from the legislature. As a result, the composition of parliament and the executive are intertwined, which tends to favour party discipline and cooperative legislative-executive relations. The president is indirectly elected by the parliament and has no executive power but a rather ceremonial role. The prime minister exercises considerable executive power and he is accountable to the legislature, which may dismiss him with a no-confidence vote, if he loses majority or if parliament disapproves government's policy.

The dependence of the chief of executive to the parliament is considered to ensure parliamentarism flexibility and a capacity for fast adjustment which are not met in presidentialism. In contrast with a strong president who's policy loses popular support, but who needs to be suffered by population and parliament until the end of his fixed term, the mandate of a prime minister can be interrupted at any time by parliament, if his policy becomes undesired. This vote of no-confidence represents a strong oversight tool legislatures possess in parliamentary systems.

There are variations to parliamentarism. United Kingdom and Canada are representatives of a Westminster model<sup>5</sup> whose particular features include a single party executive. Germany is the most prominent example of the continental model of parliamentarism, met in most European countries.<sup>6</sup> Continental parliamentarism relies on a coalition executive and on consensus building policy. The head of state is completely excluded from the executive and plays a ceremonial role.<sup>7</sup> Switzerland is described as having a 'plebiscite parliamentary system' because important political decisions are frequently checked by popular referenda.

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<sup>5</sup> A Westminster parliament is met in most Commonwealth and ex-Commonwealth nations such as Australia, India, the Republic of Ireland, Jamaica, Malaysia, New Zealand and Singapore.

<sup>6</sup> Denmark, Netherlands, Finland, Spain, Italy, Greece or Turkey are just a few examples of continental parliamentary systems.

<sup>7</sup> See, "Germany Armed Forces," Background Papers (Washington D.C.: German Embassy); available at <<http://www.germany-info.org/relaunch/info/archives/background/armedforces.html>>.

*Semi-presidential systems* combine features of the two previous models. A president and a prime minister are both active participants in the day to day administration of the state. The president is directly elected, and the prime minister and his cabinet must be acceptable to both the president and the parliament. How the powers are divided between president and prime minister can vary greatly between countries. The prime minister and his government are responsible to parliament, which may force them to resign through a motion of no confidence. Semi-presidential systems are characterized by the limitation of the powers of the parliament, in contrast not only with parliamentary systems, but also with pure presidential systems.

In France, the typical example of semipresidentialism, the president has traditionally far reaching authority in foreign policy and in defence and security issues, while the prime minister is responsible for domestic policy. In case of co-habitation (when the parliament and the presidency are controlled by opposing political parties), the parliament can drastically limit the powers of the president. Cohabitation can create an effective system of checks and balances or a conflictual relationship characterized by tense disagreements and deadlocks, depending on the attitudes of the two leaders and the ideologies of their parties.

Semipresidential systems became popular in post communist countries, like Poland, Romania, Moldova, Mongolia, Russia or Ukraine. The big differences that exist between post communist countries in terms of democratization are many times attributed to the power struggle between the president and the parliament which is made possible by semipresidentialism. Some of the semipresidential states are in fact superpresidential systems, where power is concentrated in the hands of the president at the expense of the legislature.

Within and between these types political regimes vary considerably, therefore generalisations are difficult to make. In each of the three general categories described above, we find examples of parliaments that range from contemplative to significant governing partners. But any analysis of the role played by a national parliament in a political system should start with a regard to the constitutional design, the structural relation between institutions, and the powers granted to each of them.

## **Parliamentary Oversight of Security and Defence**

National security and defence are one of the core tasks of a state, subject to the same broad set of rules and procedures that apply to other areas of government. At the same time, security agencies have features that are not met in other de-

partments of the state. The complexity and the specificity of this sector make both analysis and oversight more challenging.

First of all, by nature, there is a clash between security agencies and the individual freedom and civil liberties that are of essence to a democracy. Military, police, intelligence are a body separate from the larger society, enjoying an autonomous professionalism and a strong esprit de corps, based on hierarchy and discipline. Possessing the legal monopoly of force in a state, security forces accumulate a huge power; they have special powers that might limit human rights and liberties. They naturally develop a strong resistance to outside control and to reforms. That is why ensuring a real separation of powers and a smooth system of checks and balances in security issues is even more important than in other fields of government.

Additionally, the need to protect sensitive national security information frequently prevents transparency and accountability mechanisms to function as they do for other public policies. The security sector is less transparent than other governmental activities, also due to the military 'caste mentality.' In many countries, institutions which possess the legal monopoly of force develop into states within the state – having their own distinct values, norms, discipline, schools, courts, hospitals etc. More than that, the executive has a tendency to look at security as its own exclusive responsibility. Anti-terrorism measures added in the recent years to the arguments used by executives to withhold the flow of information to the parliament. Secret programmes are often used for defence research, development, acquisition, intelligence activities or for military operations. The identity, purpose and even costs of secret operations are concealed not only from the public, but also from a majority of members of parliament. Therefore, the parliament has to pursue an acceptable level of accountability for such activities and to prevent the executive from over-classifying information without a solid justification.

Unlike most other public policies, the efficiency of a security policy is oftentimes difficult to measure. For instance, how many soldiers, what sorts of weapon systems or how much readiness should the defence establishment provide in order to be effective? How should one evaluate whether defence capacities perform in wartime as they are projected to in peacetime exercises? Internal security also raises specific challenges: how can the efficiency of money spent by the police and intelligence services be measured?

This lack of clarity in performance indicators as compared to other government policies (to name only one example, in public education policy, the number of students graduating each year can be used as an indicator) makes the parliamentary oversight of security a more challenging task.

An efficient parliament, able to hold the executive accountable, is particularly important for *post-conflict settings*, meaning countries slowly recovering from political turmoil, military coups, civil wars and conflicts. Such a context intensifies the urgency of strengthening parliaments' ability to play a proactive role in reconstruction and reconciliation. After conflict, parliamentary institutions suffer from a severe asymmetry of power in relation to the executive, the security institutions and non-state actors. Confusing concentrated power with effective power, new regimes are tempted to gather the power of the state into the executive, mainly in the presidential institution. Therefore, the urgent correction of this imbalance through a functional and proactive parliament, the only agency at the national level that is potentially capable of controlling the chief executive, is the institutional key to democratization.<sup>8</sup>

Security agencies' need for public acceptability is higher in countries with former autocratic regimes – that used security services for their own purposes in the past; the services are prone to public suspicion, lack of confidence and attacks to their legitimacy. Accurate information and proof of human rights abuses can be difficult to collect when fear, mistrust in the police and the ineffectiveness of state institutions impedes victims' accounts of abuses.

The reason for a parliamentary revival in the field of security oversight is not a presumed better performance in decision making. Rather, possessing the mandate from the people, parliaments provide the needed democratic legitimacy to decisions that affect people's lives. People must have confidence in the democratic system and must believe that democracy will create the conditions which will open the door to improvements in their security and development opportunities. They require an effective voice in the decision-making process to render outcomes legitimate and accountable.

## Parliamentary Oversight – Levels of Action

Parliaments have some common characteristics, which include three basic functions they perform: to represent the people, to make laws, and to exercise oversight. To perform these functions, parliaments use various tools. Some of these are stipulated in the text of a country's constitution, but more commonly they are part of the rules that govern parliamentary procedures (such sets of rules are often called standing orders).

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<sup>8</sup> Steven M. Fish, "Stronger Legislatures: Stronger Democracies," *Journal of Democracy* 17:1 (2006): 5–20.

## Box 2. Parliamentary Levels of Action

<i>Plenary session</i>	<ul style="list-style-type: none"> <li>• Endorsement of government's policy</li> <li>• Enactment of laws</li> <li>• Approval of the use of public funds</li> <li>• Approval of national participation in international missions</li> <li>• Motions and votes of confidence</li> <li>• Consent to top appointments</li> </ul>
<i>Committees</i>	<ul style="list-style-type: none"> <li>• Legislative reports</li> <li>• Recommendations</li> <li>• Hearings and inquiries</li> <li>• Visits and inspections on the field</li> <li>• Investigation of petitions</li> </ul>
<i>Members of Parliament</i>	<ul style="list-style-type: none"> <li>• Legislative initiatives and amendments</li> <li>• Political declarations</li> <li>• Questions and interpellations</li> <li>• Requests for free or classified information</li> </ul>

Parliamentary oversight begins with the legislative's authority to make laws and to approve government's policies and continues with the complementary authority to oversee how these are put into practice. Only by monitoring how the executive implements laws and policies, can members of parliament identify and correct inevitable imperfections of legislation, eventual misinterpretation of legislation, or bad administration, abuses and corruption.

This study will review the powers and the mechanisms used by selected parliaments<sup>9</sup> to accomplish their oversight function, taking into account the three complementary levels of parliamentary action: plenary sessions, committees, and individual actions undertaken by members of parliament.

### Parliament's Authority: The Plenary

The plenary session is the most visible scene of parliament activity and the focus of media attention. It represents the locus of parliament's authority; all parliamentary acts and decisions with mandatory content for other entities in the state are debated and voted upon in the plenary. Here is the place where laws are enacted,

<sup>9</sup> The study is based on previous research of the author on the powers and capacities of parliaments in Western and Eastern European countries, plus United States and Canada.

political declarations are heard, and the government's actions are evaluated, parliamentary debates exerting an influence on future policy formulation.

### *Endorsing Government's Policy*

Parliaments in plenary debate give consent to, and sometimes formally approve, government's policy in the field of security. Strategic documents like Government Program,<sup>10</sup> National Security Strategy, Defence Review or White Paper for Defence shape national security policy in a long term. On the basis of a threat assessment, such documents determine the national security interests and define the priority tasks for security sector agencies: they may indicate the level of defence spending,<sup>11</sup> the maximum number of personnel employed in security forces, the necessity for arms acquisition, the levels of national participation in military and civilian peace support operations.

Strategic documents settle the political framework for future reforms and the basis upon which legislation and yearly budgets will be elaborated by the executives. The fact that the executive submits such documents to parliamentary debate is essential for the democratic accountability of security policy. Once a strategic policy document is debated by parliament, with or without a vote for formal approval, it becomes "parliament's property" and direct responsibility for its implementation will be shared by the parliament with the executive. This is an opportunity for parliament to influence future policy formulation, but also to build public support and to ensure democratic legitimacy for the policy finally adopted.

### *Enacting Legislation*

The adoption of laws represents the *proactive function* of Parliament, oriented towards future policies and activities of the executive. Enacting legislation that regulates how security agencies work poses a special challenge for democratic oversight, because national security interests may sometimes justify temporary omissions of the usual standards of accountability applied to other state agencies. Therefore, a question all modern parliaments must answer, through the laws they enact, is how to develop efficient security services, capable to fulfil their mandate in the interest of the nation, while safeguarding the protection of human rights and liberties? What rules to apply and what powers to give?

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<sup>10</sup> The Government Program's approval in parliament is characteristic for parliamentary systems.

<sup>11</sup> Usually as a percentage of Gross Domestic Product.

**Box 3. Parliamentary Influence on Security Policy Formulation – Some Good Practices**

- Romanian law on defence planning<sup>12</sup> provides that the President will, in maximum 6 months since his investiture, present the National Security Strategy in front of the Parliament, which debates and approves it, in joint session of the two chambers. NSS's average term of validity is 5 years and it contains long term provisions for accomplishing national and collective defence and security objectives.
- In the UK House of Commons each major Defence Strategy document is followed by plenary detailed questions and answers that raise vigorous debate.
- In Switzerland, important agreements for the country, like the accession to collective security organization or supranational communities, are not only subject to parliamentary debate, but also to a public debate and referenda.
- Parliamentary debates transmitted live on television, radio or internet, ensure a high degree of transparency and raise public awareness and interest in policy. In an increasing number of countries all plenary debates are broadcasted live.

A solid base for an effective parliamentary oversight of security is given by the following manifestations of parliament's legislative authority:

- Parliament enacts laws that stipulate a clear mandate, authorities, size, organization, executive powers and budget for *all* state actors mandated to use force, and for the civil management bodies that prepare and make decisions about the use of force;
- Parliament defines by law the state of emergency, siege and war; it should also have the power to declare, prolong or lift such states;
- Parliament decides by law which state organ is competent to decide to send military and civilian forces abroad to participate in peace support operations, or to approve military deployments on national soil;
- Parliament ratifies the treaties referring to the country's accession to international organizations and military alliances, or to security and defence cooperation.

### *Approving the Use of Public Funds*

*State Budget Law* deserves particular attention, for it provides how the money raised by taxes will be allocated to and spent by state agencies. The budget repre-

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<sup>12</sup> Law No. 473/ 2004 regarding the planning of national defence, Article 5.

sents a powerful policy tool states use to plan for the future development and distribution of the essential values they have to provide to the citizens: security, justice, freedom and wealth. The budget is therefore a political choice between competing demands of different sectors, the result of the so called competition between funding guns or butter.<sup>13</sup>

The national practices in budgeting differ significantly from state to state. However, one rule remains constant: *the executive proposes and the parliament disposes*.<sup>14</sup> Debating and approving the annual state budget and further monitoring its execution, parliaments have the opportunity to influence government policy and the strategic commitments of the country on a long term.<sup>15</sup>

In most countries the State Budget is comprised in one Law. There are few exceptions: Canada, with four laws, Netherlands with twenty-three or US with six. Regardless of the number of laws of which it is composed, the fact that budget has this juridical status has important consequences:

- guarantees parliamentary participation in decision making;
- it is a public document, available on the internet, in public libraries throughout the country and it is a useful basis for holding the executive to account;
- non-compliance with the budget law can be punished as a crime.

The degree of political incentives and possibilities for performing their role vary from parliament to parliament. The first important difference appears in the quality and the comprehensiveness of the information received by parliament. The second one relates to the actual power of the parliament to amend the budget.

The budget proposal can consist of a document of a few pages in length containing general information about the overall sums of money allocated to different agencies, but it can also span hundreds of pages of complex and very detailed information. The budget document contains between 500 and 1000 line item appropriations in countries like the Czech Republic, Hungary, Japan, New Zealand and

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<sup>13</sup> The “guns and butter” model is a classic economic example of the “Production Possibility Frontier.” When spending its finite resources, a nation has to choose between investing in defence and investing in civilian goods. It can buy either guns or butter, or a combination of both. The model also illustrates the idea of “opportunity cost” that every choice has: you can get more of something only by giving up something else.

<sup>14</sup> The principle of legislative authorization of all public spending and taxation is called the “rule of law” in public finance.

<sup>15</sup> For further information see DCAF Backgrounder on Parliament’s Role in Defence Budgeting, at <[www.dcaf.ch/\\_docs/bg\\_defence\\_budgeting.pdf](http://www.dcaf.ch/_docs/bg_defence_budgeting.pdf)>.

Portugal; up to 2000 appropriations in Austria, Denmark, Italy, Norway, Switzerland and the USA; and more than 2000 in Germany, Spain and Turkey.<sup>16</sup>

Second, the essential indicator of the impact of parliament in the budgeting process is the extent to which it influences the contents of the budget through the amendment process. In broad terms, there are three models describing the legal powers held by parliaments in the budget approval stage: unrestricted powers to amend the budget, restricted powers to amend the budget and limited powers to amend the budget.

*Unrestricted powers* to amend the budget mean that parliament has the capacity to amend the budget proposal and also to propose new expenditures. In theory, such powers of amendment would allow parliament to rewrite the whole budget proposed by government. The US Congress is generally pointed to as the most powerful parliament in the development of the defence budget as the executive proposal, formulated by the President, is really taken as a proposal, analysed and amended in detail by Congress. The German Bundestag and the Dutch and the Danish parliaments also initiate hundreds of budgetary amendments every year. Parliaments in Austria, Belgium, Finland, Hungary, Italy, Norway and Portugal also enjoy unrestricted powers to amend the budget.

Parliaments that have *restricted powers* to amend the budget may make as many amendments as they wish, as long as amendments do not change the total deficit or surplus proposed by the executive. This level of amendments power allows parliament to change government priorities and, by re-allocating funds, to decide upon final budgeting priorities. The restriction to keep the total deficit unchanged is justified by the need to respect fiscal discipline and macro-economic indicators. Therefore, parliament has to indicate the source of funds for any desired increase of the budget by correspondingly decreasing other line items, or by establishing new sources to finance them. Otherwise, the electoral pressure to spend more and to tax less would generate chronic deficits. Parliaments in the Czech Republic, France, Mexico, Poland, Spain and Romania follow this model.

*Limited powers* to amend the budget are characteristic of only a few parliaments in democratic countries. They may only decrease existing expenditure (without being able to reallocate the funds towards other priorities), or they may not make any changes at all but approve or reject the budget as a whole. Westminster-type parliaments are representative of this model. In some countries, amendments to the budget, if successful, are considered as being the equivalent of a vote of no confidence in the executive, that might push the government to resign

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<sup>16</sup> See OECD, *Budget Practices and Procedures Survey, Part III – Passing the Budget* (2007); available online at <<http://webnet4.oecd.org/budgeting/Budgeting.aspx>>.

**Box 4. Parliament and the Budget – Some Good Practices**

- To reconcile legislative activism with fiscal prudence, in countries like Canada, Check Republic, France, Italy, Norway, Poland, Portugal, Spain, Sweden or US, spending is kept under control by having the legislature's vote on the overall spending levels before considering sectorial allocations and specific appropriations.<sup>17</sup>
- On behalf of the House of Commons, National Audit Office undertakes in United Kingdom the financial audit of all government departments and in addition it has powers to examine the economy, efficiency and effectiveness with which those departments have used their resources. Its detailed scrutiny of departmental spending produces around 50 reports a year for parliament. The annual Major Projects Report provides details of the largest 25 defence procurement projects of the Ministry of Defence.<sup>18</sup> The MOD also provides Parliament with an annual statement of the top 20 new defence projects.

(Canada, the UK, Australia, India, New Zealand, South Africa and Zambia are such examples). This lack of statutory power in budget approval may be compensated by a vigilant involvement of parliament in other stages of the budgetary cycle.

*Sending Troops Abroad*<sup>19</sup>

Participation in peace support operations (PSOs), usually under the mandate of an international organization like UN, represents the modern variety of the old “war or peace” situation. Therefore, legislative authority on this issue is extremely important for the effectiveness of security oversight.

The main indicator of a parliament's relevance in this matter is if it *has or doesn't have* the power to approve participation in PSOs *before* the troops are deployed in mission. The main rationale of placing this power in the hands of parliament is obvious, considering the important consequences of such decision, both on the life of national soldiers and police forces and on the relation with other states. Parliamentary unhurried debate on “war and peace” situations ensures that national troops would not be too easily entered into a sensitive and risky situation.

<sup>17</sup> “The OECD Budgeting Database,” in *OECD Journal on Budgeting* 1:3 (2002), 155; available at <[www.oecd.org/dataoecd/13/13/33657560.pdf](http://www.oecd.org/dataoecd/13/13/33657560.pdf)>.

<sup>18</sup> See <[www.nao.org.uk/publications/nao\\_reports/05-06/0506595\\_II.pdf](http://www.nao.org.uk/publications/nao_reports/05-06/0506595_II.pdf)>.

<sup>19</sup> For further information see DCAF's Background on *Sending Troops Abroad*, at <[www.dcaf.ch/\\_docs/bg\\_troops\\_abroad.pdf](http://www.dcaf.ch/_docs/bg_troops_abroad.pdf)>.

Once the troops are sent abroad it is difficult for a parliament to undo the government's decision: withdrawal could endanger the ongoing mission and damage the international reputation and credibility of the country. The need to rapidly react to security emergencies is often the argument used by executives to directly initiate forceful action without previous consultation of parliament.<sup>20</sup>

### **Box 5. Parliamentary Control of Military Missions Abroad – Some Good Practices**

- German law (2004) provides that the deployment of armed forces requires prior approval of parliament, but leaves to the authority of parliament to decide whether a mission is of sufficient importance to merit its involvement: for missions of low intensity and importance a government request is circulated among the members of parliament and it is considered to be approved unless, within seven days, one fraction or a minimum of five per cent of parliamentarians call for a formal procedure. Furthermore, parliamentary votes on sending troops abroad are so-called “free votes,” meaning that political parties in parliament refrain from imposing a party line on members of parliament.
- Romanian law (2004) provides that previous approval of parliament is necessary for PSOs and coalition type operations that are not deployed on the basis of a treaty ratified by Romanian Parliament. For collective defence, humanitarian assistance or operations deployed on the basis of a treaty, the president takes the decision informing the parliament within 5 days. Thus, rapid decision is ensured for military deployments that are supposed to have been already politically supported by parliament, through its previous decisions.
- Sometimes the power over the purse may compensate for the lack of a constitutional power of prior authorisation. Parliaments can use this power when approving the annual defence budget – which provides funding for ongoing PSOs, or when receiving additional budget requests for new deployments. For example, the US Congress forced the policies of the executive, suspending military aid to South Vietnam under President Gerald Ford, or stopping funding for the US troops committed to the UN PSOs in Somalia after the first casualties were incurred in 1993.
- Many parliaments make intensive use of their power to acquire information about PSOs through visiting troops deployed in mission, inquiries, questioning responsible minister.

<sup>20</sup> Korea, Vietnam, Falkland Islands, Kosovo or Iraq, are all de facto, but not de jure wars. USA and UK, for example, have not issued a formal declaration of war since the World War II.

### *Parliamentary Motions*

*Motions* and *Votes of Confidence* are instruments of parliamentary oversight which in most parliamentary democracies are defined in the constitution. Parliaments may vote to grant confidence into the executive, for a specific law, a policy proposal or the government's general policy. Opposition may also submit to the plenary's vote a Motion of No-Confidence, or a Motion of Censure. A simple Motion, if adopted, produces no juridical effect, being only a political sanction that may or may not affect the position of the Government in that specific matter. But if a Vote of Confidence is defeated or a Motion of Censure is passed, the government is forced to resign. The list of governments defeated by Votes of No-Confidence is long. Paul Martin (2005) in Canada, Romano Prodi (1998) in Italy, Gerhard Schroder (2005) and Helmut Schmidt (1982) in Germany are only a few examples.

### *Parliamentary Consent to Top Appointments*

Another way to keep the executive accountable is the constitutional or legal requirement for Parliaments to give *consent to important appointments*, such as ministers of defence, interior, justice, directors of intelligence, directors of National Audit Office, National Prosecutor, Ombudsman, top military commanders. The nominees for these positions are questioned and evaluated in standing committees, or directly in the plenary, and they have to get the vote of the majority to become officially appointed.

### **Parliament's Ability: The Committees**

The oversight function of parliament is more efficiently and visibly developed at the level of committees. A well institutionalized structure of *standing committees*,<sup>21</sup> which parallels the structure of the government, is essential for the effectiveness of a parliament, because strong committees are the main tool for parliamentary influence in the policy-making process.

Besides the concentration of expertise, the advantage of working in committee is the lack of publicity and media coverage, which encourages open dialogue, facilitates negotiations and the development of a common view. Broad criticism in the plenary is usually pitting ruling against opposition parties, which not necessarily initiates in-depth parliamentary engagement in oversight, while work in committees facilitates more technical and detailed cross-party scrutiny.

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<sup>21</sup> There are also ad-hoc committees appointed with a specific and narrow mandate, such as a particular bill or an issue under investigation that dissolve after finishing their mandate.

**Box 6. Keeping the Executive Accountable**

- *Sunset legislation*<sup>22</sup> provides time limits on government agencies: the Sunset process works by setting a date on which an agency will be abolished unless legislation is passed to continue its functions. This creates a unique opportunity for the Legislature to look closely at each agency and make fundamental changes to an agency's mission or operations if needed. Colorado was the first US state to investigate the possibility of using this kind of legislation to control its public bodies. The Colorado Act of 1976 provided for the automatic extinction of thirteen regulatory and licensing agencies in 1977 unless their continued existence could be justified; as a result of the Act, two agencies disappeared as their functions were transferred to their sponsoring departments, two were merged, one was abolished, one had its functions broadened and another had its membership increased. From this very modest beginning, sunset legislation caught on in the United States, and within two years, no fewer than 26 other states had brought hundreds of agencies under sunset clauses. Sunset clauses were introduced in the last years in Anti-Terrorism legislation by US, UK, and Australia.
- *Constructive Vote of No Confidence* is provided in the 1949 German Basic Law. It means that a parliamentary vote of no-confidence does not automatically trigger the resignation of the government, if the opposition is unable to agree to a successor. Federal Chancellor may only be removed from office if a successor has sufficient backing in Parliament. This mechanism avoids political instability, strengthens the opposition and motivates political parties to negotiate into finding mutual beneficial solutions.

Strong committees develop an independent ethos, a capacity for unbiased thought and action. With the adequate powers, resources and attitude, committees can be an efficient instrument to foster government's reforms, transparency and accountability, and to encourage the development of an informed public awareness about the governance of the country.

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<sup>22</sup> The roots of sunset provisions are laid in Roman law of the mandate. At the time of the Roman Republic, the empowerment of the Roman Senate to collect special taxes and to activate troops was limited in time and extent. Those empowerments ended before the expiration of an electoral office, such as the Proconsul. The rule, *Ad tempus concessa post tempus censetur denegata* is translated as "what is admitted for a period will be refused after the period." The same rules were applied in the Roman emergency legislation. The principle was broken when Julius Caesar became dictator for life.

### *Committees' Oversight Mandate*

The *mandate* of parliamentary committees is defined in laws and the Standing Orders of the Parliament, sometimes even in the Constitution. Usually, their mandate is twofold. Firstly, they advise the plenary on all the legislation (including the State budget law) and all parliamentary decisions to be taken in their field of activity. Committee reports offer the starting point for all the debates on legislation in the plenary. They are the primary vehicle for formulating recommendations to the government.

Secondly, committees are mandated to monitor the activity of executive agencies, pursuing their accountability from mainly two points of view:

- administrative – trying to determine facts and laws governing a specific situation, in the attempt to make sure that government agencies respect the rule of law and the rights of the population and to avoid defective administration, waste of public resources and corruption in the act of governance;
- political – trying to evaluate the political choices of the executive, their consistency with national interests and the Program of Government, their implementation and consequences.

Committees' oversight activities are diverse, but their foundation is parliament's legal *power to get information from the executive*, and consequently to demand documents and reports or to summon executive officials to committee meetings and demand them to reveal, explain and justify for their actions. These activities can be understood as following under two distinct, yet complementary, *oversight strategies*:

- *Proactive*: When committees engage in “*police patrol*” activities, which are regular and planned (eventually together with the overseen agency): regular meetings to discuss legislation or recent policy developments, regular activity reports submitted to the committee, committee visits of troops, military or civilian premises and offices, etc. This type of oversight is a preventive approach in which the committee becomes sometimes co-responsible for the developments it reviews.
- *Reactive*: When committees act only after a “*fire alarm*” sounds, and they organize hearings or inquiries to investigate deeds signalled in parliamentary debates, media, or complaints received. Committees have the authority to summon ministers, military or civil servants, agency directors or independent experts, in order to answer committee's questions or even testify under oath, as in a court of law; committees may also order competent

authorities (like the National Audit Office) to carry out a financial audit on budget execution.

Committees' oversight activities are independent from the plenary or from the legislative schedule. Committees settle their own program and oversight agenda, they decide whom they invite to hearings or to committee meetings, which may be open or closed to the public, depending on members' decision.

No matter how wide their mandates, committees have *no power of enforcement*. Their recommendations are not legally binding for the executive. Committees have to rely on the force of argument, on publicity and on multi-partisan support to convince the plenary to follow their advice. The word of a strong and respected committee usually has a considerable political importance.

### *Composition of Committees*

The composition of parliamentary committees, especially the access of the members from opposition parties to the decision making structures within the committee, has an important impact on the effectiveness of oversight. Committee members are usually elected by parliament in plenary sitting, nominations being made by parliamentary groups, so that political parties in parliament are proportionally represented.

We meet few exceptions from this rule in the case of intelligence oversight, where the need for secrecy, professionalism and non-politicization of the committee's activity is high. The UK Intelligence and Security Committee, for example, has a cross-party membership appointed by the Prime Minister after consultation with the Leader of the Opposition. The Committee is required to report to the Prime Minister on its work, and only after deletions of any sensitive material its reports are placed before Parliament.

Most committees are characterized by equilibrium between party politics and expertise, which is reached by nominating members based on their professional background, special knowledge and interest in the mandate covered by the committee. Membership in permanent committees tends not only to be stable for the duration of the legislative term, but to last across a number of legislative terms. Committee members develop negotiating skills and a capacity to deal with the executive officials with sufficient depth and expertise to be serious governing partners, and therefore to shape outcomes.

In new democracies, elections tend to change a bigger percentage of parliament composition, which makes the development of a stable core of experience more difficult, but not impossible.

*Committees' chairmanships* are usually negotiated among the larger parliamentary parties. Because committees which deal with security sector have an important oversight function, their chairmanship is allocated in some parliaments to the opposition party, or the chairmanship rotates between the main opposition and the government party.<sup>23</sup>

### *Resources and Organisation of Committees' Work*

*Committee staff* prepares and organises committee meetings, maintains contacts with government and officials, collects information and helps interpret government information. Depending on the internal organisation of the parliament administration, committee staff may cover a wide range of activities, from secretarial work to juridical advice, drafting legislation, writing documentaries, research papers, or speeches. Stable professional staff is essential to make committees able to meet their responsibilities; they ensure continuity of committee expertise and compensate for the lack of experience of new members.

Inadequate staff numbers and training represent a big hold-up for an efficient parliamentary oversight. Lack of staff limits and delays committee's research possibilities and access to legislative advice, obliging members to rely mainly on information provided by the government and the security agencies, the very institutions the committee has to oversee.

Another facilitator of parliamentary oversight is the budget available for committee activities. Committees may access financial resources through parliamentary bureaucracy, requesting parliament's approval for each activity and expenditure, or they are allocated their own yearly budget to dispose of directly and independently. The larger and more easily accessible the budget, the more possibilities are available for hiring staff, using outside expertise, training of members and staff, engaging in oversight activities that involve territorial mobility or developing cooperation with other parliaments.

### *Committee Hearings and Inquiries*

Hearings and inquiries can be the most efficient instrument of oversight, if properly used by a parliament. Based on the constitutional right of parliament to get information from the executive, the permanent committees have the ability to demand the attendance of executive officials to their meetings in order to provide information supplementary to regular government reports.

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<sup>23</sup> Relevant especially for parliamentary systems, where mainly the opposition is tasked with the control of the government; in presidential systems the legislature as a whole is more vigilant while performing the control of executive.

**Box 7. Organization of Committee Work – Good Practices**

*Subcommittees* are used in many parliaments to divide the work of committees with broad mandate. The split in subcommittees can follow a functional approach (for a special bill, investigation or hearing) or an institutional approach (for a specific institution or agency that are covered by the committee's mandate). Subcommittees may also be formed to coordinate several main committees working on selected topics.

*Committee's Rules of Conduct and Procedure* is adopted by committee members at the beginning of the committee's mandate to enable a smooth functioning of the decision-making process within the committee. The document may refer to the attributions of chairperson, secretaries, rapporteurs and staff, the procedure of calling and running a committee meeting, the possibility of having a member represented by other colleagues in case of impossibility to attend a meeting, etc.

*Rapporteurs* play an important role in many parliamentary committees. They are appointed among the committee members to be responsible for the specific information, documentation and writing that constitute a legislative report. For example, in the Budget Committee of the German Bundestag, members are assigned the role of rapporteurs with regard to the budget of a specific ministry. The rapporteurs are kept informed by the budgetary officials in their ministry of all the phases of the budget cycle; they conduct on-site visits to investigate the necessity of certain expenditures or to check the standard of administration. They may demand additional information, clarification, latest expenditure information. As the rapporteurs tend to keep their positions for a number of years, they develop a high degree of expertise in their policy area, becoming a valuable source of information for the rest of the committee.

*Committee reports* have increased value when the Standing Orders provide that a proposed amendment to a law cannot be considered in the plenary debate unless it was included (be it adopted or rejected) in the Report of the specialized committee. Therefore, any member of parliament interested in a specific law proposal has to submit his written amendments to, or to attend the meetings of the permanent committee that will report to the plenary on the respective project. This procedure enhances legislative coherence and consistency.

The decision to hold a hearing is generally taken by a simple majority of committee members, without any requirement for approval of the parliament plenary or its governing bodies. The decision if the hearing will be public or in camera is usually taken also by majority. In some parliaments the committee's power to summon persons into hearings is limited to ministers and government officials, but in others, committees may request attendance of experts outside the government in order to obtain a different perspective on the issues under discussion.

The objective of a hearing can be twofold:

- 1) *Edification and consultation* with government officials, independent experts and/or other parties concerned. The detailed, first-hand information obtained during the hearing will allegedly enable the committee to make better informed analyses and decision on the matter. Sometimes, hearings organised for edification and consultation are called in an informal manner, and no verbatim record of the meetings is made.
- 2) *Obtaining evidence* on a specific matter. Written and oral evidence taken at the hearings is included in the record of the committee. In a number of parliaments evidence can be taken only following a decision of the plenary, and in others permanent committees are empowered to take evidence only during a parliamentary inquiry.<sup>24</sup>

Permanent committees are empowered in some parliaments to start themselves an *inquiry*, eventually with the approval of the plenary, but most often, parliament decides to set up an ad hoc inquiry committee, with a specific and usually narrow mandate. The difference between hearings and inquiries is that the parliament has more power in the former case. An inquiry, be it led by a permanent committee or by a special inquiry committee, implies a strong power of investigation, requesting the summoned officials to provide documents and information under oath, similarly to a testimony in a court of law and with the same consequences for failure to provide the truth. These investigative powers can be employed only in relation to the immediate matter of inquiry and their duration is limited in time by the mandate of inquiry.

Inquiries have an important potential to reveal facts veiled by the government, therefore they are a strong oversight instrument. Parliamentary Rules of Procedure must provide clear instructions about the conditions in which an inquiry may be initiated, allowing equitable participation of opposition and minority groups in the decision about the organisation and the mandate of an inquiry.

Committees have extended powers in establishing the topic of a hearing and the executive officials invited to provide information. Because the execution of the state budget represents one of the most relevant indicators of government's professionalism and efficiency, it represents a frequent subject of parliamentary hearings and inquiries. In many parliaments defence procurement is the main topic of

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<sup>24</sup> In the parliaments of Cameroon, Côte d'Ivoire, Iceland and Latvia, permanent committees can only hold hearings or visit government institutions in the context of a parliamentary inquiry. See *Tools for Parliamentary Oversight* (International Parliamentary Union, 2008), 31; available at <[www.ipu.org/PDF/publications/oversight08-e.pdf](http://www.ipu.org/PDF/publications/oversight08-e.pdf)>.

**Box 8. Committee Oversight – Some Good Practices**

- The Defence Committee in the German Bundestag has an outstanding position because its setting is provided for in the constitution and it is the only committee which may declare itself to be a committee of inquiry (Art. 45a, para (2) of the Basic Law). In the case of all other committees, Parliament must take a decision to this effect. A committee of inquiry is Parliament's most effective weapon for scrutinizing the Government's conduct, having similar rights to the Public Prosecution Office: The rules of criminal procedure apply *mutatis mutandis* to the hearing of evidence. Meetings in which evidence is taken are open to the public, unless military secrecy is required. Meetings at which the evidence is evaluated are not open to the public.
- US Congress Committees also possess the *Subpoena* powers – meaning the authority to summon a person to appear under penalty. Refusal to testify before a committee or failure to provide a requested document is considered Contempt of Congress, and it is punished with up to one year of prison and \$1 000 fine.
- The Defence Committee in the Romanian Parliament receives each month in advance the program of the main central and territorial activities of the Defence Ministry. Members of the committee are free to attend individually or in group the activities they are interested in, they announce the MOD organizers in due time and, if necessary, they are transported or accompanied by MOD personnel to the respective activities.
- In few countries important procurement contracts have to be submitted for the approval of the defence committees. This is the case of the Netherlands, for contracts that exceed 2,5 million euro, Germany for 25 million euro, Poland for 28 million euro and Norway 300 million Euro. In other parliaments, even if the defence committee's approval is not mandatory, MoD has the obligation to inform the committee and give details about all contracts above a certain value (Hungary, Switzerland and United Kingdom). Sometimes, parliament or the defence committee can be involved even in specifying the need for equipment, in comparing and selecting a supplier or a product, in assessing offers for offset arrangements (Czech Republic, US).<sup>25</sup>

<sup>25</sup> For more information see DCAF's Backgrounder "Parliaments' Role in Defence Procurement;" available at <[www.dcaf.ch/publications/kms/details.cfm?lng=en&id=25266&nav1=4](http://www.dcaf.ch/publications/kms/details.cfm?lng=en&id=25266&nav1=4)>.

defence committee hearings, given its weight in the overall yearly defence budget<sup>26</sup> and its vulnerability to corruption.<sup>27</sup>

### **Parliament's Attitude: The Members**

The most important function of a national parliament is to represent the citizens. Members of parliament (MPs) are the link between the public and the government providing practical mechanisms and avenues for the expression of public interests and opinions. Of all governmental institutions, parliaments are the most accessible to the public, the most open and transparent. How members of parliament carry out their duty to represent citizens' interests depends on a variety of constitutional, political and cultural factors.

#### *Individual Actions of Members of Parliament*

MPs dispose, individually, of a variety of possibilities for action on behalf of their constituencies' interests. First of all, they have the right to *initiate and amend laws*. The numbers of sponsored bills and amendments proposed are for many members of parliament a very important criterion in the evaluation of their activity, both in the political party they are a member of and in front of their constituency.

MPs also have the right to address *questions and interpellations* to the executive, which is obliged to respond. This parliamentary procedure relies on the MPs right to be informed about government actions, to hear the justification for them and to make a judgment about how they were performed. Questions and interpellations are developed in the plenary, in a weekly sitting, in which the floor is given to the interpellator and to the representative of the Government, who may reply immediately or ask for a delay until a next sitting dedicated to the debate of questions and interpellations. The effective use of this special weekly time for questioning the government is the easiest tool MPs can use in order to hold the executive to account and transform parliamentary oversight into a democratic routine.<sup>28</sup>

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<sup>26</sup> Procurement may represent a large part of defence expenditures: in 2003 NATO countries allocated an average 2% GDP to defence, out of which 17% was allocated to procurement.

<sup>27</sup> Transparency International's Global Bribe Payers Index rates the defence sector as one of the top three sectors for bribery and corruption, along with the oil sector and major infrastructure projects. See "Preventing Corruption in the Official Arms Trade," Update Note 3, 30 April 2006; available at [http://transparency.org.uk/programmes/DAC/UpdateNote3\\_ReducingCorruptionInTheDefence&SecuritySectors30April2006.pdf](http://transparency.org.uk/programmes/DAC/UpdateNote3_ReducingCorruptionInTheDefence&SecuritySectors30April2006.pdf).

<sup>28</sup> Weak parliaments where oversight is ineffective do not make frequent use of this special time for questions and interpellations, even if it is provided for in the Rules of Procedures. Addressing a question to the executive is an exceptional event, regarded with

Parliaments also have in their weekly program special times allocated for *political declarations*, thus offering MPs, as custodians of the “public interest,” an opportunity to spotlight the actual needs and priorities of the people and try to push the government on identifying strategies, solutions and resources to address them.

### *The Right to Be Informed*

Parliamentarians’ attitude and performance is much influenced by the information they have about their area of activity within the parliament. The right of parliamentarians to be informed by the executive represents the first condition for both effective lawmaking and oversight.

In defence and security matters, the access to information raises more challenges than in other fields. First, parliamentarians with a deep knowledge of defence issues are comparatively rare. Secondly, confidentiality tends to limit the flow of essential information. However, distinction has to be made between confidentiality and the lack of public scrutiny. Many countries have tried to solve this dilemma by enacting legislation to clearly define procedures for sharing classified information to specialized committees.

There are two main ways to grant access to classified information for parliamentarians. In most countries, it is assumed that the elected nature of the parliamentary mandate entitles them to have access to classified information, without any verification (e.g., US, UK, Germany, France, Poland, Czech Republic, Estonia, Bulgaria, Romania, Ukraine, Turkey). Sometimes a secrecy oath is necessary at the beginning of the legislative term or after being elected in a committee that deals with defence, security or intelligence.

In other parliaments, committee members obtain access to classified information only after receiving a security clearance (Norway, Serbia, Macedonia, Latvia). The security clearance is issued after MPs undergo background checks performed by a governmental agency. The rationale for vetting parliamentarians is, basically, to clarify the rules of the game, especially in young democracies, where politicians do not have a secrecy culture and, on the other hand, security agencies are reluctant to share information. Passing successfully such formal vetting procedures builds trust between legislature and executive, improves communication and empowers members of parliament in their dialogue with executive officials.<sup>29</sup>

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suspicion by the government, not the normal expression of “checks and balances” between the legislative and executive power.

<sup>29</sup> There is also a risk to be considered when adopting this model: the possibility to end up by creating two classes of parliamentarians – with and without clearance. This jeopardizes committee work and the credibility of parliament.

The access to classified information is not the only problematic aspect in security matters. The complexity of the sector makes accumulation of knowledge and informed decision-making more difficult for both MPs and staffers. Therefore, multiple sources of information and independent expertise should be used to complement government submissions. Relevant sources of information can be found within the constituency, NGOs or in the reports made by the National Audit Office, ombudsman, or the media. MPs have to build strategic alliances with these entities, involved in democratic oversight, in order to re-enforce each other's efforts to keep the executive accountable.

### *The Duty to Represent Citizens' Interests*

The most important condition for an effective parliament is members' attitude. If there is a lack of a firm political will, the formal powers and the resources parliaments have to engage in both lawmaking and oversight lose their relevance. A poor attitude is always the main cause of the decline of public trust in the institution of parliament and in individual members. Parliamentarians' attitude and conduct are responsible for the proliferation of the public perception on parliaments as non-responsive, unreliable, and inefficient institutions.

To respond to increased public concern over the misconduct and corruption of elected officials themselves, parliaments use a variety of legal instruments to set high ethical standards of behaviour for MPs.

*Codes of Conduct* deal with frequent general misconduct like absenteeism, tardiness, improper language, unruly or disrespectful interventions during the sessions, use of privileged information, misuse of parliamentary allowances. They also provide guidance for parliamentarians on how to reconcile their private interests with their public duties. Sanctions can be applied for misconduct in the form of a fine, suspension from attendance in the parliament, suspension of allowances or benefits, and even expulsion.

*Incompatibilities* are defined in constitution, laws, or Codes of Conduct. They address potential conflicts of interest, especially the use of legislator's position to advance their own personal economic interests. Incompatibilities intervene only after the election and impose choosing in a short length of time between the mandate of parliamentarian and the activity declared incompatible, by the member himself or the competent authority, usually a parliamentary committee. Most often, carrying out a parliamentarian's duty is considered incompatible with any contractual agreement with a body outside parliament and with undertaking other paid work outside parliament.

*Wealth and interest declarations* are in many countries public (Czech Republic, France, Germany, Italy, Poland, Romania, Spain, Switzerland, UK, US), and often

published on the internet site of the parliament. They identify all assets and liabilities of parliamentarians and their families, all benefits and any private company in which a member or his/her family has an interest, list every corporation, association, union or partnership in which any of them holds an office or directorship.

Parliamentarians' conduct is shaped by a variety of factors: personal motivations, desire to influence policy, loyalty to political parties, perceptions about their own job, and the range of ways they have to respond to constituencies. These factors are much a consequence of structural characteristics like types of political and electoral systems. As discussed earlier, the *political system* determines the relationship between legislature and executive. In parliamentary systems party discipline tends to be very strong, parliament and government speaking many times as one voice, and the oversight being taken seriously mainly by the opposition parties. Majority party members often aspire to become part of the government, and this career goal discourages a critical and vigilant attitude in their parliamentary activity. In presidential systems, legislatures tend to be more independent from, or even adversarial to, the executive. The oversight role is more effectively played by the whole parliament, members gaining influence and visibility by finding problems with how government is performing.

Secondly, the type of *electoral system* is very important in influencing parliamentarians' attitude, because it determines how votes are translated into seats in the parliament, and affects significantly party discipline. There are two main types of electoral systems,<sup>30</sup> with different principles and objectives. In Majority/ Plurality systems (US, Canada, UK, Kenya) all seats go to the strongest party in one constituency, clear majorities being followed. Because only the candidate with most votes wins, re-election depends on pleasing one's constituency. MPs make the interests of their constituency a high priority, winning over party interests. Proportional systems (most of European countries, including all the new East European democracies) distribute seats according to their share of votes, pursuing equal representation. Constituents vote for a list of candidates prepared by each party, rather than for an individual. Parties win legislative seats based on the percentage of votes they receive, therefore parliamentarians will want to maintain or improve their position on the party list to be re-elected. Therefore party discipline tends to be very strong.

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<sup>30</sup> For a detailed comparative analysis of electoral systems see Andrew Reynolds, Ben Reilly, and Andrew Ellis, *Electoral System Design: The New International IDEA Handbook*, second edition (Sweden: International Institute for Democracy and Electoral Assistance, 2005), available at <[www.idea.int/publications/esd/upload/ESD\\_full\\_with%20final%20changes%20inserted.pdf](http://www.idea.int/publications/esd/upload/ESD_full_with%20final%20changes%20inserted.pdf)>.

**Box 9. Enabling Members to Better Represent Their Electors – Some Good Practices**

- *Parliamentary immunity* reduces the possibility of pressing a member of the parliament to change his vote by fear of prosecution. Before prosecuting, it is necessary that the immunity be removed, usually by a superior Court of Justice, or the parliament itself. In France, for example, as a consequence of immunity Members of the Parliament may not be sought, prosecuted, judged or imprisoned for actions that they have accomplished within their duties as parliamentarians. In particular, parliamentarians are immune to prosecution for defamation for such actions. This includes speeches and votes in public sittings of the assemblies, law proposals, amendments, as well as reports and other actions. The termination of the parliamentary term does not allow the prosecution of former parliamentarians for actions committed within their parliamentary duties. Members of parliament may be arrested or otherwise deprived of their freedom, or face restrictions thereof, only with the permission of the desk of their assembly. This authorization is not needed only in case of a *flagrant* felony or of a definitive condemnation by a court of law.
- *Freedom of information legislation* provides a right of access to recorded information held by public authorities, not only for parliamentarians, but for all interested public, strengthening civil society as a whole in relation with the executive. Legislation on the protection of classified information is an exception from the general principle of freedom of information; it formalizes what types of information may constitute a “state secret,” establishes authorities entitled to assign a secrecy level to information, codifies the guidelines for vetting and establishes sanctions for unauthorized disclosure. All these provisions prevent over-classification and limit the executive’s space of manoeuvre with secrecy.

Political parties are crucial to political life, representing the main vehicle for structuring political competition, for aggregating the opinions of the citizens and transforming them in laws and policies. The organization, the funding<sup>31</sup> and the levels of internal democracy within political parties are important for understanding

<sup>31</sup> For a comprehensive comparative analysis of political party financing, see the handbook *Funding of Political Parties and Electoral Campaigns*, with its chapter dedicated to Africa, published in 2003 by the International Institute for Democracy and Electoral Assistance (IDEA); available online at [www.idea.int/publications/funding\\_parties/upload/full.pdf](http://www.idea.int/publications/funding_parties/upload/full.pdf).

See also Shari Bryan and Denise Baer, eds., *Money in Politics: A Study of Party Financing Practices in 22 Countries* (Washington, DC: National Democratic Institute for International Affairs, 2005), available at [www.accessdemocracy.org/files/1848\\_polpart\\_moneyinpolitics\\_010105\\_full\\_text.pdf](http://www.accessdemocracy.org/files/1848_polpart_moneyinpolitics_010105_full_text.pdf).

the way members of parliament position themselves in the mechanism of representation. Excessive partisanship limits parliament's capacity to call government to account. Following the party lines is of course a reality and a normal thing. But in many parliaments the loyalty to political parties prevails over the concern for the legislature as an institution. When all actions and debates are party-oriented, when votes are not free but party dictated, the general interest of the people starts to be eluded. Partisanship is even more harmful on national security issues. Solving the potentially conflicting demands of party loyalty and individual conscience is a difficult challenge to face.

## Conclusions

### *1. Parliament matters!*

Parliaments have substantial power when they choose to exercise it. Strong political will and a clear institutional awareness transform the parliament from an arena of obedient voters in a real centre of power. Through the laws they enact, parliaments shape all institutions of a state and assign them tasks, powers and money. Parliamentary procedure is an important constraint on government. Government's composition, its domestic and foreign policies, its bill proposals including the state budget, they all have to go through established parliamentary procedures. At least in principle, the powers parliaments have are those powers that parliaments want to assume. And the powers parliaments do not have are in fact self-imposed limits.

### *2. Fair competitive elections are the core prerequisite of democratic oversight*

History shows that the early years of building a democratic state are the most perilous, both for democracy and peace. Parliaments themselves derive their legitimacy from the credibility and integrity of the electoral process. Regular free and fair elections are crucial also for the development of a democratic political culture, encouraging civic participation and activism, allowing for the peaceful transfer of power after an electoral process and for the sustainability of democracy.

### *3. Parliament has an important conflict prevention role*

Post-conflict and transition countries are very much in need of strengthening democracy for the purpose of good governance but also as a way of conflict management. The first great benefit of democracy is the right to oppose. A representative parliament which reflects the social diversity of the population will offer space for opposition's proposals, for debates and negotiations where minority views are discussed and complaints are de-tensioned through dialogue not through violent means. If different groups in society have the feeling that they are taken seriously

and that they are represented in parliamentary dialogue, the motivation for conflict is reduced. Thus parliaments guarantee political pluralism and build acceptance of the democratic process by the majority of political actors in a society. In spite of unique features of every country, the presence of an effective parliament is a benefit for democratisation.

#### *4. Human security prevails over state security*

We have to notice that, in many countries security is still understood as an effort to preserve the regime in place against competitive attempts from other political entities to win the power. Occasionally even members of the security services in some states are themselves threatening the daily life of many ordinary people, being responsible for abuses and unjustified limitations of human rights. The security concerns which really do matter are human security and the protection of the political regime against non-democratic and unconstitutional change. Parliamentary oversight should warrant that the constitution is respected and that security services are not a source of insecurity for the people or an obstacle to democratisation.

#### *5. Parliament works for the security sector employees also*

Parliaments have to address grievances of all groups and minorities whose rights might not be respected or who might be discriminated. Additionally, parliaments have to address the issue of the loyalty of the security services to the constitutional order and have to investigate and mediate if parts of the security services start to rebel. The history of many countries has shown that military coups do not happen overnight but numerous events and steps escalate to crises as such. A strong involvement of parliaments in security oversight is essential for ensuring that governments are good employers of the security services in terms of working conditions, regular payment of salaries, and pensions.

#### *6. Government needs an efficient parliament*

Accountability makes the government stronger because it adds political authority, legitimacy, sustainability. A government which is able to explain, to reveal and to justify its policy and actions in front of a vibrant parliament is a healthy and a vital government. Therefore parliamentary oversight should be seen by members of the executive as a benefit, not as a threat. To underestimate parliament is to endanger the functionality and the endurance of the whole political system.

### *7. Parliaments have the right to be informed*

A parliament is as good as the information it receives. Transparency and public discussion compensate for the lack of expertise available in most parliaments. The criticism that civilian members of parliament do not sufficiently understand security rationales or budgetary technical requirements should be dismissed. At best, it is an argument for providing to the parliament better information.

### *8. Parliaments and their work need to be known by the large public*

Lack of trust and confidence in government institutions remains a challenge of democracy in modern times. Therefore strengthening the parliament contributes towards restoring public confidence. Decision-making process and its outcomes have to be accepted and valued by citizens, otherwise security, development and democratic values cannot coexist. People have the right to know what their representatives are doing in their name. Therefore parliaments are responsible to inform citizens but also to educate them. In order to develop democratic behaviours people need to be exposed to democratic institutions. Political elites are exposed to the institutional learning process on a daily basis. They are the first group to practice democratic values, and to prove their viability before these are internalized by the society. Parliaments should serve as an instrument of socio-economic change and the parliamentary debates should enlighten, teach and inform the people on the important issues of the day.

### *9. The integrity of parliament and its members should be beyond reproach*

Parliaments themselves are institutions accountable to the public. Members of parliament have to meet certain standards of performance and integrity in the conduct of their office. They are expected to conduct themselves with dignity, highest principles of ethics and correctness. The most important responsibility of members of parliament is to serve, through their positive performance, as a good example for the citizens, gaining their respect and confidence.

**Box 10. Possible Practical Actions for Developing Parliaments****Strengthening the general capacity of parliament**

- The quality of a parliament relies on the quality of its members. A primary challenge for political parties is how to attract valuable and successful people who already have a solid career to seek election in the parliament. Resources need to be found for offering salaries, facilities, pensions, training, and an alternative career structure that would give to the position of parliamentarian an attractive and respected status, and also discourage corruption.
- Service in a committee should be made more attractive for parliamentarians. Committees should offer an alternative career path to that of ministerial office. The chairman and the deputy chairman should be elected by members and receive salaries at the same level with ministers. Committees, especially the large ones, should be empowered to appoint one or more sub-committees, which should elect their own chairman. This would add dynamism and dedication to parliamentary work, allowing more MPs to hold positions of responsibility and raise their public profile.
- A library, internet, a research department, an intranet system that would facilitate documents circulation inside the parliament are essential tools for parliamentarians and their staff. The indispensable data base of any parliament should contain the comprehensive collection of national legislation.
- Having at least one weekly Question Time in the plenary schedule is essential to bring ministers in front of the parliament and give MPs the opportunity to call the government to account through direct questions.
- The parliamentary norm should be that all draft bills are submitted to the competent sectorial committee before they are debated in the plenary.
- A special committee could be established to monitor the impact of legislation and the problems occurring during legislation implementation. Democratic reforms require large numbers of new laws which many times need to be amended, depending on how they work in practice. Scrutinizing the effects of legislation should be an imperative for any new democracy.

**Strengthening the oversight of security sector**

- Security has distinctive features that make parliamentary oversight a difficult task: complexity, political nature, secrecy and high corruption. Standing committees for defence and security are essential in the development of a parliament which is able to scrutinize security sector. Committee membership should last for a whole parliamentary mandate to allow the accumulation of expertise. To compensate members' lack of experience, defence committees need a permanent dedicated staff, which for an ideal balance between civilian and military expertise would be

composed of civilians with education in law, political science, defence, and also personnel retired from the armed forces and other security agencies.

- For an effective oversight of intelligence a special committee should be appointed. All its members should be granted access to classified information.
- In their oversight activities committees should have the power to determine the timetable and the agenda of their meetings.

### **Better control of the use of public funds**

- The parliament should be empowered not only to approve or reject the government proposal, but to transfer funds between appropriations and budgetary chapters. This power would make the consideration of budget proposal much more attractive for MPs and it would also motivate a more vigilant scrutiny of budget execution.
- To strengthen parliamentary scrutiny of public spending a Public Accounts Committee should be appointed to consider the National Audit Office's reports on budget execution.

### **Enabling members to better perform their duty**

- Training for new parliamentarians should be introduced at the beginning of each mandate. New democracies are characterized by the emergence of a new inexperienced political class, which relies on fast self-taught skills. Without specific training MPs may for years remain amateurs in their task to represent, to legislate and to scrutinize government.
- A training infrastructure for members and staffers could be developed within parliament to increase efficiency of both training and resources' spending. Legislative technique, parliamentary tools of scrutiny, how to conduct investigations, time management, public budgeting, use of internet, use of parliamentary intranet are only several topics for training programs that would be welcomed in most parliaments.
- Besides Standing Orders that detail basic rules of conduct and procedures during parliamentary sessions, a Code of Official Conduct/Ethics for Parliamentarians can contribute to enhancing public trust and strengthening the integrity and transparency of parliament itself. Its implementation should be overviewed by an appointed Ethics Commissioner or by an Ethics Committee. Such a body should recommend administrative actions to establish and enforce standards of official conduct; investigate alleged violations of the Code of Official Conduct or of any applicable rules, laws, or regulations governing the performance of official duties, and report to the appropriate authorities about the substantial evidence of law violation disclosed in a Committee investigation.

**Better visibility and relation with the citizens**

- Parliament should be an open and a transparent institution. People are increasingly interested in learning how their representatives have stood and voted on key issues before parliament. Having the voting records published and the debates broadcasted represents the essence of parliament's accountability.
- Live telecast or live radio cast of parliamentary sessions are susceptible to bring about a better public knowledge of parliament and the matters which come before it, but also an improvement in behaviour pattern of its members.
- Media tends to focus on government rather than parliament. Therefore parliaments should attract and accommodate media through facilities provided within the parliament building.
- All draft bills should be published as soon as they are submitted to parliament or even before.
- A petition committee should be appointed to consider individual and collective petitions in detail, to refer them to sectoral standing committees or governmental departments, to eventually conduct its own investigation and demand action to redress grievances. Such a committee would give people more confidence that the parliament represents and protects them.



# Toolkit for Parliamentary Self-Assessment

The Toolkit for Parliamentary Self-Assessment provides a methodology for the evaluation of:

- 1) the general capacity of parliament
- 2) the legislative framework for an effective oversight of security sector
- 3) the effect of parliamentary oversight on governmental agencies.

Allegedly, the toolkit will help assess the quality of the democratic governance of security sector and define priority areas for legislative and institutional reforms. The toolkit elaborates on the principles and the mechanisms of parliamentary oversight presented in the *Review of Parliamentary Oversight*.

## Introduction to the Toolkit

Assessing the performance of democratic institutions and the quality of democratic processes is essential for every democracy in the modern world. In transition or post-conflict countries, this task is usually performed by foreign experts and international organisations. The general assumption is that local actors do not possess the necessary knowledge, objectivity and methodology to take part in such an exercise.

The democracy-building process can be improved only through context-sensitive approaches and local ownership. Sustainable democracy becomes possible when those who are involved and affected by its daily practice are the people who ultimately pass judgment on its strengths and weaknesses. Local actors, who are familiar with the history and culture of their country, should be the ones who determine priority areas for reforms and identify ways to improve arrangements for democracy.

This toolkit aims to assist members of parliament, parliamentary staffers and other interested users to evaluate the quality of democratic governance of security in their country and the performance of their parliament. Assessments undertaken by local actors offer some advantages over those performed by foreign experts:

- Being a voluntary exercise, undertaken in the absence of external observers, it contributes to uninhibited debate on the strengths and the weaknesses of a democracy and its institutions
- Raise better local awareness about international democratic standards and good practices
- Maximize the possibility of using and linking the findings to national reforms.

Overall, a self-assessment has more potential than an external evaluation to contribute to the democratisation process in the country.

The self-assessment toolkit contains questionnaires and check lists<sup>1</sup> that will help users evaluate the efficiency of parliament and map the relationship between parliament, government, security agencies and citizens. The toolkit may be used individually by MPs or parliamentary staffers, by a group of parliamentarians, a parliamentary committee or civil society groups that might be interested to initiate a discussion about the national parliament and its role in democratic governance.

The self-assessments proposed by the toolkit may prove to be useful at the beginning of a legislative term, having a significant training and awareness raising function for new MPs, but also at the end of the legislative term, offering an opportunity to exploit the knowledge of experienced MPs who are familiar with legislation and parliamentary procedures as well as the drafting of a relevant institutional and legislative development plan for the next legislature. Used in different moments of the legislative term, the toolkit facilitates a pragmatic evaluation of the progress achieved in the process of parliamentary reform and modernisation and in the strengthening of the democratic governance of security.

The toolkit seeks to offer principles rather than prescriptions, based on international standards and lessons drawn from the experience of developed parliaments. The application and the adaptability of these principles in national legislation and practice will depend entirely on local leadership, the specificity of national institutions and the availability of human and financial resources.

## **Self-assessment of Parliamentary Capacity**

This self-assessment exercise will help users to examine the overall capacity of their parliament, identifying particular areas in which parliament's capacity needs to be strengthened.

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<sup>1</sup> Previous versions of the questionnaires presented in this Toolkit have been used by the author in self-assessment exercises with MPs and staffers in the parliaments of Romania, Indonesia and Central African Republic.

Parliamentary practices and procedures in others democracies inspire ways to stimulate and enforce the role of emerging or transition parliaments. It is important to emphasize from the onset that there is *no ideal parliament*. Democratic practices can be compared but not prescribed, because democracies are structured according to different national contexts and constitutional designs. A practice or a rule that works well in one country might be totally inappropriate in another. Good practices exist, but they have to be adjusted to the local specific context and conditions.

This self-assessment questionnaire<sup>2</sup> contains statements based on principles, assumptions, procedures and standards of behaviour commonly met in democratic parliaments around the world. The statements are grouped into *six sections*:

- Representativeness
- Institutional capacity
- Legislative capacity
- General oversight capacity
- Security oversight capacity
- Visibility and accessibility.

Each section covers a specific area of parliament's capacity, essential for the performance of the role of parliament in a democracy. To the three basic functions of all parliaments (representation, legislation and oversight), we have added:

- a special section on security oversight, given its importance for democratic processes in transition and post-conflict countries
- a section on institutional capacity, essential for the translation into practice of all other legal capacities parliament may be endowed with, and especially fragile in democracies which are not well settled and well resourced
- a section on the visibility and the accessibility of parliament, a big responsibility for parliament itself, allowing the public to participate in the work of parliament and also to evaluate it.

The self-assessment invites users to read each statement, make a *judgment regarding the application of that principle/standard by their own parliament*, and to mark a score on a five-point scale:

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<sup>2</sup> The self-assessment of parliamentary capacity questionnaire draws extensively from David Beetham, *Evaluating Parliament. A Self-assessment Toolkit for Parliamentarians* (Geneva: Interparliamentary Union, 2008); available at [www.ipu.org/pdf/publications/self-e.pdf](http://www.ipu.org/pdf/publications/self-e.pdf).

5	4	3	2	1
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where,

5 = very much

4 = much

3 = medium

2 = poorly

1 = very poorly

The statements marked with high scores will indicate areas of parliamentary capacity that integrate well international standards and allow for an efficient parliament. On the contrary, the statements marked with low scores indicate gaps and weaknesses in parliamentary capacity, therefore areas that might become the subject of institutional or legislative reform. Adding the scores obtained by the statements in each section will allow for a comparison between the fulfilments of different functions by the parliament.

The aim of the self-evaluation is not to classify or compare one national parliament with other parliaments, but to help the users evaluate objectively the strengths and the weakness of their parliament on the basis of international standards. It is to be expected that no parliament would attain the highest score for every statement, given the different checks and balances ensured by different constitutions and due to the reality that all parliaments can be strengthened.

The conclusions of the self-assessment are likely to form the basis of recommendations that identify priority areas for future reforms. To facilitate this task, each section ends with three open questions, which ask the users to define:

1. the greatest improvement made recently in that particular area
2. the most serious on-going deficiency
3. the most urgent measures required to improve performances.

## Questionnaire for Self-Assessment of Parliamentary Capacity

### 1. The Representativeness of the Parliament

1.1. The composition of parliament is representative of minority groups and regions (in terms of political opinions, geography, ethnicity, religion, education, etc.)

5	4	3	2	1
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1.2. Women are fairly represented in parliament.

5	4	3	2	1
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1.3. Parliamentary procedures allow and encourage opposition and minority parties to contribute to the work of parliament.

5	4	3	2	1
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1.4. MPs have a full right to express their opinion freely, being protected from executive or legal interference.

5	4	3	2	1
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1.5. Party discipline is not strictly enforced, MPs being usually allowed to vote against their party.

5	4	3	2	1
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1.6. The control of funding of political parties and electoral campaigns guarantees the independence of elected MPs in the exercise of their function.

5	4	3	2	1
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1.7. Parliament participates in mechanisms of reconciliation and peace consolidation.

5	4	3	2	1
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1.8. Parliament effectively deals with citizen petitions and complaints through a specialized committee for this matter.

5	4	3	2	1
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1.9. Members of Parliament have a strong organized constituency base, disposing of offices, staff and time scheduled to go in the constituency and meet people.

5	4	3	2	1
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1.10. Parliament is effective as a forum for debate on questions of public concern.

5	4	3	2	1
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What is the biggest recent improvement in the above?	
What is the most serious ongoing deficiency?	
What measures would you take to remedy this deficiency?	

## 2. Parliament's Administrative Capacity and Institutionalization

2.1. Rules of Procedure are clear, known and respected.

5	4	3	2	1
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2.2. Parliament is independent from the executive in deciding on its own budget.

5	4	3	2	1
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2.3. Parliament is independent from the executive in deciding on its agenda and program.

5	4	3	2	1
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2.4. Parliament is independent from the executive in deciding on its committee structure and membership.

5	4	3	2	1
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2.5. Committee membership is stable during a parliamentary mandate.

5	4	3	2	1
---	---	---	---	---

2.6. Committee resources are adequate to the needs of parliamentary work in terms of meeting rooms, offices and facilities.

5	4	3	2	1
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2.7. The number and the professional qualifications of parliamentary staff are adequate to the needs of parliamentary work.

5	4	3	2	1
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2.8. Parliament has sufficient information resources (library, research department, intranet system) to support the activity of members, factions and committees.

5	4	3	2	1
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2.9. All parliamentary decisions and legislative projects are debated in the competent committee before being submitted to debate and approval in the plenary.

5	4	3	2	1
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2.10. A Code of Official Conduct/Ethics for parliamentarians is implemented and overviewed by an appointed Ethics Commissioner or by an Ethics Committee.

5	4	3	2	1
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What is the biggest recent improvement in the above?	
What is the most serious ongoing deficiency?	
What measures would you take to remedy this deficiency?	

### 3. Parliament's Legislative Capacity

3.1. The laws issued by parliament prevail in number the ordinances and the decrees issued by the government.

5	4	3	2	1
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3.2. Parliament has the right to endorse, amend or reject government's ordinances and decrees.

5	4	3	2	1
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3.3. MPs have the right to *initiate* legislation and parliamentary procedures allow them to make use of this right fully.

5	4	3	2	1
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3.4. MPs have the right to *amend* legislative proposals and parliamentary procedures allow them to make use of this right fully.

5	4	3	2	1
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3.5. Parliamentary procedures provide MPs and committees with sufficient time to analyze and debate legislative proposals.

5	4	3	2	1
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3.6. Procedures for consultation with relevant groups of interests and NGOs in the course of legislation are systematic and transparent.

5	4	3	2	1
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3.7. The plenary usually follows committee recommendations and amendments on legislative proposals.

5	4	3	2	1
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3.8. There is an effective and easy system to track legislation and its status inside the parliamentary administration.

5	4	3	2	1
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3.9. Parliament ensures that the enacted legislation is clear, concise and intelligible.

5	4	3	2	1
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3.10. Parliament ensures that the enacted legislation is consistent with the constitution and the human rights of the population.

5	4	3	2	1
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What is the biggest recent improvement in the above?	
What is the most serious ongoing deficiency?	
What measures would you take to remedy this deficiency?	

#### 4. Parliament's General Oversight Capacity

4.1. Parliament has constitutional and legal powers for an effective oversight of government's activity.

5	4	3	2	1
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4.2. Parliament is effectively making use of its constitutional and legal powers to hold the government accountable.

5	4	3	2	1
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4.3. Parliament monitors the impact of laws once they are enacted and evaluates the problems associated with the implementation of laws.

5	4	3	2	1
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4.4. The parliament has the authority to appoint or confirm ministers.

5	4	3	2	1
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4.5. Parliament is making use of a special weekly session for Questions and Interpellations.

5	4	3	2	1
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4.6. Ministers and other executive officials attend promptly the plenary session or committee meetings when their presence is requested, providing the parliament with the information requested.

5	4	3	2	1
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4.7. Permanent committees have the power to oversee the activity of ministries and other executive agencies in their area of competence.

5	4	3	2	1
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4.8. Parliament has the authority to investigate activities of the executive and to settle inquiry committees.

5	4	3	2	1
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4.9. Parliament has the power to force the executive to resign by voting a Motion of Censure or by a No Confidence Vote.

5	4	3	2	1
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4.10. Parliament is able to influence and scrutinize the national budget through all its stages (formulation, approval, execution, evaluation).

5	4	3	2	1
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What is the biggest recent improvement in the above?	
What is the most serious ongoing deficiency?	
What measures would you take to remedy this deficiency?	

## 5. Parliament's Security Oversight Capacity

5.1. Parliament is consulted in defence and security issues systematically and consistently.

5	4	3	2	1
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5.2. The activity of every security agency is regulated by legislation debated and enacted by parliament.

5	4	3	2	1
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5.3. The activity of every security agencies is overseen by a parliamentary committee, no agency being exonerated from parliamentary oversight.

5	4	3	2	1
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5.4. The committees responsible for defence and security issues dispose of adequate research, information, staff and other facilities to support their effective performance.

5	4	3	2	1
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5.5. The competent parliamentary committees organize frequently hearings on security matters.

5	4	3	2	1
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5.6. The competent parliamentary committees approve the budget for each security agency and monitor the execution of the budget by the respective agency.

5	4	3	2	1
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5.7. Parliament has the right to request the Supreme Audit Institution to start an audit or an investigation on security budget execution.

5	4	3	2	1
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5.8. Parliament may ask information, investigate and eventually have a say on important defence procurement contracts.

5	4	3	2	1
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5.9. Competent parliamentary committees have the right to visit troops, military premises, and the offices of security sector agencies.

5	4	3	2	1
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5.10. MPs have legal access to secret information necessary to perform their oversight function, and the government is providing them with secret information.

5	4	3	2	1
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What is the biggest recent improvement in the above?	
What is the most serious ongoing deficiency?	
What measures would you take to remedy this deficiency?	

## 6. Parliament's Accountability and Visibility

6.1. Parliamentary procedures allow for plenary and committee meetings which are open to media and the public.

5	4	3	2	1
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6.2. Journalists are free from restrictions in reporting on parliament and the activities of its members.

5	4	3	2	1
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6.3. Plenary and committee minutes are published in a timely manner.

5	4	3	2	1
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6.4. Records of voting on important parliamentary decisions or legislation are published in a timely manner.

5	4	3	2	1
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6.5. Parliamentary committees often hold public hearings of ministers and other executive officials.

5	4	3	2	1
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6.6. Parliamentary debates are frequently broadcast live on television or radio.

5	4	3	2	1
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6.7. The electoral system effectively ensures the accountability of parliament, individually and collectively, to the electorate.

5	4	3	2	1
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6.8. Citizens have immediate access to enforced legislation through a variety of channels (internet, official journal, mass media, MPs circumscription offices, public libraries).

5	4	3	2	1
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6.9. Citizens have adequate opportunities to express their views and concerns directly to their representatives, regardless of party affiliation.

5	4	3	2	1
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6.10. Public expectations about the role to be played by parliament are fulfilled.

5	4	3	2	1
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What is the biggest recent improvement in the above?	
What is the most serious ongoing deficiency?	
What measures would you take to remedy this deficiency?	

## Self-Assessment of Legislative Needs for the Democratic Governance of Security

This self-assessment exercise will help users to review some of the most important legislative principles and standards for the democratic control of security sector and to identify opportunities for improving existing national legislation.

The users of this assessment tool will review a list of *recommended legislative provisions* for the democratic governance of security. The provisions reflect basic principles of democratic oversight and they are drawn from national legislation in a number of countries. In reality, there is a lack of uniformity in using and understanding concepts and in the architecture of institutions. There is no country which fulfils all these recommended provisions, each national model of democratic governance being specific and unique. Therefore, this tool does not expect the user to assess national legislation against a rigid list of international standards; it rather offers a collection of recommended practices, which have proven their value in giving substance to the democratic governance of security in the experience of others.

By reviewing the list, the users will be able to identify legislative provisions that could be adapted and applied to their own local context. Some of the recommended legislative provisions are punctual and specific, and can be formulated in one law article; therefore they could be easily integrated in existing legislation or in the Standing Orders of Parliament through an amendment initiated by interested MPs. Others are general, making reference to the necessity to regulate an issue *by law enacted by parliament* – the condition for ensuring parliamentary participation in decision is making processes and a minimal level of oversight. Their implementation to local legislation would require drafting new legislation.

The legislative provisions are divided into five different sections, following the main areas of security legislation:

- Security and defence policy
- Defence establishment
- Law enforcement (police)
- Intelligence services
- Public accountability of the security sector.

The users of the toolkit are asked to mark with an “X” those legislative provisions which are already covered by national legislation. The number of “X”s acquired in each section will allow an evaluation of the assimilation of international principles about democratic oversight in the national legislation. Different scores

obtained by different sections will allow a comparison between the stage of democratic reforms in the main sectors of security sector (mainly a comparison between defence, police and intelligence reforms).

Ideally, after the identification of legislative areas that do not ensure a solid ground for democratic oversight, this self-assessment exercise will inspire a *legislative development plan*. In order to facilitate the identification of priorities which are relevant and adapted to local context, after each section the users are required to write down three legislative provisions that are needed in order to improve the democratic oversight in that specific area. The proposals can be extracted by the list of recommended legislative provisions which do not exist in the national legislation, or can be new formulations of provisions, emerging from the specificity of the local democracy.

## Questionnaire for Self-Assessment of Legislative Needs for the Democratic Governance of Security

### 1. National Security and Defence Policy

1	National security policy is set out by the government in a <i>strategy document</i> (such as National Security Strategy, White Paper for Defence, Security Concept etc.) that clearly defines priorities, tasks and responsibilities of security sector agencies.	
2	National security policy and its supporting documents are <i>submitted to the approval</i> of parliament.	
3	Parliament <i>ratifies all treaties</i> on security and defence cooperation, including those referring to the country's accession to international organizations and military alliances.	
4	Parliament has a decisive say in the declaration of <i>war</i> .	
5	Parliament approves national participation in <i>international missions</i> abroad.	
6	Parliament approves the deployment of <i>foreign troops</i> on national soil.	
7	Parliament approves the level of <i>defence and security spending</i> within the overall annual state budget.	
8	The creation, the missions and the powers of every defence and security agency are clearly defined by <i>laws enacted by parliament</i> .	
9	The executive and civil management authorities in charge of security forces are <i>accountable</i> to parliament ( <i>can be questioned, summoned, inquired</i> ).	
10	<i>Ministerial nominations</i> , including the ones for defence and internal security, are endorsed by parliament.	
11	Legislation clearly lays down that parliament has the <i>right to be informed</i> by executive on security and defence matters.	
12	A <i>supreme council for defence and security</i> , as the advisory body under the head of the executive branch, is accountable to and reports to parliament.	

According to you, which are the top three priorities of a legislative development plan in the sector above?
1.
2.
3.

## 2. Defence Establishment

1	The functioning, force structure and powers of the military are well defined in a <i>law</i> enacted by parliament	
2	Armed Forces are subject to <i>civilian oversight</i> (through a government department led by a civilian minister).	
3	Armed Forces are subject to <i>parliamentary oversight</i> (through a permanent parliamentary committee for defence).	
4	Armed forces are politically <i>neutral</i> (mainly through limitations imposed by military status, referring to: membership in political parties, eligibility for public office, freedom of expression and participation in public demonstrations).	
5	Recruitment in the armed forces is <i>non-discriminatory</i> of race, ethnicity, gender, religion, geographical origin.	
6	Career advancement in the armed forces is based on merit and <i>equal opportunity</i> .	
7	All <i>military expenditures</i> are comprised in the state budget law, which is approved by parliament (the military establishment does not dispose of additional sources of revenues)	
8	Parliament oversees important defence <i>procurement</i> contracts (equipment, weapon systems, etc).	
9	Circumstances for the use of armed forces in internal security are exceptional and well defined by law ( <i>states of emergency</i> ).	
10	<i>Human rights</i> of armed forces personnel are protected, including by preventing discrimination, mistreatment, bullying, and sexual harassment.	

11	<i>Internal mechanisms</i> (such as written orders, internal complaints mechanisms, inspector general) are in place to protect soldiers from illegal or improper orders and ministerial abuse.	
12	Parliament can examine <i>petitions and complaints</i> from military personnel, as well as from civilians, concerning the armed forces.	

According to you, which are the top three priorities of a legislative development plan in the sector above?

1.

2.

3.

### 3. Law Enforcement (Public Order)

1	Law enforcement forces (police) are subject to <i>civilian oversight</i> (through a government department led by a civilian).	
2	Law enforcement forces are subject to <i>parliamentary oversight</i> (through a permanent parliamentary committee competent for public order).	
3	Law enforcement forces are <i>politically neutral</i> and their activity is independent of political interference.	
4	Conditions and situations for the <i>use of force and firearms</i> by law enforcement officials are clearly defined by law.	
5	<i>Protection of human rights</i> is central to police activity and it sets boundaries in the exercise of police coercive powers.	
6	There is a <i>community-based policing</i> approach in the organization of law enforcement forces (a police service which is accountable, open, professional, consultative, preventive, people centred).	
7	The police has a merit-based recruitment, selection and promotion system, providing <i>equal opportunities</i> for all specific groups such as ethnic minorities.	
8	<i>Internal police accountability mechanisms</i> are in place (such as internal affairs units, financial control unit, anti-corruption unit).	

9	A <i>Code of Conduct</i> (or Code of Ethics) for law enforcement officials provides guidelines and principles for behaviour.	
10	<i>The Prosecution</i> service is independent from police, and is charged to supervise criminal investigation conducted by police.	
11	There is an effective oversight over the management of firearm registries, civilian licensing of <i>small arms</i> , and licensing of <i>private security companies</i> .	
12	The <i>correctional system</i> and the status of the penitentiary personnel are regulated by law.	

According to you, which are the top three priorities of a legislative development plan in the sector above?

1.

2.

3.

#### 4. Intelligence

1	Every intelligence service or department has its purpose, mandate, tasks and powers clearly specified by <i>laws</i> enacted by parliament.	
2	Parliament has a say on the appointment of the <i>directors</i> of the main intelligence agencies, which are accountable to both the executive and the parliament.	
3	Intelligence agencies are subject to parliamentary oversight through a specialized permanent <i>parliamentary committee</i> .	
4	The <i>special powers</i> of intelligence are grounded in legislation and their use must be proportionate to the danger incurred to national security, and must not be unduly prolonged in time.	
5	<i>Derogations</i> of fundamental rights and freedoms are always justified by the need to protect national security interests.	
6	“National security interests” and “threats to national security” are clearly <i>defined</i> in legislation enacted by parliament, and they take a human security perspective.	

7	Intrusive techniques (such as telephone intercepts and surveillance) are approved by the <i>judiciary</i> , by granting warrants.	
8	There is a clear institutional and functional separation between <i>intelligence</i> (information gathering, analysis and interpretation) and <i>police</i> (arrest, interrogation, detention).	
9	The <i>budget</i> allocated to the service is approved by parliament and properly monitored by executive, parliament, and the supreme audit institution.	
10	<i>Codes of conduct</i> and ethics for intelligence officials are implemented and monitored.	
11	Members of the parliamentary committee for intelligence oversight have <i>access to classified information</i> .	
12	Selected members of parliament are informed about <i>secret intelligence</i> operations and their budget.	

According to you, which are the top three priorities of a legislative development plan in the sector above?

1.

2.

3.

## 5. Public Accountability and Transparency

1	A <i>freedom of information act</i> gives every citizen the free right to access information of public interest, without giving an explanation for their request.	
2	Laws provide for <i>affirmative publication of information</i> : government agencies routinely release certain categories of information (such as structure, functions, budget, annual reports, etc.).	
3	A <i>public relations office</i> is established in every public institution, including security agencies.	
4	<i>Legislation</i> regulating the protection of human rights and the activity of security agencies is <i>available to the public</i> .	

5	A law regulates “ <i>secret</i> ” or “ <i>classified information</i> ”: establishes clearly what categories of information can be classified, by what authorities, codifies vetting procedures, and establishes sanctions for unauthorized disclosure.	
6	<i>Independent oversight bodies</i> responsible for human rights protection function on the basis of statutory law, they are accessible to citizens and report to the parliament (such as Ombudsman, Human Rights Commission, Inspector General).	
7	A <i>Supreme Audit Institution</i> responsible for the audit of the State budget execution functions on the basis of statutory law and reports to parliament.	
8	Independent oversight bodies and the Supreme Audit Institution can, on their own initiative or mandated by parliament, <i>undertake investigations</i> , visit sites, get access to documents of security sector agencies.	
9	<i>Wealth and interest declarations</i> of MPs, ministers and executive officials are accessible to the public and they are regularly updated.	
10	Civil Society Organisations (CSOs) are given legal opportunities to participate actively in <i>legislative consultations</i> .	
11	CSOs can <i>monitor</i> the justice and security agencies for human rights violations and corruption without intimidation or undue interference.	
12	<i>Media</i> is free, plural, and independent from state control and political pressure.	

According to you, which are the top three priorities of a legislative development plan in the sector above?

1.

2.

3.

## Evaluating the Effect of Parliamentary Oversight on Governmental Agencies

A fundamental question of parliamentary oversight is to define the fine line where the competences of the executive and those of the legislative meet. Every democracy has its own answer to the extent of parliamentary involvement in the activity of the executive, including the security institutions. The answer has to be defined between parliament's two responsibilities: (1) to monitor the activity of security forces and make sure they respect human rights and the rule of law, and (2) to provide a legal basis that allows the development of efficient security forces, capable to safeguard national interests.

In consequence, parliamentary oversight is inherently complex, political and qualitative in nature. Its efficiency is based not only on the legal powers and the attitude of parliament, but on the quality of the dialogue between parliament and government and security forces. This dialogue must be based on transparency, trust, shared responsibility and mutual respect.

How institutions subject to parliamentary oversight perceive and react to this represents valuable information for parliament. It is therefore important for MPs to engage in a dialogue with representatives of overseen institutions, to grasp their opinion about the limits and the effects of parliamentary oversight. The following template aims to give orientation to parliament in the attempt to achieve an objective perspective on its oversight activity.

The template can be used only as a guide for discussion or as a questionnaire in different circumstances such as:

- general discussions between MPs and executive officials
- meetings between a parliamentary committees and the leaders of the overseen institutions in the context of a committee attempt to evaluate its activity
- interviews of executive officials by MPs
- Analysis of parliamentary oversight by a focus group (possibly composed of MPs, staffers, executive officials, civil society organizations).

When used as a questionnaire to be filled in by the executive officials, it is recommended to send out the template in advance, in order to allow sufficient time for the collection of quantitative data. Some of the questions provide a list of possible answers that the person being interviewed can choose from, while other questions are open-ended, allowing the person being interviewed to answer in his or her own words. The latter type of questions allows for in-depth examination of peoples'

opinions, so the user of the template can alter it and leave open a larger number of questions.

By compiling the answers collected from the template, the users may assess the intensity and the focus of parliamentary oversight activities, and estimate their various effects on the overseen institution. The exercise should facilitate the definition of that system of “checks and balances” between parliaments and executive which is appropriate and beneficial to the national context.

In any circumstances, an open and honest discussion between the two actors involved in parliamentary oversight, the overseer and the overseen, should contribute to a better mutual understanding of parliament’s role and functions in a democracy, and should lead towards improved collaboration and confidence between the parliament and the executive.

<b>Template for a Dialogue between Parliament and the Institutions that are Subject to Oversight</b>	
1. In which way and how often was the parliamentary control exercised over the activity in your institution? (please mark the frequency in the right column)	
Reports on schedule (as envisaged by law or procedures)	
Reports on request (of plenary, committee or MPs)	
Questions and interpellations in the plenary (responded by minister or other executive official)	
Motions on your field of activity	
Consent on top appointments (minister, director, others)	
Approval of the yearly budget	
Hearings in the competent committee	
Visits and inspections in your institution	
Parliamentary inquiries	
Investigation of petitions regarding the activity of your institution	
Others (please mention)	
2. Which are the fields of your institution's activity that were of interest for the parliamentary oversight?	
The respect of constitution and the rule of law	
The respect of human rights and civil liberties by the employees of your institution	
The implementation of the government's policy in your field of activity	
Budget execution	
Public acquisitions / procurement contacts	
Institutional reform and its internal consequences	
Human resources management	
Cooperation with other institutions/structures in the security field	
Public-private partnership	

Investigations of corruption and bad administration	
Abuses and illegal orders within the institution	
Others (please mention)	
3. Are parliamentary reports and recommendations regarding the activity of your institution relevant and useful for the improvement of your activity? Please provide explanations.	
Very much	
They are irrelevant	
Not aware of such recommendations	
4. What are the consequences of parliamentary oversight over the activity in your institution? Please provide explanations.	
Positive consequences	
No consequences	
Negative consequences	
5. Do you consider the setting up, by mutual agreement, of an agenda of parliamentary oversight with pre-established dates and topics to be:	
Absolutely necessary	
Beneficial	
Not helpful	
6. In your opinion, to which extent should parliamentary oversight get involved in the activity of your institution?	
7. Suggest three ways of increasing the efficiency of the parliamentary control over the activity in your institution.	

8. Is the activity of your institution endangered or prejudiced by sharing classified information with parliament in the context of their oversight activities?	
Always. MPs should not have access to classified information	
Sometimes, depending on the issue and on individual MPs	
MPs should be vetted in order to have access to classified information	
Never. Parliament never discloses classified information un-authorized	
Other	
9. How is your institution respecting the democratic requirement regarding the free access to information of public interest?	
By creating a public relation office	
By frequent release of public reports	
By responding to specific requests for public information	
Others	
10. What is your opinion on developing and strengthening the relationship with the civil society?	
Necessary	
Beneficial	
Not recommended	

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