

Think Piece No. 1

Accountable and legitimate security through civilian democratic oversight and control

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The challenge

Civilian democratic oversight and control is a necessary, though not exclusive precondition for accountable and legitimate security. This is the lesson from countries emerging from armed conflict, from authoritarian and undemocratic rule, and even countries that are relatively stable and politically inclusive. Where civilian oversight of the security organs of state is absent or weak, there are usually higher levels of impunity, abuse of power and state violence than where there is monitoring, control and oversight of the institutions. This is as true for a South Africa or Sierra Leone emerging from armed conflict, as it is for a Chile or Argentina emerging from authoritarian rule, or for the USA or France engaging in international conflict or addressing domestic threats to security. If anything, recent events have shown that the challenges of effective, accountable and legitimate security are universal and transnational. In the case of Africa states, for decades, security remained the exclusive domain of the Executive to the total exclusion of any role for the parliament. This institution was confined to the role of rubber stamp for all decisions by the Executive, and never allowed to play its constitutional role of oversight and control of the Executive branch and its agencies, particularly security agencies. The multiparty politics era did not significantly alter this legacy.

Implications for SSR/G

By civilian democratic oversight, we mean the exercise of the mandatory authority of one body to hold another to account. In this case the authority is held by a legitimate, elected and representative body such as a national parliament, through its relevant structures (committees and sub-committees). In addition to civilian democratic oversight there are complementary levels of oversight and/or control that help to promote comprehensive accountability of the security sector including executive oversight; judicial oversight; and other public oversight mechanisms provided by civil society organizations, the media, academia, etc. Internal systems of accountability and independent review bodies also have an important role to play. The focus of this piece is civilian democratic oversight, exercised through elected representatives or deputies in national legislatures and functioning in more specialist capacities in oversight committees.

Entry points for engagement

In countries experiencing armed conflict or insurgencies, and where the legitimacy of the state is contested, the political classes are reliant on the security services to maintain order, and they are allowed to act relatively autonomously, with few checks and balances, and generally with limited accountability – in other words, civilian democratic oversight of the security sector is a weak or non-existent phenomenon. Lawmakers have little exposure to security affairs and are often unaware of the role they might otherwise play.

The prospects improve where there is a cessation of hostilities and an end to the conflict; in other words there is a window of opportunity to introduce the principle of democratic oversight. But even then the immediate challenges are peace-making, peacekeeping and peace enforcement. Things may go either way: where the political processes are under strong and visionary leadership and there is consensus on national goals, and the type of society or constitution needed, it has been possible to introduce a new security narrative and practice. Sadly, there have also been cases where armed actors (including those of the state) have found a way of ensuring that their vested interests are protected and they have continued to exert undue influence in political and civilian life, and to be a source of insecurity. Such states are nevertheless vulnerable in that they are reliant on external support and it is here that neighbouring countries, the region and other external parties can bring their influence to bear especially where violations are being committed. In other words, something can still be done to deepen the levels of democratisation and by extension improve the state of democratic oversight in such countries: Provisions for stronger civilian democratic oversight and control can therefore be introduced as

a critical part of the national reconciliation, peace building, and state re-building process on solid democratic foundations

When there is a conducive and decisive shift in the political conditions through on-going democratisation, the window of opportunity for meaningful civilian control of the security sector or the armed actors becomes a more realistic prospect. The most enduring reforms of democratic oversight are preceded by extensive consultations and deep processes of discussion involving civil society, political parties, the security actors themselves and the representative institutions (national parliaments). Constitutional and legal reform setting out the principles governing the status, role and powers of the security sectors, the responsibilities of parliament and of the executive are indispensable instruments, and must emerge through the most representative platforms available. National legislation and policy on security should be clear on aspects such as the composition of the security services, their legal mandate, the allocation of resources, and how they will account for these, the mission of the services, what is legal and what is not, and what liability there will be for transgressions. Parliament should have the powers to decide on the budgets, and for that the services must be transparent and accountable (of course without compromising security); this implies that the representatives must have access to the information that will allow them to make financial decisions, play a monitoring role and hold the executive to account. For this, defence and security committees must be serviced by informed and skilled support staff, and their members must themselves be well trained and keenly aware of security issues, and willing to fully exercise their constitutional and legal duties. The necessity of the training and skills upgrade and maintenance of Members of Parliament and their support staff alike is a key entry point for international partners. The oversight and control relationship in law must be cast in such a way that the security services are indeed accountable to the representatives. Under the best circumstances, this is a difficult relationship to secure, given the legacy discussed above. It is made more complicated in an environment dominated by serious terrorism related security concerns.

Civilian democratic oversight ought to be comprehensive, coordinated, and aligned. In this regard, it is usually defence reform and with it perhaps defence oversight that gets the most attention when civilian democratic oversight is introduced. Police, justice and prisons oversight should get as much attention as should intelligence reform and oversight, often the most neglected. In an era when migration, transnational crime and terrorism are high on security agendas at national, regional and international levels, there is need for improved coordination between the traditional security actors and immigration and other relevant authorities and their respective oversight structures too. A final matter for consideration is what civilian democratic oversight means for local structures and people, far removed from the capitals and centres of power. Do the representatives really carry the aspirations of the people or are they in danger of being co-opted by virtue of being close to the sources of power, and removed from their constituencies and their real daily security concerns. And if there is such a danger, how is it to be mitigated? In summary, civilian democratic oversight is an important tool for ensuring accountability and legitimacy of the security sector. Actors who want to support the strengthening of civilian oversight, and indeed those who find themselves in such oversight institutions should be mindful of the risks to their effective functioning. These risks include lack of political will and commitment to democratic oversight; this is often mirrored by resistance by the executive to inclusion of the wider public, including civil society and the media, in debates on security issues. A further risk is the wide gap between the formal/constitutional roles of management and oversight bodies and their actual role and influence. Where there has not been a shift in the institutional culture of the security services, reform in favour of civilian democratic oversight might only be effective when there is a moment of great crisis coinciding with a moment of great leadership, and critically when a genuine democratisation process is on-going.

Questions for discussion:

1. What examples on the African continent are there, of civilian democratic oversight success stories?
2. What have been the entry points for engaging in support of civil democratic oversight initiatives in Africa?
3. How can the AU framework for SSR/G be leveraged to promote civil democratic oversight?