



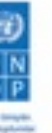
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Technical Training Program on Parliamentary Oversight Mechanisms

Module 1: Introduction to the Basic Concepts of the Parliamentary Oversight of the ISFs

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Introduction: The Strategic Plan



Introduction

1. The “Trias Politica”
2. The five golden principles of “oversight”
3. The meaning of “oversight”
4. The objectives of “oversight”
5. Different forms of “oversight”
6. Parliamentary oversight on ISFs
7. Conditions of parliamentary oversight

Strategic Objectives of the Strategic Plan for the GNAT

- **SO 1.** Improving the participatory capacity of the GNAT by engaging with other stakeholders including Civil Society Organisations (CSOs) and universities.
- **SO 2.** Establishing an effective parliamentary oversight of ISFs’ together with an independent oversight body
- **SO 3.** Strengthening budgetary oversight of the ISFs.
- **SO 4.** Reforming the relations between the Parliament and Executive for strengthening the oversight of the ISFs.
- **SO 5.** Reorganizing the structure of the parliamentary committees in line with the current governmental system

We return to these SOs during the Interactive Session





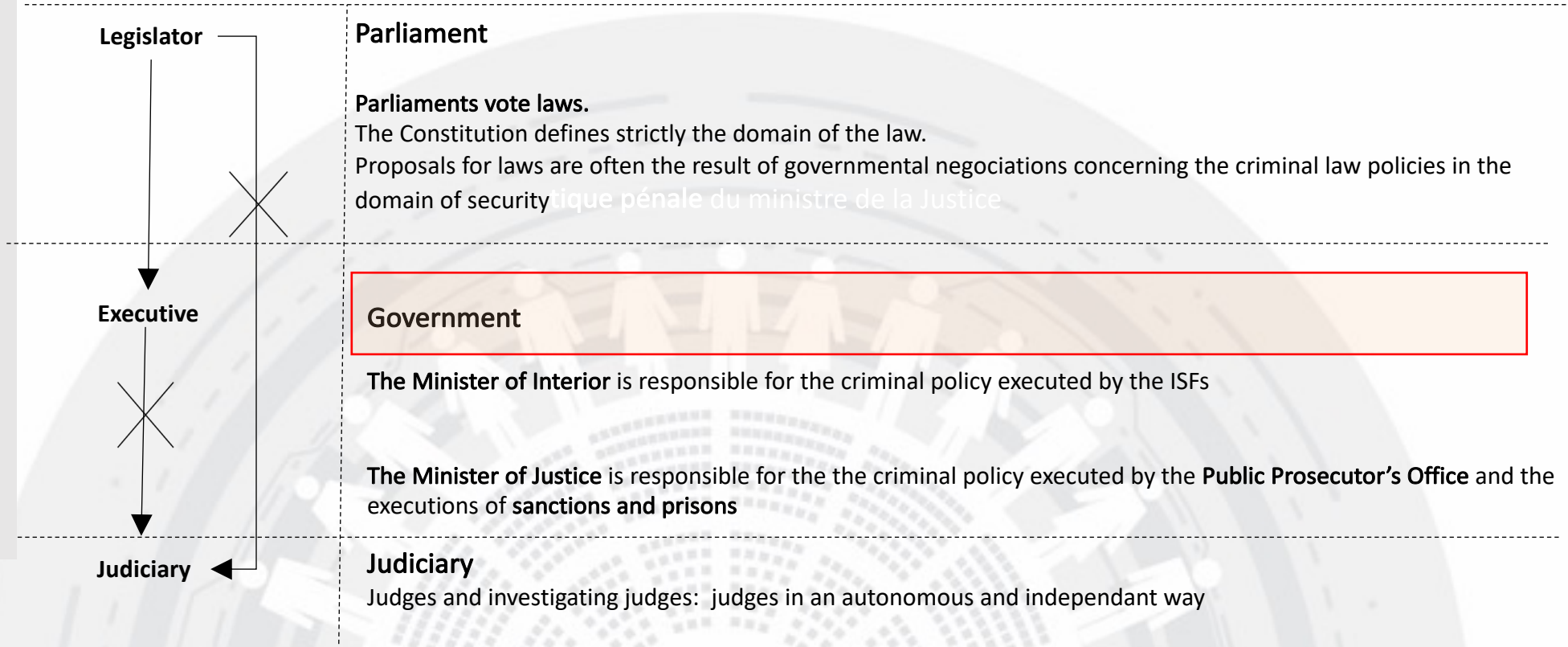
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1. The “Trias Politica”



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Oversight on governmental action can be seen as one of the pillars of the rule of law. It was already contained in Montesquieu's idea of the “separation of powers” and the resulting “balance of power”





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2. The five golden principles of “oversight”



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1. Oversight deals always about the actions of **others**. Oversight of one's own actions is at most reflective and “self-supervision” is in fact non-existent. Oversight is never “in the shoes of the performer”;
2. It is always about protecting **legal standards**. Oversight aims to monitor behavior that is prescribed by law;
3. Oversight does not create new interests or values: it is therefore **conservative in nature** (“don’t change the rules of the game during the game”);
4. The lack of oversight leads to **blind execution**: there is no confrontation between actions and standards;
5. Oversight is designated by others / third parties with a system of standards to be applied. In the public sector, that system of standards is **based on regulations**. In other words, there is always a legal basis for supervision by public actors.





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3. The meaning of “oversight”



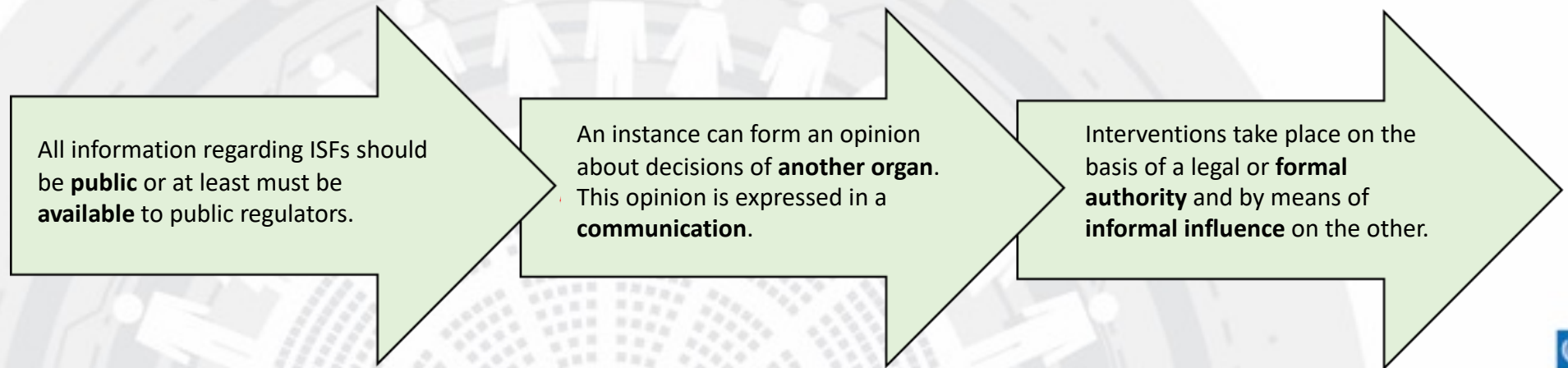
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“Oversight” has multiple meanings

- **A managerial definition:** “Oversight involves **collecting information** about whether an action meets the requirements set for it, subsequently **forming an opinion about it** and possibly **intervening** as a result thereof”
- **A juridical definition:** “only when a body explicitly has an **intervention option in law**, is this body designated as a supervisor”

Three core competencies are **always** included :





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4. The objectives of “oversight”



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Why organize oversight?

Maintaining the **legal order** in the best way

To achieve **fair and efficient litigation**, in accordance with

- the rule of law and
- the relevant (international) standards

1. Guaranteeing the **democratic legitimacy** of a system or a body.

Bodies or services have **independent room to act**, within the framework of the legislation.

Oversight provides insight into and **supports the corrective possibilities** of - ultimately - the **legislator itself**.

→ **As long as the legislator makes no changes to the system or the powers of the body, it is legitimate.**





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4. The objectives of “oversight”



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2. In line with the legitimacy of the system and the acting body, oversight aims to ensure that the body concerned acts in **accordance with the law** and the **general interest**.

→ **This is often defined as the interest of the supervisory and higher levels of governance.**

3. Oversight creates insight into the standards of **good governance**.

Oversight makes explicit **standards of good practices** which the supervisory bodies and persons assess.

→ **This provides a public insight into the standards according to which the execution of the process must take place. About these issues is a normative value debate.**

4. With this normative insight, the oversight **body influences the actions** of the body placed under scrutiny.

→ **Sometimes informal, but usually through forms of jurisprudence and policy rules, political judgments or otherwise, influence takes place.**





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4. The objectives of “oversight”



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5. Oversight provides '**checks and balances**', a division of powers to prevent a possible concentration of power. Certain decisions are **not exclusively attributed to one actor**. Appeals, directions and standards (for example the violence instruction) are examples of this.

→ **These powers are withheld from the primary responsible actor: consultation and coordination with a higher body is necessary or revision of the decisions is open.**

6. Gathering knowledge about **how systems work in practice**.

It concerns **quality, accessibility and efficiency** (effectiveness) as well as the safeguarding of personal **freedoms or rights of individuals** with regard to authority.

→ **Legislation and practice constantly influence each other: oversight provides some of the insights through which the legislator can assess whether the system as a whole generates the desired outcomes.**





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4. The objectives of “oversight”



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7. Oversight also promotes the **efficiency of the actions** of organs.

After all, if the implementation adheres to the standards, these are considered to be efficient.

→ **Supervision often includes judgments about the correct use of public funds. We also want supervision to be effective.**

8. → **The same objective can be to promote quality.**

E.g. the Education Inspectorate explicitly aims to stimulate the quality of education by means of oversight.





5. Different forms of “oversight”



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The difference between internal and external oversight

- **Internal oversight** refers to the supervision that is organized **within an actor itself** (hierarchical oversight of the police within the police itself).
- **External supervision** is supervision that is organized **outside the actor by other supervisory bodies** (for example, the Public Prosecution Service that supervises the police, but also the independent complaints committee and the Ombudsman). Finally, by instituting legal remedies (such as appeal, cassation and opposition), participants in the process can challenge criminal decisions, and thus also exercise external supervision.

The difference between oversight on operational management and policy-oriented oversight

- There is also oversight of **operational management and business processes**, to check whether the actions of ISFs are in accordance with the law. This can lead to disciplinary sanction. This is not the main focus of this training.
- The focus is on the question whether the ISFs are **“doing the right things in a good way”**, in other words we wonder if “we have the ISFs that we want”. Several indicators can be used for that, measuring impacts, effects, and goal achievements. Also the number of complaints by citizens concerning ISFs can be part of this evaluation.





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6. Parliamentary oversight on ISFs



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The parliamentary mission is considered to determine the role of Parliament, in other words the Mission contains the definition of the role of Parliament, answering the “**What**” question.

In most States the role of Parliament is defined as:

- **Scrutiny:** Check and challenge the work of the Executive
- **Legislation:** Make good laws and change existing laws
- **Debating:** Debate the important issues of the day
- **Budget Control:** Check and approve Government spending

“Scrutiny”

- **General:**
 - “to check and to challenge the work of the Executive”: need for direct communication with the Executive and can obtain documents from the Executive; Liaison offices with the Executive;
 - carry out parliamentary inquiries = the sword of the Parliament; specific competencies; expertise; proportional participation of all political groups
- **Specific concerning ISFs:**
 - minimally access to information from the Executive, but also maximally complemented by other resources
 - parliamentary inquiries = way to learn about ISFs
 - independent complaint systems; criteria for independence; oversight on the complaint system itself





6. Parliamentary oversight on ISFs

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“Legislation”

- **General:**
 - “to produce laws and change existing laws and doing this in a qualitative way”:
 - need of clear RP; adequate organizational, research and expert capacity, also of the presence of legislative experts
- **Specific concerning ISFs:**
 - the cornerstone for a performant scrutiny on ISFs is the presence of a law for all ISFs: Oversight needs a solid legal base to be adequately organized
 - leading questions: (1) Who has authority and leadership over the ISFs for which matter?; (2) What are the tasks and competences of ISFs?; (3) How should these tasks be executed and what is prohibited?

“Debating”

- **General:**
 - “balance between the rights of the majority, and those of the minorities/opposition”; agenda-setting, voting procedures, nominations in line with the principle of proportionality;
- **Specific concerning ISFs:**
 - Specialized parliamentary committee for dealing with security related matters, that has the power to randomly scrutinize the functioning of ISFs





6. Parliamentary oversight on ISFs



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“Budget Control”

- **General:**
 - power “to execute budget control at the level of programmes and projects”
 - “to execute the right to approve or to reject (supplementary) budget proposals”, etc.
- **Specific concerning ISFs:**
 - specialized parliamentary committee for dealing with security related matters, that has the power to randomly scrutinize the functioning of ISFs
 - goal: a realistic and fair allocation of the budget for ISFs and distribution of budgetary means within these institutions, but can also be used as an instrument to steer the security policy in the direction Parliament desires, making the assessment of expenditure for specific objectives mandatory

“Participation”

- **General:**
 - the participation of stakeholders from civil society by means of parliamentary hearings, surveys, round table meetings, online and town hall meetings
 - optimal communication with civil society (receptive and distributing)
- **Specific concerning ISFs:**
 - discuss annual reports on police performance; the reporting of an independent complaints system of citizens
 - development of internal & external expertise





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7. Conclusion: Conditions for parliamentary oversight



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1. Parliament has the competence to organize **oversight on the executive**, its policies and its actions. This doesn't exclude **internal oversight**, to the contrary.
2. Solid **legal standards** for the organization of oversight and **Rules of Procedure** are essential to realize this.
3. Parliament needs good and frequent **information** to exercise oversight; as well policy-oriented as organizational: direct communication, documents and research.
4. **Oversight must matter**: It has an impact on the action of others.
5. Oversight implies always **“checks and balances”** (appeal, revision, cassation...), the existence of higher bodies.
6. Oversight is a **permanent process**, checking the **effectiveness, quality** of outcomes **& fundamental rights**. In sum it is a form of **monitoring**.
7. Oversight implies **budget control**: are public funds correctly used?
8. Oversight on ISF's **implies specialization**.

