

Institution: Durham University
Unit of Assessment: 20. Law
Title of case study: Strengthening Accountability and Human Rights through Security Sector Reform [CS3]
<p>1. SUMMARY OF THE IMPACT</p> <p>Research conducted by Durham University on security sector reform has had substantial national, transnational and international impact. Specifically, it has: (1) substantially influenced good practice promulgated by the United Nations' (UN) Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; (2) informed the Intelligence and Security Committee's (ISC) response to a Government-led review aimed at improving security and intelligence agencies' accountability and, through this, the content of the Justice and Security Act 2013; (3) influenced the Council of Europe's (COE) decision to strengthen rights protection for members of its member states' armed forces; and (4) substantially contributed to the Organisation for Security and Cooperation in Europe (OSCE) efforts to strengthen human rights protection for armed forces personnel across its 56 participating states.</p>
<p>2. UNDERPINNING RESEARCH</p> <p>Intelligence Accountability: After a cycle of scandal and reform across a number of states and worldwide controversies surrounding counter-terrorism since 9/11, and owing to the prominent role of intelligence within government, ensuring the accountability of intelligence agencies is a key governance concern. The underpinning research, conducted by Leigh (in part with Born and Johnson), confronts this challenge by assessing processes of democratisation, accountability and rights protection in the field of national security with a particular focus on security and intelligence agencies (outputs 1-2, 4-6). The research involved Leigh (with Born), under the auspices of the Durham University Human Rights Centre, partnering with the Geneva Centre for Democratic Control of Armed Forces (DCAF) and Norwegian Parliamentary Committee for Oversight of Intelligence (EOS). The research comprised a comparative study of intelligence accountability: 'Parliaments and Model Laws: drafting, enacting and implementing legislation on intelligence oversight'. The findings of this project, which reviewed eight countries, emphasised the importance of (a) oversight covering a country's entire intelligence community, (b) there being multiple sources of democratic oversight, (c) parliamentary 'ownership' of oversight arrangements, and (d) independent and effective procedures to handle complaints against intelligence agencies.</p> <p>Human Rights of Armed Forces Personnel: The OSCE is the world's largest regional security organisation involving 56 participating states. Leigh's research, funded by the OSCE Office of Democratic Institutions and Human Rights (ODIHR) (2005-8) and involving collaboration with DCAF, evaluated existing legislation and policy in participating states to identify and promote best practice, building on the OSCE Code of Conduct on Politico-Military Aspects of Security 1994. The research, which took the form of an OSCE Handbook co-authored with Bonn (output 3), drew on the extensive cooperation of the ministries of defence in 35 countries and on official stakeholder workshops sponsored at ministerial level in Berlin and Bucharest in 2006. The range and depth of analysis that this research contains, engaging multiple aspects of rights protection for serving members and veterans (including the effective promotion and enforcement of civil, political, social & economic rights, freedom from discrimination, and equality) is unprecedented in the legal literature on armed forces. The Handbook seeks to strengthen human rights protection for service personnel. It identifies significant problems with bullying and initiation, and disparities across states in the treatment of certain rights, especially concerning restrictions on democratic participation, freedom of expression and collective representation. In response, it advocates a 'Citizens in Uniform' approach, proposing that any restrictions on the rights of service personnel should be strictly related to concrete military objectives and be no more than are necessary to fulfil them. It finds no contradiction between respecting human rights of personnel and maintaining combat readiness. The Handbook contains 119 proposals for strengthening rights protection for armed forces personnel, including human rights training and the introduction of military ombudsmen.</p> <p>The research was carried out while Leigh was a Professor at Durham University and Born was a senior fellow at DCAF (outputs 3-5).</p>
<p>3. REFERENCES TO THE RESEARCH</p> <p>1. I Leigh, (edited with L Johnson and H Born), <i>Who's Watching the Spies: Establishing</i></p>

Intelligence Service Accountability, (Potomac Books, 2005) [ISBN-10: 1574888978]. This reflects research commissioned, funded and supported by major international institutions. It was submitted as a RA2 output in RAE 2008 where 95% of outputs rated 2* or above. Potomac Books is a specialist military publisher and was acquired by University of Nebraska Press in 2013.

2. I Leigh, 'Rebalancing Rights and National Security: Reforming UK Intelligence Oversight a Decade After 9/11' (2012) 27(5) *Intelligence and National Security* 721-737 [<http://dx.doi.org/10.1080/02684527.2012.708525>]. This is the leading peer-reviewed journal in this field, founded by Christopher Andrews (Official Historian of MI5).

3. I Leigh & H Born, *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, (Organisation for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, Warsaw, 2008) (I Leigh, c. 50% authorship), [ISBN: 978-83-60190-53-1]. The Handbook drew on questionnaire results from the ministries of defence of 35 participating states. The results were tested at two international workshops and subjected, before publication, to detailed scrutiny by desk and field officers in the OSCE and at a workshop involving academic and user experts organised by the ODIHR.

4. I Leigh & H Born, *Making Intelligence Accountable: Legal Standards and Best Practice for Oversight of Intelligence Agencies* (Norwegian Parliament Printing House, Oslo, 2005) (I Leigh, c. 50% authorship), [ISBN: 92-9222-017-9]. An international advisory panel comprising serving and current officials and academics from six countries scrutinised and commented upon the draft report in a two-day meeting. It has since been translated into 16 languages: Albanian, Arabic, Bulgarian, Croatian, Dari, Georgian, Indonesian, Macedonian, Pushto, Romanian, Russian, Serbian, Spanish, Turkish, Ukrainian, and Urdu.

5. I Leigh & H Born 'Democratic Accountability of Intelligence Services', *Armaments, Disarmament and International Security, Yearbook of the Stockholm International Peace Research Institute 2007*, (Oxford University Press 2007), chapter 5 (I Leigh, c. 50% authorship), [ISBN: 978-019-923021-1]. This is an annual publication of one of the world's leading research institutes in the field of security studies. It is fully peer-reviewed.

6. European Commission for Democracy Through Law (Venice Commission) (I Leigh, c. 40% authorship), Report on Democratic Oversight of the Security Services in Council of Europe States, Study 388/2006 (CDL_DEM 2007-001) (June 2007) [<http://www.statewatch.org/news/2007/jun/venice-com-control-of-security-services.pdf>]. The Venice Commission is the COE's advisory body on constitutional matters, composed of constitutional and international law experts, supreme or constitutional court judges and members of national parliaments and is recognised as an international independent legal think-tank. The draft report written by a working group (of which Leigh was a member) was discussed within the sub-Commission on Democratic Institutions before being formerly adopted by the Venice Commission.

4. DETAILS OF THE IMPACT

Armed forces, security and intelligence services are traditionally closed domains resistant to external influence. In spite of this, the extensive reach of these impacts can be seen in the fact that they have significantly affected the standards endorsed by the UN and COE, as well as the world's largest security organisation (the OSCE), UK government, and the UK Intelligence and Security Committee. The research impact has arisen through direct engagement with senior policy-makers and parliamentarians in several countries (eg Albania, Azerbaijan, Georgia, Kosovo and the UK) as well as with the COE, OSCE and UN. The significance of the impact lies in the changes in international security sector policy and law reform on security and intelligence, as evidenced by legislative change in the UK and reforms relating to the human rights of armed forces personnel in the OSCE, COE and their member states.

1. Influencing the UN in the field of human rights protection: Durham University's research on intelligence governance (**outputs 4 and 6**) were 'the most influential secondary sources in shaping the focus of the UN's *Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight* report submitted by the Special Rapporteur on countering terrorism while respecting human rights to the UN Human Rights Council (**source 1**). According to the report's co-author, a Project Coordinator for DCAF, the UN Report is 'the first set of international principles on the regulation and oversight of intelligence services' (**source 1**). It was released in

2010 and has since been 'translated into all UN official languages ... presented throughout the world and cited by a number of leading national intelligence oversight bodies' (**source 1**).

He continues 'more than half of the good practices presented to the UN Human Rights Council were directly influenced' by **outputs 4** and **6** (**source 1**). Of the 35 'good practices' identified 29 are either wholly or substantially the same as (19), or partially based on (10), those elaborated in **output 4**. The report follows **output 4** by (a) closely following its substantive content in the practices endorsed and (b) adopting a best practice approach to intelligence oversight standards based on a survey of legislation. The report's co-author describes the analysis in **output 4** as having been 'invaluable in shaping' the sections dealing with human rights protection (**source 2 [27-33]**), information collection (**source 2 [34-46]**) and the use of personal data (**source 2 [37-40]**) and that 'the framework for intelligence governance pioneered in [**output 1**] ... underpins the approach taken in the UN compilation' (**source 1**). The endorsed good practices include ensuring a clear mandate and legal basis for security and intelligence agencies, oversight institutions, complaints processes and effective remedies, principles of responsibility and accountability for state institutions and individual officials. As recommended in **output 1**, the practices also endorse working principles of impartiality, non-discrimination and professionalism in, among other things, intelligence collection and the use of powers of arrest and detention, and intelligence-sharing and cooperation (**source 2, good practices 1-13, 15-26, 31-33 & 35**).

2. Influencing the UK Intelligence and Security Committee and Justice and Security Act

2013: In November 2010, Leigh presented options for reform of intelligence oversight at a high-level policy conference supported by the Cabinet Office at the Royal United Services Institute, timed to coincide with the Government's Strategic Defence and Security Review and the then-planned Counter-Terrorism Legislation Review (launched in October 2011). Following this, Leigh was one of two academics invited to brief the Chair of the ISC in writing on reform options (**source 3**). Drawing on **outputs 2, 4-6**, Leigh (with Gill, Honorary Fellow, University of Liverpool) advocated enhanced democratic oversight of the intelligence and security services by reforming the remit, status and powers of the ISC and introducing an independent fact-finding process (**source 3**). These recommendations were subsequently discussed at a meeting of the ISC and shaped its own submission to the Government's review (**source 3**). In that submission the ISC proposed that it should become a Committee of Parliament, have an extended remit to cover the entire intelligence community in the UK, have the power to compel the provision of information (subject to a ministerial veto), and have greater investigative and research resources (**source 4, section 7**).

A number of these proposals were considered in the *Justice and Security Green Paper* (**source 5, [3.16]**) and were subsequently enacted in the Justice and Security Act 2013. The legislation reflects Leigh's briefing to the ISC and the underlying research (**outputs 2, 4-6**) by extending oversight to the whole intelligence community and by enhancing parliamentary ownership of oversight through parliamentary appointment of ISC members, provision to those members of security of tenure and control over Chair selection. The Act also gives the ISC powers to obtain 'operational' information and greater autonomy over the content and timing of reports to Parliament (see respectively, **output 4, chs. 16, 18 & 19** and Justice and Security Act 2013, sections 1(3), 1(6), 2(3), 3(1) and 3(6) and sched. 1, para 1).

3. Influencing standards for rights protection of Armed Forces personnel in the Council of

Europe (COE): In 2010 the Council of Ministers of the COE formally adopted a series of principles for protecting the human rights of armed forced personnel based substantially on **output 3** (**source 6**). Durham University's research is the sole non-treaty source referred to in this resolution. Of the 85 principles in the resolution, 37 correspond directly to best practices advocated in **output 3**. (See those concerning torture and inhuman and degrading punishment (COE 10-12; **output 3 chs. 16 & 20**), military discipline (COE 21, and 33; **output 3, ch. 21**), trial of criminal charges (COE 29-31; **output 3, ch. 21**), respect for private and family life (COE 36, 38-9; **output 3 chs. 14 & 17**), freedom of religion and conscientious objection (COE 40-41 and 44-46; **output 3, chs. 11 & 10**), freedom of expression (COE 47-48; **output 3, ch. 8**), the right to access to relevant information (COE 49; **output 3 ch. 15**), the right of peaceful assembly and association (COE 53-57; **output 3, chs. 8 & 9**), the right to vote and stand for election (COE 58 and 59; **output 3, ch. 8**), the right to

Impact case study (REF3b)

fair remuneration and a retirement pension (COE 63-65; **output 3, chs. 13, 17 & 18**), dignity at work and non-discrimination (COE 66, 70-74,75 and 77; **output 3, chs. 11-14 & 17**), the treatment of young recruits (COE 79-80 and 82-84; **output 3 ch. 15**), human rights training (COE 83-85; **output 3 ch. 19**), and the right to complain to an independent body (COE 85; **output 3 chs. 16 & 22**). The resolution recommends that member states give effect to these principles in national legislation and through military training, practice and dissemination. Although not formally binding, this resolution provides an international impetus for legislative and practical reform at domestic level across the 47 member states of the COE, with the principles providing rights-based benchmarks for that process.

4. Promoting Rights Protection for Armed Forces Personnel in OSCE Countries: The findings of **output 3** have been extensively used by the OSCE to raise awareness in participating states of the rights of armed forces personnel and to advocate policy change at the national level. The OSCE has funded presentations and translations of **output 3** in over 12 countries and distributed it to ministries of defence in all 56 OSCE countries. It was officially launched, in May 2008, by DCAF/OSCE Office of Democratic Institutions and Human Rights at an international conference focussing on the recommendations concerning the role of military ombudsmen in protecting human rights of armed forces personnel and subsequently presented at the UN Human Rights Council and at the Congress of the European Organisation of Military Associations (Euromil) (**source 7**). These activities have resulted in concrete changes in a number of member states. For example, in Bosnia-Herzegovina the Handbook has prompted discussion in the Parliamentary Defence Committee of the introduction of a military ombudsman's office (as advocated in **chapter 22 of output 3**) and an agreement 'to increase efforts to ensure gender equality in the armed forces' and 'to look again at existing legislation on freedom of association, which is currently restricted for armed forces personnel' as advocated in chapter 9 (**source 8, p 35**). Similarly, in 2009 the Armenian government and OSCE agreed to revitalise NGO oversight over the security sector and to set up a training programme on human rights for Armenian armed forces personnel as advocated in **chapter 19 of output 3 (source 8, p. 35)**. **Output 3** has also been used by the Armenian Ministry of Defence for training the staff of army units and military educational institutions (**source 9, [4]**). In 2010, Albania also committed to including the Handbook (**output 3**) in the curriculum of its military academy (**source 10, p 41**).

5. SOURCES TO CORROBORATE THE IMPACT

1. Testimony from Project Coordinator DCAF: Geneva Centre for Democratic Control of Armed Forces, 23 May 2013.
2. UN General Assembly, 'Compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight', Human Rights Council, 14th Session, 17 May 2010, A/HRC/14/46 <https://www.fas.org/irp/eprint/unhrc.pdf>.
3. Correspondence between CS author and the ISC (February – May 2011).
4. Intelligence and Security Committee, Annual Report 2010-11, Cm 8114, section 7, [II-JJ] <http://www.official-documents.gov.uk/document/cm81/8114/8114.pdf>.
5. Justice and Security Green Paper (October 2011) [3.16] <http://www.official-documents.gov.uk/document/cm81/8194/8194.pdf>.
6. Council of Europe, Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers' Deputies. <https://wcd.coe.int/ViewDoc.jsp?id=1590149&Site=CM>.
7. OSCE Office of Democratic Institutions and Human Rights, Annual Report 2008, p 41. <http://www.osce.org/odihr/37142>.
8. OSCE Office of Democratic Institutions and Human Rights, Annual Report 2009, p 35. <http://www.osce.org/odihr/67854?download=true>.
9. Written replies of Armenia, UN Committee on the Rights of the Child, 16 May 2013 http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPAC.ARM.Q.1.Add.1_ENG.pdf.
10. OSCE Office of Democratic Institutions and Human Rights, Annual Report 2010, p 41. <http://www.osce.org/odihr/77665>.