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TITLE

Institutional Reforms Based on Building Integrity Initiative in the Armed Forces of the Republic of Armenia

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LIST OF ABBREVIATIONS

CPI	Corruption Perception Index
CRRC	Caucasus Research Resource Centers
DCAF	Geneva Centre for the Democratic Control of Armed Forces
GCB	Global Corruption Barometer
GS	General Staff
MoD	Ministry of Defense
NA	National Assembly
NATO	North Atlantic Treaty Organization
OHCHR	Office of the United Nations High Commissioner for Human Rights
SSR	Security Sector Reform
TI	Transparency International
WB	World Bank

INTRODUCTION

Transparency International (TI), a global anti-corruption civil society organization that monitors the public sector corruption level worldwide, published its annual *Corruption Perception Index 2016,* where Armenia ranks 113 out of 176 countries.[1] In one of its earlier reports about the state of corruption in five of the ex-Soviet countries still undergoing political transition, including Armenia, TI found that despite some positive progress made by subject countries with regard to anti-corruption reform and the fact that there are fairly sound legal frameworks in place, corruption continues to be a "serious and pervasive problem", there is a limited checks and balance on executive power, week legislature, highly politicized ineffective judiciary, and restrained civil society. Patronage networks and a lack of clear separation between private enterprise and public office are mentioned as a specific feature of corruption in Armenia[2].

Even though Armenia is party to or engaged in international anti-corruption treaties, conventions and initiatives, has obligations for practical enforcement and related improvement of legal frameworks and practices and actually implemented some of them[3], 37 % of Armenians

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[1] According to TI CPI, this estimate has deteriorated since 2016, when Armenia was 95 out of 167 countries TI, CPI, http://www.transparency.org/news/feature/corruption_perceptions_index_2016

[2] "*Public officials and members of parliament have substantial direct and indirect control over important private businesses, often through hidden partners or close relatives and friends, limiting free market competition and discouraging foreign investment*",TI, 2015 "The State of Corruption: Armenia, Azerbaijan, Georgia, Moldova and Ukraine", 2015, *available at* <http://www.transparency.org/whatwedo/publication/the_state_of_corruption_armenia_azerbaijan_georgia_moldova_and_ukraine>

[3] Armenia is party to the UN Convention on Corruption, the CoE Criminal Law Convention on Corruption, the CoE Civil Law Convention on Corruption, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Armenia has not signed OECD Convention on Corruption, however it joined the OECD Central Asia and Eastern Europe anti-corruption network. It is also a member of the Council of Europe's GRECO. Active, passive bribery, and bribing international and foreign officials are criminalized in Armenia. Money laundry is also regulated in compliance with international standards.
Commentary provided by the country assessor in the report of TI corruption in defence, 2015

believe that corruption is one of the 3 biggest problems facing the country, and only 35 % believe the government is effective in its anti-corruption efforts[4].

Understandably, the defense sphere of Armenia could not stay immune to the threat of corruption. Even though the army is one of the top most trusted institutions in Armenia and enjoys the high esteem of the society, for the last 2 years TI has been rating Armenia as a country with the high category for corruption in the defense and security sector.[5]

Lack of transparency and accountability, unrestrained discretionary powers of officials and week mechanisms of democratic control over the armed forces have set fertile ground for systemic arbitrariness and wide-range corrupt practices in the defense sector that can undermine the operational efficiency of the armed forces and endanger the human rights in the armed forces and good security sector governance. It goes without saying that under current geopolitical conditions and being in a conflict with a neighbor whose military budget exceeds Armenia's total budget by three times, Armenia should especially mainstream its efforts towards effective defense institution building and security sector reforms in large. In this regard fight against corruption is means to achieve effective defense and security sector. At the same time corruption ironically occurs in the results of week security sector, thus we can argue that elimination or at least reduction of corruption is resulted in the wake of substantial and comprehensive security sector reforms.

Since gaining its independence Armenia has been undergoing a series of reforms one of the most major ones of which are the recent Constitutional Amendments in 2015 aimed at strengthening democratic principles and "establishing a balanced and stable system of democratic government" thus laying the necessary conditions for ensuring the rule of law, respect for human rights within the country. [6]

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[4] TI, GCB, 2016, "People and Corruption: Europe and Central Asia 2016", *available at* <https://www.transparency.org/whatwedo/publication/7493>

[5] CRRC Caucasus Barometer 2015 (49 % of respondents fully trust, compared to 28% in 2013), *retrieved on* 14 February, 2017 < http://www.crrc.am/hosting/file/_static_content/barometer/2015/CRRC-Armenia_CB2015_Presentation_ENG.pdf> Armenia is placed in Band D with highest risks in areas of Finance, Operations, and Procurement.
TI, "2015 Government Defence Anticorruption Index of Armenia" *available at* <https://transparency.am/en/publications/view/124>, 2016

[6] Venice Commission, "Opinion on the Draft Concept Paper on the Constitutional Reforms of the Republic of Armenia", *CDL-AD(2014)027* ,p.4
< http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)027-e>

The aim of this study is to analyze how the new Constitutional amendments can impact the general integrity building reforms in the defense sector, whether or not they ensure grounds for democratic governance based on principles of the rule of law and respect for human rights and democratic oversight over the defense and security sector, how in this context the roles of the executive and legislative actors have changed and what are the main available mechanisms, as well as other related aspects.

Since the concept of democratic control over armed forces mainly refers to "the existence of a democratically elected organ that reviews and supervises the decisions adopted by the organs or authorities with military competences"[7], this paper will concentrate narrowly on the role of the executive which is in charge of state administration of all state structures, including the armed forces and the role of the legislative branch. The study of other important ex post control institutions like the judiciary, the ombudsman and audit offices and their respective impact on integrity building in the defense and security sector remains beyond the scope of our study[8].

This paper draws upon a number of sources of information and great deal of materials gathered from academic and other sources and reports dedicated to the issue of corruption, defense institutions building and democratic control over armed forces. Relevant legal framework of the Republic of Armenia was also examined, including acting and previous Constitutions, relevant military law system and other legal acts. The author also conducted several informal interviews and discussions with representatives of the Ministry of Defense and Standing Committee on Defense, National Security and Internal Affairs.

The structure of the paper is designed, firstly, to introduce the phenomenon of corruption in the armed forces relevant to the reality of Armenia (Chapter 1). The link between the integrity

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[7] Venice Commission, "Report on the Democratic Control of the Armed Forces", *CDL-AD(2008)004,* p.6 <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)004-e>

[8] "*Oversight may take several forms. The control can be either ex ante, ex post or both. Ex ante control is a form of proactive oversight and is mainly exercised by parliaments. Ex ante tackles issues before they become problematic. Ex post oversight is a form of reactive oversight as issues are only addressed after they have occurred. Ex post control qualifies the legitimacy of a measure or act previously decided and implemented and, when necessary, imposes a remedy. Ex post control is exercised by a range of institutions including the judiciary, ombudsman, audit offices and Parliament".*
Venice Commission, "Report on the Democratic Control of the Armed Forces", *CDL-AD(2008)004*
<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)004-e>

building and the security sector reforms and the democratic control of the armed forces is examined in Chapter 2. Chapter 3, forming the central contribution of the paper, focuses on the comparative analysis between the pervious and current constitutional systems of Armenia, and summarized the main highlights. Chapter 4 concentrates on importance of transparency in the context of fight against corruption and how exactly it is ensured in Armenia reality.

The summary of the research is provided in the paper is provided in the conclusion with a set of recommendations and the ways in which integrity building can be encouraged.

CHAPTER 1.

Overiew of the phenomenon of corruption in the defense sector

Corruption

This chapter gives and overview of the general nature of corruption with in-depth look into the defense sector and gives insight into the most vulnerable corrupt-prone areas in the defense sector of Armenia and reasons thereof.

There are many explanations and definitions for the term 'corruption'. Simply put it can be described as offering something to somebody with influence expecting a favor from the latter with the abuse of his power. *TI* defines corruption as 'the abuse of entrusted power for private gain'[9]. The pivotal element of this phenomenon is the power, relations it creates and most

[9] TI categorizes corruption into 3 types, depending on the scale, the sector it occurs and the volume of resources it engages. **Petty corruption** refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies. **Grand corruption** consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good. **Political or government** corruption is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth. (*available at* <http://www.transparency.org/glossary/term/corruption>)
In its extreme manifestation corruption can lead to "state capture", which refers to "the actions of individuals, groups, or firms both in the public and private sectors to influence the *formation* (emphasis added) of laws, regulations, decrees, and other government policies to their own advantage". Types of institutions subject to capture can include the legislature, the executive, the judiciary, or regulatory agencies. Actors engaged in the capturing care private firms, political leaders, or narrow interest groups. "*All forms of state capture are directed toward extracting rents from the state for a narrow range of individuals, firms, or sectors through distorting the basic legal and regulatory framework with potentially enormous losses for the society at large. They thrive where economic power is highly concentrated, countervailing social interests are weak, and the formal channels of political influence and interest intermediation are underdeveloped*."

importantly its abuse. The degree of the abuse of power magnifies as the power increases in the absence or lack of any limitation mechanisms, aptly described by John Dalberg-Acton, an English historian and politician, in his quote saying that "power tends to corrupt, and absolute power corrupts absolutely".

The course of our research revealed that there is a very fine and strong adverse connection between corruption on one part and rule of law, human rights, good governance and economic and social development in general. "*Corruption leads to arbitrariness and abuse of powers since decisions will not be made in line with the law, which will lead to decisions being arbitrary in nature. Moreover, corruption may offend equal application of the law: it therefore undermines the very foundations of the Rule of Law",* which is accompanied by 'diversion of public funds, lack of transparency and lack of accountability'. [10]

Dr. Anne Peters claims that corruption is 'the antithesis to the rule of law' and circumvents it since it follows the 'unofficial laws of the market' where administrative or political decisions by government authorities are "bought rather than made on the basis of lawfulness". And because the rule of law is a necessary condition for the respect of human rights, corruption "constitutes the negation of the idea of human rights."[11]

Indeed, consequences of corrupt governance touch upon all human rights by facilitating, serving or creating an environment in which the violation can take place. It erodes democratic institutions or tendencies and leads to a loss of public support as those in public positions fail to take decisions with the interests of society in mind, people become discouraged from exercising their civil and political rights and from demanding respect for these rights. The application of existing legal frameworks and pertinent reform efforts face impediment on part of corrupt judges, and other legal and law enforcement officers compromising the access to justice, right to equality

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WB, 2000, "Anticorruption in Transition: A Contribution to the Policy Debate", *available at* <http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/contribution.pdf>
Corruption generally takes common forms of bribery, extortion, negligence of duties, nepotism, cronyism, embezzlement, fraud, etc.

[10] Venice Commission, "Rule of Law Checklist", *CDL-AD(2016)007* , p.30 , *available at* http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e

[11] Anne Peters, 2015, "Corruption and Human Rights*",* Working Paper Series 20, p.9 *available at* <http://www.mpil.de/files/pdf4/Peters_Corruption_and_Human_Rights20151.pdf>

before the law and a fair trial. Finally, corrupt practices weaken the accountability structures responsible for protection of human rights and contribute to the culture of impunity. [12]

The corrupt management of public resources undermines the government's ability to deliver proper health, educational and welfare services, etc., which are essential for the realization of economic, social and cultural rights. Also, the prevalence of corruption creates "discrimination in access to public services in favor of those able to influence the authorities to act in their personal interest, including by offering bribes"[13].

This clear link is seen in the analyses of rates of corruption, human rights and effective governance records across various countries: high levels of corruption imply poor human rights and government efficiency records. Another interesting finding is that poor records in these dimensions are mostly registered with conflict-torn countries, highly authoritarian regimes, or so-called "transitioning" countries[14].

Corruption in defense

In his Annual Report, released in March 2017, NATO Secretary General Jens Stoltenberg emphasized that: *"Corruption and poor governance are security challenges that undermine democracy, the rule of law and economic development, erode public trust in defense institutions and have a negative impact on operational effectiveness."*[15]

Defense corruption poses serious challenges to the efficiency of the defense institution, undermines the operational effectiveness of the armed forces increasing the risk of vulnerability to external threats, lowers the esteem of the society and international partners for the military,

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[12] OHCHR, Human rights and Anti-Corruption, <http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/AntiCorruption.aspx> (*last visited on 20 March, 2017)*

[13] Ibid.

[14] The countries at the bottom of the most recent list of the Corruption Perception Index , 2015, TI are Sudan, North Korea, Somalia and South Sudan . <http://www.transparency.org/news/feature/corruption_perceptions_index_2016> (*last visited on March 30, 2017*) These countries are in the list of Human Rights Risk Index, 2016, as worst performing countries <http://reliefweb.int/report/world/human-rights-risk-index-2016-q4> (*last visited on March 30, 2017*) According to the data by the World Bank, they are also considered as having poor performance in government effectiveness, rule of law, voice and accountability, and regulatory quality <http://databank.worldbank.org/data/reports.aspx?source=Worldwide-Governance-Indicators> (*last visited on March 30, 2017*)

[15] NATO, 2017, "The Secretary General's Annual Report 2016", (Brussels,2017) *available at* <http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_03/20170313_SG_AnnualReport_2016_en.pdf>

and, in its extreme manifestation, threatens the democratic governance mechanisms and even the foundation of modern states thus turning into a "threat to the national security"[16]. Moreover, defense sector corruption comes at a high price and basically at the expense of other sectors of public life: it diverts funds from the national budget and prevents investments in education, healthcare and social welfare, innovation and development.[17]

In order to understand and recommend effective strategies that can be utilized to fight corruption and build solid integrity in the defense sector in Armenia, we need to look into the issue from several perspectives trying to establish existence or lack of conducive factors encouraging corrupt behavior and practices, corruption-limiting factors and root causes that make defense sector susceptible to corruption.

Being a very complex phenomenon, corruption, yet, is driven by individual, human decisions on "commission" or "omission" based on rational calculations[18]. This logic lies at the heart of the theory of rational choice, which when applied in criminology, assumes that individuals become criminals because the rewards of the crime outdo the legal and ethical repercussions – the "moral burden" and the "expected punishment"[19]. The potential reward from corrupt practices depends on the amount of resources under the control of officials and the degree of the discretionary power they have. The combination of high discretionary power (high benefits) and low accountability (low costs) is considered the main conducive factor to generate corruption, the risk of which is dramatically exacerbated in the absence of transparency, and conversely, improvement in accountability mechanisms over defense-related decision-making processes and overall transparency enhancement increase the probability of detection of corrupt actions.[20]

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[16] Interview with Mr. A.Sakunts, President of Helsinki Citizens' Assembly Office in Vanadzor, *conducted on 19 April, 2017*

[17] DCAF, 2015, "Building Integrity in Defence", Parliamentary Brief, *available at* <http://www.dcaf.ch/Publications/DCAF-Parliamentary-Brief-Building-Integrity-in-Defence>

[18] Theory of Rational Choice was proposed by Nobel Prize winner Gary Becker and is widely used including in studies of economic, social behaviors, criminology, etc.
Rational Choice Theory, <http://criminal-justice.iresearchnet.com/criminology/theories/rational-choice-theory/> (*last visited on March 7, 2017)*

[19] DCAF, 2010, "Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices",

[20] Ibid.

This simple high reward/low accountability formula shapes behavioral patterns that can be identified across all types of corruption- on an agency level a low- and mid-level official is likely to engage in so-call "need-driven" or "modest" corruption when there are limited restraints in place (poor legal and regulatory framework, detection mechanisms, relaxed liabilities); on the state level public officials exercise "greed-driven" of "elite" corruption abusing their position (including the use of subordinated security sector) to sustain their state capacity (power, status and wealth) weakening the rule of law, when there are no effective democratic control mechanisms in place (civilian and parliamentary oversights, which together make up the true democratic oversight).

Corruption is also expected to occur when there are other favorable realities in place. In most of the countries the defense establishment is the biggest governmental agency and employer, and the armed forces make the central component of the system with their own institutions of education, healthcare, logistical and administrative infrastructures and sometimes with separate justice institutions and judiciary. Consequently, defense budgets often times make the largest component of public spending, even more so when the country is caught in unresolved territorial disputes[21]. Conflicts generally push countries towards militarization and arms races and can significantly increase the risk of corruption in defense spending. [22]

Military conflicts also tend to reduce transparency in defense institutions, expenses (from combat operations to construction and procurement) can be closed to scrutiny due to "national security" justifications. This entails excess secrecy, most of the times unnecessary and unjustified, reducing the effectiveness of external oversight on part of the parliamentary and audit entities and limits public oversight though civil society institutions.

In this context, another contributing factor is urgency to satisfy defense needs which is accompanied with simplification, sometimes even waiver of established procedures and rules avoiding tender requirements for openness and competitiveness. The need to meet urgent

[21] According to data on provided by WB, military expenditures (current and capital expenditures on the armed forces, including peacekeeping forces; defense ministries and other government agencies engaged in defense projects) comprise a quite significant proportion of central government expenditure particularly in countries which are engaged in conflicts, face other security challenges, or are active participants in peacekeeping and stability operations. *Retrieved on 18 February, 2017 from* http://data.worldbank.org/indicator/MS.MIL.XPND.ZS?contextual=max&end=2015&locations=AM&start=2013

[22] DCAF, 2010, "Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices", p. 162

requirements, "especially when combined with references to secrecy, creates scope for non-transparent and arbitrary decisions, allowing suppliers to dramatically overcharge."[23]

Lastly, unresolved territorial conflicts are typically accompanied by an ideology of "national survival" and high levels of public support for the military that can lead to "tacit tolerance of corrupt activities as the price to pay for national security" reinforcing social acceptance of the phenomenon and discouraging reporting for corruption. [24]

Corrupt practices within the defense sector usually take place in areas across which defense spending is being appropriated or there are other leeways to gain corporate rewards. These vulnerable areas mainly include, but, depending on country profile specifications, are not limited to personnel management, defense procurement and construction, operations and maintenance, research and development, etc.

Corruption Risks in Defense establishment of Armenia

Due to the still unresolved, protracted Nagorno Karabagh conflict, for Armenia the number one priority for development then and now continue to be the Armed Forces, as the most important security sector institution. Starting from 1990s the power ministries and the military-political leadership started to gain significant weight becoming more powerful in political life. Naturally, it became increasingly difficult to impose control over the Armed Forces and power establishments which resulted into the spread of corruption.

In the 21st century because of the geopolitical reality Armenia finds itself and because the armed forces are still considered an institutional tool for the ruling authorities to rely on, defense sector continue to be highly prioritized in terms of national investment. In 2015 military expenditures of Armenia comprised 16.9 % of the central government expenditure with a 4.2 % of GDP.[25] Poor exercise of oversight and excessive secrecy has set a fertile ground for multilayered corruption in the defense sector. According to the findings of studies conducted by

[23] DCAF, 2015, "Building Integrity in Defence", Parliamentary Brief, p.2 *available at* <http://www.dcaf.ch/Publications/DCAF-Parliamentary-Brief-Building-Integrity-in-Defence>
[24] DCAF, 2010, "Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices",
[25] This percentage rate has been more or less constant for the recent decade (Compare it to the required regular of 2% of GDP for NATO major countries)

various watchdog organizations[26], as well as the commentary provided by the Head of the BI and HR Center of the MoD corrupt practices in the defense sector of Armenia are predominantly identified in the areas of personnel management, defense procurement and construction, social benefits, operations and maintenance, research and development, audit and oversight. [27]

Personnel management and policies

Compulsory recruitment is assessed as one of the most corrupted processes with conscription exemptions under health-related conditions or postgraduate academic pretexts, dispersion of new recruits across military units far from the Line of Contact or other dangerous areas, favorable duty performance functions. Poor regulation and oversight over recruitment offices and medical commissions undermines the effectiveness of the few measures undertaken by the MoD for prevention of corruption in this area.[28] Appointments, promotions, opportunities for foreign training and posting also provide room for corrupt practices. Despite the fact that the RA Law on Military Service Performance provides guidelines for appointments for positions, terms of offices, qualifications and appraisal systems, most military installments and detachments do not have clear terms of references for their military service slots. There is limited oversight and only partial transparency in promotion of the officers, selections of personnel for education slots abroad and foreign postings which raises serious doubts regarding the objectivity or meritocratic nature of the process.[29]

Procurement

Most of the defense-related commodities are classified and are procured through "limited procedures" predominantly through framework agreements and on one sourcing principle.[30]

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[26] TI, Helsinki Citizens' Assembly Office in Vanadzor, Policy Forum Armenia.

[27] Interview with Mr. Alik Avetisyan, Head of BI and HR Center, MoD, *conducted on 30 March, 2017.*
(The center was created after Armenia joined NATO's Building Integrity programme and became the 13th country to accomplish the BI Self-Assessment Questionnaire ("Test of Honesty") with relevant Peer Review Processes).

[28] Since 2013 the MoD among other improvements in the draft system, started using lottery draw-based draft procedure. However according to TI, the need to substitute the number of "privileged" persons exempted from draft (mainly sons of officials, and people with money and influence), resulted in recruitment of conscripts with health issues. In order to formalize this, the MoD has loosed health requirements, in result of which people with certain medical conditions previously qualified for exemption, become eligible for recruitment.

[29] The TI report particularly mentions that the criteria for service in Afghanistan are not clear. Some of the officers who had allegedly been chosen for the service in Afghanistan were not sufficiently qualified in terms of discipline, physical and other preparation.
TI, "2015 Government Defence Anticorruption Index of Armenia" *available at* <https://transparency.am/en/publications/view/124>, 2016

[30] RA Law on Procurement, (2010), Art 14.2, Art. 19.3.

Procurement procedures are accompanied by arbitrariness in the choice of the proper procurement procedure, overt or covert favoritism towards some companies and lack of transparency under the pretext of "state secret" which precludes the public oversight.

Conflict of interests and reporting (whistleblowing)

Relevant statutory regulations or mechanisms are considered insufficient and lacking.[31] Reports refer to several cases of unauthorized private enterprise by military or other defense ministry (including high caliber) employees.[32] Facilitation fees in defense sector in particular are reported to be a common practice. Internal Audit and Control Departments are considered incompetent. Cases of breaches are not effectively addressed. There are no solid legal safeguards for whistleblowers protection, thus discouraging reporting of corruption among both civil servants and military service members.[33]

Democratic oversight

Society at large is mainly marginalized from the processes of development of main security and defense policies. The very few debates so far have been targeting more at public awareness and less on public discussion. In this context, there is no trusted institutionalized model of cooperation with civil society, or a policy that defines the scope of this dialogue with the defense establishment in pursuit of general democratic oversight.[34]

Additionally, according to the statistics, the main components of democratic control over the armed forces are considered the least trusted institutions, and the society doesn't believe in

[31] Rules of ethics for civil servants in the MoD are governed by Decree N573-N, from 14.05.2008, of the Minister of Defense, based on RA Law on Special Civil Service, Article 4. Rules of honor for military officers are governed by Decree N992, from 20.09. 2012of the Minister of Defense, The breach of rules of honor is considered a disciplinary violation.
TI, "2015 Government Defence Anticorruption Index of Armenia" *available at* <https://transparency.am/en/publications/view/124>, 2016

[32] RA Law on Special Civil Service, Art. 25 ,
RA Law on Passing Military Service, Art 1.3(7)

[33] RA Law on Special Civil Service, Art 23
RA Government decree N 1816-N, 2011 December 15

[34] Despite several successful activities, the Public Council adjacent to the Minister of Defense is perceived either as not effective enough. Some other initiatives of cooperation with civil society were launched under the umbrella of international organizations (OSCE, UN agencies, Counterpart International, etc.) The Standing Committee on Defense, National Security and Internal Affairs also hosted a few discussions. A number of conferences were organized with the support of the Geneva Center of Democratic Control of the Armed Forces.
TI, "2015 Government Defence Anticorruption Index of Armenia" *available at* <https://transparency.am/en/publications/view/124>, 2016

democratic reforms[35]. The overall legal awareness and perception among civil servants on their true role of "exercisers" of civilian oversight and among the military as "being accountable to civilians" are very low.

CHAPTER 2.

Integrity building in defense in the context of security sector reform

Security sector reform and rule of law

[35] CRRC Caucasus Barometer 2015 (Respondents fully trust: NGO's- 3%; President- 3%; Media- 3%; Parliament- 2%; Executive government- 2%; Court System- 2%. Only 5 % of respondents believes in constitutional reforms), *retrieved on* 14 February, 2017 < http://www.crrc.am/hosting/file/_static_content/barometer/2015/CRRC-Armenia_CB2015_Presentation_ENG.pdf>

The discussion in this chapter focuses on the concept of democratic control over armed forces as a necessary prerequisite for integrity building in the defense institution building in the context of general security sector reforms.

Defense institutions and armed forces constitute integral components of the security sector in general, and all processes, trends and cultures in the defense sector is directly linked and impacted by the situation and developments related to the overall security sector.[36]

The concept of security sector reform gained wide political acceptance in several East European and post-Soviet states that decided to undertake efforts towards establishing democratic systems of government, and was extensively endorsed by European and Transatlantic institutions. Based on the experience of subscribed states SSR on the one hand is a "convenient general paradigm for a theoretical analysis of democratization processes" and, on the other, a "rich instrument-box for a practical political action."[37] This multidimensional process among other aspects includes professionalization of armed and security forces with their clearly defined roles and functions structured accordingly to these functions, acceptance of the rule of law and the dominance of the democratically elected authorities, and efficient actions aimed at protecting the state and its individual citizens. [38]

The UN refers to security sector reform (SSR) as "a process of assessment, review and implementation as well as monitoring and evaluation led by national authorities, that has as its goal the enhancement of effective and accountable security for the State and its peoples without

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[36] There are various interpretations of what constitutes the "security sector" concept. We present two: "*The security sector includes all 'state institutions and agencies that have the legitimate authority to use force, to order force or to threaten the use of force. Normally these institutions are the Military (Army, Navy, Air Force), Intelligence, Border Guard and Paramilitary organizations"*
DCAF, 2010, "Oversight and Guidance: The Relevance of Parliamentary Oversight for the Security Sector",
The security sector is "*a broad term often used to describe the structures, institutions and personnel responsible for the management, provision and oversight of security in a country. It is generally accepted that the security sector includes defence, law enforcement, corrections, intelligence services and institutions responsible for border management, customs and civil emergencies. Elements of the judicial sector responsible for the adjudication of cases of alleged criminal conduct and misuse of force are, in many instances, also included. Furthermore, the security sector includes actors that play a role in managing and overseeing the design and implementation of security, such as ministries, legislative bodies and civil society groups. Other non-State actors that could be considered as part of the security sector include customary or informal authorities and private security services".*
Report of the UN Secretary-General (A/62/659) *available at*
< http://undocs.org/A/62/659>

[37] Andrzej Karkoszka, "The Concept of Security Sector Reform", p.5, *available at*
<http://www.dcaf.ch/Chapter-Section/The-Concept-of-Security-Sector-Reform>

[38] Ibid.

discrimination and with full respect for human rights and the rule of law."[39] A special guidance on SSR prepared for relevant U.S. agencies states that "the desired outcome of SSR programs is an effective and legitimate security sector that is firmly rooted within the rule of law"[40].

Most definitions of SSR found in academic literature on strategic sector reform widely reflect and make references to the "rule of law" as a highly central element being an outcome of a successful SSR, a necessary attribute to conduct successful SSR, an integral process, or else. The concepts of security sector reform and the rule of law are highly interdependent, and even more so SSR builds the foundations for the achievement of the rule of law, as well as democratization and promotion of human rights in the pursuit of its main goal- that is enhancement of the 'effectiveness, efficiency and affordability' of the security sector (capacity building) within, what's most important, the framework of democratic governance – the effective, equitable, responsive, transparent, and accountable management of public affairs and resources engendered by participation and consultation in planning and decision making, including with involvement of civil society[41]- that is ensured by civilian oversight and democratic control (good security sector governance).

The core objectives of democratic control and oversight can be categorized in three groups: legality – "*to oversee that the bodies and forces are functioning within the boundaries of the law*"; legitimacy – "*to oversee that the will of the majority in parliament prevails, that the human rights of individuals and minorities are protected, and that the main principles of good*

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[39] The UN SSR perspective, "Sustainable Peace through Justice and security", <http://www.un.org/en/events/peacekeepersday/pdf/securityreform.pdf>

The concept of SSR was coined in the decade of 1990s separately by the development community, who observed the functional relationship between the largely conceived security and the economic development; and from the experiences of the post-authoritarian states, especially those of the East European ones, who transformed their civil-military relations during a general process of democratization. It evolved from its functional scope as a provision of security within the state in an effective and efficient manner, and in the framework of democratic civilian control, to the modem understanding of security, encompassing not only classical concepts of state's security, but also social and human security.
Andrzej Karkoszka, "The Concept of Security Sector Reform", *available at* <http://www.dcaf.ch/Chapter-Section/The-Concept-of-Security-Sector-Reform>

[40] USAID, US DoD, US DoS, 2009, "Security Sector Reform", p. 4, *available at* <https://www.state.gov/documents/organization/115810.pdf>

[41] Report of the UN Secretary-General (A/66/749)
Recommendations for Strengthening the rule of law inter alia include improvement of effective and equitable, accountable and transparent service delivery, empowerment of civil Society
available at < http://undocs.org/A/66/749>

governance are respected"; and efficiency – "*to oversee that the bodies and forces are sufficiently resourced, that they spend their resources efficiently, and that their activities are geared toward the goals as designated by the elected authorities".*[42] In the defense and security sector democratic control and oversight encompasses state and other independent oversight bodies, and, in order to ensure political accountability and transparency of defense and security organizations, it relies on relevant instruments such as constitutional principles, legal rules, institutional provisions, and established relations both within the defense and security sector components, and between political powers (the executive, legislative and judiciary) and the civil society.

It is widely argued and substantiated that effective functioning of the democratic control towards accomplishment of its objectives is possible when it is properly "institutionalized", given the fact that, the security sector (including armed forces) is the source of "*state's monopoly of controlling and applying violence*" and the crucial requirement is that "*no single institution should be either so powerful, or so dominant and influential, that it could endanger the proper functioning of democratic processes."* [43]

"Because we fear others we create an institution of violence to protect us,
but then we fear the very institution we created for protection."[44]

The setting of "*unambiguous attribution of responsibility and accountability…enables the elimination of overlapping missions, and of redundancies in budgeting, resources, and activities"*, "*creates the basis for a more effective and more efficient execution of the mission"* and simultaneously "*enhances both the transparency of the institution and its activities, and facilitates the professionalization of the organization – which, in the final analysis, is much of the answer to the elimination of lingering shortcomings"*[45].

In this sense, a carefully balanced institutionalized distribution of power between the different state institutions, with clear delineation of roles and responsibilities in the process of

[42] Wim F. Van Eekelen, Philipp H. Fluri, 2006, "Defense Institution Building", p.25 <http://www.dcaf.ch/Publications/Defence-Institution-Building2>
[43] Ibid , p.467

[44] Venice Commission, "Report on the Democratic Control of the Armed Forces", *CDL-AD(2008)004* , p.15 <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)004-e>
[45] Wim F. Van Eekelen, Philipp H. Fluri, 2006, "Defense Institution Building", p.24 <http://www.dcaf.ch/Publications/Defence-Institution-Building2>

formulation, endorsement and implementation of defense and security related matters, becomes an imperative. To this end the constitutional framework is of particular importance as it fixes the organs involved in military issues and their authorizations- the armed forces, called for safeguarding national security from external and internal threats and implementation of defense policies, subordinated to the authority of elected civilian officials[46], and the control process over the armed forces- the executive (those who have the authority to decide and act) are accountable to the elected representatives (those who are endowed with powers to review and supervise the performance of the executive)[47].

SSR is believed to be a complex long-term process with a slow progress. The primary reason to this is the fact that "any reform of a security sector has a direct and immediate impact on the political power relationship in a given country, and it can be executed only when there is a political will to undertake democratic reforms in general".[48] Accordingly, states with non-democratic authoritarian regimes or states that are in transition, which often use or are likely to use security institutions as instruments of state suppression, are believed to be reluctant to relinquish this important tool of control.

The reduction of corruption risks in defense constitutes an integral part of broader efforts towards security sector reform and defense institution building. In this domain corruption challenges are affected by discretionary powers of officials in charge and engaged and the level

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[46] Executive branch includes the Head of State, President, Government, Prime Minister, MoD, National security councils. In these executive "arrangements" civilian oversight plays a very important role, since security and defense policies are "civilian matters by their very nature of political endeavors." *"Even in societies where military are playing significant roles in state government, the tasks of formulating security and defense policies, implementing them and controlling these processes are still civilian tasks, though performed by the military. Civilians have an important role to play not only at the highest levels of decision-making, but throughout the governmental hierarchy"*. Civilian oversight, however, is not a sufficient condition for democratic oversight (e.g. in the Soviet Union, armed forces where controlled by civilian authorities, yet that regime was far from democratic control). It is the parliamentary involvement that makes the essential difference between and democratic oversight.
Venice Commission, "Report on the Democratic Control of the Armed Forces", *CDL-AD(2008)004* p.59.
<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)004-e>

[47] Parliaments and their respective Committees of Defense play important roles for the following reasons: 1) Parliaments are a cornerstone of democracy, there to prevent autocratic rule; 2) The principle 'no taxation without representation'; 3) Parliaments can create legal parameters for security issues; 4) They are a bridge to the public
Venice Commission, "Report on the Democratic Control of the Armed Forces", *CDL-AD(2008)004* p.59.
<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)004-e>

[48] Andrzej Karkoszka, "The Concept of Security Sector Reform",p.7, *available at*
<http://www.dcaf.ch/Chapter-Section/The-Concept-of-Security-Sector-Reform>

of transparency and accountability which are established by relevant legal and normative frames, and well as by the fact of how effective or lacking are general democratic control mechanisms or parliamentary and civil oversight, and whether there is pertinent legal foundation to ensure proper implementation of the latter. Ultimately the most effective means to fight corruption and build integrity in the defense sector should be part of a broader reform process; "a norms transfer to inculcate the sector with the highest democratic ideals and practices, thus addressing the root causes of corruption."[49]

Security sector reform in Armenia

Armenia's first-ever pledge for security sector reforms be found in the Declaration of Independence of the RA in 1990, where the people of Armenia declared beginning of the process of establishing of independent statehood "with the objective of creation of a democratic society based on the rule of law". What is more important, the document proclaims about creation of its own "armed forces, internal troops, organs of state and public security under the jurisdiction of the Supreme Council[50]" and states that "Armenia determines the regulation of military service for its citizens independently", "military units of other countries, their military bases and building complexes can be located on the territory of the Republic of Armenia only by a decision of Armenia's Supreme Council", that "armed forces of Armenia can be used only by a decision of its Supreme Council", and that "Armenia guarantees de-politicization of law enforcement bodies and armed forces on its territory" [51], in this manner introducing both concepts of civilian supremacy and parliamentary oversight to our reality and consequently establishing foundations for democratic control over armed forces.

As a newly independent state, Armenia started actively affiliate itself with international military and political partnership and cooperation formats and pledged for new commitments in the scope of several mechanisms, initiatives and documents[52]. With the background of this process of approximation and emerging new security challenges, there was an objective need to

[49] DCAF, 2010, "Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices",p.15
[50] The name of RA Parliament
[51] Declaration of Independence of Armenia (1990)
[52] Armenia joined NATO's Partnership for Peace (PfP) OSCE, CoE, receiving an access to a multilateral forum for dialogue and consultation on political, legal and security-related issues.

build and develop effective and efficient military and defense capacity, with clearly outlined missions and roles of chain of command and capable resource management in the broader context of security sector reform.

One of the most prominent milestones for the SSR was Armenia's decision to become party to politically-binding OSCE Code of Conduct on Politico-Military Aspects of Security which is one of the main SSG instruments that contains a set of principles, provisions, norms, and rules of responsible and cooperative behavior in the field of security addressing new challenges and risks to security with the intention to endorse the concept of the democratic control of the armed forces to contribute to the democratic, and thus stable and predictable, development of the new and newly sovereign or democratic states.[53]

In 2007 the President of Armenia approved the National Security Strategy which stated that "the sustainable and secure development of the Armenia calls for greater efficiency in governance, establishment of democratic values and continued economic growth. In recognition of the above, Armenia has undertaken a comprehensive reform process" and "any decrease in the speed or scope of its reform effort is seen as potential threats to national security".

> *"Institutional reforms are aimed at the strengthening of a democratic state, the effective functioning of the bodies of public administration, the independence and impartiality of the judiciary, a consolidation of the system of local self-government, the wider inclusion of civil society in the decision-making and monitoring processes, and an intensification of the fight against corruption, especially bribery.…The Republic of Armenia consistently adheres to the principles of civilian control and democratic planning within the defense budget process".*[54]

Throughout these years constitutional reforms have been the substantial side of the SSR, as they generally aim at "effective strengthening of the stability, independence and efficiency of state institutions through a clear division of competencies and effective checks and balances" and "should also introduce additional mechanisms and procedures of parliamentary control over the

[53] Democratic control over armed forces is stipulated in Sections VII-VIII, <http://www.osce.org/fsc/41355?download=true>

[54] The National Security Strategy of the Republic of Armenia, *available at* <http://www.mil.am/media/2015/07/828.pdf>

actions and intentions of the executive."[55] In the context of Armenia, the adoption of the first Constitution in 1995 played "a significant role in the establishment of democracy in the Republic of Armenia, strengthening the bases of a rule-of-law State, finding constitutional solutions in crisis situations, gradual development of the institutions of the State power, and prescribing the constitutional safeguards for the protection of human rights". Further, "the constitutional practice that emerged subsequently, as well as new issues related to the development of public relations and enrooting of democracy, and the obligations assumed in respect of the accession to the Council of Europe gave rise to the necessity of carrying out constitutional reforms. Already in late 1990's this necessity was considered as a pending issue". [56]

Despite previous 2 successfully accomplished phases of constitutional reforms, "due to objective and subjective reasons, the development of independent statehood had still not reached a milestone where one could claim that democracy stands on firm ground, human rights are safely protected, an effective system of government is in place, and the courts are independent and impartial". The key issue was "to harmonize the constitutional functions and powers of bodies bearing functions of state power, to clarify the limits of their discretion, and to create real preconditions for confining power by law" [57].

> "*Within the triune chain of "function-institute-power" essential harmony is not yet guaranteed at the constitutional level by the Constitution of the Republic of Armenia. Whereas, without that the desired balance of functional, counterbalancing and restraining powers may not be ensured. Absence of the latter substantially endangers the stable development of the country, and dangerously expands shadow relations and the scope of subjective discretion in administration of State power"*[58].

To this end, in collaboration with the Venice Commission the Professional Commission for Constitutional Reforms adjunct to the President of the Republic of Armenia developed the

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[55] Venice Commission, "Compilation of Venice Commission Opinions Concerning Constitutional Provisions for Amending the Constitution", *CDL-PI(2015)023**
<http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)023-e>

[56] Venice Commission, "Concept Paper on the Constitutional Reforms of the Republic of Armenia", *CDL-REF(2014)050,* p.2.
< http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2014)050-e>

[57] Ibid.p.4.

[58] Ibid.p.13

draft of constitutional amendments, which were subsequently endorsed upon the referendum in December 2015, when the people of Armenia approved the shift of the government from presidential to parliamentary system, with its subsequent changes in the relations of state organs in the security and defense sector.

CHAPTER 3.
Constitutional implications for defense and security sector of Armenia

This Chapter will provide a comparative analysis of democratic control mechanisms over the armed forces envisaged by previous and current constitutional frameworks in Armenia and will capitalize on some of the highlights that might have implications for defense institution building.

The "raison d'être" of the armed forces of Armenia- to ensure security, defense and territorial integrity of Armenia, as well as inviolability of its borders- first time was introduced in the amendments of the Constitution in 2005.[59] Limits to the use of force are not stipulated in either of Armenian Constitutions[60] however grounds and the procedures for declaring martial law and resorting to the use of the Armed Forces are provided.

The NSS and the Military Doctrine approved in 2007 contain more elaboration in relation to the purpose of the armed forces setting the goal of building efficient and modern armed forces, always prepared to repulse any threat[61]. The structure and functions of the armed forces where additionally detailed in the RA Law on Defense which was the first attempt to legally regulate roles and relations of relevant stakeholders.[62]

[59] The first Constitution of Armenia does not include a separate description of the role or the mission of the armed forces . RA Const. (2005), Art. 8.2. RA Const. (2015), Art.14, 2015
[60] E.g. Constitution of Germany includes provisions on purposes and extends permitted limits.
[61] The NSS and MD of Armenia stipulates that Armed forces of Armenia are used partially or entirely in war time, for defensive purposes *available at* < http://www.mil.am/media/2015/07/825.pdf >; <http://www.mil.am/media/2015/07/828.pdf>
[62] RA Law on Defense (2008), Art.11.1-2, 2008 ,

Incidentally, both previous and current Constitutions, as well as the Law on Defense, reiterate the statutory formulation found in the Declaration regarding the armed forces being under *civilian control* and maintain *neutrality in political matters*[63].

Before Constitutional Amendments of 2015

Along with a strong obligation to be the guarantor of the independence, territorial integrity and security of Armenia, the previous Constitution set a quite solid executive power for the President, who was the Head of State[64] and the Commander in Chief of the armed forces, coordinated the operations of the government bodies in the area of defense, appointed and dismissed the staff of the highest command of the armed forces (the chef of staff) including during warfare and decided on the use of the armed forces. He held the right to declare a war, a martial law, call for a general or partial mobilization and decide on the use of the armed forces. Additionally, in case of imminent danger to the constitutional order, he held the right to declare state of emergency upon consulting with the chairman of the parliament and the prime minister, and take measures commensurate to circumstances.[65]

Constitutional reforms in 2005 established a presidential parliamentary system of the government where the Prime Minister was a nominee who enjoyed confidence of the majority of the parliamentarians and had a say in the appointment of government members by the President.[66] Nonetheless, the central role of the President didn't wane. The role of the government was limited to ensure the implementation of defense, national security and foreign policies together with the presidents. While the Prime Minister was endowed with the power to convene and chair government sittings, the president alone had the right to convene government sittings concerning foreign and defense policies.[67] In order to facilitate efficient implementation of ensuring security and protection of national interests, a special advisory body- the National Security Council- adjacent to the President was formed and presided by the President.[68]

[63] RA Const. (2005), Art. 8.2, RA Const. (2015), Art. 14, RA Law on Defense (2008), Art 11.3.
[64] RA Const (1995-2005). Art. 49,
[65] RA Const (1995-2005). Art. 55 (12, 13, 14)
[66] RA Const (1995-2005). Art. 55 (4)
[67] RA Const (2005). Art 85, 86,
[68] RA Const (1995-2005). Art 55 (6), RA presidential decree NH-128-N, NH-63,

Relevant to the military sector the National Assembly comprised the power to legislate.[69] The result of the exercise of this power is the existing military law system that provides the regulating framework for the armed forces, including the laws on defense, on legal regimes of martial law and on state of emergency, on passing the military service, etc. Further, the NA held the power to make decisions on ratification, suspension or denouncement of political or military international interstate agreements[70], although the NA did not have the power to ratify international intergovernmental or interagency treaties on military cooperation.

Upon the recommendation of the president, the NA had the authority to declare war[71]. Also, in case of use of the armed forces or declaration of martial law a special sitting of the NA was to be convened by force of law, at the same time it had the right to annul the progress of measures that can be undertaken by the Presidents in regards to the right of the latter to declare martial law, to call for mobilization and decide on the use of the armed forces, and the right to declare state of emergency and take measures appropriate in the given circumstances.[72]

To deal with various parliamentary dimensions involved in the oversight of armed forces, including the preliminary review of draft legal acts and providing the NA with relevant conclusions, the NA has an institutionalized Standing Committee on Defense, National Security and Internal Affairs that focuses on security sector.[73] The legal regulating framework, however, did not elaborate on details of defense-related functions generally reserved for Committees on Defense matters, particularly, in the rules of procedure of the committee there is no explicit stipulation for the right to initiate legislation on defense issues, monitoring of defense procurement, or the range of officials (including the Minister of Defense, military leadership members, civil servants, experts) who are eligible for being summoned to plenary sessions or parliamentary hearings to testify[74]. There is also no specific mentioning about consultation over defense-related international treaties and use of force or deployment of troops and review of

[69] RA Const (2005). Art 62; RA Law on Rules of Procedures of NA (2002), Art. 1
[70] RA Const (1995-2005). Art. 81;Art7, Art 24 of RA Law on International Treaties (2007) stipulates that military and defense relations with international partners are regulated by international interstate agreements, and these agreements are subject to ratification by the NA,
[71] RA Const. (1995-2005). Art. 81.3
[72] RA Const. (1995-2005). Art. 55.13-14, RA Law on Rules of Procedure of the NA (2002), Art 42, Art 81.3, Art 92.
[73] RA Const. (2005) Art 73, RA Law on Rules of Procedures of NA (2002), Art, 21.
[74] The Rules of Procedure of the standing committee on defense (2012) Art 52.

government defense policy, although these aspects can be covered under the general stipulation regarding the power of presenting opinions/ conclusions to the NA. The Committee also had the powers to issue inquiries to state government, local self-administration entities, public officials, institutions and organizations regarding draft legal acts under its scrutiny and other relevant issues[75], also had the right to convene subcommittees (the right for participation is reserved exclusively for Committee members) and working groups (may include other participants) setting the objectives for commission.[76] The existing legal framework, however, did not specify the cases and the purposes requiring creating of these mechanisms. Sittings of the Committee are held public, unless the agenda includes debates on classified materials included in the draft budget and in the annual report of budget execution. [77] These closed-door sittings are held, jointly with the standing committee on financial-credit and budgetary affairs, and in addition to members of parliament, the chair of the control chamber, and authorized representatives of the Prime Minister, may also be attended by the president, the prime minister, other authorized people.[78]

The possibility of creation of ad hoc committees "for the preliminary review of special draft laws or for submission of conclusions and reports on certain issues, events and facts to the National Assembly", as additional ex post and ex ante control mechanisms is also envisaged. [79]

Another important competence of the NA was the decision over the military budget that derives from its general budgetary power: it adopts the budget, supervises its execution, examines its annual execution report and adopts it[80]. The NA receives classified expenditure articles included in the draft budget in a separate close envelope in-the-clear, which is submitted for preliminary discussions by the Standing Committee and relevant commentary. The standing committee submits relevant proposals on amendments to the Government which in case of approval by the latter may be included in the draft budget.[81]

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[75] The Rules of Procedure of the standing committee on defense (2012), Art 78
[76] The Rules of Procedure of the standing committee on defense (2012) Art 6,
[77] RA Law on Rules of Procedures of NA (2002), Art 80.2., 88.2.
The Rules of Procedure of the standing committee on defense (2012) Art 17, 1), 2),
[78] RA Law on Rules of Procedures of NA (2002), Art 28,
The Rules of Procedure of the standing committee on defense (2012) Art 18
[79] RA Const. (2005). Art. 73 , RA Law on Rules of Procedures of NA (2002), Art 22
[80] RA Const. (2005) Art 76, 77
[81] RA Law on Budgetary System (1997), Art 21.14,
RA Law on Rules of Procedure of NA (2002), Art 73..3-5

The representative of the Standing Committee on Defense has the right to to present the conclusion of the committee on the lawfulness and reasons of expenditures with regard to budget articles containing state and official secrets during the debates on the draft budget law. And present the conclusion of the committee on the legality and reasons of expenditures included in the annual budget execution report containing state and official secrets. [82]

The powers of the parliament could be exercised the following mechanisms: questions, written or oral, to the government- in one month only one written and one oral question; interpellations, which are written inquiries addressed by a faction or MP group to the Government within one regular session a faction may address and interpellation to the government no more than once during one regular session, within 20 days after receiving the interpellation the Government replies in writing to the faction or deputy group, which is the author of the interpellation; and hearings, which can be organized at least once during sessions by the standing committees.[83]

Legal relations and roles of the executive within the defense sector are further institutionalized by two particular legal acts- the RA Law on Defense, and the RA Government Decision 1554-N, both adopted in 2008.

These two acts refine additional aspects of the powers of the executive in relation to the defense sector. Particularly, the President approves the main directions of defense policy and conceptual documents of strategic importance (national security strategy, military doctrine), plans of development, use and mobilization of armed forces, civil defense, state development plans of military industry, armaments and military equipment, approves the structure of the Armed Forces. The Government participated in the development of defense policy directions, and upon the President's approval, ensures its implementation, approves the total number of military and civil service members, the structure of the armed forces upon submission by the Minister of Defense, approves the defense-related state orders/quotations offer for contracts, signs international intergovernmental treaties in relation to defense matters.[84] Apart from some responsibilities as a part of the Government (participates in drafting of national strategic concepts and plans), the

[82] RA Law on Rules of Procedures of NA (2002), 81. 2.(c-d)
[83] Ra Const. (2005) Art 80; RA Law on Rules of Procedures of NA (2002), Art 32, 105
Rules of Procedure of the standing committee on defense (2012), Art 72,
[84] RA Law on Defense (2008), Art 5, Art.7

Ministry of Defense makes proposals regarding the defense expenditures in the state budget, oversees the conscription process, oversees the inventory and allocation of resources and assets necessary for operational efficiency and expenditure of financial means, issues quotations/ orders for necessary procurements, develops relevant legal acts and ensures compliance with pertinent legislation. The Minister is in charge for the direct command of the Armed Forces and is accountable to the President and the Prime Minister; he ensures implementation of the MoD functions, approves the number of conscripts, presents the structures of the MoD and General Staff for the President's approval, presents the overall number of military and civil service members for the Prime Minister's approval. The General Staff is the central state body implementing the command of the Armed Forces, and directly responsible for implementation of functions of the Armed Forces. The GS develops and submits to the Minister proposals on directions of defense policy and the structure and number of armed forces, oversees activities of the Armed Forces and other entities and organizations under the structure of the Armed Forces. The general staff is managed by the Chief of general Staff, highest military official in the armed forces appointed by the president on an individual principle who is accountable to the Minster of defense.[85]

Constitutional Amendments of 2015

In the wake of the new Constitutional amendments powers and the position of the President are substantially reduced: he is no more elected by the people, and his main functions which are exercised without a proposal from the Prime Minister or the Government among other things include the signature and publication of laws, appointments to state position, resolution of issues related to citizenship, granting pardon, giving awards and honorary titles, awarding the highest grades according to provisions of the law which can require intervention by other state organs.[86]

Other powers of the President, who is elected by the NA, are exercised on the basis of a proposal on part of the Government or the Prime Minister, including conclusion of international treaties, appointment and recall of diplomatic representatives of Armenia, approval and

[85] RA Law on Defense (2008), Art 12, 13; RA Government Decision N1554-N (2008), Annex 1,3
[86] RA Const. (2015), Art. 129, 134-137

suspension or renouncing of international treaties not requiring ratification, appointment and dismissal of the supreme command of the armed forces, awarding of the highest military ranks."[87]

The president's autonomous powers in are very limited and conditioned by the proposal of another state organ, which indicates that the central body in the new constitutional system is the Government the general role of the Prime Minister gets a new emphasis, and in this context, an important change is seen in the relations between the Executive and the armed forces.

The armed forces become subordinated to the Government, which is the highest body of the executive power that develops and implements the domestic and foreign policy of the state and conduct the general direction of the bodies of the state administration system. The power to make decision on engagement of Armed Forces also shifts to the Government. [88]

The Prime Minister, who is nominated by the parliamentary majority and appointed by the President, gets a special position inside the Government with extended competencies. In general, he determines the general guidelines of the Government's policy, directs and co-ordinates activities of the Government, and, gives instructions to the Government members on specific issues.[89]

The Prime Minister becomes the Supreme General Commander of the armed forces during war and in case of urgent necessity makes the decision on engagement of the armed forces on proposal of the Minister of Defense, immediately informing about it the Government members.[90]

General command of the armed forces is vested with the Minister of Defense, and the highest military official of the armed forces is the Chief of General Staff who in the absence of war is subordinate to the Minister of Defense. Both the Minister of Defense and the Chief of General Staff are appointed by the President upon the proposal of the Prime Minister who also leads the Security Council. The latter is in charge to prescribe the general guidelines of defense policy.[91]

[87] RA Const. (2015), Art 125, 132.1. (1-2), 132.2,133
[88] RA Const. (2015), Chapter 6, Art 146.1-3, 155.1
[89] RA Const. (2015), Chapter 6, Art 149.1, 149.5,152.1
[90] RA Const. (2015), Chapter 6, Art 155.1, 155.4
[91] RA Const. (2015), Chapter 6, Art, 150, 155.2-3

The role of the National Assembly as an entity which apart from being the people's representative body exercising the legislative power and adopting the state budget conducts parliamentary oversight, including through standing committees, has been institutionalized constitutionally for the first time. The NA ratifies, suspends, or renounces international treaties that have a political or military nature.[92]

Relevant to the military sector the National Assembly retains the power to legislate.[93] It also retains its general budgetary power over adoption of the budget submitted by the government, supervision over its execution, examination of the annual budget report and its respective adoption[94].

The current Constitution contains statutory references regarding organs of parliamentary control: Article 106 states that "for the purposes of preliminary discussion of draft laws and other issues pertaining to the authority of the National Assembly and of presenting opinions thereon to the National Assembly, as well as of *conducting parliamentary oversight*, the National Assembly shall form standing committees."[95] Accordingly, the Standing Committee on defense and security matters reserves the right to, inter alia, issue written inquiries to state entities, invite parliamentary hearings and convene subcommittees and working groups.[96]

Another parliamentary oversight mechanism was also introduced by the new Constitution: According to Article 108 upon the demand of at least one quarter of the total number of

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[92] RA Const. (2015). Art. 88, 116

[93] RA Const.(2015). Art 62, RA Law on Rules of Procedures of NA (2016), Art.1

[94] RA Const. (2015). Art .110, 111

All relative procedural rules are pretty much the same. The NA receives classified expenditure articles included in the draft budget in a separate close envelope in-the-clear, which is submitted for preliminary discussions by the Standing Committee and relevant commentary. The standing committee submits relevant proposals on amendments to the Government which in case of approval by the latter may be included in the draft budget.

[95] RA Law on Rules of Procedures of NA (2016), 12.1.(2)

The representative of the Standing Committee on Defense has the right to present the conclusion of the committee on the lawfulness and reasons of expenditures with regard to budget articles containing state and official secrets during the debates on the draft budget law,and present the conclusion of the committee on the legality and reasons of expenditures included in the annual budget execution report containing state and official secrets. Sittings of the Committee are held public, unless the agenda includes debates on classified materials included in the draft budget and in the annual report of budget executionThese closed-door sittings are held, jointly with the standing committee on financial-credit and budgetary affairs, and in addition to members of parliament, the chair of the control chamber, and authorized representatives of the Prime Minister, may also be attended by the president, the prime minister, other authorized people.

RA Law on Rules of Procedures of NA (2016), Art. 14, 81, 88, 117

[96] RA Law on Rules of Procedures (2016) Art. 12.1.(4-6)

parliamentarians, an inquiry committee of the National Assembly is formed by virtue of law to establish facts on the issues of public interest, although the powers of an inquiry committee in the fields of defense and security may be performed only by the competent standing committee of the National Assembly, by demand of at least one third of the total number of parliamentarians. Members of the National Assembly have the right to pose written and oral questions. The latter are answered by the Government members. Factions have the right to address the Government members with written interpellations which must be answered within 30 days. Also, deliberations on urgent topics of public interest may be conducted.[97]

Finally, the standing committees have the right to ask information regarding the actual state of execution of the government program, has the right to request information that contains state and service secrecy and either receive them or familiarize themselves on site.[98]

In view of the discussion above, some of the most important highlights that bear significant constitutional implications are the following:

- Previous constitutional framework provided for control over the armed forces through civilian officials who were directly elected (president), or appointed (prime minister-by the majority elected representatives; minister of defense- by the president upon the prime minister's proposal), whereas with current Constitution both the prime minister and the president are elected by the parliament. Seemingly an important element towards the enhancement of parliamentary oversight, nonetheless, in view of the change in the balance of powers within the executive branch with considerable powers vested with the Prime Minister, there is a concerning observation that "unlike the President of the Republic, the Prime Minister does not represent the nation, but a political majority".[99]

- The new constitutional amendments provide delineation of roles of executive decision makers, including with a first-ever statutory reference to the powers of the Minister of Defense. However they fall short of clarifying certain aspects of their statuses under different conditions: for instance, the status of the Chief of Staff during wartime is not mentioned, availing for

[97] RA Const. (2015). Art. 108, 112-114
[98] RA Law on Rules of Procedures of NA (2016), Art. 122
[99] Venice Commission, Second Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8,9,11 to 16) of the Republic of Armenia, CDL-AD(2015) 038
http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)038-e

presumption that he should become subordinate the Prime Minister. Similarly, there is no explicit mentioning about the Supreme General Commander of the armed forces during the peacetime (during the wartime it is the Prime Minister). In its opinion the Venice Commission concludes, that "President's power under Article 133 to appoint and dismiss the Supreme Command and to award the highest ranks upon proposal of the Prime Minister suggests that the President is the Supreme General Commander during peacetime."[100] This aspect however needs further elaboration to avoid discrepancies in respective roles and missions under different situations.

- The new constitution stipulates term of office for the Chief of General Staff to be prescribed by the law. The NA was left out from the position to recommend the executive about the appointment of the Chief of General Staff, which would have fostered the latter's direct accountability. [101] "*Parliament should be given the power to express its consent to important appointments, in order to keep the executive accountable and to ensure that the rule of law is respected in the appointment procedures. Furthermore, parliamentary involvement is crucial to ensure transparency."*[102]

- The NA generally exercises *a posteriori* control over martial law decisions with the possibility to revoke or substitute them. The RA Constitution of 2005 stipulated co-participation in the *decision* for the state of emergency situations by the President, who prior to making the decision was supposed to consult with the Chair of the NA (and the Prime Minister).[103] The new Constitution no longer provides for this- Government declares state of emergency, and then after the NA can exercise *a posteriori* control.[104] Further, Article 120 stipulates that: "In case of declaration of a state of emergency, a special sitting of the National Assembly shall be immediately convened by virtue of law. The National Assembly may terminate the state of emergency or cancel the implementation of measures by majority vote of

[100] Venice Commission, First Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8,9,11 to 16) of the Republic of Armenia,CDL-AD(2015) 038
http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)037-e

[101] Israel has a similar system, and Estonia and Lithuania exercise the practice.
[102] Venice Commission, "Report on the Democratic Control of the Armed Forces", *CDL-AD(2008)004* p.59. <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)004-e>
[103] RA Law on State of Emergency (2012), Art 3.
[104] RA Const. (2015). Art 120

the total number of parliamentarians." Notwithstanding this immediate post-decision consultation and the necessity of consecutive approval of measures by the parliament the powers of the latter during the state of emergency (ex post control) are not clear and require elaboration.

- The National Assembly of Armenia falls under the categories of both budget-influencing parliaments that have the right to amend the budget through relevant recommendations or reject the budget and parliaments with limited effect on budget formulation [105]. The powers of the NA in terms of budget matters continues to remain *ex ante* (consideration of the draft budget) and ex post (deliberation of the annual government report). Article 111, inter alia provides that the "National Assembly shall exercise oversight of the execution of the state budget". Broadly interpreted this might also mean that the oversight of NA can be engaged during actual execution phases. In any case, forms in which the NA should exercise such oversight are not mentioned. There is an attempt to fill this shortcoming in the Rules of Procedure of the NA.[106] According to commentary provided by one of the experts at the DC, the committee receives fact sheets on quarterly reports on current execution of the budget from the Budget office, however that periodicity should "exclusively be attributed to the diligence and professionalism of the Budget Office staff, as the process has not been clearly regulated. Terms of functions of this body are not clear yet. "[107]

- Both recent and current Constitutions provided for parliamentary hearings as mechanisms for parliamentary oversight at the disposal of the Standing Committees. Previous Rules of Procedure for the NA envisaged at least 1 hearing for the plenary session to be organized by the Committees, which allowed them to hold at least 2 hearings per year. Traditionally the Standing Committee on Defense, National Security and Internal Affairs is one of the few Committees (if not the only one), that fully uses this opportunity of inviting 2 and more hearings, and the wide portfolio of the Committee put the latter in a rather disadvantageous position in the sense of the necessity to make a choice among the defense, the police or the

[105] Venice commission defines 3 categories of budgetary power: budget-making parliaments, budget influencing parliaments, and parliaments with limited effect on budget formulation.
Venice Commission, "Report on the Democratic Control of the Armed Forces", *CDL-AD(2008)004* p.59.
<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)004-e>
[106] RA Law on Rules of Procedures of NA (2002), Annex 1, Chapter 2
[107] Interview with an expert from the Standing Committee on Defense, National Security and Internal Affairs, conducted on April 25, 2017

emergency situations issues.[108] The new Rules of procedure for the NA does not include any explicit mentioning in this regards, which is case of proper procedural regulation in the future might be of benefit.

- Previously during regular session in one of the sittings members of parliament had the right to issue questions to the Prime Minister and the Government members.[109] Current Constitution excludes the Prime Minister from this arrangement, thus decreasing the full capacity of this control mechanism.

- The Security Council presently obtains greater role. Because of the strategic nature of defense-related policies and guidelines, proposal and suggestions could not be merely adopted as advisory opinions, but required endorsement by decision. To this end the process of transition of the Security Council form advisory body to a constitutional entity with a decision making power was launched by the Presidential Decree NH-626-N from August 10, 2016.[110] However, the composition of the Security Council is not known yet, nor is it clear to what extent the parliament (the standing committee on defense and security issues) will be engaged in this new setting.

CHAPTER 4.

Implications for transparency enhancement

Apart from the relevant restraint mechanisms over the discretionary powers and enhancement of accountability one other option in the toolkit of best strategies to fight corruption is fostering a transparent environment. Transparency ensures public scrutiny over state administration, increases the probability of detection of abuse by public officials and also allows the society to react and in this manner impact the process of policy formulation. In this light, "the principle of transparency, including access to information held by public authorities, for

[108] Interview with an expert from the Standing Committee on Defense, National Security and Internal Affairs, conducted on April 25, 2017.
Number of total hearings per year: 3 in 2013; 2 in 2014; 2 in 2015; 2 in 2016. Number of hearings from 2013-2016 per areas: Ministry of Defense - 4;the Police – 3; Ministry of Emergency Situations - 2.
[109] RA Const. (2005), Art 80, RA Const. (2015), Art 112
[110] Presidential Decree NH-525-N (2016)

democracy and good governance in general and for the fight against corruption in particular" is very important.[111]

Understandably, legitimate, well-defined national security interests are valid grounds for withholding information held by public authorities, whereas the widely popular tendency in the defense sector for "the prolific reference to secrecy in order to "protect national security interests" severely limits the opportunities for parliamentarian oversight and other forms of societal control of the executive"[112]. "A state must be able to keep certain information secret, and to protect this secrecy… Secrecy can however also hide incompetence, ulterior motives and corruption. Secrecy moreover makes life easier for state authorities, in that it shields them, and their policy-making, from scrutiny from citizens and the media. State authorities are thus continually tempted to keep information secret and to over-classify information."[113]

> *"While there is at times a tension between a government's desire to keep information secret on national security grounds and the public's right to information held by public authorities, a clear-eyed review of recent history suggests that legitimate national security interests are, in practice, best protected when the public is well informed about the state's activities, including those undertaken to protect national security"[114].*

Aspects of the freedom of expression and access to information in Armenia have been regulated by relevant legal framework. The RA Constitution, 2005, stipulated that everyone has the right to freely express opinion, and no one shall be forced to recede or change opinion."[115] Article 43 envisaged restrictions to this right, stating that: "...[it] can be temporarily restricted only by law if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, constitutional rights and freedoms, as well as honor and reputation of others. Any restrictions on human and civil rights

[111] PACE Resolution 1954 (2013), National security and access to information, *available at* <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20190&lang=en> October 2,
[112] DCAF, 2010, "Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices",p.19
[113] Venice Commission, "Compilation of Venice Commission opinions and reports concerning freedom of expression and media" CDL-PI(2016)011
<http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)011-e>
[114] "The Tshwane Principles" p.6
<https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>
[115] RA Const. (2005), Art. 27

and freedoms shall not exceed the scope set by the international commitments of the Republic of Armenia."

The new Constitutional amendments set out the right and then the legitimate aims for its restrictions, no provision "provides for the principle of proportionality and necessity in a democratic society, which is required under the ECHR for restricting the exercise of these fundamental rights. Instead, there is a general provision on the application of the principle of proportionality to all restrictions to fundamental rights and freedoms, as well as a provision on the "inviolability of the essence of provisions on Fundamental Rights and Freedoms,[116] hence *"It the central requirement of necessity is now "hidden" in the Article on the principle of proportionality, and is not included in the provisions on particular fundamental rights[117]".*

Based on this statutory provision, the State can interfere with the freedom of expression and access to information and respectively restrict the accessibility of such information, which in case of dissemination, can cause harm to the state security- namely, information that contains state and service secret.[118]

The Law on State and Service Secret set forth the list of categories of information that are eligible for classification, describe the harm that could result from disclosure, criteria of classification, levels of authorities of different state entities to classify the information.[119] Based on the requirements deriving from the law, the Government developed the extended categories of information listed under state secret, and respective state agencies developed their exclusive narrow list of categories of classified information, initially also eligible for classification. [120]

In 2012, the Constitutional Court of Armenia ruled that classification of these exclusive narrow agency lists contradicts the principles of Art, 27 and 43 and declared that requirement void, making reference to requirement of publicity mentioned in Resolution 1551 (2007) by PACE.[121] Another significant aspect of this decision is the Court's open reference to "legitimate

[116] RA Const. (2015), Article 78, Art. 80.
[117] Venice Commission, First Opinion on the Draft Amendments to the Constitution (in particular to Chapters 8,9,11 to 16) of the Republic of Armenia,CDL-AD(2015) 038
http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)037-e

[118] RA Law on Freedom of Information (2003), Art 8
[119] RA Law on State and Service Secret (1996,) Art . 9, Art. 3
[120] RA Government Decision N173 (1998). Based on the decision the MoD developed its own list.
[121] RA Constitutional Court Decision SDO-1010(2012).

national security interest" (as the ground for restrictions to certain rights under Art 43), although did not elaborate on what exactly that concept comprehends.

In one of its recent resolutions PACE calls on all member States of the Council of Europe to adhere to "the Tshwane Principles" while modernizing their legislation and practice concerning access to information[122]. This new body of principles on National Security and the Right to Information lay down a range of standards as guidance "to reach an appropriate balance between public interests both in national security and in access to information"[123].

The Tshwane Principles, inter alia, stipulate that: *"No restriction on the right to information on national security grounds may be imposed unless the government can demonstrate that: (1) the restriction (a) is prescribed by law and (b) is necessary in a democratic society (c) to protect a legitimate national security interest; and (2) the law provides for adequate safeguards against abuse, including prompt, full, accessible, and effective scrutiny of the validity of the restriction by an independent oversight authority and full review by the courts",* and that necessary in a democratic society (b) means "*disclosure of the information must pose a real and identifiable risk of significant harm to a legitimate national security interest. (ii) The risk of harm from disclosure must outweigh the overall public interest in disclosure* (emphasis added) *(iii) The restriction must comply with the principle of proportionality and must be the least restrictive means available to protect against the harm. (iv) The restriction must not impair the very essence of the right to information".*

The document also provides the list of factors to be considered in deciding whether the public interest in disclosure outweighs the risk of harm; among factors favoring disclosure is the

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"Legislation on official secrecy, including lists of secret items serving as a basis for criminal prosecution must be clear and, above all, public. Secret decrees establishing criminal liability cannot be considered compatible with the Council of Europe's legal standards and should be abolished in all member states."

[122] PACE Resolution 1954 (2013), National security and access to information, *available at* <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=20190&lang=en> October 2,

[123] "Legitimate national security interest" as *"an interest the genuine purpose and primary impact of which is to protect national security, consistent with international and national law. A national security interest is not legitimate if its real purpose or primary impact is to protect an interest unrelated to national security, such as protection of government or officials from embarrassment or exposure of wrongdoing; concealment of information about human rights violations, any other violation of law, or the functioning of public institutions; strengthening or perpetuating a particular political interest, party, or ideology; or suppression of lawful protests".*
"The Tshwane Principles" *available at*<https://www.opensocietyfoundations.org/sites/default/files/global-principles-national-security-10232013.pdf>

necessity to enhance the government's accountability, contribute to positive and informed debate on important issues or matters of serious interest, promote effective oversight of expenditure of public funds, reveal the reasons for a government decision, etc[124]. It also outlines some categories of information of particularly high public interest "given their special significance to the process of democratic oversight and the rule of law", with corresponding strong presumption in favor of disclosure; along other important areas this applies to the structures and powers of government, particularly in regards to the information needed for evaluating and controlling the expenditure of public funds (including the gross overall budgets, major line items, and basic expenditure information for such authorities); financial Information sufficient to enable the public to understand security sector finances, as well as the rules that govern security sector finances (Departmental and agency budgets with headline items, end-of-year financial statements with headline items, financial management rules and control mechanisms, procurement rules, reports made by audit institutions and other bodies responsible for reviewing financial aspects of the security sector, including summaries of any sections of such reports that are classified).

Further, in the scope of the document, a person who discloses wrongdoings (i.e. corruption, abuse of public office, human rights violation, etc.) in the public interest (whistle-blower) should be protected from any type of retaliation. provided he or she acted in good faith and followed applicable procedures[125].

And finally in pursuit of proper exercise of democratic control, all oversight bodies (including, ombuds, appeal bodies, courts and tribunals) should have access to all information, including national security information, regardless of classification level, relevant to their ability to discharge their responsibilities, and the legislature should have the power to disclose any information to the public, including information which the executive branch claims the right to withhold on national security grounds, if it deems it appropriate to do so according to procedures that it should establish.

This set of principles has received the support of PACE as a pledge for endorsement, consequently the process of integration of this corpus into the European law system has been launched. In this relation, Article 81 of the new RA Constitution provides that "restrictions of

[124] Ibid.
[125] Ibid.

fundamental rights and freedoms may not exceed the restrictions defined by the international treaties of the Republic of Armenia."[126]

Freedom of expression in the military may raise apprehensions, however as the European Court of Human Rights established it applies to servicemen just as it does to other persons"[127], reinforcing the concept of "citizens in uniform" and at the same time acknowledging that this right does not apply when one is divulging military secrets and information concerning national security- "legitimate national security interests", with appropriate constraints.

CONCLUSION

[126] RA Const.(2015), Art. 81

[127] *Engel and Others* v. *the Netherlands,*ECtHR (1976)
<http://hudoc.echr.coe.int/eng#{"dmdocnumber":["695356"],"itemid":["001-57479"]}>
Convention applies also to members of the armed forces and not only to civilians. It specifies in Articles 1 and 14 that 'everyone within (the) jurisdiction' of the Contracting States is to enjoy 'without discrimination' the rights and freedoms set out in Section I. … "*Nevertheless, when interpreting and applying the rules of the Convention in the present case, the Court must bear in mind the particular characteristics of military life and its effects on the situation of individual members of the armed forces:*
Case of *Grigoriades* v. *Greece,* ECtHR (1997)
<http://hudoc.echr.coe.int/eng#{"dmdocnumber":["695993"],"itemid":["001-58116"]}>
"Article 10 does not stop at the gates of army barracks."

The discussion throughout the preceding text enables the conclusion that recent constitutional reforms have fostered better grounds for democratic control over armed forces and set better prerequisites for sound defense establishment, which, nonetheless, is still considered as an important institutional instrument.

The objective need for synchronizations in existing legal regulations and for new legal frameworks created a very fine momentum for relevant target-oriented changes, including in the defense and security changes. The example of successful reforms in defense institutions may have considerable positive impact on other public institutions- "to strengthen those features of the organizational culture that contribute to individual and organizational integrity and deter corrupt behavior. These good practices can then be disseminated to other public organizations in the country". [128]

"*Corruption has always been a matter of concern and high-ranking officials in the Ministry of Defense explicitly acknowledge the necessity of fighting corruption in this agency*", says the Head of the recently established Center of Integrity Building and Human Rights under the MoD adding that " *Armenia is determined to enhance and strengthen democratic control over the defense and security sectors including by close collaboration with national and international organizations, as well as to promote civilian participation in development of defense and security policy."* [129]

To support this commitment, and based on the findings obtained in the course of this research we propose the following recommendations.

The parliament presently has greater avenues for engagement through its legislating powers to develop a comprehensive military law system.[130] Relevant statutory regulations in the Law on Defense should set clear mechanisms and procedures of democratic oversight, with clear elaboration on civilian oversight mechanisms employed by MoD over the General Staff (e.g. weekly reports on finance expenditure performance, frequent random audits, other instruments to ensure accountability), and parliamentary oversight mechanisms (regulated participation by defined high-rank military and civilian officials in defense committee sittings, plenary hearings,

[128] DCAF, 2010, "Building Integrity and Reducing Corruption in Defence: A Compendium of Best Practices"
[129] Interview with Mr. Alik Avetisyan, Head of BI and HR Center, MoD, *conducted on 30 March, 2017.*
[130] RA Const. (2015), Art 155. 5. Further elaboration stipulated for the subordination and command of the armed forces by respective laws

etc). Discrepancies regarding the roles of state organs in times of war should be removed, including by providing a clear definition of exactly constitutes war. [131] The defense committee should have a regulated participation in the development of defense policies, strategic documents and procurement related decision making process. [132] Also, appointments of second-in-rank top commanders of the armed forces can be consulted on with the legislative branch.

Amendments in the RA Law on International Treaties must stipulate ratification of those intergovernmental and interagency agreements that refer to military and defense areas by the parliament[133].

Relevant amendments are necessary to curb down excessive secrecy and over-classification and respectively enhancing the right to information and freedom of expression to reach the right balance between overriding public need and legitimate national security interest taking into account the Tshwane principles. This will bring transparency to a new positive quality, at the same time influencing the decrease of corrupt practices in the defense and increase the protection of human rights. In this light, separate legal framework for whistleblowing protection should also be considered, as an empowering mechanism for public willingness engage in anti-corruption activities.

A better regulated format of participatory cooperation is required to engage with the civil society on the principle of public discussion, rather than public awareness.

Current activities undertaken by the Ministry of Defense towards enhancement of general integrity among the personnel via codes of conducts, exemplary leadership presentation, promotion of human rights need to be sustained.

As a final point, presently with a quite ambitious aspiration for "smart defense" and rather scarce resources at disposal decision makers should understand thoroughly the strategic implications of their choices on spending and means they use to this end. Effective defense planning and implementation requires political commitment and mutual trust on part of all state entities in charge of the armed forces with due compliance to the rule of law.

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[131] In present realities traditional declarations of war are obsolete.

[132] Standing Committee's participation has increased during the recent iteration of Strategic Defense Review.

[133] The authorization to send troops to participate in international peacekeeping and stability operations is regulated by the decree of the President who approved the interagency treaties that set the frame of the relations.

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