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EVALUATION OF PARLIAMENTARY POWERS RELATED TO OVERSIGHT OF THE DEFENCE SECTOR IN GEORGIA

Tamara Patariaia (Ed.)



The Geneva Centre for the Democratic Control of Armed Forces

Evaluation of Parliamentary Powers Related to Oversight of the Defence Sector in Georgia

Tamara Patariaia

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Preface

Since independence, Georgia's struggle with fundamental reform of the security sector has been a notable feature of its democratisation process. With the advent of a new government and an invigorated parliament, DCAF has supported a survey of the status and needs of Georgia's parliamentary oversight practices to facilitate technical assistance and capacity development activities over the next years.

In the first instance, a focus on parliamentary oversight of the defence sector was deemed to be of most use to Georgian parliamentarians, defence professionals, and civil society organisations. The objective was to survey oversight practices and procedures in the parliament and beyond, the legal framework (particularly changes proceeding from the new constitution) and also to highlight relevant best practices from other European states.

In the interests of consolidating national ownership of security sector reforms, the need to make the survey a wholly Georgian mapping exercise was also seen as vital. DCAF would like to thank and acknowledge Dr. Tamara Pataria for again undertaking an important empirical study at short notice, as well as the Civil Council on Defence and Security, interviewees in the Parliament of Georgia, staff from the Ministry of Defence, and other civil society organisations.

It is this hoped that this survey will also assist and complement the MoD in its own reform initiatives. Notably, Georgia's commitment to embedding transparency and accountability across the defence sector has perhaps been most recently displayed by the active participation of Defence Minister Irakli Alasania and Deputy Minister Tamar Karosanidze and their teams in the *NATO Building Integrity initiative*.

Moreover, we hope that this survey will serve as a point of departure for intensive reforms to not only the defence sector, but also the law

enforcement and intelligence sectors, where substantial oversight and accountability challenges lie.

A separate set of commentaries on the current legislative framework for security governance in Georgia will also be circulated in parallel to this survey.

DCAF would also like to acknowledge to Ms. Lydia Amberg for the English language editing of this publication.

Dr. Philipp Fluri
Deputy Director
DCAF
January 2014

Introduction

All modern parliaments face the difficult challenge of ensuring transparency and accountability of all security sector components, whether defence, law enforcement or intelligence services. The legislative framework must ensure the services are capable of fulfilling their mandate whilst providing public-facing services and ensuring the elimination of malpractices such as infringements of civil liberties and human rights. Fundamentally, the services should not be sources of instability or insecurity.¹

This task can be successfully accomplished in a political system where parliament has enough power to successfully perform its three main functions: to represent the people, to make laws, and to control the executive. Moreover, as a representative body, parliament should balance and control the executive power at three main levels of parliamentary oversight: plenary sessions, committees and individual members of parliament. The Western experience has demonstrated that “the powers parliaments have are those powers that parliaments want to assume. And the powers parliaments do not have are in fact self-imposed limits”.

Objectives

The report presents the outcomes of the study on evaluation of parliamentary power in defence sector governance in Georgia conducted by a team of representatives of Georgian non-governmental institutions. The objective of this survey is to promote a more detailed discussion of the oversight needs of the Parliament of Georgia in regard to defence policies and practices. A secondary objective is to promote a wider discussion of the role of Parliament of Georgia in wider security sector governance activities encompassing defence, law enforcement and intelligence oversight across all of Georgia’s stakeholders. In addition, the study aims at encouraging the deployment of relevant technical assistance to de-

¹ Teodora Fuior, *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes, 2011, p.28 <http://www.dcaf.ch/Publications/Parliamentary-Powers-in-Security-Sector-Governance>

velop the oversight capacity of the parliament in the security governance sphere.

For the purposes of this study the Georgian security sector is limited to the following governmental institutions: Ministry of Defence (MoD), Ministry of Internal Affairs (MIA), and Intelligence Services under the prime minister. In addition, departments of Border Police and State Security Police operating under the MIA fall under the parliamentary oversight activities of security sector as the employee of the both departments have the right to carry and use firearms and to use other special means involving force in compliance with the applicable legislation.

The report describes and evaluates the specifics of parliamentary oversight over the security sector in Georgia and compares its current practices with established international norms and standards. The report reviews Georgia's legislative framework and regulations that form a basis for the oversight functioning of the security sector. The report then evaluates the role of the parliament and the practices that were applied in Georgia in the area of democratic oversight over security institutions in the last years. The report attempts to assess the parliament's capacity to implement one of its main responsibilities, based on Western norms and practice, which is to inform and educate citizens:

*“Political elites are exposed to the institutional learning process on a daily basis. They are the first group to practice democratic values, and to prove their viability before these are internalized by the society (...) the parliamentary debates should enlighten, teach and inform the people on the important issues of the day.”*²

The assessment of the parliament's performance and its conformity with international criteria was carried out by a team of representatives of Georgian civil society organisations specialising in political science, democratic management of the security sector, foreign policy and Georgia's prospects of cooperation with the Euro-Atlantic community.

Methodology

The team's analysis is based on their own documentation, news sources, and personal interviews with members of parliament (MPs) from all political parties. The team used different sources to compile a picture of the

² Teodora Fuior, *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes, 2011, p.30

parliament's activities and examine them against widely accepted criteria for democratic parliaments. The methodology is based on a self-assessment toolkit formulated by David Beetham and published by the Inter – Parliamentary Union (IPU).³

During the preparation of the report, the team members interviewed former and current MPs, former and current representatives of security and defence institutions, and independent experts working on the security and defence issues in Georgia to present their views on parliamentary performance in each of the six areas of the self-assessment toolkit:

- 1) Representativeness of parliament
- 2) Parliamentary oversight over the executive
- 3) The parliament's legislative capacity
- 4) Transparency and accessibility of parliament
- 5) Accountability of parliament
- 6) Parliament's involvement in international policy

Structure

After conducting interviews with MPs and politicians, the team reviewed the respondent's analysis and selected two priorities for reform in each of the six sections of the assessment. Respectively, the conclusive chapter of the present report includes 12 priorities for reform. The report consists of four parts.

The first part reviews the role of the Georgian parliament and examines the current situation with regard to the balance of power in the Georgian political system. The second part looks into parliamentary oversight over the security and defence sector at the level of plenary sessions. The section analyses how laws are enacted and enforced, how political declarations and policy formulations are made, and how parliament's actions are evaluated. The third part reviews peculiarities and capacities of parliamentary committees and their ability to make the security sector institutions more accountable and transparent, and examines their expertise in the field, the level of criticism, biased thought and action. The fourth section assesses the representativeness of the parliament. The final section makes recommendations for improving the oversight function of parliament.

³ *Evaluating Parliament, a Self-Assessment Toolkit for Parliaments*, Inter-Parliamentary Union, 2008. <http://www.ipu.org/pdf/publications/self-e.pdf>

1. The role of parliament in the political system

1.1 The powers of the executive as laid out in the Constitution of Georgia

Georgia has recently entered a very challenging period in terms of political development. On 27 October 2013, Georgian citizens elected a new president and after the inauguration ceremony on 17 November 2013, Georgia's political system made a transition from an over-centralised presidential rule to a mixed system of governance wherein the real executive power vests in the government with the prime minister acting as head. Under the new constitutional arrangement, the parliament's authority has been expanded, while the presidential power was curtailed. These changes have a significant impact on the already established regulations and procedures in the security and defence management system.

This chapter reviews the competencies of the president, the government and the parliament in the defence and security sphere in Georgia. The Georgian specifics of parliamentary oversight over the executive are determined mainly by the political system which itself is defined by the Constitution.

Presidential powers prior to constitutional amendments

Since 1995 the presidential model of government was deemed the most appropriate for Georgia at that stage of the state-building process. Although responsibility for the security sector management was formally divided between three branches of government, the president had the ultimate authority in the field. In the first eight years after it came into effect, the president as the supreme commander-in-chief, was empowered to implement the country's security, defence and foreign policies, appoint members of the National Security Council (NSC, which was established in 1996 as an advisory body for the president on matters of national security), preside over NSC meetings, and initiate and enact laws related to the national security. In addition, the president had the

power to sign international treaties and agreements on security policy issues (to be ratified by the parliament), define the structure of the armed forces (the strength of the armed forces was proposed by the NSC and approved by the parliament), and declare a state of emergency and martial law (parliamentary approval was needed within 48 hours).

Amendments to the Constitution of Georgia, made in 2004, significantly increased already existing strong presidential powers. The post of prime minister was established under the 2004 constitutional amendments.

The 2004 constitutional amendments also entitled the president to appoint all military and law enforcement authorities, the defence and interior ministers, both of them directly subordinated to the president. In addition, the president was given the power to dissolve, at his/her own initiative or in other cases envisaged by the Constitution, the government, and to dismiss the interior and defence ministers. Moreover, the government needed the president's consent to submit the state budget bill to the parliament. As the supreme commander-in-chief of the armed forces, the president was in charge of appointing and dismissing the chief of the general staff of the armed forces and other top military commanders. He was authorised to suspend or abrogate the government's decrees and orders of other executive bodies if they contradicted the Constitution, international treaties and laws (which used to be the exclusive prerogative of the constitutional court before the Constitution was amended) and presidential normative acts.

The presidential powers were further increased by special legislation on security sector management, including the Law on Defence Planning (2006), the Law on State Defence (first adopted in 1997), the Law on State Secrecy, etc. These laws authorised the president to submit the National Security Concept, the Strategic Defence Review, the National Military Strategy and other conceptual national security documents to the parliament for approval, and to endorse military operative plans. The laws did not change the president's role in the implementation of state secrecy policy. Rather, the president, together with other high-ranking authorities, remained the power to determine what kind of information should be classified state secret, approve the list of government officials authorised to grant access to state secrets or classify the information as state secret, and endorse other regulations concerning the classification and marking of information. The president, together with the government, members of parliament and other higher representative bodies, as well as 30,000 voters remained the right to initiate legislative acts.

Constitutional amendments

The amendments to the Constitution of Georgia, adopted on 15 October 2010, significantly changed the presidential responsibilities with regard to judicial system or checks and balances in government. It reduced the powers of the president and strengthened the authority of the prime minister. The president still was to be elected through a popular vote but no longer had the power to conduct domestic and foreign policies independently, to dismiss the government and initiate new laws. The president's role in everyday governance was also limited. While the president retained veto power, a parliamentary majority was sufficient to override the veto (as opposed to the 60 percent of the parliament required by the previous Constitution).

Parliamentary power was significantly strengthened in the Constitution while the president's power to dissolve the parliament was restricted: the new Constitution stipulates that the president can only dissolve the parliament if two consecutive parliamentary no-confidence motions against the government fail to gain the support of 60 percent of the MPs.

The president remained the country's supreme commander-in-chief with the authority to declare war, martial law or the state of emergency (though the parliament retained the right to vote down these declarations).

At the same time, the prime minister gained the right to countersign nearly all presidential decrees and orders, including declaration of the state of emergency, legislative acts issued during the martial law and state of emergency. Presidential orders, which, under the law on normative acts, regulate individual cases – such as e.g. certain staff appointments/dismissals, state awards and decorations, and other acts – do not require a countersignature. In case of a countersignature, the responsibility for the act rests with the prime minister.

In sum, the Constitutional changes enforced following the 2013 presidential elections, has delegated many of the presidential responsibilities to the prime minister who became head of the executive branch with the power to nominate government members and granted the power to determine day-to-day government policies.

Prior to these changes, the president was entitled to appoint the prime minister, approve the appointment of government members, and submit the structure of government to the parliament for approval. The constitutional amendments changed the prime minister's leadership role and

redefined the prime minister (Article 79) from “Chairman of Government” to “Head of Government”. The prime minister’s functions were revised too. According to the amended Article 79, the prime minister “determines the directions of the government’s activities, organises the work of government and coordinates and controls activities of government members”. Prior to the amendments, the article required that the prime minister report to the president on government activities and assume responsibility for the government’s work before the president and the parliament. The last phrase was removed from the new text, abolishing the prime minister’s accountability and responsibility to report to the president. Moreover, the prime minister is henceforth empowered to appoint/dismiss government members at his/her own discretion.

The new constitutional changes also stripped the president of the authority to suspend/annul governmental decrees and legal acts issued by other executive agencies if they contradicted the Georgian Constitution, international agreements, laws or presidential acts. Furthermore, the president’s power to issue legal acts was severely constrained by the newly introduced mechanism of “countersignature”.

Foreign and defence policy is a shared responsibility of the president and the government. While the latter “exercises” foreign policy, the president “represents” Georgia in foreign relations and negotiates international treaties. The Constitution puts forward a clearly defined, supreme role for the government. The new amendments specify that the government is “the highest body of the executive power” and that it is accountable to the parliament only. The functioning of the government is to be coordinated by the prime minister and the president.

Although the president can still request an extraordinary session of the government, he is no longer supposed to chair government meetings. The government is considered dissolved as soon as the authority of a newly elect parliament is recognised. However, the president may order the old government to continue its functions until the new government is formed. The president then appoints the prime minister on the basis of consultations with the party that won the majority of seats in the preceding parliamentary election. Within seven days of being nominated, the prime minister has to choose candidates for the positions of government ministers and then present the whole government together with its Action Plan to the parliament for a vote of confidence. Under the previous Constitution the president was able to nominate the prime minister independently from the parliament and then personally present the government to the parliament for approval.

By 2012, Georgia's political system was characterised by an unprecedented expansion of presidential powers which gave the president almost total control over the legislature and the judiciary. The power-sharing model was not balanced as the Constitution did not provide for efficient checks and balances. As a result, the president was allowed to unilaterally dismiss the parliament or dismiss the entire government, including the interior and defence ministers. However, the Constitution of Georgia, enforced after the October 2013 presidential elections, changed the existing balance of power in the political system from a highly centralised presidential system to a mixed model where the executive power is concentrated in the hands of the government which is accountable to the parliament.⁴

Summary and relevant best practices⁵

Since November 2013, the Georgian political system has been shifting from a pure presidential system (which is predominant in Latin America, large parts of Africa and in the non-Baltic former Soviet countries, in Indonesia, the Philippines or South Korea as well as in the United States) to a mixed system which combines features of presidential and parliamentary systems and where the executive power is in the hands of the government which became more accountable to the parliament.

The ways in which the powers are separated between the president and the prime minister can vary greatly between countries. In a semi-presidential model, the prime minister and the executive government are responsible to parliament, which may force them to resign through a no-confidence vote. The power of the parliament in a semi-presidential system is therefore somewhat limited compared to that in parliamentary systems.

France is a typical example of a semi-presidential system. This type of system became popular in post-communist countries like Poland, Romania, Moldova, Mongolia, or Ukraine. The political systems of these countries are characterised by a power struggle between the president and the parliament..

The presidential power in a semi-presidential model is significantly limited when the president and parliament are controlled by opposing political parties, because of "cohabitation" between the prime minister and the president.⁶

⁴ The Venice Commission (Advisory Body for Legal Affairs of the Council of Europe (CoE)) Preliminary Opinion on the proposed draft Constitution ; see 'Venice Commission on Georgia's New Constitution', *Civil.ge*, 3 September 2010. Available at <http://www.civil.ge/eng/article.php?id=22638>

⁵ The best practices presented here are designed by Teodora Fuior in her study on *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes 2011

⁶ Teodora Fuior, *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes, 2011, p.5

Experience shows that this type of system is characterised by a transformation of the presidential system into a "super-presidential system". Accordingly, it is important for Georgia to follow all constitutional norms scrupulously, and to ensure that all responsibilities of the president and prime minister are exercised in conformity with the constitutional and legal norms and finally, that power remains balanced between the legislative and executive branches of the government. In addition, it is important to avoid the existence of overlapping responsibilities between the president and the prime minister in the legal acts adopted following the enactment of the Constitution in November 2013.

1.2 Challenges in the legislative framework in relation to the democratic control of the defence and security sector

Legislative amendments

Since the new Constitutional changes came into force in 2013, Georgia has encountered some legislative challenges caused by the fact that not every constitutional provision was adequately reflected in other normative acts and regulations. This is why it was necessary to introduce new legislative amendments in order to bring legislation in line with existing constitutional arrangements. For this reason, the Georgian parliament initiated draft amendments to the organic laws on the National Security Council, State of Emergency, Defence Planning, and State Secrecy. Although the parliament has made around forty-two amendments in 2013 related to defence and security, there are still some vague and contradictory clauses in the laws which cast doubt on whether the new legislation can serve the best interests of the security system without further development.

Example 1: State of emergency

For example, under the current law, a state of emergency can be declared in case of a war, mass riots, and violation of the country's territorial integrity, a military coup, a major environmental disaster or epidemic and in all other cases whenever governmental institutions are unable to exercise their functions properly. Article 73.1 of the Constitution stipulates that it is the president's exclusive competence to introduce the state of emergency or martial law. At the same time, the president does not need the prime minister's consent for declaring martial law and does need it while making decision on the state of emergency.

During the state of emergency or use of martial law, the president is authorised to impose certain restrictions on constitutional rights and liberties, including privacy and private property rights, the freedom of movement, rights related to the freedom of information and mass media, the right for assembly, labour rights, including the right for protest strikes, and also the right expanding the power of authorities to arrest and detain individuals. According to the amendments to the Law on the State of Emergency adopted on 6 September 2013, the presidential decrees to restrict constitutional rights and freedoms need to be countersigned by the prime minister and approved by the parliament before they are enforced.

It is important that the Constitution also gives the parliament a significant role in declaring the state of emergency, stipulating that the presidential state of emergency or martial law decrees must be submitted to the parliament for approval within 48 hours (Article 2). If the parliament votes against the president's move, the presidential decrees will become null and void. In addition, if the parliament concludes that there are no legal grounds to extend the state of emergency, it can cancel it by passing a respective law. If the parliament fails to convene or approve a presidential state of emergency decree countersigned by the prime minister, within five days, the state of emergency will be abolished.

The parliament also holds some additional powers to control the executive's decisions on the use of the armed forces in Georgia. The use of military units during a state of emergency is prohibited without parliamentary approval. This regulation aims at preventing abuses of power by state agencies in an emergency situation. In sum, the Law on the State of Emergency establishes the formal supremacy of the Georgian parliament in the declaration and cancellation of a state of emergency and requires that respective presidential decrees, countersigned by the prime minister, be approved by parliament.

Example 2: Law on the National Security Council

Another example concerns the Law on the National Security Council (first adopted in 1996, numerous amendments added since 2004) which regulates activities of the National Security Council (NSC) as an advisory and coordinating body authorised to deal with strategic issues related to national security, foreign and domestic policy, stability, and public order. In 2011 the law was amended again, elevating the status of the NSC to the highest political decision-making body in charge of responding to all crisis or emergency situations threatening national security and national inter-

ests. According to the law, the NSC was chaired by the president and consisted of five members of the government – the prime minister, foreign minister, defence minister, minister of interior, and finance minister and the NSC secretary. The chairman of the parliament was also entitled to attend NSC meetings. The NSC secretary's prime responsibility was to assist and advise the president on matters of national security. The law allows for establishing permanent and ad hoc interagency commission in the framework of NSC, headed by member of NSC or a person specially assigned by the president.

The following commissions have been established under the National Security Council since 2008:

- The ad hoc Interagency Commission on the development of the list of state procurement assets and procurement procedures related to the state secrecy (established on 11 April, 2014).
- The ad hoc interagency commission in charge of coordinating the development of an integrated crisis management system (established in 2010, abolished on 25 March 2014),
- The ad hoc interagency commission which promotes the reform of the state border management system (first established in 2006, commission regulations amended in 2007 and 2009, abolished by the presidential declaration issued on 25 March 2014)
- The permanent interagency commission in charge of coordinating the development of conceptual and strategic national security documents (2008, continues functioning).

In 2008-2012 the NSC was involved in the elaboration of the National Security Concept and more generally in debates over state defence and security programmes. It also developed recommendations on how to strengthen Georgia's cooperation with international organisations, took part in discussions over the stationing of foreign troops in Georgia, and coordinated inter-agency cooperation.

In 2010, the NSC prepared the National Security Concept through a National Security Review process, an inter-agency process that institutionalised the whole-of-government approach to the development and implementation of Georgia's national security policy.⁷ The national security review process, launched in April 2010, included the following stages: the development of conceptual and strategic documents, open discussions on security policy planning, and capacity building for the

⁷ <http://www.nsc.gov.ge/eng/NationalSecurityReview.php#>

agencies participating in the process. An interagency council was created to work out conceptual and strategic documents proposed by the National Security Concept and the Georgian Threat Assessment Report in 2010-2013. The parliament finally adopted the National Security Concept on 23 December 2011. The Georgian Threat Assessment Report 2010-2013 was adopted by the Coordinating Commission for the Development of Conceptual and Strategic Documents in June 2010, while a non-classified version of the Georgian Threat Assessment Report was endorsed by president decree #707 (2 September 2010).

The National Security Council under the president is obliged to elaborate a proposal on the total strength of the armed forces and propose it for parliamentary approval. Parliamentary consent is necessary to enact the law on the strength of the armed forces. The proposal is to be submitted to the parliament together with the state budget bill by the end of each fiscal year. The most recent draft proposal defining the strength of the Georgian Armed Forces was submitted to the parliament on 24 December 2013 and adopted after brief debates.

Proposed draft amendments to the Organic Law on the National Security Council (29 September 2013) aimed at revising NSC functions and responsibilities in order to bring the existing practice of the development of fundamental strategic documents in line with the requirements of the Constitution. According to the draft amendments, the presidential power is limited with regards to the military and defence sector, even though the president remains the commander-in-chief of the armed forces and accordingly the role of the NSC was limited to dealing exclusively with defence issues.

In other words, the NSC will be no longer responsible for leading interagency cooperation in the country and developing the National Security Concept, the Threat Assessment Report and other strategic national security documents (required by the Law on Defence Planning, Article 9.2, 9.3). The elaboration of these documents has become a prerogative of the government, as relevant changes were made in the amendments to the Law on the Structure, Authority, and Procedures of the Government Activity, on 4 October 2013. The draft amendments to the organic law on National Security Council require only drafting recommendations for the National Security Concept. The NSC also can no longer establish special interagency commissions.

In addition to the five permanent members, the new draft amendments to the Law on the National Security Council give the president the power to select not more than three more NSC members among government

ministers and define the NSC decision-making procedure. However, the draft amendments of the organic law on NSC was submitted to the parliament in September 2013, it has been adopted by the parliament in the first reading only and still has to be reviewed and adopted before it is enacted.

Other amendments

Different amendments were made during 2012-2013 to other laws in order to meet constitutional norms. Amendments were made to the laws on State Secrecy, participation of Georgian armed forces in peace-keeping operations, the Law on Military Duty and Military Service, on the Military Reserve and the Freedom Charter. The Law on State Secrecy transferred the responsibility and authority to decide on the matters of classified information to the government and prime minister.

The latest amendments to the laws on Military Duty and Military Service and Law on Military Reserve also relate to the new constitutional arrangements, in particular, the transfer of the president's competence on conscription and reserve services to the government. However, according to the Constitution the president remains the supreme commander-in-chief of Georgian armed forces.

In sum, it could be concluded that the division of responsibilities among the president, the NSC, the prime minister and governmental agencies responsible for national security and defence needs to be clarified further as strict lines should be drawn in order to prevent the president's and the prime minister's functions overlapping each other.

On 16 December 2013, the prime minister announced the government's decision to establish the National Security and Crisis Management Council (NSCMC) under the office of the prime minister to ensure efficient crisis management and interagency coordination in case of natural disasters or other emergency situations. The new Council is headed by the prime – minister and meetings are to be held at least once in a month. The permanent members of the council are the same as the members of the NSC in particular, prime-minister, ministers of Finance, Interior, Defence Foreign Affairs, and the secretary of the NSC itself. The initiative was formally legalised on 6 January 2014 when the government issued decree #38 defining the mission and regulating authority of the institution. By this decision, the government consolidated consultative functions and interagency cooperation under the office of the prime minister with limited parliamentary engagement. According to the decree, the prime-minister could make a decision and invite the chairman of the parliament to attend the meeting of the NSCMC.

2. Parliamentary Powers and the Management of the Security Sector

2.1. Parliamentary oversight over security and defence sector institutions: plenary sessions

Powers and responsibilities of the parliament

The legislative framework defines basic functions of the parliament in exercising democratic oversight over the government, though there is a need to thoroughly examine whether security agencies pose a challenge to democratic oversight. The Constitution and respective laws provide the Georgian parliament with a wide range of mechanisms for effective control over the executive institutions. That is to say, the parliament can control government policy by exercising its right to:

- adopt defence-related laws
- determine the country's domestic and foreign policy priorities
- determine the state defence policy
- ratify, denounce or annul international treaties and agreements and military contracts
- approve the structure of government and governmental programmes and action plans
- require progress reports on the implementation of governmental programmes and organise respective hearings
- debate and approve the state budget, including the defence expenditure
- approve Georgia's Military Doctrine and the Development Concept of the Armed Forces
- approve military oaths
- approve the strength of the armed forces
- approve presidential decrees on the deployment, stay and withdrawal of foreign troops into/from the Georgian territory
- approve presidential state of emergency and martial law decrees

- approve presidential decisions on the use of the armed forces during the state of emergency or martial law

It should be noted that parliament has no formal role in appointing/dismissing the Ministry of Defence (MoD) leadership and top commanders of the armed forces. According to the 2010 constitutional amendments, the defence minister is appointed by the prime minister with the president's consent. The first deputy defence minister and other deputy ministers are appointed by the prime minister with the president's consent upon the defence minister's nomination.

Along with the MOD, the Ministry of Interior as well as the Intelligence services under the prime minister are subject to parliamentary oversight, which are exercised through the enactment of respective laws, the policy-making and budgetary processes, the appointment and confidence vote of the leadership of these agencies and approval of the country's participation in international missions.

Parliamentary Rules of Procedures

Under the Georgian law "The Rules of Procedures of the Parliament of Georgia", individual members of parliament are entitled to⁸:

- 1) have a deliberative vote in state executive structures and local self-government bodies and deal with violations of laws and other normative acts;
- 2) summon and question members of governmental institutions accountable to the parliament, government members, and executive authorities from all levels;
- 3) parliamentary factions with no fewer than ten MPs have the right to request a questioning of the accountable executive institutions, while the latter are obliged to respond during the "government hour" which is held during a plenary session every last Friday of the month. The authorities are only allowed to refuse to answer if the requested information is classified;
- 4) require respective governmental institutions to account on the implementation of laws and other normative acts in accordance with parliamentary regulations and procedures;
- 5) scrutinise activities of any governmental institution except those exempt from parliamentary scrutiny by law, and interview every official in line with the Constitution

⁸ http://www.parliament.ge/files/819_18559_127313_reglamenti.pdf

- 6) participate in debates on the issues he/she personally raised; and
- 7) elaborate recommendations for the Georgian government after hearing and checking all available information about violations of the Constitution and laws.

For their part, all officials appointed or approved by the parliament can attend the meetings of parliamentary committees, ad hoc investigative commissions, and discussions organised by the majority or minority parliamentary factions. Furthermore, upon request, officials are obliged to present all relevant documents and materials and give explanation on urgent issues.

To initiate an impeachment procedure against the president, the chair of the Supreme Court, a government member, a chief public auditor, or a member of the National Bank Board, at least one third of the MPs must vote in favour of the respective motion.

State Budget

The adoption of the State Budget Law represents an important leverage in the hands of MPs to exercise parliamentary oversight responsibilities. The State Budget Law is passed every year, but the members of parliament have no power to make changes in the budget expenditure proposed by the government. After the government submits an annual state budget bill to the parliament, the parliament can only reject or approve the document as a whole. MPs can neither change the budgetary figures nor request more detailed information on the budgetary spending. As a rule, MPs do not take part in other stages of the resources management process, especially during the drafting and review phase which is carried out by the government.

It is noteworthy that under the current legislation and regulations, the defence budget submitted to the parliament is too general, providing no breakdown of defence spending. As a result, MPs have no access to full information about the MoD budget. However, just like in other similar political systems, the Georgian parliament can control the government's expenditure on the basis of the reports of the State Audit Office.

According to the Constitution of Georgia, the government is obliged to submit a budget bill to the parliament together with the audit report on the implementation of the annual budget not later than three months before the end of the fiscal year. No changes can be made in the budget bill without governmental approval. If the parliament fails to approve the state budget within 2 months from the beginning of the

fiscal year, this can be considered as a no-confidence vote against the government. If the parliament is unable to pass a no-confidence vote within the constitutionally defined timeframe, the president has to dissolve the parliament 3 days before the deadline expires and announce snap parliamentary elections.

However, the parliament does not have enough power to monitor budget implementation. According to the Constitution, the parliament can scrutinise government spending only after the end of the fiscal year. Financial control of state agencies is the responsibility of the State Audit Office (SAO). The chairman of the SAO is nominated and approved in office by the parliament. One of the SAO's main functions is to prepare and submit annual audit reports on the government's budgetary spending. Under the current legislation, the parliament can require the SAO to provide an assessment of the budget implementation by law enforcement and security institutions.

Moreover, the chairman of the SAO has an obligation to submit his/her personal audit report on the government spending to the parliament and an annual report on SAO activities. After reviewing the annual report, the parliament issues a special statement.

When preparing its action plans, the SAO should take into account proposals and recommendations of MPs, parliamentary committees, and ad hoc commissions to select target institutions for occasional unscheduled audit inspections. The SAO must submit all audit materials and findings to respective parliamentary committees or ad hoc commissions upon request. Although the parliament has no legislative power to inspect the SAO itself, it can set up an ad hoc commission for such inspection.

Public Defender

To ensure efficient monitoring of the human rights situation in the country, the Georgian parliament appoints the Public Defender (also known as the ombudsman). The public defender is required to submit annual reports on the situation of human rights and universal freedoms in the country every year in March. On the basis of these reports, the parliament passes a special resolution or statement.

As there is no military ombudsman in Georgia, the responsibilities of the public defender's office also include the protection of human rights in the armed forces. Representatives of the office have free access to military installations and bases to investigate human rights violations and have the right to interview all those involved. State authorities are obliged

to provide every assistance to the public defender in exercising his/her functions. On the basis of obtained results, the public defender can propose amendments to the legislation in order to close any existing loopholes, issue recommendations for governmental institutions and initiate criminal or constitutional proceedings in respective courts. In addition, he/she can send reports about human rights violations to the president and parliament.

The public defender can contribute to the transparency of the security sector and public debate over national security problems by presenting annual reports to the parliament and/or informing the public through mass media about the results of his/her activities. However, the public defender's decisions are not legally binding and are often simply ignored (the Law on the Public Defender).

National security

Another important function of the Georgian parliament is to examine and debate strategic national security and defence documents, such as the National Security Concept, the Strategic Defence Review or the White Book on Defence, all of which are submitted by the government and provide long term defence development plans (as stipulated in the Law on Defence). These strategic documents are based on a classified paper, the Threat Assessment Report. Before the 2013 constitutional amendments, the Threat Assessment Report used to be prepared by the National Security Council, which then had to be signed by the president. After the Constitution was amended, the responsibility to assess security threats facing the country was shifted onto the government. However, there are no specific regulations to assign special responsibilities to respective governmental agencies with interagency capacity to develop the Threat Assessment Report.

As a rule, the parliament debates official documents elaborated by the government and executive agencies, or decisions to be made by the parliament itself. Consequently, parliament can influence the policy making process, increase public support for governmental decisions and ensure legitimacy of the documents.

Broadcasting

Under Georgian legislation, parliamentary debates are broadcast live by Georgian Public Broadcaster TV Channel 2 and live coverage is available on the internet. Since 2010, Channel 2 has been obliged to give full

coverage to political processes in the country without editorial intervention. Channel 2 reports have significantly improved public access to information on the parliament, ensured a high level of transparency and increased public awareness as well as interest in politics. It started broadcasting in a renewed format on 1 March 2010, transmitting parliamentary news up to 15 hours a day. Its audience has grown and its coverage reaches almost 65% of the Georgian population. Its news-making policy is regulated by the Law on Broadcasting, in Article 16, paragraphs a) b) v) k) and m).

Defence

The Law on the Participation of Georgian Armed Forces in Peacekeeping Missions was adopted in July 1999 and last amended in September 2013. It requires that all international agreements on the participation of Georgian troops in peacekeeping, peace enforcement and other peace missions be ratified by the parliament. The executive branch of government has the responsibility to determine the number of deployed troops, their location, tasks, rules of engagement and conditions of participation. First, the Ministry of Foreign Affairs and the Ministry of Defence propose to assign Georgian troops to an international peacekeeping mission to fulfil the country's international obligations. The government then makes a respective decision, but it needs parliamentary approval to come into force. However, the parliament does not have the power to recall deployed troops. Besides, once a year, the foreign and defence ministries of Georgia submit a report to the parliament concerning the participation of Georgian forces in peacekeeping, peace-enforcement and other peace operations.

At the same time, there are no special laws to regulate the deployment and movement of foreign troops on the Georgian soil, though parliamentary approval is necessary to station or transit foreign troops across Georgian territory – the decision about foreign military deployment or transit is made by the government and then submitted to the parliament for approval.

In sum, the current Law on Defence defines the foundations and organisation of the country's defence system, rights and responsibilities of authorities and civilian personnel of state defence agencies, and functions of the enterprises and organisations under the MoD. According to the law, the Georgian parliament is responsible for approving the National Security Concept, reviewing defence review, so called White Book and strategic

concepts on the country's institutional building in the field of defence, as well as to approve military oath. The Georgian parliament also has a responsibility to review and approve the defence budget as part of the state budget, ratify, denounce and annul international treaties and agreements related to defence and security, exercise oversight over the armed forces and monitor the implementation of the country's defence and security related legislation. The main mission of the Georgian armed forces is to defend the country's independence, sovereignty and territorial integrity, and to ensure efficient implementation of its international responsibilities. The law prohibits the use of the Georgian armed forces during martial law or the state of emergency without parliamentary consent.

Summary and relevant best practices⁹

In sum, the review of the Georgian legislation from the perspective of democratic parliamentary oversight shows that the existing legislation meets main internationally recognised norms and practices on the level of plenary sessions, as the parliament has the power to: debate and endorse the government's policies; debate and enact laws; approve public fund expenditure; approve the country's participation in international missions; initiate motions and votes of confidence. The Georgian parliament has less engagement in the approval of top appointments in the defence sector and it has no power to influence and receive detailed information about defence expenditure plans. Accordingly, the budgeting process in Georgia is characterised by the limited power held by the parliament in the budget approval stage.

The essential indicator of the impact of parliament in the budgeting process is the extent to which it influences the contents of the budget through the amendment process. There are three models describing the legal powers held by parliaments: 1) unrestricted powers, 2) restricted powers, and 3) limited powers to amend the budget (case of Georgia).

States in which parliament has limited powers to amend the budget are characteristic of only a few parliaments in democratic countries. Westminster type parliaments are representatives of this model. In some countries, amendments to the budget, if successful, are considered as being the equivalent of a vote of no confidence in the executive branch, which might push the government to resign (Canada, the UK, Australia, India New Zealand, South Africa, Zambia). Lack of statutory power in budget approval may be compensated by a vigilant involvement of parliament in other stages of the budgetary cycle.

In the United Kingdom, on behalf of the House of Commons, the State Audit Office undertakes the financial audit of all government departments and in ad-

⁹ The best practices presented here are designed by Teodora Fuior in her study on *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes 2011

dition has powers to examine the economy, efficiency and effectiveness with which those departments have used their resources. The detailed scrutiny of departmental spending produces around 50 reports a year for parliament. The annual Major Projects Report provides details of the 25 largest defence procurement projects of the Ministry of Defence. The MOD also provide parliament with an annual statement of the top 20 new defence projects.

2.2. Plenary sessions: practicing parliamentary oversight over security and defence sector

Shortcomings in parliamentary oversight

In recent years, the Georgian parliament has exercised its oversight capacity at plenary sessions with varying degrees of success. Georgian experts, interviewed during the self-assessment survey, admitted that although the parliament holds formal responsibility to examine the state budget, engage in policy debates, appoint high-level political figures and make them accountable; the practical application of its oversight functions remains rather weak. The respondents underlined two examples of failure of the MPs to properly control the executives.

Firstly, the parliament has no access to detailed information about the defence budget and breakdown defence spending. The budget bill, submitted to the parliament by the ministry of finance, contains only a few budget lines which do not indicate how much money is allocated to different missions. In addition, the parliament has no power to make any changes in the budget. It can only approve or reject the budget as a whole.

It is important for the parliament to be actively involved in the evaluation stage of the budgetary cycle, which could be done through the auditing of security and defence institutions by the State Audit Office (SAO) and strengthening of the SAO. Though, today it is difficult to say whether SAO performs its tasks with regard to the defence and security sector institutions efficiently. It was only in 2012, after the new government came to power, that the SAO carried out the financial audit of some departments of the Ministry of Interior. The financial auditing report covered 2008-2012 activities of the following departments of the Ministry of Interior: Border Department, Constitutional Security Department, Security Policy Department, as well as the Office of the Minister. However, there is no information regarding SAO financial audit reports on the Ministry of Defence.

In 2010 the SAO developed and endorsed a financial audit methodology fully compliant with International Standards on Auditing and relevant guidelines for public sector auditing. Before 2010, the SAO used to conduct the financial audit of state institutions according to an old Soviet methodology, which was much more receptive to corrupt deals. That is why it is not reasonable for evaluating pre-2010 activities of the SAO, in particular, to assess the level of its independence and professionalism, and the reliability of its pre-2010 work. Neither has parliament evaluated the performance of the SAO in 2004-2012.

In August 2013, the SAO published its Strategic Plan 2014-2017, designed to foster the accountability of the government to the parliament and the public, as well as facilitate the establishment of a corruption-free public management system. Considering the areas of high public interests, the SAO announced that “defence and public order” was among its strategic priorities, which also underlined a need in the future for targeted and effective use of budgetary resources. Parliament engagement could play a decisive role in this process.

Another factor hampering parliamentary oversight, according to the interviewed MPs, relates to the fact that parliament never debates the structure of government, their working experience and personal characteristics of candidates for government posts. The parliament rarely, if ever, passes no confidence votes in the executive structures and usually endorses candidates, proposed by the majority, without much debate. It seems that the parliament lacks independence to thoroughly examine and debate the draft defence budget, implement its daily agenda in time and assess/debate suitability of candidates for executive positions.

At the same time, all previous parliaments played an active role in lawmaking activities, initiated and debated draft laws regulating activities and functioning of the executive structures and state policies in the area of security and defence. However, the parliament does not always manage to ensure that the practice of Georgian government conforms to the democratic norms and practice. Since the new coalition created a majority in the parliament following the 2012 parliamentary elections, a number of security and defence related laws have been initiated and amended. Several main amendments were initiated by the chairman of the security and defence committee throughout 2013. Around 42 amendments were made in this period to bring these laws in line with the new Constitution mostly in relation to the redistribution of responsibilities between the president and prime minister.

Some laws were initiated and developed from scratch, for instance the Law on the Control of Military and Dual-Purpose Materials which was adopted on 27 September 2013. Together with the Laws on Licensing and Permits (first adopted in 2005 and last amended on 16 December 2013) and as well as on Import/Export Control of Arms, Military Equipment and Dual-Use Goods (first adopted in 1998, last amendments made on 27 September 2013) the new law regulates imports and exports of arms and dual-use equipments and goods to/from Georgia. However, despite the developed legislative framework, parliamentary capacity to efficiently control Georgia's performance in military export-import deals remains significantly limited, since executive agencies are excluded from the list of entities obliged to receive licenses or permits from the authorised official structures. Due to Georgian parliament's lacks of interest the practice of Georgian government does not conform to the European regulations and well established norms, such as a Code of Conduct on Arms Export.

Finally, the experts, interviewed in the framework of the self-assessment survey, shared the opinion that the level of professionalism and knowledge among the parliament staff members falls short of requirements. Besides, the staff turnover is quite high in the parliament. The experts ascribed these shortcomings to management problems and underdeveloped infrastructure. One of the reasons was said, for instance, to be the relocation of parliamentary infrastructure from Tbilisi to Kutaisi, which resulted in high staff turnover. But it should be noted that the Georgian parliament has very small research staff and limited resources to conduct oversight of the security sector efficiently. In addition, members of parliament mainly rely on information provided by the government and services and pay less attention to independent sources, such as NGO expertise, and reports from international human rights organisations. Parliament could also address more actively problems of building capacity of its staff members and strengthen research services and libraries.

Cooperation with civil society

The executive and legislative branches of the Georgian government invited members from the civil sector to participate in the development of the strategic documents in 2005. As a result, in 2005 and 2011, the National Security Concept was discussed and adopted in the parliament

with the active participation of civil society organisations and experts working in the field of security and defence.

A consultative independent body – The Civil Council on Defence and Security- was created in 2004 which brought together almost all NGOs, academicians and journalists covering the defence sector. The MoD and the Council signed two Memorandums of Understanding (2007, 2009) and conducted regular meetings for discussion of the strategic documents that led to the elaboration of recommendations during 2005-2012. Requirements for cooperation with the civil sector were incorporated in the Minister's Vision Document since 2009 and in the Strategic Defence Review (SDR) since 2007. The State Minister for Euro-Atlantic Integration has also created a forum for cooperation with the civil sector in 2005.

After the 2012 election, a Memorandum of Understanding between the civil sector and the Parliamentary Committee on Defence and Security was signed (February 2013); MOD has created three working groups for conducting the consultations on the agency level documents and a consultative body/Advisory Council was established for cooperation with the Ministry of Euro-Atlantic Integration.

Despite all these developments, parliament has a potential to further strengthen the mechanisms of oversight of the implementation of national security policy, increase the level of engagement of civil society actors and institutionalise inclusive policy-making process in the security sector.

Other forms of cooperation

Members of parliament agree that the participation of Georgian parliamentary delegations in international or regional inter-parliamentary assemblies is very important for the country. According to the Law on Parliamentary Regulations and Procedures, parliamentary delegations are usually made up of MPs from both the parliamentary majority and minority – the number of each is determined by proportional quota defined by the law. Besides, several Groups of Friends were set up in the Georgian parliament. Their aim is to promote and strengthen cooperation with parliaments of other countries. All the above mentioned activities contribute to the active involvement of the Georgian parliament in the formulation of the government's policy in the area of security and defence.

The Georgian parliament is an active participant of such cooperation forums as EURONEST¹⁰, NATO Parliamentary Assembly¹¹ and the Parliamentary Assembly of the Council of Europe¹². Members of parliament, interviewed during the self-assessment survey, emphasised that it was very important for the Georgian parliament to develop cooperation with the legislative institutions of the countries with which Georgia has little experience of diplomatic relations, as, in their own words, "it is crucial for suc-

¹⁰ The EURONEST Parliamentary Assembly is a parliamentary forum which aims to promote political association and further economic integration between the European Union and the Eastern European Partner countries. EURONEST contributes to strengthening the development and visibility of the Eastern Partnership, as the institution responsible for parliamentary consultation supervision and monitoring. The EURONEST parliamentary Assembly consists of the European Parliament delegation and the Eastern European Partners' delegations (Belarus, Ukraine, Moldova, Georgia, Armenia, and Azerbaijan). The EP delegates 60 members, the Eastern partners 10 each. The EURONEST PA meets once a year, the standing committees of the Euronest PA meet twice a year and consist of the following committees: 1) political affairs, human rights and democracy; 2) economic integration, legal approximation and convergence with EU policies; 3) energy security; 4) social affairs, education, culture and civil society. The assembly was constituted on 3 May 2011 in Brussels. <http://www.euronest.europarl.europa.eu/euronest/cms/home>

¹¹ Founded in 1955, the NATO Parliamentary Assembly (NATO PA) is the inter-parliamentary organisation for the North Atlantic Alliance. It provides a platform for members of parliament from the Euro-Atlantic region to discuss security issues and contributes to raising awareness and understanding of key security issues. It advocates parliamentary oversight of security and defence with the aim to encourage transparent and accountable decision-making and to strengthen Euro-Atlantic partnership and cooperation. NATO PA has an extensive programme of cooperation with non-member parliaments through parliamentary dialogue and capacity building: since the end of the Cold War, NATO PA has expanded its work to include members of parliaments from Eastern Europe and Central Asia who seek closer cooperation with NATO. NATO PA has five committees: 1) Committee on the Civil Dimension of Security, 2) Defence and Security Committee, 3) Economics and Security Committee, 4) Political Committee and 5) Science and Technology Committee. The Assembly meets twice a year in Session. <http://www.nato-pa.int/>.

¹² PACE holds a constant dialogue with 47 member governments, national parliaments, other international organisations and civil society. Using its powers under the founding Statute, the Assembly can: demand action from 47 European governments; conduct probes to uncover new facts about human rights violations; question Presidents and Prime Ministers on any topic it chooses; observe elections and send delegations to mediate in crisis hot-spots; negotiate the terms on which states join the Council of Europe; inspire new national laws by proposing and giving opinions on treaties; request legal opinions on the laws and constitutions of member states; and sanction a member state by recommending its exclusion or suspension. <http://www.assembly.coe.int/nw/Home-EN.asp>

successful implementation of the policy of non-recognition of the occupied territories of Georgia". "The lawmakers are obliged to support the executive authorities in order to ensure successful implementation of this policy", they said. At the same time, independent experts and members of parliament, interviewed during the self-assessment research, admitted that the parliament lacked human resources capable of contributing to public diplomacy. In their words, conflict resolution is a rather sensitive theme and the lawmakers are very cautious when addressing conflict related issues.

In fact, parliamentary plenary sessions are occasionally focused on the development of conflict related security policy issues. For example, the parliament prepares and debates draft laws and amendments to the laws (the Law on the Occupied Territories, adopted in 2008, was amended in 2013), and summons the state minister for reintegration or his/her deputies for questioning (From 1 January 2014 the Office of the State Minister for Reintegration was renamed Office of the State Minister for Reconciliation and Social Equality).

Summary and relevant best practices¹³

In 2012, a power change took place in the Georgian political system: a new coalition of six political parties created majority in the parliament and passed a confidence vote for the prime minister and members of the government. Moreover, the amendments of the Constitution led to significant changes in the responsibilities of the parliament, the president and the prime minister and the existing power balance in the political system.

Accordingly, it is expected that political views and priorities of the new government will be reflected in other newly developed strategic documents: the National Security Concept and the Threat Assessment Report. However, in the existing legislative framework, the parliament has no obligation to initiate a new cycle of strategic document development. The western experience shows that in some countries the timeline for the elaboration of strategic security documents is regulated by the law and the process is somehow attached to the beginning of a new political cycle.

For instance, the Romanian law on defence planning stipulates that within no more than six months since his/her inauguration, the president should present the National Security Strategy (NSS) to the parliament, which debates and approves the document in joint sessions of the two chambers.¹⁴ The average term

¹³ The best practices presented here are designed by Teodora Fuior in her study on *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes 2011

¹⁴ Teodora Fuior, *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes, 2011, p.10 <http://www.dcaf.ch/Publications/Parliamentary-Powers-in-Security-Sector-Governance>

of validity of the NSS is of five years and it contains long term provisions for accomplishing national and collective defence and security objectives. Georgia could benefit from the Romanian experience and set a specific timeline for the political cycle or terms of validity for the strategic documents.

In addition, according to the western experience, effective parliamentary oversight of the security sector requires expertise and resources within the parliament or at least at its disposal. In most cases, parliaments only have a very small research staff, if any. The basic problem is, however, that parliaments mainly rely on information emerging from the government and military, which creates "a relationship of asymmetrical dependency between parliament, government and military".¹⁵

According to the literature studying best practices of parliamentary oversight of the security sector, effective parliaments have developed strategies to cope with this disadvantageous situation by introducing the following measures:

- 1) Making use of expertise of civil society organisations, by engaging them in hearings and similar proceedings
- 2) Accepting support provided by international parliamentary assemblies and international think-tanks in order to promote exchange of experience and viewpoints with parliamentarians of other democratic countries
- 3) Building capacity of parliamentary staff members for supporting individual parliamentarians
- 4) Ensuring that both parliamentarians and parliamentary staff members follow national and international seminars and study tours, and that research services and libraries are strengthened.¹⁶

Thus, it is in the interest of Georgian parliament to institutionalise the cooperation framework with civil society actors and promote a meaningful and structured participation of civil society organisations in the development of national strategy documents, in order to ensure inclusive policy-making for improved policies and governance.

¹⁵ Hans Born, Learning from the Best Practices of Parliamentary Oversight of the Security Sector, in *Oversight and Guidance: the Relevance of Parliamentary Oversight for Security Sector*, DCAF, Geneva 2010. p. 39

¹⁶ *ibid*

3. Parliamentary oversight: the Committees

3.1 Legislative overview

The Law on Rules of Procedures of the Parliament of Georgia defines the responsibilities and activities of parliamentary committees. Under this law, a parliamentary committee is responsible for ensuring transparency and accountability of governmental institutions. The Georgian parliament has several committees which deal with security and defence issues. They hold significant leverages to exercise efficient democratic oversight.

Role of parliamentary committees

One of the most important instruments is a parliamentary committee's right to initiate legislation. It enables a committee to contribute to the development of parliamentary oversight over the security sector, create a legislative basis for the organisational arrangements of security institutions and define specifics of their activities.

Furthermore, a committee is empowered to and responsible for investigating and inspecting activities of an executive body on the basis of either a regular, pre-planned inspection schedule, or urgent complaints and petitions. A committee can request all documents and materials related to the case and report its findings to the parliament. Authorities and government members who are accountable to the parliament by law, are obliged to submit all documentary evidence to the committee in a timely manner (classified documents should be submitted to the Group of Confidence, which consists of MPs – information about Group of Confidence see below).

Another important parliamentary control tool is the regulation that requires a government member or a senior executive, elected by the parliament, to attend committee meetings, answer questions posed by committee members and report activities of the respective executive structure to the committee. For their part, senior executives have the right to request a committee hearing and the committee is obliged to satisfy the request.

According to the Rules of Procedures of the Parliament of Georgia, a parliamentary committee must include no fewer than 10 MPs. A committee is responsible for scheduling the committee meetings, while ensuring appropriate time intervals between them. At the same time, the law states that a committee meeting should be held not less than twice a month. The minimum quorum for a committee meeting is defined by the law as a majority of its members. Decisions are to be made by a majority of those present through the open vote. If votes are equally divided, a committee chair has the decisive voice. The law also regulates how information about committee meetings should be disseminated. Planned committee meetings should be announced on the parliament's website one day before a meeting is to be held. Committee meetings should be open to the general public, except in special cases where a committee decides that there are legitimate reasons to convene behind closed doors.

Committee members are entitled to review draft laws and discuss policy issues. The results of a committee meeting are to be summarised in three types of documents: 1) recommendation, 2) resolution, and 3) proposal – which are then submitted to the Parliamentary Bureau or presented during a plenary session.

The following committees of the Georgian parliament have the authority to exercise democratic control over the security sector institutions:

- The Budgetary and Finance Committee
- The Defence and Security Committee
- The Legal Issues Committee
- The Human Rights

Budgetary and financial control of security and defence structures

The Budgetary and Finance Committee (BFC) reviews state budget bills and organises committee budget debates with the participation of other committee members and MPs from different parliamentary factions. The BFC is also responsible for controlling the implementation of laws and other parliamentary decisions, as well as activities of executive agencies which are accountable to the parliament. If necessary, the BFC can prepare and submit respective resolution to the plenary session. BFC members are obliged to keep the general public informed about the country's budget and finances, future plans and accomplished goals.

The Defence and Security Committee (DSC) is the most powerful parliamentary body to exercise oversight over the security structures. It

has the responsibility to initiate defence and security related laws, prepare resolutions and proposals on other draft laws and amendments submitted to the parliament for approval. According to the Law on Defence and Law on Intelligence Services, the MoD and Intelligence Services are accountable to the DSC. Moreover, the DSC participates in the development of defence policy and monitors the implementation of activities required by law in general and strategic policy documents in particular. If necessary, the BSC can address the parliament and bring specific issues to the attention of MPs at plenary sessions or bureau meetings.

According to the Law on Parliamentary Regulations on Procedures, the DSC has the authority to create a Group of Confidence (GC) which is authorised, under the Law on the Group of Confidence, to examine and control special programmes and secret activities of the MoD, the MIA and the Intelligence Services.

The GC consists of five MPs (the DSC Chairman, one MP from the parliamentary majority, two MPs from the minority or the faction that is not part of the majority, and one majoritarian MP elected from a single-mandate constituency through the first-past-the-post voting). Executive structures are obliged to report their implemented projects and ongoing activities to the GC at least once a year and provide it with any information or document it requests.

The GC can also make its reports available to the BFC. If the GC concludes that a certain executive agency violates the law, it can request the parliament to set up an investigative commission and send a written request to the prime minister to declassify the information which the commission needs to access. These functions allow the GC to exercise efficient control over security structures.

Before 2008, the Law on the Group of Confidence required to hold GC meetings at least once a month. After 2008, this provision was reformulated, stipulating that the CG should convene at least once in 6 months. Besides, any GC member has the right to request a GC meeting, which should be held if the request is backed by a majority of GC members. It is noteworthy that all GC meetings are held behind closed doors.

Every question that falls under the GC competence and is brought to a parliamentary plenary session should be accompanied by a respective GC resolution. On 12 June 2013, the Law on the Group of Confidence was amended. The amendments were initiated by MoD and related to the responsibility of MoD to open up classified state procurement programmes for GC members. GC members should be informed about such procure-

ment programmes beforehand, the total volume of the procured goods and services exceeds 2 million GELs and if construction programmes exceed 4 million GEL. These amendments are designed to increase the level of transparency and accountability of the MoD before the parliament and respective committees.

In January 2014 the Committee on Defence and Security initiated additional amendments in the law on the Group of Confidence, which aimed at easing the procedures for the establishment of the GC and making the GC functional throughout the whole parliamentary cycle. In particular, it will be no longer required that parliament adopts members of the GC. According to the new amendments, the responsible sides will select members and parliament will be informed only about this decision.

Power to initiate legislation

Functions of the Legal Issues Committee overlap with the oversight responsibilities of the DSC in certain security related areas. The Legal Issues Committee is one of the most powerful and influential parliamentary committees, which initiates and drafts laws in the areas of constitutional law, administrative and criminal law, procedural codes and international law. It actively participates in the development of the legislative framework regulating activities of the constitutional court, common courts, the prosecutor's office, bar associations, and law enforcement institutions. It is involved in debates on draft budget laws and prepares respective resolutions. With the above mentioned responsibilities, the Legal Issues Committee plays a key role in the lawmaking activities that regulate security and law enforcement institutions, including defence and intelligence agencies.

It is also important that the Legal Issues Committee submits proposals to the parliament about ratification, denouncement and annulment of international treaties and agreements. This means that Legal Issues Committee members should have full access to multilateral and bilateral – regional and international – agreements signed by the government, including cooperation agreements with the NATO and EU. It is also responsible for the harmonisation of the Georgian legislation with international norms and standards, which is very important for the establishment of democratic governance principles in the Georgian security sector.

In particular, the Legal Issues Committee is involved in the development of defence and security related legislation, safety regulations, martial law and laws on reserve forces, military service and alternative mili-

tary service, the import/export of arms and dual-purpose materials and their approximation with democratic norms. It is also responsible for investigating and inspecting the performance of executive structures upon request and, if necessary, presenting its findings to the parliament.

Protection of Human Rights

The activities of the Human Rights and Civil Integration Committee (HRCIC) are very significant for efficient control and oversight of the security and defence sector institutions. The HRCIC has the responsibility to respond in a timely manner to the concerns expressed by individuals regarding political or social rights of the military, reserve force members or war veterans, as well as concerns related to the public safety and security issues. For example, the HRCIC has to react to excessive use of force by police, or police violence during police operations used to control protest demonstrations and rallies.

According to the regulations, the HRCIC should meet all interested individuals, review and respond to written questions and statements on relevant issues. In order to conduct its oversight functions, the HRCIC can summon and question top government officials and organise committee hearings, discuss the performance of the agency in question and review its annual report. If the HRCIC finds out that the agency violated human rights and universal freedoms during the reporting period, it can prepare respective recommendations for the government, cooperate with foreign and domestic civil society, including international nongovernmental organisations

Democratic control of the armed forces in Georgia is also part of the mandate of a broader civilian oversight mechanism – the ombudsman's office. The HRCIC has every right and responsibility to cooperate closely with the Public Defender's Office (PDO) and MoD, namely share information with them.¹⁷

3.2. Committee oversight over the executive in practice

The Constitution, the Parliamentary Regulations on Procedures, and the Committee Regulations all define regulations and procedures according to which MPs can summon and question representative of executive

¹⁷ B. S. Buckland, W. McDermott, *Ombudsman Institutions for the Armed Forces : A Handbook*, 2012, p. 36

structures during committee hearings. Members of parliament and experts specialising in security and defence issues share the opinion that in recent years parliamentary committees have not exercised their rights and responsibilities efficiently enough. The leadership of security and defence agencies have been rarely summoned by MPs to account. Past experience shows that the parliamentary majority has no interest in questioning their party leaders at committee hearings, and consequently requests by minority MPs to summon authorities to parliamentary hearings are usually ignored.

In fact, representatives of executive agencies rarely report about their activities at committee sessions. Even when defence and security officials did visit the parliament, opposition MPs were not active enough to question them about most urgent issues. The majority of the parliamentary hearings and debates have so far been organised in response to the executive's request and the hearing agenda was usually determined by the executive structures themselves. This aspect can hardly help to ensure accountability of security sector institutions.

For instance, the defence minister visited a DSC session and answered committee members' questions only on one single occasion in the period of 2007-2012. In May 2009 the DSC held a committee hearing at the MoD, which was focused on the new defence concept, the situation in the occupied territories and the training and everyday life of the Georgian army. In 2010-2012, the parliament made no attempt to summon and question the defence minister and the minister never attended parliamentary sessions.

Experts interviewed during the self-assessment survey admitted that prior to 2007 the DSC used to receive information about the defence sector reforms on a regular basis. In 2005 alone, a deputy defence minister attended five committee sessions and took part in discussions on various issues. In addition, open parliamentary hearings were held regularly in 2005-2006 to debate bills and reports on the progress of reforms. Members of the armed forces and civilian personnel, as well as civilian experts and representatives of academic circles, were regularly invited to attend DSC sessions. But since 2007 this practice had virtually changed.

The DSC currently consists of thirteen members, elected by the parliament, and is led by its chairman and his three deputies. One of the deputy chairmen is nominated by the opposition, and one is an independent MP. The DSC Chairman is nominated by the parliamentary majority.

In the present DSC, seven of its members have working experience of dealing with the defence sector. Two DSC members from the minority

were members of the defence and security committee in the previous parliament. This set-up helps to ensure that the Committee has enough expertise to efficiently implement its oversight functions. The legislative framework also provides DSC members with efficient tools to exercise control over the security and defence sector institutions.

Group of Confidence

As the experience of previous years shows, the Group of Confidence was never able to implement its responsibilities efficiently. In the past decade, the Georgian parliament constantly struggled to choose and nominate Group of Confidence members, because MPs from majority from the ruling party routinely rejected candidates proposed by the opposition, thereby severely hampering Group of Confidence activities.

Under the 2004-2008 law, for instance, the Group of Confidence was to be made up of three members. However, since the majority of MPs invariably rejected candidates proposed by the opposition, the Group of Confidence remained dysfunctional during the whole parliamentary cycle. The 2008 amendments to the law increased the number of Group of Confidence members from three to five (to be chosen from among DSC members). Although Georgia elected a new parliament in October 2012 and new ruling elite came to power in the country, the Group of Confidence had not been formed during the first year of its functioning for the same reason, the majority of MPs refused to support opposition candidates.

On 6 February 2014 the parliament adopted new amendments to the law on the Group of Confidence which eased the procedures for the establishment of the Group of Confidence and ensured functioning of the Group of Confidence throughout the whole parliamentary cycle. In particular, it is no longer required that parliament calls for members of the Group of Confidence. Parliament will be informed about composition of the Group upon all members are nominated.

It should be mentioned that the meetings of the Group of Confidence are closed. Any member of the Group could request an urgent meeting, but the role of individual MP is quite limited in this regard. The requested meeting will take place only if majority of the Group members support this initiative.

Challenges and opportunities for effective democratic oversight over the executive

However, there are also several obstacles to effective democratic oversight. Firstly, the DSC has no access to detailed budgets of defence and security agencies. The development of the State Budget Law is the government's prerogative, while DSC's role is limited to rejecting or approving the budget as a whole. The DSC is not entitled to make any changes in the proposed budget. In recent years, the Georgian government has repeatedly assured that it is interested in adopting a planning, programming and budgeting system in the country. However, introducing such a system in Georgia does not seem an easy task. It requires the amendment of the State Budget Law something that has never been done before. Only a few paragraphs of the current defence budget provide a breakdown of expenditure: wages, official missions, other services, spending, subsidies and transfers, social welfare, and other expenditure. It prevents the parliament from scrutinising defence spending. This factor weakens parliamentary oversight and civil sector monitoring. Thus, the specialised bodies responsible for the oversight of budgetary spending, namely the Defence and Security Committee and the Group of Confidence, could hardly fulfil their functions efficiently, because they have limited power to thoroughly examine and evaluate the budgeting process.

Secondly, the experts and members of parliament interviewed during the self-assessment survey agreed that the law in fact does not give the parliament any effective powers to minimise the risks of abuse of power by government agencies other than the Ministry of Defence, which raises serious concern among the public.

In particular, civil society is worried that the Group of Confidence has no actual authority to inspect and monitor activities of the Ministry of Internal Affairs. It became recently known that in 2004-2012, the MIA abused its power on numerous occasions. It was revealed, for instance, that MIA services, as well as the Military Policy Department of the MoD, regularly used illegal eavesdropping surveillance and unauthorised secret filming of suspects. At committee hearings, Group of Confidence members never questioned MoD representatives and government officials about the legality of eavesdropping, wiretapping, videotaping and video monitoring. Experts –respondents think that this might have been caused by the lack of tradition, political culture and political will among the political elite to establish a strict parliamentary control over the MIA. At the same time, interviewed experts admitted that relevant procedures and regulations

are in place to enable the parliament to increase accountability of the MIA. In their words, there are no formal limitations for that. For example, one such procedure is related to the committee right to initiate legislation and review it scrupulously at committee hearings and parliamentary sessions in general. However, in practice this right was rarely used.

One of the interviewed respondents, an independent expert who worked as parliamentary staffer earlier, stated that in previous parliaments the opposition was rather weak, while the ruling party was unwilling to organise open hearings in the parliament. MPs from the majority always had a consolidated position and their assessments never contradicted each other. Although there is strong evidence that different opinions existed in the United National Movement's political bloc, they never expressed their views in public. After the October 2012 parliamentary elections political debates have become more open and democratic. However, experts say that MPs from the majority obviously lack expertise and knowledge on defence and security related issues.

In addition, interviewed experts said that committee hearings and procedures on legislative initiatives revealed close connections and existence of informal influence among majority MPs and executive officials. This is why, in their words, it is difficult to ensure a balance between responsibilities of the executive and law-making institutions. In some cases, for instance, a committee chairman initiated a new legislation, but it became clear later that the legislation was actually prepared by an executive agency, rather than the committee, but the chairman submitted the initiative to the parliament.

The opposition, community of experts, and civil society representatives widely criticised the fact, according which the chairman of the Procedure Committee initiated a law regulating exit procedures from Georgia's territory, which intended to restrict regulations for those Georgian citizens who wanted to leave Georgia or cross the state's borders. Both the general public and MPs assessed the law as unacceptable, as it violated internationally recognised norms and standards of the freedom of movement. During a committee hearing, the Procedure Committee chairman acknowledged that the draft law was in reality developed by the executive government, the Ministry of Interior in particular, but it was presented to the parliament as if it were the chairman's initiative.

According to the experts and MPs interviewed during the self-assessment survey, authors of the legislative initiatives usually conduct consultations with respective interest groups, while information about draft laws is readily available on the parliament's website. It should be mentioned,

however, that such consultations are not systematic and transparent. For instance, the law requires that the author(s) of a legislative initiative enclose information about experts and interest groups engaged in the consultation process with the draft law. However, in practice this requirement is rarely met and such information is usually absent when the draft is submitted to the parliament. What is more, even though the expert opinion is missing, the parliament starts to review the draft law anyway. According to the experts and MPs interviewed during the research, although the lawmaking procedures and regulations are well defined in the Georgian legislation, there is still enough room for improvement, as these regulations are not properly implemented. The committee procedures related to the lawmaking process, such as a review and elaboration of amendments, are well developed and defined, and can be quickly and efficiently introduced in practice. It does not rule out, however, that some improvements may become necessary in future.

The Legal Issues Committee has the responsibility to check that legislative initiatives are in line and consistent with the Constitution human rights standards, universal freedoms and other international norms. As a rule, the parliament has enough expertise to meet the above mentioned requirements. According to the interviewed experts, the main concern is the fact that legislative initiatives are not always substantiated by motives and aims, making it difficult to understand the meaning of the initiative. On the other hand, the parliament apparatus is responsible to ensure that the enacted legislation is clear, concise, intelligible, and technically readable.

For this reason parliamentary oversight over the defence and security sector was less dynamic in previous years, even though security sector reforms proceeded quite intensively during this period and the parliament had a special role in the effective oversight of the reforms.

Parliamentary regulations have changed little since the October 2012 parliamentary elections, which swept a new ruling coalition to power. Cooperation between the DSC and MoD seems quite efficient. One of the deputy defence ministers was put in charge of the liaison with the parliament. One of the May 2013 DSC hearings was attended by the defence minister Irakli Alasania who was asked to specify the priorities and challenges his ministry was facing. He told the lawmakers that one of the MoD's top priorities was to renovate infrastructure in most of the military units across the country, which could be accomplished only if additional funds were allocated to the MoD. In addition, he proposed a draft law which obliged the MoD to report every procurement deal worth 2 million

GELs and above to the parliament. Specific amendments to the laws on the Group of Confidence and Parliamentary Regulations on Procedures were then drafted on the basis of this initiative and adopted by the parliament after brief debate.

Summary and relevant best practices¹⁸

The access of MPs to defence and security information raises challenges in many countries. Firstly, parliamentarians with a deep knowledge of defence issues are relatively rare. Secondly, confidentiality tends to limit the flow of essential information. However, a distinction has to be made between confidentiality and the lack of public scrutiny. Many countries have tried to solve this dilemma by enhancing legislation in order to clearly define procedures for sharing classified information to specialised committees.

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

In other parliaments, committee members obtain access to classified information only after receiving a security clearance (Norway, Serbia, Macedonia, Latvia). The security clearance is issued after MPs undergo background checks performed by a government agency. The rationale behind vetting parliamentarians is to clarify rules of procedures, and this is especially important in young democracies, where politicians do not have a secrecy culture and on the other hand, security agencies are reluctant to share information. Successfully passing such formal vetting procedures helps build trust between the legislature and the executive improves communication and empowers members of parliament in their dialogue with executive officials.

To respond to increased public concern over misconduct and corruption of elected officials themselves, parliaments use a variety of legal instruments to set high ethical standards of behaviour for MPs through 1) Codes of Conduct (to vet absenteeism, tardiness, improper language, unruly and disrespectful interventions during sessions, use of privileged information, misuses of parliament allowances and sanction misconduct); 2) Incompatibilities defined in the constitution, laws, Codes of Conduct (publicise wealth and interest declarations, like it is done in Czech Republic, France, Germany, Italy, Poland, Romania, Spain, Switzerland, UK, US) identifying all assets and liabilities of parliamentarians and their families, all benefits and any private company in which a member of his/her

¹⁸ The best practices presented here are designed by Teodora Fuior in her study on *Parliamentary Powers in Security Sector Governance*, DCAF, Parliamentary Programmes 2011

family has an interest, list every corporation, association, union of partnership in which any of them holds an office or directorship.

In some countries, important procurement contracts have to be submitted for the approval of the defence committee. This is the case in the Netherlands for contracts that exceed 2.5 million euro, Germany for 25 million euro, Poland for 28 million euro, and Norway for 300 million euro. In other parliaments, even if the defence committee's approval is not mandatory, the MOD has the obligation to inform the committee and give details about all contracts above a certain value (Hungary, Switzerland, and UK). Sometimes parliament or the defence committee can be involved even in specifying the need for equipment, in comparing and selecting a supplier or a product, in assessing offers for offset arrangements (Czech Republic, US).¹⁹ Amendments recently applied to Georgian laws on Parliamentary Regulations on Procedures and on the Groups of Confidence bring Georgia's procurement practice closer to that of Hungary, Switzerland and the UK, but only time will tell if and how the new regulations contribute to making the procurement system more efficient and transparent.

¹⁹ Teodora Fuior, *Parliamentary Powers in Security Sector governance*, DCAF Parliamentary Programmes, 2011

4. Representativeness of Parliament

4.1. Role of individual members

The functioning and development dynamics of the country's political party system has significantly influenced the level of parliament's representativeness.

Like in other transitional democracies, Georgia's party system is still volatile and not fully institutionalised: there is still no sense of stability regarding the main players in the political system and their rivals and there are no fundamental rules and limits in terms of party competition and behaviour. The system is characterised by a rather high expectation of change which is confirmed by the unpredictability of political regime, and the economic, institutional or legal environment. Due to profound personalisation of party politics, in contrast with strongly institutionalised systems, stable political constituencies are largely irrelevant in Georgia. In addition, like in other transitional countries, the level of uncertainty is very high in the functioning of formal institutions including democratic election regulations and even civil-military relations (in 2013 a high-ranking police officer was elected as the Minister of Interior). Additionally, these uncertainties lead to a perception of growing authoritarian leadership.

Furthermore, like in other transitional democracies, Georgia's market economy model strongly depends on market openness and global economic processes. Therefore, there is a high level of uncertainty regarding the country's potential for economic development.

Single-party dominance 1995-2004

The political process that has been under way in Georgia in recent years has demonstrated that the rules of political interaction are underdeveloped and often change. Due to this uncertainty, political parties, just like in other young democracies, take decisions they deem rational at a given point and seek the fulfilment of short-term goals. Parties do not rush into taking decisions regarding party decentralisation because of a high level of personalised decision making and limited and short-term planning hori-

zons. This strategy strengthens the level of the above mentioned uncertainties during the whole election cycle and can strongly undermine it.

According to the outcomes of the academic research on weakly democratised political party systems, the systems governed by authoritarian leaders usually tend to evolve into either a mixed political coalition or a single-party dominated system. Both of them attract weaker parties and encourage a 'bandwagon effect' after the strong entities. Indeed, Georgian parliaments elected in 1995, 1999, 2004, and 2008 were characterised by the strong dominance of a single party in the legislative and executive branches, which at the same time held a constitutional majority in the parliament and consequently, it was sometimes difficult to distinguish the ruling party from the executive and civil service.

As many commentators in Georgia admitted, until 2012 the ruling party faced little competition in terms of policy. Marginalised opposition had less capacity and incentive to initiate costly and time-consuming activities on their own. However, this changed during the run-up to the 2012 election campaign, when the opposition consolidated its ranks and formed a coalition of six political parties with significant financial resources, which in turn increased competitiveness of in the pre-election period and made them win the elections.

Growing opposition

Based on the election results, political opposition in the newly elected parliament is much stronger than it was before 2012. The former ruling party, the National Movement, obtained 40.4% of the votes while the Georgian Dream Coalition won the majority in the parliament with 54.9% of the votes. The election victory allowed the winner to nominate the prime minister and form a new government, even though it lacked a constitutional majority in the parliament. Today, the parliamentary opposition significantly influences the country's political agenda. This is a relatively new development in the Georgian political party system. The given survey has shown that currently the summary rating of those political parties which did not manage to enter the parliament does not exceed 4.5%, which means that almost all main interest groups are represented in the parliament.

Georgian experts participating in the self-assessment survey share the opinion that the new parliament represents the diversity of political opinion in the country and all main political players are represented in the parliament. Following developments contributed to this outcome:

First of all it should be mentioned that international observer missions assessed the pre-election environment in Georgia positively. According to reports published in September 2012 by two international organisations- the Parliamentary Assembly of the Council of Europe (PACE) and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR)- the pre-election environment in Georgia ahead of the 1 October 2012 parliamentary elections was "competitive" albeit "polarised".

Secondly, the 2012 parliamentary elections were conducted under a new election code adopted in December 2011 and on 29 June 2012 latest amendments were made. According to the new code, voters elected a 150-member parliament for a four year term: 77 members were elected under a list-based proportional system and 73 in single-mandate constituencies. According to the Central Election Commission, there were 21 "election subjects" registered to contest the 1 October 2012 elections, including two election blocs and 19 political parties/unions. Four independent candidates have also registered. The United National Movement (UNM), the Georgian Dream Coalition, the Christian-Democratic Movement (CDM) and New Rights all announced their candidates for the position of prime minister.²⁰

As of the 1 September deadline, the Central Election Commission announced that 16 electoral subjects (14 parties and 2 blocs) and four independent candidates will contest the 1 October elections. All 16 parties and blocs submitted their lists of candidates by 1 September. Although the minimum age at which a candidate can run for parliament has been lowered to 21, there were no youth candidates for majoritarian seats. All 16 parties included youth candidates in their lists. In total, there were 151 candidates under the age of 25.

However, experts and MPs interviewed during the self-assessment research agree that the level of representativeness of the parliament is still not satisfactory and needs to be improved. The reasons for this underrepresentation are the specifics of the election system and the lack of Georgian politicians' attachment to their constituencies.

Political parties nominated their candidates to all 73 single-mandate constituencies. Between two and ten candidates from every political party stood in every electoral district. Only two parties, the United National Movement and Georgian Dream, assigned their candidacies to all electoral districts. Other political entities such as the Christian Democrats, New Rights, and Labour Party, were represented in almost all districts.

²⁰ NDI Long-Term Election Observation 2012 Parliamentary Elections in Georgia, Interim Report, August 2012, pp. 3 – 27

The majoritarian candidates ensure the presence of regional representatives in the Georgian parliament. At the same time, there was a wide disparity between single-mandate, majoritarian constituencies, which led to unequal weight of each vote. "The new election system is not fully in line with European standards," two co-rapporteurs from the Parliamentary Assembly of the Council of Europe (PACE) said in their report to the PACE's monitoring committee.

For example, the weight of constituencies in the Krtsanisi district of Tbilisi was 95,000 voters, while the Gldani electoral district totalled 140,000 voters. Although political parties lobbying business interests and those advocating women's rights are presented in the parliament, their representation remains very weak and armed forces veterans are worried that their interests are not protected in the parliament, as there are no MPs promoting their rights.

There is also another reason for insufficient representative power of the parliament. The Georgian public has very limited awareness and understanding of who and how represents them in the parliament. According to the survey conducted by the National Democratic Institute (US) in Georgia in November 2013, 45% of the respondents did not know their majoritarian MPs, and only 40% of the respondents appeared aware that their majoritarian candidate represents the interests of their constituency rather than his/her personal or partisan interests.

It should also be mentioned that experts interviewed during the self-assessment research think that it is not easy for an average Georgian citizen to be elected in the parliament because, on the one hand, the legislative framework and formal regulations are quite complicated and, on the other, informal mechanisms play an important role in the political party career advancement process. Even though under the current law persons as young as 21 can be elected in the parliament, victory in the elections is very closely tied to the level of development of a respective political party infrastructure and a candidate's relationship and connections with the party leadership, and less depends on personal achievements and characteristics.

The electoral lists for the proportional voting system are usually drawn on the basis of party leaders' considerations and motivations, largely because the Georgian political party system is very much personalised and internal democratic principles are rarely adopted by political parties in Georgia. Majoritarians are elected in single-mandate constituencies, and it is essential for a candidate to receive infrastructural support from the political party, as well as from local and central government, in order

to become competitive in the poll. Without such support, it is almost impossible to win elections and get a parliamentary seat in Georgia.

Experts agree that the existing environment represents a challenge for society, because nobody among legislative and executive leaders considers it necessary to increase the level of parliament's representativeness. Neither MPs nor experts have ever raised this problem. The following questions need to be discussed in order to address the problem:

- How to restore a balance in the representativeness of the parliament.
- How to ensure active engagement of the majority and the opposition in parliamentary activities.
- How to encourage political leaders to work closely with the parliament and reach diverse groups of society.

Interviewed MPs and independent experts share the opinion that political parties and MPs from the ruling coalition are concerned more with unity among rank-and-file members rather than the improvement of the representativeness of the parliament.

For example, the previous parliament did little to engage opposition or minority groups in parliamentary activities. Instead, their initiatives were blocked and freedom of expression limited in different ways. Opposition parties launched street protests in 2007 because their voices were ignored in the parliament. As a result, a serious political crisis erupted in Georgia in November 2007, leading to the president's resignation and snap presidential elections on 5 January 2008. These developments demonstrated the ruling party's failure to understand that opinions of minority members should be taken into account in the decision-making process.

The situation in the current parliament has since improved: The opposition has a stronger voice and the parliament provides a more competitive environment than before. For constitutional changes, it is important for all parliamentary factions to cooperate. At the same time, experts participating in the research admitted that the parliament's decisions are, as usual, often influenced by different factors. For example, parliamentary debates over the State Budget Law are apparently influenced by the government, though direct indications of this influence are often impossible to notice. All experts agree that the degree of independence in the current parliament is much higher than in the previous one, not least because the opposition is very actively involved in the political processes.

Accountability

Majoritarian MPs and those elected through party lists have different accountability mechanisms to exercise their duties. Only majoritarians are responsible for implementing certain formal accountability mechanisms regulated by the Constitution and the Law on Parliamentary Regulations on Procedures. Under this law, majoritarians have the obligation to conduct monthly constituency surgeries on specific days of a non-plenary week – on Tuesday, Wednesday and Thursday, while MPs elected by proportional vote have no responsibility for that. Formally, majoritarians should bring the problems discussed at constituency surgeries to the attention of respective committees, while the latter are obliged to report them to the Chairman of Parliament. Information about constituency surgeries, responses to the raised questions and requests, and oral complaints should be published on the parliament website, available to all interested individuals.

According to experts, however, not all majoritarian MPs follow regulations and fulfil their responsibilities dutifully. In 2008-2012, the National Democratic Institute, supported by the USAID Parliamentary Strengthening Programme, encouraged majoritarian MPs to develop constituency outreach strategies and offered them training on communication skills. In addition, the NDI-led programme aimed to facilitate debate among MPs on issues of district interests, improve interaction between MPs and journalists as a way to increase media access to parliament and help elected officials develop relationships with journalists. Overall, experts and MPs interviewed during the self-assessment survey admitted that majoritarian MPs elected in 2008 and 2012, only rarely communicate with their districts as they were selected by the party leaders on the basis of loyalty or prestige, do not care much about concerns and interests of their constituencies, and are generally not accountable to them.

The Law on Parliamentary Regulations on Procedures and the Law on the Conflict of Interests and Corruption in Public Service define means of financial oversight and responsibilities of MPs, designed to prevent conflicts of interests in the parliament. The regulations are quite strict and require that all MPs publish their income declarations on the government's website to make it publicly accessible. In order to increase accountability of MPs, many non-governmental organisations collect as much information about MPs as possible and make it public, including voting patterns and statistics from parliamentary sessions, income declarations and proposed legislative initiatives. Procedures and rules of political party funding

are another important means of ensuring political party accountability to the public. It is regulated by the Law on Citizen's Political Entities and the Law on Electoral Code of Georgia. The State Audit Office is responsible for controlling funding sources of political parties, including citizens' voluntary contributions. The Central Election Commission contributes to transparency by publishing respective data and statistics.

Despite the existence of such straightforward formal regulations, efficient accountability practice in the parliament cannot be fully guaranteed. Interviewed experts say that even though the State Audit Office has the right to audit financial sources of political parties, it does not guarantee more transparency of political parties. Finding out incomes of political parties is not difficult, but there are no rules and norms that regulate a political party's spending. This means that political party spending does not fall under the scrutiny of the State Audit Office.

Women's representation

Women do not play a visible or proportional role in Georgian politics as, until 2012, there were only nine women members in the previous parliament. Party representatives always proclaim that women play an 'essential' role in political parties. In practice, however, there has been little evidence that this rhetoric translates into an active role for and equal representation of women. There were only 726 women among 2,312 registered party-list candidates (31 %) and 68 among 436 majoritarian candidates (16 %).²¹

On 28 December 2011, the government introduced new provisions in the legislation to promote women's political participation. Article 30, paragraph 71 of the Law on Political Unions stipulates that those electoral subjects that receive state funding will receive additional funding if their party lists include at least 20 percent women candidates, provided there are two women among every 10 names in the list. CDM, New Rights, Georgian Trump, Kakha Kukava – Free Georgia, People's Party, and Georgian Sportsmen's Community party lists met this condition – every 10 names in their party lists included two women. Although this legislation was introduced by the government, the ruling UNM party failed to meet the requirement. So did Georgian Dream, Labour Party, National Democratic party, etc.²²

²¹ NDI Long-term election observation 2012 Parliamentary elections in Georgia, Second Interim Report, August 28 – September 12, 2012

²² *ibid*

Among contestants of the October 2012 parliamentary elections, the level of women's representation was slightly higher than in previous elections. In the previous parliament, women's representation among MPs was 6%. In the newly elected parliament it reached 12%, elevating Georgia's international rating from 134th to 105th place for 2013, in the world classification index, Women in National Parliaments.²³ One should also mention that women's role in politics is not actively discussed by society. According to the poll conducted by the National Democratic Institute (NDI, US) in November 2013, 46% of the Georgian population consider women's representation satisfactory, which indicates that public opinion tends to distrust women politicians and women stay among second-class players in political processes and gender-based discrimination is still part of the electoral process in Georgia.

At the same time, Georgia has made some progress in elaborating and implementing gender related legislation. In 2010, Georgia adopted the Law on Gender Equality and Action Plan for the Implementation of the Law. The Georgian parliament has ratified the following resolutions affecting security governance issues:

- UN SC Resolutions 1325 on women, and peace and security.
- UN SC Resolution 1820 condemning the use of sexual violence as a tool of war, and declaring that "rape and other forms of sexual violence can constitute war crimes, crimes against humanity or a constitutive act with respect to genocide".
- UN SC Resolution 1888 mandating peacekeeping missions to protect women and children from rampant sexual violence during armed conflict.
- UN SC Resolution 1889, which explicitly links sexual violence as a tactic of war with women, peace and security issues.
- UN SC Resolution 1960 on women, peace and security.

Under the resolution of the Georgian parliament, the National Action Plan for the implementation of the UN SC Resolutions 1325, 1820, 1888, 1889 and 1960 on Women, Peace and Security was adopted in 2011. The National Action Plan has five priority areas. The first one underlines the issue of women's participation at the decision-making level in conflict elimination, prevention and management process. This part of the Plan sets several objectives which target key power issues: women's increased participation and involvement in the defence and

²³ Data compiled by Inter-Parliamentary Union, <http://www.ipu.org/wmn-e/classif.htm>

security sector and in peace negotiations. The implementing agencies are the Gender Equality Council, the Office of the National Security Council, the Ministry of Foreign Affairs, the Ministry of Justice, and the Office of the State Minister for Reintegration. Part of the state budget and donors' funding are key resources to ensure implementation of the planned activities. Parliament has approved Georgia's 2012-2015 NAP for the Implementation of UN SC Resolution on Women, Peace and Security, on 27 December 2011.

Even with these tools of gender equality, significant differences remain in the roles of men and women in the sector. According to international sources, women are underrepresented in political offices on both national and local levels in Georgia. The country was ranked 60th out of 86 in the 2012 Social Institutions and Gender Index and was given the 33rd position among 102 countries in the 2009 Social Institutions and Gender Index. This in reality means that women's roles and representation in the defence and security sector and in formal decision-making processes are limited.²⁴

Despite the fact that there are institutional and legislative mechanisms ensuring women's participation in security and defence-related decision-making, there are still many challenges to be addressed. Such challenges are reflected in the absence of gender-sensitive approaches in the relevant government structures where gender issues are still perceived as a formal and exaggerated problem. Besides, in most cases some positions are specially created for male service officers. Traditional gender stereotypes prevail in the defence and security sector, which is one of the most conservative areas. There is a ban on appointing women to combat positions, a process which excludes women from the decision-making process.

In sum, parliamentary procedures and regulations need to be improved to ensure gender equality principles. Members of parliament representing women's rights in the parliament consider that women equality and participation should be regulated by special clauses in laws. The amendments to the Labour Law enacted on 1 January 2014, aim, among other things, to improve workplace conditions for women. The amendments are designed to ensure equal remuneration, equal social guarantees, and equal working conditions.

²⁴ Implementation assessment of the Convention on the elimination of all forms of discrimination against women, research, conducted by Women's Information Centre, 2011

4.2 Transparency and Accessibility of Parliament

Media Freedom

Very few media outlets provided diversified and politically neutral news for Georgian citizens prior to the 2012 parliamentary elections and the issue remained a problem even after the elections. Among these relatively free sources were the internet and a number of private newspapers with central and regional coverage, which were editorially independent but had only very limited circulation (reaching only 2% of the population).

Freedom of the Press Worldwide 2013, a report published by Reporters Without Borders, ranked Georgia 100th among 178 countries, while its regional partners Moldova and Armenia enjoyed a much better ranking, 55th and 74th respectively. The report noted that Georgians “enjoy broad media pluralism and a low level of state censorship, but they still face important challenges concerning media independence and the working environment of journalists...” The report also emphasised that “journalists in those countries [with limited media freedom] are often in the firing line in ‘highly polarised societies’ and treated as easy prey by a variety of pressure groups”.²⁵

According to reports published in September 2012 by two international organisations- the Parliamentary Assembly of the Council of Europe (PACE) and the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR)-, welcomed the endorsement of the new rules prior to the 2012 parliamentary elections campaign that improved pluralism in the country’s media environment. The OSCE/ODIHR interim report, covering the period between 22 August and 5 September, found that Georgian media outlets were polarised according to political outlook and lacking in independent editorial policies.²⁶

In fact, in recent years the Georgian public and NGOs have continuously called upon the government to take appropriate measures to improve the level of media freedom. Civil society organisations organised wide-scale campaigns on the improvement of management practices of Georgian Public Broadcaster and on fair and transparent procedures regulation of the governing board of the entity. This is especially relevant for Georgia where television remains the main source of news for about

²⁵ Reporters Without Borders – Freedom of the Press Worldwide 2013. http://fr.rsf.org/IMG/pdf/classement_2013_gb-bd.pdf

²⁶ Central Asia Caucasus Institute, CACI Analyst, issue dated: 09/19/2012. <http://www.cacianalyst.org/?q=node/5843>

80% of Georgian citizens residing in the capital and 92% of the rural population. Even in Tbilisi, only 11% of people surveyed in 2011 said that the internet represents their main source of information.²⁷

The 2011-2013 media survey data also indicates that a large proportion of the Georgian public is critical towards the current state of affairs in the media²⁸. Unrestricted access to the internet and the free dissemination of online news are especially important in such circumstances. The internet provides traditional media and news agencies with an opportunity to freely disseminate their information online and bypass the artificial barriers that led Freedom House to categorise Georgia as a 'partly free' country.

Access to social networks is unrestricted in Georgia and the Georgian government does not censor the internet. This is why Freedom House upgraded Georgia's ranking with regard to internet freedom from 'partly free' in 2011 to 'fully free' in 2012.

Internet freedom was a subject of heated public debate in Georgia in 2011-2012. One of the most actively debated disputes was a lawsuit against the Georgian parliament brought to the Constitutional Court in 2011 by a local NGO, the Georgian Young Lawyers Association (GYLA). GYLA appealed against the newly adopted law that gave the authorities the power to monitor all internet activities, including private online communication, without a court warrant.

After hearing the case on 24 October 2012 (immediately after the new government came to power after the 1 October parliamentary elections), the Constitutional Court ruled in favour of GYLA, emphasising that the law did not provide any mechanisms to ensure the protection of the right to privacy and prevent unauthorised monitoring of internet activities, including private online communication, by law-enforcement bodies without a court warrant.²⁹

Despite the fact that media freedom was substantially limited in 2007-2012 and the ruling elite influenced editorial policy of media broadcasters in Georgia, information about parliament and its committees has become increasingly accessible for the wider public since 2010. Georgian Public Broadcaster is responsible for providing live coverage of parliamentary plenary sessions via its Channel 2. This requirement is stipulated by the Law on Broadcasting. Members of parliament and independent experts

²⁷ Caucasus barometer 2011, Caucasus Research Resource Center, <http://crrc.ge/>

²⁸ Media survey in Georgia, 2011, Caucasus Research Resource Center, <http://crrc.ge/>

²⁹ Constitutional Court: http://www.constcourt.ge/index.php?lang_id=ENG&sec_id=6&info_id=1068 accessed 15 April 2013

interviewed during the self-assessment survey, supported the idea that plenary sessions are broadcasted live, recorded and could be monitored later upon request. In recent years, many international donors operating in Georgia contributed to increasing transparency and accessibility of the parliament. For example, the Parliamentary Strengthening Project led by the National Democratic Institute (NDI) (funding of \$6.7 million) was designed to achieve the following results:

- 1) Improve relations between MPs and journalists.
- 2) Provide Advanced Internet Services on the parliament's website; create personal web pages for majoritarian MPs, opening up communication channels with the electorate.
- 3) Establish the Parliamentary Communication Centre. Its main objective is to inform the general public about MPs' activities in the parliament. It provides information about voting patterns, legislative initiatives, and policy issues.
- 4) Broadcast debates between MPs and civil society representatives and ordinary voters, supported by the Parliamentary Communication Centre.

With donors' support, the parliament website became much more informative and helped increase the level of transparency in the parliament. However, according to the interviewed experts and MPs, the website still lacks regular updates and the minutes of some meetings and sessions are missing. In addition, the information contained in the website is not detailed enough – it is freely accessible but not comprehensive enough. For example, in September-December 2013 the parliament initiated and amended a total of 42 laws related to the security and defence sector, but respective DSC reports are missing on the website. The latest committee report published on the website is dated 26 June 2013 (the website was last accessed on 1 January 2014).

Summary and relevant best practices³⁰

The most important function of a national parliament is to represent its citizens. MPs individually initiate and amend laws, and the number of initiatives is a very important criterion in the evaluation of their activity, both in the political party they are a member of and within their constituency.

³⁰ The best practices presented here are designed by Teodora Fuior in her study on *Parliamentary Powers in Security Sector Governance*, DCAF Parliamentary Programmes 2011

MPs also have the right to address questions and interpellations to the executive which is obliged to respond. Parliaments also have their weekly sessions allocated for political declarations, with the help of which MPs could try to push the government to identify strategies and resources to address them.

Parliamentary debates transmitted live on TV, radio or internet, ensure a high degree of transparency and raise public awareness and interest in policy. In an increasing number of countries, all plenary debates are broadcasted live.

Recommendations

The analysis of the self-assessment survey reflects a variety of views from within parliament, as well as other actors, such as political party representatives, civil society actors, former government officials and MPs. The application of methodological tools provided by the IPU's self-assessment toolkit created a framework for discussion among respondents of the research.

The methodology involved answering questions about the nature and work of the parliament. The questions were grouped under six topics characterising the Georgian parliament: 1) representativeness, 2) oversight over the executive, 3) legislative capacity, 4) transparency and accessibility of the parliament, 5) accountability and 6) involvement in international politics.

While answering the questions of self-assessment toolkit, respondents were engaged in discussion, leading to an identification of the priorities for parliamentary development, and formalization of cooperation between the ministry of Defence and the relevant committees in the parliament. Based on the evaluation and assessment results summarized in the report, the following recommendations were developed aiming at improving the process of oversight of the defence sector in Georgia.

Recommendations for the Ministry of Defence

1. Develop framework to facilitate efficient parliamentary oversight by inviting Committee members to facilities, policy discussions, key units. In order to achieve the objective, each month, in advance, inform members of the Group of Confidence, Committee on Defence and Security about programs on main activities of the Defence Ministry and the Armed Forces. Members of the committees should be free to attend individually or in group the activities they are interested in.
2. Formalize cooperation with relevant parliamentary committees in terms of information sharing (Defence and Security, Human Rights, Legal and, Budget and Financies committees), reach an agree-

- ment with the relevant committees on exact timing of regular meetings, participation in hearings.
3. Intensify institutionalization process of Planning, Programming and Budgeting System (PPBS) in the Ministry of Defence, and ensure its sustainability and efficient functioning through capacity building and educational activities
 4. Scrupulously execute requirement of the new amendments to law on the Group of Confidence, on submission of classified information on important procurement programs to the Group of Confidence.
 5. Assess options for technical assistance (capacity building, knowledge-skill transfer) on Parliament-MoD cooperation issues. Invite international donors willing to contribute to the promotion of cooperation framework between the parliament and the MOD.
 6. Develop options to address technical aspects of Parliament-Committee-MoD-civil society cooperation on defence policies and practices. Invite International donors to support the initiative.

Recommendations for the Parliament

1: The representativeness of Parliament

- 1) Review and further develop legislation on lobbying in accordance with best practices from the US and EU member states, which could strengthen voices of interests groups and raise the level of representativeness in the parliament.
- 2) Promote sufficient and effective training in relevant ministries and institutions to discuss gender and women's issues with the aim to remedy gender related deficiencies.

2: Parliament's oversight over the executive

- 3) Ensure vigilant involvement of parliament in other stages than that of the budgetary cycle. This could be done by strengthening the State Audit Office and giving the office power to examine the economy, efficiency and effectiveness with which those institutions have used their resources.

- 4) Empower the Group of Confidence to ensure full-scale functioning of the Group during the whole parliamentary cycle without interruptions. Set more frequent dates for meetings and make the attendance for the member of the Group of Confidence mandatory.

3: Parliament's legislative capacity

- 5) Develop parliamentary regulations on legislative review procedures, which could increase the quality of professional debates in the parliament; make use of the expertise of civil society organisations, by engaging them in hearings and so forth.
- 6) Strengthen the professional capacity of parliamentary staffers supporting individual parliamentarians; ensure both parliamentarians and parliamentary staff members follow national and international seminars and study tours; strengthen research services and libraries.

4: The transparency and accessibility of parliament

- 7) Increase communication of parliamentarians with civil society organisations and journalists during the work on plenary and committee level; develop parliamentary communication strategies which address the issues of improvement of internal communication mechanisms among employees of the parliament as well as communication between MPs and journalists, civil society organisations and the wider public.
- 8) Better inform the general public about MP activities in the parliament through provisions of advanced internet services on the official website of the parliament creating more effective communication channels for constituencies and ordinary voters with their representatives. Continue broadcasting parliamentary debates transmitted live on TV, radio or internet; ensure a high degree of transparency and raise public awareness and interest in policy.

5: The Accountability of parliament

- 9) Ensure further development of the political party system in Georgia, and in particular, bring the legislation regulating transparency of political party funding to the standards exercised in Western democracies. Those changes should aim at increasing the accountability of parliamentarians.

10) Prepare parliament's annual report. Information provided should go beyond statistics on numbers, names and dates of laws and declarations adopted in the parliament; it should cover analysis defining the accountability of MPs which could contribute to a more critical selection of potential members of parliament by their political leadership as well as by the wider public during the next elections.

6: *Parliament's involvement in international policy*

11) Increase the expertise of MPs in the area of international policy in order to strengthen the oversight and control over the implementation of responsibilities undertaken by Georgia in the international arena.

12) Monitor the development process of national-level strategic documents and ensure that the documents are updated and implemented properly. Establish an average term of validity for the National Strategic Document which contains long-term provisions for accomplishing national and collective defence and security objectives.

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