Open Society Foundations - Armenia

Monitoring Report
of
Eastern Partnership Roadmap 2012-13
Armenia

Bilateral Dimension

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Contents

Preface

The process of European integration, and specifically the prospect of negotiating the EU Association Agreement (AA), was viewed by many in Armenia as a unique chance to comprehensively raise standards in governance, democratic institutions, justice, and economy, at a systemic level. The reason for this is the multi-faceted and binding nature of the AA. As such, the Eastern Partnership (EaP) Roadmap 2012-2013 was deemed to be an important step in this process. Along with a number of previous efforts, we at Open Society Foundations (OSF) undertook monitoring of the roadmap implementation in order to secure a proper point of departure for further integration within the AA framework.

During the writing of this report, there was an unexpected policy shift with President Serzh Sargsyan's September 3rd announcement to join the Customs Union (CU), which radically changes Armenia's development roadmap, setting it towards an opposite direction. While the EaP Roadmap had found advocates and implementers among the most experienced and capable members of civil society, and the monitoring has been carried out, we are now faced with a reality that does not allow for the initialing and implementation of the AA.

The decision to join the CU has created a new and dangerous reality that no longer includes an EaP Roadmap, and by extension an AA. In fact, much of the work already undertaken for the AA now needs to be undone in order to get to that opposite destination set out in the CU.

It can be argued that in light of such a reality, the work of the expert group and our resources were meaningless. For this particular project and moment in time, it is difficult to argue against such a conclusion, however, as EU diplomats have repeatedly stated since September 3rd, "The door to the Association Agreement is closed, but it is not locked". While reopening that door will require a political decision from both sides, keeping it open, despite real or perceived geopolitical pressures will take more than political theatrics. It will take a reform agenda based on genuine improvements in the efficacy of democratic practices and accountable governance institutions. These improvements must be measured by their impact on the ground, and through the protection of human rights and fundamental freedoms.

It is here where the Roadmap, along with similar monitoring initiatives and reports, can be instrumental, by providing valuable insight into the quality of the reforms and offering tangible recommendations on how to move forward. Our monitoring reports have repeatedly documented the superficiality and deficiency of the reforms process, which has not only failed to address the intended issues, but has actually served to intensify them and undermine their solutions. The lenient assessment of the reforms by European officials has lead to a failed process, resulting in a dramatic degradation of democratic standards in many areas, including elections, transparency, judicial independence, and in economic and political domains. If not seriously tackled, these problems will only grow, and consolidate towards a return to authoritarian rule. Any integration project that fails to

address these problems cannot truly be called value-based, but rather as temporary and unsustainable measures. By contextualizing the problems, analyzing the deficiencies, and providing concrete recommendations, this report can be a critical resource not only for a roadmap aimed at a re-opening, but also for real benchmarks on walking down that road towards the desired destination.

Acknowledgments

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Methodology

The monitoring report consists of *two volumes* aiming to assess Armenia's progress towards implementation of the *multilateral* and *bilateral* dimensions of the 2012-2013 Eastern Partnership (EaP) Roadmap, using evaluations conducted using benchmarks developed by a group of experts from Georgia and Armenia. The benchmarks are based on objectives, outcomes and measures set in the EaP framework. The report is structured in a way so that each section is composed of an executive summary, results, discussion, conclusion, and recommendations. Where applicable, the context in which these reforms have been undertaken is briefly introduced. The report has been peer-reviewed by independent experts from academia and civil society. As a result, it provides a detailed assessment that offers a cross-sectoral and comparative view of the overall integration process.

Both quantitative and qualitative research methods were used in the report, based on descriptive statistical data, observation results, in-depth interviews with experts, officials, and field professionals, along with secondary sources. Wherever required materials were not available, information was provided by prominent civil society organizations working in the relevant fields. Depending on the context, media reports have also been used to capture the most recent events, though arguments based on the latter are supported by other sources as well. The research was conducted with due respect and full confidentiality to the rights and interests of all parties involved.

The report documents Armenia's progress towards the EaP Roadmap implementation in selected areas. It covers the period from May 1, 2012 through September 1, 2013 and highlights areas where progress has been made, along with serious concerns regarding the overall governance situation and the pace of reforms. The report also evaluates the quality, depth and logic of measures put into place by the government to meet the EaP commitments, and provides practical policy recommendations in priority areas.

The assessed policy areas under the *bilateral* dimension – political association and economic integration, enhance mobility in a secure and well-managed environment, and

sector cooperation – all correspond to the Armenian government's efforts to achieve objectives in support of democracy, good governance and stability. These policy areas were chosen because sustainable development, and functional operation of the core democratic institutions involved, will play a determining role in successful European integration.

Working Group for the EaP Roadmap Monitoring Report of the *Bilateral* Dimension

Armenia

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A. Political Association and Economic Integration

(A.1.7) Implementation of common values and principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law by: non-discrimination on the basis of gender and sexual orientation

EXECUTIVE SUMMARY

The Republic of Armenia has undertaken international and national commitments regarding the promotion of gender equality and the increased role of women in all sectors, as well as the protection of human rights including LGBT (lesbian, gay, bisexual, transgender) rights. However, there are evident human rights violations, gender discrimination, and gender based violence in the country. Some sectors of the Armenian society make frequent references to national values, culture, and traditions while explaining gender norms and sexual identities. Yet the societal view of accepted gender roles for men and women are quite stereotypical, discriminatory, and intolerant and are largely a result of patriarchal mindset. This patriarchal understanding of gender roles defines what men and women should and should not do, and as a result often limits the rights of women. It is considered that women should be feminine, caring, and modest; while men should be intelligent, strong, and masculine. This submissive portrayal of women combined with patriarchal traditions (example of which is the saying: "the man is the head of the house" or "the more you beat a woman the softer she will become") leads to gender based violence, which often takes the form of domestic violence in intimate relationships. Incidentally domestic violence is an extremely persistent problem in families across the nation yet there is no legislation on domestic violence, no definition of it, and no established preventive and responsive mechanism against it.

Armenia is signatory to the Convention on the Elimination of all Forms of Violence against Women (CEDAW), is committed to the UN Millennium Development Goals, has developed Republic of Armenia Gender Policy Strategic Action Plan for 2011-2015[1] regarding the improvement of women's status and role in Armenia, and has created a Council on Women's Affairs. However the reality is that these efforts of gender mainstreaming and promotion of gender equality seem to stay only on paper. There is widespread gender discrimination against women and the LGBT community in the economic, political, social, and other spheres of Armenian reality.

There have been multiple incidents of hate speech and hate crimes, which are on the rise in Armenia in the recent period, targeting women, LGBT people, equal rights, and gender equality. Moreover, recently a group of people calling themselves the Pan-Armenian

[1] Republic of Armenia Gender Policy Strategic Action Plan for 2011-2015. Retrieved from http://www.un.am/res/Gender%20TG%20docs/national/2011-2015_Gender%20Policy_NAP-Eng.pdf

Parent's Committee raised an active wave of extreme nationalism and hate towards the word 'gender' itself, the ideology behind gender equality, the Law on Equal Rights and Equal Opportunities for Men and Women, as well as people and organization advocating for gender equality in the country.

INTRODUCTION

The "Global Gender Gap Report 2013"[2] published by the World Economic Forum, ranks Armenia 94 out of 136 countries in gender equality. The report ranks the Existence of legislation punishing acts of violence against women in case of domestic violence in Armenia as 0.75 (where 0 = best, 1 = worst). A draft Law on the Prevention of Domestic Violence was created by NGOs and state bodies, but it was rejected and shelved despite the fact that there are numerous cases of domestic violence in the country. As reported by women's organizations there were 8012 hotline calls for domestic violence since 2011 to September 2013; 766 recorded cases of domestic violence in 2012[3] (an unofficial estimate done by the civil society sector accounts for approximately 2000 cases annually); and 8 deaths of women as a result of domestic violence in 2012-2013.

There is an absolute need for a separate Law on Domestic Violence as opposed to some amendments to existing laws since it is an issue that takes place in intimate relationships and special circumstances, and therefore needs a special response tailored for this purpose. The adoption of the Law on Domestic Violence is directly connected to the establishment of preventive measures against DV, the reduction of DV incidents, the establishment of a referral mechanism throughout the country and appropriate crisis centers, hotlines and other services, and obviously the increased protection of victims of DV. Moreover, the adoption of the Law is crucial since it will promote change in social behavior, ending the current trend of tolerance towards domestic violence by spreading awareness on a nationwide level to all circles of society.

The Global Gender Gap 2013 report also indicates that Armenia has legislation prohibiting gender-based discrimination, which is the Law on Equal Rights and Equal Opportunities for Men and Women adopted in June 2013, and yet there has been a wave of hysteria linked to the term "gender" in the Law which was defined as the "acquired, socially fixed behavior of persons of different sexes."[4] This definition of gender was either: misunderstood, not understood, deliberately distorted by many or all of the above. Some sectors of society are convinced that this Law refers to sexual minorities and "spreads perversion" thus destroying traditional Armenian families. Eventually, as opposed to conducting awareness raising activities throughout the country, the Government decided to withdraw the specific section from the Law, due to active 'anti-

[2] Global Gender Gap Report 2013. Retrieved from http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf
[3] Domestic violence cases grow in number in Armenia. Retrieved from www.tert.am/en/news/2013/02/06/domestic-violence/
[4] Law on Equal Rights and Equal Opportunities for Men and Women (Armenian) http://www.parliament.am/drafts.php?sel=showdraft&DraftID=28173

gender' propaganda of formed extremist groups. Moreover, these opponents of the Law have now turned against the entire Law itself, calling for the withdrawal of the Law while spreading misinformation about what the true meaning of 'gender' and other related terms.

There have been direct threats in social media sites to attack the Women's Resource Center, a well known women's rights NGO, target the Armenian Progressive Youth NGO, the Public Information and Need of Knowledge NGO and other groups and activists as part of the 'gender equality' law hysteria.[5]

This 'gender' related hysteria might very well be a strategic move to unite the homophobic masses against gender equality. Amnesty International's latest report presents hate crimes, discrimination, and harassment cases against LGBT individuals in Armenia—another indicator of homophobia.[6]

METHODOLOGY

This report is based on information and data attained by Armenian NGOs advocating for women's rights, gender equality, domestic violence, LGBT rights, prevention of sexually transmitted infections (STIs), etc. through their daily activities and firsthand experience with the issues at hand. Other sources for this report are Laws and draft Laws of the Republic of Armenia, international Conventions, as well as international reports and assessments.

RESULTS

There are widespread societal misconceptions in the country about what the term 'gender' means, acting as a precursor and basis for extremist nationalist groups to spread further fallacies. As a result 'gender', 'gender equality', 'gender identity' and all related terms and even ideologies are as a result equated with the spread of disease, homosexuality, destroyer of national traditions and family values, igniting fear, panic and hysteria amongst the people.

There have been many accounts of hate speech and hate crimes against women's rights organizations, women's rights defenders, and LGBT defender with threats to 'blow up' centers, 'burn' people, and violently disrupt a diversity march held in the capital.

Combining hate speech with distorted traditional values and the stereotypical understanding of women's rights and responsibilities in all aspects of life, there is an consequence of a specific, intimate type of gender based discrimination, which is domestic violence, a widely spread phenomenon in Armenia.

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[5] Hate movement against women's rights groups in Armenia http://unzipped.blogspot.com/2013/08/hate-movement-against-womens-rights.html

[6] Armenia: No Space for Difference, Amnesty International http://www.amnesty.org/en/library/asset/EUR54/002/2013/en/6d6a852f-6494-4ef5-bc13-1373f154e0de/eur540022013en.pdf

DISCUSSION

Firebombing of DIY pub

DIY pub was firebombed on May 8, 2012 by a group of young people, who justify their action with the fact that the pub owner Armine Oganezova (known as Tsomak) went to Turkey in 2011 and took part in a gay pride, as well as because LGBT people went to that pub. These young people were charged under Article 185 Part 3 of the Criminal Code with the intentional infliction of damage to property committed by arson, explosion or other publicly dangerous method. It should be noted that this does not fully describe the crime as it does not include the bases on hate.

The same day police arrested two brothers. They were released on bail and signature as a result of sureties given by members of the Armenian Revolutionary Federation (ARF) Artsvik Minasyan and Hrayr Karapetyan. The explosion of the pub was also justified by the spokesperson of the Republican Party of Armenia (RPA) and the deputy speaker of National Assembly of RA Eduard Sharmazanov, RPA members Hamlet Sahakyan and Ruben Hayrapetyan, ARF members Vahan Hovhannisyan and Artur Aghabekyan.

The Court of General Jurisdiction sentenced the brothers to 1 year and 7 months' provisional imprisonment and 2 years' probation. The upper court granted the defendants amnesty.[7]

Disruption of Diversity March

"Public Information and Need of Knowledge", "Women's Resource Center" NGOs and some activists organized "Diversity March", on May 21, 2012, on UN International Day for Cultural Diversity for Dialogue[8]. This event was dubbed as a "gay pride" by extreme groups and the misinformation was spread in media quickly. Throughout the march the nationalist groups were insulting and offending the participants of the march. Police officers were preventing attacks and physical violence towards participants. While the attackers of the march were gathered in front of Artists Union, the priests of the Armenian Apostolic Church arrived and blessed them, as well as they've given interview to media sources mentioning that they are against sexual minorities.

Helsinki Association human rights organization applied to Prosecutor's Office in order to hold appropriate investigation and to reveal the organizers. However, the Prosecutor's Office did not undertake anything relating to this. The media had their own role in the promotion of hate, aggravation and manipulation of current situation. After all, the organizers of the march noticed persecutions against them. Threats, personal insults and speech inciting violence were delivered to them explicitly as well as through social networks, emails, and third party involvement.

[7] Amnesty Granted to Brothers Accused of Bombing Gay-Friendly Bar DIY
http://www.epress.am/en/2013/10/24/amnesty-granted-to-brothers-accused-of-bombing-gay-friendly-bar-diy.html

[8] Deliberate misinformation to disrupt Diversity March
http://www.pinkarmenia.org/en/2012/05/misinformationondiversity/

Propaganda bill

In August 2013 the Police Department of the Republic of Armenia drafted changes in the "Code of the Republic of Armenia on Administrative Infringements", particularly adding two articles which set forth responsibility for "propaganda of non-traditional sexual relations".

The Legal Department of RA Police based the draft changes by stating its significant role in the protection of Armenian families. In addition, the draft changes did not define what "traditional sexual relations", "non-traditional sexual relations", or "propaganda" mean in that context. Furthermore, in a secular and democratic state, where freedom of speech is declared as part of the Constitution, the term "propaganda" should not be applied to harmless acts.

On August 8 the Legal Department of Police Forces of the Republic of Armenia withdrew the draft amendments to the Code of Administrative Infringements. As it was provided in the official website of RA Police, chief of Police Vladimir Gasparyan has sent the bill back considering the gaps and shortcomings identified during the discussions, as well as noting that the bill is not a police priority for them. Nevertheless, the draft addenda to the law has not been cancelled but postponed.

CONCLUSIONS

Armenia is proclaimed as a democratic country, which basic guideline is the institutionalizing and implementing of liberal values, therefore, the state and all interested organizations and associations, acting within the framework of the Constitution and existing laws need to contribute to the process of forming the society as a bearer of a democratic culture.

Issues regarding gender and sexual orientation are usually approached from a negative point of view, Defenders of LGBT and women's rights are considered as "traitors of the State" and LGBT people are presented as enemies of the society. As a result, any sphere of social life is becoming a place for discrimination, degrading treatment and violence. The intimidating activities toward LGBT people and supporters are considered to be new challenges which were not countered in a comprehensive way. The statements of state officials contribute to human rights violations of LGBT people, creating an atmosphere of impunity.

Despite being a signatory to several international declarations and conventions, the Government of Armenia has failed to address the issue of discrimination based on gender and sexual orientation. Moreover recent events showed that there is also lack of knowledge among society and a failure in awareness raising regarding these issues. As a result, human rights of women and LGBT people, as well as their advocates are not protected.

RECOMMENDATIONS

- Implement a common state policy based on the principle of non-discrimination in all spheres of public life.
- Implement actions in order to eliminate the reasons of inequality due to discrimination in all spheres of the society, in particular:
  a) Include the topics of sexuality and domestic violence in formal educational system, at the same time ensuring that the implementation of the education is by qualified specialists who received relevant training.
  b) Teach the importance and priority of principle ideas of respect for human rights, tolerance and equality among police officers and media representatives during the trainings.
  c) Raise public awareness on sexuality, as well as disseminate the ideas of equality, non-discrimination and tolerance.
- Take into consideration the principle of non-discrimination when adopting normative-legal acts, ensuring that the adoption or rejection of any legal act will not become a barrier for realization of rights and freedoms of vulnerable groups in the society.
- Adopt a separate Law on domestic violence to prevent and punish gender based discrimination in intimate relationships, which will prohibit violence on any basis of gender discrimination between partners or family members.
- Adopt a legislation prohibiting the calls and propaganda of hatred and violence, which will include and define responsibility for the propaganda and manifestations of hatred and violence.
- Make appropriate amendments in RA Criminal Code on classifying the crimes on motives of sexual orientation / gender identity to hate crimes.
- Develop projects that counter harmful gender-based stereotypes and discrimination through awareness raising by media campaigns and educational programs.
- Raise awareness among government officials regarding gender discrimination and how to abstain from making discriminatory, homophobic, and sexist remarks, in order to stop the reinforcement of prevailing stereotypes.
- Develop recommendations for local TV companies for reviewing the existing stereotypes concerning gender issues and sexuality in TV programs.
- For Mass Media representatives it is very important to follow the journalistic ethics, avoiding violating them in their work for rating and popularity.
- International bodies should pay special attention to the protection of rights of women and LGBT people in Armenia as a duty undertaken by a number of international agreements.
- International bodies should pay special attention to the close cooperation with women's and LGBT related civil society organizations in Armenia for raising the issues existing in the sphere and collaborating on the actions aimed at solving those issues.

(A.1) Area 1: Democratic reform

Develop the Human Rights Ombudsman institution

EXECUTIVE SUMMARY

The report assesses the development of the RA Human Rights Defender Institute (HRDI) from the perspective of the EaP Roadmap for 2012-2013 and provides assessment of efficiency of the Defender's activities in the current legislative and political environment according to National laws and Paris Principles of National Human Rights Institutions (NHRI)[9].

Activities of the Human Right Defender (HRD) throughout 2012-2013 mainly addressed the applications of citizens, evaluation of state agencies, issuing public announcements, initiating legislative amendments and monitoring of closed institutions. Although, there was an increase in the number of applications received by the Defender's office in 2012, mainly due to the newly established regional offices funded by the Organization for security and Co-operation in Europe (OSCE), the comparative analysis shows that formally the Defender's activities correspond to Paris Principles, yet, the actual application of these principles by the Defender is deficient due to the strong influence of the Executive Branch resulting in ineffective human rights protection and law confidence of society towards the Defender.

Throughout 2012, the Defender assessed the work of the government agencies regarding the issues of human rights violations, yet, it did not have any visible impact due to the defensive reaction of the state bodies and unwillingness to improve the situation and the insufficient follow up by the Defender, which in its turn revealed the deficiency of independence of the Defender.

The existence of legislative and institutional issues related to the effective activity of the HRDI as a National Preventive Mechanism (NPM) also causes concerns, since there have not been normative legal regulations adopted so far, while the regulations approved by the HRD are not publicized.

The issue of recognizing HRD as a subject with a legal standing, able to defend public and collective interests, is another major problem.

There is also an issue of financial scarcity of the Defender's Office, partially covered by international donors. However, the donors' funding, according to the Defender, creates a risk of limiting the independence of his activity[10].

[9] The Paris Principles relate to the status and functioning of national institutions for the protection and promotion of human rights. The Paris Principles were adopted by the United Nations Human Rights Commission by Resolution 1992/54 of 1992, and by the UN General Assembly in its Resolution 48/134 of 1993. http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf

[10] News&Analytics Hartak.am, *International Donors deprive me from independence (30 May, 2013),* http://www.hartak.am/arm/index.php?id=3281

It is necessary to carry out both "external" and "internal" reforms targeted at the proper and full implementation of the activities and goals by the HRD. It terms of external reforms it can be singled out: the regulation of Defender's activity as an NPM through corresponding legislative regulations, creation of additional safeguards by the state bodies in cases of inadequate processing of Defender's applications, specifically, authorizing the defender to dispute public interest in court at least on administrative cases, as well as allocating sufficient funds. In terms of internal reforms, the revision of the policy applied in relation to ensuring the publicity and transparency of the decisions made by the Defender, the full application of the HRD authority to impact policy-making along with provision of public awareness regarding it.

INTRODUCTION

This report presents the assessment of the action plan of the Eastern Partnership Roadmap for 2012-2013 which was confirmed within the frameworks of Eastern Partnership with participation of the High Commissioner for Foreign Affairs and Security policy of European Union. The report particularly addresses the development of the Defender's Institute in the context of democratic reforms.

The Human Rights Defender (Ombudsman's Office) of Armenia was established under Article 83.1 of the Constitution. The Human Rights Defender is elected by a majority of three fifths of the National Assembly for a non-renewable six-year term. Under Articles 8(1) and 12(1)(1) of the 2003 Human Rights Defender Act the Ombudsman has the right to access every detention facility and any other place where persons are deprived of liberty.

The Act provides for a mechanism of examination of complaints to the Ombudsman (articles 7-15). A complaint can be made within a year after the alleged violation has taken place, unless judicial proceedings are or can be brought forward to remedy the violation. When investigating a complaint, the Ombudsman has the right to consult judicial case-files, obtain expert opinions, interview public officials and so on. If he or she believes that a violation of human rights has taken place, he or she may indicate the measures the impugned state body or official has to take in order to remedy the violation and that body or official has to reply within 20 days to report the measures taken following the Ombudsman's decision (article 15(3) of the 2003 Act). The 2003 Act also provides for the Ombudsman's annual reports presented to the President of Armenia, Legislative, Executive and Judicial bodies and debated in the National Assembly.

Even though the Human Rights Defender is an accessible mechanism and has an access to every person in detention, it focuses more on addressing complaints than on preventing violations.

METHODOLOGY

The report was compiled based on the information provided by the HRD's office, HRD annual reports, reports of Armenia-based NGOs, the legislation regulating the Defender's activity, relevant international documents, as well as publications/articles disseminated by mass media.

RESULTS

According to the Article 83.1 of RA Constitution, the Human Rights Defender is an independent official who implements the protection of the violated human rights and freedoms by state and local self-government bodies and their officials. The RA Constitution stipulates the non-recallability and immunity of the Defender, the duty of the state and local self-government bodies and their officials to cooperate with the Defender. The procedure of appointment and dismissal of the Human Rights Defender, as well as the power, the terms of service and the guarantees for performing the duties of the Human Rights Defender, are regulated by the RA legislation on Human Rights Defender, adopted on 21 October, 2003.

In fact, in terms of financial independence and independence from the Executive Branch the Human Rights Defender institute fails to meet the norms established by the Paris Principles on National Human Rights Institutions.

Despite the mentioned achievements, the RA Defender's Institute is not yet established as an independent body implementing the full range of the activities it is entitled to by its mandate. The limitation of the resources necessary for actual accomplishments, and strong influence of the Executive Branch on unbiased and independent activity of the Defender still cause concern and affect social confidence towards that institute, which is generally perceived as a "government body".

As of today Armenia has had 3 defenders. The current Human Rights Defender Karen Andreasyan, began his service on March 3, 2011.

According to the data of the of the Caucasus Research Resource Center, during the second year of his service, the trust level towards the Human rights defender's office decreased: the number of people who fully trusted or somewhat trusted the Defender decreased, while the number of people, who somewhat distrusted or fully distrusted stayed the same and increased respectively (Table 1)[11].

The Trust Level / The Year	Fully trust	Somewhat trust	Neither trust nor distrust	Somewhat distrust	Fully distrust	Don't know
2011	11	23	24	8	13	22
2012	9	20	29	8	15	20
2012/2011	□	□	□	□□	□	□

Table 1

[11] http://www.crrc.am/hosting/file/_static_content/barometer/di11/CRRC_CB_2011_Eng_19.09.2012.pdf, http://www.crrc.am/hosting/file/_static_content/barometer/di12/CB_2012_Presentation_eng.pdf

In 2012 and 2013, Human rights Defender introduced Annual reports on the activities of the RA Human Rights Defender and violations of human rights and fundamental freedomsin the country during 2011 and 2012. The reports and the information were discussed disapprovingly by the state agencies, ministries[12], and in the RA National Assembly during 2013 spring session (April 9-11, 2013).

DISCUSSION

The resources necessary for the sterling activity of the Defender

Legally, the Defender's mandate is provided by the Law on Human Rights Defender[13]. The law sets the procedures of nominating the Defender and general guarantees for his/her activities and prerogatives. However, the legislation does not fully regulate the area of Defender's competence; in particular, the law empowers the Defender with the right to examine cases of human rights violations, yet, it does not provide leverages to prevent such violations even in such institutions as law enforcement bodies and the army[14]. This fact serves as a basis for limiting the access of Defender's staff into these institutions for examining possible violations.

There were efforts to make amendments in the RA Law on Human Rights Defender aimed at strengthening this institute in compliance with the Paris Principles, namely, clarifying the legal status of the Defender's staff and considering the staff members as public servants[15]. Despite these efforts, the financial independence of the Defender's office remains an issue as the government does not provide sufficient and sustainable funding for the full operation of the Office.[16] Currently, the Defender's staff is structured into 5 divisional administrations: citizen's reception and correspondence, civil and political rights, criminal procedural rights, legal analysis and foreign affairs. The Defender has advisers working on issues connected with the following groups: soldiers, prisoners, children, refugees, women, people with disabilities and minorities. There are also, regional offices operating with the financial support from OSCE that is coming to an end in 2013.

Effective impact of the activity of the Defender on the state bodies

In 2012, the Defender evaluated the activity of 22 state bodies and agencies and identified 148 violations (while in 2011, there were 25 RA state bodies assessed, with 130 violations revealed[17]).

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[12] See the response of the Ministry of Justice` http://moj.am/article/673

[13] http://parliament.am/legislation.php?sel=show&ID=1457&lang=eng

[14] Currently, the measures undertaken by the Defender in addressing human rights violations in armed forces, divisions of police, prisons are implemented within the mandate of National mechanism for preventing torture provided by Optional Protocol to the UN Convention on Tortures and other cruel, inhuman or degrading treatment or punishment

[15] RA Law on Human Rights Defender, art 23.1

[16] Human Rights Defender, "On the activity of RA Human Rights Defender and violations of Human Rights and Fundamental Freedoms in the country during 2012", sub-section "Obstacles for Defender's activity", 2012, www.ombuds.am

17 See Annual Report of HRD for 2011, www.ombuds.am, "Informational center" saction, "Reports" sub-section

However, despite addressing certain violations, the Defender did not follow up with the cases by presenting corresponding requests to relevant bodies to undertake measures concerning the identified violations. This may serve as an indicator of ineffective influence of the Defender's office on the state agencies and the restriction of Defender's activity by the Executive Authorities[18]. This concern can also be confirmed by the activities of the Defender in addressing certain violations during electoral processes of 2012-2013. During the period of elections to RA National assembly of 2012 and the Presidential Elections of 2013, the Defender was actively addressing electoral violations through special reports and public statements presenting nearly 500 cases of violation. However, the same level of active engagement was not observed in 2013 Yerevan Community Council elections, during which the Defender displayed more cautious behavior, although the facts of large-scale electoral violations were not fewer than those of the previous elections[19].

Independence of the Human Rights Defender from the authorities is a vital precondition for effective operation of the institution as per both national legislation and Paris Principles. In the reports on human rights violations presented by the Defender, the issues become visible for society, but are mostly left without a follow-up, impairing the trust towards the Defender's Institute. In order to gain the confidence of society and to fully implement its duties, the Defender should show more active engagement not only in the form of responding to an issue, but also following it up with in until the elimination of the violation.

The quantity of cases of restored rights with intervention of ombudsman (in comparison to previous years)

During 2012 there was a 39 % increase in the number of cases addressed by the Defender with a 38% rise in cases with the positive outcome. The increase can be attributed to the fact that Defender's regional offices operated in regions, namely, Vanadzor, Gavar, Ijevan, Gyumri, Yeghegnadzor, and Kapan aiming to implement the full scope of activities all over the country. The regional offices were established with the financial support from European Union and within the framework of cooperation with OSCE Yerevan office.

The role of the Defender in presenting reports on procedures of legislative amendments and implementation of international obligations

According to Article 16 of the RA Law on Human Rights Defender, based on the results of review and analysis of information on human rights and freedoms and in relation to finalizing the results of reviews, the Defender shall be authorized to provide advisory clarifications and recommendations to the state and local self-governing bodies and officials.

18 "The deputy of NA to HRD: Why are you not mentioning the name of Gagik Khachatryan- President of the Committee of State Revenues", April 11, 2013, http://hetq.am/arm/print/25374/

19 Transparency International, "Citizen-monitor-Elections to Yerevan local council", http://armdex.com/elections2013/map/

The RA Law on Human Rights Defender does not prescribe a mandatory requirement of compiling and presenting conclusion in terms of human rights regarding the legislative bills put into official circulation by the Defender. In the meantime, part 43 of the decree of the RA president, dated in July, 2007, stipulates that the draft laws of the RA Government, which relate to human rights and freedoms are sent to the RA HRD for the latter's opinion before being presented to the Government.

It is noteworthy that during his office years the RA's second Ombudsman A. Harutyunyan, as a rule, presented the Defender's expert conclusion over draft laws on human rights, which was presented in HRD's annual reports[20]. It is unclear from the current reports of HRD whether or not this mechanism is currently being practiced.

Beside the annual report, the Defender has presented other special reports as well; to the UN Committee against Torture concerning the implementation in RA of the Convention Against Torture, to the UN Human Rights Committee on implementation of International Covenant on Civil and Political rights, to the UN Committee on the Rights of the Child on the implementation by RA of the Convention on the Rights of the Child[21].

The role of the Defender in the prevention of torture

According to the Optional Protocol to the UN Convention on Tortures and other cruel, inhuman or degrading treatment or punishment, a national mechanism for prevention was created adjunct to the Defender's institute. The Defender's Institute is an independent national prevention mechanism established by the Optional protocol of the Convention against torture and other cruel, inhuman and degrading treatment or punishment. A counsel of experts composed of the staff of Defender's office and the representatives of different NGOs was created as a national mechanism of prevention. Moreover, there are not any legislative regulations of national preventive mechanism and it is stated on HRD's official website that the relevant legislative draft law is still being developed[22]. The absence of specific legislative regulations entails both inefficiency of implementation of functions by the Defender as a national preventive mechanism, and poor and ineffective introduction and application of NPM in Armenia as stipulated by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The situation becomes even more obscure if we take into account the fact that the decrees and the decisions adopted by the HRD regarding NPM and adjunct expert's council do not get published and are not accessible. Hence, the Defender has, by his own decision, determined the list of persons entitled to enter closed and semi-closed institutions, including representatives from both NGOs and HRD's staff. The Defender has presented this decision to relevant state bodies, and is manipulated by the state bodies to impede[23] the entry of persons excluded from the list, including other

[20] See: Annual reports of 2007, 2008, 2009 on human rights defender's activities as well as on violations of human rights and fundamental freedoms in the country.
[21] Human Rights Defender, section "Informational center", sub-section "Reports", 2012, www.ombuds.am
[22] See: http://www.ombuds.am/guards/browse/page/421/code/4
[23] See: http://hetq.am/arm/news/26591/qnnchakan-gortsoxutyunner-katarelu-npatakov-zinvorin-texapokhel-en-noyemberyan.html

representatives from the HRD's staff into closed institutions. The aforementioned decision of the Defender is not posted in the official website (as of 05.09.2013).

Currently, certain limitations and flaws are remarkable in organizing effective measures of combating torture. Defender's staff members often meet certain obstacles while entering closed and semi-closed institutions[24].

The issue of recognizing the Defender's power of judicial legal subject in the protection of public and collective interests

According to the RA Law on Human Rights Defender, the RA Defender can apply to the Court only in a manner prescribed by Paragraph 4, Part 1, Article 15 of the law, by bringing an action before the court on invalidating in full or partially the normative legal acts of the state and local self-governing bodies or officials that violate human rights and fundamental freedoms and contradict the law and other statutes, in case the state or local self-governing bodies or officials in question do not invalidate in full or partially their corresponding legal act within the prescribed period. Thus the Defender can apply to the Court when the legal act is of normative nature, and over a complaint to recognize the normative legal act of the state and local self-governing bodies or officials as contradicting the law and other statutes as well as to recognize the inactivity or activity of state or local self-governing bodies or officials as contradicting the law and other statutes.

By Recommendation (2004)20 of the Committee of Ministers of the Council of Europe on judicial review of administrative acts dated on December 15, 2004 to member states, it was defined that member states are encouraged to examine whether access to judicial review should not also be open to associations or other persons and bodies empowered to protect collective or community interests (Principle 2, paragraph 1).

The reference to this provision addressed in the Explanatory memorandum of the same Recommendation reads that the Recommendation encourages the NGOs, empowered to protect public or community interests, associations or other persons and bodies, to protect these rights and apply to the Court for their protection. Here, those administrative acts which relate to the interests of other groups of persons rather than a person are meant. Moreover, the term "administrative act' implies 1) both individual and normative acts, which are adopted by the administrative body and which may affect the rights or interests of natural or legal persons; 2. in cases of refusal to act or inaction, in cases when the administrative authority is obligated to instigate proceedings in the fact of a complaint.

The absence of mechanisms to carry out protection of public interest in a court procedure by the human rights defender decreases the effectiveness of protection from systemic violations of rights of citizens.

[24] See "Arrested serviceman was tortured", http://goo.gl/pPrvM

There is an Ombudsman for each sector, e.g. Military Ombudsman

Only one Ombudsman is functioning in the Republic of Armenia, who is empowered to deal with all violations of human rights. In the meantime, the Ombudsman also functions in separate sectors, which include but are not limited to the armed forces, penitentiary services, police, health care, including psychiatric institutions, freedom of speech, journalist activity and etc. The volume of human rights violations is too high for one institute, with limited resources, to be able to cope with all violations of human rights. Besides, the violations in separate sectors have different manifestations and different resolution. The violations of human rights in different areas should have specialized Ombudsmen dealing with them. The current problem can be tackled only by making amendments and addenda to the RA law on Human Rights Defender. Currently, one activity, which foresees the creation of Military Ombudsman's Institute, is included in the list of Action plan events under the National Strategy on Human Rights Protection.

The Ombudsman has the right to conduct research and inquiries upon his own initiative (legislative changes)

In compliance with Part 4, Article 11 of the RA law on Human rights defender, the Defender shall by his own initiative make a discretionary decision about accepting the issue for consideration, particularly in cases when there is information on mass violations of human rights and freedoms, or if these violations have exceptional public significance or are connected with the necessity to protect the rights of such persons who are unable to use their legal remedies.

The elective use of the mechanism to accept the issue for consideration by the own initiative of the current Defender gives rise to concerns. Very often the principle, by which the issues and their consideration time and reasons (own initiative or complaints) are set, is unpredictable. The defender also applies the mechanism of signing a memorandum with citizens, which constitutes a so-called "agreement".

Thus, in October 2011, the Defender signed agreements with the relatives of soldiers who died in the RA Armed Forces, which included information regarding the cases, the applicant's opinions regarding the causes of death, as well as the violations that took place during the investigation of the cases. The Agreements that were signed by Ombudsman Karen Andreasyan are summarized in an annotation which reads, "…the versions, assumptions, findings, claims and recommendations, presented in the agreements, with the exception of those presented under Part 6 of this agreement do not by any means reflect the evaluations or standpoints of the Human Rights Defender." Due to inconsistent and unpredictable approach of the Human Rights Defender, in certain cases the NGOs have revoked their signatures from the Memoranda of Cooperation[25] signed with the Human Rights Defender.

[25] See http://hetq.am/arm/news/26591/qnnchakan-gortsoxutyunner-katarelu-npatakov-zinvorin-texapokhel-en-noyemberyan.html

CONCLUSIONS

Despite the fact that there was an increase in the number of applications receivedby the Defender's office in 2012, mainly due to newly established regional offices with the financial support of OSCE, the comparative analysis as per Paris principles shows that formally the Defender's activity corresponds to Paris Principles, yet, the actual application of these principles by the Defender is deficient due to the strong influence of the Executive Branch resulting in ineffective human rights protection and the low confidence of society towards the Defender.

There is also an issue of financial scarcity of the Defender's Office, partially covered by international donors. However, the donors' funding, according to the Defender, creates a risk of limiting the independence of his activity[26].

Throughout 2012, the Defender assessed the work of the government agencies regarding the issues of human rights violations, yet, it did not have any visible impact due to the defensive reaction of the state bodies and unwillingness to improve the situation and the insufficient follow up by the Defender, which in its turn revealed the deficiency of independence of the Defender.

The existence of legislative and institutional issues related to the effective activity of the HRDI as a National Preventive Mechanism (NPM) also causes concerns, since there have not been normative legal regulations adopted so far, while the regulations approved by the HRD are not publicized.

The issue of recognizing HRD as a subject with a legal standing, able to defend public and collective interests, is another major problem.

RECOMMENDATIONS

- Encourage and support the improvement of work of Human Rights Defender Institute according to Paris Principles.
- Ensure that Human Rights Defender can have access resources, including financial resources to carry out his activity in full.
- Provide measures for swift assistance in cases of urgent matters
- Present the statutory regulation of the NPM mandate of the ombudsman;
- Provide clear criteria for selection of NPM members and separation of administrative and monitoring functions;
- Provide clear regulation of the NPM working methods in order to allow institutionalized cooperation with the Monitoring Groups;
- Promote creation of new mechanisms or reform of the existing ones, consider concentrating on those detention facilities which fall outside the currently defined mandates of the two monitoring groups (military units and military detention facilities, psychiatric hospitals etc.)

[26] News&Analytics Hartak.am, *International Donors deprive me from independence (30 May, 2013),* http://www.hartak.am/arm/index.php?id=3281

Ensure electoral framework complies with international commitments

EXECUTIVE SUMMARY

Electoral rights are regulated by the Constitution and the electoral code. The latest version of the electoral code was adopted on May 26th 2011, almost a year before the 2012 National Assembly elections. In theory, the electoral code adopted in 2011 provides the necessary mechanisms for ensuring free, fair and fully democratic elections; however, the abuse of administrative, human and material resources on behalf of the ruling party prevents this from happening. As a result, electoral rights are not fully respected in the Republic of Armenia. It is therefore of even greater significance to implement steps directed at proper application of legislation in practice in order to hold fully democratic elections.

The current report is based on an analysis of the Armenian electoral code and other pieces of electoral legislation aimed at measuring Armenia's progress in implementing the goals set out by the bilateral dimension of the EaP roadmap. As such, it aims to understand the nature of domestic electoral legislation, its practice in line with international electoral standards, and the reforms that have been carried out thus far. In so doing, it will reveal the persisting problems in the field, and identify the legislative inconsistencies between Armenia's electoral legislation and international commitments and standards. Finally, it will propose certain recommendations to overcome these problems and shortcomings.

In conducting the analysis, the following sources were examined: RA national legislative acts; international documents; conclusions of international expert organizations; reports released by local and international observation of National Assembly elections, LSG Bodies; and data from the Presidential Elections. Elections data was gathered from the official website of the Central Electoral Commission.

There are still legislative gaps that restrict full electoral rights, such as:

- Restrictions of the right to universal suffrage of certain groups of people, including convicted prisoners, the persons recognized as legally incapable by a court, and citizens of RA residing abroad.
- Limitations on appealing electoral violations, to those whose "subjective electoral right" has been violated, essentially restricting civil society and "groups of voters" from judicial remedy of public interest violations.
- Restrictions on publication of the voter lists after elections, which make it impossible to monitor their accuracy.

INTRODUCTION

According to the Constitution of the Republic of Armenia, presidential, National Assembly and local self-government bodies, as well as referenda shall be held on the basis of the right to universal, equal and direct suffrage by a secret ballot. The electoral

rights in the Republic of Armenia are regulated by the Constitution and the RA Electoral Code, which was adopted on May 26th 2011, almost one year prior to a large number of national and local elections.

The 2012-2013 electoral season consisted of the National Assembly elections on May 6th, 2012, the Presidential elections on February 18th 2013 and the Yerevan City Council elections held on May 5th 2013, along with over 1471 local self-administration elections. By the end of this season, the distribution of political office seats indicated an increase in standing of the ruling party, both in the National Assembly where it now enjoys an absolute majority, as well as in the Yerevan City Council, and throughout local offices, often at the expense of opposition party members[27], while the incumbent president, representing the ruling party, was declared the winner of the presidential elections. National elections were monitored by international and domestic observers while some of the local self-government elections were monitored by domestic observation missions.

While international organizations recorded progress in the Armenian elections in comparison with previous parliamentary and presidential elections, domestic observers highlighted a number of violations. According to the many local human rights and democracy building civil society organizations, the nature of violations has changed over time, moving from violent and overt forms of intimidation and harassment to peaceful methods of multiple voting or vote-buying. In fact, many of these violations stem from shortcomings in the electoral code, both in its content and in its application, and serve to undermine the free will of the citizens and remove much democratic legitimacy of the state.

This report aims to understand the nature of domestic electoral legislation, its practice in line with international electoral standards, and the reforms that have been carried out thus far. In so doing, it will reveal the persisting problems in the field, and Armenia's progress in implementing the goals set out by the bilateral dimension of the EaP roadmap. Finally, it will propose recommendations to overcome these problems and shortcomings.

METHODOLOGY

This document aims to examine the latest revision to the RA Electoral Code, and analyze its application and its level of compliance with international commitments. In so doing, the it will analyze the following documents: The RA Constitution; The RA Electoral Code (2011); The RA Criminal Code; The RA Administrative Code; The Venice Commission's and OSCE/ODIHR's Joint Final Opinion on The Electoral Code of Armenia (2011); The Venice Commission's Code of Good Practice (2002); The OSCE/ODIHR Elections Observation Mission Final Reports for Parliamentary Elections (2012) and Presidential Elections (2013); and the OSCE Copenhagen Document (1990). Based on these international commitments, there are still legislative gaps within Armenia's electoral framework, which have adversely affected the process and outcome of the last elections cycle.

[27] See Volume 1 of EaP Roadmap - Appendix 1, table 1

RESULTS

The Principle of Universal Suffrage and the Voting Process

While the RA Constitution states that elections shall "be held on the basis of the right to universal, equal and direct suffrage by secret ballot", the principle of universal suffrage is yet to be fully realized. Specifically, according to Article 2.3 of the RA Electoral Code, and in line with Article 30 of the RA Constitution, "citizens sentenced by a final court judgment to imprisonment and serving the punishment in a penitentiary institution shall not be entitled to vote and be elected," with no regard to the severity of the crime and punishment. This indiscriminate disenfranchisement of all incarcerated individuals is inconsistent with OSCE and international elections standards, as well as the European Convention on Human Rights.[28][29][30][31]

Composition of the Electoral Commissions

According to Article 40 of the Electoral Code, the seven members of the CEC are appointed by the RA President, based on a list of nominations submitted by the following officials: three nominees by the Human Rights Defender, two nominees by the Chairperson of the Chamber of Advocates, and another two nominees by the Chairperson of the Court of Cassation. Moreover, Article 40.2 requires that at least two of the CEC members are women and that at least two members have a legal education or a scientific degree in Law. Similarly, under Articles 41.1, 41.2 and 41.3 of the Electoral Code, the method for appointing members of the Territorial Electoral Commissions (TEC) has also moved away from a de jure partisan model to a model of appointing professionals by the CEC, with at least 2 being women in each TEC. According to Article 41.6 and 41.7, appointments are made based on unanimous decisions where possible, or under a method of preferential voting known as the single transferable vote (STV) system, as outlined in Article 166. By contrast, Precinct Electoral Commission (PEC) members are appointed through a partisan model, as stated in Article 42.2 of the Electoral Code. As such, each political party or alliance having a faction in the National Assembly appoints one member each for every PEC. In cases where a political party or alliance is unable to fill their slot in a specific time, it is filled by the corresponding TEC Chairman, as stated in Article 42.9. The Venice commission and the OSCE have cautioned that this gives unreasonable power to a single person who can exercise their political bias in the decision making[32].

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[28] Paragraphs 7.3 and 7.5 - Conference on Security and Cooperation in Europe. (1990). Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. Retrieved from Organization for Security and Cooperation in Europe: http://www.osce.org/odihr/elections/14304

[29] Article 25 - United Nations General Assembly Resolution 2200A (XXI). (1966). International Covenant on Civil and Political Rights.

[30] European Commission for Democracy through Law (Venice Commission). (2002). Code of Good Practice In Electoral Matters. Retrieved from http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev.aspx

[31] Council of Europe. (1952). Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

[32] Pg7, point 26 - European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

Voter Registration and Voter Lists

Article 7 of the Electoral Code regulates voter registration lists, which is maintained by The Passport and Visa Department of the police, with every eligible citizen in the State Population Register automatically included. The list is seen by many to be extremely inflated, owing to the high level of out-migration and for use in election fraud on Election Day. Despite efforts to improve the technical process of maintaining the list, there is still an overall distrust over its integrity throughout the electorate, as stated in the OSCE/ODIHR Presidential Elections Observation Report[33].

Article 12.2 of the Electoral code allows for voter registration on Election Day, stating that voter registration can occur "during the four days preceding Election Day and on election day until the end of voting". OSCE/ODIHR has deemed this to be a vague provision, as it does not clearly stipulate which categories of voters can apply for registration[34]. The CEC interpreted this to mean voters whose names had been left out of the voter list for technical reasons. Article 8.4, which describes how citizens not registered in the Republic of Armenia can be included in the list of electors, is similarly vague. There does not seem to be a specified procedure for either of these procedures. The Venice Commission and OSCE/ODIHR recommend that the Electoral Code be revised to include specific procedures for same-day voter registration and for registration of noncitizens in local elections[35].

Candidate Nominations

Individuals seeking nominations for candidacy still face some obstacles, as the provisions of the electoral code that address this topic are not in compliance with international norms. According to the electoral code, candidates must pay an electoral deposit that is a number multiplied by the "minimum salary as defined by the legislation of Armenia."[36]. Moreover, the code does not provide for signature support as an alternative method of registration. The Venice Commission and OSCE/ODIHR have expressed concern on both shortcomings. They contend that "electoral deposits must be considered carefully", so every citizen is provided with a genuine opportunity to stand as a candidate[37]. Moreover, they reaffirm their recommendation from 2007, for allowing a signature-based candidacy registration process, in order to remove financial considerations from an individual's ability to stand as a candidate.

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[33] OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). (2013, May 8). Republic of Armenia Presidential Election OSCE/ODIHR Election Observation Mission Final Report. Retrieved from Organization for Security and Cooperation in Europe: http://www.osce.org/odihr/elections/101314

[34] OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). (2012, June 26). Republic of Armenia Parliamentary Elections OSCE/ODIHR Election Observation Mission Final Report. Retrieved from Organization for Security and Cooperation in Europe: http://www.osce.org/odihr/91643

[35] Pg 8 - European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

[36] Electoral Code of the Republic of Armenia - (Articles 80, 108(3)(5), 115(2)(2), 134(3)(1))

[37] Pg 8, pt 36 - European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

Election Campaign Regulations

Campaigning regulations have continued to be an area where political pressure can be asserted and an unleveled playing field can be created. Indeed, during the National Assembly Elections of 2012, HCAV's observation mission noted multiple instances of selective enforcement of campaign regulations, where violations by the ruling party and its allies were systematically ignored[38]. The separation of state resources from party and candidate resources is a persisting problem, as has been cited in every OSCE/ODIHR election report since 1996. The ruling party exercises unlawful influence over state resources, including national, regional and local self-government offices throughout the country, which are exploited for campaigning on behalf of the ruling party and their candidates. During the 2012 National Assembly elections, the HCAV election observation mission recorded numerous instances of regional state offices being used for campaign headquarters, and state employees engaging in unlawful campaigning[39]. This environment creates a disparity in resources available. Moreover, it fosters the perception among state employees that they are obligated to work for, attend rallies on behalf of and vote for the government candidates out of fear for losing their jobs. This practice is in direct contradiction with the Venice Commission's Code of Good Practice in Electoral Matters, and the OSCE Copenhagen Document commitments, which call for a separation of state and party resources, and equal treatment during campaign. While the Venice Commission and OSCE/ODIHR recommend wholesale changes to Article 19 and 22 in order to address this issue, years of domestic observation by human rights organizations has shown that this issue rests on the lack of political will on behalf of the government and ruling party to properly implement and enforce a true separation between state and party. As an example, to date, the criminal code does not include specific provisions for addressing the abuse of state resources during elections[40].

Campaign Finance

Campaign finance remains an area where there is a lack of proper reporting and oversight, leading to further concerns of abuse and an unleveled playing field. Articles 25 through 28 of the Electoral Code govern the establishment, use, and reporting requirements of campaign fund accounts, and the authority of the Oversight and Audit Service of the CEC. While previous recommendations by the Venice Commission and OSCE/ODIHR to provide greater detail on acceptable expenditures and donations have been incorporated, as found in Article 26.12, the list is still limited and does not include recommendations from the latest report by the Council of Europe's Group of States Against Corruption (GRECO). Article 26.12 lists the following as acceptable campaign expenditures: "mass media, funding for renting halls, premises, preparing (posting) campaign posters,

[38] Pg 23 - Helsinki Citizen's Assembly - Vanadzor Office. (2012). Report on Observation Mission on the Parliamentary Elections of May 6, 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

[39] Ibid pg 25

[40] OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). (2013, May 8). Republic of Armenia Presidential Election OSCE/ODIHR Election Observation Mission Final Report. Retrieved from Organization for Security and Cooperation in Europe: http://www.osce.org/odihr/elections/101314

acquiring print campaign and other materials, funding for all types of campaign materials (including print materials) to be provided to electors". The Venice Commission and OSCE/ODIHR continue to recommend that Article 26 provide all costs related to campaigning, including: use of services for marketing, campaign offices, external campaign strategy support, travel costs, and any cost incurred in an effort to be elected[41].

Observers

The accreditation process, including training and examinations, for registering domestic observation missions is under the jurisdiction of the CEC. The Venice Commission and OSCE/ODIHR continue to express concern over this procedure as it can, and has, been used for limiting civil society monitoring of the electoral process.

Voting

While the OSCE/ODIHR Election Observation Mission labeled the 2013 Presidential elections as being "calm and peaceful overall" with a well-organized voting process, domestic observers have repeatedly reported on the changing nature of elections violations during voting, moving away from crude violent methods, to more sophisticated, nonviolent ones such as bribing[42]. As mentioned above, the inaccuracy of the voter registration lists are a source of large scale election fraud. One reason for this inaccuracy comes from the high out-migration rate and the limitation in the electoral code, which requires voters to be in the Republic to vote, thereby creating a situation whereby many people whose names are on the voter list, often times haven't lived in the country for years and can't participate in the electoral process.

Recounts, complaints, appeals, invalidation of results, and repeat elections

Article 48 of the Electoral Code establishes the procedure for recounts of voting results by the relevant TECs. Article 46.3 lists those authorized to submit an application for declaring voting results in a precinct invalid. It conspicuously leaves out observers and "groups of voters". Specifically, article 46.1, points 1 and 3 of the Electoral Code provides that decisions, actions (inactions) of an election commission may be appealed by anyone who finds that his or her 'subjective right of suffrage' is violated or by an observer if his or her 'observer rights' are violated. This essentially denies voters, accredited observers, and civil society groups the right to seek judicial remedy for break of general electoral rights, because each role is only allowed to appeal a decision or present a violation in cases that affect their respective roles directly. The Venice Commission and OSCE/ODIHR continue to insist on a change to this provision, to allow for groups of voters and civil society groups to file appeals challenging election results

[41] Pg 12, pt 53 - European Commission for Democracy Through Law (Venice Commission). (2002). Code of Good Practice In Electoral Matters. Retrieved from http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev.aspx

[42] Pg 25 - Helsinki Citizen's Assembly - Vanadzor Office. (2012). Report on Observation Mission on the Parliamentary Elections of May 6, 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

and revealing general elections violations[43].

There is also an issue with overlapping jurisdiction for filing complaints. While the electoral code states that complaints are directed to electoral commissions, general administrative laws allow complainants to choose to file complaints directly to the Administrative Court, creating an overlapping jurisdiction with superior commissions. In these cases, proceedings in an election commission are suspended if the case is already under consideration by a court. Moreover, while complaints filed by candidates are addressed directly by the constitutional court, citizens are only allowed to challenge the constitutionality of provisions after exhausting all other judicial means. This process, which can take over 10 months, goes against Paragraph 5.10 of the OSCE Copenhagen Document, which establishes the right of everyone to seek "effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity." Further limiting the citizen's right to appeal, Article 150.1 of the Administrative Procedures Code, states that first instance court decisions on electoral rights may not be appealed[44].

DISCUSSION

While the new electoral code has taken steps to address some of the concerns of the Venice Commission, it is clear, both from the contents of the code and its application during the last elections cycle, that more work must be done to come into compliance with international electoral standards. In its final assessment of the electoral code, the Venice Commission has expressed its concerns over the restrictions on universal suffrage of incarcerated individuals and individuals recognized as legally incapable by a court ruling. More troubling is that these restrictions exist not only in the electoral code but also in the Constitution. These restrictions contradict Article 3 of First Optional Protocol to ECHR.

After the May, 2012 parliamentary elections, by the instruction of the President a working group was established consisting of the representatives of the Government and other public officials, who should study the OSCE/ODIHR Election Observation Mission (EOM) Final Report on the 2012 parliamentary elections, observation reports of other organizations, observing those elections and based on the recommendations presented in those reports prepare an action plan for the implementation of those recommendations. On October, 2012 the findings and recommendations of that working group were presented to OSCE/ODIHR. Based on the international good practices on elections, OSCE/ODIHR recommended refraining from legislative changes prior to 2013 presidential and Yerevan Council elections. As a result, no steps have been undertaken since October 2012 to continuing the implementation of recommendations contained in

[43] Pg 17, pt 86 - European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

[44] OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). (2012, June 26). Republic of Armenia Parliamentary Elections OSCE/ODIHR Election Observation Mission Final Report. Retrieved from Organization for Security and Cooperation in Europe: http://www.osce.org/odihr/91643

the final reports of OSCE/ODIHR Election Observation Missions on the 2007 and 2008 national elections.

Participation in elections is limited to citizens that are physically present in the republic on elections day. The one exception to this limitation is in Article 60 of the Electoral Code, which provides for electronic voting by members of the diplomatic corps and consular representations of the Republic of Armenia and employees of the overseas offices of legal entities registered in Armenia, along with their families residing abroad with them and having the right to vote. According to the CEC decision 19-N, the process of electronic voting takes place in an uncontrolled environment as the only option. The Venice Commission and OSCE/ODIHR stress that this should only be an alternative to voting in a controlled environment (i.e. a polling station). They add that, "Remote electronic voting is particularly controversial because it cannot guarantee secrecy and it cannot be observed through the methods commonly applied to observation of voting in the controlled environment of a polling station"[45]. They recommend that the proper implementation of an electronic voting system requires a robust and detailed legal framework that can provide equal levels of accountability as a controlled polling station environment.

There are other arbitrary restrictions on an individual's ability to declare candidacy, only some of which have been addressed in the latest version of the Electoral code. Specifically, Article 77.1 has been amended to allow a person holding dual citizenship to run for president so long as they fulfill the rest of the requirements and they abandon their second citizenship. As such, article 77.1 now reads "Anyone having attained the age of thirty-five, not being a citizen of another state, having been a citizen of the Republic of Armenia for the last ten years, permanently residing in the Republic for the last ten years and having the right of suffrage, may be elected as the President of the Republic." While the Venice Commission and OSCE/ODIHR regard this as an improvement, they also state that none of the other issues related to age or residence have been addressed in the latest electoral code[46]. They maintain that the age requirement, though not unprecedented in other countries, is considered too high, and the 10 years of citizenship and residency is disproportionate. These restrictions are not justifiable in Armenia's case.

The Venice Commission and OSCE/ODIHR have similar concerns as it relates to candidacy requirements for the National Assembly. Article 105 of the Electoral Code establishes an age requirement of twenty-five years, and places for a 5-year residency and citizenship requirement, while excluding dual citizenship for National Assembly candidates. While the requirement to not have been a dual national in the last five years has been removed from the latest electoral code, it is still not in conformity with

[45] European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

[46] Pg 9, pt 37 - European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

European electoral standards[47]. According to the Venice Commission Code of Good Practice in Electoral Matters, "a length of residence requirement may be imposed on nationals solely for local or regional elections." Similarly, the UN Human Rights Committee has stated that, "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as… residence or descent." Moreover, the Electoral Code does not provide a concrete definition or criteria for fulfilling permanent residency requirements. Despite this gap, the CEC did not establish any procedures to address this issue, and as a result, 5 applications for candidate registration were denied during the National Assembly elections[48].

In Compliance with Article 47.6 of the electoral code, electoral commissions must undertake relevant measures for issues requiring urgent solution. However, the particular issues considered to be requiring urgent solution and what measures the electoral commissions are obliged to undertake, are left vague and unanswered, leading to an altogether disregard for the provision.

According to the electoral code, upon failure to adhere to campaign regulations, the electoral commission can apply to court in order to invalidate a candidate's, party's or alliance's registration all together. Previously, the Venice Commission and OSCE/ODIHR had recommended the revision of Article 18.8 of the electoral code, which provided for a candidate's registration to be revoked after a warning and a court decision for any violation of the campaign regulations, in line with the principle of proportionality. The amended provision now allows for a candidate revocation based on a violation "that may essentially affect the results of the election", following a warning by the corresponding electoral commission giving the candidate "a reasonable period" not exceeding three days, to address the violation. Where the violation is not addressed within the prescribed timeframe, the commission must file a claim with a court in order to repeal a candidate's registration. While the revision adds a degree of protection from arbitrary pressure, the punishment is still uniform for all forms of violations, running against the principle of proportionality. The Venice Commission and OSCE/ODIHR recommend that the electoral commission should have the ability to extend the three-day deadline where appropriate. They also continue to recommend that monetary fines be imposed for minor violations of campaign regulations, in conformity with the principle of proportionality.

According to Article 28, the CEC's Oversight and Audit Service is responsible for supervising the use of campaign funds and "over financial activities of political parties". The Venice Commission and OSCE/ODIHR have repeatedly expressed concern over the CEC's role in providing oversight and auditing. They have stressed the importance of assigning this role to an independent agency, as a form of good practice, which can increase public trust in the process and ensure proper functioning of the campaign finance system. A prime example of the need for this reform can be found in the OSCE/ODIHR observation report on the 2012 National Assembly elections. While Article 25.1 of the

[47] Ibid pg 9, pt 38

[48] Pg 10 - OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). (2012, June 26). Republic of Armenia Parliamentary Elections OSCE/ODIHR Election Observation Mission Final Report. Retrieved from Organization for Security and Cooperation in Europe: http://www.osce.org/odihr/91643

electoral code requires all electoral contestants to open special campaign bank accounts, the Oversight and Audit Service interpreted this provision as non-mandatory for those contestants who did not intent to spend funds on their election campaign. As such, some 11 majoritarian candidates failed to open special campaign accounts, and another candidate reported no expenditures. Overall, the Oversight and Audit Service did not have a proactive approach or an effective mechanism to examine the accuracy of submitted reports, which lessened the value of the reporting[49].

In November 2012, a coalition of NGOs – Transparency International Anti-corruption Center, Helsinki Citizens Assembly - Vanadzor, Europe in Law Association, Protection of Rights without Borders, Rule of Law – developed a package of amendments to the electoral code addressing the inflation of voters' lists, abuse of administrative resources, transparency of the voting process, complaint procedures. Specifically, it also asked for the publication of the voter lists after an election, in order to mitigate multiple-voting and ballot stuffing, and to provide civil society oversight of the process. The proposals were rejected whole-sale, citing inappropriate timing with elections on the horizon, even though many of the suggested amendments wouldn't have required any preparation by the authorities at all. Indeed, the proposals would not have disrupted the upcoming elections but instead would enhance the legitimacy of, and increase public trust in, the electoral institutions.

Although the electoral code adopted in 2011 reflects certain aspects of the Venice Commission's Code of Good Practice in Electoral Matters, the full application of the electoral rights and democratic elections are hampered by the abuse of human and administrative resources by the ruling party. Moreover, the electoral code still contradicts the Venice Commission's Code of Good Practice in many places. Shortcomings of the law are exacerbated by poor enforcement, mainly due to the lack of political will. At present, there are no known processes aimed at amending the electoral code and incorporating recommendations of local or international organizations. Instead, there is clear evidence that even after recommendations from OSCE/ODIHR to change the practice of rejecting claims on technicalities, TECs and courts continue the practice of denying consideration of complaints and applications, against, mostly because of the clear absence of political will.

Electoral administration and civil society participation in electoral observation process

The following bodies are involved in organizing and conducting elections, and in monitoring the pre and post election processes: the Central Electoral Commission (CEC), Territorial Electoral Commissions (TEC), Precinct Electoral Commissions (PEC), Oversight-Audit Service of the Central Electoral Commission, Police Department (Passport and Visa Administration, Patrol and post services, Investigative Service) , and the RA judicial bodies (courts of common jurisdiction, administrative courts, and Constitutional Court).

[49] OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR). (2012, June 26). Republic of Armenia Parliamentary Elections OSCE/ODIHR Election Observation Mission Final Report. Retrieved from Organization for Security and Cooperation in Europe: http://www.osce.org/odihr/91643

Any citizen not involved in public, social or political activities that meets certain educational and professional experience requirements, can be involved in TECs. However, there is no restriction on TEC members to hold other positions within the state, such as civil service, discretionary or community service positions. In light of the high level of politicization among the civil service , this circumstance can influence the independence of the commissions.

Elections observation missions, especially domestic missions organized by civil society, are crucial in mitigating electoral violations through deterrence where possible, and recording violations where necessary. Articles 29 through 33 of the Electoral Code establish the rights of observers and candidate representatives and describe their accreditation procedures. There remain many areas where the rights of observers need to be improved and strengthened in order for them to do their jobs effectively and properly. Article 29 states that any organization that wishes to conduct elections observation must be involved with "issues relating to the democracy and protection of human rights" by statue. Article 30 places the responsibility of accreditation with the CEC, with Article 30.4 requiring the CEC to "reject the application on accreditation of observers where the tasks enshrined by the statute of the organization do not meet the requirements" for foreign and domestic non-governmental organizations outlined in Article 29. The enforcement of this provision has been based on a subjective interpretation of what constitutes the protection of human rights. As an example, a prominent women's rights organization, The Armavir Development Center, was denied accreditation during the 2012 National Assembly elections, because while their statute used the words "women's rights", it didn't include "human rights", and was therefore deemed ineligible by the CEC.

The CEC offers courses and administers the mandatory accreditation exams, based on Article 31.1 (1), which states that courses be offered annually in Yerevan and in the marzes, that qualification certificates be granted based on a computer-based or standard test, that persons can be tested "notwithstanding whether he or she has participated in the courses", and that representatives of mass media and non-governmental organizations can monitor the courses and tests. The Venice Commission and OSCE/ODIHR have repeatedly expressed concerns over this provision, as it can be used to "limit transparency by restricting the pool of potential observers through the training, testing, and certification process"[50]. They recommend that the training should be the responsibility of the observer organization. Furthermore, they state that the accreditation process should not be used as a means to limit organizations from participating in elections observations in any way.

The new electoral code has changed the way in which electoral commissions are selected, by limiting the de jure power of the presidency in the case of the Central Election Commission (CEC), and paying more attention to political affiliation, professional experience, and gender balance. In conformity with the Electoral Code, CECs and TECs

[50] Pg 13, pt 59 - European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

are formed along nonpartisan lines, whereas, PECs are formed from representatives of political parties and alliances represented in the National Assembly each faction appointing one member of PEC. A new method for selecting CEC members also has been defined by the new electoral code. Moreover, the candidates to CEC membership must meet certain requirements, have a higher education, and work experience. Both CEC and TEC members are recruited for permanent positions. While the Venice Commissions welcomed this model in theory, they expressed that this will have to be tested. Additionally, CEC members can neither be employed for other paid jobs, with the exception of being involved in scientific, pedagogic and creative work, nor be engaged in politics. While this is a positive development that de jure limits presidential discretion, The Venice Commission and OSCE/ODIHR have stressed the importance of making sure CEC appointees enjoy the trust of the electorate. As such, they have placed the responsibility of securing that trust on the nominating institutions and have cautioned against any intervention and interference in the nomination process[51]. While the Venice commission and OSCE/ODIHR encouraged the Armenian authorities to use this change in the composition as an opportunity to gain the trust of the public and ensure fair and balanced elections, this has not been the case. Moreover, political independence of electoral commissions is not guaranteed, either by law, or in practice. Commissions, which are called to be politically diverse, particularly the PECs, include people who are employed by various state and community entities. PECs, in turn, have two members appointed by TECs, while the rest are represented by parties in the National Assembly (one member from each faction). The representatives of the oppositional parties in PECs are frequently bribed or intimidated.

In practice, the major deficiencies of PEC and TEC members is not in their lack of electoral knowledge and skills, but rather in their lack of political will to ensure free and fair elections. As the last elections cycles demonstrated, in practice, the TECs are highly politicized and lack the political will to conduct free and fair elections[52]. As a result, instead of carrying their duties prescribed by law, PECs strive to ensure turnout and voting results based on the political interests of the ruling party and its allies, by following the basic commands of higher administrative bodies – the TECs and the CEC. The TECs and PECs often demonstrate systematic inaction in disciplining the unlawful interference of unauthorized persons, preventing gatherings outside precincts, as well as recording incidents and violations in the record books. TECs in their turn consistently reject complaints and applications of observers and oppositional political parties, basing their judgment exclusively on minor technicalities, without taking into consideration the merits of the claims. At the same time, electoral commissions and law enforcement bodies do not conduct a proper and objective examination of the claims. As a rule, law enforcement bodies do not respond to crime reports in a timely manner and later reject initiating a criminal case or dismiss the cases on lack of corpus delicti.

[51] Pg 6, pt 21 - European Commission for Democracy Through Law (Venice Commission) and OSCE/ODIHR. (2011). Joint Final Opinion on The Electoral Code of Armenia. Retrieved from http://www.osce.org/odihr/elections/84269

[52] Helsinki Citizen's Assembly - Vanadzor Office. (2012). Report on Observation Mission on the Parliamentary Elections of May 6, 2012. Retrieved from http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf

Law enforcement bodies receive information about violations through reports from individuals, organizations and media outlets, as well as from the internet. In response to hundreds of reports, law enforcement bodies instigate only selected few criminal cases, denying others on the grounds of not finding sufficient evidence to proceed with the case. Even in cases pursued by these bodies, there is evidence of using intimidation tactics against whistleblowers and supporting persons engaged in illegal activities. Moreover, there is currently no specific provision in the criminal code for pursuing criminal cases on electoral violations. Such a provision would help facilitate faster investigations by defining shorter terms for the examination of these cases, considering their urgency and its impact on the election results.

CONCLUSIONS

While the new electoral code addresses some of the concerns of the Venice Commission, it still falls short of meeting international commitments and standards, both in content and in practice. Specifically, problems still exist in the composition of voter lists, in the disenfranchisement of incarcerated individuals, the politicization of electoral commissions and their general unprofessionalism, on inability for observers to file violations on behalf of "groups of voters" and more. As the 2012-2013 elections cycle demonstrated, these shortcomings are a fundamental source of electoral fraud, and serve to undermine the credibility of the electoral process among society. The recommendations listed below address these shortcomings, and should be used by the Armenian authorities to ensure its electoral code is in full compliance with their commitments to international standards and norms.

RECOMMENDATIONS

- Amend the electoral legislation to safeguard publication of voter lists after an election, in order to mitigate against multiple voting and ballot stuffing, and to provide civil society oversight of the process.
- Amend the legislation to allow voters, groups of voters, NGOs conducting observation to appeal electoral violations and advocate for public interest electoral reforms.
- Amend the electoral code to set the requirement on the electoral commissions examining the complaints in accordance with part 6 of Article 46 of the electoral code, to obtain evidence as well.
- Make an addendum in the electoral code stipulating that proxies, observers and media representatives may not be held criminally liable for opinions expressed about the process of elections and results.
- Amend the electoral code to restrict the right of public or state officials, as well as members of political parties, to be appointed to the TEC.
- Remove the knowledge test requirement for observers from the electoral code
- Amend corresponding legislation and RA Constitution to restore the electoral right of incarcerated individuals.
- To make corresponding amendment to the legislation prescribing an individual-based approach to electoral rights for people convicted for minor crimes by the

courts, so they are not automatically deprived of their electoral rights.

- Make an addendum to Part 6 of Article 47 of the electoral code, specifying what issues require immediate solution and what action the electoral commissions are required to take.
- Research the possibility for creating alternatives to invalidating the registration of a candidate or a political party in case of violation of campaign regulations or failure to eliminate the violation in a timely manner.
- Research the possibility of creating an independent auditing body to audit campaign fund.

Develop/adapt laws for the judiciary to enhance its independence and impartiality

EXECUTIVE SUMMARY

This section summarizes issues regarding the independence and impartiality of judiciary in Armenia, including legislative and practical guarantees for judicial independence, and public trust in the judiciary. The report provides an analysis of the 2012-2016 Judicial Reform Strategy, as well as issues in the administration of justice, judicial oversight of pre-trial detention.

INTRODUCTION

Public trust in the judiciary is extremely low in Armenia. According to Transparency International's Global Corruption Barometer, 67% of Armenians view the judiciary as corrupt or extremely corrupt[53]. Research conducted by the Caucasus Research Resource Center reveals a decrease in public trust in judges between 2011 and 2012.

A major reform of the justice system was initiated in Armenia with the adoption of the 2012-2016 Strategy on Legal and Judicial Reforms. The reform initiative aims to safeguard an independent and accountable judiciary, and to improve the effectiveness of criminal justice the criminal sentencing systems, administrative justice, administrative proceedings, civil justice, and the performance of procedural functions. Although adoption of an overarching reform strategy is needed, the current strategy has several drawbacks. It fails to substantiate the choice or necessity of reforms in prioritized areas and does not contain an assessment of achievements and impact of previous strategies. Moreover, it fails to justify how the proposed changes will complement and consolidate the judicial and legal reforms implemented to date.

METHODOLOGY

This report draws on information from assessments and studies conducted by local and international non-governmental organizations; reports and evaluations by international organizations; mass media publications; official reviews of court practice; expert opinions; and monitoring results from the Protection of Rights Without Borders NGO. Comparative analyses have been carried out to obtain a comprehensive understanding of the situation.

RESULTS

The president continues to have undue influence in appointing, promoting, disciplining, and sanctioning judges, thus precluding judicial independence. The lack of clear and objective criteria for disciplining and promoting judges leaves room for double standards

[53]Transparency International, *Global Corruption Barometer Armenia-2013*. Retrieved from http://www.transparency.org/gcb2013/country/?country=armenia

and exacerbates the existing systemic dependence. As a result, judges of lower courts tend to consult with judges of the Court of Cassation when rendering their rulings, in an effort to minimize their chances of being subjected to disciplinary actions. Judicial self-governing bodies do not promote independence either, as the majority of core functions are vested with the Council of Court Chairmen. All of the above factors limit the establishment of a truly independent judiciary.

The 2012-2016 Strategy of Legal and Judicial Reforms in Armenia and its Action Plan were adopted without due consultation with civil society. The Strategy does not provide an assessment of the human rights situation in the country, does not justify target area selection, and does not account for the risk of widespread corruption.

DISCUSSION

Judicial independence

There have been some positive developments relating to the qualification exams for the judge candidates, following the amendments to the Judicial Code making the interviews and written tests more transparent. The interviews and tests are live broadcast as well as video and audio taped, and applicants can receive copies of these recordings upon request. The testing and interview process can be overseen by representatives from the Staff of the President, Ministry of Justice, Chamber of Advocates and NGOs. To mitigate the risk of conflict of interest, members of the Council of Justice cannot participate in the decision making related to candidates that are direct relatives.

Nevertheless, there are systemic problems that hinder the establishment of an independent judiciary. The president has discretionary power to influence the process of judicial appointment, disciplinary sanctions, and the termination of judicial powers, with few checks or balances. While the Justice Council proposes the list of judge candidates, the president has the power to choose "candidates acceptable to him" to be appointed as judges (Article 117 of the Judicial Code), and to promote judges (Articles 137(9) and 138(8) of the Judicial Code).

Another impediment to the independence of the judiciary is the practice of judges consulting their colleagues (judges in the same court and/or other courts) prior to rendering a ruling. This practice is particularly widespread between lower courts and the Court of Cassation out of fear of the judgment being reversed and the judge being subjected to disciplinary action for an "illegal" ruling.

The tradition of a strong prosecutorial dominance persists, resulting in undue interference on the administration of justice. As of July 2012, according to judges' official biographies posted on the judiciary's website, 59 of the 220 sitting judges (26.8%) had previously worked for a prosecutor's office as a prosecutor, investigator, assistant to the prosecutor, or in another capacity[54]. The influence of the prosecution is strongly manifested in the

[54] American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012, 79.

administration of criminal justice, with only 2% full or partial acquittals during 2012. The judiciary also grants almost all the motions of the prosecution for pre-trial detention.[55] Only 17 of the 2,873 motions to perform a search during pre-trial investigation were rejected.[56] Prosecutors also influence the judiciary by using threats of retaliation for unfavorable rulings, although such behavior is prohibited by Article 6(3) of Judicial Code.[57]

The limited effectiveness of the judicial self-governing bodies affects the internal independence of judges. This point was raised by the Working Group on Independent Judicial System[58]. In particular, under the current legislation, the self-governing bodies of the Armenian judiciary are the General Meeting of Judges and the Council of Court Chairmen. The core functions of judicial self-governance are vested with the Council of Court Chairmen. The latter forms the Ethics Commission and the Training Commission. Such concentration of judicial self-governance is not consistent with the notion of the independence of judges and self-governance of the judiciary. Moreover, first instance judges do not participate in the implementation of reforms of the judiciary and the functioning of the courts. The Ministry of Justice has developed the new concept of the composition of the self-governance bodies of judges, but it is yet to be seen how this concept will lead to improvement of judicial self-governance practices.

Corruption remains widespread within the judiciary. One of the manifestations of this corruption is the recent scandal within the Judicial Department. Currently, virtually all top officials of the Bailiff Service within the Judicial Department are under investigation for abuse of office, fraud and illegal seizure of property. As of September, two people were suspects and 19 were accused[59]. The police are also investigating the case of the head of the Judicial Department, who is suspected of taking large bribes for hiring people to work. On September 27, 2013, the head of the Judicial Department allegedly left his position of his own accord.[60] An investigation of his suspected corruption is still underway.

Implementation of a coherent sector-wide reform strategy

The adoption of 2012-2016 Strategy of Legal and Judicial Reforms marked the start of a comprehensive judicial reform agenda in Armenia. The Strategy contains measures to support the development of clear criteria for the appointment, promotion, and

[55] Within 2012-2013, out of 2,621 filed motions 2,497 were granted, and only 114 rejected. Data provided by Protection of Rights Without Borders NGO. 2013.
[56] The Judiciary of Armenia, http://www.court.am.
[57] American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012, 78.
[58] Eastern Partnership Enhancing Judicial Reform in the Eastern Partnership Countries Working Group on Independent Judicial system, *Project Report, Judicial self-governing bodies Judges' Career*, Directorate General of Human Rights and Rule of Law, Strasburg, March 2013, http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic_reform/ENG%20March%20Report%20Independant%20Judicial%20Systems.pdf
[59] Hetq online, Retrieved from http://hetq.am/arm/news/29621/datakan-kargadrichneri-gortsov-19-mexadryal-ev-2-kaskatsyal-ka.html
[60] Radio Free Europe/Radio Liberty, Retrieved from http://www.azatutyun.am/content/news/25120047.html

performance evaluation of judges. It also contains measures to harmonize with the relevant international standards the grounds and procedures of imposing disciplinary sanctions upon judges, and measures to facilitate the creation of an effective system of self-governance of the judiciary. Unfortunately, the Strategy was developed and approved without a broad consultation with civil society and most of the recommendations put forth by civil society were not included in the strategy. The Strategy does not provide a comprehensive assessment of human rights problems in the country nor does it evaluate the effectiveness or drawbacks of previous strategies. The rights to fair trial, effective legal remedy, and personal security are not included in the strategy. The risk of widespread corruption is not considered within the strategy at all.

CONCLUSIONS

The current legislative framework and practice creates systemic problems precluding the establishment of an independent judiciary. While steps are taken to improve the qualifications of lawyers, the system is slow in transforming due to prevailing corruption and improper influence from the executive. The willingness of the authorities to address these issues within the 2012-2016 Strategy of Legal and Judicial Reforms is commendable, but lack of civil society participation in the design process resulted in a strategy that does not address key issues.

RECOMMENDATIONS[61]

- Improve the procedures for the appointment and promotion of judges by removing president's discretionary power in the process
- Install institutional safeguards against corruption by imposing stricter penalties for those found guilty of corruption; conduct proactive prosecution of corruption cases
- Ensure individual independence in adjudication by strictly prohibiting the practice of consultations of judges with their colleagues prior to delivering the judgment;
- Introduce a conflict of interest procedure for removal of dependence and links between judiciary and prosecution
- Ensure transparency of implementation of 2012-2016 Strategy of Legal and Judicial Reforms by holding regular consultations with civil society representatives and reporting on implementation

[61] Most of these recommendations were made by civil society from the start of the ENP and Eastern Partnership processes. Previous assessments can be found on Partnership for Open Society website at www.partnership.am

(A.1) Area 2: Human Rights

Ensure the independence of media by strengthening the independent regulatory body

EXECUTIVE SUMMARY

This report analyzes the activities and independence of media regulatory body, the National Committee for TV and Radio (NCTR) and the Council of Public TV and Radio Company from the viewpoint of Armenia's EU EaP obligations.

INTRODUCTION

For the past 10 years, Armenian media entities were under political and economic control of authorities and thus not free; at the same time, media remain a very influential tool for shaping public opinion. Armenia needs to make significant improvements to ensure independence and freedom of the regulatory bodies, address the issue of media monopolies, solve problems related to digital switchover and liberalize advertising market. Since 2002, "A1+" and "Noyan Tapan" TV companies were banned by NCTR from air depriving the public from sources of alternative information. Since 2003, Freedom House has assessed the level of freedom of press in Armenia as *Not Free Press*[62]. At the same time, the World Press Freedom Index of Reporters Without Borders has noted progress in the Armenian media sector, improving its ranking from 77th to 74th (out of 179 countries).[63]

During almost all elections, broadcast media was used to influence public opinion through manipulation of information, significantly contributing to reproduction of the power. National regulator, the NCTR, has regularly deprived broadcast media of air by blocking opposition channels. Broadcast media ownership in Armenia is still unknown for the public, the activities of the NCTR and the Council of Public TV and Radio Company are partially transparent. The public service broadcaster remains a serious player in the broadcast advertising market. Being financed from the state budget and having the largest coverage in Armenia, the public television remains in significantly superior position over other broadcasters.

METHODOLOGY

This report is based on information, monitoring and assessments of research organizations, media publications, reports and periodic publications of media

[62] Armenia, Freedom of Press 2013, Freedom House - http://www.freedomhouse.org/report/freedom-press/2013/armenia

[63] Reporters without Borders. Press Freedom Index 2013. http://en.rsf.org/spip.php?page=classement&id_rubrique=1054

organizations, as well as expert opinions and evaluations. The report identifies and analyzes the problems related to independence of the NCTR and the Council of Public TV and Radio Company within the framework of EaP obligations. At the end of this report the main problems are summarized and recommendations are outlined.

RESULTS

Independence of media regulatory body - Article 83.2 of the RA Constitution stipulates that, for the purposes of providing freedom, independence and diversity of broadcast media, an independent regulatory body is created and half of its members are elected by the National Assembly (NA) and half appointed by the President, for a six year term. The Law on Television and Radio stipulates that the authorized regulatory body is the NCTR, composed from eight members. The NA elects NCTR members by the majority of votes of the total number of deputies. There is no mechanism for society to influence the election of NCTR members and oversee their activities. The current selection and appointment system does not guarantees the independence of the NCTR, primarily because the election procedure is such that the parliamentary majority can always have its preferred candidate elected to the NCTR, and in Armenia, the parliamentary majority always consists of the parties that support the RA President. In other words, all eight members of the NCTR are representatives of the authorities.

According to the Law on Television and the Radio, the NCTR monitors the activities of television and radio companies, determines the compliance of television and radio programs with the current legislation, and imposes administrative penalties provided by law in case of detecting violations.[64] According to the Law, the NCTR also has the power to oversee the television and radio companies' compliance with the pre-electoral campaign procedure stipulated by the Electoral Code of the Republic of Armenia. A designated government body for oversight of the compliance of the legislation on advertisement is prescribed only for the broadcast news media. It is the NCTR. However, the NCTR mostly fails to perform its regulatory duties.

Public broadcaster serving public interest - No legislative measures have been taken to amend the Law on Television and Radio in order to ensure independence of the Council of Public Television and Radio Company. The Council of Public Television and Radio Company, which is in charge of all the public broadcasters, is perceived as an organization serving the interests of the authorities, rather than society.

Public TV and Radio Company, which includes 2 channels and 1 radio station with nationwide coverage, remains the most influential television company in Armenia's media field. Public service broadcaster, financed from the state budget, at the same time is deeply involved in selling commercial advertising and broadcasting, while commercial broadcasting cannot exceed 7 percent of its total airtime, and broadcast advertising can be

[64] Republic of Armenia Law on Television and the Radio, Article 36, http://parliament.am/legislation.php?sel=show&ID=3853&lang=arm

no more than 14 minute per hour. Public service broadcaster's practice of selling advertisement time results in the following (1) regularly exceeds the advertising broadcast limits prescribed by the law, uses generally around 27 full days of airtime annually for commercial advertising, and (2) the public service broadcaster gets 20% of income from advertisements, while the rest of the income goes the intermediary organization which sells the advertisement[65]. Selling commercial advertisement on the air of the public service broadcaster through private intermediary company, which gets 80% of the profit, raises corruption risks.

Transparency of media ownership and sources of financing - Transparency of media ownership is an increasing challenge for Armenia which endangers diversity of media content, pluralism and discourages media independence . The major problem in detecting media owners in the Armenian media market is the lack of publicly available ownership data. There are no legal provisions in the legislation for the media to disclose their owners or benefactors. According to the broadcasting legislation, the tenders of TV and radio frequencies in Armenia are public, so that the applicant companies' bids should be published and available to the public, while in practice, this information is not open to public.

Although media legislation and policies do not guarantee transparency of media ownership and the broadcast media ownership remains unknown, there is indirect evidence of political or business affiliations. It is widely known that people affiliated with the RA President have significant control over major TV and radio companies through content production and appointment of staff. Large businesses and local authorities have direct or indirect control over a number of regional TVs. According to the investigation of Investigative Journalists' Association, "CS Media City" media holding consists of Armenia TV, ArmNews TV, ATV channels, «FM 10» radio station and a number of other media companies[66]. It is known that "Yerkir Media" TV is controlled by the Armenian Revolutionary Federation party, and "Kentron" TV is controlled by leader of the Prosperous Armenia Party Gagik Tsarukyan. Journalistic community and media organizations regularly demand to ensure transparency of media ownership and sources of funding..

Law on Freedom of Information prescribes pro-active mechanisms of providing public with information and re-active mechanisms for answering to citizens' oral and written inquiries by the officials, including the NCTR and the Council of Public TV and Radio Company. In this regard, the websites of the NCTR and the Council of Public TV and Radio Company are not structured and informative for an average citizen.

[65] Monitoring of Correspondence of Advertising Volume and Allocation of Programs of the Public TV with RA Legislation. Journalists' Club "Asparez" - http://www.asparez.am/wp-content/uploads/2012/10/1st-report-2011-total-2011-2012-may-june-comparative-monitoring-jca-9.10.2012.pdf

[66] Media Moguls: On the Trail of Armenian TV Owners; Foreign and Domestic, http://old.hetq.am/am/media/broadcast/

DISCUSSION

The main problems associated with the activities of the National Committee for TV and Radio (NCTR) and the Council of Public TV and Radio Company are the followings - legislation gaps, shortcomings of practice, lack of data on media ownership, unavailability of information on free and used broadcast frequencies as public assets, problems of digital switchover, and commercialized public broadcaster. Years of experience have shown lack of transparency in the operation of NCTR. Though the Law on Television and Radio declares lawfulness, democracy, equality, impartiality, autonomy, collegiality, and publicity as the guiding principles for the activities of the NCTR, the way in which these principles are followed in the administration of competitions cannot meet the expectations of society. Moreover, under the same law, the NCTR may engage specialists and experts in the performance of its functions on a volunteer or contractual basis. However, no specialists have been invited to ensure impartial assessment of applications in competitions held since 2002, despite the repeated offers from media organizations to participate in the review process. The same holds true for the competitions carried out in 2010 for air broadcasting via the digital broadcasting network.

The Armenian broadcasted media does not provide enough pluralism and diversity for the audience. Broadcast media has become a tool of propaganda, PR and advertising. During political tensions and elections, human rights violations and infractions are not covered by the vast majority of broadcast media. News analysis and editorial pieces covering high level officials and MPs are biased as they try to present their work only from positive perspective. In general, the broadcast media is considered as pro-governmental with dictated analytical news and editorial policy, which results from the dependence of media on large businesses and the political elites. In the absence of adequate self-financing, there is widespread shadow financing of the mass media, which leads to hidden controls and curbing of media independence.

The Law on Television and Radio stipulates the status of the Armenian Public Television and Radio Company, principles of its activities, the procedure of governing body formation, functions, powers, etc. The Council of Public TV and Radio Company, by law, is composed of five members (at least one of whom must be a woman), who are appointed by the RA President. The Council members are appointed for six-year term. The Council elects a Chairman and Vice-Chairman from its members. The appointment of members by the President hinders the possibility of having a politically independent Council. The public service broadcaster is heavily dependent on commercial advertising, which is often broadcast with violations of norms of volumes and placement prescribed by the Law. The intermediary organization, which sells advertisement time of public television, gets fourfold more profit than the public broadcaster. Thus, the public service broadcaster brings as much advertising revenue for the intermediary private company as it receives from the state budget.

The digitalization tender conducted by the NCTR in 2010, was not transparent. So far, the digitalization process has only resulted in less pluralism on air by de-facto decreasing the

number of TV companies on air. The digitalization tender led to a decrease in, the number of frequencies used for TV broadcasting from 22 to 18. A number of regional TV stations, as well as "A1" and "ALM" TV companies were defeated or for several reasons dropped out of the competition in the result of tenders carried out in 2010 by NCTR. In 2015, only 10 out of 25 regional TV channels will be allowed to broadcast, and operational deadline of analog licenses are extended up to July 1, 2015. It is not clear what will happen with regional TV channels after that. Though digital broadcasting provides ample opportunities for increasing the number of the broadcast television stations, what happened in Armenia was the opposite: in the switch-over process, the number of television stations was reduced, which further indicates that the authorities wish to maintain the status quo of "controlled broadcasters," disregarding the public interests.

It is known that an international audit of television and radio frequencies took place in Armenia in 2009. In March 2012 the Ministry of Economy provided 141 page report on audit of TV frequencies in Armenia[67], and only 1.5 pages related to broadcasting. The audit does not provide answers to the most important questions; how many frequencies have been provided to Armenia, how many are used and how many are free. Therefore, the government's assurances that the digitalization process was implemented based on this audit are not credible. The NCTR refuses to provide information about all companies that participated in the digitalization frequency tender in 2010 despite a request for information by media organizations and a related court case.

CONCLUSIONS

As a member of the EU EaP country, the following conclusions are important for the Armenian media sector from the viewpoint of ensuring of independence of the regulatory bodies:

The NCTR, which is vested with the authority to regulate broadcast sector and to control broadcast advertising carries out its responsibilities in a selective and inconsistent manner. The NCTR is not independent. The activities of the regulatory body and the public service broadcaster are not generally transparent and accountable to the public. The authorities control editorial policy of TV companies through pressure and the NCTR leverage.

The procedure of member appointment for the Council of the public broadcaster by the president makes it a politically dependent entity.. Excessive advertising on the public broadcaster make it similar to commercial TV undermining its role as public content producer. Moreover, the advertisement is often broadcast with violations of norms of volumes and placement prescribed by the law.

[67]In request of the Committee to Protect Freedom of Expression, The Ministry of Economy provided the organization with the printed version of the report on audit of frequencies in March 2012.

RECOMMENDATIONS

- Provide guarantees for the independence of NCTR members by reforming the system of member selection and appointment. Create legal and practical safeguards for independence of the NCTR through radical changes in the order of formation, providing maximum transparency of the entire process of the members' selection and appointment, and ensuring participation of independent experts, journalists, and civil society organizations in the activities of the regulatory body.
- Legislatively prohibit the public broadcaster from commercial advertising, provide additional funds from the state budget. As a result, the society will benefit about 630 hours of public broadcasting time (about 27 full days). The corruption risk connected with advertisement selling private company will disappear.
- Transfer the appointment authority of members of the Council of Public TV and Radio Company from the RA president to the RA National Assembly. Appoint members of the Council of Public TV and Radio Company only persons who will have recommendations of at least 5 media organizations, or appoint 2 members of the Council nominated by them.
- Publish the list of free and occupied TV and Radio frequencies at least once a year; publish full application packages of the tenders of broadcast frequencies that took place up to now and will take place in future.
- Make amendments to advertising legislation and to the relevant laws, by which product placement advertising (inclusion or reference to a product within a TV program) will be defined as tax delinquency.
- Legislatively define the minimum volume of broadcasting programs of public content.

Ensure freedom of assembly

EXECUTIVE SUMMARY

This section analyzes issues related to freedom of assembly in Armenia. It provides both legislative and practical perspectives and discusses certain provisions of the current Law, which are used by the State to repress peaceful assemblies in the country. The report also provides an overview of the right to freedom of assembly during pre- and post- elections periods as well as the dynamics of recent protests.

INTRODUCTION

The Law on Freedom of Peaceful Assembly, adopted on April 14, 2011 by the National Assembly of the RA, declared invalid the Law on Holding Meetings, Rallies, Marches and Demonstrations effective since 2004. The current law is generally in line with international standards, however, certain provisions are problematic, an issue that was also raised by the Venice Commission.[68] Particularly, civil society is concerned with the possibility of prohibition of assemblies at a certain distance from the president's residence, courts and the national assembly, organization of protests in the territory of historical and cultural monuments or in their immediate vicinity and the seven-day notice prior to holding a protest gives room for manipulation by authorities.

The aftermath of pre- and post- election developments in the first half of 2013 as well as other events throughout the year, showed that the Law on Freedom of Assembly is not applied properly and does not provide practical guarantees for protection of freedom of assembly. The State does not directly prohibit peaceful assemblies as such, however in practice violations continue and the state officials are using different forms to repress public gatherings.

METHODOLOGY

This section is based on studies and monitoring conducted by local human rights NGOs, as well as assessments done by international organizations, expert opinions and evaluations, media publications.

RESULTS

Certain provisions in the Law on Freedom of Assembly give room for continuous manipulations by state officials resulting in gross violation of the right to freedom of assembly. Although there are legal guarantees for freedom of assembly, practical guarantees are not in place and unlawful detention of activists, use of force against protest participants continues. There is no proper investigation of instances of use of force against activists and protesters either by the Police or by the General Prosecutor's office.

[68] Interim Joint Opinion on The Draft Law on Assemblies of The Republic of Armenia by The Venice Commission and OSCE/ODIHR - http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282010%29049-e

DISCUSSION

The Law on Freedom of Assembly is generally in line with international standards; however, several problematic provisions remain. In particular, Paragraph 3 of Article 16 requires that in case a meeting is planned in the territory of historical and cultural monuments or in their immediate vicinity, the notification about the assembly shall be sent to the Ministry of Culture, which, in its turn, may provide an opinion to limit or ban the assembly. Article 19 of the Law states that a gathering can be banned if it is to be held close to the National Assembly, Government Buildings and Courts as such meeting may pose a danger of disruption of their routine operation. The seven-day notice prior to a protest (paragraph 3 of Article 21) is unusually long and creates additional burden for the organizers. The Venice Commission also raised a concern with the Law, as it does not reflect the state's positive duty to protect peaceful assembly and does not provide for police facilitation of the holding of assemblies and the protection of those who take part in it[69].

The rights of citizens to peaceful assembly are protected on paper, while in practice, this right is routinely violated by the police, which disproportionally uses force against the activists and protesters. During the past two years, different human rights organizations and the Ombudsman's office[70] made several statements raising issues and concerns of disproportionate use of power by police officers and ongoing violations and illegal detentions of protestors and activists.

In the course of 2012, civil society has reported on instances of preferential treatment to pro-government events prior to the May 6 elections while blocking political rallies of the opposition. The Police was blocking civil servants from attending opposition rallies; during every opposition ralliy the transportation from the regions to Yerevan was not properly working creating obstacles for citizens to participate in the rally; public servants and students were forced to attend the pro-government rallies.

Throughout 2013, the increase of civil disobedience and public interest and dissidence has become visible not only in the Capital but also in the regions. Along with the protest actions held throughout Armenia after disputed presidential and Yerevan City Council elections (including student strikes[71], and Heritage Party's protest[72] against the announced results of the Presidential Elections) a number of other peaceful protests took place in different parts of the country related to increased transportation fare, unlawful constructions and the President's announcement to join the Customs Union. Although all these protests were peaceful, on a number of occasions the police restricted the realization

[69] Interim Joint Opinion on The Draft Law on Assemblies of The Republic of Armenia by The Venice Commission and OSCE/ODIHR- http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282010%29049-e

[70] The Ombudsman Demands Restoring Peaceful Demonstrators Right to Have a Single Tent in Mashtots Park- http://ombuds.am/en/library/view_news/article/592

[71] The Day Started with Student Strike- http://www.a1plus.am/en/social/2013/04/09/dasadul

[72] Police Brutality Disrupts Peaceful Protest- http://asbarez.com/109290/police-brutality-disrupts-peaceful-protest/

of this right by using force and detaining activists, sometimes over the 3-hour time limit set in the law. The practice of prohibiting use of tents continued, albeit lack of such prohibition in the law, leaving the protestors of the sit-ins under an open air. Cases when activists were forbidden to post flyers and announce about the assemblies were also in place. On September 10, a group of non-governmental NGOs issued a statement addressed to UN Office of the High Commissioner for Human Rights calling to take special actions to stop violence and unlawful acts of state authorities by visiting Yerevan and to get acquainted with the situation in person.[73]

Police investigation into cases of violations, attacks, and use of force during the protests is ineffective. With the rise of activism, which largely focuses on corrupt and undemocratic practices of national and local authorities, a new phenomena was observed in 2013. Five activists were targeted, attacked, and beaten by thugs. Civil society representatives voiced their concern with the incidents claiming the attacks to be attempts to silence government criticism and activism. The investigation of the attacks is currently underway but there are already concerns with the impartiality of the investigation process.

The following cases illustrate the ways in which the right to peaceful assembly was restricted throughout 2013.

Case 1: After the post-election period, during the march organized by Raffi Hovhannisyan on April 9, 2013, the founding leader of "Heritage" party, the Police closed the street crossing at Proshyan-Demirjian, later also Baghramyan str. thus blocking the protestors to come close to the President's residence. As a result, a crush occurred between the demonstrators and the Police. More than 10 young people were taken to the Police stations. Armen Martirosyan, member of Heritage Party, was beaten by police officers and taken to the Police station.

Case 2: On May 18, 2013 parents, relatives and co-villagers of a Lyuks Stepanyan, a soldier who was killed
on May 15, 2013 during his army service, decided to take the body of the deceased soldier to the Ministry of Defense in protest of the numerous deaths in the army. The RA Police and the Military Police blocked Sevan-Yerevan highway so that this group cannot reach the capital. According to Helsinki Citizens Assembly, the police used physical violence and psychological intimidation against the protest participants and restricted their right to freedom of assembly by blocking their way and not letting them to continue the rally. Also, subdivisions of the armed forces were used against the participants which was deemed by the human rights organization as a grave violation of a constitutional norm[74].

[73] *Urgent appeal of Armenian NGOs and citizens;*
http://www.transparency.org/news/pressrelease/transparency_international_anti_corruption_center_in_armenia_and_others_urg
[74] Sevan-Yerevan Highway as a Route for Military Drills- http://hcav.am/en/events/sevan-yerevan-highway-as-a-route-for-military-drills/

Case 3: On August 24, 2013, Argishti Kiviryan, a lawyer and activist, was detained and severely beaten in the police car by 10 police officers as the police dispersed the protesters rallying against illegal construction of a multi-storey building on 5 Komitas Avenue. After Kiviryan's detention, a criminal case was opened against him by the police on charges of use of force against police officers while no proper investigation was carried out on the incident. The police detained other activists from the same rally without giving any legitimate grounds for detention and kept them at the police over the 3-hour limit. The violation of the right of freedom of people and illegitimate use of force by the police during this protest was pointed out by the RA Ombudsman as well[75].

CONCLUSIONS

The use and application of the Law on Freedom of Assembly by law enforcement agencies is flawed, leading to human rights restrictions and abuses. Limitations on freedom of assembly become especially pronounced during the pre-and post – election periods when the authorities created obstacles for oppositional rallies by blocking the roads and directly discouraging citizens from participation under the threat of losing jobs. Abuse of power by police through unlawful apprehension of participants of various protests results in spread of an atmosphere of fear and has a chilling effect for those willing to exercise their right to protest.

RECOMMENDATIONS

- Amend and bring in compliance with European standards Articles of Law on Freedom of Assembly which create room for manipulation and restrictions by the State
- Conduct impartial and transparent investigation of instances of restrictions on freedom of assembly and use of force by police; identify and prosecute police officers for excessive use of force
- Abandon the practice of unlawful detention and intimidation of activists
- Conduct proactive, impartial and credible investigation of attacks on activists

[75] Ombudsman: During The Komitas 5 Protest Actions of The Police Were Not Legitimate: The Police Displayed Impatience and Intolerance- http://pashtpan.am/en/library/view_news/article/1085

Individual property rights

EXECUTIVE SUMMARY

This report covers the issue of property rights, with a focus on the state program on urban development and the expropriation of property under eminent domain. Under the current legislation, the state transfers its exclusive right of property alienation to a private company and does not monitor the process of compensation to property owners offered by the company. There is no accountability and transparency in the company selection process, which leads to a rise in corrupt practices and violation of property rights.

INTRODUCTION

The right to property is enshrined in the Armenian Constitution and legislation; nevertheless, this right is routinely violated. The Law on Alienation of Property for Public and State Needs allows the government to declare a particular urban development program dominant over the interests of property owners in that area and to expropriate their property. Subsequently, the government makes a decision to pass its exclusive right of property expropriation to a private construction company, stating in its decision that the government is not liable for damage caused in the course of expropriation or in connection with compensation for property. The whole process of property alienation poses significant corruption risks and is marred with a lack of transparency in the selection of the construction company.

The legislation stipulates that the expropriation of property for public and state needs may be justified only in exceptional cases: when there is a prevailing public interest, through a procedure established by the Law, and with due compensation. According to the Constitution of the Republic of Armenia, public and state interest cannot exist independently of each other.

The decision N CCD-815, dated July 2009, of the Constitutional Court states that the procedure for property alienation under the Law on Alienation of Property for Public and State Needs is not in line with constitutional requirements under the Court's decision N CCD-630. Public interest is broadly defined in the Law, such that nearly all issues can fall under this category – security of state and society, education, health, etc[76], leading to excessive use of public interest for promoting urban development in Armenia. Such a broad definition allows arbitrary application of the Law and results in the violation of property rights, particularly by not providing adequate compensation to owners. When seeking redress in courts, the citizens are faced with further complications. Since the adoption of the Law, not a single case was ruled in favor of a property owner. In this situation, the citizen's last resort is the ECHR, which has already made 8 judgments and ordered compensation in a total amount of USD 600,000, while another 13 cases are still pending a judgment. Nevertheless, the findings of the ECHR have not led to a change in domestic practice.

[76] http://www.hra.am/hy/tag/property_rights#

METHODOLOGY

This report is based on information, monitoring, and assessments of research organizations, media publications, analyses of the legislation and legal practice, as well as expert opinions and evaluations. At the end of this report, the main problems are summarized and recommendations are outlined.

RESULTS

The Law on Alienation of Property for Public and State Needs is arbitrarily applied and does not provide adequate safeguards for the protection of property rights. Construction companies often do not meet their contractual obligations and declare bankruptcy, leaving the owners of expropriated property with no means of seeking just compensation.

In turn, the courts do not provide redress to citizens whose rights have been violated. To date, not a single ruling was made by the courts in favor of the citizens, which would set a positive precedent for other property owners to go to court. Instead, construction companies push for friendly settlement, giving citizens less of an incentive to go to court.

Despite the failure of so many state-supported urban development programs, the government continues to approve the alienation of property under eminent domain and transfers its right of land expropriation to new companies, which are owned by the very same people whose former companies had failed to fulfill their contractual obligations in previous programs.

DISCUSSION

Since the adoption of the Law on Alienation of Property for Public and State Needs in 2007, about 18 government decisions have been made on urban development in Yerevan. Monitoring conducted by Victims of State Needs NGO shows that for three urban development projects, about 326 owners and their families lost their homes and did not receive compensation, despite the fact that they had compensation agreements. In a number of instances, construction companies did not meet their contractual obligations and declared bankruptcy.

Despite the fact that the Constitutional Court of Armenia declared the government decision that was being used as a legal basis for the alienation of the property unconstitutional, followed it up with an adoption of a new law, there has been no improvement in the process of alienation of property. The new Law on Alienation of Property for Public and State Needs adopted in 2006 by the National Assembly just simply changed the wording of the previous legal acts. In accordance with new law, the government of the Republic of Armenia made a number of decisions on the recognition of "public interest" in respect to the territories situated in the center of Yerevan, particularly, Ferdousi, Khanjyan, Buzand, Pushkin, Tumanyan, Hanrapetutyan streets, T.Mets ave, Kond, Kozern, etc. The decision to expropriate these territories had been unlawful. As a result, the law was changed to make the decision legal.

When making a decision on taking property by eminent domain, the government's main argument is that instead of the current "ruins" of the city center, the company will build good quality houses and underground parking space, thus freeing the center from current traffic issues. In practice, many of the construction plans never materialize as the construction company declares bankruptcy, leaving the property owners without compensation and without property.

Most of property rights violations arise from the fact that the government delegates its right of property alienation, along with the obligation to pay compensation, to a private company and subsequently does not conduct any oversight. In delegating its rights to the private company, the government declares that the company has undertaken a contractual obligation to keep the government exempt from liability for any damage that may occur as a result of the sale of property and in connection with the adequacy of compensation for the property. The monitoring efforts by Victims of State Needs NGO shows that in practice, none of the development projects started under the pretense of state needs were successfully finalized. To ensure that property rights violations do not continue, the government needs to guarantee the right of property owners and oversee the urban development process to ensure that it truly is in line with public interest.

The construction company selection process is not transparent and no information is available to the public on its track record. The information on the developers, names of the founders or where the funding is coming from, the guarantees of the developer and government's rationale of prioritizing one company over the other is not publicly available. The Yerevan Municipality refused to provide such information to property owners and Victims of State Needs NGO upon their request, despite the government decision 1151-N which explicitly states that such information should be provided to property owners. Lack of this information results in numerous violations of property rights such as the case of "Gapbnakshin" LLC selling 150 apartments to 520 citizens or "Narek - Shelter LLC" selling non-existent apartments to over 20 citizens.

The government does not recognize the lack of competition and transparency in the selection process as the root cause of so many violations. In April 2013, the government officially recognized the failure of a development program on Arami Street, which had 37 property owners whose properties were alienated. Despite these failures, throughout 2013, two more government decisions were made on the alienation of property in central Yerevan.

These cases are examples of continuing violations of the right to property, and despite the fact that they all started at different times, all are still ongoing as none of the victims have received adequate compensation for their property.

Case 1. In 2010, the Government recognized the territory 106/1 Nalbandian Street (kindergarten), subject to alienation for public and state needs. "Avag-Shin" LLC was subsequently given the right to build a luxury apartment building in that area instead of the "ruins" and garages, and children can attend the kindergarten in that area in 2 years. It

has already been three years since the start of the project and the only thing the company has done so far is to dig a huge pit.

Case 2. "Downtown Yerevan" CJSC (subsidiary of "Glendale Hills" JSC), signed agreements with 200 owners of the property in Kond area for constructing new buildings, where they would own apartments instead of the property seized from them. After alienating the property, the construction company declared bankruptcy, leaving 200 property owners on the streets.

Case 3. "And EM SI" CJSC (another subsidiary of "Glendale Hills" JSC) and "City Centre Development" JSC did not fulfill their contractual obligations towards 70 owners. Specifically, after the alienation of property on Ferdousi Street, the only thing the company did was to dig a pit during 6 years, which today is turned into a garbage pit. The owners of property on Byuzand and Amiryan streets are in the same situation, as "Leader Mobil" LLC did not fulfill its contractual obligations either.

Case 4. 80 percent[77] of property owners in the village of Artavaz lost their property due to property expropriation, leaving the population of an entire village as victims of property rights' violations. The land was alienated for building a water production and bottling factory, and the landowners went to court to challenge the decision on expropriation as it was clearly not for "public use". The Court of Cassation, however, returned all the appeals leaving the villagers with no remedy.

CONCLUSIONS

The right to property is not adequately protected in Armenia due to a lack of accountably mechanisms, as well as through corrupt practices in deciding on the alienation of property under eminent domain. The state makes excessive use of the notion of "public interest" to alienate property for urban development without due justification of the scope and need for such projects. Legislative loopholes make it easy to take the property from individual owners under the pretense of "public interest," while in reality it is used simply for business gains. Although there is a lack of publicly available information on construction companies, the clandestine ties between the construction business and decision-makers is widely discussed in the public domain.

RECOMMENDATIONS

- Make changes in Law on Alienation of Property for Public and State Needs, regulating the process of alienation of property, bringing the government control over the process of compensation
- Make changes in legislation regulating the delegation of any right from the government to the private
- Make transparent the information on the constructing company, delegated by the government

[77] Accessible at: http://www.hra.am/hy/tag/property_rights#

Reform the penitentiary system in line with the CPT recommendations

EXECUTIVE SUMMARY

This report assesses the measures taken by Armenian government to address CPT's recommendations on conditions of detention, healthcare issues, and ill-treatment of inmates. The CPT visited Armenia in 2010, 2011, and 2013. The results of the most recent visit are not published yet; however the previous two visits have identified a large number of concerns, which have not been addressed properly.

INTRODUCTION

The RA Ministry of Justice currently oversees 12 penitentiary establishments (the official documents indicate 13 establishments, probably referring to Abovyan Penitentiary for women and juveniles as two separate entities) and the Department of Criminal Justice.

Following the signature of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment by the Republic of Armenia, the CPT visited Armenia on a regular basis with two year intervals in 2002, 2004, 2006, 2008, and 2010, it conducted a short follow-up visit to a number of prisons in 2011, and the next visit was conducted in 2013, so the results of the last visit are yet to be published.

In 2010, the CPT made 21 recommendations regarding penitentiary establishments, which, as a rule, are pointing at problems that have been reported by other observation groups as well. In response to the CPT remarks, the Government presented lengthy justifications essentially denying most shortcomings or reassuring that the identified problem would be solved shortly. In 2012, Center for Strategic Litigations Human Rights NGO conducted a comprehensive analysis on implementation of CPT recommendations by the Republic of Armenia, revealing that a large number of recommendations were repeatedly put forward by CPT throughout different years[78]. In general, the fact that the same problems continue being stressed in virtually all reports on prison establishments in Armenia speaks for itself.

In his 2013 report on the Ministry of Justice, the RA Ombudsman expresses his concern about prison overcrowding, corruption among prison personnel, absence of visiting rooms in some prisons, unsatisfactory conditions for prisoners on hunger strike, low quality and quantity of food, untimely provision of medical service and referrals, unduly protracted bureaucratic procedures, and ambiguity of the list of illnesses, which are incompatible with serving the punishment.

[78] Marukyan, Edmon. Report on the results of monitoring over implementation of recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) by the RA. Vanadzor: CENTER FOR STRATEGIC LITIGATIONS HUMAN RIGHTS NGO, 2012

METHODOLOGY

The report is based on a comparative analysis of reports by the CPT, The Armenian government and specifically, the Ministry of Justice, the Ombudsman as the National Preventive Mechanism (NPM), the Group of Public Observers Conducting Monitoring of Penitentiary Institutions of the RA Ministry of Justice, Center for Strategic Litigations NGO and media publications. The situation presented in the report was evaluated against the plans and programs developed by the Armenian government to address the problems revealed in the reports.

The actions and steps taken by the Armenian government are evaluated based on their compliance with international standards and best practices and the commitments undertaken by Armenia within the frames of EU-Armenia relations.

RESULTS

A number of system-wide changes were conducted in the recent years, however, the problems identified by the CPT do persist, namely: prison overcrowding; poor or unbearable sanitary and living conditions; lack of health care specialists and poor healthcare conditions, including at the psychiatric ward; ill treatment of inmates; lack or absence of rehabilitative and recreational activities; general staffing issues; corruption; the 'institute" of prison "leaders"; discrimination; absence of independent and effective complaint mechanisms.

DISCUSSION

Numerous manifestations of corrupt practices in the penitentiary system prove that the issue is endemic and affects all aspects of life in prison: from demanding bribes for arranging a visit or a letter delivery to arranging early release or medical assistance[79]. The average salary of prison personnel remains extremely low and unattractive, while the lack of staff increases the workload of the existing personnel and leads to problems such as unavailability of regular walks, showers, visits, and other recreational or rehabilitative activities. Staffing issues also lead to increasing reliance on prison "leaders" to maintain order in prison. A number of prison directors have confessed that they would not be able to maintain order if it wasn't for prison "leaders". Moreover, they do not view this practice as negative or problematic. Prison "leaders" are provided with special conditions. They have fully renovated and well furnished rooms, they have a very wide, if not to say unlimited authority over the other prisoners, and even the staff[80]. At the same time, overcrowding remains a serious issue and inmates in some of the prisons take turns to sleep.

[79] Deputy Head of Nubarashen penitentiary accused of taking bribes, June 28, 2013, http://www.a1plus.am/en/social/2013/06/28/genproc

[80] Gor Ghlechyan: the existence of prison "leaders" does not go against the internal disciplinary regulations of the penitentiary, October 30, 2012, http://hcav.am/en/events/gor-ghlechyan-the-existence-of-prison-%E2%80%9Cleaders%E2%80%9D-doesn%E2%80%99t-harm-the-internal-rules-of-procedure-of-penitentiaries/

When inmates try to raise attention towards their conditions and treatment and resort to such measures as hunger strikes or self-mutilation, the response from authorities is striking. Particularly, in October 2012, in response to a question regarding self-injuries of inmates (sewing mouth and eyes shut), the RA Minister of Justice, responded that such measures by prisoners are usual for them and compared these acts to wearing earrings was for girls.[81] The Monitoring Group over Penitentiary Institutions has noted a tendency among prisoners to refrain from complaining about the situation and conditions in prison, mostly because inmates believe that they will face repercussions. There have been reports of prisoners receiving punishment or appearing in a worse situation after they attempted to submit a complaint letter to the government authorities. Most of the complaints are on the examination of the criminal case they were charged with or health related issues.

The Prison Monitoring Group reports on discriminatory practices towards inmates based on their ethnicity, sexual orientation, social or criminal status, health conditions, reason and duration of imprisonment. Inmates belonging to various vulnerable groups report that they were subject to discrimination both by prison staff and/or other inmates. Particularly, LGBT detainees experience humiliation and discrimination in prison[82] as they are forced to do humiliating jobs and are kept in separate cells as other inmates refuse contact with them.

Although the current report focuses on the reforms conducted in 2012-2013, a reference to earlier years is necessary to show the scope and pace of reforms, if any . The table below represents the dynamics of funding allocated for penitentiaries, specifically the funding available for healthcare compared to the number of inmates in penitentiaries and the number of deaths occurring in prisons.

Table 1: Annual funding and inmate data (according to official response to inquiry made by the Monitoring Group)

Year	Funding for Penitentiary Establishments (thousand AMD)	Healthcare funding for Penitentiary Establishments (thousand AMD)	Number of Death	Number of Inmates	Maximum capacity
2009	4 349 6875	40.484	15	4313	4180
2010	2 104 8578	25.6313	35	5142	4395
2011	4 980 5592	26.3305	32	4532	4395

The discrepancy between funding available in 2010 and the number of inmates is striking. The data on budget allocations for 2009 and 2010 show that there was a significant

[81] Why do inmates cut off fingers? October 31, 2012, http://www.a1plus.am/en/social/2012/10/31/hrayr-tovmasyan

[82] Human Rights Violations of Lesbian, Gay, BIsequal, and Transgender (LGBT) people in Armenia: a Shadow report http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBT_Armenia_HRC105.pdf

budget cut in 2010, for which no justification was presented. At the same time, the highest death rate was registered in the same year, which can be connected with the lower quality of life at prisons due to the abrupt budget cut.

The CPT visited Armenia in 2010, therefore the Delegation's monitoring coincided with the worst conditions. The increase in funding for 2011 may be the result of CPT's remarks and recommendations; however the problems identified by the CPT in 2010 still exist in 2013 on almost the same scale. Thus the measures undertaken by the government are not particularly effective and did not go beyond budget increase.

At the same time, it is unclear how funding is disbursed and whether there are objective criteria for directing more funding to one area at the expense of the other. The statistics presented in the table below show strange lack of correlation between the number of inmates and the spending on healthcare or food, whereas there is increase in salaries and maintenance costs.

Table 2: State Budget allocations for penitentiaries (as stipulated in the Law on State Budget for the years of 2009, 2010, 2011, 2012, and 2013) and the number of inmates (according to official response to inquiry made by the Monitoring Group)

Year	Capital Expenditures (thousand AMD)	Salary and other remuneration	Maintenance and ongoing renovations	Utilities*	Household materials and food	Healthcare and laboratory mater	Total Budget	Number of inmates
2009	1 864 542 7	3 402 013 8	80 142 1	337 375 0	906 395 5	43 037 9	7 072 496 9	4313
2010	0	3 418 909 1	50 127 9	422 681 7	906 395 5	43 000 0	5 229 727 0	5142
2011	1 004 368 0	3 857 821 7	50 127 9	484 055 0	1 084 039 0	43 000 0	6 990 793 5	4532
2012	1 117 270 0	3 944 699 4	50 127 9	498 437 4	1 134 356 7	43 000 0	7 263 379 4	4688
2013	1 075 000 0	5 017 668 3	150 127 9	501 310 4	1 134 356 7	43 000 0	8 398 048 1	4780

*Since 2012 this category also includes equipment rental and insurance

After its visit in 2010, the CPT presented a detailed report on the situation at visited establishments and put forth a number of recommendations to the Armenian Government on general conditions and on the situation of individual inmates. Below is the assessment on implementation of some of CPT's recommendations by the government.

Prison overcrowding – In 2010, CPT expressed its concern with overcrowding in all visited establishments, especially Nubarashen prison, where inmates had to take turns to sleep, as there were not enough beds for all inmates[83]. The same concern was raised by the Monitoring Group over Penitentiary Institutions in 2009 and in response, the RA

[83] the CPT. "Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2010." European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. August 17, 2011. http://www.cpt.coe.int/documents/arm/2011-24-inf-eng.htm (accessed July 5, 2013).

Ministry of Justice declared that all inmates had personal beds[84]. At the same time, no remarks were submitted by the government to CPT regarding te same allegation and the government expressed its willingness to improve prison conditions and to address overcrowding by building larger prisons within the next 10 years. Meanwhile, the data from Monitoring Group over Penitentiary Institutions confirms that overcrowding is still an issue and lack of use of alternatives to imprisonment aggravates the situation. The report of the National Preventive Mechanism (NPM) from the 1st quarter of 2013 confirms that most cells in Nubarashen prison accommodate up to 17 inmates, while only 10-12 beds available[85] in the cells.

The Armenian government's response to CPT indicates a plan of building 4 new establishments over the course of 10 years, in order to partly relieve the existing ones[86]. The List of Priorities of the government for 2010 foresaw building only 2 new penitentiaries, while the 2011 and 2012 lists did not reflect on this issue at all. The list of 2013 Priorities of the government indicated that it was planned to complete the construction of a section of "Armavir" Prison, with capacity to hold up to 400 inmates[87].

Although an explicit statement was made by CPT requesting to address prison overcrowding by using imprisonment as a last resort and improving the early release procedures, it is only now that the Armenian Government is making steps toward incorporating probation and other alternatives to imprisonment, while also stating its intention to close down smaller prisons and establishing larger and more centralized ones. In other words, the CPT recommendation to relieve the prisons by prioritizing measures other than imprisonment is currently being developed as an alternative, while the priority for the Government remains enhancing and enlarging the penitentiary establishments.

The Armenian Government plans to both construct new penitentiary establishments and to reconstruct some old ones. The table below estimates the capacity of those prisons according to provided data.[88]

[84] "Comments on the 2009 report on the Monitoring Group." Official Website of the RA Ministry of Justice. 2009. http://moj.am/storage/files/legal_acts/legal_acts_9093660_193.pdf (accessed July 5, 2013)

[85] Expert Council of the National Preventive Mechanism. "Human Rights Defender of Republic of Armenia as National Preventive Mechanism." Human Rights in Armenia. Interim Report 2013. http://www.hra.am/i/up/pdf_7285849995_eng_NPM_Report_2013-Eng..pdf (accessed July 10, 2013)

[86] "Response of the Armenian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Armenia from 5 to 7 December 2011." European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). October 3, 2012. http://www.cpt.coe.int/documents/arm/2012-24-inf-eng.htm (accessed July 5, 2013)

[87] Armenian Government. "Appendix 1 to N 70 Decision of the RA Government from January 10, 2013." Armenian Legal Information System (ARLIS). January 10, 2013. http://www.arlis.am/DocumentView.aspx?DocID=81137 (accessed July 5, 2013)

[88] Marukyan, Edmon. Report on the results of monitoring over implementation of recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) by the RA. Vanadzor: CENTER FOR STRATEGIC LITIGATIONS HUMAN RIGHTS NGO, 2012

Table 2: Capacity of to-be-built and renovated prisons (according to information collected by the Center for Strategic Litigation)

Penitentiary Establishment	New	Renovated
Armavir	1200	0
Goris	320	215
Yerevan	1800	0
Sevan	1200	548
Vanadzor	250	245
Abovyan		250
Kosh		640
Former Tumor research Center	N/A	0
Total	4770	1898

Although the table above may not be complete or exhaustive, the numbers indicate that incarceration will remain a priority measure of restraint and while some of the problematic establishments, such as Nubarashen penitentiary, will be demolished[89] new and more centralized prisons will be built.

Poor or unbearable sanitary and living conditions – An immediate consequence of overcrowding is poor sanitary and living conditions, an issue that has been raised by all groups conducting monitoring of prisons[90]. Specifically, civil society groups indicate that such poor conditions amount to degrading treatment and that the Armenian government should take urgent steps to insure proper conditions for inmates, such as access to natural light, permanent electricity and water as well as normal heating in winter. Civil society groups argue that lack of access to shower, family visits and exercise of other rights has turned into a source of corruption as the prisoners get access to these rights as a paid privilege.

Lack of health care specialists and poor healthcare conditions, including at the psychiatric ward – According to official data provided by the Ministry of Justice the overwhelming majority of death cases in prisons is a result of health issues.

Table 3: Information on death statistics in Prisons (according to official response to inquiry made by the Prison Monitoring Group and Helsinki Committee of Armenia)

Year	Health-related issues	suicides	other	Total
2010	29	4	1	34
2011	26	6	0	32
2012	25	3	0	28

[89] Advisor to the Minister of Justice, Nikolay Arustamyan Stated this in an interview with an Armenian News Agency. "Armenian –American Collaboration will provide new quality" Pastinfo, 04.09.2012, http://www.justice.am/press/view/article/507

[90] Armenia's Prison System Rocked by Protests, 28 January, 2013, http://groundreport.com/armenias-prison-system-rocked-by-protests/

Despite this worrying tendency, healthcare funding and qualification of health personnel remains problematic. Although there has been a slight increase in the number of healthcare specialists, they are still unable to provide adequate service to all inmates with medical needs, especially inmates with psycho-social disability or with special needs. The inmates complain about the lack of medicine and other medical supplies at the Prisoners' hospital or other prisons as well of the failure to provide timely medical assistance to inmates, which in turn has led to several fatalities. Moreover, the procedures for early release of inmates with severe health condition incompatible with serving the punishment has been long criticized by civil society for being arbitrary and unpredictable and amounting to torture and degrading treatment.

Ill treatment of inmates_- Ill-treatment of inmates by prison personnel, was one of CPT's biggest concerns, but at the same time remains one of the most unreported problems. In its report, CPT stated that unbearable sanitary and living conditions in some of the prisons amount to torture or degrading treatment. Civil society organizations report on excessive use of disciplinary punishments, special means, and disciplinary isolation, while CPT has stressed that persons are incarcerated as a punishment, not to receive punishment and therefore their imprisonment should not entail more hardship than the restriction of freedom.

CONCLUSIONS

The CPT presented a large number of remarks and recommendations, which the Armenian government claims to have solved or in the process of being solved. However in his 2013 report on the Ministry of Justice, the RA Ombudsman expresses his concern about prison overcrowding, corruption among prison personnel, absence of visiting rooms in some prisons, unsatisfactory conditions for prisoners on hunger strike, low quality and quantity of food, untimely provision of medical service and referrals, unduly protracted bureaucratic procedures, and ambiguity of the list of illnesses, which are incompatible with serving the punishment. The reports by other missions and groups as well as the information presented in the official responses of authorities show that the government is not particularly concerned or open about the situation in prisons. On the contrary, the government has adopted a strategy of denial of allegations if they come from local missions or groups, while stating that the same issues are being worked on, if the complaint comes from an international entity.

The government's readiness to improve the situation would be visible if it admitted to the fact and scale of violations; however it is apparent that the denial of these outrageous violations in prisons and unwillingness of the Armenian government to accept any criticism of its work is a clear that the violations will persist until pushed for more strictly.

RECOMMENDATIONS

- Address prison overcrowding by making use of non-custodial measures and using imprisonment as a last resort
- Conduct impartial and prompt investigation of all ill treatment allegations
- Provide thorough and objective examination of corruption cases and eliminate its underlying causes; Improve the working conditions of prison personnel making prison jobs more competitive and attractive
- Address criminal hierarchy and promote the observation of disciplinary regulations by the prison staff and inmates
- Guarantee sanitary and living conditions in prisons based on international standards
- Secure the penitentiaries with professional medical staff and medication; ensure prompt screening of inmates upon admission to the institution and in cases of alleged ill-treatment
- Eliminate all forms of discrimination and ensure that nobody is isolated from the general prison population be that safety or other considerations
- Encourage creation of effective, independent complaint mechanisms and full protection of whistleblowers, including changing the attitude toward complaints and complainants

Cooperate closely with OSCE and CoE to reform the police

EXECUTIVE SUMMARY

"Strengthening the police-public relations is one of the priorities of democratic policing, which builds a foundation for trust and co-operation. It is however a complex process, which takes time, effort and goodwill."
- Lilian Salaru, Politico-Military Officer of the OSCE Office in Yerevan, on OSCE engagement and support of police reform in Armenia

Over the past few years, Armenia has conducted significant reforms in police system. In 2013, the police launched the next stage of reform program, which they claimed aimed to make the activities of the police more transparent, and to enlarge and improve the scope of cooperation between society and the police. The reforms were conducted in cooperation with a number of international organizations, such as OSCE, CoE, UNDP, the US Embassy in Armenia, and corresponding ministries in foreign countries.

International entities such as UN Committee on Human Rights, UN Committee against Torture, European Committee for the Prevention of Torture, are paying special attention to the fulfillment of reforms regarding the fundamental freedoms of persons within the scope of police activities. The results of the assessment of the effectiveness and impact of reforms in the RA police system regarding the protection of human rights will most likely be summarized this year.

Large-scale reforms have been carried out in the RA police force and tremendous efforts have been made to improve the working style of the police. A number of legal acts, guidelines and standards have been drafted and approved, police officers have been trained, and the education system has improved. Despite all this, it should be noted that it will be impossible for actual reforms to take place in a setting where the rights of the police officers are not protected; there is impunity of police officers for the violation of a person's rights; and there are corruption risks in the police system. It is only through willingness to properly ensure the protection of the rights of citizens and police officers that real reforms can be achieved.

This study aims to reveal what reforms were made and are currently underway in the field of the RA Police activities and how they impact the protection of human rights in the RA. The study also partially addresses the state of human rights in the Armed Forces, by touching upon the death cases, application of ill treatment in the Armed Forces and the issue of conducting proper investigation over such cases. This report does not serve as a comprehensive information source regarding all of the actions scheduled within the framework of the EU-Armenia Action Plan, or of documents approved and adopted to facilitate its further implementation.

INTRODUCTION

The EU / Republic of Armenia Action Plan envisages close cooperation with OSCE and CoE in reforming the police force, in order to eliminate torture, other mistreatments and corruption, to establish more trust between society and the police, and to improve the overall human rights situation.[91]

In 2012, the UN Committee against Torture and the UN Human Rights Committee presented their concluding observations regarding the implementation of provisions set in the UN Convention against Torture and the International Covenant on Civil and Political Rights by the Republic of Armenia, respectively. These two Committees have recorded progress in the assurance of the right of freedom from torture and other mistreatments, specifically noting the ratification of certain international documents: the Optional Protocol of the Convention against Torture, the Convention on the Rights of Persons with Disabilities, and others. However, issues requiring urgent solutions, and which have been repeatedly addressed by international organizations, were also recorded.

Two out of the three issues recorded by the UN Human Rights Committee and deemed as urgent directly relate to the activities of the RA police. The government is obliged to present information regarding the resolution of these issues within one year of the adoption of the concluding observations (August, 2013) These issues are: 1) the ongoing impunity for excessive use of force by the police during the events of 1 March 2008, despite efforts to investigate the fatalities; and 2) the absence of a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment in places of deprivation of liberty, as well as the low number of prosecutions of such cases.[92]

In its turn, the Committee against Torture singled out: the routine use of torture and ill-treatment of suspects in police custody, especially to extract confessions; failure to afford all detainees all fundamental safeguards against violations from the very outset of their de facto deprivation of liberty, including timely access to a lawyer and a medical doctor and the right to contact family members; the need for mechanisms to conduct fair investigations over cases of torture; the insufficient number of public defenders in the state; the absence of prompt, impartial or effective investigation and prosecution of allegations of torture and/or ill-treatment committed by law enforcement officials and military personnel. Regarding these issues as well, the government was to report to the Committee within one year, by June 1, 2013.[93] Armenia submitted its follow-up report on July 11, 2013.[94]

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[91] EU-Armenia Action Plan, 2006 November 14, http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf

[92] Concluding observations adopted by the Human Rights Committee at its 105th session, Human Rights Committee 9-27 July 2012, Armenia 2012, August 31, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/455/24/PDF/G1245524.pdf?OpenElement

[93] Concluding observations of the Committee against Torture Armenia (Extracts for follow-up of CAT/C/ARM/CO/3), Committee against Torture, July 6, 2012, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ARM/INT_CAT_FUI_ARM_12361_E.pdf

[94] Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment - Follow-up to concluding observations, Government of Republic of Armenia, July 2013, http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/FollowUp.aspx?Treaty=CAT&Lang=en

Meanwhile, during April 4-10, 2013, the European Committee for the Prevention of Torture made ad hoc visits to detention facilities in Armenia and conducted monitoring in the Detention Centre of Yerevan City Police Department, five Yerevan police divisions, and the Kotayk-Abovyan police division. The main objective of the visit was to review the implementation of recommendations made after previous visits regarding the treatment of persons deprived of their liberty by the police. Previously, during its visit in May 2010, the Committee monitored the safeguarding of the right to freedom from torture and other ill treatment afforded by the RA police.

International organizations are paying particular attention to the fulfillment of reforms regarding the fundamental freedoms persons within the scope of the RA police force. The results of the assessment of the effectiveness and impact of reforms in the RA police system regarding the protection of human rights will most likely be summarized this year.

This study aims to reveal the reforms that were recently made and those that are currently underway in the field of the RA police activities, and to assess their impact the protection of human rights in Armenia. The study also partially addresses the state of human rights in the armed forces, touching upon cases of death and ill treatment, and the issue of conducting proper investigations of such cases. This report does not serve as a comprehensive information source regarding all of the actions scheduled within the framework of the EU-Armenia Action Plan, or of documents approved and adopted to facilitate its further implementation.

METHODOLOGY

This study is based on the reports and recommendations by international organizations and local NGOs, as well as the human rights defender's reports on the situation of human rights in the police force and armed forces. With an aim to obtain information regarding the undertaken measures, the strategic programs and event lists implemented in the field of policing and with the involvement of the police were also studied. In order to receive information regarding the cooperation of OSCE and CoE with the RA Police, the official press releases posted on the websites of the relevant structures have been studied.

RESULTS

Reforms in the Police Force

Reforms of the RA police force have been implemented, and will be, implemented within the framework of a number of reform programs, as well as the 2013-2014 Program of Reforms of RA Police Activities. These reforms are part of the Institutional Reform Plans (IRP) under the Comprehensive Institution-Building Program of the state governing agencies, within the framework of the European Union Eastern Partnership. They were approved by Decree 1161-A[95] of the RA prime minister on December 1, 2011. The 2012-

[95] See Appendix 1 (Table reflecting the trust level towards the police)

2013 list of events ensuring the implementation of the EU/RA Action Plan of the European Neighborhood Policy was approved by Order NK- 52, issued by the RA president on April 16, 2012.

Institutional Reform Plans under the Comprehensive Institution Building Program

Institutional reform plans (IRP) under the Comprehensive Institution Building Program of the state governing agencies within the framework of the European Union Eastern Partnership were approved through a December 1, 2011 decree of the prime minister.[96]
The Comprehensive Institution Building Program has three core areas, which are:

- Strengthening of the institutional structure for the negotiations for the Association agreement;
- Justice, freedom and security (JFS);
- Preparations for negotiations of the DCFTA.

Issues that have been noted in the IRP include: the insufficiency of technical equipment in the police system; the absence of electronic database software; the lack of one centralized database system of law-enforcement agencies and other state stakeholders; and inadequate working conditions for police staff. The improvement of cooperation between the police and mass media, namely, the necessity to raise awareness regarding the activities and projects implemented by the police through the mass media, has been viewed as a separate issue.

The reforms of the RA Police are under the core area of justice, freedom and security (JFS). The goals set for their implementation are directed at the enhancement of institutional capacity and human resources.

The following actions have been identified as primary issues for reforms in the police sector:

- Establish an institute of Community Policing;
- Implement educational reforms;
- Carry out traffic safety reforms;
- Administer service quality improvements for the complex management of borders;
- Effectively fight against drug trade and human trafficking;
- Effectively fight against organized crime, corruption, money laundering and computer crimes;
- Strengthen public trust towards the police and reinforce effective cooperation with the mass media;
- Provide adequate technical equipment to the police service.

OSCE is a co-financing donor for the five actions included under the IRP action plan, which are:

[96] http://www.arlis.am/DocumentView.aspx?docid=76686

- Introduction of Community Policing model in Armenia (€ 837.735 from OSCE / € 211.320 from the RA state budget);
- Promotion of material and technical provisions for the training processes of the police educational complex (€ 581.132 from OSCE / € 145.283 from the RA state budget);
- Protection of public order /crowd control (€ 243.396 from OSCE / € 58.490 from the RA state budget);
- Struggle against domestic violence (€ 60.377 from OSCE / € 15.094 from the RA state budget);
- Improvement of police and mass media relations (€ 118.868 from OSCE / € 28.302 from the RA state budget).

2012-2013 Program of Events Ensuring the Implementation of the European Neighborhood Policy EU/RA Action Plan

This program is comprised of eight actions, for which the RA Police serves as the primary implementer:
security increase of travelling documents; provision of protection of personal data; combatting illegal migration; fighting against illegal revenues, money laundering and their illegal circulation; improvement of partnership mechanisms on judicial and legal systems between EU member states and Armenia (ensuring the implementation of provisions of the UN Convention on the Rights of the Child, developing the RA draft law "On domestic violence"); and finally, the adoption of the program of reforms for 2012-2014 of the Police in partnership with OSCE and Council of Europe and implementation of the program-based actions.[97]

2013-2014 Project of Reforms in RA Police Activities

The 2013-2014 project of reforms in RA police activities was approved by Decision #109-N of the RA government, adopted on February 7, 2013. According to the project justification, it was developed by the Organizational and Analytical Department of the Reform-Planning and Project Coordination Division of the RA Police headquarters. Experts from the United Kingdom, invited to Armenia through the support of the OSCE Yerevan office, also proposed their recommendations for the project.

The primary goals of the reform project are: making the activities of the police more transparent; improving police-citizens relations; expanding partnerships; and introducing Community Policing throughout the country.

The project will include five types of reforms: structural and organizational reforms; reforms aimed at increasing effectiveness in fighting crime; reforms directed at the improvement working conditions for police; and reforms aimed at the social and legal

[97] See Appendix 2. 2012-2013 program of events ensuring the implementation of EU/RA Action Plan of the European Neighborhood Policy (Extracts).

protection of the police officers.[98] Regarding the last type, only actions directed towards the betterment the social situation of police officers are included in the framework of social and legal protection of the police officers.

Other Reform Projects

The 2009-2012 National Program on Combating Drug Addiction and Trafficking of Narcotic Drugs was implemented under the coordination of the RA police. The main goals of the Program were: 1) to adopt necessary conditions in order to decrease crime rates in the trafficking of illicit drugs; 2) to provide coordinated cooperation between governmental bodies in order to implement legal and practical measures to prevent illicit drug trafficking and other associated crimes; 3) to abolish the causes of drug abuse. The Ministry of Healthcare was responsible for the implementation of 47% of the measures, and the police force was responsible for 15%.

Human Rights within the Police Force and the Military

The practice of ill treatment, torture, and unlawful acts against persons by police officers is still a cause for major concern. According to information provided by HCA-Vanadzor, from 2012 to 2013, citizens reported to the organization five cases of the breach of the right to freedom from torture and ill treatment by the police; six cases of illegal searches; and three cases of illegal imprisonment. Out of the fear for harassment, persons in some cases refused to pursue their claims and to submit applications to relevant bodies.[99] In cases when applications were sent to the Special Investigation Service and to the Prosecutor General's office, either the instigation of a criminal case was refused or the criminal case was stopped because of the absence of *corpus delicti*. These issues become exacerbated and do not yield systemic solutions given the impunity of police officers, with an absence of proper investigations in such cases. This problem is stressedin the Armenian Helsinki Committee's report titled *Treatment of Detained Persons in Police Departments*.[100]

The same issue was addressed in the 2012 report of the European Neighborhood Policy, released on March 13, of 2013. The report states that the cases of torture and ill treatment were not adequately put to discussion.[101] It was also addressed in the concluding

[98] RA Government decree in the scopes of activities the RA Police adjunct to the RA Government on acceding 2013-2014 reforms program and approving of the program implementation schedule, February 7, 2013, http://www.arlis.am/DocumentView.aspx?DocID=81344

[99] Report on the cases of ill treatment in RA police divisions in 2011-2013, HCA Vanadzor, July, 2013, http://hcav.am/wp-content/uploads/2013/07/%D5%BF%D5%A5%D5%B2%D5%A5%D5%AF%D5%A1%D5%B6%D6%841.pdf

[100] Treatment of Detained Persons in Police Departments, Report of Armenian Helsinki Committee, 2013 http://armhels.com/wp-content/uploads/2013/04/zekuyc-2013.pdf

[101] Implementation of the European Neighbourhood Policy in Armenia. Progress in 2012 and recomendations for, European Commission, High Representative of the European Union for Foreign Affairs and Security Policy, March 20, 2013, http://ec.europa.eu/world/enp/docs/2013_enp_pack/2013_progress_report_armenia_en.pdf

observations on the implementation of provisions of the International Covenant on Civil and Political Rights of the UN Committee against Torture[102] and the Human Rights Committee[103].

In its concluding observations on the implementation of provisions of the International Covenant on Civil and Political Rights, the UN Human Rights Committee expressed concerns regarding the lack of an independent body charged with investigating cases of ill treatment and application of excessive force by the police, and regarding the impunity of the use of excessive force by the police on March 1, 2008. It should be noted that according to the Committee, efforts to investigate deaths were made, however, the state should undertake effective measures to subject all of the responsible individuals to liability; and the victims of those actions should receive adequate compensation, medical and psychological rehabilitation. The Committee also expressed concern over the pervasiveness of domestic violence and the absence of a relevant article in the RA Criminal Code defining liabilities for torture, as well as the lack of reliable results on the corruption level decrease in the activities of the police.[104]

In addressing the issue of ill treatment and torture by the police in detention facilities in its concluding observations, the UN Committee against Torture (CAT) calls on authorities to conduct adequate, complete and fair investigations of cases of torture, ill treatment and death, and to ensure adequate procedures upon detaining a person, in notifying him/her of his/her rights.[105]

In addition, the Committee recommended video recording in all interrogation rooms as a preventive measure against torture, and pointed out the necessity of quality improvement for legal aid rendered by the Public Defender's Office of the RA Chamber of Advocates.[106]

Currently, cases of unlawful actions committed by police officers are often investigated by the same police department where the alleged breach of rights took place, or by the prosecutor's office, implying the impunity of police officers. The UN Committee against Torture addressed this issue, stating that the complete and proper investigation should be conducted by an independent and effectively operating body.[107]
The Armenian government, in its follow-up documentation in response to the CAT recommendations mentions that the fight against torture in the Republic of Armenia, as

[102] Concluding observations of the Committee against Torture, Armenia (Extracts for follow-up of CAT/C/ARM/CO/3), UN Committee against Torture, July 6, 2012, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ARM/INT_CAT_FUI_ARM_12361_E.pdf
[103] Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Armenia, UN Human Rights Committee, August 314, 2012, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/455/24/PDF/G1245524.pdf?OpenElement
[104] Ibid
[105] Concluding observations of the Committee against Torture, Armenia (Extracts for follow-up of CAT/C/ARM/CO/3), UN Committee against Torture, July 6, 2012, http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ARM/INT_CAT_FUI_ARM_12361_E.pdf
[106] Ibid
[107] Ibid

the most essential component of the protection of human rights, was included in the directions stipulated by the National Strategy for the Protection of Human Rights, approved by the executive order of the president (NK-159-N of 29 October 2012)[108]. It is important to note that, in order to implement the above-mentioned Strategy, a corresponding Action Plan had to be approved by the government by July 17, 2013 – such an action plan has not yet been approved.

It was also mentioned in the Response that a draft law on making amendments and a supplements to the RA Criminal Code was developed and submitted to the National Assembly in order to bring the definition of torture in the Criminal Code in compliance with the Article 1 of the UN Convention against Torture. In reality, the corresponding legislative changes have not been made to this day, and the inclusion of the abovementioned draft law in the National Assembly's agenda was postponed for one year on October 22, 2012.

In the first half of 2013, 15 deaths of servicemen were recorded in the RA armed forces. Two out of the 15 recorded deaths were due to violation of the ceasefire, three were suicide, three were caused by a violation of statutory relations, four were accidents, two were caused by health-related issues or lack of proper medical care and one was the result of negligence committed by a fellow serviceman.[109] The UN Human Rights Committee addressed the cases of violence, suspicious deaths and ill treatment in the RA armed forces.[110]

On June 7, 2013 the RA Military Prosecutor's office disseminated a press release about initiating a working group, to be in charge of studying the criminal cases over deaths in the RA Armed Forces and to present their assessments regarding the effectiveness of investigation carried out over those cases[111].

By the Governmental decree No. 1554-N from 25 December 2008, the Charter and the Structure of the Investigation service of the Ministry of Defense was approved. According to abovementioned decree

On June 7, 2013, the RA Military Prosecutor's office issued a press release announcing that they were initiating a working group to examine the criminal cases of deaths in the armed forces and present their assessments regarding the effectiveness of investigations

[108] Follow-up information in response to the CAT recommendations, Government of RA, July 11, 2013, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CATC%2fARM%2fCO%2f3%2fAdd.1&Lang=en

[109] Report on death cases in the RA Armed Forced within January-June 2013, HCA Vanadzor, 2013, http://hcav.am/wp-content/uploads/2013/07/%D5%8F%D5%A5%D5%B2%D5%A5%D5%AF%D5%A1%D5%B6%D6%84-2013-2.pdf

[110] Concluding observations adopted by the Human Rights Committee at its 105th session, 9-27 July 2012, Armenia, UN Human Rights Committee, August 314, 2012, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/455/24/PDF/G1245524.pdf?OpenElement

[111] The RA Military Prosecutor's office sets up a working group to investigate death cases in the RA Armed Forces, RA Military Prosecutor's Office, July 2, 2013, http://www.genproc.am/am/49/item/7881/

carried out over those cases.[112] By government decree No. 1554-N (December 25, 2008), the Charter and the Structure of the Investigation Service of the Ministry of Defense was approved. According to abovementioned decree, crimes committed against military servicemen, by military servicemen/commanders, or on the premises of a military unit, are to have a preliminary investigation conducted by the Investigation Service of the RA Ministry of Defense.

Cooperation of the OSCE Office in Yerevan with the RA Police

According to the official website of the RA Police, the close cooperation between the RA Police and the OSCE Yerevan office started in 2003. On November 27, 2008 a memorandum "On partnership between the RA Police and the OSCE Yerevan office" was signed, determining the creation of a working group dealing with the reinforcement of cooperation between the RA Police and residents, and other working groups dealing with the improvement of the RA police education system, and support in ensuring public order.

As a result, a number of structural and educational reforms and awareness campaigns have been carried out with OSCE support. Guidelines and criteria have been developed on activities in the police force that require regulation. A number of new measures were introduced that dealt with trafficking, trials of juvenile delinquents, and community policing. Roundtables with mass media representatives were also conducted.

CoE partnership with the RA Police

According to the official website RA Police, the partnership with the CoE was established within the framework of drafting the Council of Europe Convention on trafficking in organs, tissues and cells; the promotion of the CoE Convention on preventing and combating violence against women and domestic violence; the implementation of the Convention on the Protection of Individuals (with regard to the automatic processing of personal data); and the implementation of the Convention on Cybercrime (Budapest Convention).

DISCUSSION

In 2012-2013 the RA Police made a commitment to carry out both systemic reforms directly targeted at the improvement of police work, and reforms directed at the promotion of the effectiveness of the RA Police. The improvement of human rights protection in society and unconditional fulfillment of human rights and fundamental freedoms should be viewed as a primary vision and final outcome of police reforms. As a result of the effective implementation of these reforms, public trust toward the policing system and individual police officers will increase.

Perhaps the most significant initiative directed towards strengthening police-society

[112] The RA Military Prosecutor's office sets up a working group to investigate death cases in the RA Armed Forces, RA Military Prosecutor's Office, July 2, 2013, http://www.genproc.am/am/49/item/7881/

relations is the introduction of the Community Policing model, supported by the OSCE Yerevan. Although community policing stations were set up in 2011, it is too early to make conclusions about their effectiveness, especially when the police have not yet released statistics about the activities carried out by those stations[113]. The fact that community policing is under the direct control of the central police system is quite concerning; community policing does not have any commitments towards LSG bodies, and LSG bodies do not have any influence over community policing.

Currently, the police force is undergoing another phase of reforms, based on the 2013-2014 agenda of police reforms. Civil society organizations were excluded from the process of drafting the reform program. Moreover, to the inquiry of HCA-Vanadzor regarding the drafting of the program of reforms, the RA Police replied that the program was in its drafting stage and the expedience for public discussions would be determined after it was drafted.[114] The police reform program was posted on the official website of the RA Police only after its approval.

The 2010-2011 police reform program preceded the current one and was far more extensive. Similar to the current one, it also comprised structural and organizational reforms, reforms aimed at increasing the level of trust towards the police, and reforms directed at the legal and social protection of the police officers. Community Policing was first introduced during the 2010-2011 program. The analysis of 2010-2011 program of RA police reforms showed that 49% of the planned activities had not been fulfilled, while only 37% were fully implemented.[115] In the meantime, the report presented by the RA Police regarding program implementation was very written in brief, general terms. Even the legal acts adopted for the implementation of the program activities (including the decrees of the Chief of Police) were not posted on the official website of the RA Police.

In response to the inquiry of HCA-Vanadzor to provide the "Guidelines for the activities of officers of the police units involved in public order management and for the use of physical force, special means and firearms by these officers during mass disorders"[116] and "Guidelines on negotiations during public order management and ensuring of public security"[117] and a number of other documents, the police stated that the guidelines, approved by the order of the RA Chief of Police, were available on the official website of the OSCE office in Yerevan.[118]

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[113] No such information is available at the corresponding section of the RA Police official website See www.police.am, as of july 10, 2013

[114] See Appendix 3 (The response of the RA Police Legal Department to the inquiry submitted by Helsinki Citizens' Assembly- Vanadzor)

[115] Analysis over 2010-2011 program of reforms in the RA Police scope of activities, HCA Vanadzor, April 26, 2012, http://hcav.am/wp-content/uploads/2012/04/%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81.pdf

[116] Guidelines for the Use of Physical Force, Special Means and Firearms Involved in Public Order Management, 2011, http://www.osce.org/yerevan/85133v

[117] Guidelines for Conducting Negotiations2011, http://www.osce.org/yerevan/85135

[118] See Appendix 4 (The response of the RA Police to the inquiry submitted by Helsinki Citizens' Assembly-Vanadzor)

The CoE Convention on the protection of individuals with regard to automatic processing of personal data (ETS-108) was ratified on May 9, 2012. On May 22, 2012 the analysis of the EU legislation regarding the automatic processing of personal data was done by the EU Advisory Group to the Republic of Armenia, and recommendations were developed for the reforms in the RA legislative and institutional sectors. Recommendations, such as using special means to ensure and the upholding of personal data protection rules by all state institutions, were presented in the document, as well as measures directed at the establishment of an independent national body for data protection.[119] The RA Law "On the Protection of Personal Data" foreseen by the program, has not been adopted. The only amendment made since 2010 to the current law "On personal data" states that the order of transferring personal data of state and local self-governing bodies, state or community institutions to each other is determined both by the RA government decree and by the law.

The RA law "On domestic violence" has not yet been adopted, though it is currently in its drafting stage. Studies show that cases of human rights violations, torture, degrading treatment and other ill treatment still persist in the police force. These issues are more widespread during the preparation of materials and investigation by the police, and during investigative activities, such as searches. The situation is made worse by nepotism and the impunity of police officers, since cases of ill treatment are usually investigated by the disciplinary of the same body were the alleged ill treatment took place, rather than by an independent investigative body. The new RA Criminal Procedure Code may address some of these issues. However the internal investigation procedures regarding police officers must still be improved.

According to government order #1672-N RA, dated December 27, 2012, on defining the composition and the working order of the RA Police Disciplinary Committee, five representatives are to be from non-governmental organizations. This is expected to make the procedures of subjecting police officers to disciplinary actions more transparent. Improper oversight by the prosecutor general's office can also entail inadequate investigation over illegal actions committed by the police officers. The directly controlling prosecutor does not provide adequate oversight over the lawfulness of preliminary investigations or of investigations of cases at the scene. Similarly, in later phases, the Prosecutor General and other authorized prosecutors do not provide adequate control over the legality of the preliminary investigation conducted by the Special Investigation Service.

Satisfactory efforts have not been made to improve the legal/social protection and working conditions, or to provide improved material and technical equipment. Drafted actions directed towards improvement in these areas are not being implemented. For example, according to the 2010-2011 project of reforms in the field of the RA Police activities, housing conditions of police officers were to be improved by adopting relevant

[119] Policy Paper on Analysis of EU legislation on Personal Data Protection, EU Advisory group in Armenia, May 22, 2012, http://www.euadvisorygroup.eu/sites/default/files/Policy%20Paper%20on%20Analysis%20of%20EU%20legislation%20on%20Personal%20Data%20Protection_arm.pdf

legislation. In response to an inquiry, about the steps taken to implement the abovementioned activity, the police stated that, since there were no funds for it in the 2013-2015 budget, it would be unreasonable to adopt a corresponding legislative act.

Equipping interrogation rooms across the country with video and audio recording was foreseen by the 2010-2011 Police Reform Program. However the only interrogation room with this kind of equipment is in the Special Investigation Service.

The lack of full, impartial and effective investigations of deaths in the military has still not been addressed. Preliminary investigations of cases of ill treatment and death are conducted by the Investigation Service of the Ministry of Defense rather than by an independent investigative body.

CONCLUSIONS

Large-scale reforms have been carried out in the activities of the RA Police and tremendous efforts have been made towards the improvement of the working style of the police. A number of legal acts, guidelines and standards have been drafted and approved, police officers have been trained and the education system has improved. Despite all this, it should be noted that it will be impossible for actual reforms to take place in a setting where the rights of the police officers are not protected; there is impunity of police officers for the violation of a person's rights; and there are corruption risks in the police system. It is only through willingness to properly ensure the protection of the rights of citizens and police officers that real reforms can be achieved.

RECOMMENDATIONS

On improving the situation of human rights in the police force:

- Adopt the RA Law On Combating Domestic Violence;
- Ensure the implementation of relevant amendments and addenda to the Law on Personal Data, in line with the recommendations outlined by the EU Advisory Group;
- Undertake measure directed at increasing access to quality free legal aid; namely, draft and adopt the RA Law on Free Legal Assistance;
- Ensure adequate material and technical equipment for the law enforcement bodies;
- Undertake measures targeted at the social and full legal protection of RA police officers;
- Ensure the accountability of the RA police and adequate public awareness of police activities, including engagement of civil society in the development and implementation of reforms on police activities.

On the prevention of ill treatment in the RA police force:

- Ensure the proper, full and effective implementation of recommendations proposed by the UN Committee against Torture, the Human Rights Committee and UN

Committee for the Prevention of Tortures;

- Ensure the proper, full and effective implementation of the recommendations recorded in the concluding observations of the UN Committee against Torture and the Human Rights Committee, as well as the recommendations of the Committee for the Prevention of Torture;
- Ensure the completion of comprehensive, proper and fair investigations over the cases of torture and ill treatment on the part of police officers by the SIS, as an independent body;
- Ensure adequate oversight over investigations (and preliminary investigations) by the RA prosecutor's office;
- Provide all of the investigative departments of the RA police with interrogation rooms and allow the video and audio-recording interrogations; make recording a part of interrogation protocol; if this is not possible, to provide the person under interrogation with his/her right record the interrogation;
- Perform mandatory entry and exit registration of persons in all investigative departments and stations of the RA police.

On the prevention of ill treatment in the RA armed forces:

- Ensure comprehensive, thorough and impartial investigations into cases of death, torture and ill treatment in the RA armed forces by an independent investigative body, rather than the military investigative service.

Appendix 1

Trust towards RA Police

The tables below reflect the level of trust on the part of the citizens towards the RA Police during 2012, 2011, 2010 ascending or descending dynamics of trust during these years.

	2012		2011		2010
Fully trust	6	<	8	>	7
Rather trust	24	>	21	>	12
Neutral	26	>	25	<	29
Rather distrust	14	<	18	<	22
Fully distrust	26	>	22	<	26
Do not know	4	<	6	>	4

The results of the studies carried out by the Caucasus Research Resource Center (www.crrc.am) within the frames of "Caucasus Barometer" project were used for the compilation of the table.

Appendix 2

2012-2013 Program of Events ensuring the implementation of the EU/RA Action Plan of the European Neighborhood Policy (extracts)

The 2012-2013 Program of Events ensuring the implementation of EU/RA Action Plan of the European Neighborhood Policy was approved by order NK- 52 –A of the RA president given (April 16, 2012).
The current action plan includes six actions for which the RA Police serve as the primary implementer:

1) Security increase of travelling documents:
   a) Introduction of electronic passports with biometric chips by 2012;
   b) Introduction of a system of electronic passports with biometric chips by 2013.

2) Study of international expertise of the protection of personal data, ratification of the CoE Convention on the Protection of Individuals with regard to automatic processing of personal data (ETS-108); submission of the RA draft law "On the protection of personal data" to the RA National Assembly:
   a) Development of sub-legislative acts based on the RA law "On the protection of personal data" and their adoption in 2013; scheduling and implementation of necessary plan of actions; establishment of a division of "the protection of personal data" and an Advisory Council within the RA Police, adjacent to the RA Government and # 1 division of the department on combating organized crime;
   b) Partnership with diplomatic and consular missions of EU member states accredited in Armenia regarding combat against illegal migration;
   c) Drafting of legislative acts directed at bolstering the struggle against illegal migration by 2012.

3) Training of officials to carry out the struggle against illegal migration, study of expertise by EU member states in the aforementioned field by 2013:
   a) Improvement of combat mechanisms against illegal revenues, money laundering and unlawful circulation; capacity building of authorized state bodies and accountable persons on combat against financing of money laundering and terrorism; reinforcement of partnership with EU member states and relevant institutions of the European community; review of sanctions applied in cases of money laundering within the framework of domestic law upon necessity; bringing the sanctions in line with international standards;
   b) Study of expertise by EU member states with the aim to improve the mechanisms of the struggle against illegal revenues, money laundering and unlawful circulation; study of domestic legislation; developing and presenting a package of recommendations by 2012; enhancement of interdepartmental cooperation for the purpose of obtaining necessary data on illegal revenues, money laundering and unlawful circulation;
   c) Adoption of sub-legislative acts based on legislative amendments in 2013;
   d) Improvement of partnership mechanisms (legal and contractual) of judicial and

legal systems between EU member states and Armenia; development of regional and international cooperation in the law-enforcement sector;

e) Promotion of partnership between general prosecutors' offices and ministries of internal affairs of the EU member states, based on the provisions of international treaties signed in the judicial and legal sector in 2012; a study of opportunities for the signing of new cooperation treaties and conduction of negotiations;
f) Promotion of partnership between general prosecutors' offices and ministries of internal affairs of the EU member based on the provisions of international treaties signed in the judicial and legal sector in 2013; negotiations over signing new cooperation treaties prior to conclusion of treaties;

4) Approval of police reform projects for 2012-2014 in partnership with OSCE and Council of Europe, and implementation of project-based actions:
   a) In 2012, assembling a working group for the development of the project of police sector reforms for 2012-2014; approval of projects and implementation of project-based activities according to the schedule;
   b) Implementation of scheduled actions rising from the reforms in the RA system in 2013.

5) Ensuring the implementation of provisions of the UN Convention on the Rights of the Child, introducing oversight mechanisms, continuing efforts targeted at the improvement of the national system for the protection of children's rights:
   a) Continuation of the activities of community-based rehabilitation centers for juvenile delinquents, expanding the network of new centers in 2012; continuation of the process of establishing a special regime educational institution for male delinquents ages 14-18 with special educational needs and conduct disorders;
   b) Continuation of the activities of community-based rehabilitation centers for juvenile delinquents, expanding the network of new centers in 2013.

6) Developing the RA draft law "On domestic violence" in order to prevent and combat domestic violence and violence against women in line with the provisions of the Council of Europe Convention:
   a) Adoption of action plan and sub-legislative acts arising from RA law "On domestic violence" by 2012;
   b) Implementation of action plan arising from RA law "On domestic violence" in 2013.

Appendix 3

ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ՈՍՏԻԿԱՆՈՒԹՅՈՒՆ ԻՐԱՎԱԲԱՆԱԿԱՆ ՎԱՐՉՈՒԹՅՈՒՆ

0025, ք.Երևան, Նալբանդյան 130, հեռ. 596591

N-35/809 «06»-----06-----2012թ.

Ձեր

Հելսինկյան Քաղաքացիական
Ասամբլեայի Վանաձորի գրասենյակի
նախագահ Ա.Սաքունցին

ՀՀ ոստիկանությունում ուսումնասիրվել է Ձեր 2012 թվականի մայիսի 29-ի թիվ Ե/2012-29.05/188 գրությունը, որի վերաբերյալ հայտնում ենք հետևյալը.

Ոստիկանության գործունեության ոլորտում նոր բարեփոխումների ծրագրի նախագիծը մշակվում է ՀՀ ոստիկանության կողմից, որին ներգրավված են ոստիկանության բոլոր ծառայությունները: Նախագծի մշակման աշխատանքները գտնվում են ավարտման փուլում և այն հանրային քննարկումների ներկայացնելու նպատակահարմարությունը կորոշվի նախագծի մշակման ավարտից հետո:

Նախագիծը հաստատվելու է ՀՀ կառավարության որոշմամբ:

ՈՍՏԻԿԱՆՈՒԹՅԱՆ ԳՆԴԱՊԵՏ ***Թ.ՊԵՏՐՈՍՅԱՆ***

Appendix 4

ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ՈՍՏԻԿԱՆՈՒԹՅՈՒՆ
ԻՐԱՎԱԲԱՆԱԿԱՆ ՎԱՐՉՈՒԹՅՈՒՆ

0025, ք.Երևան, Նալբանդյան 130, հեռ. 596591

N 35/1084 «06» 06 2012թ.

Ձեր

Հելսինկյան Քաղաքացիական
Ասամբլեայի Վանաձորի գրասենյակի
նախագահ Ա.Սաքունցին

ՀՀ ոստիկանությունում ուսումնասիրվել է Ձեր դիմումը՝ ՀՀ ոստիկանության գործունեությանն առնչվող հրամանների պատճենները տրամադրելու վերաբերյալ:

Ձեր կողմից ներկայացված ցանկում նշված հրամաններն իրենց մեջ ծառայողական գաղտնիք են պարունակում, հետևաբար՝ «Պետական և ծառայողական գաղտնիքի մասին» ՀՀ օրենքի դրույթներից ելնելով, ինչպես նաև «Իրավական ակտերի մասին» ՀՀ օրենքի 59-րդ հոդվածի 1-ին մասի համաձայն՝ պետական կամ օրենքով պահպանվող այլ գաղտնիք պարունակող իրավական ակտերը կամ դրանց առանձին մասերը հրապարակման ենթակա չեն: Բացի այդ, ՀՀ ոստիկանության պետի 17.08.2010թ. թիվ 1747-Ա և 02.12.2011թ. թիվ 3535-Ա հրամանները ՀՀ ոստիկանության շտաբի կողմից 2012 թվականի ապրիլի 11-ի թիվ 10/4-1-1178 գրությամբ արդեն իսկ տրամադրվել են: Ինչ վերաբերում է ոստիկանության պետի հրամանով հաստատված ուղեցույցներին, հայտնում ենք, որ դրանց կարող եք ծանոթանալ ԵԱՀԿ երևանյան գրասենյակի www.osce.org.yerevan կայքում:

ՈՍՏԻԿԱՆՈՒԹՅԱՆ ԳՆԴԱՊԵՏ ***Թ.ՊԵՏՐՈՍՅԱՆ***

Իրավաբանական վարչության
կպտ.՝ Ա.Աբրահամյան
հեռ.՝ 59-67-04

(A.3) Establishment of Deep and Comprehensive Free Trade Area

Emphasis: Public Procurement and Effective Administration of Public Funds

EXECUTIVE SUMMARY

Since it was introduced in 2000, public procurement has been neglected in Armenia, and for this reason it faces many problems today.

It took Armenia ten years to shift from a centralized procurement system to a decentralized one, where each contracting authority (i.e. state entity or public enterprise) can procure for its own needs. However, this shift happened overnight and state authorities were not prepared to handle the complex processes it involved When decentralization was introduced in 2011, contracting authorities lacked procurement practice, capacity, knowledge, training and even basic procurement staff.

Despite numerous problems, the public procurement system has been deemed in line with international standards. However it has never been assessed or reviewed for efficiency, effectiveness, transparency, knowledge, capacity or actual implementation by non-donor, independent and recognized procurement professional(s).

METHODOLOGY

In reviewing the Armenian public procurement system, the following documents and data were studied: primary, secondary and tertiary procurement legislation; circulated and published reports; fact-checks; interviews; and site visit reports.

The data provided was crosschecked and procurement and supply management information was verified. Procurement management manuals, approach and techniques that are currently in use were considered.

The report covers such vital parts of public procurement as:

- Public procurement legislation;
- E-procurement system;
- The right to appeal;
- Role of small and medium enterprises in public procurement.

RESULTS

Public Procurement Legislation

When applying for membership to the Council of Europe in 2001, Armenia had to show strong public procurement legislation. Nevertheless, almost a decade later, in the EBRD's 2010 assessment, Armenia's regulatory framework scored medium compliance (71%) with international procurement standards.[120]

[120] http://www.ebrd.com/downloads/sector/legal/armenia.pdf

Although it is generally in line with the WTO's Agreement on Government Procurement standards, the new Law on Public Procurement contains numerous contradictions and corruption risks. It does not touch upon vital parts of procurement cycle, such as procurement planning, framework agreements, and contract management. The government is currently trying to introduce these missing elements through secondary procurement legislation, by adopting government decrees or Ministry of Finance orders.

The current procurement legislation has helped Armenia become a GPA signatory, however it has brought new challenges and risks, including lack of transparency, integrity and efficiency. The legislation has never been assessed by a non-donor, independent organization.

Among numerous inconsistencies and corruption risks, the Law on Public Procurement allows amendments of draft contracts after tendering process is over. This runs against the very idea of equal competition. According to the Law:

> *Prior to the deadline stipulated in paragraph 3 of this Article and upon the consent of the parties, the draft contract could be amended. However such amendments cannot lead to changes in the specifications of the procurement subject or to an increase of the price offered by the selected bidder.*

Amending the draft contract circulated to all participants means applying other conditions, against which the contracting authority did not call for bids. The contracting authority can plan these amendments in advance and apply them once the bidder of their choice is winning. This means that none of the unsuccessful bidders are informed about changes and none of them are given a chance to offer another (less expensive) bid, which corresponds to those amendments.

The review of secondary and tertiary procurement legislation and standard bidding documents (SBDs) also revealed numerous errors, misleading information and corruption risks. The initial review of a few standard bidding documents has revealed inconsistencies and challenges. Some of the most common issues (listed below) were found by reviewing the SBDs for procurement of goods through Open Procedures. The SBDs were downloaded from the official website of the Ministry of Finance.

- SBDs mislead bidders by not mentioning exact bidding deadlines. Instead, the document calls for the provision of bids "within 40 days of publication of the notice". Bidders may not be clear on the date of publication and miss the deadline. Some contracting authorities deliberately use this practice to exclude a good portion of bidders.

- Contracting authorities provide clarifications on bidding documents only to companies that ask for them. Otherwise, participants are asked to regularly monitor the contracting authority's website and find clarifications there. Many bidders may miss publications on the website and provide noncompliant bids.

- Contracting authorities do no inform bidders directly about changes to deadlines. They ask bidders to check their website regularly to see if deadlines have changed.

- Contracting authorities use a percentage for bid security (usually 2% of the bid price). The practice of mentioning percentages but not exact amounts, although used by some purchasers, increases the risk of fraudulent practice. Bidders "trading" their ranks often use this practice to provide unrealistically low-priced bids and, consequently, 2% of those low-priced bids amounts to very little. However, knowing the names of all participating companies, these bidders effectively "sell" their lowest price rank to the second or third lowest evaluated bidders. By "selling" their first rank, these companies lose nothing but 2% of their unrealistically low-priced bid.

- If there is only one bidder, contracting authorities allow negotiations on "changing the conditions of payment" before the contract is signed. This practice contains huge corruption risks. Some contracting authorities deliberately make conditions of payment harsh, so that only their "favorite" company participates. This filters out all other potential vendors in the market. After the bid is received, the "favorite" company (the only participant) negotiates conditions of payment with the purchaser and the parties agree to make those conditions softer.

- Contracting authorities state that if the evaluation committee notices inconsistencies in a bid, it will offer the bidder a chance to correct those inconsistencies. It is unclear what exactly the evaluation committee is allowed to register as an inconsistency and how a bidder is to correct it. Changes to bids once bidding has commenced should be forbidden. The contracting authority may mark anything as an inconsistency and change the bid of its "favorite" bidder.

- As mentioned above, contacting authorities negotiate and make changes to the conditions of contracts, "except for changes in technical specifications and price increase". This means that all other conditions of the contract may be changed. This allows for the unequal treatment of participants and presents huge corruption risks.

- Finally, instead of simply refusing to accept noncompliant goods, contracting authorities penalize vendors for delivery of those goods.

E-Procurement System

The Government obtained an e-procurement system, which has the potential to impact the efficiency and transparency of the procurement process. However this system is not functional due to erroneous implementation and countless bugs that hinder the smooth management of e-procurement.

Due to ineffective implementation, in 2011, the year it was introduced, contracting authorities advertised only three tenders through the e-procurement system, two of which did not take place because there were too few participants. In 2012, the system had 55 tenders, 21 of which did not take place.

Today, two years since e-procurement system was introduced, only 18% of Armenia's contracting authorities are registered in the e-procurement system.

The system has around 35 known bugs, some of which are simply due to the lack of a basic understanding of the public procurement system. These include:

- The system operates in a wrong time zone.
- The system operates using erroneous deadlines that do not correspond with Armenian legislation.
- The Armenian currency (AMD) is not in the list of currencies in the "Estimated Cost" drop down list.
- The system does not create a "Contract Award Note" if the subject of procurement is services (not goods).
- If the tender is in lots and no lots are mentioned in the bid, the system does not inform bidding companies about the incorrect submission.
- Armenian authorities cannot change or refresh the guidelines posted on the "Help" page.
- Armenian authorities cannot change information on the main page, including contact info.
- The system does not provide information for auditing purposes and instead produces a document with indecipherable symbols.

With the e-procurement system in such a state, its existence is even more risky than its absence. The government is trying to correct these bugs and make the system operational, though it should be noted that in 2011, the government accepted the system as fully operational and paid for it.

The Right to Appeal

The methods of appealing tender results are highly dependent on the Ministry of Finance or other contracting authorities. Meanwhile, these same state entities also procure, and can also be challenged by unsuccessful bidders. This conflict of interest is ignored by the government and decreases public trust in the system.

According to the Law on Public Procurement, the country should have a Complaint Review Board. The Law states:

> 1. *The Board is a unit implementing unprejudiced and independent review, which does not have any interests in the outcomes of the given procurement process, and the members of the Board, when implementing their rights and responsibilities, are protected from external influence. The members of the Board shall review the appeals with due care, diligence and in an impartial way. The Board and the members of the Board, when implementing the competences stipulated in this law, are independent from the participants of the procurement process, including the Clients, as well as from the state bodies and local self-governments and officials. When reviewing a complaint, they are neither representatives of any participant in the proceedings nor of the nominating organization and they are only obliged to apply and follow the law.*

2. The Board shall include one representative of:

1) The public administration bodies envisaged in the Republic of Armenia Constitution and laws;

2) The Republic of Armenia urban communities;

3) The Republic of Armenia Central Bank;

4) Non-Governmental Organizations (Unions) registered in the Republic of Armenia, which have submitted a written request to the Authorized Body.

According to the Law on Public Procurement, the Procurement Support Center (PSC) acts a secretary of the Board. This entity operates under the guidance of the Ministry of Finance. It receives and processes complaints from unsuccessful bidders. Today, the Board consists of 42 members, 40 of which are representatives of state entities, i.e. ministries, municipalities, etc. These are, in fact, contracting authorities against which appeals can be filed. The level of procurement knowledge of these officials is questionable.

The Board is not independent, either in theory or in practice, since complaints are handled by the entity under the Ministry of Finance. In addition, the Board consists of representatives of those entities who are the biggest procurers in the country. The representatives of these entities, although functioning as independent individuals according to the Law, make decisions about complaints and appeals against their own entities, or affiliated state entities.

Role of Small and Medium Enterprises in Public Procurement

Monopolies, groups and consortiums that import goods, provide services and dominate the market remain a well-acknowledged problem in Armenia. While competing for public funds, these companies have greater chances and wider possibilities than small and medium enterprises (SMEs). The Law on Public Procurement does not stipulate a quota for contracts awarded to SMEs and this discourages smaller companies from bidding for public funds.

As a landlocked country, Armenia is highly dependent on imports. Armenia's economy is highly monopolized, thus the import of many products, such as sugar, fuel, grains, and wood is concentrated in the hands of a few local monopolies that cover about 95% of the import market for those products.

Because of their privileged position, these monopolies can offer lower prices and are much more competitive than SMEs in seeking public contracts. As mentioned above, the Law on Public Procurement does not have any provisions in favor of SMEs, leaving small and medium enterprises with little or no chance to win contracts.

CONCLUSIONS

Since earning independence in 1991, Armenia has had a good chance to develop a cohort of professional procurement experts and to build a strong public procurement system, however this has not been done.

Since its introduction in 2000, the public procurement system has taken a misguided approach to effective public spending. The system has been thoroughly criticized by the president and by the Chamber of Control of parliament. Today, the Armenian public procurement system lacks both a strong legislative basis and competent procurement professionals. Procurement, as such, is not considered a profession (or science) in Armenia. None of the universities in Armenia have faculty members specializing in procurement, or courses dedicated to procurement.

The public procurement system in Armenia is in need of deep and comprehensive reform. The reform should apply to primary, secondary and tertiary legislation, personnel, capacity building, e-procurement and control mechanisms. Eventually, the reform should include a roadmap of the future of public procurement in Armenia.

RECOMMENDATIONS

A.3 Establishment of Deep and Comprehensive Free Trade Area

- The Armenian Law on Public Procurement should correspond to the latest EU public procurement directives, GPA 2012 and best international standards.
- The Law should stipulate a quota for SMEs in public procurement (at least 15% of all awarded contracts).

B.2.i Fight against corruption

- An independent tender review authority should be created to review complaints from unsuccessful vendors (both local and international). Financing mechanisms for this office should be similar to those of the ombudsman's office. The members of this authority (no more than five individuals) should be selected through a transparent process (advertised through national media, with sufficient time allowed for application). Selected individuals' candidacies should be discussed with the EU.
- An effective, efficient and transparent e-procurement system (for both local and international suppliers) should be introduced, that corresponds to international standards.

B.2.j Law enforcement cooperation

- The public procurement regulating body should undergo a semiannual audit by an independent international non-donor procurement auditor, with the involvement of local experts if needed. The audit should aim at ensuring:
  - Comprehensive formal written procedures which guide procurement and contract management, in line with international best practice;
  - Effectively, efficient and transparent procurement process;
  - Adequate controls in place to minimize the risks of fraud and corruption;
  - Contract management processes that conform with formal written procedures;
  - The capacity of the regulating body to manage and regulate procurement processes fairly and transparently.

C.1.b. Promote partner countries' participation in the work of EU agencies

- At least one local specialist in public procurement should be delegated for four years to respective EU agencies to participate in drafting and/or updating EU public procurement directives. The selection procedure of this specialist should be open and transparent (advertised through national media, with sufficient time allowed for application). The selected specialist's candidacy should be discussed with the EU.

B. Enhance Mobility in a Secure and Well-Managed Environment

(B.2.h) Tackling illicit drugs

EXECUTIVE SUMMARY

The prevention of drug addiction and drug dependence, which implies the provision of effective and accessible medical care to drug addicts and drug users, as well as rehabilitation and care services, remains a pressing issue in Armenia. Pursuant to the 2009-2011 list of measures ensuring the implementation of the EU-Armenia ENP Action Plan, the Republic of Armenia approved and implemented the 2009–2012 National Program on Combating Drug Addiction and Trafficking of Narcotic Drugs (hereinafter National Program).

The goal of the National Program is to refine public mechanisms aimed at combating drug addiction and the illicit trafficking of narcotic drugs, and to ensure their effective application. There is no strategy directed at safeguarding the right of drug addicts to receive medical treatment and care, which would include prevention of drug abuse, and treatment for addiction.

The title of the National Program and the nature of the measures outlined therein imply an approach towards the prevention of drug dependence and drug addiction that is primarily focused on punitive policies meant to counter crimes, sentencing to incarceration.

The National Program should be based on humanitarian principles. It must be able to single out existing problems, raise issues based on evidence in the field, and propose concrete solutions and steps for reform. It should integrate a list of measures directed at the improvement of the medical care of drug-dependent persons and persons needing treatment against drug addiction. The state must undertake measures targeted at securing the right to medical care of drug-dependent persons and persons needing treatment against drug addiction, along with the provision of rehabilitation services and care.

INTRODUCTION

The low rate of applying to drug rehabilitation clinics for medical care is a serious issue in Armenia. If addicts do not receive medical care, they are exposed to great health risks, have an increased risk of contracted related diseases, and face serious social issues. The implementation of the action plan envisaged by the National Program not only impedes the assurance of the right to medical care to those who are addicted to drugs, but also aggravates problems related to combating drug dependence and addiction through its punitive policy approach.

The Republic of Armenia must develop a national strategy directed at ensuring the right of drug addicts to medical care. The indicators of the effectiveness of such a strategy will be the increase in the number of cases of drug addicts applying for treatment, and an increase in the provision of rehabilitation and care services.

METHODOLOGY

This analysis is based on information regarding the implementation of measures foreseen by the National Program and its Action Plan, compiled by Helsinki Citizens' Assembly - Vanadzor.

Data regarding the implementation of the National Program were obtained through inquiries addressed to the government, the chairman of the Interagency Commission on Combating Drug Addiction and Illicit Traffic in Narcotic Drugs, and the bodies implementing the program.

The following sources were used to assess the current situation:

- Provision of free legal consultations
- Monitoring
- Inquiries sent to relevant state entities
- Information disseminated via mass media
- Websites of state and non-governmental organizations
- Meetings with stakeholders and beneficiaries
- Study of international and domestic legislations

RESULTS

The 2009-2012 National Program on Combating Drug Addiction and Trafficking of Narcotic Drugs is comprised of 87 actions. The RA Ministry of Healthcare is directly responsible for the implementation of 39 of the actions (about 45%), and law enforcement bodies are responsible for 15 of the actions (over 17%).

Although the Ministry of Healthcare is directly responsible for the implementation of the majority of actions stipulated by the National Program, actions regarding the treatment of drug-dependent persons and persons needing treatment against drug addiction constitute only 8% of these actions.

Armenia does not have a single state policy that deals with the prevention of drug addiction and drug dependence. On the one hand the state accepts that drug addiction is an illness and on the other hand, it subjects people to administrative liability for the trigger of the illness, the use of narcotic drugs.

The prevention of drug addiction and drug dependence implies access to quality medical care, which should include the provision of social-psychological and rehabilitation services. Such a model currently does not exist in Armenia.

The state policy should focus on the prevention of drug addiction and drug dependence, and the only way to do so is to secure the right of drug-dependent persons and drug addicts to medical care.

DISCUSSION

Rehabilitation services are an important part of drug treatment. In the absence of social-psychological and rehabilitation services, the treatment of drug addicts is incomplete. Therefore, the treatment of drug-dependent persons and drug addicts in Armenia is incomplete. The state policy that addresses the prevention of drug addiction and drug dependence is punitive in nature. It is regulated by administrative and criminal legislation. Although the state admits that drug addiction is an illness, it continues to subject persons to administrative liability for the illegal use and unlawful possession of small amounts of narcotic drugs.

The state does not undertake measures to ensure accessibility and quality of treatment for drug-dependent persons and drug addicts. There is no strategy in place in Armenia that deals with the prevention of drug addiction and drug dependence, where drug addiction and drug dependence are viewed as an illness and policies are primarily based on a person's right to health rather than punitive measures.

CONCLUSIONS

Based on our research, the state does not have an unequivocal approach to viewing drug addiction and drug dependence as an illness. Armenia does not have a strategy in the sphere of improving the quality of medical services and their accessibility to drug-dependent persons, ensuring their right to effective medical care, as well as introducing social-psychological services services.

The 2009-2012 National Program on Combating Drug Addiction and Trafficking of Narcotic Drugs is primarily punitive in nature. The program title and the action plan have been worded based on non-humanitarian principles, which mainly relate to preventing and fighting crime. The National Program does not include any measures directed at safeguarding of the right to health of drug-dependent persons and drug addicts, with no mention of the provision of quality and accessible medical care. The strategy on the prevention of drug addiction and drug dependence should be based on humanitarian principles as well as actions directed towards securing the rights of drug-dependent persons and persons needing treatment against drug addiction.

RECOMMENDATIONS

- Develop a national strategy for the prevention of drug addiction and drug dependence, based on humanitarian principles in its title, goals and actions.
- Eliminate the punitive policy against drug-dependent persons and drug addicts.
- Focus on the treatment and rehabilitation of drug-dependent persons and drug addicts, as well as their integration into society.
- Develop programs aimed at providing social-psychological and rehabilitation services to persons who have been treated for drug addiction and drug dependence and are in the remission phase.
- Introduce the program of methadone replacement therapy in regions of Armenia through state funding, ensuring the right of each drug-dependent person and drug addict to medical assistance.

(B.2.i) Fight against Corruption

Continue to implement 2009-2012 Anti-Corruption Strategy and Action Plan; improve the relevant legal framework and ensure its effective implementation.

EXECUTIVE SUMMARY

Corruption is a major problem that affects political, economic and social reforms. It contributes to poverty and emigration and deepens public distrust of authorities. The bilateral dimension of the 2012-2013 Eastern Partnership Roadmap includes *Area B.2.i. Fight against Corruption*, based on which Armenia has committed to continuing the implementation of its 2009-2012 Anti-Corruption Strategy and associated Action Plan, improving the relevant legal framework and ensuring its implementation. Ensuring the progress of the national anti-corruption strategy is also a part of the commitment in *Area 1. Democratic Reform*.

The Armenian government's Anti-Corruption Strategy and Implementation Plan were in force from 2009 until December 31, 2012, though they were not adequately implemented. Since January 2013, the government does not have a document guiding its anti-corruption policy. The country lacks strong and effective anti-corruption institutions and mechanisms to fight corruption. Existing structures have not made any notable progress in the fight against corruption. The failure in the fight against corruption is due to the lack of effective institutions, the limitations of their jurisdiction, dependence on the president, lack of political will.

The Armenian people do not trust the government, which is largely associated with the belief that the power of the people is usurped through continuously falsified elections. Additionally, many problems of corruption are associated with the convergence of business and politics.

In order for the fight against corruption to be effective, Armenia must have strong and independent anti-corruption institutions, guided by a consensus-based and concrete anti-corruption policy and free from political pressure. To this end, recommendations relate to the adoption and support of a new Anti-Corruption Strategy and Action Plan; development of legislation to ensure independent and effective anti-corruption institution(s); amendment of the public service legislation to broaden the scope of oversight of the conduct of high-ranking officials; adoption of legal and practical measures for the elimination of the convergence of business and politics; and, criminalization of illicit enrichment.

INTRODUCTION

The bilateral dimension of the 2012-2013 Eastern Partnership Roadmap includes *Area B.2.i. Fight against Corruption*, based on which Armenia has committed to continuing the implementation of its 2009-2012 Anti-Corruption Strategy and associated Action Plan, improving the relevant legal framework and ensuring its implementation. Ensuring the progress of the national anti-corruption strategy is also a part of the commitment in *Area 1. Democratic Reform*.

Corruption is a major problem that affects political, economic and social reforms. It contributes to poverty and emigration and deepens public distrust of authorities. According to international indices, corruption is a serious problem in Armenia that *does not show improvement over years*. Transparency International's (TI) 2012 Corruption Perception Index (CPI) gives Armenia a score of 34 on a scale of 0 to 100 (0 representing the highest level of corruption), with a ranking of 105-112 out of 176 countries. This is not a significant change from 2011, when the country scored 33 and ranked 129 -133.[121] Freedom House's 2013 Nations in Transit study gives Armenia a corruption score of 5.25 on a scale of 1 to 7 (1 representing the most progress), which was the same score the country received in 2012. By the World Bank Governance Indicators of 2011, Armenia's "control of corruption" score is 30 on the scale of 1 to 100 (1 representing the lowest level of control of corruption), while in 2010, it scored 31.

Armenia's anti-corruption policy is framed by the Anti-Corruption Strategy and Implementation Plan. The first such strategy and action plan were in force from 2003 to 2006, and the second, from 2009 to 2012. The first strategy was ineffective, largely because of the quality of the documents and their restrictive approach that focused mainly on preventive measures. The second strategy has received more positive feedback from local and international experts. Along with preventive measures, it included the main means of detention and the participation of the public in the fight against corruption. It also contained a monitoring and evaluation plan, which called for the involvement of the civil society. Nevertheless, this document was not properly implemented.

Armenia does not have specialized anti-corruption institutions that would be fully responsible for the coordination and effectiveness of anti-corruption efforts. The following institutions do exist:

- The Council on the Fight against Corruption and the Anti-corruption Strategy Monitoring Commission, charged with the implementation of the anti-corruption strategy;
- The Ethics Commission of High-Ranking Public Officials and the Ethics Commission of the National Assembly, which are responsible for preventing corruption by keeping in check the conduct of public officials;
- Law enforcement bodies – the Police, Special Investigative Service, and National Security Service (whose investigations are overseen by the Prosecutor General's Office , responsible for the detection of corruption.

[121] CPI is aggregated and calculated by TI with the use of data of prominent international organizations and reflects the opinion of businesses and experts about the level of corruption in a country. Given the change of methodology of the calculation of CPI in 2012 this index can be compared only to that of 2011. Increase from 33 in 2011 (not published) to 34 in 2012 for Armenia is within the range of the statistical error so does not indicate progress. It rather completes the recent years' picture of stagnation of corruption (2.6 in 2011, 2.6 in 2010, 2.7 in 2009). More information available on http://transparency.am/cpi.php.

METHODOLOGY

The methodology for the assessment of progress in *Area B.2.i. Fight against Corruption* is based on the following objectives in the bilateral dimension of the 2012-2013 Eastern Partnership Roadmap: continue the implementation of the 2009-2012 Anti-Corruption Strategy and Action Plan; and improve the relevant legal framework and ensure its implementation.

The assessment was conducted with the use of data collected by the Transparency International Anticorruption Center (TIAC) from the following sources:

- Legal acts regulating the work of anti-corruption institutions;
- Websites of anti-corruption institutions, such as the Ethics Commission for High-ranking Public Officials (www.ethics.am), the National Assembly Ethics Commission (www.parliament.am), the Prosecutor General's office (www.genproc.am), the police (www.police.am), the Special Investigative Service (www.investigatory.am), and the National Security Service (www.sns.am), as well as the websites of the president (www.president.am) and the government (www.gov.am);
- Public statements of state officials regarding the quality of the implementation of the 2009-2012 Anti-Corruption Strategy and Implementation Plan and efforts to draft new policy documents;
- Media articles on corruption-related cases and their examination by law enforcement authorities;
- Reports of international organizations, including the OECD Anticorruption Network for Eastern Europe and Central Asia, the *Second Round of Monitoring Report for Armenia*[122] of the Istanbul Anticorruption Action Plan, and the GRECO *Third Evaluation Round Compliance Report on Armenia*[123];
- Lists of participants in the government's anti-corruption initiatives and their input;
- Responses of public institutions to the inquiries of TIAC regarding the implementation of the 2009-2012 Anti-Corruption Strategy and Implementation Plan;
- Responses of ethics commissions to the inquiries of TIAC regarding the pursuit of conflict of interest cases and other breaches of the code of ethics;
- Responses of law enforcement institutions to the inquiries of TIAC regarding the pursuit of corruption-related cases.

RESULTS

Based on the assessment, no effective steps have been taken in the fight against corruption.

The Armenian government's Anti-Corruption Strategy and Implementation Plan were in

[122] http://www.oecd.org/corruption/acn/48964985.pdf
[123] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2921_Armenia_EN.pdf

force from 2009 until December 31, 2012, though they were not adequately implemented. Since January 2013, the government does not have a document guiding its anti-corruption policy.

Anti-corruption institutions do not function effectively. The Council on the Fight against Corruption held only one session in 2012 and none in 2013, and the Anti-Corruption Strategy Implementation Monitoring Commission has been completely inactive. The Ethics Commission of High-Ranking Public Officials has convened twice, and the Ethics Commission of National Assembly has held 14 sessions.

According to the report of the Deputy Prosecutor General, there were fewer corruption-related criminal cases in 2012 than in previous years.[124] However, there is decreased share of cases where the opening of criminal proceeding was rejected (418 out of 813, or 51% in 2012, vs. 402 out of 712, or 58% in 2011). The number of cases taken to court has decreased from 129 in 2011 to 125 in 2012, though the number of accused persons has increased from 158 to 180. A large portion of corruption crimes are related to tax evasion.[125]

There is a great deal of corruption among high-ranking officials, including members of parliament and ministers. These cases are exposed to the public by investigative journalists. Despite this fact, there are only a few cases of the pursuit of senior public officials who have allegedly taken part in corruption (the governor of Vayots Dzor in 2013 and Deputy Governor of Kotayq in 2012). In addition, there are a number of reports from the Chamber of Control about corruption in several sectors, which are not adequately investigated or pursued by law enforcement bodies.

On May 29, 2013, Hetq Investigative Journalists NGO published information about the participation of Prime Minister Tigran Sargsyan as an equal shareholder of an offshore company called Wlispera Holdings Limited (WHL) together with the Primate of the Armenian Apostolic Church, Ararat Diocese Archbishop Navasard (Samvel) Kchoyan and his godson, an infamous businessman, Ashot Sukiasyan. The latter is known to have seized the assets of another businessman, Paylak Hayrapetyan. The publication also exposed the involvement of Ameria Bank, which transferred loans to WHL for the support of a diamond industry project, in spite of its failure to abide with the terms of the loan agreement.[126] Both the prime minister and the archbishop refuted any connection or knowledge of their engagement as owners of the company, registered in Cyprus.

[124] http://www.pastinfo.am/hy/node/8223

[125] http://www.genproc.am/upload/File/Korupcia%20hetaqnnutyun,%20naxaqnnutyun%202011.pdf; http://www.genproc.am/upload/File/Korupcia%20dataqnnutyun2011.pdf; http://www.genproc.am/upload/File/Korupcion%20hanc_-hetaqnnutyan%20ev%20naxaqnnuthayn%20ardyunqner%202012%20tarekan%20vichtvyalner.pdf; http://www.genproc.am/upload/File/Korupcion%20hanc_-datakan%20qnnutyan%20ardyunqner%202012%20tarekan%20vichtvyalner.pdf

[126] Hetq online. 2013. May 29. "Cyprus Troika: Who 'Stripped' Businessman Paylak Hayrapetyan of His Assets?". Retrieved from http://hetq.am/eng/news/26891/ovqer-en-paylak-hayrapetyani-unezrkman-hexinaknery-ofshorayin-eryaky.html; http://hetq.am/eng/news/27709/offshore-labyrinth-armenian-style.html

Prime Minister Sargsyan applied to the Prosecutor General's Office to investigate how his name appeared on the Cyprus registry document of the company. The Prosecutor's Office was informed of Paylak Hayrapetyan's seizure of assets for the purpose of getting the loan and did not act on this knowledge for almost a year. After Ashot Sukiasyan was convicted in this case, he sent a letter to the Prosecutor General confessing that he had added the names of the prime minister and archbishop the registration of the offshore company without their knowledge.[127] *However, the Prosecutor of Cyprus stated that it is not possible to register a company using the name of a person without his or her knowledge.*[128] *The case was widely discussed in traditional and social media, and people were waiting for the reaction of President Serzh Sargsyan, since those who hold public office in Armenia are prohibited by law to be involved in business, according to the Armenian Constitution.*

A few days later, on June 13, 2013, the Chamber of Control presented its Annual Report to the National Assembly. The report revealed enormous corruption risks related to expenditure, amounting to about 700 billion Armenian drams (roughly 70% of the country's budget)[129] *particularly pointing to the procurement and construction sectors.*[130] *This information, too, was widely discussed among the public, which expected that law enforcement bodies would initiate criminal proceedings and launch investigations on cases of embezzlement.*

The ultimate surprise for the Armenian public was the president's reaction to these developments. On June 29, 2013, Serzh Sargsyan held a discussion on the effective use of budgetary resources, strengthening of oversight and decreasing corruption risks, where he actually skipped the offshore scandal – the largest case of this nature in the history of the Armenian government – and went on to blame the Head of the Chamber of Control for criticizing the government's work and publicly expressing political statements implying the embezzlement of 70% of the budget. He instructed the Prosecutor General to launch an investigation of the facts revealed by the report. He claimed with confidence that the embezzlement amounted to no more than 200-300 million Armenian drams. The president's reaction indirectly indicated his political support for the business dealings of the prime minister and his anger with the findings of the Chamber of Control, which raises questions about the sincerity of the supposed commitment to fight corruption.

[127]Hetq online 2013. June 18. Ashot Sukiasyan: 'I wrote names of Prime Minister and Archbishop on off-shore document'. Retrieved from: http://hetq.am/eng/news/27474/ashot-sukiasyan-%E2%80%98i-wrote-names-of-prime-minister-and-archbishop-on-off-shore-document%E2%80%99.html

[128]Radio Liberty. 2013. July 1. "Cyprus Prosecutor Adds Fuel To Armenian Corruption Scandal". Retrieved form: http://www.armenialiberty.org/content/article/25033483.html

[129]Republic of Armenia Press. 2013. October 2. Investigations must be given a Legal Assessment. http://www.hhpress.am/index.php?sub=hodv&hodv=20130621_15&flag=am

[130]Report of Control Chamber 2012. http://www.coc.am/YearReportsArm.aspx?ReportYear=2012

DISCUSSION

The Armenian people do not trust the government and a major factor in this distrust is the belief that the power of the people is usurped through continuously falsified elections. Additionally, many problems of corruption are associated with the convergence of business and politics.

The involvement of lawmakers and high-ranking public officials in entrepreneurial activities and promotion of their business interests is prohibited by the Armenian Constitution. However law enforcement bodies turn a blind eye to the business activities of public servants, interpreting regulations as they see fit. In some cases, officials register their businesses under the names of relatives, so their earnings do not appear on their assets and income declarations. Public Service Law is very narrow in this regard and includes persons with a blood relationship of up to the second degree of kinship under the definition of family. It even disregards the first degree of kinship in cases when the relative (e.g. son and daughter) lives separately.

The lack of legitimacy of elected and appointed officials and the perceived abuse of public office for the promotion of business interests raise doubts about the government's sincerity in its fight against corruption. These doubts are further supported by the questionable reputation of the people charged with leading the fight against corruption and the impunity of high-ranking officials who are widely perceived as corrupt. Though these issues have been brought to the government's attention, they have not received an adequate response, indicating a lack of political will.

Since 2003, when Armenia first announced its fight against corruption, the government has failed to establish strong institutions and policies to effectively fight against corruption. Most of the anti-corruption work in the country has been done with support from and fulfillment of the conditions of international organizations.

Based on this assessment, the quality of the implementation of the fight against corruption has not improved in connection with the commitments prescribed by the Eastern Partnership Roadmap. Anti-corruption policy documents were either not in place or not properly implemented. The actions of anti-corruption institutions were limited to the convened sessions and the decisions of ethics commissions. Though there is a certain level of civil society involvement in the government's anti-corruption efforts, there is a sense of skepticism and apathy, which stands in the way of creating conditions for combating corruption.

According to TI's 2012-2013 Global Corruption Barometer (GCB), 82 percent of respondents in Armenia consider corruption to be serious or very serious problem, and only 3% think it is not a problem at all. 43% think that the level of corruption has increased over the past two years, and only 19% think that it has decreased. About 53% of respondents consider the actions of the Armenian government to be ineffective or very ineffective, and only 21% think that they are effective or very effective.

The most corrupt institutions are perceived to be the courts, public officials and the public

health system, followed by the police. The judiciary is seen as corrupt or extremely corrupt by 69% of Armenian respondents, and the police by 66%. Hence, the very institutions charged with fighting corruption are among the most corrupt ones.

According to 48% of the respondents Armenian government is run by a few big entities acting in their own best interests and merely 16% of the surveyed think that these entities have no or little influence on the government. About 48% think that personal contacts are not important at all to get things done, while only 9% of respondents have an opposite opinion.

Only 37% of respondents (the 4th lowest number among the 107 surveyed countries) agree or strongly agree that ordinary people can make a difference in the fight against corruption, and 43% (the lowest number among the surveyed countries) are willing to get involved in any form of activity to fight corruption. Only 33% of Armenian respondents (the 5th lowest number among the surveyed countries) would report an incident of corruption. 68% of those who would not report an incident of corruption would choose not to do so because they think that it would not make a difference. Though this reason is the most widespread among the surveyed countries (in 73 out of 107 countries it was the most frequently stated answer), Armenia's rate of 68% is the highest among the countries where the majority of respondents would not report an incident of corruption.[131]

Implementation of anti-corruption policy

The 2009-2012 Anti-Corruption Strategy and its Implementation Plan included the main components of an effective anti-corruption policy (i.e. prevention, detection, and public participation in the fight against corruption) as well as specific measures in those areas. 70% of the actions outlined in the document deal with prevention of corruption, 15% deal with criminalization, and 15% with civil society's participation, providing measures in money laundering, public finance management, public procurement, tax and customs, judiciary, police, electoral system, local self-governance, education, healthcare, etc.[132]

Though these policy documents were quite well developed and comprehensive, they were not properly implemented in practice. There is no final government report evaluating the implementation of the anti-corruption strategy, but according to data received from entities responsible for anti-corruption activities, some of the planned activities of the 2009-2012 Anti-Corruption Strategy and Implementation Plan have been completed, while others have not. According to the documents, each ministry was to develop and implement its own anti-corruption strategy, but the only ministry to have completed one is the Ministry of Education and Science (MoES). Furthermore, MoES Anti-Corruption Action Plan is not logically connected to the measures in the respective section of national policy document.

[131] GCB is developed based on household surveys. More information available on http://transparency.am/gcb.php.

[132] OECD Anticorruption Network for Eastern Europe and Central Asia Istanbul Anticorruption Action Plan Second Round of Monitoring Report. Retrieved from http://www.oecd.org/corruption/acn/48964985.pdf

The 2009-2012 Anti-Corruption Strategy and Implementation Plan were in force until December 31, 2012. Since January 2013, the Armenian government has not had a document guiding its anti-corruption policy. Statements have been made at events and negotiations with international organizations indicating the government's interest in developing a new strategy and action plan, but its focus and format are not yet clear.

The lack a new anti-corruption strategy and implementation plan points to the indecisiveness and lack of urgency within the leadership of the country to fight corruption. On the one hand, there are international obligations and expectations to be met; on the other hand, there is a lack of true political will. An additional factor contributing to skepticism is the fact that since 2003, the Armenian government has not created effective institutions, allocated a budget, or designated human resources to match its promises of anti-corruption with concrete measures.

Existing institutions are not effective, which is due to factors, such as the limited scope of authorities prescribed by legislation, insufficient resources, and lack of independence from political influence, mainly of the president of the country.

No progress has been made in the detection of corruption-related crimes by law enforcement bodies. According to the Deputy Prosecutor General, the examination of corruption reports is often superficial and unsound.[133] The failure to pursue cases involving high-ranking officials is an indication of the lack of the political will to fight systemic corruption.

Improvement of legal framework

Since May 2012, Armenia has not adopted any laws targeting the prevention of corruption. The Law on Public Service came into force in January 2012, however its multiple deficiencies prevent the actual existence of a transparent and accountable government, at least at the level of high-ranking officials. The law fails to ensure the independence of the Ethics Commission of High-Ranking Public Officials; the Commission is formed by the president, resides in the president's office and does not have any oversight over the president. The law does not regulate the engagement of public officials in businesses through their close relatives, since it only includes persons with a blood relationship of up to the second degree of kinship under the definition of family, and even disregards the first degree of kinship in cases when the relative (e.g. son and daughter) lives separately.

The Ethics Commission of High-Ranking Public Officials does not oversee the conduct of officials who do not have supervisors, such as the president, and fail to include several high-ranking positions, such as the ombudsman and the head of the Special Investigative Service. The Commission is not mandated to carry out analyses of assets and income declarations, nor is it mandated to report divergence of income or criminal offenses. It is not able to initiate a proceeding in conflict of interest cases, or other cases of corrupt practices. The conclusions of this and other commissions on conflicts of interest do not

[133]http://www.pastinfo.am/hy/node/8223

have any practical or legal implications; they do not have the power to void the acts adopted or actions taken by public servants involved in such cases.

GRECO's Third Evaluation Round Compliance Report on Armenia, published in December 2012, noted that Armenia had implemented 16 of the 19 recommendations contained in the Third Round Evaluation Report, while three were partially implemented. Recommendations were related to incriminations and transparency of party funding, and many of them were implemented through legislative changes in the Criminal Code, Electoral Code, Administrative Offense Code, and Law on Political Parties.

CONCLUSIONS

In order to effectively fight against corruption, strong and independent anti-corruption institutions are needed, guided by a consensus-based and concrete anti-corruption policy and freedom from any political pressure. The current situation in Armenia does not provide the grounds for an effective fight against corruption.

Though Armenia has different institutions dealing with anti-corruption, there is no specialized structure that would coordinate the respective activities of these institutions, analyze gaps and impacts, and provide recommendations. Of the few efforts undertaken by the government, most are of a piecemeal nature and even minor improvements, if they exist, are unnoticeable and/or unsustainable.

Armenia's current anti-corruption institutions are highly dependent on the president of the country, either directly (e.g. appointed by the president, reporting to the president) or indirectly (e.g. appointed with the approval of the parliamentary majority led by the president, led by the prime minister and appointed by the president). The Republican Party of Armenia, led by the president, represents major business interests in Armenia. So naturally, anti-corruption institutions may not operate free from the influence of the president and his political support team. As yet, the leadership of the country has not shown any interest in separating business from politics.

Even though there is significant progress in the transparency of assets and income declarations of public officials, the fact that they are made available to the public does not lead to legal ramifications in cases of unlawful enrichment. Armenia has ratified the UNCAC, which includes a stipulation on illicit enrichment (Article 20). As this article is not reflected in Armenian legislation, law enforcement bodies do not have any directive to pursue the enormous and suspicious gaps between the salaries of public servants and the volumes of assets and incomes they declare.

RECOMMENDATIONS

The following is a list of the most critical recommendations to improve anti-corruption activities in Armenia:

- Develop a new Anti-corruption Strategy and Action Plan and ensure appropriate funding for the planned activities. This document should be developed based on the

evaluation of the 2009-2012 Anti-corruption Strategy and Implementation Action Plan, and the input of stakeholders;

- Adopt legal acts and amendments to ensure the establishment and operation of independent and effective anti-corruption coordination/evaluation institution(s) with strong jurisdiction and guaranteed funding, led and composed by prominent and honest persons;
- Enlarge the scope of activities of the Ethics Commission of High-Ranking Public Officials to include mandatory reporting of divergence of data on assets and incomes, and oversight of the conduct of all high-ranking officials, including the president, ombudsman, head of the Special Investigative Service.
- In the Public Service Law, expand the definition of family relationship to include up to the fifth degree of kinship, regardless of whether family members married or live separately from high-ranking officials;
- Take concrete measures to disintegrate business and politics. As necessary, introduce clarifications and amendments to legislation to avoid misinterpretations of banning regulations;
- Introduce illicit enrichment to the Criminal Code and develop respective regulations to ensure analysis of available information, such as assets and income declarations, and pursuit of respective cases.

C. Sector Cooperation

(C.5) Environment and Climate Change

EXECUTIVE SUMMARY

This report summarizes issues surrounding the laws and regulations aimed at environmental protection as well as the process of environmental decision-making in Armenia. It addresses concerns regarding Armenia's failure to meet its international obligations in this area; the shortcomings of the draft Law on Environmental Impact Assessment; the inadequacy of laws for conservation, improvement, and protection of natural resources; and the lack of opportunities for environmental NGOs to challenge the decision of the authorities in court.

INTRODUCTION

From 2012 to 2013, there has been no drastic improvement on the part of the government in its environmental decision-making. The intensive exploitation of natural resources has continued and the decisions on resource governance continue to serve the interests of a small group, without any consideration of sustainable development or of the long-term public good.

The mining industry operates in a business environment with exceptionally privileged conditions, where the law exempts underground resource users of the fees for natural resource use and environmental pollution with waste. This sector is rapidly developing, disregarding the impact on the environment and human health, destroying historical and cultural heritage along the way, ignoring people's right to property, and undermining the potential for the development of an alternative, green economy.

Although Armenia has ratified a number of international conventions on environmental issues, it continues to fail in their implementation. Authorities are slow to adopt the necessary laws and acts, and to change their practices in order to comply with internationally accepted practices in environmental decision-making. Despite the dire need for legislative improvements, the main problem remains the flawed legal practice. Some decision-making bodies issue permits neglecting the existing mandatory requirements of environmental impact assessments (EIAs).

The environmental decision-making process has continued to be non-transparent and unaccountable. Public participation in decision-making is either limited or done only on a very formal level, usually with no impact on the actual decision. This is due to the fact that participation is initiated at a stage when the decision is nearly finalized. Moreover, environmental NGOs are do not have the ability to challenge these unlawful decisions in court.

METHODOLOGY

This report uses a comparative analysis of national legislation, strategies and action plans focusing on environmental matters, international best practices, a study of court practices, reports and evaluations by international organizations, decisions of international bodies, expert opinions, and interviews.

RESULTS

The laws regulating environmental protection are flawed and create opportunities for businesses to expand their operations without conducting assessments of the impact on the environment and on human health. The new draft Law on Environmental Impact Assessment was drafted and presented to the National Assembly, but is not yet adopted. The draft law does not provide a procedure for the complete assessment of ecological damage resulting from economic activity; and there are no legal regulations on determining the value of ecosystem services. As a result, ecologically unsafe activities implying even small economic gains are profitable for the private sector.

The issue of adequate compensation for the harm caused to the health of the population from hazardous waste is also poorly regulated. Although the Law on Sanitary and Epidemiological Safety of the Population outlines the right of citizens to claim compensation for damages caused to their health as a result of a violation of sanitary rules, no specific procedure is provided by the government.

Legislation is vague on the standards for creating special protection areas. There is no clear regulation as to when the state is obliged to include a specific area under special protection, which entails corruption risks.

Armenia regularly fails to fulfill its obligations under the Aarhus Convention, particularly in respect to ensuring public participation in environmental decision-making processes, and exercising citizens' right to access to justice. Non-governmental organizations continue to be denied the right of take environmental issues to court.

DISCUSSION

Legislative gaps

Environmental impact assessment regulations in Armenia are far from EU standards.[134] The Law of the Republic of Armenia on Environmental Impact Expertise does not specify the types of documents to be submitted for

[134] DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.

environmental expertise or the volume or content of the data to be reflected in the submitted documents; nor does any other legal act. This legislative gap allows companies to omit the presentation of data that would lead to negative environmental impact assessment.[135]

There are no clear legal mechanisms to guarantee the protection of unique and endangered species; the only effective mechanism for their protection is creation of special protection areas. However neither the Law on Special Protected Areas nor Government Decision No. 72-N (January 22, 2009) on establishing the procedure for creating special protected areas, clearly defines the criteria based on which the status of a special protected area is granted. The lack of clear standards for creating special protected areas leads authorities to make arbitrary decisions on granting this special status. A number of areas with rich and unique biodiversity are not classified as special protected areas and are subsequently destroyed due to economic activity.

The new mining legislation of the Republic of Armenia does not recognize the existence of "mining waste" and "tailings waste," which means that such waste is not covered by any legal regulation or taxation. Over 99% of the waste produced in the Republic of Armenia is mining waste, which is not taxed under the current legislation, and mining companies bear no responsibility for it after they phase out mining operations.

Research conducted by the American University of Armenia in 2012-2013 revealed the impact of toxic waste on health and the environment in a number of rural communities. In addition to the negative impact on flora and fauna, there is a strong impact on human health, with an increased prevalence of heart attacks and strokes, hypertension, gastrointestinal diseases, fatigue, malignant tumors, allergies, birth defects, infertility, respiratory diseases, headaches, and diabetes.

The Law on the Sanitary and Epidemiological Safety of the Population requires the Ministry of Healthcare to inspect the impact of environmentally dangerous activity on the health of the population, and to undertake measures to diminish or mitigate the impact of hazardous and dangerous factors. However, the ministry does not have data on the impact of hazardous wastes on the health of people living near mining waste. Moreover, the Law does not have a procedure regulating compensation for damage to health (insurance, other compensation mechanisms).

[135] In the Environmetal impact assessment of the first draft for the exploitation of Amulsar mine situated in the centre of Armenia plant species registered in the Red Book and specific to the local flora were presented, however, in the second expanded draft those data were missing. In the Environmetal impact assessment submitted for the exploitation of Mazre mine near Shikahogh situated in the South of Armenia data about potential impact on the reserve were totally missing.

International obligations regarding environmental matters

Although Armenia has ratified the Aarhus Convention[136], its requirements are consistently violated. Armenia still fails to meet the standards set by the Aarhus Convention and to address the recommendations of the Compliance Committee. In all three cases raised by NGOs since 2004, the Compliance Committee has responded that the state has failed to realise the right for public involvement in decision-making and access to justice, and has provided recommendations for the improvement of situation. Nevertheless, the government has not provided necessary measures for training legislative and judicial servicemen, nor has it proposed other measures to harmonize legislation and practice with the Convention.[137]

The government has failed to ensure active dissemination of information about the use of natural resources and the overall situation of the environment. Passive provision of information is limited, in some cases, due to gaps in legal acts and legal practice.[138] Public participation in decision-making is either absent or done only on a very formal level, usually with no impact on the decisions taken; this is due to the fact that participation is initiated at a stage when the decision is nearly finalized. In some proven cases, the fact that public hearings took place or the results of such hearings were faked.

In February 2012, the National Assembly adopted amendments proposed by the government to the Law on Expert Assessment of the Environmental Impact, but the Law was not ratified by the president and was returned for revisions. In response to complaints by non-governmental organizations regarding the proposed amendments, the Ministry of Nature Protection has engaged representatives of non-governmental organizations in the development of the new draft. The new draft law is up for review by parliament and is due for adoption by the end of the year.

Access to justice by non-governmental organizations

A decision rendered by the Cassation Court in 2011 creates obstacles for NGOs and natural persons exercising their right to apply to the courts in relation to environmental violations or flaws in implementing the Aarhus Convention. This decision was made despite the fact that the Constitutional Court has interpreted provisions of the Administrative Procedure Code, saying that NGOs play an

[136] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

137 Necessary measures are: a) within the Law on Environmental Impact Assessment develop an elaborate procedure, for the purpose of holding public hearings and ensuring public participation in decision-making; b) ensure the right for access to justice to nature protection NGOs in environmental matters.

[138] Please refer to Partnership's reports on ENP implementation www.partnership.am

important role in the administration of justice, and that they should be given legal grounds to apply to court. With the aforementioned Decision, the Constitutional Court has outlined a clear and legally specific list of criteria, based on which non-governmental organizations are to be viewed as subjects of law "having legal interest", and have the right to appeal the decisions of administrative bodies. The most important of these criteria is that in the statutory objectives of an NGO, the sphere of activity considered "public interest" shall be clearly specified; NGOs may go to court in order to protect their rights that are affiliated to public interest.

However, the Court of Cassation and administrative courts are reluctant to consider this and continue to deny NGOs legal standing.[139] In its June 28, 2012 decision, the Aarhus Convention Compliance Committee stated that Armenia fails to meet the access to justice standard for NGOs. Nevertheless, this decision has not yet led to steps to change court practices so that NGOs have legal standing in court. The new NGO Law Concept, which was developed by the Ministry of Justice in 2013, again denies NGOs the right to have access to the courts, as there are no specific provisions in the concept safeguarding this right.

Courts of general jurisdiction refuse to listen to NGOs, arguing that people who believe that their rights have been infringed are entitled to apply to administrative courts. However, only persons who believe that their rights have been *directly* infringed by the administration can apply to administrative courts. Therefore, NGOs concerned with environmental matters are not considered appropriate claimants when appealing the decisions of administrative bodies.[140] Moreover, according to the new Concept on Non-Governmental Organizations, NGOs are again deprived of the right to go to court in compliance with the recommendations of the Committee.

Implementation of the National Environmental Action Plan

The third National Environmental Action Plan was adopted in 2008[141] to fulfill the requirements of the Eastern Partnership. The Action Plan aimed to harmonize the environmental legislation of the Republic of Armenia with that of the European Union by 2012, within the framework of the Partnership and Cooperation Agreement made between the European Communities. So far, the National Assembly has not approved the draft Law on the Execution of Self-Control over the Implementation of the Requirements of Nature Protection

[139] In April 2011, the Cassation Court made a decision declaring that NGOs are not recognized as legal persons to represent the interests of the public, and this decision is still in effect.
[140] See the Decision of the Court of Cassation of the Republic of Armenia No VD/3275/05/09 of 1 April 2011
[141] Second national programme for environmental protection measures. Yerevan, 2008 http://www.nature-ic.am/res/pdfs/documents/strategic/THE%20%20SECOND%20NATIONAL%20%20ENVIRONMENTAL%20ACTION%20%20PROGRAMME%20%20OF%20THE%20%20REPUBLIC%20%20OF%20%20ARMENIA.pdf

Legislation, the deadline of which was set for 2008. The program for creating complex and integrated mechanisms for the prevention of environmental harm, which was supposed to be implemented by 2012 also failed. The implementation of sectoral programs on land protection, efficient use of water resources, waste management, and natural resource use either failed or were not completely implemented. A shared information system on environmental issues has not yet been developed.

a) ***Land:*** Currently, the procedure for changing the category (the designated and functional purpose) of high value land, is very simplistic. The category can easily be changed by a government decision. The government itself decides on the procedure for changing the category and a subsequently, many agricultural lands are re-categorized and allocated for mining purposes. From 2008 to 2011, 44,300 hectares of agricultural land were re-categorized.

b) ***Water Resources:*** The Water Code of the Republic of Armenia does not have reasonable norms for "ecological discharge" and the Soviet norm for "sanitary discharge" is applied to the use of water flows for financial gain. This leads to harmful practices, such as hydroelectric power stations entirely using up river water. In doing so, they damage the endemic system of the river and cause water shortages in adjacent communities.

c) ***Waste:*** According to the 2012 report of the Control Chamber of the Republic of Armenia[142], in the annual reports on waste that were submitted to the Ministry of Nature Protection, waste was either presented as harmless, or the contents tailings were not considered "waste". As a result, no nature protection fees were paid by the companies producing the waste.[143] 79% of companies producing hazardous waste did not provide descriptions of hazardous waste and did not present related documents to the Ministry of Nature Protection for approval. According to the same report, the Ministry of Nature Protection, the Ministry of Energy and Natural Resources, and the Ministry of Emergency Situations have not undertaken measures to assess the category of hazardousness of the waste in the tailings of mines, which shows a lack of supervision in this sphere and can lead to real corruption risks.

[142] Control Chamber of the Republic of Armenia, current report: "On the Results of the Control Exercised over the Use (re-processing, neutralisation, storage, transportation and installation) of Hazardous Waste in the Republic of Armenia". Approved by the Decision of the Council of the Control Chamber of the Republic of Armenia No 3/4 of 10 February 2012.

[143] Current report of the Control Chamber of the Republic of Armenia, Appendix: approved by the Decision of the Council of the Control Chamber of the Republic of Armenia No 3/4 of 2012.

d) ***Health issues:*** The relevant state agencies have no methodology for determining the impact of environmental pollution on human health.[144] This is especially alarming considering the fact that heavy metals from tailings causing serious health problems when they come in contact with the human body.[145] Over 99% of the waste produced in the Republic of Armenia[146] comes from the mining industry. Independent scientific research conducted in Armenia shows a causal relationship between the diseases of people living in zones polluted by the mining industry, and the mining waste. A study conducted by the Centre for Ecological-Noosphere Studies (part of the National Academy of Sciences of the Republic of Armenia) found an accumulation of heavy metals in the hair of 17 children living in the communities of Lernadzor and Kajaran in Syunik[147], a region heavily polluted by mining. Research conducted by the American University of Armenia in 2012-2013 revealed the impact of toxic waste on health and the environment in a number of rural communities. In addition to the negative impact on flora and fauna, there is a strong impact on human health, with an increased prevalence of heart attacks and strokes, hypertension, gastrointestinal diseases, fatigue, malignant tumors, allergies, birth defects, infertility, respiratory diseases, headaches, and diabetes.[148]

Protection of Biodiversity

Armenia occupies only 6.7% of the Caucasus region but is home to over half of the region's flora (about 6000 species). The density of vascular flora species is more than 100 species/km^2 – one of the highest in the world.[149] However due to the expansion of the mining industry, these species are endangered. The Ministry of Nature Protection continues to issue mining permits in areas where rare and endangered plant and animal species are located, despite the prohibition of mining in such areas.

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[144] By the official letter in response to the enquiry addressed to the Ministry of Healthcare of the Republic of Armenia in May 2013 it was discovered that the Ministry had not conducted any research in order to find out the impact of the pollution of the environment with mining-industry waste on human health.

[145] Appeal of the Civil Initiative for the Protection of Teghut submitted to the UN Human Rights Council, page 5; 14-17 http://teghut.am/wp-content/uploads/2012/07/Teghut-appeal-to-the-HRC.pdf

[146] According to official data, during the year of 2009, 14766.1 thousand tons of waste was generated and the amount of waste per person in the Republic was 4.5 tons146. In 2010, 17307.8 thousand tons of waste was generated and the amount of waste per person in the Republic was 5.3 tons146. In 2011, a total of 27608.9 thousand tons of waste, and the amount of waste per person in the Republic was 8.4 tons

[147] See: Centre for Ecology-Noosphere Studies of the National Academy of Sciences of the Republic of Armenia, research: "Ecologic-geo-chemistry assessment of the situation in the surroundings of the city of Kajaran"; Yerevan, 2008.

[148] Varduhi Petrosyan, MS, PhD, Associate Dean College of Health Sciences: Influence of Mining Related Activities on Environmental Health in Armenia. Yerevan. November 30, 2012. http://aua.am/wp-content/uploads/2012/12/Blacksmith_presentation_Nov30-2012.pdf

[149] http://www.discoverarmenia.info/en/journals/14/142/

Such a permit was given for the exploitation of the Teghut copper-molybdenum mine in northern Armenia, which is home to around 200 plant species and 155 animal species. Of these, six plant species and 29 animal species are registered in the Red Book of the endangered species[150] and in the Red List of the IUCN. The permit for the exploitation of the gold mine of Amulsar in the basin of Lake Sevan is also a result of the shortcomings of the current legislation.[151] There, too, there are several species registered in the Red Book of Armenia. Gaps in the laws regulating the sphere are also due to the non-implementation of the legislation for the protection of biodiversity.

There are no clear criteria for the assessment of damage caused to the environment as a result of economic activity. The government has made decisions that stipulate the evaluation categories for the assessment of impact on the air, land and water resources; however, they are not applied in practice when assessing environmental damage in economic terms.[152] These government decisions have not defined categories for the assessment of the impact on flora and fauna, or on the mineral resources.

Subsequently, the calculation of the damage to the ecosystem is done arbitrarily, leading to the undervaluation of resources. For example, the Armenia Copper Program Company, which is exploiting Teghut mine, used an outdated methodology from 1992 and prices from 1984 to calculate the damage to the environment. The same company placed a value of 175,000 AMD (approximately 150 euros) on an entire river; the forest that would be destroyed as a result of the company's activity was only valued in terms of its timber and calculated with ridiculously low prices. According to independent experts, the damage to the environment has been assessed around 300 times less than it should be.[153]

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[150] Թեղուտի պղինձ-մոլիբդենային հանքավայրի շահագործման աշխատանքային նախագիծ, page 15-18 http://www.teghout.am/images/7_-_Environment.pdf

[151] As a result of the research conducted by the specialist group of the WWF Armenian one plant species – Potentilla porphyrantha, two types of reptile, eighteen species of birds and four species of mammals registered in the Red Book were found in Amulsar and adjunct areas.

[152] There are 2003 and 2005 Government decisions, whereby the order for assessing the impact on water and land resources, on the atmosphere, caused by economic activities, and the methodology for calculating economic damage. These are:
"The Order for Assessing the Impact on Water Resources Caused by Economic Activities" defined by the Decision of the Government of the Republic of Armenia No 1110-N of 14 August 2003;
"The Order for Assessing the Impact on Atmospheric Air Caused by Economic Activities" defined by the Decision of the Government of the Republic of Armenia No 91-N of 25 January 2005;
"The Order for Assessing the Impact on Land Resources Caused by Economic Activities" defined by the Decision of the Government of the Republic of Armenia No 92-N of 25 January 2005.

[153] The calculation of the economic damage is reflected as a result of the recalculation of the 2005 "Assessment of the impact of Teghut Mining and Processing Combine on the environment" by "Armenian Copper Programme" Company; experts: Hrachik Avagyan (architect-geologist, doctor of geological-mining science), Knarik Hovhannisyan (engineer-hydro-technician, candidate of technical sciences), Pavel

Moreover, the Law does not stipulate compensation for damage caused to the environment. This means that even if the damage assessment and calculation system is regulated, the law will still not oblige companies to pay for the damage caused.

Sustainable Development and Green Economy

The government developed a Tourism Development Concept[154] which designated the city of Jermuk as center for tourism development where a national park would be established.[155] However, to date, Jermuk National Park has not been established. One of the possible reasons for this is the new open pit mine of Amulsar, which is planned to be exploited for the next ten years. The exploitation of the mine will hinder Jermuk's economic development as a tourism center and its prospects for long-term green economic development.

The development of a green economy is also hindered by policies on administrative liability. Illegal logging, construction in green areas, levels of emissions exceeding the permitted limit, and other ecological legal infringements are widespread and uncontrollable. The current legislation does not set proportional measures of liabilities and as a result, it is often more financially viable for companies to pay a fine than to act in accordance with the law. For example, due to an accident in the waste pipe of the Zangezur Copper-Molybdenum Combine, the tailings filled the transboundary Voghji River. The State Inspectorate concluded that the damage amounted to 650,000 AMD, and imposed a fine of 100,000 AMD.[156] Such disproportionally low sanctions lead to a lack of responsibility and thus the main environmental issues do not get resolved for years.

CONCLUSIONS

Based on the analysis of the implementation of the Association Agreement Roadmap, Armenia has substantive failures in this area, which are linked with other wider issues. The main reason for these failures is the profound crisis of Armenia's democratic institutions, which manifests itself in the restriction of NGOs' rights, failure to ensure rule of law, lack of an independent judiciary, unaccountable governance, and failure to fulfill international commitments.

Ghambaryan (botanist, candidate of biological sciences), Martin Adamyan (ornithologist, doctor of biological sciences) and Edita Vardgesyan (economist, lecturer in the Chair of Nature Exploitation Economy in Armenian State University of Economy.

[154] Tourism Development Conception http://edrc.am/images/National_Strategies/Industrial/tourism_dev.pdf

[155] Decision of the Government of the Republic of Armenia No 497-N of 27 April 2005 http://www.arlis.am/DocumentView.aspx?docid=13678

[156] See: http://news.am/arm/news/58771.html

The legislation regulating this field does not comply with EU legal regulations. The responsible authorities do not have a comprehensive environmental database. They regularly refuse to provide information to the public, claiming that there are commercial secretes involved, or not giving any justification at all.

Environmental NGOs are not given the chance to dispute the illegal decisions of the authorities in court. Sectoral issues are only superficially addressed in the National Environmental Action Plan and no effective solutions are proposed. As a result, natural resources are constantly destroyed, land resources are degenerated, and water resources are ineffectively used. An increase in mining waste and insufficient waste management mechanisms pose a serious threat to both human health and the sustainable economic development of the country. Having all the necessary natural conditions for the development of a green economy, Armenia does not fulfill its potential to develop tourism, organic and traditional agriculture, and other branches of green economy. Territorial development programs remain ink on paper, yielding to the mining industry.

Armenian authorities must make urgent legislative amendments to ensure compatibility of the legal field regulating environmental issues with EU standards, and to ensure the actual fulfillment of international commitments and effective protection of the right to live in a healthy and safe environment. A first step in introducing effective public control mechanisms would be granting NGOs the right to access to justice, giving them the opportunity to dispute the decisions of administrative bodies.

RECOMMENDATIONS

- Adopt the Law on Environmental Impact Assessment and ensure that bylaws are adopted within one year; clearly stipulate ecosystem assessment standards for the economic, health, and cultural damage caused to the environment; ensure that a system is in place for the proper implementation of the law;
- Fundamentally review the legislative regulations on waste management, charges for mining waste, and ownership rights pertaining thereto. Based on international best practice, establish a payment mechanism for mining waste to ensure that the costs of waste management and the neutralization of harmful impacts are covered;
- Guarantee the right of NGOS to access to justice in disputing environment-related decisions of administrative bodies;
- Legislatively guarantee the right to full compensation for the damage caused to human health by environmental pollution;
- Set a higher liability for environmental pollution so as to push the

businesses towards modernization and minimizing of pollution;

- Create a comprehensive environmental database with up-to-date information on the country’s environmental situation;
- Establish 'Jermuk National Park as stipulated by the Tourism Development Concept;
- Declare green economy a priority area for the country's economy and take practical steps to develop the branches of a green economy.

(C.6) Cooperation on Macroeconomic and Financial Stability Issues

EXECUTIVE SUMMARY

Macroeconomic and financial stability in Armenia depends on the maintenance of a stable currency, proper management of the external debt, reducing the foreign trade deficit, attracting foreign direct investments, and mitigation of a financial crisis.

To ensure macroeconomic stability, the government must:

- Establish a competitive economy and support the elimination of monopolies;
- Improve the external competitiveness of the country;
- Stimulate export-oriented production;
- Increase the technological preparedness of producers;
- Ensure the diversification of dependence on natural resources;
- Improve the technical equipment of agricultural producers.

INTRODUCTION

Armenia's major creditors, such as the World Bank (WB), the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB), the Eurasian Development Bank, and the International Monetary Fund (IMF), have been instrumental in stabilizing the country's macroeconomic and financial system. Based on mutual agreements, these funds are primarily focused on agricultural development, small and medium enterprise (SME) development, and for the construction of business supporting infrastructures. The combined loan portfolio of these financial institutions in Armenia is in the billions of dollars. Since 1993, Armenia has accrued more than 1.6 billion USD in World Bank credits. The EBRD's credit portfolio for Armenia exceeds 650 million USD. Loans from the ADB, amounting to roughly 500 million USD, are primarily for the construction of the north-south highway.

Until the end of 2008, Armenia was considered a country with a low level of debt by the IMF and other international financial institutions.[157] Unfortunately, in October 2008, the Central Bank of Armenia, in direct contradiction with existing legislation, began pursuing a policy of protecting the exchange rate of the Armenian dram at any cost. It did so by selling off vast amounts of Armenia's foreign exchange reserves. The IMF stepped in with a loan to provide the Central

[157] http://www.gfmag.com/gdp-data-country-reports/327-armenia-gdp-country-report.html

Bank with funds for foreign exchange reserves in order to stabilize the financial system. As a result, the Armenian debt burden has sharply increased since 2009. Over 80% of Armenia's foreign debt burden today is owed to international financial institutions, with the IMF, the World Bank, and the Russian Federation as its primary creditors.

More than half of the foreign debt is based on a 35 to 40 year lending period, with a grace period of 7 to 10 years. Instead of generating economic growth and developing infrastructure, the loans from recent years have been used to ensure the stability of the financial system during, and in the aftermath of, the global economic crisis. More troubling still is the way in which the loans have been spent. Not a single objective action within the development policy of Armenia has been achieved through these loans. After the first wave of the financial crisis in the first half of 2009, Armenia's budget deficit drastically increased. The funds from the loans were used to cover the budget deficit and for payment of salaries and pensions. After 2009, Armenia became less likely to resort to credit, and in 2012, even began repaying its loans. If the loans were obtained to preserve financial stability and maintain social benefits, this goal was achieved. In terms of development, however, the loans had no impact. Armenia's foreign debt this year will amount to 4 billion 375 million USD, an increase of 252 million USD from 2011. In 2011, the external debt to GDP ratio was 30.1%; in 2012 it was 31.1%.

METHODOLOGY

The following is a list of the main criteria for ensuring macroeconomic stability[158]:

- **Low and stable inflation** indicates healthy demand in the marketplace, while high or unstable inflation threaten growth. High inflation alters the value of long-term contracts. Volatile inflation creates uncertainty in the market place, increasing risk premiums. Since many tax rates are adjusted by average inflation, volatile inflation can severely alter government revenues and individual liabilities.
- **Low long-term interest rates** reflect stable future inflation expectations. While current inflation rates may be acceptably low, high long-term rates imply higher inflation to come. Keeping these rates low implies that the economy is stable and is likely to remain so.
- **Low national debt relative to GDP** indicates that the government will have the flexibility to use its tax revenue to address domestic needs instead of paying foreign creditors. Additionally, a low national debt permits lenient fiscal policy in times of crisis.
- **Low deficits** prevent growth in the national debt.

[158] http://reut-institute.org/Publication.aspx?PublicationId=1299

- **Currency stability** allows importers and exporters to develop long-term growth strategies and reduces investors' need to manage the exchange rate risk. For national accounting, currency stability reduces the threat posed by debt issue in foreign coin.

The conclusions and suggestions for this paper are made based on the criteria listed above, on data provided by the National Statistical Service of Armenia, and on analyses provided by the Ministry of Finance and the Central Bank.

RESULTS

The primary reasons for Armenia's economic situation are the lack of a clear national economic policy, a weak domestic production policy, the dominance of monopolies in the economy, and low and inefficient tax collection.

To ensure economic stability, the government must reduce the level of external debt and maintain it at a low level. According to the CIA Factbook, the level of Armenia's foreign debt in relation to its GDP, in the medium term, will be at the level set out in the table below:

Share of external debt to GDP

2011	2012	2013	2014	2015	2016
41.475%	41.390%	39.285%	37.418%	37.025%	36.510%

The main sources of growth for the Armenian economy are:

- Recovery in Armenia's domestic demand for goods and services based on the growth of remittances and active lending in domestic consumption;
- Growth in exports based on the preserved external demand and relatively high prices for exported raw metals;
- Strong growth in agriculture based on favorable weather conditions, as well as the effect of a low starting base;
- A diversification of real capital investment, due to the continuing decline in the construction sector.

Remittances continue to play an important role in ensuring financial stability, by greatly stimulating domestic demand. Despite strong macroeconomic performance and the shift of economic activity from construction to other sectors of the economy, the development model of Armenia is unsustainable and requires serious reforms.

DISCUSSION

Maintaining the stability of the national currency and controlling inflation by using loans has led to a slowdown in the growth of domestic production, reduced exports, and increased the foreign trade deficit. As a result, Armenia has been unable to service the loans through its own means, and has instead been forced to resort to new credit facilities, such as issuing bonds on the international market below market value, which are issued on less favorable terms.

According to the Midterm Expenditure Program of the Republic of Armenia, expenditures for debt service, as expected, will continue to grow steadily. This year, the expenditures total 52.5 billion AMD from the budget. In 2014, this amount will reach 54.2 billion AMD, in 2015 it will reach 60 billion AMD, and in 2016 it will reach 66 billion AMD. The interest alone for servicing the debt in the next three years will amount to 1,691 million AMD in 2014, 5,778 million AMD in 2015 and 5,984 million AMD in 2016, respectively. As a result, expenditures for debt servicing will increase the national debt.

As mentioned in the Midterm Expenditure Program, one of the characteristic features of the RA state budget is its dependence on external sources of financing through foreign loans and official grants, a feature which is set to continue in the coming years. The budget deficit is, in fact, once again being covered by external transfers, mainly through credit. As such, the budget is dependent on interest rate fluctuations and the amount of funds allocated for debt service. Moreover, tax revenue continues to be highly inefficient, and its contributions to the state budget continue to be small. In 2012, the level of tax revenue was 14.1%, the worst in the CIS countries.

In 2014, external funding is projected to be 140 billion AMD, of which about 120 billion will be through loans. In 2015 the situation will remain unchanged, with the only difference being that the size of grants will decrease, amounting to about 10 billion AMD. Grants in the amount of 10 billion AMD will continue into 2016, however the size of loans will increase, reaching about 150 billion AMD. The heavy burden of loan repayments will impact the Armenian budget for years to come.

RECOMMENDATIONS

- Promote the sustainability of public finances and the balance of payments positions;
- Implement appropriate reforms and regulations in the financial sector based on the recommendations of the IMF;
- Through legislation, set conditions regarding foreign loans to Armenia;
- Develop and implement an export-oriented trade policy in Armenia;
- Increase the level of tax revenue as a percentage of GDP.

(C.8) Employment and Social Cooperation

EXECUTIVE SUMMARY

Under Area C.8 of the bilateral dimension of the 2012-2013 Eastern Partnership Roadmap - employment and social cooperation - Armenia's objective was to start addressing various challenges with respect to employment and social policy, and gradually adopting EU practices and acquis. Armenia is expected to ensure that the relevant legislation is reviewed and that the process of drafting amendments is underway.

Since the second half of 2012, Armenia has made changes to its Social Protection and Labor Policy, initiated programs that will continue throughout 2013 to ensure the smooth transition and implementation of the defined-contributions pension scheme (2nd Pillar) system of the integrated social services; and implemented labor market measures focused on activation agenda, as stated in the 2013-2018 Employment Strategy Action Plan. These measures could be considered outcomes that relate to the objectives of Area C.8. Although the timeframe of some components is not clearly stated in the Action Plan, it could be considered that "*the process for adjustments has started*," and that by November 2013, Armenia will meet the stated outcome.

Since the main objective of Priority Area 3 of the EU/Armenia Action Plan is to ensure economic development, or to "*enhance poverty reduction*", this monitoring report focuses on social protection and labor reforms.

The robustness of the pension system (mainly 2nd pillar) will determine how affordable and sustainable the system will be in 2014-2018, especially starting from 2015-2016, in case Armenia faces economic shocks. Given the current level of public debt, if the designed pension system is not robust, it may be a threat to the whole system of social protection and labor. It could constrain the government's ability to allocate resources for the implementation of the designed programs and contribute to the future pensions of participants of the mandatory pillar. However if Armenia manages to escape economic shock, the nation has the potential to achieve macroeconomic stability in the long run.

If the government does not address the problem of employability aggressively enough in 2014-2018, the Employment Policy, regardless of how well it is implemented, cannot ensure the growth of high-paying jobs, which would translate into higher economic growth and poverty reduction.

The role of case managers will be crucial in ensuring the successful operation of the System of Integrated Social Services over the medium-run.

INTRODUCTION

According to Area 3 of the EU/Armenia Action Plan, Armenia was to implement reforms in labor, social protection and security to ensure economic development, reduce poverty

and enhance social cohesion.[159] The Ministry of Labor and Social Affairs (MLSA) was charged with implementing the following activities in 2012-2013 to ensure the progress of the ENP Armenia/EU Action Plan[160]: introducing the system of integrated social services; ensuring implementation of pension reforms; designing required legislation to protect the rights of migrant workers with Armenian citizenship.

Under the area of C.8 of the bilateral dimension of the 2012-2013 Eastern Partnership Roadmap, the objective for each partner country is to start addressing various challenges regarding employment and social policy[161], and gradually adopting EU practices and acquis[162]. One of the expectations of the partner is to review and amend relevant legislation.

Since the second half of 2012, Armenia has made legislated changes to its Social Protection and Labor (SP&L) policy, and initiated various measures and programs that will continue throughout 2013 to ensure a smooth transition to the defined-contributions pension scheme, a viable system of the integrated social services. Activities described in the 2013-2018 Employment Strategy Action Plan have also been implemented. However, without clearly stated timeframe for some activities, and conditionality (with regard to the minimum wage policy) Armenia will not manage to secure the required outcome under Area C.8.

However if the reforms do not enable Armenia to report high productivity growth leading to higher wages over the long run (Area 3 of the EU/Armenia Action Plan), the implementation of employment policy reforms will lead to "low-productivity-low-paying jobs".

This report presents the main legislative changes and actions initiated or to be undertaken with regard to pension reforms, the 2013-2018 Employment Strategy and activation agenda, and system of integrated social services. It highlights the major threats to the new pension system; the importance of robustness to withstand economic shocks; and the role of two policy agendas on how to "*improve access to jobs and earnings opportunities*", and enhance employability. In order to have a strong system of social services, the role of social workers in ensuring the wellbeing of individuals and/or their families is stressed in the short run.

METHODOLOGY

For the purpose of the analysis and discussions a "system-wide approach to social protection": social insurance, social assistance[163] and labor market policies and measures,

[159] Source: http://lexbox.am/uploads/PDF/EU/EU_Armenia%20Relations/2.2_armenia_enp_ap_final_en.pdf
[160] Source: http://www.mss.am/home/index.php?code_id=98&menu_id=77
[161] In this Monitoring Report the main focus is on social protection and labor (mainly active) policy. The system of integrated social services is not widely discussed in the discussion part, and in the results part the progress on introduction of the system is reported.
[162] Source: http://ec.europa.eu/world/enp/docs/2012_enp_pack/e_pship_bilateral_en.pdf
[163] According to Alderman and Yemtsov (2012:3), with this respect the provided definition is " is close to the EC standard, which also emphasizes "social inclusion efforts that enhance the capability of the marginalized

discussed by Alderman and Yemstov (2012) is taken into consideration, ensuring productivity growth,[164] leading to economic growth and translated into poverty reduction (see Figure 1, Appendix A). The main focus is on macro-level effects.

Taking into account the main goals of a pension system *"to provide adequate, affordable, sustainable, and robust retirement income*" (Holzman and Hilz, 2005:6), the main focus is on the robustness of the system (mainly 2nd pillar) to withstand economic shocks and to ensure investment in social protection, enabling the government to implement SP&L programs and leading to macroeconomic stability in the longer run.

This report focuses on the the short- and medium-term impact of the reforms designed and implemented by the Government of Armenia, as well as the challenges to be addressed in 2013-2018.

RESULTS

In December 2012, the parliament adopted changes (amendments and supplements) to several laws[165] originally passed in 2010 to ensure the implementation of pension reforms (with the main focus on the 2nd pillar) beginning in 2014. In 2011, the government selected a contractor (IU Networks) to design a Unified Income Tax and Personified Recordkeeping System. The contractor was to submit two modules of the system in 2012 and the remaining four in June-July 2013.[166] In 2011, eCSDX, a subsidiary of NASDAQ OMX Tallinn and the Central Depository of Armenia signed an agreement to design software and provide services for the 2nd pillar that will end in 2014.[167] Public awareness activities will continue throughout 2013.

In November 2012, the government adopted the 2013-2018 Employment Strategy and Action Plan. The MLSA drafted the Law on Employment to replace a previous law adopted on October 24, 2005. The Law would come into effect in January 2014 (according to point 91.9.a of the Employment Strategy). The government also made legislative changes to related laws[168] in the first half of 2013. The new Employment Law reflects the concept of the activation agenda, and the logic behind integrated social services. The focus of employment services is on "*'individualized'*[169] *intermediation*

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to access social insurance and assistance" (EC2010)… SP has a core function in securing access to services by vulnerable groups, such as disabled individuals".

[164] In 2012 Armenia was classified by the World Economic Forum (2012) as a nation in the Efficiency-driven Stage that needs to rely on productive practices to increase the competitiveness.

[165] the Law on State Pensions, the Law on Funded Pensions, the Law on Investment Funds, the Law on Personified Record Keeping of Income Tax and Mandatory Funded Contributions, and the Law on Income Tax

[166] Source: http://www.plm.am/en/activities/success-stories/93-round-table-discussion

[167] Source: http://www.pensionikeskus.ee/?id=3535

[168] The Law on Organizing and Carrying Out Inspections in the Organizations on the Territory of the Republic of Armenia, Code of Administrative Violations

[169] "*'Individualized' refers to a personal service dimension (e.g. career guidance, counseling, active placement and post placement support...) as opposed to more generic provisions such as standardized training programs*" (Employment, Social Affairs and Inclusion Directorate General of the European Commission, 2011:10)

services to support (or 'activate') unemployed or inactive jobseekers to find and maintain employment"[170], or to enhance employability chances.

In fall 2013, the government adopted the 2014 Employment Regulation State Program and its Action Plan, which reflect the principles stated in the draft of the Employment Strategy and the Law and propose pilot programs. Various programs and legislative changes are expected to follow through to 2018 to fulfill the outcomes under Area C.8. (health and safety at work, etc.). The Law on Employment, along with other related laws should be sent to the parliament for hearings in the second half of 2013. Other activities are supposed to be completed by the end of 2013, according to the 2013-2018 Action Plan (Employment Strategy).

The government approved the introduction of the system of integrated social service in 2012,[171] followed by establishment of the Council[172] to coordinate the required activities and ensure implementation of the pilot program. The new Law on Social Assistance, drafted in July 2013, reflects the concept of personalized and/or individualized social services. At the end of June, the pilot program was still implemented. About 20 integrated social service centers (one-stop shops) were launched throughout the country.[173] The new Law on State Benefits was drafted in May 2013 and will come into effect on January 1, 2014, with respective changes in social security for military servants and their family members to make the "one-stop shops" more efficient. The drafts of these and other required documents, including the monitoring and evaluation results of the pilot program, are to be submitted to the government by the Council by October 1,[s] 2013. The results should be available in the second half of 2013, and should play a key role in determining the legislative changes to be made in 2014.

DISCUSSION

Pension Reforms

The new pension system will be fully in place in 2014.[174] Its robustness[175] will determine how affordable and sustainable the system will be beginning in 2015-2016 (in case Armenia faces economic shocks). If it is not robust, the pension system could be a threat to the whole system of social protection and labor, taking into account the current level of public debt (public debt-to-GDP ratio: 44.1% in 2012)[176]. Holzman et al. (2005) identify three major shocks to the system: economic, demographic and political. In 2014-2018

[170] Source: Employment, Social Affairs and Inclusion Directorate General of the European Commission, 2011:10.
[171] Government Decree numbered 952-N of July 26, 2012
[172] Prime Minister's decree numbered 941 of September 29, 2012
[173] Source: MLSA of Armenia
[174] Although in June 2013, private pension schemes were offered by a quite few private institutions, the 2-nd pillar will be in place starting from January 2014.
[175] Robustness is referred to *"the capacity of the system to withstand major shocks and to remain viable in the face of unforeseen conditions and circumstances"* (Holzman et al., 2005:57)
[176] Source: Ministry of Finance and NSS of Armenia, 2013, authors own calculations. Government debt-to-GDP ratio: 38.1% in 2012

economic shocks will be the real threats, taking into account the negative impact of the Global Financial Crisis (GFC) on Armenia. Even in Estonia, considered one of the best implementers of the pension reforms in Europe (Kulu and Reiljan, 2004),[177] the GFC negatively affected the viability of the pension system (ASISP, 2011). Armenia has decided to design its pension system based on the Estonian model of individual pension savings accounts.[178] Building strong shock-absorbers and oversight mechanisms will allow Armenia to mitigate shocks. Demographic shocks will be felt in the longer run (if there is no sharp increase in migration rates).

Regarding the secondary role of the pension system, "*to create developmental effects*"[179] i.e. positively affect national savings and make financial markets more sophisticated (Holzman et al., 2005:57), the Armenian stock market will not develop rapidly. With current quantitative and currency limitations[180] set by the government (regarding investing in financial tools by mandatory pension funds), the channel to contribute to the economic growth would be through credits/loans to private companies (banking deposits). The other investment option that would be especially viable in the short run would be government bonds. Due to declining interest rates and an increase in lending, Armenia, with its small domestic market and underdeveloped stock market, cannot ensure high profitability of the assets in the domestic market. On the other hand, if Armenia manages to escape any type of shock in the medium-term, the country may experience macroeconomic stability in the long run.

Employment Policy

Here the main focus is on two policy agendas[181] aimed at improving "*the access to jobs and earnings opportunities*": i.e. "*creation of business and higher productivity jobs*[182]*; removal of constraints that individuals have to access better jobs, and/or that improve the productivity of the jobs that they already have*" (Almeida et al., 2012:1-2).

Regarding the first agenda, Armenia has significantly improved its Ease of Doing Business rank, with a 32nd place ranking in 2012[183] (up 18 positions). In 2012, Armenia's macroeconomic environment was relatively stable, being ranked 83rd among 144

[177] "*Several international as well as local experts have assessed pension reform in Estonia as one of the most successful in Europe*" (Kulu and Reiljan, 2004:24), in terms of participation rate, innovative tax scheme, administrative capability with regard to the implementation of the funded component, risk diversification due to lack of any currency of quantitative restrictions

[178] Source: http://www.nasdaqomx.com/digitalAssets/71/71131_feas_pension_reform_pdf_without_ad.pdf

[179] "*Either by minimizing negative impacts, such as the effects on labor markets or macroeconomic (in)stability created by imbalanced systems, or by leveraging positive impacts, especially by increasing national saving and by promoting financial market development*" (Holzman et al., 2005:57).

[180] Government Decree numbered 1685-N of December 27, 2012

[181] discussed by Almeida et al. (2012) referring to Robalino et al., 2011

[182] "*these are policies that guarantee macroeconomic stability and reduce the costs of doing business while promoting competition and incentives to innovate, adopt new technologies, and enter new markets*" (Almeida et al., 2012:1)

[183] Source: Doing Business 2013, ranks out 185 economies

countries.[184] However, local competition, anti-monopoly policy, and other facts (see Table 2, Appendix 2)[185] may not lead to higher productivity growth rates in the short-run and the medium-term, and will not create strong demand on high-productivity jobs requiring sophisticated skills, leading to "low productivity-low growth equilibrium" (Alderman and Yemtsov, 2012:2). Thus the successful implementation of an export-led industrial growth strategy is of primary importance,[186] along with attracting FDI from "efficiency-seeking" multinational corporations.

Although pay in Armenia, is generally linked to productivity, and the employers are rather flexible in determining wages (see Table 1, Appendix 2)[187], the real monthly average wage (in large and medium-sized companies) declined in 2011-2012[188], while productivity growth rates were even higher than GDP growth, the employment rate declined (see Table 3, Appendix 2), and nominal wages increased.

One possible explanation is that with the rise of productivity, the most productive employees benefited more than less productive ones. This would imply that productivity is the driver of higher wages in Armenia, reinforcing survey results. Hence, the most productive will be better off, while the rest might experience a slight increase and real wages might decline. Taking into account these trends and the discussion presented above, labor demand (in terms of number of new vacancies) might mainly be on "low-paying-low-productivity" jobs, if the first agenda is not properly addressed in the medium-term. Regardless of how well the Employment Regulation Annual Programs and the Action Plans are crafted and implemented by the MLSA, at best, their success might lead to increase in number of low-paying-low-productivity jobs. Therefore, the main objective of Priority Area 3 of the EU/Armenia Action Plan: ensuring economic development to "*enhance poverty reduction*", might be achieved over a longer period time.

Integrated Social Services System

Figure 4 (see Appendix A), provides a Model of Integrated Social Services that will be finalized after the pilot program is completed, and will be crucial in finalizing respective legislation and building administrative capacity. Case mangers (social workers) will play a crucial role in the short-run (methodology to assess the case, management, sharing the information and experience with other colleagues, and etc.). These services are aimed at improving the wellbeing of individuals. Advocacy is needed to raise awareness among the population.

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[184] Source: The World Economic Forum, *The Global Competitiveness Report 2012–2013: Full Data Edition*, Geneva: the World Economic Forum, 2012

[185] Relatively limited competition in the local market (ranked 130th) with market dominance by the limited number of business groups (ranked 90th), and anti-monopoly policy not efficiently supporting the competition (ranked 116th) (see Table 2, Appendix 2).

[186] For 2013 Armenia is planning to allocate significant budget recourses to attract MNCs and increase exports of items of the targeted industries. (Source: http://www.gov.am/en/press-conference/item/6605/)

[187] The Executive Opinion Survey reflects the opinion of the leading business executives representing the main sectors of the economies and the size of the company (Large versus others)

[188] During the same period the nominal wages were increasing.

CONCLUSIONS

Armenia has begun to address challenges with the respect to employment and social policy. The real threat to the whole social protection system could be the ability of the pension system (Mandatory Savings Pillar) to withstand (mostly economic) shocks in the medium-run. Therefore the government must start building shock absorbers. Otherwise social spending could be trapped and the government would either have to increase the public debt or cut the spending. Armenia may achieve macroeconomic stability if it manages to withstand shocks either transmitted or originated in Armenia.

Although all major reforms will come into effect on January 1, 2014, the main focus has been on raising awareness on pension reforms. Public awareness on the performance of "one-stop shops" must also be properly addressed, since it concerns the wellbeing of all individuals who may need these services at any stage in their lives. With the introduction of this system, all social services will be provided in one place, reducing the number of visits to different institutions.

RECOMMENDATIONS

- Build shock absorbers to increase the robustness of the pension system to withstand economic shocks and ensure macroeconomic stability in the country;
- Design oversight mechanisms to supervise the performance of the mandatory pension funds and commercial banks, with frequent revision of rules (quantitative restrictions and currency limitations regarding investment choices of the mandatory funds in financial tools) to support the robustness of the system;
- Ensure strong competition in local markets, build strong export-oriented local clusters, and attract "efficiency-seeking" multinational corporations to ensure successful implementation of pension reforms and provide access to high paying jobs;
- Have a clearly defined set of criteria to be used in designing mediation programs (employment services), taking into account international best practice in monitoring and evaluation;
- Set in place mechanisms to determine minimum wage that will take into account worker productivity and average monthly salary, in line with the principles of ILO Convention No. 131 and the Revised European Social Charter, regardless of whether the conditionality requirement is met;
- Set a timeframe for ratifying ILO Convention No. 181 on Private Employment Services, and clearly state the paragraph of Article 7 that Armenian will opt for.