



**PARTNERSHIP  
FOR OPEN SOCIETY**

**ARMENIA'S ENP IMPLEMENTATION  
IN 2013**

**YEREVAN, ARMENIA**

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## PREFACE

In this volume, we present the seventh consecutive annual monitoring report of the implementation of the European Neighborhood Policy (ENP) Action Plan. The report covers 2013, the final year of the two-year extension of the initial five-year implementation period.

The Action Plan of the ENP covers almost all aspects of democratic and economic domains and as such, it was deemed a comprehensive reform framework that would produce systemic and lasting change in the quality of democratic institutions, protection of rights and freedoms, and social justice. Acknowledging the potential of the ENP Action Plan to bring about democratic reforms and recognizing an opportunity to comprehensively address development goals, the Partnership for Open Society (POS) has monitored and reported on its implementation and progress. In summarizing the seven consecutive reports, we see documentation of a largely manipulated reform process that failed to meet its goals and pushed problems deeper by implementing superficial legislative “quick fixes”. In addition to measuring the reform process against the benchmarks of the Action Plan, civil society experts have provided a comprehensive analysis of how these surface level reforms contribute to and support a resurgence of authoritarian governance, and undermine the effective development of democratic institutions such as the parliament, judiciary, democratic elections, law enforcement, and the media.

While an analysis of the advantages and disadvantages of joining the Customs Union falls beyond the scope of this report, the quality of the decision-making process is a core segment of the ENP Action Plan and hence of this monitoring and report. The failure of democratic institutions and absence of accountable and responsible governance was fully demonstrated by the way the decision to join the Customs Union was made on September 3, 2013 – at the expense of the EU Association Agreement. This strategic decision has long-term and far-reaching implications on almost every aspect of social, political, and economic life in Armenia. It alters the country’s target development roadmap and destination, yet it was executed without any democratic oversight, with complete disregard to the democratic process, excluding branches of power that not only are entitled to, but had explicitly requested, to be part of such a decision-making process. Remarkably, no policy research or public debate of any kind preceded this decision, further demonstrating its arbitrariness and putting into question its intentions.

Some may question the need for carrying on with our work in this direction and launching this report. On the contrary, we believe that the value and usefulness of this report, along with our work in policy analysis and monitoring, have only increased in the current context. At this time, we need an honest and thorough reassessment of the current state of affairs, as well as a professional and unbiased analysis of how we got here. We believe that the seven-year monitoring process, and its corresponding annual reports, provide not only insight, but also effective tools that can be used by civil society and the general public to achieve positive, systemic, and irreversible change.

Over the past six years, while our monitoring data and analyses have been regarded as highly credible, the assessments and conclusions of the findings have often been deemed too critical and biased. We hope that in light of recent events that have so bluntly demonstrated the failures of

democratic institutions, there will be a renewed approach and a heightened sense of urgency by European policy analysts and decision-makers in continuing to support the development of a comprehensive reform agenda in Armenia. However, in order for such a reform agenda to be successful, it must be based on genuine improvements in the efficacy of institutions. These improvements must be measured not only by benchmark indicators, but by their impact on the ground, and by the degree to which fundamental rights and freedoms are protected, with the full and transparent participation of all stakeholders. Indeed, such an approach is necessary for building accountable governing institutions today, and safeguarding democratic processes in the future.

The 2013 monitoring report covers the following areas: elections; reform of the judiciary; fight against corruption; human rights and fundamental freedoms; right to property; gender equality and domestic violence; civil society; media freedom; rights of the child; economic development; environment; tax administration and customs.

The report was prepared by the following organizations and experts:

Armenian Association of Women with University Education  
Collaboration for Democracy NGO  
Ecological Right NGO  
Helsinki Citizens' Assembly – Vanadzor Office  
Helsinki Committee of Armenia NGO  
Asparez Journalists' Club  
Open Society Foundations – Armenia  
Protection of Rights without Borders NGO  
Transparency International Anti-Corruption Center  
Victims of State Needs  
Women's Support Center NGO  
Vahagn Ghazaryan  
Anna Makaryan

**ENP AP Priority Area 1:** *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

## **ELECTIONS**

### **Overview of the Situation**

According to the Constitution of the Republic of Armenia, presidential, National Assembly and local self-government elections, as well as referenda, shall be held on the basis of the right to universal, equal and direct suffrage by a secret ballot. Electoral rights in the Republic of Armenia (RA) are regulated by the Constitution and the RA Electoral Code, which was adopted on May 26<sup>th</sup> 2011, almost one year prior to a significant number of national and local elections.

The following elections took place in the Republic of Armenia during the 2012-2013 electoral cycle: National Assembly elections on May 6<sup>th</sup> 2012; Presidential election on February 18<sup>th</sup> 2013; and the Yerevan City Council elections held on May 5<sup>th</sup> 2013; along with over 1471 local self-government elections. By the end of this cycle, the distribution of political office seats indicated an increase in the standing of the ruling party on all levels of government – in the National Assembly, where it now holds an absolute majority; in the Yerevan City Council; and at the local level, often at the expense of opposition seats.

Domestic observers noted a number of violations, especially during the February 2013 presidential elections, including abuse of administrative resources, multiple voting, vote buying, carousel voting, intimidation, ballot stuffing, and falsification of the voting results<sup>1</sup>. The nature of violations has changed over time, moving from violent and overt forms of intimidation and harassment, to more discreet methods of multiple voting or vote buying. However, the scale of such “soft” violations has become so widespread that they undermine the free will of citizens and compromise the democratic legitimacy of the state.

***ENP Implementation Tool, Priority Objective 17: Carrying out legislative and institutional measures aimed at the implementation of the recommendations contained in the final reports of OSCE/ODIHR Election Observation Missions on the 2007 and 2008 national elections.***

The implementation of this measure, as outlined by the Action Plan, brought about the adoption of the new electoral code. After the May 2012 parliamentary elections, a working group was established by the instruction of the president, consisting of government representatives and other public officials. The working group was charged with studying the OSCE/ODIHR Election Observation Mission (EOM) Final Report on the 2012 parliamentary elections and observation reports by other organizations. Based on the recommendations of those reports, they were to prepare an action plan. In October 2012, the findings and recommendations of that working group were presented to the OSCE/ODIHR. The latter, based on international best practices on elections<sup>2</sup>, recommended refraining from making any legislative changes prior to the 2013

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<sup>1</sup> Report on the Observation Mission on Parliamentary Elections of 6 May, 2012. Helsinki Citizens' Assembly Vanadzor, August, 2012. Retrieved from <http://hca.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf>

<sup>2</sup> See paragraph II.2 b) of the Council of Europe Venice Commission's "Best practices on elections" which states that "the main principles of the electoral legislation, in particular, the electoral system, composition of the electoral commissions, and delineation of electoral districts, shall not be subject to change within one year prior to elections, or they shall be defined by Constitution, or other legal act of higher supremacy, than the law".

Presidential and Yerevan Council elections. Following this recommendation, no steps have been undertaken since October 2012 to continuing the implementing the recommendations contained in the final reports of OSCE/ODIHR Election Observation Missions on the 2007 and 2008 national elections.

Only citizens who are present in the Republic of Armenia on Election Day are able to participate in elections. The one exception to this limitation is in Article 60 of the Electoral Code, which permits electronic voting by members of the diplomatic corps and consular representations of the Republic of Armenia, as well as employees of overseas offices of legal entities registered in Armenia and family members who reside with them. According to Central Electoral Commission Decision 19-N, the process of electronic voting takes place in an uncontrolled environment as the only option. The Venice Commission and OSCE/ODIHR state 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”<sup>3</sup>. They add 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.

In Compliance with Article 47.6 of the Electoral Code, electoral commissions must undertake relevant measures for issues requiring urgent resolution. However, the criteria that determine which issues require urgent resolution and the measures that electoral commissions must take in case of such issues are left vague and unanswered, leading authorities to disregard the provision altogether<sup>4</sup>.

According to the Electoral Code, upon failure to adhere to campaign regulations, an electoral commission can apply to court in order to invalidate the registration of a candidate, a party or an alliance. Previously, the Venice Commission and OSCE/ODIHR had recommended the revision of Article 18.8 of the Electoral Code, according to which, in keeping with the principle of proportionality, a candidate’s registration would be revoked after a warning and a court decision for any violation of the campaign regulations. The amended provision now allows for a candidate’s 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 violations, running against the principle of proportionality<sup>5</sup>. 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, again, in keeping with the principle of proportionality.

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<sup>3</sup> Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May 2011. pg 13, pt 62

<sup>4</sup> Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 Retrieved from May, 2013. Retrieved from [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)032-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e)

<sup>5</sup> Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May, 2011. pg 10, pt 45

According to Article 28 of the Electoral Code, the CEC's Oversight and Audit Service is responsible for supervising the use of campaign funds and "financial activities of political parties". The Venice Commission and OSCE/ODIHR have repeatedly expressed concern about the CEC's role in providing oversight and auditing. They have stressed the importance of assigning this role to an independent agency, following best practice, which can increase public trust in the process and ensure proper functioning of the campaign finance system.<sup>6</sup> While Article 25.1 of the 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 intend to spend funds on their election campaign. As such, 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 its reporting.<sup>7</sup>

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, and complaint procedures. It also asked for the publication of 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 altogether, citing inappropriate timing with elections on the horizon, even though many of the suggested amendments would not have required any preparation on the part of the authorities. Indeed, the proposals would not have disrupted the upcoming elections; they would have enhanced the legitimacy of, and increased public trust in, 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 realization of the electoral rights and democratic elections is hampered by the ruling party's abuse of human and administrative resources. 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. There is clear evidence that even after recommendations from OSCE/ODIHR to change the practice of rejecting claims on technicalities, Territorial Electoral Commissions and courts continue to do so, mostly because of the clear absence of political will.

*While there is no reference to the practical applications of the Electoral Code in the ENP Action Plan, we find recent developments in this area an important indicator of Armenia's democratic development.*

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<sup>6</sup> Joint Final Opinion on the Electoral Code of Armenia, Council for Democratic Elections, Venice commission, 26 May, 2011. Retrieved from [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)032-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e)

<sup>7</sup> OSCE/ODIHR Election Observation Mission Final Report – Parliamentary Elections 2012

## **Electoral Administration and Civil Society Participation in the 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 (TECs), 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).

Any citizen who is not involved in public, social or political activities and who meets certain educational and professional experience requirements can be involved in TECs. However, there is no restriction preventing TEC members from holding 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,<sup>8</sup> this circumstance can undermine the independence of the commissions.

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 about this procedure as it can, and has, been used to limit civil society's capacity to monitor the electoral process.

In accordance with the Electoral Code, CECs and TECs are formed along nonpartisan lines, whereas PECs are comprised of representatives of political parties and alliances represented in the National Assembly, each faction appointing one member to the PEC. A new method for selecting CEC members has been defined by the new Electoral Code, which states that CEC members are formally appointed by the president for a term of six years, based on the recommendations of the Human Rights Defender (three members), the Chairman of the Cassation Court (two members), and the Chairman of Chamber of Advocates (two members). Candidates for CEC membership must meet certain requirements, have a degree in higher education, and work experience. Both CEC and TEC members are recruited for permanent positions. CEC members can neither be employed for other paid jobs (with the exception of being involved in scientific, pedagogic or creative work), nor be engaged in politics.

The political independence of electoral commissions is not guaranteed, either by law, or in practice. PECs, which are supposed to be politically diverse, include people who are employed by various state and community entities. PECs, in turn, have two members appointed by TECs, while the rest are representatives of 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 deficiency of PEC members is not their lack of electoral knowledge, but rather their lack of political will to ensure free and fair elections. As a result, instead of carrying out 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. They do so by following the basic commands

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<sup>8</sup> European Neighbourhood Policy: Monitoring Armenia's Anti-corruption Commitments, Transparency International Anti-corruption Center, January 2011. Retrieved from <http://transparency.am/dbdata/ENP2010-final-am.pdf>

of higher administrative bodies – TECs and the CEC. TECs and PECs often demonstrate systematic inaction. They do not fulfill some of their basic obligations, such as disciplining the unlawful interference of unauthorized persons, preventing gatherings outside precincts, and keeping official records of violations. TECs, in their turn, consistently reject complaints and applications of observers and oppositional political parties, basing their judgments exclusively on minor technicalities and with no consideration of the merits of the claims<sup>9</sup>. Moreover, electoral commissions and law enforcement bodies do not conduct proper objective examinations of the claims. As a rule, law enforcement bodies do not respond to crime reports in a timely manner and often reject initiating a criminal investigation or dismiss cases based on lack of *corpus delicti*.

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 a select 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<sup>10</sup>. 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 setting shorter terms for the examination of these cases, considering their urgency and impact on election results.

During their observation of the presidential election, the Helsinki Citizens' Assembly – Vanadzor Office recorded and submitted 61 violations. The NGO also issued statements through its website and through the media every four hours on Election Day. Police departments prepared materials based on the reported incidents, which resulted in nine decisions not to pursue criminal cases, and one decision not to pursue an administrative process. To date, there have been no decisions to open criminal cases on the rest of the reported violations. According to police reports, no criminal cases were filed for the 81 complaints on electoral violations during the presidential elections.<sup>11</sup> Moreover, the courts refuse to accept claims<sup>12</sup> about the failure of the police to properly investigate reports on electoral violations, citing the provision in the Electoral Code which only allows appeals by individuals whose “subjective right of suffrage” is violated, essentially denying litigation aimed at protecting public interests<sup>13</sup>.

According to the OSCE/ODIHR Election Observation Mission, there is a lack of public trust in the election administration and the judiciary. Public reluctance to report electoral offenses can be explained by a fear of repercussions<sup>14</sup>. Authorities widely abuse administrative resources during

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<sup>9</sup> HCAV Report on Observation Mission On The Parliamentary Elections of May 6 2012, Vanadzor 2012

<sup>10</sup> Post-Election Interim Report, 19-26 February 2013, OSCE/ODIHR and Human Rights Election Observation Mission, March 2013. <http://www.osce.org/odihr/elections/99931>

<sup>11</sup> See Appendix 1, *Charts on investigations of electoral*

<sup>12</sup> “According to the Court of Appeals of the RA, the Observer is not eligible to request from the RA Police to undertake steps towards the violations, recorded by the observer”. Press-Release, Helsinki-Citizens' Assembly-Vanadzor, May 23 2013. Retrieved from <http://hca.am/events/վերաքննիչ-դատարանի-կարծիքով-դիտորդն/>

<sup>13</sup> The Constitutional Court has stated in its SDO-906 decision adopted on September 7th 2010 that civil society has a role in pursuing public interests and demands of collectives and individuals, as well as in public management. It is through civil society that the public has an opportunity to provide independent oversight and control over state and local self-government bodies. The Constitutional Court has also recorded that this is especially true when there are violations of legal interests or subjective rights of a collective entity and not an individual

<sup>14</sup> RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission. Final Report, OSCE, May 2013. Retrieved from <http://www.osce.org/odihr/elections/101314>

the election campaign and on Election Day. Such abuses are mainly carried out by members of the ruling party, and in rare cases, by other political factions<sup>15</sup>. The abuse of administrative resources is manifested in the selective and discretionary application of the legislation by administrative authorities and is coupled with the partiality of administrative bodies<sup>16</sup>. Domestic observations revealed that during the election campaign and on Election Day, the ruling party used administrative resources to garner votes, while the politicization of TECs and other administrative bodies was used for concealing this abuse<sup>17</sup>.

Meanwhile, little-known NGOs, which have almost no track record of being engaged in democratic development or human rights issues, reveal themselves in full force and deploy observers on a large scale. Usually comprised of state employees such as teachers and civil service workers, they are deployed in almost every single polling station, and issue statements denying any violations, in an effort to provide legitimacy to the outcome of the elections<sup>18</sup>. Moreover, based on the observations of HCA-Vanadzor, these observers have been seen to openly support the interests of specific parties, namely the Republican Party of Armenia and the Prosperous Armenia Party.<sup>19</sup> The European Platform for Democratic Elections has addressed this formal involvement of some observation missions in its statement regarding the presidential election<sup>20</sup>. Domestic observations have shown that such organizations protect the interests of specific political parties and are directly or indirectly affiliated to these parties.<sup>21</sup>

## RECOMMENDATIONS

### Legislative Amendments

- Amend electoral legislation to safeguard the publication of voter lists after an election, in order to prevent multiple voting and ballot stuffing, and to provide civil society oversight of the process.
- Amend legislation to allow voters, groups of voters, and NGOs conducting observations to appeal electoral violations and advocate for public interest electoral reforms.
- Require electoral commissions to obtain evidence when examining complaints, as prescribed by Part 6 of Article 46 of the Electoral Code.
- Make an addendum to 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 prohibit public or state officials, as well as members of political parties, from membership to TECs.

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<sup>15</sup> Joint Final Opinion on the Electoral Code of Armenia, Joint Final Opinion on the Electoral Code of Armenia, May, 2011. Retrieved from [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2011\)032-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)032-e)

<sup>16</sup> RA Presidential Election, 18 February, 2013, OSCE/ODIHR Observation Mission, Final Report, OSCE/ODIHR, May, 2013. Retrieved from <http://www.osce.org/odihr/elections/101314>

<sup>17</sup> HCAV Report on Observation Mission On The Parliamentary Elections of May 6 2012, Vanadzor 2012

<sup>18</sup> Situation of Human Rights Defenders of Armenia, January 2011-November 2012, Helsinki Citizens' Assembly – Vanadzor, PINK Armenia. Helsinki Association for Human Rights, Rule of Law, November 2012. Retrieved from <http://hcav.am/wp-content/uploads/2013/02/Report-English.pdf>

<sup>19</sup> Report on the Observation Mission on Parliamentary Elections of 6 May, 2012, HCAV, August 2012. Retrieved from <http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf>

<sup>20</sup> EPDE statement on Presidential Elections in Armenia, 18 February, 2013, EPDE, February 2013. Retrieved from [http://www.epde.org/tl\\_files/EPDE/EPDE%20PRESS%20RELEASES/EPDE%20Statement%20Presidential%20Election%20Armenia%2018022013\\_final\\_EN.pdf](http://www.epde.org/tl_files/EPDE/EPDE%20PRESS%20RELEASES/EPDE%20Statement%20Presidential%20Election%20Armenia%2018022013_final_EN.pdf)

<sup>21</sup> Helsinki Citizens' Assembly Vanadzor (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> (pg. 15)

- Remove the knowledge test requirement for observers from the Electoral Code.
- Amend the RA Constitution and corresponding legislation to allow for an individual-based approach to the electoral rights of people convicted for minor crimes, so that they are not automatically deprived of their electoral rights.
- Make an addendum to Part 6 of Article 47 of the Electoral Code, specifying what qualifies as an issue requiring immediate resolution and what action the electoral commissions are required to take.
- Research the possibility of 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 spending.

### **Practical Measures**

- Ensure comprehensive, thorough and independent investigation by electoral commissions, judicial and law enforcement bodies.
- Ensure transparency of electoral processes through videotaping and online broadcast of the electoral process.
- Provide official feedback to recommendations made by organizations conducting observation missions.
- Reintroduce mechanisms for citizens residing abroad to exercise their electoral rights.
- Conduct trainings of PEC and TEC members, providing sufficient knowledge and skills about electoral processes and the rights of all individuals involved in the electoral process.

**ENP AP Priority Area 1:** *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

## **REFORM OF THE JUDICIARY**

### **Overview of the Situation**

Popular trust in the judiciary is extremely low in Armenia. According to Transparency International's Global Corruption Barometer, 67% of the Armenian population believes the judiciary to be corrupt or extremely corrupt<sup>22</sup>.

A major reform of the Armenian justice system was initiated with the adoption of the 2012-2016 Strategy of Legal and Judicial Reforms in the Republic of Armenia. The reforms outlined in this document are geared towards safeguarding an independent and accountable judiciary and improving the effectiveness of criminal justice, the criminal sentencing systems, administrative justice, administrative proceedings, civil justice, and the performance of procedural functions. An overarching reform strategy must be adopted, as the current strategy has several drawbacks. It fails to substantiate the choice or necessity of reforms in prioritized areas, does not contain an assessment of achievements and impact of previous strategies, and does not recognize corruption as a major risk in implementing this strategy. Moreover, it fails to justify how the proposed changes will complement and consolidate the judicial and legal reforms implemented to date.

Within this reform strategy, a new Criminal Procedure Code was drafted and discussed with lawyers, civil society actors, and criminal procedure experts. There is a tremendous need for a new Criminal Procedure Code that will effectively safeguard the rights and freedoms of people involved in criminal cases, however, the government has not taken any real steps in promoting institutional change in this sphere. A new Criminal Code Concept is currently being drafted, but it is a closed process in which civil society has not been consulted.

Meanwhile, the decision to join the Russia-led Customs Union, as announced by the president on September 3, 2013, may pose serious risks to the quality of the ongoing reforms. Many of the reform priorities were promoted and financed by the EU, in line with the requirements of the Association Agreement. The current diversion towards the Customs Union will lead to the approximation of legislation and policies with Russian ones, bringing about barriers for judicial independence.

On October 3, 2013, the RA president declared a general amnesty on the occasion of 22<sup>nd</sup> anniversary of Armenia's independence, and the National Assembly approved the list of amnestied citizens. On October 14, 505 prisoners were released.

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<sup>22</sup> Transparency International, *Global Corruption Barometer Armenia-2013*, available at <http://www.transparency.org/gcb2013/country/?country=armenia>

## **Judicial Independence**

### **Action Plan: Specific Actions under Priority Area 1**

*Ensure proper implementation of Constitutional Reform providing better separation of powers, independence of the judiciary and functioning of local self-government.*

*Ensure that the status of the Council of Justice is independent from the legislative and executive branches and that the Council can guarantee the independence of the judiciary and is the only and final instance with regard to issues related to the activities of judges and magistrates (during 2006).*

***ENP Implementation Tools, measure 25:*** *Effective continuation of the reforms foreseen by the constitutional amendments, including better separation of powers.*

***ENP Implementation Tools, measure 27:*** *Take practical steps to ensure independence of the judiciary and increase public trust towards the judiciary.*

In September 2013, authorities announced that they would be embarking on a new process of constitutional amendments. A special commission for constitutional reform, affiliated to the executive branch, was set up to lead this reform and as of October 11, the commission had held four working meetings. Although the directions for the reform were announced, no substantive justification was given on the need for embarking on constitutional reform. One of the issues included in the reform package is separation of powers and guaranteeing the principle of rule of law.

There have been some positive developments related to the qualification exams for judge candidates, following the amendments to the Judicial Code to make the interviews and written tests more transparent. The interviews and tests are live broadcast, as well as video- and audiotaped, and applicants can receive copies upon request. The testing and interview process can be overseen by representatives from the staff of the president, the Ministry of Justice, the Chamber of Advocates and NGOs. To mitigate the risk of conflict of interest, members of the Council of Justice cannot participate in the evaluation of candidates that are direct relatives (up to third blood line).

Nevertheless, the influence of the executive branch over judicial appointment, disciplinary sanctions, and the termination of judicial powers remains one of the most serious issues hindering the establishment of a truly independent judiciary.<sup>23</sup>

The compromised independence of the judiciary is also manifested in the practice of judges consulting with other judges (colleagues from the same court as well as other courts) prior to making their judgment. This is particularly prevalent between lower instance courts and the Court of Cassation, out of fear that the judgment will be reversed and the judge subjected to disciplining for an “illegal” ruling. The existing legal grounds and the practice of imposing disciplinary measures does not correspond to international standards and does not serve a legitimate purpose. Rather, it is used as a punitive measure for judges who attempt to go against the executive’s control. According to international standards, a judge may be disciplined only in

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<sup>23</sup> While the Justice Council proposes the list of judge candidates, the President has the power to choose “candidates acceptable to him” to be appointed judges (Article 117 of the Judicial Code), to promote judges (Articles 137(9) and 138(8) of the Judicial Code).

the cases of a violation of rules of conduct; in the Republic of Armenia, disciplinary liability is applied for both procedural and substantial breaches of law. Disciplinary sanctions are imposed upon judges for the contents of their judgments, which breaches the principles of the judges' independence and freedom to render decisions based on their beliefs. Moreover, the observation of a violation by a higher court, normally the Cassation Court, is deemed proof of the fact that a judge gravely and obviously violated the law and is grounds for disciplining. The decisions on subjecting a judge to disciplinary responsibility, including decisions on terminating the powers of a judge<sup>24</sup> are not subject to an appeal in any courts or administrative authorities of the Republic of Armenia. This practice strips judges of the possibility of an appeal and is a serious threat to any judge who would dare to act against executive power.

Another factor that compromises the independence of judges is the limited effectiveness of the self-governing bodies of the judiciary. This point was raised by the independent judicial system working group<sup>25</sup>. 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 majority of the core functions of judicial self-governing are vested with the Council of Court Chairmen, which forms the Ethics Commission and the Training Commission. Such a concentration of judicial self-governing is not in line with the philosophy of the independence of judges and self-governing 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 self-governing bodies of judges, but it is yet to be seen how this concept will lead to the improvement of judicial self-governing practices.

## RECOMMENDATIONS

- Improve the procedures for nominating judge candidates and appointing judges by removing the president's discretionary power in endorsing the list of judges.
- Modify the grounds for disciplinary liability of judges by establishing clear and precisely defined criteria in compliance with well-recognized international standards and best practice.
- Ensure internal independence in adjudication by removing the pressure placed on first instance courts by the Court of Cassation. Prevent the Court of Cassation from giving legal qualification to the nature of "violation of law" by a lower court, which should remain within the exclusive competence of the Council of Justice.

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<sup>24</sup> As defined by Article 157 (1) of the Judicial Code, the Justice Council, after considering the matter related to the disciplinary liability of a judge, may apply any of the following types of disciplinary sanctions against the judge:

- 1) Warning—this is applied for a disciplinary offence that the Justice Council considers an offence of the least gravity, unless the judge has another pending sanction;
- 2) Reprimand – this shall be combined with depriving the judge of 25% of his salary for a six-month period;
- 3) Severe reprimand – this shall be combined with depriving the judge of 25% of his salary for a one-year period; or
- 4) Filing a motion requesting the President of the Republic to terminate the judge's powers -- This is applied if the grave disciplinary offence or the regular disciplinary offences committed by the judge renders him incompatible with the judge position.

<sup>25</sup> 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, Strasbourg, March 2013, [http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic\\_reform/ENG%20March%20Report%20Independant%20Judicial%20Systems.pdf](http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic_reform/ENG%20March%20Report%20Independant%20Judicial%20Systems.pdf)

- Establish a mechanism that will ensure equal participation of judges in self-governing bodies; clarify the competences of these bodies, as well as the role of court chairs, which should be limited to representative and court managerial functions.

## **Prosecutor's Office**

### **Action Plan: Specific Actions under Priority Area 1**

*Following the reform of the Constitution (concerning separation of powers, independence of the judiciary) develop/adapt laws for the Procuracy in order to enhance procedures aimed at independence, impartiality, appointment and promotion of prosecutors, as well as the scope of their powers.*

***ENP Implementation Tools, measure 30: Implementation of reforms in the judicial system and modernization of Prosecution Law aiming at strengthening prosecutors' independence, impartiality, procedures of appointment and promotion.***

The issue of prosecutorial independence and the removal of investigative functions from prosecution remains an issue. Although a formally independent Special Investigative Service was established,<sup>26</sup> in reality it operates under the full control of the General Procuracy. On September 24, 2013, the president of the Republic of Armenia issued an order on the formation of a legal committee to support the establishment of a joint investigative body. The new investigative service will be established on the basis of investigative units operating within the State Revenue Committee, the Police and the Ministry of Justice. It is still unclear whether the two other services with investigative functions – the Special Investigative Service and the National Security Service – will fall under the jurisdiction of this new investigative body. Under the 2012-2016 Judicial Reform Program, an electronic management system was introduced for the prosecution office in an effort to raise the efficiency of prosecutorial functions, including control over the legality of preliminary investigation and inquiry<sup>27</sup>.

The tradition of a strong prosecutorial dominance persists, resulting in undue interference on the administration of justice. Prosecutorial influence is strongly manifested in the practical 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, with 2497 granted motions out of 2621 during 2012-2013. Prosecutors also influence the judiciary by using threats of retaliation for unfavorable verdicts, although such influence is specifically prohibited by Article 6(3) of the Judicial Code.<sup>28</sup>

One of the manifestations of these corrupt practices 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 official position, fraud and illegal seizure of property. As of September, two persons were suspects and 19 were accused<sup>29</sup>. The police are

<sup>26</sup> The function of this Service is to conduct pre-trial investigation of cases related to crimes committed by or with participation of senior officials of legislative, executive and judicial authorities or persons performing special state service in connection with their official position, as well as cases related to the electoral processes

<sup>27</sup> <http://www.genproc.am/en/121/item/7860/>

<sup>28</sup> American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012

<sup>29</sup> Hetq online, Retrieved from <http://hetq.am/arm/news/29621/datakan-kargadrichneri-gortsov-19-mexadryal-ev-2-kaskatsyal-ka.html>

also investigating the case of the head of the judicial department, who is suspected of taking large bribes in exchange for hiring people. On September 27, 2013, the head of the judicial department voluntarily resigned.<sup>30</sup> Investigation is still underway.

In 2013, the term of Prosecutor General Aghvan Hovsepyan expired and Gevorg Kostanyan, the military prosecutor, was nominated by the president and approved by the parliament as the new prosecutor general for a term of six years. This appointment raised a wave of protests among the public, as Gevorg Kostanyan made the decision to set free and clear of any wrongdoing the son of Suren Khachatryan, a former Armenian governor notorious for violent conduct. Human rights NGOs are appalled by this nomination as during his two-year term as military prosecutor, no real progress was made in the investigation of army-related deaths.

A new system for training judges and prosecutors is being developed in Armenia. According to the new law, the Justice Academy was created, where judges and prosecutors will be trained jointly. This change aims to optimize administrative and educational resources, contribute to the association of these two professions, and develop training courses under the same methodology.

## RECOMMENDATIONS

- Introduce a conflict of interest procedure in order to eliminate dependence and links between the judiciary and prosecution.
- Ensure de facto elimination of the investigative functions of the prosecution, and functional independence of investigators and of the new investigative body.
- Ensure independence of the Special Investigative Service by enforcing a transparent code of conduct based on the principles of the rule of law.

## Effective Implementation of Judicial Acts

### **Action Plan: General objectives and actions: Political dialogue and reform: Judicial reform**

*Increase the effectiveness of implementation of judicial acts envisaging alternative bodies (services) for enforcement of these acts.*

*ENP Implementation Tools, measure 27: Ensure effective execution of court decisions pursuant to national legislation; ENP Implementation Tools, measure 27: Modernization of service for the compulsory enforcement of judicial acts and adjustment to EU standards.*

As reported in previous assessments of ENP implementation,<sup>31</sup> the Service for Compulsory Enforcement of Judicial Acts<sup>32</sup> still fails to enforce judicial acts, especially if one of the parties to the case is the executive branch of power.<sup>33</sup>

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<sup>30</sup> Radio Free Europe/Radio Liberty, Retrieved from <http://www.azatutyun.am/content/news/25120047.html>

<sup>31</sup> Available at [www.partnership.am](http://www.partnership.am)

<sup>32</sup> The Law on the Service for Mandatory Enforcement of Judicial Acts was adopted in 2004. Based on the law, the Service for Mandatory Enforcement of Judicial Acts was established in the Ministry of Justice.

<sup>33</sup> For additional information, see the summary of the report on monitoring in administrative courts, conducted by “Protection of Rights Without Borders” NGO. <http://prwb.am/wp-content/uploads/2011/05/Zekuyc-HH-varchakan-ardaradatutyun-vorosh-himnaxndimeri-veraberyal.pdf>, page 122

Although the service is created within the structure of the Ministry of Justice, the minister does not have any direct influence or oversight over this structure, as its head is appointed and dismissed by the president. In practice, this means that the minister of justice has limited authority in sanctioning the head of the Service. This is of paramount importance, given that the Service for Compulsory Enforcement of Judicial Acts remains one of the most corrupt structures within the Armenian judicial system. Recently, a new scandal unfolded involving the head of the Service. As reported by *Zhogovurd* newspaper, about \$120,000 from state budget was used to buy cars for the Service from a company belonging to the head of the Service.<sup>34</sup>

## RECOMMENDATIONS

- Increase the role of the judiciary in the enforcement of judicial orders by establishing a procedure for immediate execution of the order through the judiciary, where possible.
- Reinforce criminal liability for non-execution of court decisions, especially for persons acting in an official capacity.
- Amend the law on the Service for Compulsory Enforcement of Judicial Acts to vest the minister of justice with the authority to appoint and dismiss the head of the Service.

## Free Legal Aid

### **Action Plan: Specific Actions under Priority Area 1**

*Improve the legal and particularly free legal aid system by improving and strengthening the system of advocates and develop a school of professional practice for young graduates in law.*

***ENP Implementation Tools:*** *Ensure access to justice in line with EU standards (measure 26), expansion of free legal aid (measure 32).*

On December 8, 2011, the National Assembly adopted amendments to the Law on Advocacy expanding the eligibility for free legal aid to representatives of vulnerable groups, insolvent persons, and civil and administrative cases. This is a positive step towards state regulation of free legal aid. The decision on granting the Chamber of Advocates with funds for hiring extra public defenders only came into effect in September-October 2012. According to the website of Chamber of Advocates, 56 public defenders are currently employed, out of which 28 are in Yerevan and 28 are in the regions. It is worth noting that some of the lawyers listed as a public defenders also work as private lawyers, so it is unclear how many lawyers are employed solely as public defenders.

Despite these positive steps, there are concerns about whether the Public Defender's Office will have the capacity to handle all these cases. According to monitoring conducted by Protection of Rights without Borders NGO, there is an uneven distribution of defenders between Yerevan and the regions, leading to an overload for some defenders. Many defenders do not have adequate time to prepare their cases and are thus unable to ensure quality and effectiveness of protection. An increase in the number of cases eligible for public defense should, in effect, lead to an increase in the number of defenders.

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<sup>34</sup> <http://168.am/2013/10/05/284550.html>

## **RECOMMENDATIONS**

- Improve the free legal aid system by adopting a standalone law on free legal aid; promote access to legal assistance by establishing a national authority charged with providing reliable legal aid.
- Create an oversight mechanism for the Public Defender's Office aimed at making their free legal aid system more effective.

**ENP AP Priority Area 1: Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.**

**CORRUPTION**

**Overview of the Situation**

Currently, Armenia lacks strong and effective anti-corruption institutions and mechanisms to fight corruption. The recently established Commission on Ethics of High-level Officials of the legislative and executive branches attempts to function effectively, but has limited jurisdiction. There has been no notable progress in the detection of corruption, and despite multiple investigative reports revealing criminal acts by high-ranking officials, very few of these cases have been pursued.<sup>35</sup> Of anti-corruption institutions are dependent on the president and are prone to political pressure by the ruling party.<sup>36</sup>

According to the report of the Deputy Prosecutor General, there were fewer cases of corruption crimes in 2012 than in previous years.<sup>37</sup> Moreover, 2012 saw a lower proportion of cases where the opening of criminal proceedings was rejected (418 out of 813 cases, or 51% in 2012, compared to 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 in 2011, to 180 in 2012. A large share of corruption crimes is related to tax evasion.<sup>38</sup> For the first half of 2013 this share was 52% (189 cases out of 363).<sup>39</sup> Tax evasion remains the most common corruption crime (167 out of 363 cases) in the first half of 2013, followed by abuse of official power (54 cases) and embezzlement committed by public office-holder and forgery (25 cases each). 48 cases were taken to court in the first half of 2013 and 66 persons were accused.<sup>40</sup>

Currently, the Armenian government does not have an anti-corruption policy-guiding document, as the 2009-2012 Anti-corruption Strategy and its Action Plan expired on December 31, 2012. However, a number of legal acts have been adopted by the Armenian National Assembly (almost all of them changes and amendments to the existing laws and codes), which address corruption risks in some important areas. One of the most important steps in this direction was the adoption

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<sup>35</sup>There is no adequate follow-up of cases related to high-ranking officials reported by TIAC. All 8 corruption reports (5 in 2012 and 3 in 2013) by TIAC on criminal acts of high-ranking officials (2 members of parliament, 2 ministers, 2 heads of committees under the government, the head of president's oversight service) addressed to Prosecutor General, Police and Special Investigative Service were rejected on the basis of absence of crime, without due examination of materials and with no proper justification.

<sup>36</sup>The Ethics Commission of High-ranking Public Officials has convened 2 sessions the RA National Assembly Committee on Ethics has held 14. Those mainly discussed applications of civil society organizations or activists regarding the misconduct of senior officials. Most of the applications addressed to the ethics commissions by TIAC (3 to the Ethics Commission of High-ranking Public Officials and 5 to RA National Assembly Committee on Ethics respect with behavior of high-ranking officials were rejected on the grounds of no identification of unethical conduct.

<sup>37</sup><http://www.pastinfo.am/hy/node/8223>

<sup>38</sup><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> -

[hetaqnnutyun%20ev%20naxaqnnuthayn%20ardyunqner%202012%20tarekan%20vichtvyalner.pdf](http://www.genproc.am/upload/File/Korupcion%20hanc-hetaqnnutyun%20ev%20naxaqnnuthayn%20ardyunqner%202012%20tarekan%20vichtvyalner.pdf);

[http://www.genproc.am/upload/File/Korupcion%20hanc -](http://www.genproc.am/upload/File/Korupcion%20hanc-datakan%20qnnutyun%20ardyunqner%202012%20tarekan%20vichtvyalner.pdf)

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<sup>39</sup>[http://genproc.am/upload/File/Korupcion%20hanc -](http://genproc.am/upload/File/Korupcion%20hanc-hetaqnnutyun%20ev%20naxaqnnutyun%20ardyunqneri%20masin%202013%201-in%20kisamjak.pdf)

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<sup>40</sup>[http://genproc.am/upload/File/Korupcion%20hanc -datakan%20qnnutyun%20ardyunqneri%20masin%202013%201-in%20kisamjak.pdf](http://genproc.am/upload/File/Korupcion%20hanc-datakan%20qnnutyun%20ardyunqneri%20masin%202013%201-in%20kisamjak.pdf)

of the Law on the Academy of Justice<sup>41</sup>, by which a unified educational institution for judges and prosecutors is being established. Through this institution, the training of representatives of different components of the Armenian judicial system (judges, prosecutors, bailiffs, public officials employed in judicial departments and prosecution bodies) is unified. This is achieved through the gradual integration of their educational programs and establishment of joint educational programs, all of which enable them to operate in close cooperation with each other. Another set of important changes relates to the qualification exams for candidates for the positions of judges.<sup>42</sup> The Judicial Code was amended with four new articles (Articles 115.1, 115.2, 115.3 and 116.1), which make the interviews and written qualification tests of candidates more transparent.<sup>43</sup> Besides these changes, through a change in the Judicial Code (see Article 104 of the Code), as a preventative measure for conflicts of interest, members of the Council of Justice cannot participate in the evaluation process of candidates who are direct relatives (up to third blood line).

Another area where very important anti-corruption measures have taken place is local self-governance.<sup>44</sup> In particular, newly introduced articles (10.1, 33.1 and 35.1) in the Law on Self-Government aim to foster citizens' participation in decision-making at the local self-government level. They enable any member of the community to initiate a motion to include an issue in the agenda of the council of elders meeting (after presenting a petition signed by a given number of community members). The newly introduced Article 54.1 of the Law regulates public participation in drafting the community development program and planning of the community budget. According to this article, an advisory council shall be formed to discuss these issues and public hearings shall be conducted prior to the adoption of these documents. Finally, Article 69 of Law on Self-Government was amended to include open public hearings prior to the presentation of the mayor's report on the execution of the community budget to the council of elders. Another recent development is the stipulation for meetings of councils of elders to be recorded and for the protocol of the meeting to be signed by the mayor and members of the council of elders.<sup>45</sup>

GRECO's Third Evaluation Round Compliance Report on Armenia, published on December 17, 2012<sup>46</sup> marked that Armenia's implementation of 16 of the 19 recommendations contained in the Third Round Evaluation Report was satisfactory. The remaining three recommendations were partially implemented. Recommendations were related to incriminations and transparency of

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<sup>41</sup> See Republic of Armenia Law on the Academy of Justice HO-50-N (adopted by NA on 2.05.2013) at [www.arlis.am](http://www.arlis.am)

<sup>42</sup> See Law on Making Amendments in the Judicial Code of the Republic of Armenia HO-90-N (adopted by NA on 20.06.2013) at [www.arlis.am](http://www.arlis.am)

<sup>43</sup> In particular, these interviews and tests are live broadcast, and those, who are in the site of the test (and in the case of the interview – in the building of the Council of Justice, where the interview takes place), can follow them. These tests and interviews are video- and audio-taped, and the applicant can receive the tapes upon his/her request. In addition, the conduct of tests and interviews can be overseen by representatives from the Staff of the President (1 representative), Ministry of Justice (1 representative), Chamber of Advocates (no more, than 3 representatives) and NGOs (no more, than 5 representatives). The evaluation and appeals commissions shall not include members of the Council of Justice. Finally, one of the three mandatory parts of the applicant's interview shall be on the judicial integrity, related to the ethical conduct of judges. It should also be mentioned that the Armenian Criminal Code was amended by an article (Article 332.4), which penalizes the violation of secrecy of the test questions.

<sup>44</sup> See Law on Making Amendments in the Law on Local Self-governing of the Republic of Armenia HO-72-N (adopted by NA on 19.06.2013) at [www.arlis.am](http://www.arlis.am)

<sup>45</sup> See Law on Making Amendments in the Law on Local Self-governance of the Republic of Armenia HO-30-N (adopted by NA on 2.05.2013) at [www.arlis.am](http://www.arlis.am)

<sup>46</sup> See *Third Evaluation Round: Compliance Report on Armenia* at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)21\\_Armenia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)21_Armenia_EN.pdf)

party funding; implementing such measures means either making amendments to existing legal acts, or developing relevant training courses and guides for law enforcement bodies. As a result of the implementation of the recommendations on the criminalization of corruption offenses, a number of changes were introduced in the articles of the Armenian Criminal Code related to penalizing corruption offences<sup>47</sup> and new topics were developed in the training courses and relevant guides.<sup>48</sup> Meanwhile, upon analyzing the statistics on corruption offenses for the first half of 2013, it appears that there were very few offenses falling under those articles of the Criminal Code that were changed, amended or introduced to comply with GRECO recommendations on incriminations. Out of 363 investigated cases, there were only four cases of commercial bribery, 16 cases of active bribery by public officials, and 3 cases of active bribery by public servants who were not officials. There were no recorded cases of bribery in sports, nor of active or passive abusive of power, although both practices are widespread.

The introduction of the new Electoral Code and changes and amendments made through the Law on Changes and Amendment in the Law on Parties, adopted by the National Assembly on February 9, 2012, helped to meet GRECO recommendations on the transparency of party funding, which, similar to those related to incriminations, were calling only for the improvement of the existing legislation in the area of political finance. However in practice, there have been no criminal cases related to violations of party or campaign funding, which most probably could be attributed to the government's lack of political will to disclose irregularities in political finance.

From June 2012 to May 2013, Armenia underwent the first cycle of review on the UN Convention against Corruption (UNCAC).<sup>49</sup> At this cycle of the review process, states party to the UNCAC are reviewed on the implementation of provisions of Chapters 3 (Criminalization and Law Enforcement) and 4 (International Cooperation). So far, there is no publicly available information on the status of Armenia's country review report.<sup>50</sup>

During its December 11, 2012 meeting in Paris, the Steering Committee of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN), one of whose members is Armenia, adopted the Working Program for the Third Round of Monitoring under the ACN

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<sup>47</sup> On February 9, 2012 NA adopted a law on changes and amendments in the Criminal Code in compliance to GRECO Third Round Evaluation recommendations. Due to these changes and amendments: a) request for and acceptance of an offer or promise of a bribe were criminalized, b) all persons who direct or work for, in any capacity, in private sector entities, became subject to criminal liability for commercial bribery, c) a new article (Article 312.2) criminalizing active trading of influence was amended to the Criminal Code, d) sanctions for "basic" active bribery of public servants, "basic" active commercial bribery and bribery in sports were raised, and, e) dual criminality requirement in respect of bribery and trading in influence offences committed abroad by Armenian nationals was abolished. The only recommendation related to incriminations that was only partially implemented was the revision of the automatic exemption from punishment granted in cases of effective regret.

<sup>48</sup> As a result of implementation of GRECO recommendations related to incriminations, training courses covering the topics "offering, promising, requesting and accepting offers of promises of undue advantages as autonomous offences" and "bribing public sector servants (including clerks, secretaries and other categories of employees not considered as public officials) as a corruption offence" were introduced and guides on those topics were developed by the Educational Complex of the Armenian Police.

<sup>49</sup> The first cycle of the review process started on June, 2010 and will end on May, 2014. All state parties to UNCAC, which have to undergo the review process, are grouped into 4 groups and countries in each group are reviewed during a one-year period. Armenia was included in the third review group, and as the other countries of that group, was reviewed from June 2012 to May, 2013. The second review cycle will take place from 2016 to 2020 and during that cycle the implementation of the provision of Chapters 2 (Preventive measures) and 5 (Asset recovery) will be reviewed.

<sup>50</sup> Transparency International (TI) global anti-corruption movement is closely monitoring the review process. It established the mechanism of parallel reports (country review "shadow" reports) and encourages its chapters to prepare such reports. Transparency International Anti-corruption Center (TIAC), which is TI's official chapter in Armenia, prepared its parallel review report. Its final draft currently is reviewed by TI Secretariat, and after that it will be publicized.

Istanbul Anti-Corruption Action Plan (IAP), which also covers Armenia.<sup>51</sup> Currently, the first stage of the monitoring process (the completion of a self-assessment questionnaire) is in process and it is planned to be completed by March, 2014.

*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 Whispera 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.<sup>52</sup> Despite the assurances of some high-ranking officials, including the prime minister himself and then prosecutor general of Armenia, to follow this case and inform the public about the results as soon as possible, at this time, no official information about its investigation is available.*

*A few days later, on June 13, 2013, the Chamber of Control presented to the National Assembly its annual report, which revealed corruption risks related to expenditure, which amounted to a huge figure – about 700 billion Armenian drams, or about 70% of the country's budget,<sup>53</sup> particularly pointing to the procurement and construction sectors.<sup>54</sup> This information became 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 the above-mentioned 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.*

*On September 20, 2013, the Department for the Protection of the State Interests of the Office of the Prosecutor General issued a statement.<sup>55</sup> In accordance with that statement, one day prior, on September 19, after studying the 2012 annual report of the Chamber of Control, the Department prepared seven criminal cases, six of which were sent to the police, and one to the Department of Investigations of the State Committee of State Revenues, for further investigation. It is worth mentioning that four out of the six cases sent to the police relate to the use of credits, loans and grants given by foreign states and international financial institutions to the Armenian Government.<sup>56</sup>*

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<sup>51</sup> An important novelty of this round of monitoring is that the “shadow” reports prepared by NGOs will also be considered by the country reviewers.

<sup>52</sup><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>  
<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>

<sup>53</sup>[http://www.hypress.am/index.php?sub=hodv&hodv=20130621\\_15&flag=am](http://www.hypress.am/index.php?sub=hodv&hodv=20130621_15&flag=am)

<sup>54</sup><http://www.coc.am/YearReportsArm.aspx?ReportYear=2012>

<sup>55</sup><http://www.genproc.am/am/234/item/8003/>

<sup>56</sup> All these 4 cases were projects co-financed through the mentioned credits, loans and grants and Armenian state budget. They were implemented by the project implementation units (PIU) of the relevant ministries or state institutions, and were related to the education, water sector, transportation and reconstruction of Arpa-Sevan water tunnel.

Though the situation with corruption in Armenia is already bleak, it could become even worse if Armenia joins the Russia-led Customs Union (CU). One may claim that the assistance rendered so far by European and US governments, the EU and international financial organizations aimed at reforming different sectors of Armenian economy and public administration have not reduced corruption in Armenia. However, there was hope that after signing the Association Agreement between EU and Armenia (the product of 3.5 years of negotiations) and acquiring the status of EU associate member, these reforms would be accelerated and would bring about serious changes. Considering the fact that Armenia is going to join a union, whose members (Russia, Belarus and Kazakhstan) consistently score even worse than Armenia on the Corruption Perceptions Index and other corruption-related indices, it is highly unlikely that the situation with corruption will improve after Armenia joins the CU.

### **Action Plan: Specific actions under Priority Area 1**

*Review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of civil society and business representatives in monitoring implementation.*

***ENP Implementation Tool, Priority Objective 29: Continue fight against corruption, join international anti-corruption structures, continue fulfilling international obligations.***

Four measures were foreseen to be implemented in 2009-2011 to achieve this Priority Objective. For each year from 2009 to 2011, specific results (outputs) were defined for each measure, and outputs for two out of the four measures (measures 2 and 3) have been achieved. Regarding measure 4, though the mentioned draft law and draft decree have not been adopted, the Law on Public Service of May 26, 2011 (which entered into effect on January 1, 2012), to some extent substituted the mentioned law.<sup>57</sup> It is also worth mentioning that so far, none of the sub-legislation acts that were outlined by the above-mentioned law and adopted by the Armenian government, address the issue of verification of assets and income declarations, which was intended to be the main subject of regulation through the Government Decree “About Approval of the Order for Substantiating Availability of the Property Subject to Be Declared by Declarant, the Right on the Property Ownership, Source of Income and Its Size”, mentioned in Measure 4.

***ENP Implementation Tool, Priority Objective 29, Measure 1: Continue meeting requirements of the “National Program of Corruption Combat” provisions; if required arrange for and carry out additional day-to-day-preventive measures.***

The government’s Anti-corruption Strategy and its Implementation Plan were in force from 2009 to December 31, 2012. Though these documents were well developed and comprehensive in terms of formulating policy and clarifying problems and measures to be taken, they were not adequately implemented in practice, nor were they monitored or evaluated. The monitoring and

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<sup>57</sup> The adoption of the law mentioned in Measure 4 would enable to establish the practice of declaration of assets and income for all natural persons residing in Armenia. At the same time, the Law on Public Service requires submission of such declarations only from high-ranking public officials (the definition of high-ranking public official is provided by Article 5 of the named Law) and part of their close relatives. It is worth mentioning that the Law on Public Service even narrowed the scope of declarers, compared to the Law on the Declaration of the Income and Property of Physical Persons, which was revoked effective after the Law on Public Service entered into effect. The scope of the previous Law was including, together with high-ranking public officials (and their close relatives) also physical persons, whose annual income was exceeding 8 mln Armenian Drams (AMD), as well as lower-ranking public officials.

evaluation methodology, which should have been developed in 2010, was not developed.<sup>58</sup> The government did take steps to engage NGOs in its very limited range of anti-corruption activities, such as invitations to participate in the sessions of the Council on the Fight against Corruption and the Open Government Partnership working group.

There have been only two interim monitoring reports on the implementation of the Anti-Corruption Strategy and Action Plan (for 2010 and first half of 2011)<sup>59</sup>, and the government still has not produced a final evaluative report.<sup>60</sup>

The RA Anti-Corruption Council held only one session in 2012 and none in 2013. The Anti-Corruption Strategy Implementation Monitoring Commission was entirely inactive.

Since January 2013, the Armenian government does not have an operational anti-corruption policy document. This fact points to the lack of resolve among the country's leadership to fight corruption. On the one hand, there are international obligations and expectations to be met; on the other hand, apparently there is a lack of true political will.

## **RECOMMENDATIONS**

- Publish the final report on the implementation of the 2009-2012 Anti-corruption Strategy and Action Plan.
- Considering serious deficiencies in the implementation of the previous Anti-Corruption Strategy and Action Plan, as well as the lack of positive changes in the perception of corruption among the population, businesses and experts, review the approaches on the formulation of the country's anti-corruption policy targeting only a few (2-3) crucial areas.
- Develop a new Anti-corruption Strategy and Action Plan and ensure appropriate funding for the planned activities based on the evaluation of the 2009-2012 Anti-corruption Strategy and Action Plan.

There were no developments regarding measures 2 and 3. As stated in the previous report, the relevant legal acts on the establishment of the practice of anti-corruption assessment by the government (measure 2) and introduction of the principle of "one-window" registration in Armenian governmental institutions (measure 3) have already been adopted. At the same time, neither the government nor non-governmental entities (NGOs, private sector or academic institutions) have carried out an assessment of the effectiveness of the introduced measures.

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<sup>58</sup> OECD Anticorruption Network for Eastern Europe and Central Asia Istanbul Anticorruption Action Plan Second Round of Monitoring Report on <http://www.oecd.org/corruption/acn/48964985.pdf>

<sup>59</sup> see at <http://www.gov.am/files/docs/914.pdf><http://www.gov.am/files/docs/915.pdf>

<sup>60</sup> Some of the planned activities of the Anti-corruption Strategy and its Implementation Plan 2009-2012 have been completed and others were not. For instance, each ministry had to develop and implement its own anti-corruption strategy, however only the Ministry of Education and Science has developed an Anti-corruption Action Plan, which however does not have logical connection with the measures of the respective section the Anti-corruption Strategy and Implementation Action Plan.

***ENP Implementation Tool, Priority Objective 29, Measure 4: Draft and adopt RA Draft Law “About Organization and Implementation of Control at Individuals’ (natural persons)” and Draft Government Decree “About Approval of the Order for Substantiating Availability of the Property Subject to Be Declared by Declarant, the Right on the Property Ownership, Source of Income and Its Size”.***

Similar to measures 2 and 3, no changes were introduced in 2013 regarding the procedures for the declaration of income and assets of high-ranking officials. Moreover, there are no changes to report in procedures for verifying those declarations. The launch of the official website of the Ethics Commission of High-Ranking Public Officials ([www.ethics.am](http://www.ethics.am)) can be considered as significant progress in the transparency of assets and income declarations of public officials; though the fact that this information is made public does not lead to legal repercussions for unlawful enrichment. However, according to the monitoring report of the website of the Ethics Commission of High-Ranking Public Officials carried out by the Committee on the Protection of the Freedom of Speech NGO, more than half of the high-ranking public officials (338 out of 660) did not submit their income and property declarations.<sup>61</sup> One very serious reason for this is that the legislation does not foresee any sanctions for failure to submit declarations, incomplete submissions, incorrect or even false information in the declarations.<sup>62</sup>

The Transparency International Anticorruption Center, which has done a great deal of work in this area, has come to the conclusion that one of the main factors that allows high-ranking public officials to underreport their income, is the gaps that exist in the relevant legislation. For example, as was noted in the previous ENP report, a high-ranking official can register his/her business under the name of a close relative. According to the Law on Public Service, relatives of high-ranking officials are not required to submit their declarations on income and property (relations of the at least the third degree of kinship or closer relatives, who do not reside with the official). Another gap in the current legislative framework is that a high-ranking official can transfer his/her shares in a company under trust management, which, considering Armenia’s reality, is simply a way to hide business activities.<sup>63</sup>

## **RECOMMENDATIONS**

- Introduce illicit enrichment as an offense in the Criminal Code and develop respective regulations to ensure the use of available information, such as assets and income declarations, and the pursuit of cases.
- Establish mechanisms to ensure that citizens can report the undeclared income or property of high-ranking officials.

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<sup>61</sup> The report will be published by the end of 2013.

<sup>62</sup> The Armenian Code of Administrative Delinquencies was containing an article, which was setting liability for presenting false data in the declarations of income and property of physical persons or presenting those declarations not in a timely manner (see Article 169<sup>17</sup> of the Code). However, instead of changing some provisions of that article to adapt it to the newly adopted Law on Public Service, which became the only law regulating the issues related to those declarations, Armenian National Assembly on November 29, 2011, abolished that article.

<sup>63</sup> This problem could be, to some extent, resolved, if the concept of beneficiary ownership would be widely used to disclose the illicit business activities of high-ranking public officials.

- 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 to the law enforcement bodies and to oversee the conduct of all high-ranking officials, including the president, ombudsman, and 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.
- Reintroduce punitive sanctions for submitting false data in declarations of income and property, and failure to submit declarations in a timely manner.

**ENP AP Priority Area 2:** *Strengthening of respect for human rights and fundamental freedoms, in compliance with Armenia's international commitments (PCA, CoE, OSCE, UN).*

## **HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**

### **Overview of the Situation**

Attacks on human rights defenders continue and the very institutions mandated with rights protection continue to restrict and limit the right to exercise fundamental rights. Throughout 2013, multiple peaceful protests took place in the streets of Yerevan in response to events such as the results of the presidential elections; the Yerevan mayor's decision to increase public transportation fees; the unlawful construction and destruction of historical-cultural monuments; and the unexpected and non-transparent decision of the president of Armenia to join the Customs Union. Although these protests were generally peaceful, the police used force and detention against protesters, and charged some of them with administrative offenses.

Abuse and disregard of human rights persists in penitentiaries, the police and the army. Overcrowding, ineffective use of non-custodial measures, and lack of adequate healthcare services remain problems in penitentiary system. Lack of impartial investigation into torture allegations and army deaths continues to exacerbate the atmosphere of impunity.

Intolerance towards minorities has been on the rise in 2013, as representatives of the Armenian Apostolic Church publicly declared that other religious denominations were a threat to Armenian society. Hatred towards sexual minorities was pronounced in light of the May 2013 adoption of the law on "Equal Rights and Equal Opportunities for Men and Women" and the possible adoption of an Anti-Discrimination Law, which was perceived by conservative groups as a threat to national values. Women's rights defenders were particularly targeted and harassed because of their work on gender equality, which was associated with homosexuality and pedophilia.

Intolerance is manifested not only in relation to minority groups, but also towards individuals and groups that question the unaccountable practices of the authorities, particularly of the president. On October 2, 2013, at the Council of Europe's Parliamentary Assembly session in Strasbourg, opposition parliamentarian Zaruhi Postanjan posed a question regarding President Serzh Sargsyan's "gambling habit". In response, in an October 10 interview with Yerkir.am, Deputy Minister of Sports and Youth Affairs Khachik Asryan, a member of the ruling Republican Party, called the Heritage party member a "vole from a Turkish garden" and called for "burning Postanjan at the stake."<sup>64</sup>

President Serzh Sargsyan's recent announcement that Armenia would be joining the Russia-led Customs Union and the implication that this would mean diverging from European integration are perceived by national civil society organizations as a serious threat to democratic development. Recent developments in Russia have led to increased control over civil society and limitations on freedoms, a practice that may potentially be duplicated in Armenia.

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<sup>64</sup> Following this statement, and given the overall atmosphere of hatred towards Mrs. Postanjan, she requested the Police to ensure her and her family's security.

## Freedom of Assembly

### **Action Plan: Specific actions under Priority Area 2**

*Install freedom of assembly in line with international commitments and recommendations of the Council of Europe and OSCE by further improving the law on rallies and demonstrations.*

*There is no reference to freedom of assembly in the Implementation Tools approved by the government. Nevertheless we find this area, and recent developments in this area, an important indicator of Armenia's democratic development.*

The current Law on Freedom of Assembly is generally in line with international standards. However certain provisions are problematic – an issue that was also raised by the Venice Commission.<sup>65</sup> Particularly, civil society is concerned that the prohibition of assemblies at a certain distance from the president's residence, courts and the national assembly; the prohibition of protests in the territory of historical and cultural monuments or in their immediate vicinity; and the obligation to give seven-day's notice prior to holding a protest, leave room for manipulation by authorities.

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

It is worth mentioning that the increase of civil disobedience and public interest in dissidence has become visible not only in the capital, but also in the regions. Along with the protests held throughout Armenia after the disputed presidential and Yerevan city council elections (including student strikes<sup>66</sup> and Heritage Party protest<sup>67</sup> against the announced results of the presidential elections) a number of other peaceful protests took place in different parts of the country. These protests were 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 right to freedom of assembly by using force and detaining activists, sometimes over the three-hour time limit set by law. The practice of prohibiting the use of tents continued, though there is no such prohibition in the law, leaving the protestors of the sit-ins to remain outdoors overnight.

With the rise of activism among the population, which is largely focused on the corrupt and undemocratic practices of national and local authorities, a new phenomenon 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 criticism of the government. The investigation of the attacks is currently underway, but there are already concerns with the impartiality of the investigation process.

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<sup>65</sup> <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282010%29049-e>

<sup>66</sup> <http://www.a1plus.am/en/social/2013/04/09/dasadul>

<sup>67</sup> <http://asbarez.com/109290/police-brutality-disrupts-peaceful-protest/>

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

On May 18, 2013 parents, relatives and acquaintances of 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 the Sevan-Yerevan highway so that this group could not reach the capital. According to Helsinki Citizens Assembly, the police used physical violence and psychological intimidation against protestors, and restricted their right to freedom of assembly by blocking their way and not allowing them to continue their 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 constitutional norms.<sup>68</sup>

On August 24, 2013, Argishti Kiviryan was detained and severely beaten in a police car by ten police officers, as the police dispersed protesters rallying against the illegal construction of a multi-storey building at 5 Komitas Avenue. After futile attempts to stop the construction, the public blocked Komitas Avenue to raise awareness of this issue. After Kiviryan's detention, the police opened a criminal case against him, charging him with use of force against police. The incident was not properly investigated. Police detained other activists from the same rally without giving legitimate grounds for detention, and kept them at the police station for longer than the legally allowed three-hour limit. The violation of the right to freedom of assembly and the illegitimate use of force by the police during this protest were pointed out by the RA ombudsman.<sup>69</sup>

The police routinely detain the activists of the sit-in by Yerevan city hall, releasing them after three hours. Some of the activists have been detained several times within the same day. Police claim that these protestors are disturbing the public order and have no permission to occupy the territory of the municipality. Activists are not allowed to pitch tents at the site of the sit-in; all attempts to do so have resulted in confiscation by the police. Activists were using their cars, parked in front of the municipality, as an alternative shelter, however the cars were crashed in suspicious circumstances and towed by the police.

## RECOMMENDATIONS

- Amend and bring in compliance with European standards Articles of the Law on Freedom of Assembly that create room for manipulation and restrictions by the state; shorten the seven-day requirement prior to assembly.
- Conduct impartial and transparent investigations of incidents where freedom of assembly has been restricted and police have used force; 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 investigations of attacks on activists.

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<sup>68</sup> <http://hcav.am/en/events/application-of-armed-forces-against-protestants-is-a-crime/>, <http://hcav.am/en/events/sevan-yerevan-highway-as-a-route-for-military-drills/>

<sup>69</sup> [http://pashpan.am/en/library/view\\_news/article/1085](http://pashpan.am/en/library/view_news/article/1085)

## Freedom of Association

Freedom of association is of particular concern in light of continuous attempts to introduce changes to the NGO Law, which started in late 2009, with an alleged aim of increasing control over non-governmental organizations.<sup>70</sup> Due to civil society pressure, this process was temporarily suspended. Efforts to amend NGO legislation continued in the following years by a newly established joint working group of representatives of the Ministry of Justice and NGOs, resulting in the drafting of a Concept for Institutional Development of Civil Society Organizations (CSOs) and Legislative Improvements.<sup>71</sup> The document suggests a number of legislative improvements to ensure a better environment for NGOs mainly addressing financial sustainability, management, volunteerism and reporting procedures. The Concept was publicly discussed in December 2012 and in April 2013, and has been submitted to the Ministry of Justice for approval. Most of the proposed changes were approved by civil society experts, yet the Concept still includes provisions related to additional obligatory online reporting for NGOs. It also calls for mandatory annual financial audits, and despite public demand and the Constitutional Court ruling (DCC No. 906, from September 7, 2010), does not provide the possibility for *actio popularis*, so adamantly advocated by civil society representatives. The Concept is expected to be approved by relevant ministries by the end of 2013, after which the working group will embark on preparing relevant legislative amendments for submission to parliament.

In parallel, another Concept on Civil Society Organizations Development was developed by the Public Council in 2012, which raised a number of serious concerns among CSOs as it seemed geared towards controlling the activities of CSOs rather than regulating them. Approval of the concept will create favorable grounds for limiting CSOs' independence; restricting the activities of international benevolent organizations; and centralizing both local and international funding of CSOs in the hands of the authorities. Currently, the draft concept is in circulation and has been submitted to the Ministry of Justice for assessment.<sup>72</sup>

The fact two CSO development concepts are being simultaneously circulated is worrisome. It keeps civil society in a state of uncertainty and speaks to the lack of coordination between government entities.

After the adoption of the law on "Equal Rights and Equal Opportunities for Men and Women" in May 2013, a serious debate was raised around the concepts of gender and gender equality. Stemming from this debate, a certain group of people began associating those concepts with homosexuality and pedophilia. The manipulations of the wording of the law, which was unanimously adopted by the parliament, resulted in spreading hate towards women's organizations and women's rights defenders who were called as "destroyers of families" and promoters of sexual abuse towards children and minors.<sup>73</sup> The Women's Resource Center was particularly targeted and received threats of arson. So far, the police have not taken any actions to investigate the case and punish the offenders.

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<sup>70</sup> See ENP reports for 2012, 2011

<sup>71</sup> [http://www.moj.am/storage/files/legal\\_acts/legal\\_acts\\_6609299985941\\_NGO\\_Concept\\_FINAL\\_version\\_15\\_04\\_2013\\_new.pdf](http://www.moj.am/storage/files/legal_acts/legal_acts_6609299985941_NGO_Concept_FINAL_version_15_04_2013_new.pdf)

<sup>72</sup> <http://www.publiccouncil.am/hy/documents/item/2012/10/22/program1/>

<sup>73</sup> <http://www.womenofarmenia.org/en/>

## RECOMMENDATIONS

- Initiate a broad discussion of the Concept for CSOs Institutional Development and Legislative Improvements.
- Ensure that the Concept addresses main concerns raised by civil society, does not contain provisions controlling NGO activities, and safeguards the right for NGOs to have legal standing in court.
- Properly investigate cases of threats and hate speech towards women's rights organizations.

### **Freedom of Thought, Conscience and Religion**

*There is no reference to freedom of religion in the Implementation Tools adopted by the government. Nevertheless we find this area, and recent developments in this area, an important indicator of Armenia's democratic development.*

Freedom of thought, conscience, religion and belief remains problematic both in legislation and practice. Since 2011, there were three attempts to make legislative changes to the Law on Freedom of Conscience and Religious Organizations. All draft laws were negatively reviewed by the Venice Commission. At the moment, based on our internal information, the Ministry of Justice is working on a new draft law, however no public hearings or discussions have been held so far. Based on past experience, civil society is concerned that no public hearings or discussions will be held on the new draft, prior to sending it to the Venice Commission or to parliament.

Religious intolerance still does not receive adequate attention from authorities. The media continues to play an important role in the instigation of religious intolerance by spreading false information about religious organizations. Newspaper articles, television and radio programs repeatedly produce hateful and offensive content towards those who are not members of the Armenian Apostolic Church.<sup>74</sup> Street walls are covered with leaflets with hostile messages and even calls for physical violence against religious minorities.<sup>75</sup> However, the authors of those articles and programs are never held accountable by state authorities.

On September 19, two organizations, Menq ("Us") and the United Youth League started gathering signatures to demand that authorities prohibit the work of several "sects" that they find damaging for the Armenian nation. They also released a list of famous Armenians that, according to them, are members of "sects". These organizations have unlimited access to media and continue to spread religious intolerance and hatred.

At a press conference on September 9, Archimandrite Komitas talked about a newly emerged denomination in Yerevan which promotes homosexuality and pedophilia.<sup>76</sup> Following his interview, on September 11 and 13, members of the Evangelical Church of Yerevan were attacked.<sup>77</sup>

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<sup>74</sup> See at <http://www.osce.org/yerevan/74894>; [http://armhels.com/DownloadFile/344eng-Freedom\\_of\\_Religion\\_in\\_Armenia.pdf](http://armhels.com/DownloadFile/344eng-Freedom_of_Religion_in_Armenia.pdf); [http://religions.am/eng/index.php?option=com\\_content&view=article&id=104:international-religious-freedom-report&catid=1:articles&directory=9](http://religions.am/eng/index.php?option=com_content&view=article&id=104:international-religious-freedom-report&catid=1:articles&directory=9)

<sup>75</sup> The organization behind these leaflets - "Mek Azg" (One Nation), operates openly, giving press conferences and appear on television, including Public Television.

<sup>76</sup> <http://armenpress.am/arm/news/732201/ukrainayic-hayastan-miaserakanutyun-qarozox-axand.html>

<sup>77</sup> <http://www.religions.am/arm/news>

*ENP Implementation Tool, Priority Measure 52: Evaluate and improve opportunities for civilian alternatives to military service, in line with the Council of Europe's recommendations.*

There are positive developments with regard to the new amendments to the Law on Alternative Military Services, adopted on May 2, 2013. The amendments are mostly in line with the recommendations of the Venice Commission and address important issues.

The amendments stipulate two types of alternative service: alternative labor service and alternative military service (not related to bearing arms). The latter, in essence, is still military service. The service term will be reduced from 36 months to 30 months for alternative military service, and from 42 months to 36 months for alternative labor service. In addition, military personnel will no longer supervise work done as an alternative to military service. Currently imprisoned conscientious objectors will also be allowed to apply for transfer. Time already served by conscientious objectors will be counted towards the total required length of alternative service and their criminal records will be removed.

Even though OSCE/ODIHR welcomed the proposed amendment to the structure of the Republican Commission<sup>78</sup>, human rights defenders still have concerns about its structure and the fact that the Republican Commission includes high-ranking officials from state agencies instead of relevant independent experts, who will potentially defend the interest of their respective agencies rather than the rights of the person in question. Moreover, the fact that the Republican Commission still includes representatives of the Ministry of Defense and the police preclude the effective detachment from military command and control, as highlighted in OSCE/ODIHR Opinion. The first full meeting of the Commission took place on October 23, during which 57 applications from Jehovah's Witnesses, including 6 applications from the current prisoners of conscience, were reviewed and approved.

Following the amnesty announced by the president and approved by parliament on October 3, 2013, nine imprisoned conscientious objectors were released on October 8 and 9, 2013. However as of October 31, 2013, despite the rulings of the European Court of Human Rights in *Bayatyan v. Armenia* and subsequent judgments, and despite the recent legislative changes, there are still 14 prisoners of conscience in Armenia, who applied for alternative military service. According to our information, their applications will be reviewed during the next meeting of the Commission, the date of which is yet unknown.

Even though the recent amendments are mostly in line with international standards and the Venice Commission recommendations, their implementation is yet to be monitored during the upcoming military conscription in November 2013.

## **RECOMMENDATIONS**

- Give an adequate and timely response to instances of instigations of religious hatred; identify and prosecute those spreading hate speech.
- Ensure broad consultation with civil society and all relevant stakeholders on the new Law on Freedom of Conscience and Religious Organizations.

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<sup>78</sup> OSCE/ODIHR Opinion on the Draft Law of the Republic of Armenia on Making Amendments and Supplements to the Law on Alternative Service Retrieved from <http://www.osce.org/yerevan/84996>

- Release 14 imprisoned conscientious objectors.
- Set a date for the next meeting of the Commission as soon as possible.
- Ensure effective implementation of the amended Law on Alternative Service and safeguard the right of conscientious objectors for alternative service.
- Create a mechanism for an adequate review process by the Republican Commission by establishing a transparent process of engagement of independent and specialized experts.
- Closely monitor the places for alternative military service to ensure a genuinely alternative service (conditions, oversight, attitude towards conscientious objectors )

## **Reform of Penitentiary**

### **Action Plan: Specific actions under Priority Area 2**

*Implement further reforms to the penitentiary system in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions.*

***ENP Implementation Tool, Priority Measure 35: Further reform of the penitentiary system: in this regard, take concrete measures in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the UN Committee against Torture, particularly through adoption of a program of actions for the implementation of the recommendations of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, as well as through facilitation of public oversight over the penitentiary institutions and preliminary detention facilities.***

As in the previous reporting period, there have been no regulatory or policy changes that would lead to improvement of detention conditions in penitentiaries. Civil society registers no improvement of the human rights situation in prisons, as reported by the Public Monitoring Group over Penitentiaries.<sup>79</sup> Overcrowding remains one of the biggest problems, which immediately leads to other serious rights violations, such as the inadequate provision of hygiene, lack of bed space, and a lack of normal sleep. The Civic Monitoring Group over Penitentiaries reports on the lack of access to natural light and permanent electricity, lack of access to permanent water and normal heating in winter, which amounts to degrading treatment. The group's data also shows an increase of deaths in institutions, the majority of which are due to health reasons.<sup>80</sup> The inability of the institutions to provide access to healthcare is conditioned by lack of funding and inadequate medical staffing. Despite the reports of the Civic Monitoring Group, the state does not respond even to emergency cases, when medical intervention is necessary to save the life of the prisoner.

As a result of the lack of access to basic services and conditions, there is an increase in corruption. Inmates acquire access to basic services as a paid privilege rather than a minimum standard that should be ensured by penal institutions.

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<sup>79</sup> Established by order of the Minister of Justice of the RA in 2005 for the purpose of public monitoring of the penitentiary institutions According to its procedure, the public monitoring group is committed to monitoring the protection of prisoners' rights in the penitentiaries, improving prisoners' living and working conditions, as well as developing recommendations for enhancing the RA prison legislation.

<sup>80</sup> 15 deaths in 2009, 34 deaths in 2010, 32 deaths in 2011 and 28 in 2012

According to the Helsinki Citizens' Assembly - Vanadzor Office, seven prisons out of the 13 that exist today in the Republic of Armenia are highly overcrowded. 12 to 20 prisoners are kept per 32 square meters; by Armenian law, the maximum number of prisoners per 32 square meters is eight.

The government plans to address the problem of overcrowding by building four new establishments over the course of the next ten years. The problem of overcrowding could have been addressed by using alternatives to imprisonment (which is also CPT's recommendation to Armenian authorities). In reality, detention is still the most popular measure of restraint, as the prosecution grants almost all the motions for pre-trial detention, with 2497 granted motions out of 2621 during 2012-2013. Only 17 of the 2873 motions to perform a search during the pre-trial investigation were rejected. This is later translated into conviction and serving time in prison, as the acquittal rate for Armenia is about 2%.

On the occasion of Armenia's 22<sup>nd</sup> anniversary of independence, the president announced an amnesty, which resulted in the release of 462 inmates by October 11, 2013.

## **RECOMMENDATIONS**

- Address prison overcrowding by making efficient use of non-custodial measures.
- Initiate impartial investigation of deaths in penitentiaries and make the findings public.
- Ensure access to health services for inmates by increasing the number of medical personnel, and ensuring that prisons have essential equipment and medications.
- Set up effective complaint mechanisms in penitentiary institutions.

### **III Treatment and Torture**

#### **Action Plan: Specific actions under Priority Area 2**

*Closely cooperate with OSCE and CoE to reform the police force, in order to eliminate the use of torture, other mistreatment and corruption, and to increase public trust in police.*

*ENP Implementation Tool, Priority Measure 51: Secure investigation into ill-treatment and torture, ensure the criminal prosecution of torturers, including in the armed forces, secure practical legal measures for victims suffering from ill-treatment and torture, their compensation and restoring them in their human rights.*

#### **Police System**

A large-scale system-level reform process is underway with the approval of the Reform Program for 2013-2014. The main goals of the reform are to make the activities of police more transparent, and to enhance the connection and cooperation between society and police. Yet the progress of this reform project is doubtful, as human rights violations are not being addressed adequately, in a manner that is in line with international human rights standards.

Ill treatment, torture, and unlawful actions on the part of police officers are still of major concern. According to the data of the Monitoring Group over Police Detention Facilities, in 2013, only 267 detainees out of 1676 applied to have a lawyer. This lack of access to legal counsel fundamentally strips detainees of an important safeguard against torture or ill treatment. The monitoring of the Armenian Helsinki Committee reveals reluctance from victims of ill treatment and torture to pursue their claims by submitting applications to relevant bodies because of fear of pressure or lack of trust in the credibility of investigations. In cases when an application is sent to the Special Investigation Service and to the prosecutor's office, a criminal case is either not opened or is halted because of the absence of evidence of crime. This is possible because the definition of torture in the Criminal Code does not meet the standard set by Article 1 of the UN Convention Against Torture. There is a loophole in the RA Criminal Code, which does not include the purpose or special subjects of the actions committed. The absence of these elements results in the prosecution of torture perpetrators under other articles and milder punishments. Currently, a Concept for the new Criminal Code is being drafted and it is yet to be seen whether this issue will be addressed. The drafting process is done behind closed doors and without the consultation of civil society.

Detainees are generally reluctant to complain of torture because of lack of trust in the justice system.<sup>81</sup> In cases when they do make torture allegations in the courtroom, there is no effective investigation to find and penalize the offenders<sup>82</sup> as the courts generally dismiss these allegations, and continue to use self-incriminating evidence during trial. The mandate of the Monitoring Group over RA Police Detention Facilities does allow for access to police investigator's rooms, where torture is allegedly used to acquire self-incriminating evidence.

#### **RECOMMENDATIONS**

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<sup>81</sup> Avetik Ishkhanyan and Robert Revazyan. Treatment of detained persons in police departments. Yerevan 2013,

<sup>82</sup> There is a loophole in the RA Criminal Code, which does not include purpose or special subjects of the actions committed. The absence of these elements results in prosecution of torture perpetrators under other articles and milder punishments.

- Adopt a “zero-tolerance” strategy for ill treatment or torture by guaranteeing full and impartial investigation into allegations of torture, and punishment of officials committing torture.
- Ensure access to legal counsel from the earliest stage of the deprivation of liberty.
- Guarantee access to ECHR jurisprudence, irrespective of any interrogation.
- Ensure that the new Criminal Code Concept contains a definition of torture in line with Article 1 of UN Convention Against Torture.
- Extend the mandate of the Public Monitoring Board over RA Police Detention Facilities to include all premises within the police where persons may be detained.

## **Army**

The human rights situation in the army remained problematic throughout 2013. According to HCA-Vanadzor, 15 incidents were recorded in the RA Armed Forces in the first half of 2013, only two of which were due to a breach of the ceasefire regime. Investigations of death cases are flawed, and relatives of the deceased soldiers say they have no faith in the impartiality of the investigation process. According to Helsinki Citizens’ Assembly – Vanadzor, during the first half of 2013, three deaths were classified as suicides, three as breaches of statutory relations, four as accidents, and two as a result of health problems. Yet, even within above classifications, the internationally accepted standard is for the state to assume responsibility for the life of a soldier during obligatory military service. An illustrative example is the case of E. Alaverdyan, who according to the official documents, committed suicide after a quarrel with a serviceman. The court’s ruling found this case to be incitement to commit suicide whereas the lawyer of Alaverdyan’s family claimed it was murder. Even though a proper investigation was not conducted, the court dismissed the case, rejecting charges against the military command and neglecting the state’s responsibility for life of the soldier.

On June 7, 2013 the military prosecutor’s office initiated a working group, involving NGOs, to study the cases of the deaths in the RA Armed Forces and to present their assessments on the effectiveness of investigations. Helsinki Citizens’ Assembly – Vanadzor and Journalists for the Future, two leading human rights NGOs that have done significant work in this area, announced their withdrawal from the working group in protest of the decision on a high-profile political case taken under the supervision of the Chief Military Prosecutor.<sup>83</sup> Both NGOs stated that it is impossible to work with the prosecutor in these circumstances.

## **RECOMMENDATIONS**

- Ensure comprehensive, thorough and impartial investigations into death, torture and ill treatment cases in the RA Armed Forces by an independent investigative body, rather than by military investigative service.
- Recognize the state’s responsibility for the life and health of servicemen under obligatory military service.
- Increase transparency of the military by establishing a civil society body to monitor the human rights situation within the armed forces, based on the positive experience of penitentiary and police monitoring groups.

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<sup>83</sup> <http://hcav.am/en/events/statement-regarding-quitting-enrollment-in-the-ra-military-prosecutor%E2%80%99s-office-commission/>

**ENP AP Priority Area 2:** *Strengthening of respect for human rights and fundamental freedoms, in compliance with Armenia's international commitments (PCA, CoE, OSCE, UN).*

## **MEDIA**

### **Overview of the Situation**

Years of experience have shown that the commitments of Armenia to make legislative changes aimed at ensuring diversity of broadcast media, improvement of media legislation and proper implementation of the digital switchover have not been fulfilled. For more than two years, legislative processes aimed at improving broadcast legislation in order to meet international standards for allowing and securing broadcast independence and diversity, have been inactive.

Prior to elections, authorities have made baseless assurances about respect for freedom of speech and journalists' rights. During the 2013 presidential and Yerevan council elections, broadcast media provided equal airtime to all candidates and parties/factions.<sup>84</sup> However, despite equal airtime, the content of reports was highly biased in favor of the ruling party. The 2013 elections were characterized by violent acts against journalists and hindrances to their professional activities.

While slander and insult cases against journalists and the media decreased after they were decriminalized, the situation is still worrisome and deserves renewed scrutiny. The decriminalization of slander and insult raises concerns because of the introduction of high monetary fines. Out of 14 court cases held from January to July 2013, nine plaintiffs demanded the maximum amount of compensation (1 million AMD for insult and 2 million AMD for slander). Moreover, seven plaintiffs are demanding 3 million AMD, for both slander and insult.

Broadcast licenses granted in December 2010 under the current legislation are valid for 10 years and have a negative impact on freedom of expression. These licenses<sup>85</sup> were granted through a tender conducted by a problematic<sup>86</sup> regulatory body with a complete lack of transparency, no clear licensing criteria and no guarantees of fair competition.

The transition process from analogue to digital broadcasting remains problematic. The tender for the formation and management of digital broadcasting multiplexes is not transparent. So far, the digitalization process has only resulted in diminishing pluralism on air by de facto decreasing the number of television companies.

Media concentration and poor transparency of ownership are increasing challenges for Armenian media; these issues endanger diversity of media content and pluralism, and undermine the independence of media.

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<sup>84</sup> Armenian Broadcast Media Coverage of Parliamentary Elections in 2012, Presidential Elections in 2013, and Elections to the Yerevan Council of Elders in 2013, Yerevan Press Club - [http://ypc.am/upload/Monitoring\\_2012-2013%20Electoral%20Cycle\\_eng.pdf](http://ypc.am/upload/Monitoring_2012-2013%20Electoral%20Cycle_eng.pdf)

<sup>85</sup> The TV companies that received the licenses do not have sufficient information on the digitalization process or expectations from them, financial or technical. As a positive step, the government allowed the regional TV companies that failed to get licenses to continue analogue broadcasting by mid of 2015 but it is not clear what will happen to them afterwards.

<sup>86</sup> Please refer to 2010 ENP Implementation in Armenia report at [www.partnership.am](http://www.partnership.am)

## **Action Plan: Specific actions under Priority Area 2**

*Ensure the independence of media by strengthening the independent regulatory body for public and private broadcasters, responsible for awarding broadcasting licenses and supervision.*

***Implementation Tools, Measure 19:*** *Successive steps to strengthen freedom of mass media; open and transparent process affiliation to appoint members of regulatory body in private and public broadcasting sector; license granting; enhance freedom of controlling body; enact measures to develop mass media freedom and pluralism; take stricter measures towards slander and insult, prosecution in cases of violence to mass media representatives, and other measures to secure safety in mass media.*

The regulatory body for broadcasters, the National Committee for TV and Radio (NCTR), is not a transparent institution. There is no mechanism through which society can influence the NCTR members' elections or oversee their activities. Four members of the NCTR are elected by the National Assembly, while the other four are appointed by the president. The current system of NCTR member selection and appointment does not guarantee 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; in the current situation, all eight members are appointed by the president and the ruling party. There are no reforms in place to change the system of member selection and appointment in order to guarantee the independence of NCTR members.

Lack of transparency of media ownership and concentration are increasing challenges that endanger diversity of media content and pluralism, and undermine the independence of media. Current legislation does not guarantee transparency, as it does not require the media companies to disclose their owners or benefactors. Such information is virtually inaccessible to the public.

There were fewer cases of slander and insult against journalists and the media in 2012 than in the 2011 (16 cases versus 36). 14 new cases have been brought to court in the first half of 2013.<sup>87</sup> The decriminalization of slander and insult raises concerns because of the introduction of high monetary fines, which further restricts freedom of expression and freedom of the press.

Although broadcasters provided equal conditions to all candidates and parties/factions during 2013 elections, editorial airtime allocated to pro-government candidates was of much higher quality compared with that allocated to the opposition. There was manipulative coverage of opposition candidates by the broadcast media. Some manipulations can be noticed in the coverage of activities and public events of certain political players, such as special filming techniques to make it seem like there are fewer people gathered at demonstrations than was really the case. As a result, the ruling political forces always get an advantage in their coverage by virtue of being in the government.

The 2013 presidential and Yerevan city council elections were characterized by cases of violence against journalists. On Election Day of the presidential election, five incidents were observed – two cases of physical violence against journalists and three cases of pressure on media and

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<sup>87</sup> Committee to Protect Freedom of Expression, Annual Report 2012; [On the Situation of Freedom of Speech and Violations of Rights of Journalists and Media in Armenia](http://khosq.am/en/reports/annual-report-2012/) <http://khosq.am/reports/2013-թ-Էրկրորդ-Էռաւօյալալիս-գէկույց/>

journalists. During Yerevan city council elections, eight cases of pressure on journalists and one case of physical violence were recorded. There have been more violations of the rights of journalists and the media in January to June of 2013 than there were in the same period last year. Six cases of physical violence against journalists, 34 cases of pressure on media and journalists, and six cases of violation of the right to seek and disseminate information were recorded by the CPFE.<sup>88</sup>

On September 30, 2013, the National Assembly adopted amendments to the RA Law “On Copyright and Related Rights”.<sup>89</sup> According to these amendments, conditions are stipulated for using news pieces, particularly, partial reproduction of a news piece of one print/online media outlet by another, without the author's consent and payment, shall be permitted only within reasonable limits. A reference to the source is required for partial reproduction of news pieces. If a material is an online reproduction from a print media outlet, its title should bear the name of the given media outlet. If a material is an online reproduction from another online source, its title should bear the name of the given online source, in Latin script, with a hyperlink to it. Moreover, full reproduction of a news piece shall be made only upon the author’s consent.<sup>90</sup>

### **Action Plan: General objectives and actions: Cooperation in specific sectors, including transport, energy, environment**

*Switch from an analogue to a digital system in the field of radio and television and approximate digital television and audio broadcasting to European standards.*

The transition process from analogue to digital broadcasting remains problematic. The digitalization process so far has only resulted in diminishing pluralism on air by de facto decreasing the number of television companies. The tender for the formation and management of digital broadcasting multiplexes was not transparent. The tender announced in 2012 for "Introduction and management of the RA terrestrial digital broadcast transmission services" was canceled because enough applications were not received. According to government’s decree of June 20, 2013, the responsible authority for the digital switchover is the Television and Radio Broadcasting Network state agency.<sup>91</sup> This decision was closed; the government made it directly without announcing a new tender and with no public discussion.

On June 14, 2013, based on the amendments made to the Law on Television and Radio, the deadline for the transition from analogue to digital broadcasting, and for analogue licenses of operation for regional TV channels, was extended by six months (until July 1, 2015). The deadline for digital radio broadcasting was extended by three years (until July 20, 2016).<sup>92</sup> The government justified the need for such amendments citing “essential technical, material and financial difficulties”, which occurred during the transition from analogue to digital

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<sup>88</sup> 1<sup>st</sup> and 2<sup>nd</sup> Quarterly Reports 2013. [On the Situation of Freedom of Speech and Violations of Rights of Journalists and Media in Armenia](http://khosq.am/en/reports/cpfe-quarterly-report-january-march-2013/), Committee to Protect Freedom of Expression - <http://khosq.am/reports/2013-թ-էրկրորդ-էռաւոյսլալիս-գէկույց/>

<sup>89</sup> RA Law to Amend the Law on Copyright and Related Rights, at <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=6214&Reading=1>

<sup>90</sup> Yerevan Press Club, “Weekly Newspaper, September 6-12”, at <http://ypc.am/bulletin/t/45744/ln/eng> (accessed 22 September 2013).

<sup>91</sup> Decision taken in the minutes of the Government session June 20, 2013 [https://www.e-gov.am/u\\_files/file/decrees/arc\\_voroshum/2013/06/qax24-24.pdf](https://www.e-gov.am/u_files/file/decrees/arc_voroshum/2013/06/qax24-24.pdf)

<sup>92</sup> Amendments to the Law on TV and Radio of 14.06.2013 <http://parliament.am/drafts.php?sel=showdraft&DraftID=30636>

broadcasting. Overall, the public is not informed about the process of digitalization. It is also unclear which vulnerable groups might benefit from state-supported provision of digital set-top boxes.

On June 6, 2013, the government released a decree that started the distribution process of digital dividend frequencies without developing a national digital dividend plan/policy, and without consulting with civil society, media organizations or telecom companies. It is proposed to sell 20 MHz-wide frequency for broadband mobile internet provision from the digital dividend frequency range, for 6 billion AMD (~15 million USD).<sup>93</sup> This decree raises digital dividend distribution transparency and accountability issues. It is not effective to start the distribution process of digital dividend frequencies without having a national digital dividend plan/policy developed with involvement of major stakeholders. Moreover, the price mentioned for this frequency allocation in the decree does not correspond with historic allocation prices made in 2010-2011.<sup>94</sup> Mapping of the whole frequency range is required to ensure optimal management of frequencies that will be released in the process of the digital switchover. This mapping will ensure guaranteed use of the whole frequency range and ensure that there are no non-usable frequency zones in the released spectrum. In the context of these processes, transparency and accountability issues remain unaddressed; the public is not informed about these processes.

The current broadcast law raises many legitimate concerns.<sup>95</sup> It is an obstacle to the liberalization of the broadcasting sector, to the development of competition, and to the diversity of television programs. A draft law has been presented to the Standing Committee on Education, Culture and Youth Affairs of the National Assembly, and it has been adopted as a basis for further development and discussion.<sup>96</sup> Several working groups have discussed various topics in an effort to incorporate them into the draft law and bring them up for the consideration of the National Assembly in 2013. However, no hearings have taken place to discuss the draft law at the National Assembly.

## RECOMMENDATIONS

- Fundamentally amend the Law on Television and Radio so it provides solid and real guarantees for pluralism and diversity in line with the OSCE/RFOM and civil society recommendations.
- Provide guarantees for the independence of NCTR members by reforming the system of member selection and appointment.
- Develop a national digital dividend plan/policy for the distribution of digital dividend frequencies, to ensure public benefit and transparency of the process.
- Amend legislation to make media ownership transparency a requirement for television, and for all types of media.

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<sup>93</sup> Decision taken in the minutes of the Government session June 06, 2013 [www.gov.am/tiny\\_forms/gnf.php?f=TNT-22-34-01.doc](http://www.gov.am/tiny_forms/gnf.php?f=TNT-22-34-01.doc)

<sup>94</sup> On 23.04.2010 40 MHz wide frequencies was sold to K-telecom for 990.000.000 AMD ( \$2.5 mln)

<sup>95</sup> Please see the review by the OSCE Representative on Freedom of the Media/RFOM, available on <http://www.osce.org/fom/68579>

<sup>96</sup> The first one was developed by a working group under the previous Ombudsman and sent to NA in March 2011. The organizations involved in drafting it worked on it further and submitted another draft in October 2011. This draft addresses the shortcomings of the current law. In December 2011 and October 2012, the Standing Committee discussed jointly-developed draft law with participation of state agencies and NGOs and it has been included on the agenda of the Standing Committee.

- Develop and carry out campaigns promoting the purpose and general advantages of the digitalization of broadcasting, and provide practical advice to media consumers on the use of digital television.
- Amend article 1087.1 of the RA Civil Code on moral compensation for slander and insult, reducing financial compensation by eight to ten times.

**ENP AP Priority Area 2:** *Strengthening of respect for human rights and fundamental freedoms, in compliance with Armenia's international commitments (PCA, CoE, OSCE, UN).*

## **RIGHT TO PROPERTY**

### **Overview of the Situation**

The right to property is enshrined in the Armenian Constitution and legislation; nevertheless this right is routinely violated. The biggest concern in this area is the policy on property alienation in favor of urban development under eminent domain. For such urban development projects, the government simply declares that the urban development program in the area of interest is dominant over the interests of the owners of expropriated property. The government acknowledges private property as under eminent domain and alienates that property, but it then passes its right of alienation and the obligation to pay compensations in favor of a construction company. Particularly, the government delegates its rights to the private company and declares in its decision, that the company has undertaken a contractual obligation to keep the government from liability for any damage that may occur as a result of the sale of property, in connection with the adequacy of compensation for the property. The company selection process is not transparent and there is no public information on the track record of the company. The process of property alienation is marred with lack of transparency and poses huge corruption risks, as the government has absolutely no oversight over the process. The monitoring data of Victims of State Needs NGO shows that none of the development projects that resulted in alienation of property for state needs were successfully finalized.

### **Action Plan: Specific actions under Priority Area 2**

*Ensure protection of the right to individual property.*

***ENP Implementation Tool, Priority Measure 41.B.18: Improvement of mechanisms for the protection of individual property rights, in accordance with European standards.***

Since 2007, when the Law on Alienation of Property for Public and State Needs was adopted, about 18 government decisions have been made on urban development in Yerevan. The monitoring of Victims of State Needs NGO for three urban development projects shows that 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, leaving the owners of expropriated property with no solution. To date, there has not been a single court ruling 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 alienation of property under eminent domain and transfers the right to development to new companies, which are owned by the very same people whose companies did not fulfill their obligations in previous programs. 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.

#### **RECOMMENDATIONS**

- Amend the law on "Alienation of Property for Public and State Needs" to bring governmental control over the process of compensation.
- Ensure transparency in the company selection process; provide full information on the track record of development companies to the public.

**ENP Action Plan: General objectives and actions:** Political dialogue and reform:  
Strengthening of respect for human rights and fundamental freedoms

## **GENDER EQUALITY AND DOMESTIC VIOLENCE**

### **Overview of the Situation**

In order to meet the 2009-2011 gender equality measures of the ENP Action Plan, the RA government submitted the draft law on “Ensuring Equal Rights and Opportunities for Men and Women” to the National Assembly; the law was adopted in May 2013. In the context of the continuous underrepresentation of women in political and public life, especially in leadership and decision-making positions, this represents an important step in the direction of reducing oppressive gender hierarchies at the legislative level. However, due to the misinformation and misrepresentation of definition of gender, which is not a new issue, but one that has been highlighted of late, amendments to the Law were proposed that would replace the definition of gender with the definition of physiological sex. The parliament delayed the discussion of these amendments for one year. One positive development is the establishment of Gender Policy Committees in Yerevan and in governor’s offices in all the *marzes* (regions) of Armenia. These new structures, headed by the deputy mayor and deputy regional governors, are designed to strengthen the capacity of public administration and local government officials to address gender equality issues on the policy and legislative levels and, ultimately, achieve the Gender Policy Concept goals, and the 2011-2015 Gender Policy Implementation Strategy at the local level.

Nevertheless, gender inequality and gender-based violence are continuously overlooked by policymakers. Women’s full realization of rights and equal participation in society are hindered by the existing power relations and gender disparity in social, economic, and political areas. Although policymakers have previously expressed that there is an increased priority on drafting legislation that would ensure equal opportunities for women, in practice, the government still fails to create a more favourable environment for women. While the government has already established Gender Policy Committees, law enforcement agencies, criminal justice officials, and local government bodies still lack the expertise, knowledgeable personnel, and sensitivity needed to deal effectively with gender discrimination in public and private sectors. To date, they have not taken sufficient steps to build the capacity of existing structures, which serves as a bleak reminder that the government is not genuinely committed to protecting women’s rights.

## **Specific Actions under General Objectives: Strengthening of respect for human rights and fundamental freedoms**

*Continue efforts to ensure the equality of men and women in social and economic life by implementing the adopted “National Plan for Improving the Status of Women and Enhancing their Role in Society”.*

### **Gender Equality**

*ENP Implementation Tools, Measure 53.B.30: Adopt a Concept Paper on National Gender Policy and implement measures toward the improvement of legal relations in this area;*

*ENP Implementation Tools, Measure 53.B.30: Submit the draft Law on Ensuring Equal Rights and Opportunities for Men and Women to the National Assembly of Armenia.*

The Law on Ensuring Equal Rights and Opportunities for Men and Women to the National Assembly was adopted in 2013. However currently, amendments to the Law are proposed for substituting the definition of gender by a definition for physiological sex. The revisions were proposed in light of the hysteria that arose over the definition of gender as an acquired trait, which led some to interpret the concept as an expression of perversion, which will promote homosexuality and transgender individuals. The public fear is associated with misinformation regarding these important issues, and is promoted by the fear of losing what is sacred such as traditions and family values.

Throughout 2013, an atmosphere of hatred and intolerance has been surrounding the organizations that advocate for equality and women’s rights. The Pan-Armenian Parent Committee, an organization that supports traditional values, has threatened the Women’s Resource Center NGO on Facebook, and has called for an action to bomb it. This organization has been sermonizing conventional values and persuading the public that European values are threatening our nation and its unity. Although the Pan-Armenian Parent Committee publicly threatened and clearly called for violent actions towards the Women’s Resource Center, authorities did not initiate an investigation. Member organizations of the Coalition to Stop Violence postponed their gender-related activities until the general atmosphere of intolerance settled down.

Women remain underrepresented in local and national politics, and are systematically excluded from leadership and managerial positions. However, in the aftermath of the May 2012 parliamentary elections, a positive trend was registered in the political participation of women in the legislative branch: the proportion of female MPs increased from 9.2% to 10.7%. Moreover, a woman was elected to the position of Deputy Speaker of the National Assembly, and the European Integration and the Human Rights and Public Affairs standing committees are currently headed by women. On the regional level, as a result of the local elections that took place on September 9 and 23, 2012, the number of women in local councils increased from 6.2% to 8.4%.

While some progress was made in the political participation of women over the course of 2012, the proportion of women in the National Assembly is still well below that intended by law. Armenia failed yet again to meet its international commitments to increase the number of women

MPs to 20%, and to increase the number of women mayors to 10%. In fact, the disparity between male and female policy makers is reinforced since the number of women-community leaders dropped from 2012 to 2013 (from 24 to 19) and there are still no female regional governors.

According to the Republic of Armenia State Employment Agency, at the beginning of 2013, the official number of unemployed individuals was 69,400, of which 49,200 (or 71%) were women. These statistics indicate a 6% unemployment.<sup>97</sup> However, the data provided by the agency is not representative of actual statistics. Furthermore, research suggests that there is widespread discrimination against women in the labor market because of employers' personal preferences.

## **Domestic Violence**

*ENP Implementation Tools, measure 53.B.30: Prevent and combat family violence by determining relevant prevention measures and punishment.*

*ENP Implementation Tools, measure 132: Enhance public awareness and promote the efforts for the prevention of domestic violence.*

While the Law on Domestic Violence was to be adopted in 2010 with other legal acts ensuring its enforcement in 2011, it is still pending at the prime minister's office. At the beginning of 2013, after two years of drafting the Law with a working group, the government rejected the draft law based on an announcement from the Ministry of Justice that several points in the law were unconstitutional. The government argues that a new Criminal Code is being drafted, which will address all the issues raised by women groups. The need for the adoption of one single, separate Law on Domestic Violence in the Republic of Armenia is conditioned by the following:

- The importance for people to recognize that violence conducted against women in the scope of domestic and interpersonal relationships within the family is domestic violence. The Law on Domestic Violence would assure awareness-raising in this sphere;
- The importance of recognizing domestic violence as an offense against the individual as well as the society, and the fact that such acts are punishable by law;
- The importance of establishing legal norms and regulations to prohibit violence against women in the family and in interpersonal relations, to protect the victims, their children and their guardians from such violence and to prevent further incidents;
- The importance of ensuring the victims of domestic violence maximum protection of the law, preventing them from underreporting domestic violence incidents due to fear of unwanted consequences.

In order to achieve the goal of prevention, the government has developed national instruments to address gender-based violence,<sup>98</sup> however a referral system is still pending and the responsibilities and competencies of actors who will be involved in the system have not yet been defined.<sup>99</sup> No progress has been registered in this area throughout 2013. Women's rights groups attempt to fill this gap by providing protection services to victims (including direct legal support

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<sup>97</sup> [www.employment.am](http://www.employment.am)

<sup>98</sup> Gender Policy Concept Paper; National Action Plan to Combat Gender-Based Violence; 2011-2015 Strategic Action Plan to Combat Gender-Based Violence; 2011 Action Plan to Combat Gender-Based Violence; 2012 National Action Plan to Combat Gender-Based Violence.

<sup>99</sup> This information was provided by the Ministry of Labour and Social Affairs.

and social programs). However, to really address the complex problem of gender-based violence (GBV)<sup>100</sup>, collective interventions are needed, covering a wide scope of activities.

## RECOMMENDATIONS

- Adopt the Law on Domestic Violence and set up a referral system for victims of domestic abuse in order to meet the goal of prevention and combat of family violence.
- Reject the proposed amendments to the definition of gender in the Law on Equal Opportunities for Women and Men.
- Create a series of awareness-raising campaigns for broadcast, print, online and social media outlets that would ultimately shift the perception that GBV is an acceptable cultural norm to an understanding that violence against women is a gross abuse of human rights.
- Incorporate gender issues into the development programs of the government and leading political parties.
- Build the capacity of government officials (police, Gender Policy Committee staff in the regions, judiciary officials) for gender monitoring, gender research, and policy outcomes evaluation.
- Conduct mandatory trainings for government officials, members of parliament, church officials, and political parties on gender, gender mainstreaming, and women's rights. This should be done in collaboration with UN Women, or a UN office representative, since Armenia adopted the UN's definition of gender ten years ago.
- Activate intellectuals, academia and other higher institution to speak out on gender issues.

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<sup>100</sup> United Nations Declaration on the Elimination of Violence Against Women (DEVAW) recognizes that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men. Available from [www.trust.org/dotAsset/abbf7e98-46fe-4579-850b-e18bebf04708.pdf](http://www.trust.org/dotAsset/abbf7e98-46fe-4579-850b-e18bebf04708.pdf)

**ENP Action Plan: General objectives and actions:** Political dialogue and reform:  
Strengthening of respect for human rights and fundamental freedoms

## **CIVIL SOCIETY PARTICIPATION**

### **Overview of the Situation**

The narrative, facts, and conclusions on civil society participation presented below are to some extent irrelevant, given the secretive nature of the decision-making process behind the most important political decision of the year – Armenia’s decision to join the Customs Union. Considering how other institutions within the formal power structure (i.e. Parliament, the judiciary, and even most of the government) were neither consulted nor informed about this decision, discussion on cooperation with civil society in the lawmaking process seems superfluous. Moreover, the lack of any real reaction to their exclusion from the decision-making process, on the part of these institutions and their leaders, demonstrates even more clearly their irrelevance in the country’s decision-making and lawmaking processes. For the sake of consistency and information sharing, however, we present the section below.

### **Specific Actions under General Objectives: Strengthening of respect for human rights and fundamental freedoms**

*Facilitate development of civil society*

*Implementation Tools, measure 19: Improvement and stimulation of co-operation with NGOs, with application of comprehensive lawmaking procedures and stakeholder participation.*

*Implementation Tools, measure 42: Further improve and activate cooperation with public organizations, particularly in the framework of drafting new legislation specifying lawmaking procedures, which will ensure participation of all stakeholders in the process. As a specific outcome, the ENP Implementation Tools mention developing and adopting the Decree “About Specifying the Order to Organize and Run Public Consultations.”*

The Decree on Defining the Order to Organize and Run Public Consultations, adopted by the government in March 2010, went into effect in 2011. Our assessment of the situation, as being one that lacks a meaningful and systemic consultative process, which we have presented in the three consecutive reports since the adoption of the decree, remains valid.

In 2013, there were clear instances when civil society’s opinions and positions on certain legislation were outright dismissed by the government, based on unsubstantiated reasons. A prime example is the Draft Law on Domestic Violence, which after a five-year process of cooperation between the government, international agencies and civil society, was dismissed by the Ministry of Justice on extremely questionable grounds, citing an absence of the need for such legislation. In reality, the need for such legislation is quite urgent, not only to address the wholesale impunity of perpetrators and the reluctance of law enforcement to act in domestic violence cases, but also because Armenia is obliged to specifically develop mechanisms for eliminating domestic violence under its UPR and CEDAW international commitments. Similarly, a seemingly consultative process of developing the Action Plan for the Human Rights

Strategy ended in the rejection of most suggestions made by human rights organizations and civil society groups.

The only meaningful and productive instance of civil society and professional community engagement in a legislative process is the work on the Law on Narcotics and the strategy for palliative care in Armenia, where the Ministry of Health has adopted most of the recommendations put forth by civil society experts, and has invited them to join the ministry working group in charge of this legislative change. There have been no other documented instances of productive cooperation between civil society and the lawmaking process.

The attitude of the authorities towards civil society monitoring and watchdogging initiatives, and the recommendations that come from these initiatives, remains equally dismissive and uncooperative. Specifically, civil society observation reports on violations and fraud during the presidential elections have largely been ignored or rejected. According to the RA Police Department, of the 104 election violations-related cases filed by civil society observers, 81 have been rejected, and 17 have been in indefinite investigation, while only six have had cases instigated. Moreover, civil society recommendations on proposed amendments to the electoral code have been rejected wholesale, again with no clear justification. (For more information, see the chapter on elections).

The selective participation of government representatives in civil society discussions indicates a clear and reoccurring pattern of discrimination against certain groups and topics. While it can always be argued that government representatives cannot be everywhere at all times, such patterns and attitudes exacerbate the culture of selective access for civil society and undermine the spirit of diversity and tolerance.

This year, human rights defenders came under direct attack, as youth groups, women's organizations and civic activists were specifically targeted for their activities. For over two months, civic activists were repeatedly ambushed and beaten by organized neighborhood gangs, with over ten incidences recorded thus far. To date, no genuine effort has been made by the police to find the perpetrators. There has also been an increasingly organized dissemination of propaganda of intolerance, including hate speech, ultra-nationalism and religious fundamentalism, directed against proponents of anti-discrimination legislation and women's and LGBT rights organizations. Similarly, no serious effort has been undertaken by law enforcement authorities to address these attacks. Such an environment of impunity encourages perpetrators to continue and intensify their attacks. Not only does it undermine the ability for a participatory and consultative process with diverse opinions and robust public discourse, it has in fact raised the level of intolerance in the society to unprecedented and dangerous levels.

## **RECOMMENDATIONS**

- **NONE**

**ENP AP Priority Area 3:** *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.*

## **RIGHTS OF THE CHILD**

### **Overview of the Situation**

As in the previous reporting period, the realization and implementation of children's rights on the national level remains an issue, both in terms of legislation, and in practice. In May 2013, the UN Committee on the Rights of the Child reviewed and provided the government of Armenia with the concluding observation on the submitted third and fourth combined periodic reports on the implementation of the UN CRC. The Committee urges the government to provide all the necessary resources for the effective implementation of the National Program for the Protection of Children's Rights. The committee also recommends taking necessary measures to provide the National Committee on the Protection of the Rights of Children with the required authority and resources to effectively coordinate actions for children's rights.

The legislation regulating this field contains vague and ambiguous provisions and does not provide practical mechanisms for enforcing the law. The Parliament adopted new amendments to the laws on Education and on Mainstream Education upon second reading<sup>101</sup> according to which the whole mainstream education system is to become inclusive by 2022. However, these amendments are not supported by a relevant implementation strategy, financial, human resources or other necessary measures.

The Civic Monitoring Board<sup>102</sup> over residential childcare institutions reports a large number of cases of violence against children in these institutions.<sup>103</sup> However, the board still faces substantial obstacles with access to, and independent monitoring of, all residential childcare institutions.

There is no special legal framework on juvenile justice and relevant legislation does not specify the unique needs of juveniles. There are no provisions requiring specialization of the judicial panel, bodies of inquest, prosecution, or lawyers dealing with juvenile cases. The Criminal Procedure Code does not provide safeguards ensuring the effective participation of juvenile defendants in criminal proceedings. The drafting of a new Criminal Code Concept is underway, which also regulates the age limit for juvenile offenders. There exists a concern that this new concept will lower the age limit of juvenile offenders.

**Action Plan: Specific actions under Priority Area 3 :** *Further implement projects in the field of protection of children's rights; Make further reform efforts in the fields of education, vocational training as well as continuous/adult education (to promote human resources development as one of the main pillars of the Government's Poverty Reduction Strategy);*

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<sup>101</sup> Final adoption is expected during the upcoming Parliamentarian session in October 2013

<sup>102</sup> On March 12, 2010, upon the order of the RA Minister of Education and Science, a Civic Monitoring Board was set up with a mandate to monitor special educational institutions under the Ministry of Education and Science

<sup>103</sup> Monitoring Report by the Civic Monitoring Board, April 15 – July 15 2012

***Implementation Tools, Measure131.E.14: Ensure the implementation of the provisions of the UN Convention on the Rights of the Child, introduction of supervision mechanisms, and continuation of efforts for improving the National System of the Protection of the Rights of the Child.***

With funding provided by the EU in 2012, the Ministry of Labor and Social Issues initiated the development of the new 2012-2016 Strategy on Protection of the Rights of Children (Strategy), and the restructuring and strengthening of the supervisory role of the National Committee for Child Protection. However, the draft Strategy was not made public and civil society had no opportunity to contribute to its development. The Strategy was approved in December 2012 for the period of 2013-2016. Following its approval, the new National Committee on the Protection of the Rights of Children (the Committee) was established. It is chaired and coordinated by the Ministry of Labor and Social Issues. However, in 2013, there has been no solid investment or improvement in either the implementation of the Strategy, or the operation of the Committee.

At the end of 2012, Save the Children Armenia introduced the Child Protection Referral System, which was developed in the scope of EU funding. The referral system was transferred to the Ministry of Labor and Social Issues (MoLSI) for further elaboration and implementation. The introduction of the referral system, which was designed on the basis of the existing three-tier child protection system, happened in parallel with the piloting and adoption of the new Integrated Social Services, which was initiated by the government with the support of UNICEF. Although the developers considered the possibility of adjusting the referral system to meet the needs of the newly introduced Integrated Social Services, in 2013, the MoLSI initiated the development of the new child protection referral system, ignoring the existing referral system.

In July 2013, the Civic Monitoring Board released its 2012 monitoring report. The Board identified a number of child abuse and violation cases, but the identified cases were not properly examined or addressed by responsible authorities due to the incomplete and non-functional child rights protection mechanisms. Moreover, in 2013, the ministries of Education and Science and Labor and Social Issues did not authorize the Board to monitor the institutions under their supervision, and requested revision of the monitoring tools and standards. Though all requested materials have been properly developed and provided to the ministries, the mandate is not yet provided and negotiations are still underway. As of October 2013, the Ministry of Territorial Administration is the only ministry that authorized monitoring of its institutions.

In 2012, the Ministry of Education and Science came up with an initiative to shift from the division of inclusive and non-inclusive schools towards inclusion for all. According to the Ministry of Education and Science, by 2022, all mainstream schools should open their doors to children with special educational needs. However, neither education experts nor representatives of the ministries involved (ministries of Education & Science and Finance) can forecast the dynamics of inclusive school growth by 2022, or determine the capacity of the state budget to foster more than 1400 inclusive schools in Armenia. Above all, no principal financing mechanisms are foreseen to guarantee inclusion for all.

## **RECOMMENDATIONS**

- Develop a set of indicators to measure the actual progress towards implementation of the 2013-2016 Strategy on the Protection of the Rights of Children and ensure operation of the National Committee on the Protection of the Rights of Children.

- Ensure adaptation of key aspects of the existing Child Protection Referral System in the development of the new child protection system and Integrated Social Services.
- Develop a strategy and action plan for the realization of the mainstream education reformation towards inclusivity and ensure civil society participation through public discussions.
- Ensure civil society access to all residential childcare institutions to monitor and report violations of the rights of children.

**ENP AP Priority Area 3:** *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.*

## **ENVIRONMENT**

### **Overview of the Situation**

In 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 decision-making process continues to be non-transparent and unaccountable. The new draft law on Environmental Impact Assessment was drafted and presented to the National Assembly, but is not yet adopted.

**Implementation Tools, measure 119/E2:** *Improve mechanisms for poverty reduction and gradual poverty eradication, ensure implementation of the provisions of the Sustainable Development Program 2008-2021.*

- *Develop the action plan for the 2009-2011 sustainable development program.*
- *Develop the conceptual framework of the SDP monitoring indicators system and build institutional capacity for implementation of the monitoring.*

This activity has not been implemented.

**Implementation Tools, Measure 143/E26:** *Follow the EU best practices in the development and implementation of reforms necessary for improving environmental governance.*

- *Draft the Republic of Armenia Law on Expert Assessment of the Environmental Impact and the relevant sub-legislation.*
- *Create a program on the development and enforcement of the strategic environmental assessment system of state environmental review and environmental impact assessment, and implement the relevant EU requirements.*
- *Work towards the development of national legislation to ensure implementation of UN ECE Espoo Convention, in accordance with the decision of the 4<sup>th</sup> Conference of Parties to the Convention.*

In February 2012, amendments proposed by the government to the Republic of Armenia Law on Expert Assessment of the Environmental Impact were adopted by the National Assembly, 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.

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). Red Book plant species were

presented in the EIA of the first draft project for Amulsar mine, however in the second expanded draft, this data was missing. In the EIA for the exploitation of Mazre mine, located near Shikahogh Reserve, the data on potential the impact of the mine on the reserve was not presented at all.

***Implementation Tools, measure 146/E29:*** *Enforcement of further economic development, increase in the efforts aimed at poverty reduction and social harmonization, thus contributing to long-term goals of sustainable development.*

- *Agree upon the vision for sustainable economic development of the country, and implement a respective program.*

Mining remains a key sector for economic growth in Armenia, which is developing intensively and without much regard to the principles of sustainable development. In the territory of Armenia, which is about 29,000 square kilometers, there are currently over 670 mines, according to official figures. Extraction rights were issued for 26 metal mines (81% of all metal mines) and for 398 non-metal mines (70% of all non-metal mines). There are 15 tailing dumps on the territory of Armenia, which occupy 700 hectares of land. 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 alternative development of the regions.

***Implementation Tools, measure 148/E31:*** *Advance reforms of the environmental sector in accordance with EU requirements, the Aarhus Convention, and the Kyoto Protocol, and continue reporting on the implementation of the provisions of the Kyoto Protocol.*

- *Submit national reports on the implementation of the Aarhus Convention and the execution of decision III/6b of the Third Meeting of Parties to the Convention held in Riga on June 11-13, 2008.*
- *Deepen reforms in accordance with the EU standards in the field of environmental monitoring, develop national environmental indicators and methodology for comprehensive reflection of the state of the environment to ensure effective environmental governance, and develop national state-of-environment reports based on them.*

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.<sup>104</sup>

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<sup>104</sup> 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.

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.<sup>105</sup> 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.

Due to a 2011 decision rendered by the Cassation Court, NGOs and natural persons face obstacles in exercising their right to apply to the courts in relation to environmental violations or flaws in implementing the Aarhus Convention. In 2011, Armenian NGOs filed a communication to the Aarhus Convention Compliance Committee and by a decision rendered on June 28, 2013, the Committee stated that Armenia failed to meet the standard for access to justice for NGOs (Article 9, paragraph 2).<sup>106</sup> Nevertheless, this decision has not yet led to steps to change of court practice so that NGOs have legal standing in the court. The new NGO Law Concept, which is developed by the Ministry of Justice in 2013, again strips NGOs of the right to have access to court, as there are no specific provisions in the concept safeguarding this right.

***Implementation Tools, Measure 149/E32: Improve the performance of structures dealing with protected areas, waste management, combating desertification, nature protection, and environmental impact assessment.***

- *Develop and maintain a cadastre of protected natural areas, and implement measures aimed at protection of the flora and fauna.*
- *Develop and maintain registers on waste formation, processing, and recycling entities, and on places of its disposal.*
- *Develop and maintain a state cadastre of waste.*
- *Develop the principles of safe management of tailings dams.*

Although some activities planned under the ENP Action Plan have been carried out, the general conduct of public authorities in these areas has not served the objectives of improving the performance of structures dealing with protected areas, waste management, combating desertification, nature protection, and environmental impact assessment. 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. At the same time, over 99% of the waste produced in the Republic of Armenia is mining waste, which is not taxed under the current legislation and the mining companies bear no responsibility of 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 number of myocardial infarction and stroke, hypertension, gastrointestinal diseases, fatigue, malignant tumours, allergies, birth defects, infertility, respiratory diseases, headaches, and diabetes.

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<sup>105</sup> Please refer to Partnership’s reports on ENP implementation [www.partnership.am](http://www.partnership.am)

<sup>106</sup> <http://www.unece.org/env/pp/compliance/compliancecommittee/62tablearm.html>

### **Areas not covered by the Action Plan**

Armenia's forest resources remain endangered and the government has not taken any active steps in addressing the situation. Illegal logging continues, and credible official data on this issue has not been presented.

The Republic of Armenia is implementing a large-scale program to develop renewable energy, namely hydropower, while the environmental impact of such a program has not been properly assessed. Events that occur every day in this context demonstrate the potential ecological and social consequences, such as the complete destruction of ecosystems or access to water resources for lowland communities.<sup>107</sup>

### **RECOMMENDATIONS**

- Improve the legal framework for the protection of the environment, ensuring separation of functions of policymaking, resource management, resource use, and oversight, precluding conflicts between different legal acts and eliminating conflicts of interest. Promote the role of the Ministry of Nature Protection in making decisions related to the environment and in oversight, rather than the performing resource management functions.
- Streamline legal documents, ensure proper implementation of environmental legislation, and improve the enforcement of fines/penalties for violations of the law in line with the EU Directive on Environmental Liability. Improve the system of nature protection and nature use fees, especially by introducing the “polluter pays” principle in the mining sector. Use separate “command and control” tools and “market-based” mechanisms in developing environmental policy. Develop methodologies for assessing the impact of economic activities on ecosystems and human health and cost-benefit analysis methodologies, turning them into the basis for environmental impact expert assessment reports and compensation for environmental damage.
- Adopt the Environmental Impact Law and ensure that by-laws are adopted within one year; ensure that a system is in place for proper implementation of the law. Implement a pilot project under the Espoo Convention and carry out a trans-border strategic environmental assessment of the second phase of the Teghut Mine operation.
- Make decisions on the basis of the principles of sustainable development and green economy, the available information on existing resources, and long-term strategic programs. Finalize the inventory of all reserves and publish complete information about their availability and utilization. Discontinue the practice of changing the designated purpose of land and allocating forests and other public areas for economic activities. Include forest management in the future programs of EU-Armenia cooperation.
- Expand the scope of environmental education possibilities by incorporating the subject of environment protection in the mandatory curriculum of all educational institutions, and providing adequate resources and modern educational technologies. Implement regular trainings for staff and introduce new methodologies/techniques.

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<sup>107</sup> Residents Protest against Hydropower Plant in Marts River, Retrieved from <http://www.bidocean.asia/Asia-tender-business-news/97821-AM--Residents-Protest-Against-Hydropower-Plant-In-Marts-River.html>

**ENP AP Priority Area 3:** *Encourage further economic development, enhance poverty reduction efforts and social cohesion, thereby contributing to the long-term objective of sustainable development, including the protection of the environment.*

**ENP AP Priority Area 4:** *Further improvement of investment climate and strengthening of private sector-led growth.*

## **ECONOMIC DEVELOPMENT**

### **Overview of Situation**

The 2011-2013 National Indicative Program<sup>108</sup> for Armenia was designed to determine the main Priority Areas towards which EU assistance would be channeled: trade and investments (with focus on DCFTA); improved regulation in regard to various sectors of the economy; social and economic reforms; and sustainable development. Without the DCFTA, the role and successive implementation of reforms stated in the ENP 2012-2013 Action Plan cannot be considered a priority. Considering recent developments, those reforms are under serious risk of being discontinued. With the political decision to join the Russia-Belarus-Kazakhstan Customs Union (CU), Armenia now needs to start a costly process of negotiation over the format of joining the CU<sup>109</sup> under an increasingly unsustainable economic system with widening disparities in wealth and income, negative effects of entrenched corruption, and the barriers to market reform from powerful commodity-based cartels. In the given context, without having a comprehensive democratic institutional reform component in place, any economic reform is almost doomed to failure, with the assumption that “playing on both sides” cannot go on for very long.

However, in the given situation, a review of important metrics of economic performance for the first eight months of 2013 mainly reflects the progress reported in the past couple of years, and the current reform structure (implemented in January-August 2013). This analysis will identify the main economic policy directions and trends in order to understand whether previously implemented reforms were capable of supporting current growth patterns, that would translate into economic development and poverty reduction, at least in the short-run. Wherever possible in the analysis, informed predictions are made about the outcomes of Armenia joining the CU.

### **Economic Performance**

*Prosperity:* GDP per capita PPP (in constant 2005, international \$) increased in 2012 reaching 5,727 comparing to 5,354 in 2011<sup>110</sup>. In the first and second quarters of 2013, quarterly GDP continued to report positive growth rates over the same periods of the previous year (7.5% and 0.6% respectively)<sup>111</sup>.

*Productivity:* According to the 2013-2014 Global Competitiveness Index of the World Economic Forum, Armenia is ranked 79<sup>th</sup> among 148 economies/nations, with improvement in both score

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<sup>108</sup> Source: [http://www.mineconomy.am/uploads/NIP\\_2011-2013.pdf](http://www.mineconomy.am/uploads/NIP_2011-2013.pdf)

<sup>109</sup> i.e. to study the list of possible issues/obstacles Armenia would face due to commitments to the WTO etc.

<sup>110</sup> Source: WDI-Online Database (last accessed: October 9, 2013)

<sup>111</sup> Source: [http://www.armstat.am/file/article/sv\\_08\\_13a\\_112.pdf](http://www.armstat.am/file/article/sv_08_13a_112.pdf).

(0.1 points) and ranking (up by 3 positions).<sup>112</sup> However, the intensity of local competition (ranked 102<sup>nd</sup>), exports as a percentage of GDP (ranked 130<sup>th</sup>), and foreign market size index (127<sup>th</sup>)<sup>113</sup> indicate that, in general, local competition and exports could not be considered the major drivers of productivity growth that can be translated into higher real wages and standard of living in the short-run. There was significant growth in labor productivity in 2011-2012 (5.6% and 7.4% respectively)<sup>114</sup>, while the real annual monthly average wages (in case of large and medium-sized companies)<sup>115</sup> were declining over the same period by 1.9% and 2.4% respectively<sup>116</sup>. After 8.4% growth of labor productivity in the first quarter of 2013, in the second quarter, productivity declined by 0.5%<sup>117</sup>.

*Exports:* In January to August of 2013, merchandise exports amounted to 952.2 million USD (at F.O.B. price)<sup>118</sup>, a 8.9% increase over the same period of the previous year. The performance of major groups varied: there was an increase in export of prepared food (23.4%), mineral production (4.5%), and precious stones and metals (5.9%), while there was a 3.3% decline in the export of base metals. The largest gain was recorded in textiles; exports nearly tripled (2.9 times) reaching about 24 million USD. There was also a significant increase in the export of and animal products and vegetable products (79.8% and 82.3% respectively).

*FDI:* Inward foreign direct investment flows in the first six months of 2013 decreased by 64.2% compared to the same period of the previous period, comprising only 118.2 million USD<sup>119</sup>. Investments by Russian-owned companies comprised the largest share of investments (27.8%), followed by investments by French-owned companies (24.5%) and German-owned companies (10.5%). The telecommunications industry received the largest share of FDI (33.4%). Other industries that receive significant FDI were mining and quarrying (17.0%), real estate (16.7%), and land transport and transport via pipelines (9.1%). Predominantly market- and resources-seeking companies were investing/reinvesting profits in Armenia. At the current stage, again, it is hard to say what types of companies will be interested in investing in Armenia, and whether existing ones will continue to invest.

## Macroeconomic Stability

In 2012, the current account deficit-to-GDP ratio comprised 11.2%<sup>120</sup>, an increase of 0.3 p.p. (y/y). In the first six months of 2013, the current account balance improved by 77.5 million USD, comprising -350.8 million USD. In 2012, state budget-to-GDP improved by 1.5%, 1.3 p.p. (y/y). In January to August 2013, the state budget reported a surplus of 32,408.5 million AMD<sup>121</sup> compared to the deficit of 28,359.2 million AMD of the same period of previous year. The tax

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<sup>112</sup> The World Economic Forum, *The Global Competitiveness Report 2012–2013: Full Data Edition*, Geneva: the World Economic Forum, 2013, pp.108-109.

<sup>113</sup> Value of exports of goods and services, normalized on a 1–7 (best) scale, 2012 (Source: Ibid, p.519).

<sup>114</sup> Real GDP/number of employed (Note: 2005=100; Source: Author's own calculations).

<sup>115</sup> Here only data from large and medium-sized companies are reported, since only in December 2012 general annual average monthly data for 2013 would be released by the NSS including data from small companies.

<sup>116</sup> Note: 2005=100; Source: Author's own calculations.

<sup>117</sup> Note: 2005=100; Source: Author's own calculations.

<sup>118</sup> Source: [http://www.armstat.am/file/article/sv\\_08\\_13a\\_411.pdf](http://www.armstat.am/file/article/sv_08_13a_411.pdf).

<sup>119</sup> Source: [http://www.armstat.am/file/article/sv\\_07\\_13a\\_420.pdf](http://www.armstat.am/file/article/sv_07_13a_420.pdf).

<sup>120</sup> If not mentioned otherwise, the sources of all data in this sections are various online databases available at <http://www.minfin.am/main.php?lang=1&mode=macroind&iseng=1&isarm=1>

<sup>121</sup> Sources: [http://www.armstat.am/file/article/sv\\_08\\_13a\\_211.pdf](http://www.armstat.am/file/article/sv_08_13a_211.pdf)

revenues (including duties)-to-GDP ratio comprised 22% in 2012, up by 1.4 p.p. (y/y). The collected tax revenues (including duties) in the first eight months of 2013 comprised 657,023.7 million AMD, 18.7% over the same period of previous year. The contribution of VAT was the largest in tax revenues (40.5%), followed by profit tax (13.0%). Social benefits and pensions comprised the largest share of state budget expenditure (31%), indicating the government's efforts to reduce the poverty level and increase the standard of living of its citizens. The average annual CPI inflation comprised 2.6% in 2012. However in August 2013, CPI inflation was 9.3%<sup>122</sup>, compared to 3.5% in August 2012.<sup>123</sup> The rise is mainly attributed to an increase in the food price index (including alcoholic beverages and tobacco), and services price index (9.6% and 11.2% respectively).

The external public debt-to-GDP ratio was at 37.6% in 2012, while the government external debt to GDP ratio accounted for about 31.6%. The domestic public debt-to-GDP was at 6.4%. As of August 31, 2013, the government external debt increased by 15.811 million USD (comprising 3,063.723 million USD), and the domestic debt increased by 6,002.5 million AMD (accounting for 274,687.2 million AMD)<sup>124</sup>.

On October 3, the government announced that: "Armenia will use most of the proceeds from the recent sale of its first-ever Eurobonds for repaying a \$500 million Russian loan ten years ahead of schedule... the rest of about \$700 million raised on international markets on September 19 will be spent on lending programs for small and medium-sized businesses as well as partly financing the state budget deficit."<sup>125</sup> With Armenia joining the Customs Union, the government's efforts to ensure macroeconomic stability, maintain the indicated level of spending on social protection, support economic development, and prevent poverty growth in the short-run might be constrained.<sup>126</sup> CPI inflation higher than the target of 4% +/- 1.5% might restrain consumer spending.

## Social Policy Reforms

*Pension Reforms (mandatory savings pillar):* In December 2012, parliament adopted changes (amendments and supplements) to several laws<sup>127</sup> (originally passed in 2010) geared toward pension reforms (with the main focus on the second pillar). The changes will come into effect in 2014. Robustness<sup>128</sup> will determine how affordable and sustainable the system could be starting from 2015-2016 (in case there is an initial economic shock) in order not to be a threat to the whole system of social protection and labor, taking into account the current level of public debt. Demographic shocks will take place in the longer-run (if the migration rate does not drastically increase). Regarding the secondary role of the pension system, "to create developmental

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<sup>122</sup> Source: [http://www.armstat.am/file/article/sv\\_08\\_13a\\_130.pdf](http://www.armstat.am/file/article/sv_08_13a_130.pdf)

<sup>123</sup> 3.5% comparing to December 2012

<sup>124</sup> Source: [http://www.armstat.am/file/article/sv\\_08\\_13a\\_221.pdf](http://www.armstat.am/file/article/sv_08_13a_221.pdf)

<sup>125</sup> Source: <http://www.azatutyun.am/content/article/25126054.html>

<sup>126</sup> taking into account Government's contributions to the participants of the Second Pillar (Mandatory Savings), rise in minimum wage rates, and etc.

<sup>127</sup> 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

<sup>128</sup> 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)

effects”<sup>129</sup> i.e. positively affect national savings and make financial markets more sophisticated (Holzman et al., 2005:57), this area will not develop rapidly. With current quantitative and currency limitations<sup>130</sup> set by the government (regarding investing in financial tools by mandatory pension funds), the way to contribute to economic growth would be through banking deposits. The other investment option for the short-run would be government bonds. Due to the small size of the domestic market and the underdeveloped nature of the stock market, high profitability of assets in the domestic market cannot be ensured, starting from 2019 or even earlier.

*The system of integrated social service:* In 2012, the government approved the introduction of the system of integrated social service<sup>131</sup> followed by the establishment of a council<sup>132</sup> to coordinate the required activities and ensure implementation of the pilot program. In 2011, the poverty rate reduced by 0.8 p.p. reaching 35%, however the poverty rate was still the highest in urban towns (43.6%)<sup>133</sup>. In September 2012, the implementation of the 2008-2021 Sustainable Development Program, approved by Government Decree N 1207-N of October 30, 2008, was still suspended. In November 2012, the 2012-2025 Strategic Development Program<sup>134</sup> was drafted, and in the first quarter of 2013, was presented for public discussion.<sup>135</sup> However as of September 2013, no document was finalized or adopted.

## State of Human Capital

According to the 2013-2014 Human Capital Index<sup>136</sup> published by the World Economic Forum, Armenia ranks 73<sup>rd</sup> among 122 countries. Armenia’s overall Index Score is negative (-0.218), which means it is below the mean.

*Education:* Armenia’s education ranks relatively highly (60<sup>th</sup>) with a positive score (0.042), because of how the country fares in terms of access to education, enrollment rates, and education gender gap. In terms of quality of education and quality of education management, Armenia fares poorly (103<sup>rd</sup>) with low wages hindering the ability to excel in this area.

*Health and wellness:* Armenia’s state of health and wellness is ranked 71<sup>st</sup> with a negative score (-0.035). Health care quality (score:-0.326) and accessibility (score:-0.586) must be improved.

*Workforce and employment:* In terms of workforce and employment, Armenia is ranks 113<sup>th</sup> (score: -0.678). The country’s capacity to retain (103<sup>rd</sup>) and attract (93<sup>rd</sup>) talent indicate that the most educated and most highly qualified professionals are mostly inclined to leave Armenia and pursue opportunities elsewhere. These trends affect the ability of employers to finds skilled

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<sup>129</sup> “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).

<sup>130</sup> Government Decree numbered 1685-N of December 27, 2012

<sup>131</sup> Government Decree numbered 952-N of July 26, 2012

<sup>132</sup> Prime Minister’s decree numbered 941 of September 29, 2012

<sup>133</sup> Source: [http://www.armstat.am/file/article/poverty\\_2012a\\_2.pdf](http://www.armstat.am/file/article/poverty_2012a_2.pdf)

<sup>134</sup> Source: [http://www.mfe.am/up/programs/Final%20DraftADS\\_Nov%2020%202012\\_arm.pdf](http://www.mfe.am/up/programs/Final%20DraftADS_Nov%2020%202012_arm.pdf)

<sup>135</sup> Source: <http://www.b24.am/finance/40639.html>

<sup>136</sup> The World Economic Forum, *The Human Capital Report Global Competitiveness Report 2012–2013: Full Data Edition*, Geneva: the World Economic Forum, 2013, pp.108-109.

employees (88<sup>th</sup>). Along with scarcity of skilled employees, participation in the labor force<sup>137</sup> is low. In 2012, Armenia's labor force participation rate was 62.7%<sup>138</sup> (57.1% in urban settlements, including Yerevan), while the employment rate was 51.9% (42.5% in urban settlements). The 2012 unemployment in urban settlements was rather high (25%), while in rural communities, it was 5.3%. In the second quarter of 2013, the unemployment rate in Armenia dropped to 23.3% in urban settlements. Trends in demand for skilled workforce and unemployment rate indicate that the most productive ones benefit the most. For large and medium-sized firms, nominal wages increased while real ones declined in 2011-2012, accompanied by labor productivity growth exceeding real GDP growth rates.<sup>139</sup> With the limited demand on low-skilled workforce, the unemployment rate will remain rather high in the short-run and over the medium-term if Armenia is not aggressive in increasing exports. In terms of training, the demand for high-skilled employees generally does not make employers more invest more heavily in employee trainings and development (98<sup>th</sup>), while “high-quality, specialized training services” are not widely available (106<sup>th</sup>). Therefore, these trends won't support economic development, at least in the short-run.

## RECOMMENDATIONS

- Build shock absorbers to boost the resilience of the economy to withstand economic shocks as the main threat to the pension system and to ensure macroeconomic stability in the country.
- Design programs boosting growth of the sectors that are sources of income for low-income population.
- Build shock absorbers to increase the robustness of the pension system to withstand economic shocks as the main threat to the system to ensure macroeconomic stability in the country.
- Design tight oversight mechanisms in place 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 the local markets along with building strong export-oriented local clusters, and attracting “efficiency-seeking” MNCs to ensure successful implementation of pension reforms and provide access to high paying jobs to enhance employability chances, that will result in economic development translated into poverty reduction.
- Have clearly defined set of “productive” criteria to be used in designing various mediation programs (employment services) taking into account best practices worldwide to be used in monitoring and evaluation of various programs.
- Define minimum wage determining clear mechanisms that will take into account worker productivity and average monthly salary in line with the principles of ILO Convention No131 and Revised European Social Charter, without conditionality requirement is met or not.
- Specify timeframe for ratifying ILO Convention No181 on Private Employment Services, with clearly stating which paragraph of article 7 Armenian will opt for.

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<sup>137</sup> The most recent data of participation indicators are reported here.

<sup>138</sup> Source: [http://www.armstat.am/file/article/sv\\_08\\_13a\\_141.pdf](http://www.armstat.am/file/article/sv_08_13a_141.pdf)

<sup>139</sup> Note: 2005=100, Source NSS various publications, author's own calculations

**Action Plan: Specific actions under Priority Area 4** : *Strengthen the overall administrative capacity of the customs administration, in particular, to increase transparency of customs rules, procedures and tariffs, to ensure the correct implementation of customs valuation rules, to implement the principles of risk-based customs control and post clearance control; provide the customs administration with sufficient internal or external laboratory expertise as well as sufficient operational capacity in IT.*

## **CUSTOMS**

### **Overview of the Situation**

All of the last year's comments regarding Paragraph 4.1.1 of the EU-Armenia ENP Action Plan, as well as Measures 175-178 of the List of 2009-2011 Actions to Ensure the Implementation of the ENP EU-Armenia Action Plan remain unchanged.<sup>140</sup>

In comparison with previous years, there have been no reductions in the required paperwork by customs authorities for registration and controls. Customs authorities continue the policy of attaching codes and prices to a vast number of goods, notably household goods. Moreover, the share of goods examined by customs agencies has grown, despite having released them through the green channel procedure. As a consequence, there are now more cases of severe sanctions imposed on business entities for seemingly trivial violations that do not affect the amount of customs payments. In some cases, the fines imposed on entities can be as high as the value of the declared goods.

Some positive amendments were made to the Customs Code, which came into effect on January 1, 2013. Particularly, Article 203 of the Customs Code has been amended to address disproportionate fines. Prior to the amendment, a disproportionately severe fine (equal to the customs value of the product) was imposed for products transported across the customs border of the Republic of Armenia. This fine has significantly decreased per the new amendment. Currently, if customs duties are not imposed due to violations, the amount of the fine is 50,000 AMD. In cases where customs duties are imposed, the fine is set at 10% of those duties. Such fines, compared to the previous ones, are both logical and proportional to the violation made.

For invoice-based transactions, permission by the State Revenue Committee(SRC) is mandatory, despite the fact that the declarer is both the one determining and declaring the customs value, and the one importing goods. Often declarers are asked to submit additional documents not required by law. One improvement is the increasingly wide use of so-called "second" and "third" methods of determining customs values based on the transaction price of "identical" and "analogous" goods. Previously, the customs value of goods was determined on the basis of either the transaction price, known as the "first" method, which is based on the submitted invoice or the unit sale prices of goods in the domestic market of Armenia, with appropriate deductions from the current sale prices in the market of Armenia, the "fourth" method. The SRC also requires special permission for customs registrations of exports, which again is not stated in the law. Apart from this, the SRC requires special permission to import foreign technologies and other

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<sup>140</sup> Please refer to 2010 ENP Implementation in Armenia on [www.partnership.am](http://www.partnership.am) for more information

identical goods when the special subdivision issues codes and prices for imported goods; this is not explicitly stated by law.

To date, there have been no real steps towards reforming and simplifying the customs registration process. As such, the post-clearance checks system is only in conformity with international standards as a formality. This reflects a punitive approach, rather than one supporting and simplifying foreign trade or preventing violations. The customs registration procedures related to the clearance of goods at border check posts have not been reviewed. Currently, the customs registration processes differ from post to post. Queues are an ordinary occurrence, often stemming from imperfect procedures, a heavy load of paperwork, or lack of cooperation with other subdivisions. However, it should be noted that important steps have been taken in the direction of the full reconstruction of the customs check posts along the Georgian border, notably at Bagratashen and Gogavan. The company that has won the tender for the reconstruction of these customs posts is already known, but no other work has been carried out so far.

***Implementation Tools, Measure 175.F.21: improvement of customs administration in accordance with the EU standards and simplification of the customs legislation***

This requires enabling good-faith transporters of goods to carry out registrations on the basis of simplified procedures. Allowing such good faith companies the status of an *Authorized Economic Operator*, following the example of the European Union, is long overdue in Armenia. At the same time, it is necessary to develop new and substantially simplified procedures for such companies when relationships are built exclusively on the basis of mutual trust. A system of electronic declarations should be introduced.

One improvement is the 2012 launch of the EU Twinning Project<sup>141</sup> aimed at improving customs procedures. The project was awarded to a donor consortium consisting of customs authorities from Lithuania and Finland. Priority areas have been outlined and the parties have nominated their respective areas of focus. Among them are improvement of the legal field, pre-clearance customs control procedure, improvement of relations with businessmen, simplification of customs control procedures, strengthening of risk management system, improvement of post-clearance control and audit, and the development of risk management and information technology systems. Mutual study tours have begun and the project is moving forward in its entirety. After a detailed analysis and assessment of the situation, a clear action plan will be approved, specifying the actors responsible for each area. The final output will be the introduction of customs legislation and procedures meeting European standards.

International experts have familiarized themselves with the RA Customs Code and procedures. They have identified differences and are working to resolve them based on their corresponding sectors of expertise. Work has been carried out in five directions, covering customs legislation, information technologies, pre- and post-clearance controls, and a number of other fields. As a result of a thorough study, differences have been identified between the customs legislation of the Republic of Armenia and that of the European Union and in their procedures. An action plan has been developed, which includes a clear schedule by specific fields. A draft law on making amendments to the Customs Code of the Republic of Armenia has been put into circulation,

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<sup>141</sup> [http://www.customs.am/csMD\\_News.aspx?ntname=csMDOfficialNews&nid=758](http://www.customs.am/csMD_News.aspx?ntname=csMDOfficialNews&nid=758)

which includes various provisions leading to simplified customs formalities. Particularly, the concept of an Authorized Economic Operator, the requirements for obtaining such a status, and the process of granting such a status have been determined. The mechanisms for challenging the decisions adopted by customs authorities, their actions or inaction have been clarified. An opportunity has also been provided to make electronic declarations. Individual action plans have been developed and approved for the information technologies and the post-clearance controls sectors. The action plans contain concrete timelines and accountability measures for completing the plans. Among them are a risk assessment, modernization plan, and simplification and shortening of customs procedures.

After a long hiatus, the training center for education and training programs for customs authorities has reopened. It is equipped with all of the required state-of-the-art technical facilities and means. The center has launched a large-scale program of education and training for different target groups of customs officials. Employees graduating from the course must pass an exam before moving forward in their work. The training greatly contributes to enhancing the professional knowledge of customs officials. Among other topics, it includes instruction on a code of conduct (ethics) for customs officials.

### ***Implementation Tools, Measure 176.F.22***

This implementation tool anticipates an increase in the efficiency of customs checks based on a risk assessment, which refers to the balance between procedures for checking goods (the red channel) or their accompanying documents (the yellow channel). At the moment, the customs examination of goods is carried out in great detail, which is unnecessary and counterproductive. There are frequent cases in which a minor mistake that has no impact whatsoever on the customs fees, results in serious sanctions on the importer – a fine of equal value to that of the goods. This is both resource-intensive and time-intensive, and leads to higher prices for imported goods. It also causes unnecessary redundancies in inspections.

The process of granting licenses and certificates to customs registration specialists, or customs brokerages, is far from transparent and in some cases, is entirely incomprehensible. Customs brokers have merged with the customs authorities, with broker offices now belonging directly or indirectly to the customs officials. This leads to an uneven playing field and results in excessively high tariffs for delivered services. For instance, for the customs registration of one promotional printed catalogue, there is a 20,000-30,000 AMD brokerage fee. Often, those who wish to carry out registration without a broker have to overcome serious hurdles and eventually have to register through a broker indicated by the customs official.

All of the above-mentioned processes and trends significantly slow down and complicate the movement of goods across Armenia's borders, increasing considerably the time spent on the customs registration of goods as well as the costs for people engaged in importing goods. The majority of costs are of an informal nature, which in its turn makes businesses resort to the grey market.

## RECOMMENDATIONS

- Continue consistent work in the legislative and administrative fields aimed at the reforms implemented, based on the study of the practices of the EU and other developed countries.
- Adopt a decree transforming the institution of customs brokers, revising rights and powers in the customs declaration field, and completely reforming the self-assessment system in order to rule out any synergy between the brokers and the customs authorities.
- Introduce selective examinations on the basis of a risk management system to exclude unnecessary interferences, and ensure clearance of goods through the green channel without additional examination or documentation checks.
- Determine the customs value based on declarer's presented invoices, with no imposition of price controls.
- Establish the institute of AEO (Authorized Economic Operators) by means of certain simplified procedures, taking into account the experiences of EU countries.
- Further strengthen and improve the post-clearance controls system, bringing it in line with international standards (especially for large importers) with the aim of identifying shortcomings and recommending solutions, instead of imposing sanctions, and enabling customs authorities to strengthen control of goods and vehicles after their release.
- Simplify customs procedures and loosen customs controls at the border.
- Carry out post-clearance controls based on a risk management and assessment system; plan the controls to be done in advance by six months or a year.
- Carry out controls not only over the specific selected transactions, but over all activities of selected high-risk companies, during which, in addition to revealing the violations, it will be possible to identify all weaknesses of the company, and provide the company with recommendations.
- Improve customs administration by specifically defining the powers, rights and responsibilities of the subdivisions accepting customs declarations and exercising customs controls, clearly differentiating between their functions.
- Review the whole procedure for customs registration at border customs check posts and introduce uniform procedures, state-of-the-art technological schemes, and infrastructures meeting the requirements of the Kyoto Convention; deepen cooperation among all border customs services.
- Adopt secondary legislation following the reconfigured Customs Code and leading to simplified procedures.
- Introduce simplified procedures, including simplified declaration procedures, electronic declarations, preliminary declarations, and oral declarations.
- Discontinue the practice of examining all goods and inspecting all documents, whilst developing and improving the targeting of risk analysis and selectivity systems.

**ENP AP Priority Area 4:** *Further improvement of investment climate and strengthening of private sector-led growth.*

## TAX ADMINISTRATION

### Overview of the Situation

Regarding the implementation of tax reform, major success is visible in the following areas:

- A significant decrease in reporting and documentation required for submission to the tax authority;
- Laying the groundwork for an e-governance system and introducing an automated system for risk-based audits (inspections);
- Increased access to information for taxpayers;
- Ensuring legislative bases to implement target-based and flexible tax administration;

In accordance with the announcement of the tax authority, the following issues were targeted to be improved in the year 2012<sup>142</sup>:

- An expansion of services for taxpayers and an increase in quality of the service
- Large-scaled introduction of automated systems in all business processes of the State Revenue Committee (hereafter referred to as the SRC)
- Tax control by using mainly risk-based and analytic tools
- Trainings of tax officers.

Despite the legislative amendments made at the end of 2012, there have been setbacks in the following areas

- Compared to 2012, the number of documents and volume of the content of reports increased (individual income tax report – 12 times annually, announcements for using discounts, balance documentation of stocktaking of goods, etc.);
- There was an increase in amount of taxes paid by major taxpayers
- An increase in the efficacy of oversight over large businesses and their transaction documents;
- Improvements in the mechanisms for identifying tax evasion cases;
- Cooperation with the private sector.

Based on the official data of the SRC<sup>143</sup>, in 2012 revenues in the amount of AMD 749.3 billion were raised. This is an increase of 14.6% compared to the previous year. Based on the data for January-July 2013<sup>144</sup>, revenues in the amount of AMD 569,4 billion were raised, the rate of increase to the same period of the previous year was amounted to 19,6%.

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<sup>142</sup> [http://www.taxservice.am/Shared/Documents/Publications/th\\_annual\\_report\\_2012.pdf](http://www.taxservice.am/Shared/Documents/Publications/th_annual_report_2012.pdf)

<sup>143</sup> [http://www.taxservice.am/Shared/Documents/Publications/th\\_annual\\_report\\_2012.pdf](http://www.taxservice.am/Shared/Documents/Publications/th_annual_report_2012.pdf)

<sup>144</sup> <http://www.taxservice.am/Content.aspx?itn=TTTaxStatData>

#### **Action Plan: Specific actions under Priority Area 4**

*Continue the modernisation and simplification of the tax administration in order to simplify the tax system, to improve coherence and reliability of the system and to reduce corruption risks and shadow economy. Define the necessary administrative structures and procedures, including a fiscal control strategy, audit and investigation methods, co-operation with the tax payers in order to increase tax compliance and effectiveness of tax collection. Identify all needs in terms of financial, human, logistic and IT resources.*

***Implementation Tools, measure 57.C.3: Reinforce the IT Capacity of the Tax Authority. The Expected Specific Outcome for 2011 is “100 percent automated processing of the reports received”.***

The development of e-reporting and e-invoicing systems has resulted in a decrease in the time and resources required for reporting taxes, and has significantly reduced person-to-person contact with the tax authority officials.<sup>145</sup> In 2012, 61 types of tax reports were identified and input in the system for e-submission and, there were more than 20 000 e-report submissions. In 2013<sup>146</sup> the number of tax report types increased to 71. As of 30.06.2013, the number of electronic submissions is 43,488, while the number of taxpayers that have issued e-invoices is 5,394. This increase in electronic submissions comes as a result of new legal requirements, that have come into force on 1<sup>st</sup>, Jan 2012, mandating the practice for entities with an annual turnover in excess of AMD 58.35 million. Since 1<sup>st</sup> Jan 2013, there has been a complete transition to electronic submissions for individual taxpayers, in preparation for the new pension system that will be coming into force at the beginning of 2014. Moreover, since the beginning of 2013, taxpayers have been given the possibility to electronically maintain the delivery of ledgers of goods and commodities.

#### ***Reservations***

Electronic submissions of tax returns are still not possible for all tax reports, due to the unavailability of their forms in the system.

***Implementation Tools, Measure 181.F.27: Full implementation of the system of risk-based selectivity of taxpayers to be audited***

Towards the implementation of this action, the government initiated legal regulation reforms. The amendments to the RA Law on Organizing and Conducting Audits, entered into force in August 2011, introduced a system of risk-based audits, which focuses on sectors and entities of greater risk. In terms of the risk criteria, entities are classified into either the high-risk (audited once a year), medium-risk (audited once every three years), and low-risk (audited once every five years) categories. Moreover, to ensure the transparency of the audit process, the auditing authorities are required to draft by December 1-st of each year and post the audit plan for the following year on their website. After the end of each year, but prior to January 20, the auditing authority must publish on its official website a report on the audits and reviews carried out during the preceding year.

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[http://www.taxservice.am/Shared/Documents/TS/Tax\\_Service\\_Activity\\_Reports/hv\\_hhk\\_2012\\_gorc\\_mijoc\\_ard\\_segmagir.pdf](http://www.taxservice.am/Shared/Documents/TS/Tax_Service_Activity_Reports/hv_hhk_2012_gorc_mijoc_ard_segmagir.pdf)

<sup>146</sup> [http://www.taxservice.am/Shared/Documents/TS/Tax\\_Service\\_Activity\\_Reports/hv\\_hhk\\_2013\\_gorc\\_mijoc\\_ard.pdf](http://www.taxservice.am/Shared/Documents/TS/Tax_Service_Activity_Reports/hv_hhk_2013_gorc_mijoc_ard.pdf)

In light of the aforementioned, the Tax Authority introduced an assessment automation risk-based system, on the basis of which the list of taxpayers to be audited for the years 2011 and 2012 were developed and published (954 entities for 4 months of 2011, 2386 entities for 2012<sup>147</sup>).

In compliance with legislative amendments made in 2012, with regard to drafting annual plan of audits, the schedule was changed, based on which further audit plans must be drafted for the period from July 1 of each year to July 1 of the following year. This amendment is highly appreciated, since the risks comprised in the recent year statements had not affected the risk factor of entities, during the periods for presentation of annual statements,. In the website of the State Revenue Committee the lists of taxpayers to be audited (inspected) from July 1, 2013 to July 1 2014 is published (1385 entities).

There are two points in the 2012 legislative amendments worth mentioning. First, while inspections are carried out based on a fixed schedule, there are some exceptions , which allow inspectors to carry out visits outside of the fixed schedule in certain industries. This is especially true in the mineral resources industry. Second, while the act of inspections may have a very narrow scope, and fall within the prescribed legal framework, the tax authority carries out studies and other risk-based calculations throughout the year irrespective of the fixed schedule.

***Implementation Tools, Measure 181.F.27: Reduction of tax arrears by 20 percentage points in 2011***

There is no published information on the tax arrears figures for 2011, 2012 and 2013. Based on the data available through the SRC for the year 2011<sup>148</sup>, 483 entities had an increase in arrears to the amount of AMD 1million and more, the total arrears increase of which amounted to AMD 10,1 billion. Based on the data for 2012, 473 entities had an increase in arrears to the amount of AMD 1million and more, the total arrears increase of which amounted to AMD 8,5 billion. However, it is necessary to note that the Republic of Armenia Law on Granting Exemptions from Taxes and Other Mandatory Payments for Organizations and Sole Entrepreneurs allows taxpayers that had tax arrears as of 31 December 2009 to apply to the tax authority and to agree on a timetable for the repayment of their arrears: for arrears not exceeding AMD 50 million, before June 30, 2012, for arrears exceeding AMD 50 million, before July 31, 2013.

It is hoped that as a result of these measures, tax arrears will be significantly reduced. However, the problem of arrears reduction still remains on the agenda and additional measures must be carried out to prevent occurrence of new arrears and an increase of the old ones.

***Implementation Tools, Measure 181.F.27: Implementation of the risk-based VAT refund software***

The amended Tax Administration Strategy Program states that the automated risk-based system of tax credit refunds should be fully operated by the end of the year 2011. According to a 2012

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<sup>147</sup> <http://www.taxservice.am/Content.aspx?itn=TIVerificationsPlan>

<sup>148</sup> <http://www.taxservice.am/Content.aspx?itn=TILists>

announcement by the SRC<sup>149</sup>, the observation procedure for protocolizing the amounts to be set off and/or refund for indirect taxes has been approved. Moreover, the SRC announced that the current VAT refunds system was used for VAT setoffs and refunds in 2012 by using this automated system. However, no information has published yet on total amounts of offsets and refunds.

Through a monitoring of major taxpayers report<sup>150</sup> it was revealed that in January-September, 2011(annual results of 2011 are not published), tax credits in the amount of AMD 15,4 billion were refunded to major taxpayers. For the same period of 2012, the number of refunds amounted to AMD 13,9 billion. Moreover, in January-June, 2013 the refund of tax credits was already at AMD 10,0 billion. The same monitoring report found that through 440 taxpayers in 2011, 462 in 2012 and 477 in 2013, there was an observable decrease of VAT refunds in 2012, however in 2013 the picture has changed with a noticeable increase of refunds. In 2011, the Government of the Republic of Armenia adopted the procedure of accruing and paying penalties for delaying the refund of tax credits beyond the deadlines stipulated by law, which we think we will help to resolve the issue of tax credit refunds

***Implementation Tools, Measure 180.F.26: Increase the share of large businesses in state revenues collected under the Tax Administration Strategy Program***

According to the major taxpayers monitoring report, In 2011, there were 440 large taxpayers, in 2012 this number increased to 462, while in 2013 the number has already 477 taxpayers. Per indicators of the first quarter of 2013<sup>151</sup>, tax payments and other mandatory payments made by major taxpayers to the state budget amounted to AMD 73,8 billion or 51,8% of total taxes raised in the Republic of Armenia. Per indicators of the second quarter, AMD 84,4 billion or 50,2% of total taxes raised in the Republic of Armenia, as compared to the year 2012 when that number was equal to AMD 69,6 billion that was paid by 462 major taxpayers, or 54,5% of total taxes raised in the Republic of Armenia. If we try to compare with the results of June, 2011, the collection indicator for 440 major taxpayers was AMD 20.9 billion, or 58.5% of the total taxes raised in the Republic of Armenia, thus it can be concluded that the portion of tax payments of major taxpayers in the amount of total taxes paid both in 2012 and in 2013 was a bit decreased with consideration also to the increase of the number of major taxpayers served by the major taxpayer monitoring. In absolute values, payments of major taxpayers have increased, however the portion of a major business in the amount of total raised state revenues in the RoA has decreased.

***Implementation Tools, Measure 180.F.26 Lenient tax administration of SMEs under the Tax Administration Strategy Program, regulation of the documentation of transactions and self-declaration, and improvement of the quality of taxpayer services***

- With the introduction and successful implementation of the “One Stop Shop” principle from April 2011, the state registration of business is fully performed by the State

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<sup>149</sup>[http://www.taxservice.am/Shared/Documents/TS/Tax\\_Service\\_Activity\\_Reports/hv\\_hhk\\_2012\\_gorc\\_mijoc\\_ard\\_segmagir.p](http://www.taxservice.am/Shared/Documents/TS/Tax_Service_Activity_Reports/hv_hhk_2012_gorc_mijoc_ard_segmagir.pdf)

<sup>150</sup><http://www.taxservice.am/Content.aspx?itn=TILTaxPayersMonitoring>

<sup>151</sup><http://www.taxservice.am/Content.aspx?itn=TILTaxPayersMonitoring>

Register, which also issues the Taxpayer Identification Number;

- Within the scope of introduction of a new unified individual income tax, personal registration e-system was developed in 2012 and introduced starting from January 1, 2013;
- Tax service centers are being fully operated. 3 centers were opened in 2012;
- Within the scope of expanding tax services, tax service centers were designed in 2012 and located in Haypost departments in 2013;
- Electronic terminals for the electronic submission of reports and calculations to the tax authority are now operational in the tax inspectorates, however, they are not heavily used by the public;
- Payment terminals are now functioning, through which taxpayers can pay the penalties ordered for administrative infringements on the spot. In the future, they will be able to make all tax payments via these terminals;
- The taxpayer telephone service center became fully operational;
- The new website of the Tax Authority became operational in 2012, providing tools and access to information for taxpayers. However, the lack of certain information and infrequent updating limits timely and complete information on the tax system;
- From January 1, 2013, delivery ledgers also became possible to maintain electronically;
- The introduction of a new generation of control cash machines started on July 1, 2013 and will be completed on July, 2014 that will allow for the sending of information on the total cash transactions made during the day through a network connection. However, taking into consideration the high cost of the new generation control cash machines and the fact that the introduction thereof is being implemented at the expenses of taxpayers, it can be stated that those prices are a real burden for SMEs. Thus, it seems that the Tax Authority tries to increase efficiency of tax administration at the expense of taxpayers;
- Labeling system of certain goods and commodity that was initiated in 2012 and is intended to expand in 2013 aims at decreasing of shadow transactions through the declaration of actual turnovers;
- Official clarification process of regulations of tax legislation was significantly deteriorated. The Tax Authority provided only 47 clarifications in 2011, 29 in 2012, 7 as of October 1, 2013, 25 official clarifications were submitted during the same period.

### *Legislative Amendments as of January 1, 2013*

- For taxpayers that have turnover up to AMD 58.35 million, the turnover tax was specified; the tax is accrued by applying certain percentage to the turnover (trading and production – 3,5%, leasing, interest, royalty, property disposal – 10%, other activity – 5%). Negative effect of this tax is that it was not an alternative for the taxation system applied to the same taxpayers in 2012. At the same time, for taxpayers that have up to AMD 58.35 million turnover, operating with small commission fees, as well as having certain production, as compared with the previous year, the tax burden increased.
- For taxpayers paying turnover tax, tax registration was simplified, since expenses should not be taken into account, also they are exempt from income tax liabilities when making purchases from the market without documentary support.
- Turnover taxpayers were exempt from maintaining delivery ledgers.
- Sole entrepreneurs that pay permission fees and turnover tax, shall make income tax payments in the amount of AMD 5000 monthly.
- Starting from January 1, 2014, e-settlement documents that are not electronic shall be introduced.
- The scope of permission fee payers was enlarged;
- Starting from January 1, 2014, the minimum profit tax system is eliminated;
- The modes “excise store” and tax representatives were eliminated. These modes were introduced as tools to fight against the shadow for the purpose of increase of efficiency of taxation. However, they were eliminated after their operating inefficiency was revealed;
- To prevent the shadow turnover, the scope of responsibility was defined for the movement of goods without documentary support;
- Argumentation of the Tax Authority on not having sufficient resources to carry out tax control over turnovers of taxpayers, a mechanism of levying a penalty in case of the deficit of products, goods of taxpayers was introduced. Those penalties shall not be levied on turnover taxpayers and the taxpayers that pay permission fees;
- Classified and high penalties are established in public food sphere and for turnover taxpayers that hide their fiscal turnovers and in case they do not apply control cash machines.

Assessment of the effects of legislative amendments mentioned above can be made in 2013 on the basis of their application results.

***Implementation Tools, measure 29.F.6: Legislative regulation of a consistent process of asset and income declaration and controls***

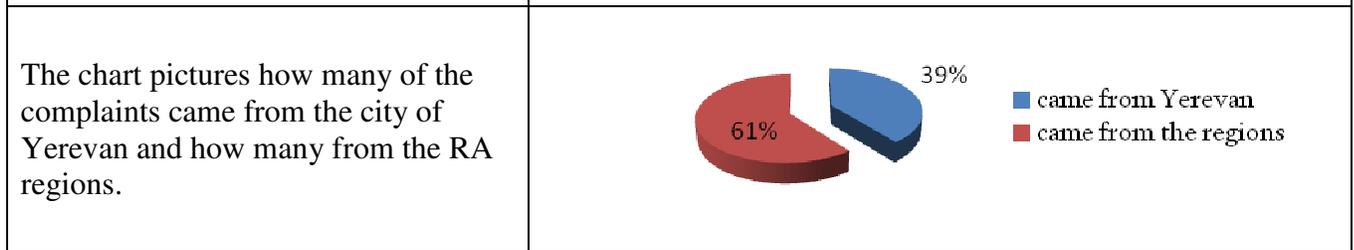
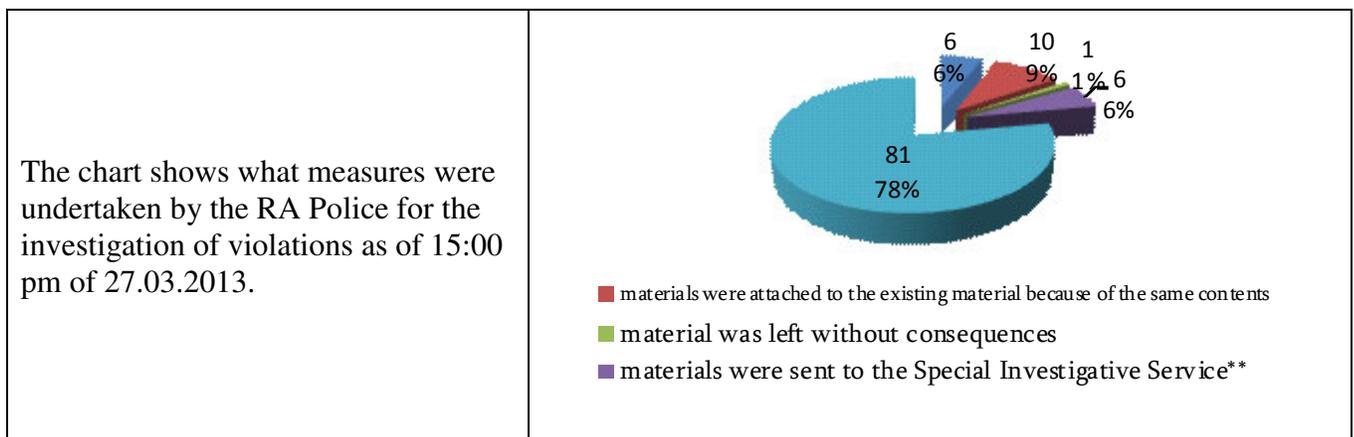
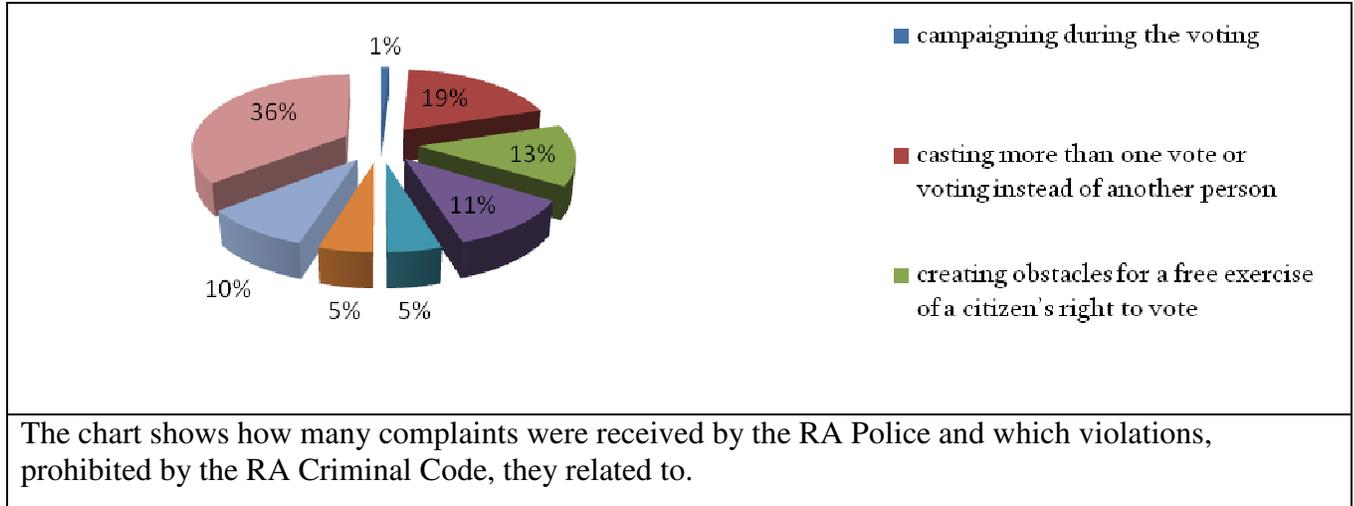
This action was included in the 2010 Activity Program of the Government of the Republic of Armenia, but it was removed from the Program in view of the anticipated legislative amendments. The Republic of Armenia Law on the Declaration of the Property and Income of Physical Persons was repealed in 2011. The Law on Public Service was enacted (due to enter into force in 2012), which now requires only a limited number of senior officials to present declarations of property, income, and affiliated persons to an Ethics Commission. This law, therefore, covers issues related to the conflict of interests only for senior officials.

## RECOMMENDATIONS

- Eliminate frequent amendments of the tax legislation
- Evaluate actions taken to improve tax administration based on their effectiveness taking into consideration evaluative subject indicators.
- Ensure publicity of legislative amendments for various stakeholders and make decisions only after considering the views and sound standpoints, excluding the approach of formalistic discussions.
- In case of necessity to amend the legislation, adopt a concept framework on legislative amendments to be amended.
- In case of certain activities or inactivity by tax officers, define clear mechanisms and standards to discuss such cases by the Tax Authority, ensuring transparency of such activities.
- Ensure transparency of appeal procedures involving civil society organizations into appeal procedures.
- Enhance analytic capacities of the Tax Authority and based on those skills to disclose the risky sectors; application of classified approaches to risky economic entities by excluding the improper notification approach to taxpayers.
- Improve the effectiveness of measures against tax evasion, tax crimes and infringements by introducing the monitoring and assessment system of efficiency audits.
- Exclude audits made based on decisions of investigators without informing taxpayers the content of those decisions.
- Make legislative specification (clarification) of concepts “obviously misstated data” and “maliciously escaped”, set forth by Article 205 of the RA Criminal Code.
- Within the scope of criminal cases, define specific standards for initiating the criminal case, by excluding the practice of initiating criminal cases on the basis of discretionary decisions and the practice of requiring inappropriate clarifications from taxpayers.
- Legally regulate provisions that contradict each other, bear ambiguous interpretations.
- Ensure the process of providing official clarifications on legislative regulations based on applications of taxpayers, within the procedure and timeframe specified by the law.
- Within the framework of enhancement of tax administration, exclude the practice of laying the load on taxpayers, when introducing new tools.
- Continue regulating declaration issues with regard to documenting operations and actual turnovers.
- Further enhance a risk-based automated system for refunding VAT and other tax credits and to ensure transparency thereof.
- Adopt a clear framework for managing tax arrears, which should contemplate classification, analysis, and monitoring of arrears, as well as actions to prevent the buildup of arrear.
- Expand the range of services rendered by the tax authority electronically, and make the system of electronic payments to be completely operational.
- Provide an option of submitting reports electronically to all taxpayers.
- Ensure and increase the quality of services in all tax service centers.
- Introduce a quality control system over the services rendered to taxpayers.

**APPENDIX 1**

Charts on investigations of electoral violation cases conducted by the RA Police (as of 15:00 pm of 27.03.2013) on the voting day of the RA Presidential elections.<sup>152</sup>



The current charts were compiled based on data posted on the RA Police official website.<sup>153</sup>

<sup>152</sup> Others include voter list irregularities, disputes in a polling station, stealing from a polling station, intentional damage to property near a precinct, and illegal access to email

<sup>153</sup> <http://www.police.am/news/view/hh-նախագահական-ընտրությունների-վերաբերյալ-ընտրախախտումների-դեպերտվի-նուսիկանության-կողմից-կատարվող-ընտրությունների-վերաբերյալ-27032013-թ-ժամը-1500-ի-դրությամբ.html>