



**ARMENIA'S ENP IMPLEMENTATION  
IN 2014**

**YEREVAN, ARMENIA**

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## PREFACE

This is the eight consecutive annual monitoring report on the implementation of the European Neighborhood Policy (ENP) Action Plan (AP) in selected areas in the framework of the ENP Action Plan Implementation Program for 2014-15<sup>1</sup>. The report covers the period of October 15, 2013-October 10, 2014. It has been prepared on the basis of analysis of factual information collected by civil society organizations and individual experts, descriptive statistical data, in-depth interviews with experts, officials, and field professionals, along with analysis of secondary sources. The assessment is based on the ENP Action Plan and the ENP Action Plan Implementation Program<sup>2</sup> 2014-15 priority areas, as well as outcomes and measures envisioned for 2014<sup>3</sup>. The primary observation here is that in a number of areas of strategic importance for the development of democratic institutions substantial gaps between AP's formal commitments and AP implementation Plan 2014-15 priority areas, outcomes and actual implementation measures persist.

It is noteworthy that for the period under study transparency of the entire action plan implementation process has suffered significantly<sup>4</sup> as compared to the process for preceding years. In the ENP Implementation Plan 2014-15 activities in the areas of human rights and fundamental freedoms are significantly curtailed. Possible counterargument could have been the document's reference to 2014 Human Rights Strategy and its' Action Plan. The HR Strategy and particularly the AP are largely declarative and extremely shallow when addressing human rights problems in the country<sup>5</sup>.

Monitoring period has shown dangerous tendencies in human rights protection policies and practices—namely, the rhetoric of intolerance towards minority groups and the notion of gender inequality increased, drafting of Anti-Discrimination Law was halted and the draft law on domestic violence was removed from the Parliament agenda. Adequate definition of torture is not included in the concept of the new Criminal Code, court decisions curtailing freedom of media outlets to disclose source of information were accepted. Meanwhile, demonstrations of force by law enforcement agencies have become more prevalent—police have widely restricted the right to freedom of assembly by using force and detaining activists. As a result public trust in democratic institutions in general has decreased reaching to its' lowest points since 2008<sup>6</sup>. Additional threat is contained in the 'Concept on Institutional and Legal Reforms on the Development of Civil Society Organizations' approved by the government that envisions increased financial and programmatic reporting for civil society organizations as a tool for increased public oversight<sup>7</sup>.

Undoubtedly current reporting period has been a year of dramatic internal and external challenges and turbulence in Armenian domestic and international policies. Internally society is faced with the prospect of constitutional reform that is to bring a systemic shift in the governance structure. It is explicitly stated

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<sup>1</sup> ENP Action Plan Implementation Program for 2014-15. [http://www.smsmta.am/upload/EHQ\\_mijocarunner14-15.pdf](http://www.smsmta.am/upload/EHQ_mijocarunner14-15.pdf)

<sup>2</sup> [http://moj.am/storage/uploads/HR\\_table\\_Gov\\_approved\\_3Apr14\\_FINAL\\_Arm-1.pdf](http://moj.am/storage/uploads/HR_table_Gov_approved_3Apr14_FINAL_Arm-1.pdf)

<sup>3</sup> Implementation Plan areas and measures have been selected based on the Partnership for Open Society's priorities with a major emphasis on human rights protection mechanisms and development of democratic institutions.

<sup>4</sup> This among other external political reasons, can also be attributed to the change of the supervisory body from the executive to the National Security Council.

<sup>5</sup> See Appendix 1 for more detail.

<sup>6</sup> Caucasus Research Resource Center. Caucasus Barometer 2006-2013. Datasets available here <http://www.crrc.am/research-and-surveys/caucasusbarometer/documentation>

<sup>7</sup> Failure to provide detailed financial reports by civil society organizations will result in administrative fines and, in special cases termination of work based on court's decision.

that the major purpose of changes is “to ensure political majority” in the parliament and ‘minimize post electoral discontent’. This implies that the reform is undertaken to strengthen the basis for sustaining the political party monopoly and consolidate the current governing regime. Equally dramatic economic and accompanying political shifts are due to joining the Eurasian Economic Union particularly at a time when tensions and incompatibilities between the EU and Russia are at height.

Yet none of the two large agendas have been presented and justified in any sophistication, less so discussed with the wider public. Concerns and speculations running high in the society range from price hike to loss of independence and consolidation of one-party autocratic regime as a result of constitutional reform. These and many other concerns are at best confronted by defensive statements of lower rank officials.

Since 2007 the civil society has been pointing out the need of stronger and more outcome based conditionality when pushing the EU led reforms. However the EU’s underlying logic for action has been the gradual change and formal approximation. It has not pushed for real strong conditionality due to common perception that it may have driven the Armenian side completely away from Europe towards Russia. However as the one night shift of the policy has shown this approach didn’t work. This first and foremost has become possible due to political dominance of Russia manifested in electoral and regional conflict manipulations. The EU has never given sufficient support to such core democratic institutions as elections, independent media, civil society and local communities in the Eastern neighborhood. Instead, top down democracy promotion mechanisms with extensive direct budget support and programmatic support have been the leading policy of cooperation<sup>8</sup>. For now it is of urgent importance to build a new tailor made cooperation framework between the EU and Armenia that will concentrate on democratic governance and human rights protection mechanisms with stricter measurement tools attached to each activity and less space left for the government to manipulate the reform via existing gaps between goals, objectives and measures of Action Plan Implementation Program.

Member organizations of the Partnership for Open Society initiative and individuals who have joined the Initiative to produce this report believe that lessons learned of the challenges in the implementation of the ENP in Armenia can help to inform policy thinking as the EU reviews and recalibrates its partnership with Yerevan today.

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<sup>8</sup> See for example sections of education and judiciary of this report for more specific examples.

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## ELECTIONS

**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.

### 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 are 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, adopted on May 26th 2011.

On September 4, 2013 President of Armenia issued an order<sup>9</sup> to form a professional commission adjunct to the President to develop a proposal for constitutional reforms. On April 10, 2014, the same commission published a draft concept paper on the main directions of proposed amendments in the RA Constitution<sup>10</sup> and currently actively works to meet the President's plan of holding the constitutional referendum in 2016. The chair of the Constitutional Court is also actively advocating in favor of the constitutional amendments. The most significant change proposed by the concept paper is the shift from a semi-presidential system to a parliamentary system of governance. The draft explicitly states that the major purpose of changes is "to ensure political majority"<sup>11</sup> in the parliament and 'minimize post electoral discontent'<sup>12</sup>, implying that the major purpose is to reproduce the power of the ruling party and strengthen the basis for sustaining the political party monopoly.

According to the paper, the number of nation-wide elections will be reduced from two to one, the Parliament and the President being elected on the same day. This change has been justified as a means to avoid possible dualism<sup>13</sup> between the President and the prime minister; it could however raise concerns over excessive centralization of political power. Meanwhile the proposal mentions the insufficient level of institutional checks and balances as well as risks of political monopolization as one of the reasons for constitutional reform, it in fact suggests a more sophisticated system for strengthening of the political monopoly of the Republican Party of Armenia.

According to the results of in-depth interviews and an online survey<sup>14</sup> on the proposed constitutional amendments, a majority of respondents are concerned over the ill-developed nature of the party system and the danger of the parliamentary system in terms of sealing of one party rule in the country. Experts also highlight lack of necessary preconditions for initiation of constitutional change and the low levels of public trust in core democratic institutions, including the initiator of the reform-RA president. In this respect it is important to note that according to the latest nation-wide survey 42% of respondents fully

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<sup>9</sup>Order of the President to establish a professional committee on constitutional amendments adjunct to the RA President. <http://www.president.am/hy/decrees/item/947/>

<sup>10</sup> Draft Concept of RA Constitutional Reforms. Available in Armenian [http://www.justice.am/storage/uploads/A\\_00.pdf](http://www.justice.am/storage/uploads/A_00.pdf)

<sup>11</sup> Ibid page 29.

<sup>12</sup> Ibid page 27.

<sup>13</sup> Such a 'problem' never has been observed in practice.

<sup>14</sup> What do Experts think about RA constitutional reform? Report. Yerevan 2014. <http://acrrc.apellainstitute.org/> (Report available in Armenian, brief available in English upon request). Selection of experts was based on their experience in legal practice, academic background in law and political science. As a result interviewed experts represent come from legal practice, NGOs and academia. Total number of participants is 22.

distrust and 15% somewhat distrust the president<sup>15</sup>. It is also noteworthy that even half of those experts who support the draft concept of constitutional amendments, still do not have trust in the entire constitutional amendments process.

Lack of trust towards the purpose of constitutional changes is further exacerbated by other electoral problems such as refusal by the government of Armenia to make voters' lists public. Despite numerous facts about this policy serving as a major tool to manipulate elections<sup>16</sup> the Constitutional Court has twice (in 2003 and 2012) refused to give a positive solution to this issue (publicity of voters lists) on the basis of Venice Commission's recommendation and citing number of international documents, which were in fact, irrelevant to the point that the court made its decision. Additionally Venice Commission in 2010 has had a recommendation to balance the private data protection with the public interest<sup>17</sup>. These problems coupled with the lack of independent media<sup>18</sup> intensify the concern that the results of the constitutional referendum will be falsified much similar to previous elections.

**ENP AP Implementation Program 2014-15 Priority Area 17.A.17.** *Ensure that the RA electoral code is in line with recommendations of 2012 and 2013 nation-wide elections observation missions of OSCE/ODIHR.*

**Outcome.** Make necessary legislative amendments. **Measure.** Develop a legislative proposal in 2014.

This objective is planned to be reached through adoption of changes in the electoral legislation, and measures for 2014 included drafting of the legislative package. Following the last report published on May 8, 2013 there have not been any steps towards making amendments into the electoral legislation, except for discussions on election-related problems organized by the Central Electoral Commission (CEC) in December 2013.

ENP Objective 17A on improvement of electoral processes overlooks local government elections, since the latter are critical for developing the culture of elections administration and adequate law enforcement. Observation of local elections in twenty two rural communities in March and June 2014 by a coalition of NGOs<sup>19</sup> indicates that though problems there are not as acute as those at the national level, nevertheless they are generally in line with the negative trends of presidential and parliamentary elections at a smaller scale. Most frequent violations identified at the local level included violation of the secrecy of vote, directions provided to citizens on how to vote, active ruling of the process by unauthorized persons, transportation of groups of voters to the precincts, etc. This was widely accompanied by poor administration of the voting process by the Precinct Electoral Commissions (PECs) who also commonly refused to register complaints in the registration book<sup>20</sup>. Out of 66 violations 52 were complained to the Territorial Electoral Commissions, which were however refused

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<sup>15</sup> Caucasus barometer 2013. <http://www.crrc.am/research-and-surveys/caucasusbarometer/documentation>

<sup>16</sup> See respective sections of the previous monitoring reports on ENP implementation in Armenia: [http://www.osf.am/wp-content/uploads/2014/10/2013\\_ENP\\_Report.pdf](http://www.osf.am/wp-content/uploads/2014/10/2013_ENP_Report.pdf)

<sup>17</sup> Vahe Grigoryan. 2014. "Access to the signed voters' lists: Constitutional dimensions". Paper presented at the Conference 'Rethinking Constitutional Reforms in Context. July 10, 2014. Apella Institute; OSF Armenia. Yerevan. See more at <https://www.youtube.com/watch?v=kjtMdMFFayE>

<sup>18</sup> According to Freedom House's Nations in Transit 2013 independent media score in Armenia is 5.75. The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest.

<sup>19</sup> Coalition includes Transparency International Anti-corruption Center, Europe in Law Association, Journalists Club "Asparez" and Helsinki Citizens Assembly-Vanadzor.

<sup>20</sup> More information is available on <http://transparency.am/elections/2014-03-09/map/> and <http://transparency.am/elections/2014-06-08/map/>

for two major reasons – there is no case of violation of observers rights and NGOs do not have a legal standing in respect with electoral rights. Decision on the refusal were appealed in the administrative court, which in turn refused to consider the complaints.

## **RECOMMENDATIONS**

- Restart the constitutional amendments process to ensure separation of power and judicial independence in the structure of semi presidential governance system.
- Initiate a process of amending the electoral legislation in accordance with OSCE/ODIHR recommendations to ensure that the Electoral Code is changed at least one year in advance of upcoming presidential elections in February 2017. Assure active engagement of civil society organizations in the preparation of reforms.
- Amend the electoral legislation to provide for the publication of voter lists after elections and, similarly, introduce the same requirements to RA Law on Referendum to ensure the honesty of any future election and referendum results. Publicity of voters lists is the most critical measure to reestablish the people’s trust in the electoral process.
- Build the capacity and ensure appropriate administration at the local level elections.

## NATIONAL ASSEMBLY

**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.*

### Overview of the Situation

Public trust in core democratic institutions in Armenia is very low. Trust in the executive government and the president has traditionally been slightly higher than trust in political parties or the National Assembly<sup>21</sup>. Public trust in the National Assembly and political parties have been decreasing since 2010. In 2013 66% and 61% of respondents fully distrust or rather distrust political parties and the parliament accordingly<sup>22</sup>.

According to the Law on the Regulations of the National Assembly its' standing committees have the power to organize public hearings of draft laws. However, hearings organized by the committees of the National Assembly are mostly formalistic and often aim at superficially fulfilling the existing legal requirement of public participation. Their impact in terms of improving draft laws is minimal. The real impact or effectiveness of public hearings is virtually not measurable, due to two main reasons: firstly, the National Assembly's procedures do not provide any quantitative or qualitative indicators and institutions for measuring the effectiveness of public participation, which in turn is due to the low level of accountability of the parliament<sup>23</sup>. Secondly, the Law on the Regulations of the National Assembly provides that the committee organizing the hearing may prepare materials summing up the results of the hearings. However, this tool is not utilized, as it is not a binding requirement.

During the reporting period, as previously, the National Assembly in numerous cases adopted laws in violation of the prescribed procedure, and without sufficient discussions. The statistics are compelling: more than half (77) of the 143 laws adopted during the fifth session of the fifth convocation of the National Assembly were adopted during two extraordinary sittings. The Government declared over 60 draft laws to be 'urgent', without citing any convincing arguments, and in respect of all of these draft laws without exception, the parliament decided to conduct every subsequent reading 24 hours after the previous reading. During the 5th session of the National Assembly of the 5th convocation the government/parliament ratio of adopted laws was 95/5%, with the government's legislative initiatives constituting 95% (136 laws), and National Assembly deputies 5% (7 laws)<sup>24</sup>.

The aforementioned statistics raise serious concerns that extraordinary sittings turn into events for rubberstamping the draft laws or legislative packages that the Government considers a priority, with provisions preferred by the executive branch. As a representative body, the parliament is virtually deprived of any leverage over key political decisions. This reality was manifested especially in respect of adopting a new direction of foreign policy and deciding to join the Customs Union, as well as

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<sup>21</sup> See Caucasus Barometer at Caucasus Research Resource Center since 2006. <http://www.crrc.am/research-and-surveys/caucasusbarometer/documentation>

<sup>22</sup> See official presentation of Caucasus Barometer 2013.

[http://www.crrc.am/hosting/file/\\_static\\_content/barometer/2013/CB2013\\_public%20presentation\\_English.pdf](http://www.crrc.am/hosting/file/_static_content/barometer/2013/CB2013_public%20presentation_English.pdf)

<sup>23</sup> According to the Law on the Regulations of the National Assembly, the standing committees shall convene a parliamentary hearing on a matter pertaining to their domain at least once during each session. In fact, not all of the parliamentary committees comply with this binding requirement, and whenever they do, it is usually fulfilled superficially, without any tools to measure the impact of public hearings on the policy outputs.

<sup>24</sup> For additional information, see the "Monitoring of the National Assembly: the Fifth Session" report at [www.parliamentmonitoring.am](http://www.parliamentmonitoring.am)

initiating constitutional amendments contemplating changes in the system of government, all of which circumvented the parliament. In the aforementioned cases, the parliament will eventually be able to participate in the process. However, its isolation from the process from its inception shows that the National Assembly will be expected to perform the limited function of legitimizing already-taken political decisions.

### **Action Plan Implementation Program. 145.Z.20. Improve law-making procedures in the RA National Assembly.**

**Outcome 1.** Continue enhancement of the procedure of Parliamentary hearings. **Measure 1.** Conduct necessary legislative reforms and organize parliamentary hearings at a qualitatively higher level that will aim to ensure efficient participation of the public in law making procedures. **Outcome 2.** Make necessary legislative amendments to improve law making procedures in the NA. **Measure 2.** Prepare and implement necessary legislative amendments to ensure the role of the NA and its bodies in presenting and discussing draft laws.

From October 2013 to date, the National Assembly has not discussed any legislative initiative that would be related to improving the procedures of adopting laws, reforming the institution of hearings, and safeguarding effective public participation. Although there was a legislative proposal (on amending the Law on the Regulations of the National Assembly to provide live broadcasting of not only the National Assembly's sessions, but also the public sessions of the standing and ad hoc committees of the National Assembly, as well as parliamentary hearings, drafted by Tevan Poghosyan (Heritage Party), its inclusion in the agenda of the Sixth Session of the Fifth Convocation of the National Assembly was postponed by a year.

One typical example of procedural violations was the discussion and adoption of a legislative package that attracted much attention and controversy in society-namely the amendments to the Republic of Armenia Law on Accumulative Pensions and to eleven related laws. The legislative package adopted on 21 June 2014 passed all three readings in one day, was presented to the National Assembly and entered the agenda without performing actions required by law, including public discussions, expert reviews, and the relevant conclusions/opinions, despite the fact that the Constitutional Court of Armenia had laid the emphasis on public awareness in its procedural decision number SDAO-3 dated 24 January 2014 (“...the success of implementing the accumulative pension system largely depends on proper public awareness of and public trust in the system”)<sup>25</sup>.

### **Recommendations**

- Ensure full compliance with the legally-prescribed procedures of presenting, discussing, and adopting laws. This can become possible through employment of the practice of challenging the constitutionality of laws adopted with violation of National Assembly procedures, thereby raising the issue of legal and political liability of the parliamentary majority<sup>26</sup>.

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<sup>25</sup> See the Courts decision in Armenian here <http://www.concourt.am/armenian/decisions/common/2014/pdf/sdv-1142.pdf>

<sup>26</sup> The current parliament has already had such experience: in 2013, members of the National Assembly initiated an application to the Constitutional Court claiming to declare Paragraph 4 of Article 44 of the Law on the Regulations of the National Assembly to be unconstitutional, on the ground of the parliamentary majority's massive absentee practice to fail the extraordinary session of the National Assembly.

- Provide a viable working mechanism for urgent legislative initiatives to be properly justified at National Assembly session.
- Envision a mechanism to question the legitimacy of legal acts adopted in violation of the National Assembly procedures.
- Reform the framework for parliamentary hearings by expanding the duties of the National Assembly committees under law and putting in place measures, as discussed above, for safeguarding effective public participation and feedback collection.

## EDUCATION

**Action Plan General Objectives and Actions. 4.7.1.** *Reform and modernize the education and training systems within the framework of Armenian plans towards convergence with EU standards and practice.*

### Overview of the situation

Despite large scale institutional reforms in secondary and higher education<sup>27</sup> systems supported by international donor communities, numerous studies<sup>28</sup> point to a backsliding in quality, access and independence in education.

The 2013 Transparency International Global Corruption Barometer indicated that 59% of the population perceives education as the second most corrupt sector in the country. This endemic corruption translates into restrictive access to quality education for a majority of the population and especially for 32.4% of the population living at or below the poverty line<sup>29</sup>. At the same time, education expenditures are continuously declining and in the next three years will go down to 2.56 percent of GDP, despite the fact that the 2011-15 State Program on Education Development had envisioned that in 2015 education expenditures would constitute 4%.

Executive control of the education system and vested interests are major obstacles to ensuring accountability and quality improvement<sup>30</sup>. Government officials are represented in the governing boards of universities and schools and constitute at minimum 50% in the decision making processes<sup>31</sup>. Government control remains high in the governance and management of education regulatory agencies, (university governing boards, National Center for Education Quality Assurance-ANQA) where often the same officials may be represented<sup>32</sup>. The regulatory framework of the education sector allows for state interference over the finances, governance, management appointments, specializations, and admissions of educational institutions<sup>33</sup>. The existing laws and regulations provide conflicting regulatory framework for higher education governance and allow for ambiguity in favor of the government control.<sup>34</sup> At the same time, the country has chosen governance and funding as the main themes throughout chairing the Bologna Secretariat and will be reporting on developments in these areas at the Bologna Ministerial Conference in May 2015.

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<sup>27</sup> Armenia started transition to three stage (12 year) secondary education since 2008. Bologna reform in higher education started since 2005.

<sup>28</sup> Matei, L., Iwinska, J. & Geven, K. 2013. Higher Education in Armenia Today: a focused review. Budapest. CEU Higher Education Observatory. Kataoka, S., Shahverdyan, A.; Harutyunyan, H. 2013. Addressing governance at the center of higher education reforms in Armenia. Washington DC. World Bank.

<sup>29</sup> Armenian Statistical Service.

<sup>30</sup> Matei, L., Iwinska J., Geven K. 2013. Higher Education in Armenia Today: a focused review. Budapest . CEU Higher Education Observatory.

<sup>31</sup> State Policy on General Education Financing. 2013. Communities Finance Officers Association.

<sup>32</sup> Kataoka, S., Shahverdyan, A.; Harutyunyan, H. 2013. Addressing governance at the center of higher education reforms in Armenia. Washington DC. World Bank.

<sup>33</sup> Ibid; Matei, L., Iwinska, J. & Geven, K. 2013. Higher Education in Armenia Today: a focused review. Budapest. CEU Higher Education Observatory.

<sup>34</sup> The most problematic ones are the Law on Higher Education and the Law on State Non Commercial Organizations in a way that the latter contradicts with the education laws and denies autonomy and the principle of self-governance. According to the education laws, universities are separate legal entities and neither the Ministry nor the founder (government) can hinder their autonomy, whereas, according to the Law on SNCOs, the founder may make any final decision related to the activities and governance of SNCOs (Part 1, Article 13).

Education reforms in Armenia have not had a significant impact neither on the quality of teaching and learning in higher education, nor on the content and substance of administrative and governance practices in the field.<sup>35</sup> Instead, higher education sector is witnessing lowering of quality standards by universities in an attempt to maintain financial resources and meet high rates of youth unemployment<sup>36</sup>.

Reforms in the general education bring equally alarming outcomes, particularly in the areas of content development and access. Access and equity for school and university education are not made equal for underprivileged groups. High school education is largely inaccessible for students from rural areas. Only 6 out of 110 state run high schools are located in villages<sup>37</sup>. The government is planning to make 12-year schooling mandatory and introduce the credit system into the high schools starting from 2015. The reform will result in providing certain privileges to the graduates of high schools when continuing their studies at universities. The educational materials and teachers' attitudes fail to encompass civic education in line with human rights standards. Gender insensitive content is promoted in educational materials and textbooks and is reinforced by teachers' attitudes<sup>38</sup>. These trends are maintained at all pathways of education up to postgraduate education where female students are underrepresented despite the striking performance indicators<sup>39</sup>. The incoherence of civic education with gender equality and religious tolerance in accordance with Toledo principles breaks the major idea of secular education and contradicts the European Convention of Human Rights<sup>40</sup>.

Despite several international reports voicing issues of governance, quality and access of education sector, measures undertaken by Armenian government and the EU do not address problems of higher education at a systemic level. For example, the European Union recently restated its support to the Armenian government in tertiary education. Programmatic assistance of the EU to strengthen cooperation between Armenia and the EU will address capacity empowerment of key regulatory bodies in quality assurance that are quite controversial as they do not challenge the core problems of legislation and of quality assurance bodies identified and acknowledged locally and internationally<sup>41</sup>. Such reluctance to address systemic problems in the field and designing actions that target problems merely on surface will result in poorer outcome in value based democratic progress and necessarily lead to deeper problems when communicating with Armenian Government in the wider context of democracy promotion.

### **Action Plan Implementation Program 89.D.1. *Quality Enhancement of Higher Education in Armenia.***

**Outcome.** Internal quality assurance system in all RA state universities.

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<sup>35</sup> Matei, L., Iwinska, J. & Geven, K. 2013. Higher Education in Armenia Today: a focused review. Pp 9-11.

<sup>36</sup> A survey by the OSCE found that nearly one-fifth (18.8%) of the emigrants between 2002 and 2005 have a degree from higher education. The same report also estimated that 5,7% of the total population with a higher education degree had left the country. GALLUP study on the "desire to migrate" among those aged 15 and older conducted across the 12 former Soviet Union countries, indicated that 40% of Armenians desire to migrate to another country permanently in comparison to the 15% average for all the 12 countries.

<sup>37</sup> Distribution of general education institutions in 2011-2012 academic year in urban and rural areas of Armenia as per education program. <http://stat.armedu.am/?section=content&id=63&year=2011>

<sup>38</sup> According to the survey, for 96% of teachers, courage, determination and industriousness are among instilled characteristics for boys; whereas modesty and patience should be instilled in girls according to 94% of the same teachers. Also 66% of teachers consider boys more capable than girls, while 68% of teachers consider girls to be obedient and modest. Gevorgyan. H. ed. 2011. The Mosaics of Gender Relations. pp35-37.

<sup>39</sup> In 2013 women representation at doctoral degree was 23%. Information available at National Statistical Service [www.armstat.am](http://www.armstat.am)

<sup>40</sup> Absolute privilege in teaching and developing materials for the subject of History of Armenian Church is given to the Center for Christian Education.

<sup>41</sup> See for example the world Bank and OSFA reports in footnote 28.

**Measure 1.** Institutional accreditation process in all state universities completed. **Measure 2** Accreditation of professional programs at universities. **Measure 3.** Improvement of internal quality control mechanisms at universities.

Implementation of quality assurance measures is controlled by the government with no dialogue or consultation possible among relevant stakeholders<sup>42</sup>. The Armenian National Quality Assurance Agency (ANQA) demonstrates political control in its composition and lacks of credibility, independence. The organizational setup of the Agency shows political interest and conflict of interest with the governing board. (For instance, the chair of ANQA is the prime minister, who at the same time is the board chair of one of the universities). The Agency does not comply with the principle of independence defined in the Standards and Guidelines for Quality Assurance in European Higher Education Area according to which “Agencies should be independent to the extent both that they have autonomous responsibility for their operations and that the conclusions and recommendations made in their reports cannot be influenced by third parties such as higher education institutions, ministries or other stakeholders”<sup>43</sup>. The principle of independence is undermined by ANQA carrying only a consultative role in the external review of Armenian universities, whereas the final decision on accreditation/licensing lies with the government. These conclusions are confirmed by the review of the European Association for Quality Assurance (ENQA) of ANQA’s work that underline direct conflict of interest, lack of authority to make accreditation decisions and coaching work that prevent ANQA from fulfilling its mission of an independent external accreditation agency<sup>44</sup>.

#### **Action Plan Implementation Program. 90.D.2 Integration of financial mechanisms for the development of higher education institutions.**

**Outcome.** Existence of efficient financing schemes directed towards development of higher education institutions. **Measure.** Development and implementation of innovative and development projects of quality enhancement of universities on competitive basis.

The Financing Strategy of Higher Education (2011) does not address the decrease in the public spending and does not offer ways for universities to engage in various activities due to constraining provisions in the legal framework regulating the finances of universities<sup>45</sup>. The state directly controls the budget of state universities<sup>46</sup> with the overall university governance model remaining highly state-controlled<sup>47</sup> despite the fact that Armenia is one of the most privatized higher education systems in the world, with only 9-36 percent of state funding.

The measure on “diversifying the finances” of universities was implemented as part of the Competitive Innovation Fund (CIF). Ten universities received grants to carry out innovative projects; however, they

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<sup>42</sup> Ibid

<sup>43</sup> Standards and Guidelines for Quality Assurance in European Higher Education Area. p25.

<sup>44</sup> Report of the External Proof Review of the National Center for Professional Education Quality Assurance Foundation ANQA.

<sup>45</sup> The conflicting legal framework confines financial autonomy of universities in diversifying the funding schemes, conducting audits, operating the procurement procedures, setting and administering tuition fees. See more at Kataoka, S.; Shahverdyan, A., Harutyunyan, H., 2013. Addressing governance at the center of higher education reforms in Armenia. Washington DC. World Bank.

<sup>46</sup> University budgets are controlled by university governing boards heads of which are high ranking officials starting from the President and prime minister and ending with the Minister of education and mayor of Yerevan. See more on this in Kataoka, S., Shahverdyan, A.; Harutyunyan, H. 2013. Addressing governance at the center of higher education reforms in Armenia. Washington DC. World Bank. Page 30. Report available online at <http://documents.worldbank.org/curated/en/2013/01/17748657/addressing-governance-center-higher-education-reforms-armenia>

<sup>47</sup> Matei, L., Iwinska, J. & Geven, K. 2013. Higher Education in Armenia Today: a focused review.

are performed in an ad-hoc manner and are impeded by irregular and ambiguous financial mechanisms and state interventions. Extensive executive control over academic projects is manifested in the set up of the Steering Committee on CIF<sup>48</sup>.

The newly introduced system of ranking of universities mentioned as a measure to ensure transparency can create integrity loops in governance and funding of educational institutions. Given the pitfalls in the ranking methodology, magnified by the lack of credibility and accountability in the system-wide governance, this measure is likely to be used as another political control tool by the government.

### **Action Plan Implementation Program. 91.D.3. Integration of student-centered education principles in the higher education system.**

**Outcome. Higher inclusion of students in the overall organization of teaching and learning process. Measure:** Periodic assessment of student needs with the aim to improve student support services, organization of student centered learning process. **Measure for 2015** Development of a methodological guide for universities.

Student participation remains among major challenges of the reforms. Student-centered study programs, as one of the priority lines of Bologna reforms, are revised only structurally. In reality, they are rarely aligned to develop student learning outcomes and are not tailored to labor market needs<sup>49</sup>. Student involvement in content development, quality assurance processes and university governance, although formally possible, is weak due to top-down implementation of reforms in universities, limited sense of ownership for the reforms among students and politicization of student structures.

Despite modifications in degree structure and credit transfer, Armenia is placed among countries with low shares of incoming and outgoing mobile students. Inconsistencies in internal university procedures, lack of institutional autonomy to ensure exchange programs, lack of funding for international students, issues with recognition of degrees, and curricular discrepancies are among major obstacles for student mobility<sup>50</sup>.

Changes in the higher education financing have been made to meet the financial needs of socially vulnerable students with allocation of special quota, discounts for tuition fees. These measures however do not address the systemic issues of access to and equity of to higher learning for students from rural locations, female students, students with disabilities and vulnerable groups<sup>51</sup>. For university students access to some specializations is restricted by the government as well<sup>52</sup>. Young people from a rural and/or poor background are restricted from high school and university access due to inadequate schooling or fees for private tutoring/university<sup>53</sup>. The issue of equity further comes up with the government planning to make 12-year schooling mandatory and to introduce the credit system into the

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<sup>48</sup>The Steering Committee is represented by the Minister/deputy ministers of Education, 6 governmental officials, 3 state educational organizations, chairmen of rectors' council, donor organization. CIF Operational Manual. [www.cfep.am](http://www.cfep.am)

<sup>49</sup>Survey studies point to only 9.6 percent of students being prepared for a job during their education years, and only 43 percent being able to find jobs after graduation. [http://www.osf.am/wp-content/uploads/2013/12/Anna\\_Poghsranyan\\_and\\_Lilit\\_Shakarvan.pdf](http://www.osf.am/wp-content/uploads/2013/12/Anna_Poghsranyan_and_Lilit_Shakarvan.pdf)

<sup>50</sup>The European Higher Education Area in 2012: Bologna Process Implementation Report p

<sup>51</sup>Tuition fees may cost between 7 and 50 months of median personal income. This is typically complemented with private tutoring to compensate for poor quality of teaching, which may cost as much as US\$ 1.000 (€ 800) per year. Some 2% of students receive scholarships and 20% may apply for discounts.

<sup>52</sup>RA Higher Education Finance Strategy. 2011.

<sup>53</sup>Only 6 out of 110 state run high schools are located in villages.

high schools starting from 2015 which will provide certain privileges to the graduates of high schools in continuing their studies at universities.

### **Recommendations**

- Eliminate executive control over university financial management, university board governance and management. Enable the university governance boards as independent governance bodies in compliance with the European standards of higher education autonomy.
- Ensure transparency and accountability of university boards to university faculty and student communities.
- Make ANQA compliant with its mission as an independent accreditation body with function to provide autonomous external quality assurance review over higher education institutions and their accreditation/licensing.
- Guarantee academic independence, integrity, and research schemes by revising education financing mechanisms and methodology of allocation of financial resources to education institutions.
- Ensure equity and access for higher learning at system level irrespective of geographical area gender and ethnicity.
- Set up mechanisms and measures to prevent reinforcement of practices and social norms that instill intolerance and stigmatization in education.
- Ensure participatory mechanisms for policy and academic communities and civil society organizations to increase integrity in education processes and decision making.

## CORRUPTION

**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.*

### Overview of the Situation

Armenia still lacks strong and effective anti-corruption institutions and mechanisms to fight corruption. Considering the semi-authoritarian character of the governance system in Armenia<sup>54</sup>, the efficiency and effectiveness of the fight against corruption mainly depends on the existence or absence of political will of the ruling political-economic elite<sup>55</sup>. So far, such will has sufficed for adoption of numerous legislative acts, aimed at curbing corruption, however, their implementation and enforcement remain extremely unsatisfactory. This assessment is supported with a number of corruption indices, all showing that the population, businesses and experts continue to perceive Armenia as rather a corrupt country and this perception has not improved in the last decade. Particularly Armenia's score in the category of 'Corruption' in Freedom House's 'Nations in Transit 2014 study is 5.25<sup>56</sup>. Armenia's score in the Transparency International's Corruption Perception Index (CPI) in 2013 was equal to 36<sup>57</sup>, which reveals statistically insignificant change from the 2012 CPI score of 34.

Since 2009 the Office of the Prosecutor General was presenting statistical information on corruption crimes<sup>58</sup>. Since 2009, after the enactment of the N 82 Order of the Prosecutor General of Armenia on the establishment of the list of corruption offences, the website of the Office of the Prosecutor is regularly posting statistics on corruption offences since 2008. However up to the moment there is still no data on corruption crimes for the entire period of 2013. Scarce information on corruption crimes for 2013 is available in the news flow section (only in Armenian) on the official websites of the Police<sup>59</sup>. There is just a single sentence stating that "in 2013, 782 cases of corruption crimes have been revealed, which was 39.4% more, than in 2012 (561 cases), and out of them 269 or 34.4% were revealed by Police." The information on the webpage of the Special Investigatory Services (SIS) states that during 2013 out of 239 cases investigated by SIS, 77 were corruption crimes, which was 31 cases more than in 2012 (46 cases).

As of the progress regarding the first cycle of review on the UN Convention against Corruption (UNCAC), until now neither the Executive Summary, nor the Country Report on the results of the implementation review of Armenia<sup>60</sup> are publicized<sup>61</sup>.

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<sup>54</sup> According to the Freedom House's Nations in Transition study of the character of regimes in former Communist nations, in 2014 the political regime in Armenia still is classified as semi-consolidated authoritarian with score with Democracy score equal to 5.36 on the scale of 1 to 7, with 1 representing the highest and 7 the lowest level of democratic progress (see <http://www.freedomhouse.org/report-types/nations-transit#.U5jXQSj77Fg>).

<sup>55</sup> Taking into account high level of convergence of political and business elites, which is also one of the root causes of corruption in Armenia, the term "political-economic", rather than "political" is used.

<sup>56</sup> The scale is from 1 to 7, 1 representing very clean and 7 – very corrupt. See more at See <http://freedomhouse.org/report/charts-and-graphs-nations-transit-findings>.

<sup>57</sup> The Index scores 177 countries and territories on a scale from 0 (highly corrupt) to 100 (very clean). See the link for more detail: <http://cpi.transparency.org/cpi2013/results/>

<sup>58</sup> Usually it was published on its website <http://genproc.am/am/197/>

<sup>59</sup> See police.am and Special Investigatory Service (SIS) (<http://investigatory.am/am/News/item/602/>).

<sup>60</sup> see more about this in the 2013 ENP monitoring report.

<sup>61</sup> see the country profiles at <http://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>.

**ENP AP Implementation Program 2014-15 Priority Area 47.B.27.** *Enhancement of institutions to fight against corruption in accordance with EU best practices.*

**Outcome 1.** Define the concept and types of corruption crime<sup>62</sup>. **Measure.** Research EU practices on the issue. **Outcome 2.** Legal regulation of the problem to criminalize vote buying<sup>63</sup>. **Measure.** Research EU practice on the issue. Adopt a project draft if necessary for 2015.

For the achievement of both outputs the same measures are foreseen both for 2014 and 2015. In particular, for 2014 it is foreseen “Study of the legislation of EU member states”. For 2015 the measure to achieve these two outputs is “Preparation of the corresponding draft legal act (if needed)”. So far, Transparency International has no information on how these measures (“Study of the legislation of EU member states”) have been implemented in 2014.<sup>64</sup>

**ENP Implementation Program, Priority Area 48.B.28:** *Continue fight against corruption, join international anti-corruption organizations, continue implementation of anti-corruption obligations undertaken by Armenia. Adopt new anti-corruption strategy (national program on the fight against corruption) and ensure its compliance to the GRECO recommendations*

**Outcome.** New anti corruption strategy in place. **Measure 1.** Develop a new anti corruption strategy in line with UNCAC in 2014. **Measure 2.** Continue implementation of GRECO recommendations<sup>65</sup>.

Regarding the first measure, the concept paper on fighting against corruption in the public administration sector was approved at the session of the Government of the Republic of Armenia of 10 April 2014.<sup>66</sup> Based on the Concept Paper a draft anti-corruption strategy will be developed upon recommendations by interested state bodies, representatives of the civil society, experts of international institutions and later this year it will be submitted for the approval of the Government of the Republic of Armenia. The identified priority areas include the fields of education, healthcare, collection of state revenues and police, in terms of services provided to citizens.

The government has not made the final evaluative report<sup>67</sup> of the Anti-corruption Strategy and its Implementation Plan for 2009-12 available to the civil society and the public at large. Hence the

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<sup>62</sup> It is worth mentioning that the types of corruption offences have been already defined by the Order of the Prosecutor General of Armenia N 82 of 19 November 2008 on the establishment of the list of corruption offences, and it is not clear why this sub-output is listed. However, as the international practice reveals, the most consistent approach for the introduction of the term “corruption offence” and types of corruption offences would be their introduction in the Criminal Code. However, as it can be seen from the concept of the new Criminal Code posted on the website of the Armenian Ministry of Justice (see [http://moj.am/storage/files/legal\\_acts/legal\\_acts\\_0871859725811.....pdf](http://moj.am/storage/files/legal_acts/legal_acts_0871859725811.....pdf)), neither the term “corruption offence” nor its types are included there.

<sup>63</sup> Vote buying was explicitly criminalized already in 2006 (see Article 154<sup>2</sup> of the Armenian Criminal Code) and it is not clear what added value will have its definition as “corruption offence”.

<sup>64</sup> TIAC strongly believes that there is no need to allocate so much time to the study of the legislation of EU member states for defining the term “corruption offence”.

<sup>65</sup> The implementation of the second measure will be continued in 2015.

<sup>66</sup> TIAC Executive Director and Policy Expert were members of the working group on the development of the concept on the fight against corruption in public administration. It should be mentioned that TIAC was the only civil society organization invited to participate in that working group.

<sup>67</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.

methodology of the evaluation and the inclusion of the drawbacks of the previous strategy in the new concept are largely under question.

The inclusion of the second measure (continuing the implementation of GRECO recommendations) in the 2014-2015 Action Plan seems irrelevant, as Armenia already almost completely implemented GRECO recommendations from the previous rounds (Joint First and Second Round and Third Round)<sup>68</sup>. No fourth round evaluation visit to Armenia is scheduled for 2014 by GRECO Secretariat, therefore there will be no new recommendations to be implemented in 2014.

### ***50.B.30. Legal regulation of illegal enrichment in accordance with EU best practices.***

**Outcome.** Define legal norms in relation with legal regulation of the institute of illicit enrichment.  
**Measure.** Research on EU member states best practices and legal regulation of the problem in 2015 if necessary.

The only output of this Objective is “the definition of legal norms related to the legal regulation of the institute of illicit enrichment”. The measure foreseen for the implementation in 2014 is “Study of the legislation of EU member states”. Article 20 of the UN Convention against Corruption (UNCAC) provides countries, parties to UNCAC, shall consider establishing illicit enrichment as criminal offence. However, as this provision is optional, and Armenia, while party to the Convention (on March 2007), still does not criminalize illicit enrichment. It should be also mentioned that one of the obligations taken by Armenia in the framework of the Anti-Corruption Network (ACN) of Istanbul Action Plan (IAP) in the Round 2 Cycle of Monitoring (2011-2014) was titled “*Armenia is encouraged to conduct further analysis of needs and possibilities to criminalize illicit enrichment*”<sup>69</sup>. In the draft of the Armenia’s Third Round Monitoring Report<sup>70</sup>, which analyses the implementation of the obligations taken in the second round and proposes recommendations (obligations) for round 3, it was mentioned that this issue is still being discussed in the context of the Criminal Code reform. The reviewers also mentioned that the officials from the Office of the Prosecutor General told them that the issue of illicit enrichment is included in the new ENP Action Plan and, in the framework of which they are now studying the EU experience.

## **Recommendations**

- Introduce the concepts of illicit enrichment in domestic criminal legislation of Armenia and provide mechanisms for identification and prosecution of illicit enrichment.
- Introduce uniform and comprehensive statistics on corruption offences, which will include position/rank/occupation of the suspect/indicted/convicted person, amount of damage caused by offender and value of properties confiscated.
- By the end of 2014 develop the new national anti-corruption strategy and its action plan (for 2015-2018) based on the concept paper on fighting against corruption in the public administration sector and establish a functional and realistic (based on existing human and financial capacities) institutional setting for its implementation.

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<sup>68</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)

<sup>69</sup> See p.31 in the Armenia Second Round Monitoring Report at <http://www.oecd.org/corruption/acn/48964985.pdf>

<sup>70</sup> Currently the Report is not published (its draft, prepared on September 9, 2014, was sent to NGOs, including TIAC for comments). It will be published after its approval at the ACN 14<sup>th</sup> Monitoring Meeting to be held on October 8-10 at OECD headquarters in Paris, France.

## HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

**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).*

**ENP AP Implementation Program 2014-15. Priority area 39.B.19.** *Adopt and implement National Strategy of Human Rights Protection.*

**Outcome.** Implement the Action Plan of human rights strategy. **Measure.** National Human Rights Strategy Action Plan development and adoption in 2014.

There has been no substantive improvement with regard to the exercise of rights and freedoms in Armenia throughout 2014. On the contrary, in the light of possible accession to the Eurasian Union Armenian civil society have experienced and expects deterioration of human rights situation and retreat from the few legislative and practical gains that Armenia had registered previously. National Human Rights Strategy and its Action Plan<sup>71</sup> could have provided safeguards against many of those challenges; nevertheless the quality of the document when it comes to the protection mechanisms of human rights remains largely problematic.

Human Rights Strategy Action Plan is directed at minimizing any costs and actions associated with its implementation and avoid most sensitive human rights issues such as definition of torture, direct prohibition of discrimination, and domestic violence. According to the Action Plan, 72 out of 119 activities (60%) do not require funding. Furthermore, in the course of drafting of both the Strategy and its Action Plan, authorities largely dismissed the recommendations that were put forward by local civil society organizations. Main issues and recommendations are discussed in respective sections of the report.

The practice of human right protection organizations on the ground has shown that the hate speech and aggression toward human rights defenders escalated before Serzh Sargsyan's announcement of joining the Customs Union. The most common rhetoric was denouncement of the West, particularly of the European values of liberty and endorsement of nationalistic approaches presented as traditional family centered culture attributed to the Eurasian states.<sup>72</sup> Intolerance towards vulnerable groups continues, without an adequate response or investigation on the part of authorities. Widely-controlled media continues to be used as a tool for instigation of intolerance and hatred, specifically on religious grounds. Despite the widespread issue of discrimination, authorities yet do not fully acknowledge the need of a standalone legislation that would safeguard equal rights and opportunities for vulnerable groups.

Police use of force against small-scale demonstrations and apprehension of participants continues under the claim of "unauthorized" events. As a general rule complaints and reports about human rights violations committed by law-enforcement bodies are not properly investigated. For instance, in several

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<sup>71</sup> In February 2014, the RA President approved Human Rights Strategy Action Plan, which officially entered into force in June 2014.

<sup>72</sup> In May 2014, Ambassador of Russian Federation to Armenia, Ivan Volinkin, stated "I believe that Russia should remind of its own presence in Armenian informational sphere. There's no doubt about it. However, additional methods should also be used in order to neutralize the NGOs which are striving to drive a wedge between the Russian-Armenian relations. Russia, in fact, has adopted a law that clearly regulates the NGO activity." See the full interview in Armenian at <http://en.aravot.am/2014/05/09/165117/>

cases in 2013 and 2014 when activists reported physical violence by police officers against them, the latter filed a case against activists themselves, accusing them of disobedience and violence against representatives of authorities.<sup>73</sup> Full and impartial investigation of allegations of torture and inhuman or degrading treatment remain problematic and impunity for torture persists.

The government lacks political will to address gross human rights violations despite numerous international commitments for improvement and numerous instances of violations brought up by civil society actors. Participation of civil society has been almost completely limited when developing the concept of the new Criminal Code in the framework of the justice reform. There have been no wide scale public discussions around this document as well. Though the concept identifies only the main directions of the Criminal Code to be developed nevertheless problems of the ill treatment and torture, discrimination, hate crime, domestic violence, false crime reporting<sup>74</sup> remain unaddressed here and therefore would merit public discussion and consultation.

## **Reform of Penitentiary**

*ENP Implementation program Priority Area 53.B.33. 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.*

**Outcome:** *Improvement of the Penitentiary System. Measure:* *Draft reform program of penitentiary system in accordance with international best practice.*

Detention is still the predominantly used measure of restraint, as the prosecution grants almost all the motions for pre-trial detention. According to the National Statistical Service, there were 1043 detention motions submitted to court. 970 of them were granted (96 %). There is neither independent, effective investigation, nor comprehensive data on the number and causes of deaths in penitentiary institutions. Investigations are often not initiated, or are discontinued due to a lack of *corpus delicti*. The reporting period didn't bring any regulatory or policy changes that would lead to improvement of detention conditions in penitentiaries. Civil society registers no improvement of the human rights protection in prisons, as reported by the Public Monitoring Group over Penitentiaries.<sup>75</sup>

Overcrowding in prisons continued to be a problem even after amnesty declared in 2013. Although in some prisons the situation has improved, yet as per June 2014, six prisons out of the 13 that exist today in the Republic of Armenia are overcrowded<sup>76</sup>. Twelve to 20 prisoners are kept per 32 square meters

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<sup>73</sup>Charges filed against Argishti Kiviryan, retrieved on April 19, 2014, <http://www.investigatory.am/en/news/item/431/>

<sup>74</sup> Existence of false crime reporting acts as an additional obstacle for people to report about crime, especially in sensitive fields such as elections, corruption, domestic violence etc.

<sup>75</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>76</sup> Noubarashen Penitentiary – 982 detainees for 840 available places, Kosh Penitentiary – 740 inmates, for 650 available places, Sevan Penitentiary – 562 inmates for 548 available places, Artik Penitentiary – 378 inmates for 367 available places, Vardashen – 244 inmates for 154 available places, Hrazdan Penitentiary – 239 inmates for 215 available places.

while the domestic standard stipulates a maximum of 8 prisoners per 32 square meters. The government plans to address the problem of overcrowding by building four new establishments over the course of the next ten years while the problem of overcrowding could have been addressed more efficiently by using alternatives to imprisonment.

The Civic Monitoring Group over Penitentiaries reports on the lack of access to natural light and permanent electricity, lack of access to running water and normal heating during wintertime, all being instances of degrading treatment. Despite the reports of the Public Monitoring Group, the state does not respond even to emergency cases, when medical intervention is necessary to save the life of the prisoner<sup>77</sup>.

As a result of the lack of access to normal living conditions and basic health services in penitentiaries 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. Thus, as per information of the Public Monitoring Group over Penitentiary Institutions, the detainees are forced to pay 50,000-60,000 drams (more than 100 euro) a month for being hospitalized, and an extra 5000 drams (about 10 euro) or 10 liters of petrol for the transfer to the hospital.

The major persistent problem is the informal hierarchical interrelations between the inmates regulated by unwritten "criminal" laws and criminal authorities putting additional, internal pressure on the inmates and discriminative attitude towards some groups of prisoners. This issue is not being seriously addressed by the Penitentiary Administration.

## **Probation Service**

***ENP Implementation Tool, Priority Measure 56:** Within the structure of Ministry of Justice create a probation service independent from the Ministry's Penal Department.*

CPT<sup>78</sup> explicitly stated that the Armenian government should address prison overcrowding by considering imprisonment as a last resort and improving the early release procedures. In the reporting period Armenian government has had little progress in the field. The government has stated its intention to close down smaller prisons and establishing larger and more centralized prisons. Introduction of probation as an alternative to imprisonment is currently being discussed. Cost analysis has shown the cost-effectiveness of the measure along with its added value, yet funding priorities of the government in the field are unclear.

Thus main concerns in this field are the appointment procedure of the head of the service and its' functional independence from the penal department.

## **RECOMMENDATIONS**

- Address prison overcrowding by making efficient use of non-custodial measures.

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<sup>77</sup> For instance, in May 2014, a prisoner of Kosh detention facility was taken to Ashtarak City hospital because his mouth was bleeding. He was told at the hospital that he did not have any health problems and was taken back to the penitentiary, where he subsequently died on the same day.

<sup>78</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

- Ensure access to health services for inmates by increasing the number of medical personnel, and ensuring that prisons have essential equipment and medications.
- Adopt legislative provisions stipulating state liability for deaths of persons under the responsibility of the State, in the newly developed Criminal Procedure Code, and in the Criminal Code currently under development.

### **III Treatment and Torture**

There is an urgent need to address the problem of torture from multiple perspectives as problems in the field vary from incompatibility of the definition of torture, lack of mechanisms of registration of body injuries and international standards. There has been no improvement in the field either in legislation or in practice. The concept for the new Criminal Code is being drafted with no reference to torture and its definition in compliance with international standards.

A large-scale systemic reform process has been underway in the framework of ‘Reform Program for Police Activities in 2013-2014’. The term of this reform project is now coming to an end, yet the results are questionable.

During 2014 the Public Monitoring Group over the Police Detention Facilities<sup>79</sup> has repeatedly reported of police actions hindering and limiting the Group’s data collection efforts. This in turn seriously restricted the Group’s monitoring activities and narrowed the scope of the collected public data.

Special Investigation Service is enforced to conduct preliminary investigation of criminal cases, related to the complicity of officials, with an aim to avoid the conflict of interest. Frequently, the Special Investigation Service does not conduct investigation *per se*, sending inquiry on torture cases to the police. Hence, the investigation of torture cases in practice is conducted in the police.

Investigator’s room is closed for the public oversight; there is no any kind of mechanism recording possible ill-treatment or torture cases.

The lack of access to legal counsel fundamentally strips detainees of safeguard against torture or ill treatment. According to the data of the Monitoring Group over Police Detention Facilities, in 2014, only 75 detainees out of 690 applied to have a lawyer.

### **RECOMMENDATIONS**

- Ensure that Special Investigation Service of RA de facto investigates the cases of torture, not involving other investigatory mechanisms, like Police internal investigation.
- Transfer the competence of appointment of the head of department of penitentiary institutions of the ministry of justice from the RA president to the Minister of Justice.
- Ensure access to legal counsel from the earliest stage of the deprivation of liberty.

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<sup>79</sup> The Public Monitoring Group at the Detention Facilities of the Police Department of the Republic of Armenia is a monitoring body engaged in activities to secure the protection of rights and liberties of persons held at detention facilities of the police system. For more see the Group’s latest monitoring report in Armenian here: [http://www.policemonitoring.org/DownloadFile/4366arm%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81\\_20110.06.pdf](http://www.policemonitoring.org/DownloadFile/4366arm%D4%B6%D5%A5%D5%AF%D5%B8%D6%82%D5%B5%D6%81_20110.06.pdf)

- Ensure that the new Criminal Code contains a definition of torture in line with Article 1 of UN Convention against Torture.
- Ensure the transparency of investigator's room through audio and/or video recording, and open those for public oversight.

## Human Rights in the Army

In 2014 lack of comprehensive medical examination, medical care and services for conscripts in the course of the call-ups result in conscription of individuals with serious health issues<sup>80</sup>. Conscripts are not provided with the results of their health examination, whereas they're entitled to receive this information upon completion of health examination. Lack of transparency in organizing of the medical checkup and lack of awareness among conscripts of their rights, limits their access to re-examination in cases when there are serious health issues.

42 out of 45 servicemen during the winter call-up of 2013 and the summer call-up of 2014 raised issues of inadequate medical examination and consequent drafting to the army<sup>81</sup>. In 2014, Helsinki Citizens' Assembly Vanadzor Office has received applications from 22 servicemen (20 had health issues and 2 cases were related to grounds for deferment). For comparison in 2013, it received applications from 13 servicemen (12 health issues and 3 delays in granting deferment).

There are obvious drawbacks in the legal framework as well. Particularly, eligibility of conscripts for military service based on their health state are determined by the Minister's orders, rather than by law<sup>82</sup>.

In 2014, death cases continued to be documented. For the period of January 1, 2014 to September 30, 2014 thirty eight death cases were registered, amongst which twenty cases were caused by the ceasefire violation, six cases caused by accident, three cases by violation combat service rules, three cases by health problems and four by homicide; one death was caused by breaching the rules of weapon use and one death case was qualified as a suicide. The total number of deaths in the armed forces has increased as compared to 2013, when the total of deaths for the entire year was thirty one<sup>83</sup>.

The year of 2014 has seen a major growth in the ceasefire violation rate and several subversive attacks causing many death cases. Only in the period of July 27, 2014-August 11, 2014, Azerbaijan violated the ceasefire for 4600 times, and the Nagorno-Karabakh – for 1300 times<sup>84</sup>.

<sup>80</sup> Observation supported by the practice and monitoring of Helsinki Citizens' Assembly Vanadzor Office (HCAV) human rights protection NGO.

<sup>81</sup> Data is based on the number of servicemen who have applied to HCAV human rights protection NGO.

<sup>82</sup> According to Article 9(4) of the RA Law on Legal Acts, Orders of the ministers of the Republic of Armenia, as well as decrees and orders of Region Governors (marzpets) and Mayor of Yerevan may not prescribe regulations to the effect of restricting or changing the procedure for exercising the rights, freedoms and privileges of legal and natural persons; assigning responsibility or heavier responsibility; assigning or changing obligations or establishing or changing the procedure for the fulfillment of obligations; establishing or changing procedures for control or surveillance over the activities of legal or natural persons, or any other regulations otherwise affecting their legal status.

According to Article 83.5 of the RA Constitution, the issues below shall be stipulated exclusively by the laws of the Republic of Armenia:

1) terms and procedures for the exercise and protection of the rights of natural and legal persons;

2) restrictions on the rights and freedoms of natural and legal persons.

<sup>83</sup> <http://hcav.am/wp-content/uploads/2014/10/Տեղեկանք-2014-հունվար-սեպտեմբեր.pdf>

<sup>84</sup> Helsinki Citizen's Assembly Vanadzor. Report on 'Death cases in the armed forces in January-September 2014'. Report published October 2014. Available in English at <http://hcav.am/en/publications/reference-on-death-cases-in-the-armed-forces-in-january-september-2014/>

The ceasefire violation in January-September 2014 caused 20 death cases in the armed forces, while the number of victims in the same period of 2013 was only 3. If during the last several years only 22 % of death cases were related to violation of the ceasefire agreement, the percentage was 52 as of September 2014<sup>85</sup>.

## RECOMMENDATIONS

- Provide adequate, government funded pre-service, service and post-service healthcare to conscripts and servicemen.
- 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.

## Freedom of Thought, Conscience and Religion

Freedom of religions or belief remains problematic in both legislation and practice. The existing Law contradicts to the Constitution<sup>86</sup> of the Republic of Armenia and the international standards in this field. Since 2009, there were three attempts to improve legislation resulting in the draft Law introduced by the Ministry of Justice in 2011, which was negatively reviewed by the Venice Commission and received critical feedback from both religious organizations and civil society<sup>87</sup>. Currently, 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 hatred and calls to violence continue to be commonplace and still do 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 (henceforth AAC)<sup>88</sup>. Street walls are covered with leaflets with hostile messages and even calls for physical violence against religious minorities<sup>89</sup>. However, authors of those articles and programs are never held accountable by state authorities<sup>90</sup>.

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<sup>85</sup> Ibid

<sup>86</sup> For example, articles 1-4 of the Law guarantee freedom of conscience only for the citizens of the Republic of Armenia, while the Republic of Armenia Constitution (Article 26) guarantees freedom of conscience for everyone.

<sup>87</sup> The main issues with the draft Law are the following: any preaching can be easily defined as “soul hunting”, which is criminalized<sup>87</sup>; Armenian Apostolic Church is given a special status; the Law defines a high threshold and procedure for registration of religious organizations; adequate provisions are not included to safeguard the right to religion or faith to everyone regardless of citizenship.

<sup>88</sup> Information provided by Collaboration for Democracy NGO <http://www.religions.am/arm/>

<sup>89</sup> The organization behind these leaflets - “Mek Azg” (One Nation), “The United Youth League” operates openly, giving press conferences and appear on television, including Public Television.

<sup>90</sup> Very few litigation cases currently are in the process referring to defamation. The latest one is the case of the Pastor of Yerevan Evangelic Church Levon Bardakchyan appealing to the court against “Iravunq” daily for a series of abusive articles about Armenian Evangelic Church published by the newspaper in 2014. The lawsuit is in the process.

Schools and kindergartens are commonly used for religious propaganda and prayers services by the AAC<sup>91</sup>. Most widespread problems in educational sector include incitement of hate speech and preaching against religious organizations and denominations other than the AAC, indoctrination of the AAC's belief system in the educational contents<sup>92</sup> and absence of alternative teaching mechanism for students of other beliefs, as well as strong linkage and association of the AAC with the Armenian national identity in school educational content. Attendance of Armenian Church History classes is mandatory which contradicts to the Article 2 of the Protocol 1 of the European Convention of Human Rights. Under the newly adopted "Action Plan Against Vicious Norms" the Ministry of Defense and the Apostolic Church will "work individually with the representatives of explicit members of destructive religious movements and subcultures" in schools and army units.<sup>93</sup>

RA National Assembly adopted amendments to the Law on Alternative Military Services on May 2, 2013. Amendments are mostly in line with the recommendations of the Venice Commission and address important problems. Following adoption of amendments, all conscientious objectors applied for transfer and their applications were positively reviewed by the Republican Commission. During 2014, 74 applications from conspicuous objectors were reviewed and satisfied by the Commission to carry out the service in one of the following institutions: elderly houses, psychiatric institution, orphanage, and landscaping/zoning agency.

## RECOMMENDATIONS

- Ensure broad consultation with civil society and all relevant stakeholders on the new Law on Freedom of Conscience and Religious Organizations.
- Give an adequate and timely response to instances of instigations of religious hatred; identify and prosecute those spreading hate speech.
- Closely monitor the places for alternative military service to ensure a genuinely alternative service (conditions, oversight, attitude towards conscientious objectors)

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<sup>91</sup> Analysis of the content of school textbooks of the history of the Armenian Church and their impact on the young generation, H. Hovhannisyanyan, A. Davtyan, and S. Mkrtychyan, 2013; Issues of Religious Education at Public Schools of the Republic of Armenia, Stepan Danielyan, Ara Ghazaryan, Hovhannes Hovhannisyanyan, Arthur Avtandilyan, 2012;

<sup>92</sup> The Armenian Apostolic Church has an absolute privilege and domination in teacher trainings and development of educational materials for the Armenian Church History course taught throughout secondary school. This becomes possible through anti constitutional interference into what was prescribed to be Ministry of Education's primary and sole responsibility.

<sup>93</sup> On 26 April, a Practical and Theoretical Conference on the theme of "Destructive Beliefs and Vicious Norms as a Threat to Defense Capability" was carried out in the auditorium of the Administrative Building of the Ministry of Defense. During the conference, Minister of Defense Seyran Ohanyan declared: "We are simply obliged to conceive the coverage of destructive faiths and subcultures, and especially their consequences for their followers and other soldiers... One should not live by the dictate of faiths and criminal beliefs, but rather, believe in one's fatherland and the Armenian Apostolic Church..." See more at <http://168.am/2014/04/28/358822.html>

## Freedom of Assembly

Current Law on Freedom of Assembly in general is in line with international standards; however, its implementation is marred with numerous drawbacks. The police regularly use force and impose restrictions on assemblies stating that the assembly is not “authorized”.<sup>94</sup> Recorded violations are not thoroughly investigated.

Authorities impose detention to neutralize minimal perceived threats coming from political opponents. On October 2013, Shant Harutyunyan organized a march to the presidential office. According to Mr. Harutyunyan, his allies and the lawyers, the provocateurs incited clashes. As a result, 20 of the participants, including 14 years old son of Harutyunyan were arrested.<sup>95</sup> Currently, 14 of them are under detention and pre-trial detention is continuously extended without sufficient grounds. Being in custody Mr. Harutyunyan reported on being beaten by the chief of Police and the deputy chief of the police. The allegation was not investigated. Within the court examination in August 2014, prosecuting attorney requested from 8.5 to 4 years of imprisonment for the protesters, 7 years of imprisonment for Harutyunyan and 5 years of imprisonment for his underage son.

The largest rally against the accession into the Customs Union was held on December 2, 2013, on the day of the visit of Vladimir Putin to Armenia, when the police apprehended at least 110 protesters violating the rights to freedom of movement, freedom of assembly, freedom of expression, liberty, and security. Before Vladimir Putin’s visit and during the visit itself, police and national security troops searched apartments of activists, obstructed citizens’ freedom of movement in Yerevan and Gyumri where the RA and RF presidents were to participate in a Russian-Armenian economic forum. During the actual march police troops stationed on the protest route used excessive force against the protesters by coercively apprehending them without proper grounds. Administrative charges were brought against most of the protesters and litigations are underway and the versus claims towards the illegal activities of the police are filed.

After several failures to bring activists to administrative responsibility, due to consistent work of defenders, the police began to suppress activists by applying criminal procedure. In particular, in June, 2014, 11 activists were apprehended from sit-in strike against demolition of the historical building. Activists were released, however, their personal belongings were apprehended and the police prepared materials for bringing criminal charges against them for damaging private property. In June, 2014, one activist was arrested for attempting to tear down the fabric cover on the building with a sharp tool at a protest against demolition of Afrikyan Club. The activist was released, but the police continued the investigation.

Apart from the above mentioned cases, the police repeatedly applied detention of activists participating in peaceful demonstrations. Disproportionate practice of detention aimed at suppressing activism instigating fear in relation to the manifestations of freedom of expression.

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<sup>94</sup> The Law requires a notification of assembly rather than authorization of an event that has more than 100 participants.

<sup>95</sup> Clashes in downtown Yerevan; many citizens were apprehended to the Police. Retrieved from <http://www.azatutyun.am/content/article/25159068.html>

## **RECOMMENDATIONS**

- 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 administrative apprehension/detention and intimidation of activists.

## REFORM OF THE JUDICIARY

**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.*

### Overview of the Situation

Institute of judiciary continues to be perceived as one of the most corrupt sectors in Armenia. According to nationwide survey results<sup>96</sup> 53% of respondents fully distrust or rather distrust courts which constitutes the highest rate of public distrust since 2008. According to the same database in 2013 only 1% of respondents completely agree that courts are free from government influence. According to Transparency International's Global Corruption Barometer 2013<sup>97</sup>, 69% of respondents feel that judiciary is corrupt or extremely corrupt. In the given context any international aid that will go to the reform of the judiciary has to address these negative trends in the field and design programs that will strategically prioritize between root causes of below presented systemic problems in the field.

The problem of president's discretionary power to influence the process of judicial appointments<sup>98</sup>, disciplinary sanctions and the termination of judicial powers remains unresolved. The Justice Council proposes the list of candidates for judges but it has only advisory and no actual decision-making power. The president has the power to choose from the list of "candidates acceptable to him" for appointments and promotions. Candidates not selected by the President are disqualified and have to start the process anew. The issue of separation of powers and judicial independence is on the agenda of the Constitutional Reform Commission. Nevertheless, no practical mechanisms are suggested to raise independence of the Council of Justice<sup>99</sup> and to solve the problem of judicial impartiality at institutional level.

There have been some positive developments related to the qualification exams for candidates of judges, following the amendments to the Judicial Code to make the interviews and written tests more transparent. The interviews and tests are live broadcasted, as well as video and audio taped, and applicants can receive copies upon request. The testing and interview process can be overseen by representatives from the President's office, the Ministry of Justice, the Chamber of Advocates and NGOs. Members of the Council of Justice cannot participate in the evaluation of candidates with whom they have conflict of interest.

The Criminal Procedure Code was substantively discussed with stakeholders but its adoption is still pending in the National Assembly. Adoption of a new Code is imperative, particularly following the violent events of the 2008 presidential elections, which have yet to see a credible investigation and which demonstrate a complete failure of the justice system to ensure a fair trial. There are a number of

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<sup>96</sup> Caucasus Barometer 2013. CRRC 2013. <http://www.crrc.am/research-and-surveys/caucasusbarometer/documentation>

<sup>97</sup> Transparency International. Global Corruption Barometer 2013. <http://www.transparency.org/gcb2013/country/?country=armenia>

<sup>98</sup> One judge of the Constitutional Court, five judges of first instance courts, one judge of the administrative court, and one court president were appointed by the president in 2014 (source: [www.president.am](http://www.president.am)).

<sup>99</sup> According to the RA Constitution Article 95 In conformity with the procedure stipulated in the law the Council of Justice shall: 1) form and present to the approval of the President of the Republic the list of candidates of judges and the lists of the professional advancement, which shall be used as a basis for appointments; 2) provide a conclusion on submitted candidacies of judges; 3) nominate the candidates for the chairman of the court of cassation, chairmen and members of its chambers and candidates for the chairmanship of the appeal courts, first instance courts and specialized courts; 4) express opinion on issues of pardon on the request of the President of the Republic; 5) subject the judges to disciplinary responsibility; submit recommendation to the President of the Republic on terminating the powers of a judge, detaining him, on agreeing to involve him as an accused or instituting a court proceeding to subject him to administrative liability.

outstanding concerns with the Criminal Procedure Code: the judicial deposition of confessional testimony; the procedure for arrests or alternative means of restraint for persons accused of grave and particularly grave crimes; the provisions, according to which a private party can apply to the Court of Cassation only with the aid of a licensed attorney.

## **Judicial independence**

**ENP Implementation Program, priority area.** *Development of objective criteria and procedures for assessment and promotion of judges, in order to secure judiciary reform process.*

**Outcome.** *Improved Judicial System. Measure.* *Actions directed at capacity enhancement of technical and assisting staff of judicial departments. Actions continue in 2015.*

Amendments to the Republic of Armenia Judicial Code made in 2014, which will enter into force starting from January 2015, define the procedure of assessing performance of judges as well as provides assessment and promotion criteria. These regulations of performance assessment of judges have somewhat clarified the preparation of judge promotion lists. However, the RA President still enjoys excessive powers in respect of the promotion of judges. According to the Judicial Code, the President of the Republic of Armenia shall approve the judge promotion lists, and in case of disagreement, the President may send the list back to the Justice Council, demanding a new discussion.

The practice of applying disciplinary sanctions against judges for “illegal” rulings remains unaddressed and is used as a punitive measure. According to international standards, a judge may be disciplined only in 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 as disciplinary sanctions are imposed for the content of a judgment. An attempt was made to define the meaning of “violations of substantive and procedural provisions,” but the definition is still too broad, unclear, and subject to ambivalent interpretation<sup>100</sup>. Despite this attempt to clarify the law, violation of substantive provision of the law is still treated as a disciplinary offence.

The decisions on subjecting a judge to disciplinary responsibility, including decisions on terminating the powers of a judge<sup>101</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.

**ENP Implementation tools, measure 54.** *Develop and adopt an effective model for financing the judiciary, based on international best practice.*

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<sup>100</sup> Under the Judicial Code, the “violation of a substantive and procedural provision” must be “obvious and grave.” An “obvious” violation is a violation of a substantive and procedural provision by a judge in the course of implementing justice, if the existence of such violation cannot be questioned through any reasonable legal presumption or argument. A “grave” violation is a violation of a substantive and procedural provision by a judge in the course of implementing justice, which undermines the reputation of justice or is incompatible with the high calling of a judge

<sup>101</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.

RA Judicial Code defines judicial self governing bodies-General Council of Judges, Council of Court Chairmen. Judicial department prepares a draft budget, where Council of Court Chairmen has its part. The latter confirms program of courts' mid term expenditure program and the draft budget, it can also make necessary amendments to the draft budget. During further discussions of the draft budget in the National Assembly, the Judicial Department participates and presents position of the Council of Court Chairmen. It is worth mentioning that the General Council of Judges does not participate in the budget draft preparation process in practice, despite the fact that the law prescribes it the power to discuss any questions related to the natural functioning of the system of judiciary including those that are under the discretion of the Council of Court Chairmen. Thus in practice the role of the Council of Court Chairmen remains uncertain when drafting the budget or presenting it to the National Assembly.

## **Recommendations**

- Improve the procedures for nominating judge candidates and appointing judges by removing the president's discretionary power in endorsing the list of judges.
- 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.
- 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.
- Improve the procedures for nominating judge candidates and appointing judges by removing the president's discretionary power in endorsing the list of judges.
- Define mechanisms of judicial appeal of disciplinary sanctions defined by the Council of Justice.
- Define effective mechanisms for participation of the General Council of Judges in the mid-term expenditure program development and budget drafting process envision mechanisms for the participation in the discussions of the draft budget in the National Assembly.

## **Prosecutor's Office**

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

*No measure has been envisioned in the Action Plan Implementation Program 2014-15 on the reform of the prosecutor's office.*

In 2014, the Republic of Armenia Law on the Investigative Committee of the Republic of Armenia was adopted, and entered into force in July. The Investigative Committee includes only the investigative agencies of the Republic of Armenia-Police and the Ministry of Defense, while according to the relevant presidential decree, the joined Investigative Committee was supposed to be created on the basis of the investigative agencies of the Ministry of Defense, the Police, and the State Revenue Committee. Moreover, both legally<sup>102</sup> and functionally the National Security Service and the Special Investigative Service also has to be included into this unified structure. Thus, although the creation of a unified Investigative Committee can be considered a positive development, there are still concerns over the fact

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<sup>102</sup> The work of all those agencies is regulated by the RA Criminal Code.

that the Committee will not be a genuinely unified investigative agency and serve its purpose of raising the effectiveness of pre-trial investigation in criminal cases.

Moreover, the Republic of Armenia Law on the Investigative Committee fails to define a procedure for the parliamentary oversight of committee's activities. In this context, it should be highlighted that, prior to enacting amendments to the Republic of Armenia Law on the Special Investigative Service in May 15, 2014, the Head of the Special Investigative Service was required to present annual written communications to the National Assembly and to the President about the activities of the Special Investigative Service. However, subsequent to those amendments, the Head of the Special Investigative Service now only presents "written information" to the president and government. Both the Special Investigative Service and the Investigative Committee will thus present written "communications" on their previous year's activities to the president and the government of the Republic of Armenia. There is no provision requiring publicity of the communication.

In practice the tradition of a strong prosecutorial dominance persists, resulting in undue interference in the administration of justice. Prosecutorial influence is strongly manifested in the practical administration of criminal justice, with 95 % of accusation rate during the first semester of 2014. The judiciary also grants almost all the motions of the prosecution for pre-trial detention, with 1097 granted motions out of 1155 during the first semester of 2014<sup>103</sup>. 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>104</sup>

## RECOMMENDATIONS

- Ensure de facto elimination of the investigative functions of the prosecution, and functional independence of investigators and 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.
- Take measures to amend the Republic of Armenia Law on the Investigative Committee, so that the functions of all the investigative agencies operating in the Republic of Armenia are merged under the Investigative Committee, at least safeguarding compliance with the presidential decree requiring the Inquest Department of the State Revenue Committee to be merged within the Investigative Committee.
- Establish a procedure for the Republic of Armenia Special Investigative Service and the Investigative Committee to present a written report on their previous year's activities to the National Assembly of the Republic of Armenia.

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<sup>103</sup> See more at: Documents of Judicial Practice. <http://court.am/?l=lo&id=50>.

<sup>104</sup> American Bar Association, Judicial Reform Index Armenia, Volume IV, December 2012

## Effective Implementation of Judicial Acts

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

*No measure has been envisioned in the Action Plan Implementation Program 2014-15.*

The Service for Compulsory Enforcement of Judicial Acts<sup>105</sup> continues to fail the enforcement of judicial acts, especially if one of the parties to the case is the executive branch of power.<sup>106</sup> 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 RA judicial system. Recently, a new scandal unfolded involving the head of the Service.

### 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.
- 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.

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<sup>105</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>106</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-ardaradatutyanyan-vorosh-himnaxndimeri-veraberyal.pdf>, page 122

## 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 Program priority area, 59.B. 39: Improvement of the quality of free legal aid and development of a concrete framework for provision of free legal aid.*

**Outcome.** Increased efficiency of advocacy system. **Measure 1.** Develop criteria for free legal aid that will allow to assess state of personal need. **Measure 2.** Needs Assessment to find out the volume of free legal aid and necessary number of public defense lawyers. **Measure 3.** Development and adoption of free legal aid provision mechanisms.

In January 2014, the provision of the RA Law on Advocacy, entered into force, as a result of which number of individuals entitled to free legal aid has increased considerably, which also implies some changes in the field of public defense. Nonetheless, given the heavy workload of the public defense lawyers, there are still problems when it comes to the quality of services rendered by the Public Defender's Office. Moreover, there are concerns over the relatively small number of cases defended in the field of civil and administrative law (during the first half of 2014, the Public Defender's Office provided free legal aid in 1,901 completed criminal cases<sup>107</sup> and 568 completed civil and administrative cases<sup>108</sup>). It is worth mentioning that the aforementioned 2,469 cases were managed by a total of 48 public defenders (of which six were part-time employees).

### **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.
- Allocate sufficient financing for the provision of free legal aid, consistent with the updated list of individuals entitled to free legal aid.
- Develop the oversight over the Public Defender's Office aimed at making their free legal aid system more effective.

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<sup>107</sup> <http://pastaban.am/resources/advocates/img/decision/64d3e127f92c730c2bf9cca757ce31b5.pdf>

<http://pastaban.am/resources/advocates/img/decision/d9aed86d74104adf2b716951e9baf25.pdf>

<sup>108</sup> <http://advocates.am/resources/advocates/img/decision/ad5adf929fe85521580589635024e0aa.pdf>

## GENDER EQUALITY AND DOMESTIC VIOLENCE

### **Action Plan Priority Area 1. Strengthening of respect for human rights and fundamental freedoms**

#### **Overview of the situation**

Gender equality and fight against discriminatory narratives at policy level is not a priority for the Armenian government. This alarming observation is based on the actual practice of policies, and deeply engraved gender stereotypes of policy makers. These stereotypes manifest in the party platform of the leading Republican party, official speeches of the policy makers<sup>109</sup> and consequent practice of policies in different fields i.e. education, employment, healthcare<sup>110</sup>.

RA Law ‘Ensuring Equal Rights and Opportunities for Men and Women’<sup>111</sup>, adopted in 2013, established the first national-level policy in addition to the existing ‘Gender Policy 2011-15’<sup>112</sup>. The law triggered fierce opposition and a smear campaign against women's organizations from nationalist groups and Kremlin-backed political technologists. The government refused to condemn the propagation of hate and failed to counter the spread of misinformation around the law, while the police refused to address the related reports, even when threats were voiced by MPs and other public figures.

State policy makers ignore the problem of gender inequality and domestic violence effectively promoting the quasi-nationalistic agenda<sup>113</sup>. Furthermore the systematic enrootment of gender bias and stereotypes both in teaching philosophy (textbooks, methodological materials) and in teaching practice<sup>114</sup> come to seal the ruling patriarchal narrative on gender equality at a systemically deeper level. Studies indicate that similar problems exist in the system of higher pedagogical education as well<sup>115</sup> that accordingly translates into problems at school level. 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 the government has 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. In the given context positive expectations from effective enforcement of the newly adopted law are significantly lowered.

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<sup>109</sup> Ruzanna Tsaturyan. 2014. ‘Decoding the Woman in Contemporary Political Discourse’. 2014. Center for Gender and Leadership Studies. Electronic publication is forthcoming at the website of the Center for Gender and Leadership Studies.

<sup>110</sup> Low average salary of women - 65% of men’s salary; increased mortality rates based on increase of oncological diseases amongst women of reproductive age; unequal representation of women-10,7%-in the National Assembly, government and local self government levels. In 13% of rectors and vice rectors of state universities, 18% of deans and only 25% of heads of departments are women. Sources: Global Wage Report 2012/13 Wages and equitable growth [http://columnru.global-labour-university.org/2013/04/blog-post\\_30.html](http://columnru.global-labour-university.org/2013/04/blog-post_30.html). Men and Women of Armenia. Statistical guide. 2013. Yerevan. RA State Statistical Service. Available in Armenian and English at <http://www.armstat.am/file/article/gender.pdf>

<sup>111</sup> See the Law in Armenian <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=28173>

<sup>112</sup> See the Gender Policy in Armenian. <https://www.e-gov.am/protocols/item/2/>

<sup>113</sup> A recent illustrative instance of this policy was provided recently by Armenian police. The official website published rules for ‘women safety’. See more at <http://www.police.am/en/help/womens-saf%D0%B5ty.html>

<sup>114</sup> Ruzanna Tsaturyan. 2012. Yerevan. Gender roles in RA elementary school textbooks. Available in Armenian at [http://www.osf.am/wp-content/uploads/2014/01/Gender\\_roles\\_in\\_primary\\_school\\_textbooks-2012.pdf](http://www.osf.am/wp-content/uploads/2014/01/Gender_roles_in_primary_school_textbooks-2012.pdf); Mosaics of Gender Relations. Gender socialization, gender tolerance, gender identity. 2011. Edited by Hasmik Gevorgyan. Yerevan. Edith Print.

<sup>115</sup> Ruzanna Tsaturyan 2013. Gender related stereotypes and problems in pedagogical domain. Available in Armenian at [http://www.osf.am/wp-content/uploads/2014/01/Policy\\_paper\\_Ruzanna\\_Tsaturyan.pdf](http://www.osf.am/wp-content/uploads/2014/01/Policy_paper_Ruzanna_Tsaturyan.pdf)

**Action Plan Implementation Program. 37.B.17. Adopt Law on Domestic Violence in accordance with the Council of Europe Convention on preventing and fighting of violence against women.**

**Outcome.** Public awareness raising and promotion of actions meant at prevention of domestic violence.

**Measure 1** Draft the Law on Domestic violence and present it to the NA.

Domestic violence is widespread, with neither adequate legal mechanisms to protect victims, nor a clear understanding of its scope. There are no support services for victims, with police discouraging them to file complaints in the first place. Investigation and judicial review of cases of domestic violence are marred by a lack of credibility. Up to now the government has developed national instruments to address gender-based violence, 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. As such, lack of a standalone law for comprehensive protection mechanisms is a serious challenge to combating domestic violence.

Available scarce data already highlights alarming trends in the field. According to official police data<sup>116</sup>, in 2012 there have been 766 cases of violence amongst which 621 have been conducted against women and 145 against men. 15 cases of violence have been recorded against underaged. Five hundred and eighty cases of domestic violence have been recorded by police in 2013, and 1501 in first 8 months of 2014. As a result of domestic violence nine women have died (the same number for the entire period of 2013 has been seven)<sup>117</sup>.

Law on domestic violence was due for adoption back in 2010 both in the framework of ENP and first cycle of United Nations' Universal Periodic Review. Up to now the law has not been adopted, neither have there been any steps towards its adoption. In 2014 the Ministry of Labor and Social Affairs introduced the 'Law on Social Assistance'<sup>118</sup> which simultaneously addresses several vulnerable groups of people, including domestic violence victims, and aims to give them assistance in various forms. While the Law is intended as a substitute for the domestic violence law it is not enough to effectively fight against domestic violence. The Law neither considers specificities of domestic violence, needs of victims, nor contains the prevention and awareness raising component which that separate domestic violence law would provide. The proposed Law defines several vulnerable groups in the framework of 'people who appear in a difficult life situation' (i.e. elderly people, people with physical disabilities, pregnant women, victims of domestic ill treatment and violence, poverty, unemployment, illness etc.). Major problem associated with this draft law is that it tries to address too many groups and doesn't envision multilayered mechanisms of addressing diverting needs and adequate specialized professional assistance leaving combined service provisions to different vulnerable groups highly dubious.

## **Recommendations**

- Clarify primary aims and problems of the RA Law on 'Ensuring Equal Rights and Opportunities for Men and Women'.

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<sup>116</sup> Data has been officially presented by Deputy Chief of police criminal investigation department. See more on the Police official site <http://goo.gl/fAs7E4>

<sup>117</sup> Though this dramatic increase in the numbers may speak in favor of increased awareness and reporting however increase in the number of deaths does not allow to fully support such positive conclusions.

<sup>118</sup> RA draft Law on Social Assistance. Draft available in Armenian at <http://www.parliament.am/drafts.php?sel=showdraft&DraftID=374&Reading=0>

- Set up a comprehensive system of laws criminalizing hate speech and discouraging homophobic statements by public officials.
- Adopt standalone legislation and effective mechanism on combating discrimination.
- Adopt standalone legislation on domestic violence and set up a specialized referral system for victims of domestic abuse wherein violence against women will be qualified as a criminal and civil offense subject to prosecution and punishment.
- Adopt specific legislative norms to expedite the elimination of employment discrimination against women and to attain de facto equal opportunities for women at all levels of the labor market.
- Government should introduce quotas in line with the principle of affirmative action to ensure adequate presence of women at the top level of management in economy and state-run organizations and in companies' boards of directors with the involvement of the state and communities.

## PERSONAL DATA PROTECTION

### ENP Action Plan Implementation Program 2014-15. 23.B.3. *Enhance the System of Personal Data Protection*

**Outcome:** Enhanced system of data protection. **Measure:** Research on international experience with the account of Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data. Amend the Law on ‘Personal Data Protection’.

Despite the early adoption of data protection law<sup>119</sup> and general recognition of principals set under the Council of Europe and European Union data protection legislation Armenia was one of the later signatory of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (hereinafter referred to as Convention)<sup>120</sup>. Gaps and deficiencies of the Republic of Armenia current law on personal data protection in many respects hinder its effective enforcement on the ground. Current law lacks implementation and enforcement mechanisms, such as existence of an independent data protection authority, administrative and criminal sanctions for negligible or willful violation of data protection legislation. Alongside with abovementioned issues Armenian data protection legislation is lacking regulations aimed to establish security standards for computer stored personal data files. Armenian personal data protection legislation does not contain additional legal guarantees for the protection of special, sensitive personal data, such as racial origin, political opinions, religious or other beliefs, personal data concerning health or sexual life, as well as data on criminal records. The Council of Europe and the European Directive required CoE and EU member states correspondingly to prohibit processing of abovementioned special categories of personal data unless it is prescribed by the law. EU Directive, though, allows processing of such personal data in case of consent provided by data subject.

Current national legislation on personal data protection is missing an important element of personal data protection system developed on the basis of the Council of Europe Convention and EU Directive, e.g. principles and rules of transborder data flow. Absence of transborder data flow rules makes it uncontrollable and exposed to misuse of data by third parties located outside the country. A separate chapter defining rules of transborder data flow must be added to the Law on Personal Data Protection in parallel with administrative sanctions for non-fulfillment of these rules.

Current draft law on personal data protection became open to public in 2014. In general it is in line with CoE standards, but still misses a very important element – sanctions and remedies for violation of data protection rights and establishment of an independent supervisory authority.

### Recommendations

- Adopt administrative and criminal liabilities and amend the draft Law on Personal Data with a specific chapter on independent supervisory authority as well as mechanisms of its structural and

<sup>119</sup> With support of European experts Armenian government developed first draft data protection law, adopted by the National Assembly in 2002.

<sup>120</sup> Armenia signed the Convention in April 2011 and ratified in May 2012, when most of member states did so during the course of 1990 - 2000. CIS and former Soviet countries also signed and ratified earlier-Georgia signed in 2001 and ratified in 2005, Latvia, Lithuania and Estonia signed in 2000, ratified in 2001, Moldova signed in 1998, ratified in 2008, Azerbaijan signed and ratified in 2010, Ukraine signed in 2005 and ratified in 2010. Only Russia signed the Convention in 2001 and ratified only in 2013.

financial independence with detailed description of its responsibilities and scope of authority including but not limited to inspection and imposing administrative sanctions.

- Define legal mechanisms to protect special, sensitive personal data, such as racial origin, political opinions, religious or other beliefs, personal data concerning health or sexual life, as well as data on criminal records.

## **MEDIA**

**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.*

### **Overview of the situation**

2014 was marked with alarming developments towards freedom of expression and media in Armenia. In 2014, the RA National Assembly proposed amendments to the RA Civil Code on addressing the use of anonymous (“fakes”) messages in social media. The draft attempts to prescribe legal punishment mechanisms for those media which would publicize statements or comments produced by anonymous users in social networks for content that contains defamation. Experts highlighted a number of risks with the draft, such as already existing legal mechanisms of the protection from defamation, possible conceptual confusion, designed to further control the field and allowing for an unbalanced protection of freedom of expression.

Another challenge to freedom of speech and media was a court decision stipulating media outlets to disclose source of information. In June 2014 General Jurisdiction of Yerevan Kentron and Nork Marash Court had a closed-door meeting and decided to grant a petition of the Special Investigation Service imposing two media outlets, ILur.am online publication and Hraparak daily, to disclose their source of information. Heads of the media outlets refused to disclose their sources of information. At the current stage, ILur.am online publication and Hraparak daily applied to the Court of Appeal which has rejected the appeal. These developments are perceived as alarming threats towards freedom of expression and media in Armenia.

Violation of the rights of journalists and media continued in 2014; 44 cases of violations of media and journalists’ rights were observed for the first half of 2014 (46 cases for the first half of 2013), out of which 5 cases were of physical violence against journalists, 29 cases were persecution of media representatives and journalists, and 10 cases were violation of the right to obtain and spread information.<sup>121</sup>

Court cases against journalists and media reduced in the 1st half of 2014 compared with the same period of 2013 - 12 cases against 16 (8 were slander and offence cases, 3 related to protection of copyright, and 1 court proceeding related to disclosure of the source of information).<sup>122</sup> The amount of compensation prescribed by law for slander and offence is too high, and it is still used as a pressure tool against the media.

**Action Plan Implementation Program. 18A.18. Strengthen the independence and diversity of media through implementing successive steps.**

**Outcome.** Broadcasting and mass media legislation and implementation in accordance with OSCE/CoE criteria, de facto assurance of broadcasted media diversity.

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<sup>121</sup> First half of 2014 report on the freedom of expression in Armenia and violations of the rights of journalists and the mass media. Committee to Protect Freedom of Expression, Retrieved from <http://khosq.am/en/reports/report-of-the-committee-on-the-situation-with-freedom-of-speech-and-violations-of-rights-of-journalists-and-media-in-armenia-first-half-of-2014/>

<sup>122</sup> First half of 2014 report on the freedom of expression in Armenia and violations of the rights of journalists and the mass media. Committee to Protect Freedom of Expression, Retrieved from <http://khosq.am/en/reports/report-of-the-committee-on-the-situation-with-freedom-of-speech-and-violations-of-rights-of-journalists-and-media-in-armenia-first-half-of-2014/>

**Measure.** Based on necessity make amendments in broadcasted media legislation in accordance with OSCE CoE recommendations.

**Tool:** Amending broadcast legislation in line with OSCE and Council of Europe recommendations

The broadcast legislation is not in line with the country's international commitments aimed at ensuring diversity of broadcast media, and proper implementation of the digital switchover. The current broadcast law, last modified in 2010, still raises many legitimate concerns; it is an obstacle to the liberalization of the broadcasting sector, the development of competition, as well as to the diversity of television programming. Legislative processes that aimed at improving the broadcast legislation have been halted for four years. The Law on TV and Radio does not guarantee the independence of the national regulator and transparency of media ownership.

As a positive step were legislative amendments in the broadcast legislation to ban commercial advertising in the public television. On 12 March 2014, the Parliament adopted in the first hearing the draft on changes and amendments to the RA Laws "On Television and Radio" and "On Advertising". These changes envisaged complete ban on commercial advertising on Public Television. On 21 July 2014, the Parliament made changes and amendments in the same laws to permit advertising of strong alcoholic beverages during 10.00 PM to 6.00 AM. Before that, advertising such beverages was totally prohibited except from Armenian brandy.

**Action Plan Implementation Program. 74G. Priority Area. Ensure gradual transition from analog to digital broadcasting by 01 January 2015 (according to different regions).**

**Outcome:** Ensure Gradual transition from analog to digital broadcasting in selected regions of RA.

**Measure** Implementation of gradual digital switchover.

**Tool:** Implementing gradual transition from analog to digital broadcasting.

The process of transition from analogue to digital broadcasting remains problematic. As it is known the deadline for transition from analog to digital broadcasting, as well as analog licenses of operation for regional TV channels was extended for six-months until July 1, 2015.<sup>123</sup> On 14 January 2014 "Television and Radio Broadcasting Network" CJSC, which has become the responsible authority for digital switchover in the territory of Armenia, signed an agreement with Swedish "Ericsson" company on purchasing and installation of necessary equipment for the digital broadcasting.

On 04 November 2014, 20 MHz wide frequency for broadband mobile internet provision from the frequency range which refers to "digital dividend" was sold to Ucom for 6 billion AMD (~15 mln USD). Armenia's Public Service Regulatory Commission licensed Ucom Company for providing mobile services on 801-811 MHz and 842-852 MHz radio frequencies.<sup>124</sup> As result of selling of "digital dividend", government generates 15 mln USD which is currently used to cover the costs for the digital switchover.

The ongoing digital switchover of broadcasting poses real corruption risks for misappropriation of public funds and the digital dividend, i.e. the part of spectrum that will free up upon switching off analogue broadcasting. Switchover to digital broadcasting and the release of significant spectrum resources require a policy agenda and an action plan. The government has started the process of granting

<sup>123</sup> Amendments to the Law on TV and Radio of 14.06.2013 <http://parliament.am/drafts.php?sel=showdraft&DraftID=30636>

<sup>124</sup> Armenia to have UCOM as fourth mobile operator

[http://telecom.arka.am/en/news/regulator/armenia\\_to\\_have\\_ucom\\_as\\_fourth\\_mobile\\_operator/](http://telecom.arka.am/en/news/regulator/armenia_to_have_ucom_as_fourth_mobile_operator/)

permits for digital dividend frequencies without having put any such framework in place. In the view of these processes, transparency and accountability issues remain unaddressed, and the public is not informed about public resource management in the digital sphere.

With the switch-off date less than a year away, there is still limited public awareness and understanding of the impending change in broadcasting, and of its purpose and implications. Overall, the public is not informed about the process of digitization, it is also unclear which vulnerable groups will benefit from the state support for the provision of digital set-top boxes.

Wired radio broadcasting of the public radio programs ceased completely since 01 June 2014. “Television and Radio Broadcasting Network of Armenia” CJSC explained the termination of wired radio network by unprofitability. The public radio continues its broadcasting; however, over 2,500 wired radio subscribers lost public radio service and source of information. Thus, broadcasting of the parliamentary sessions stopped as well for the wired radio subscribers.

### **Recommendations**

- Amend the Law on TV and Radio to make media ownership listed publicly, to ensure a transition to a simplified licensing procedure, transparency and fairness of tenders, and independence of the national regulator through reforms of the member selection and appointment process.
- The government should develop, consult on, and adopt a policy for the use of the digital dividend which prioritizes the public interest. Ensure transparency of the digital switchover by informing the public about the most important technical, financial, and social problems and their solutions.
- Reform Article 1087.1 of the Civil Code with a view to preventing its potential use as a pressure tool against the mass media, namely by considerably reducing the cap on the amount of compensation for slander and offence.

## ENVIRONMENT

**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.*

### Overview of the Situation

One of the major developments of 2014 was the adoption of the RA Law on Environmental Impact Assessment and Expertise. Despite the urgent need for the new law<sup>125</sup> still in certain areas it sets a lower standard for impact assessment. Specifically, the requirement for environment impact assessment upon the demand of communities or the interested public as well as the requirement to take into consideration alternative development scenarios in process of environmental impact assessment were removed from the law as well.

Mining remains a key sector for economic growth in Armenia, operating with privileges that exempt mining business from paying fees for natural resource use and environmental pollution. Environmental and health impacts from mining are routinely disregarded as this sector expands, often resulting in destruction of historic and cultural heritage and violation of human rights. The Mining Code does not recognize existence of “mining waste” and “tailings” resulting in zero taxation of toxic waste from mining, while nearly 99% of waste produced in Armenia is generated from this type of activities. Such lack of regulation encourages increase in mining, which in turn leads to serious health and environmental impacts within affected communities.

**Implementation Tools, Measure 107:** *Advance reforms of the environmental sector in accordance with EU standards, specifically strengthening of institutional capacity, as per requirements of Aarhus Convention*

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.

Moreover, on June 21, 2014 the National Assembly of the Republic of Armenia (RA) adopted RA Law on Environmental Impact Assessment and Expertise (hereinafter EIA law) by holding three readings in one day (24-hour regime). Despite the appeal of a number of public organizations the RA President to not sign the highly controversial law and return in to the Parliament for revisions, the law was signed on July 23. Adoption of this law was imperative, in particular, for improvement of RA legislation in compliance with decisions and recommendations within the frameworks of Aarhus Convention and Espoo Convention. In addition, it was included as a precondition for the provision of Armenia’s budget support loan by the World Bank.

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<sup>125</sup> The Law was adopted in 1995 and did not comply with international standards.

The draft law was developed since 2012 by a working group, including representatives from the Ministry of Nature Protection as well as relevant public organizations providing for serious improvements, such as clarification of EIA procedures, ecosystem approach in process of assessment, economic assessment of damages and requirement for compensation, classification of activities. Despite the fact that there were shortcomings in the draft, it was included in the National Assembly's agenda in 2013. No public hearings were held since then and up to the adoption of the Law. Moreover, the bill that was submitted by the Government to the National Assembly and discussed by the National Assembly's Standing Committee on Agriculture and Environment was different from the draft that was presented and adopted at the National Assembly's extraordinary session on June 21, 2014. The new version of the document was not publicized in advance and was not subject to public discussion, as prescribed by RA Law on Legal Acts article 27.1.

Confidentially introduced changes, in fact, devalue many of the positive provisions of the document proposed by the working group. Specifically, threshold values of activities became highly problematic as some *activities* (e.g. *hydropower plants up to 100 kW of power, nearly all types of food production, activities against landslide and flood on up to 10 hectares of land, pharmacy production, fish-breeding, cattle-breeding, sheep-breeding, pig-breeding, etc.*) were taken off the list of activities subject to environmental impact assessment, while others' (e.g., building of gas and chemical product pipelines, geological exploration of mines, utilization of non-metallic mines, hydropower generation, waste treatment, etc.) categories were changed to ensure a more simplified process. The requirement for environmental impact assessment was removed for the change of categories of lands, even though major decisions are actually made at this stage. The requirement for environment impact assessment upon the demand of communities or the interested public as well as the requirement to take into consideration alternative development scenarios in process of environmental impact assessment were removed from the law as well.

Instead, an unacceptable provision was added to the Law, which contradicts the notion of impact assessment on environment and human health. The provision stipulates that assessment will be conducted on the *equipment* rather than the *type* of activity under question. In other words, according to this provision the ore crushing-sorting equipment in Sotk gold mine will be assessed as opposed to the whole mining project to be implemented in Lake Sevan. In this light, the assessment will not look into the fact that the equipment should work in the watershed of the region's largest freshwater reservoir with respective likely negative impacts.

Upon the complaint of the environmental NGOs addressed to the World Bank in July 2014, the latter negotiated with the government to make amendments within the newly adopted legislation to meet the conditionality requirements. Though addressing some of the concerns of NGOs, the amendments too were not appropriately discussed with the public and were rapidly – within 3 days - adopted on September 11, 2014.

No steps have been taken to ensure access of justice for environmental NGOs. In spite of the initiated efforts aiming at changing the NGO legislation, the government consistently avoids addressing the issue of access to justice.

## **RECOMMENDATIONS**

- Amend the RA Law on Environmental Impact Assessment and Expertise to ensure that all major activities that contain risks for the environment and health are included within the scope of environmental impact assessment in accordance with the initial draft law developed by the working group.
- Develop the set of necessary sub-laws to ensure appropriate operation of the environmental impact assessment legislation.
- Adopt the environmental legislation with consideration of the requirements of the Aarhus Convention and adequate public participation.

## FINANCIAL, ECONOMIC AND TRADE RELATED ACTIVITIES

### Overview of the Situation

The EU-Armenia bilateral relationships are mostly regulated by the Armenia-EU Partnership and Cooperation Agreement (PCA). Armenia undertook a number of commitments in the framework of PCA with the aim to approximate Armenia's trade and economic legislation with those of the EU. Armenia has reassured its commitments undertaken in the framework of PCA when approving Armenia-EU Joint ENP Action Plan in 2006. Approximation of Armenia-EU trade and economic legislation is an important element of the Action Plan. After the President signed the agreement of Armenia's membership to the Eurasian Economic Union in October 10, it automatically meant that since 2015 number of laws regulating trade and finances<sup>126</sup> will be replaced with respective norms of Eurasian Economic Union. In the given context ENP Action Plan and its Implementation Program also will need to be reviewed in respect with possible inconsistencies across the EU and the Eurasian Economic Union.

More specifically implementation of a number of objectives stipulated by the ENP Action Plan Common Objectives and Actions, namely 4.4.1, 4.4.2, 4.4.3, 4.4.4, and 4.4.5 become contradictory to trade and economic policy pursued by the Republic of Armenia. This contradiction already resulted in the removal of most of those items from the Armenian government's agenda and from the Action Plan Implementation Program 2014-15. The latter document contains only 25 activities related to finance, economy, and trade. When we have a closer look at those activities following classifications can be made:

- 2 of the activities (144F19<sup>127</sup> and 145F20<sup>128</sup>) do not directly stem from the ENP AP goals on financial, economic and trade related activities.
- 18 activities are related to the financial sphere and included in the ENP AP, but are at the same time also commitments of the Republic of Armenia towards international financial organizations (such as the IMF, the World Bank, IFC, and others). The execution of these activities is connected with the strong dependency of the Armenian budget upon financing of those organizations. Hence, their execution is largely driven by the volume of support provided by such organizations, rather than the need to implement the ENP AP.

### **Action Plan Implementation Program 126.F.1. *Revision of the Public Sector Accounting Model.***

**Outcome.** Legal framework necessary for implementing public sector accounting standards formed.

**Measure.** Adoption of the Republic of Armenia Law on Public Sector Accounting and approval of the Republic of Armenia public sector accounting standards.

The common framework for accounting, bookkeeping, and general financial reporting of public sector entities (public administration institutions, community heads' offices, and state and municipal non-commercial organizations registered in accordance with the procedure defined by law of the Republic of Armenia) is provided by the Accounting Standards for Public Sector Entities (ASPSEs).

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<sup>126</sup> RA customs code, laws on sanitary and phyto sanitary, RA law on standardization etc.

<sup>127</sup> Adding new oversight functions and improving the existing oversight functions of the National Assembly of the Republic of Armenia over the utilization of the state budget, as well as loans from foreign states and international organizations.

<sup>128</sup> Improving the procedure of adoption of laws by the National Assembly of the Republic of Armenia.

Public sector accounting in line with the international (IMF or EU) standards would provide credible and reliable information on the financial condition and activities of public entities. It would enable public administration bodies to obtain credible and swift information needed for managerial decisions in the public sector.

Up to the moment the draft law on ‘Public Sector Accounting’ has been developed but have not been adopted yet by the National Assembly. As for the ASPSEs those are still the same as for the private sector while the overall logic of the reform was to separate the two fields as their goals and functioning vary significantly.

The way the priority area is formulated in the Implementation Plan 2014-15 oversees developments in private sector which are equally important in regard with relevant objectives of the ENP Action Plan. As for the private sector in June 2014, the Republic of Armenia Government and the State Revenue Committee jointly presented to the National Assembly amendments to the Republic of Armenia Law on Accounting. Proposed amendment entered into force in July 2014.<sup>129</sup>

Currently, according to the amended law, under Paragraph 2 of Article 24 of the Republic of Armenia Law on Accounting<sup>130</sup> financial reports of large private organizations can be published without an audit opinion. Under this amendment, international audit organizations have lost the function of auditing organizations that are deemed “large.” Instead, the function was vested with the Ministry of Finance of the Republic of Armenia, of which the State Revenue Committee is part of. Thus, the State Revenue Committee carries out both direct and indirect assessment and review of tax liabilities, which implies rather extensive powers for the State Revenue Committee and increases the likelihood of redundant functions, tighter fiscal functions, conflict of interest and corruption risks.

Moreover, issuance of transparent, IAS-compliant reports by international organizations was likely to contribute to the development of Armenia’s financial market by increasing its appeal for foreign investors. Presently, however, it only tightens fiscal and taxation function, neglecting the real possibilities of improving the business climate and competitiveness in Armenia. The amendments to Paragraphs 1 and 2 of Article 24 of the Republic of Armenia Law on Accounting will also result in reduction of private sector costs, and decrease competitiveness of the private sector in terms of providing transparent and impartial information. Elimination of the requirement for an audit opinion by an international organization in the private sector will further deepen economic risks of Armenia and reduce Armenia’s international business competitiveness. This amendment will also have a negative impact on the structure of tax revenues in the state budget.

**Action Plan Implementation Program 2014-15. Priority Area 144. F. 19.** *Enhance oversight functions of the National Assembly over implementation of the state budget as well as loans borrowed from foreign states and international organizations.*

**Outcome.** *Employ the EU best practices to enhance oversight functions of National Assembly committees especially in the state budget implementation monitoring, provide necessary technical assistance for the practice of oversight functions.*

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<sup>129</sup> See the amendment in Armenian here: <http://www.arlis.am/documentview.aspx?docid=90915>

<sup>130</sup> Republic of Armenia Law on Accounting adopted on 26 December 2002, Law number HO-515-N. Paragraph 2 of Article 24. Available at <http://www.arlis.am/documentview.aspx?docid=80488>

According to the “Law on International Agreements of the Republic of Armenia” loan agreements with international financial organizations and foreign governments are subject to approval by the National Assembly as those are international agreements. Parliamentary approval is not necessary for loans from commercial and other private banks and bonds issued in international capital markets. Targeted public debt management indicators are not approved by the National Assembly, giving the government a great degree of autonomy. While loan agreements with international organizations and foreign governments are subject to parliamentary approval, other financial agreements are not.

In the given context one has to take into account that until recently the Republic of Armenia was classified among low income countries and was mainly relying on concessional loans from international financial organizations. Now Republic of Armenia is considered a middle income country and must start borrowing more funds on market terms. Because of this, there is an urgent need to regulate public debt management<sup>131</sup>, set up target public debt performance indicators and parliamentary oversight mechanisms for those indicators<sup>132</sup>.

It is also necessary to regulate the authority of the government to make amendments to the state budget. Although the Law on Budget System defines certain limitations, several provisions of the annual budget law essentially allow the government to amend the budget without limitations. Changes in deficit financing are a witness to that, e.g. extending loans a number of times exceeding the limits established by the parliament. It is not clear why it is necessary for the parliament to approve the annual budget execution law if the government can restructure the budget in a completely different manner. It is also necessary to regulate by law the process of extending loans from the state budget.

Republic of Armenia government started implementation of program budgeting reforms starting from 2003. Currently the government approves budget implementation plan with quarterly allocations along with non financial performance indicators. The non-financial indicators of different government programs are included in a government decree regulating the annual budget execution report<sup>133</sup>. However there is no demand from the side of the National Assembly to assess government progress based on those indicators<sup>134</sup>. Moreover, performance indicators do not comply with the government strategy’s outcomes and other programmatic documents. National Assembly’s active oversight here could have had a beneficial effect in harmonizing these documents and keeping up with the actual outcomes and development of those indicators. One solution to this problem has been to establish a budget office that will have the necessary expertise and the functional concentration in state budget oversight. However the institutional setup of the budget office its functions and array of work up to now remain largely uncertain.

Both in the spheres of program budgeting and establishment of budget office major work is conducted via the support and expertise of international donors with the National Assembly being a recipient of services rather than the lead of the reform. Major program budgeting, supervision strengthening and

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<sup>131</sup> For example the RA Law on Public Debt envisages certain procedures when the public debt exceeds 50 percent of GDP. According to the same law public debt must not exceed 60 percent of the previous year’s GDP. However the law does not specify what steps must be taken if the debt exceeds the benchmark and what are the National Assembly’s oversight functions there.

<sup>132</sup> Artak Kyurumyan. 2014. Public debt Management in Armenia. Available in English at <http://www.osf.am/wp-content/uploads/2014/10/Debt-Management-A-Kyurumyan-ENG.pdf>

<sup>133</sup> Government of Armenia Decree №1414-N from December 19, 2013, about measures to assure 2014 annual budget execution. Available at <http://www.arlis.am/documentview.aspx?docid=87950>. Annex 11 of the Decree approved the non-financial indicators of the state budget. Available at [http://www.arlis.am/Annexes/4/PT2.1\\_14hav11.pdf](http://www.arlis.am/Annexes/4/PT2.1_14hav11.pdf)

<sup>134</sup> During 2014 no discussion have occurred, National Assembly members participated in trainings organized by international donors, however no practical meetings with government members followed.

other National Assembly capacity development projects are carried out with the help of ‘Die Deutsche Gesellschaft für Internationale Zusammenarbeit’ (GIZ) GmbH and USAID funded Strengthening Armenian National Assembly Project (SANAP).

**Measure.** *Establishment of budget office, its internal regulations, job description of staff, sign memorandum of understanding between the government and the National Assembly.*

GIZ extended support to the NA by hiring consultants to advise on the mandate of the budget office, organizational structure, job descriptions of employees and other issues related to budget office<sup>135</sup>. However, as of mid-October 2014 the Budget office has not been established. There is also no evidence that the National Assembly and government of Armenia have signed a Memorandum of Cooperation envisioned in the measures for 2014 number 144.F.19 of the Implementation Plan.

**Measure.** *Develop 2015 and 2016 budget outcomes in a program budget formats, provide support to necessary legislative reforms.*

In 2013 the National Assembly (NA) adopted a law<sup>136</sup> that incorporated the concept of program budgeting into Armenian budgetary legislation. The government of Armenia program<sup>137</sup> envisages full implementation of programme budgeting starting from 2018. In May 2014 within the framework of Concept on Continuous Professional Capacity Development at the National Assembly the Standing Committee on Financial-Credit and Budgetary Affairs organized a program budgeting workshop<sup>138</sup>. Several members of the National Assembly and representatives of the staff of the NA participated in the workshop on ‘Program budgeting reforms in Armenia’.

In May 2014 GIZ expert made presentation on analytical tools of program budgeting in Armenia<sup>139</sup>. In October GIZ and SANAP supported the SCFCBA<sup>140</sup> in discussion of program budgeting issues with six sectoral standing committees (Standing Committee on Agriculture and Environment; Standing Committee on Health Care, Maternity and Childhood; Standing Committee on Economic Affairs; Standing Committee on State and Legal Affairs; Standing Committee on Science, Education, Culture, Youth and Sport; Standing Committee on Social Affairs).

## Recommendations

- Establish a regular practice of Parliamentary deliberations with the government every trimester based on the Government action plan and performance indicators.
- Amend the state annual budget process in a way that will allow limited and well justified amendments during budget execution stage. As of now actual financial numbers of the state budget often significantly differ from the ones approved by the National Assembly.
- Fully utilize the information, act and report upon the findings of the Chamber of Control.

<sup>135</sup> [http://parliament.am/news.php?cat\\_id=2&NewsID=6652&year=2014&month=06&day=03&lang=eng](http://parliament.am/news.php?cat_id=2&NewsID=6652&year=2014&month=06&day=03&lang=eng)

<sup>136</sup> The Law of the Republic of Armenia on Making Additions and Amendments to the Law of the Republic of Armenia on Budget System. HO-45. Adopted by the National Assembly on April 30, 2013. Available at <http://parliament.am/legislation.php?sel=show&ID=4749&lang=arm>

<sup>137</sup> Government of Armenia Program. Annex to the Government of Armenia Decree №511-A from May 19, 2014. Available at <http://www.gov.am/files/docs/1321.pdf>

<sup>138</sup> [http://parliament.am/news.php?cat\\_id=2&NewsID=6596&year=2014&month=05&day=15&lang=eng](http://parliament.am/news.php?cat_id=2&NewsID=6596&year=2014&month=05&day=15&lang=eng)

<sup>139</sup> [http://parliament.am/news.php?cat\\_id=2&NewsID=6629&year=2014&month=05&day=23&lang=eng](http://parliament.am/news.php?cat_id=2&NewsID=6629&year=2014&month=05&day=23&lang=eng)

<sup>140</sup> [http://parliament.am/news.php?cat\\_id=2&NewsID=6881&year=2014&month=10&day=06&lang=eng](http://parliament.am/news.php?cat_id=2&NewsID=6881&year=2014&month=10&day=06&lang=eng),

[http://parliament.am/news.php?cat\\_id=2&NewsID=6890&year=2014&month=10&day=08&lang=eng](http://parliament.am/news.php?cat_id=2&NewsID=6890&year=2014&month=10&day=08&lang=eng),  
[http://parliament.am/news.php?cat\\_id=1&NewsID=6907&year=2014&month=10&day=10&lang=arm](http://parliament.am/news.php?cat_id=1&NewsID=6907&year=2014&month=10&day=10&lang=arm)

- Legislation to regulate the maximum amount of public debt. The NA must be empowered to set limits on public debt and define targeted characteristics of the debt portfolio (maturity, currency composition, ratio of fixed and floating rate debt, concessionality and other indicators. Public debt management must be free from political influence, which can be achieved by establishing a professional body in charge of public debt management.
- Clarifying the authority to borrow on behalf of the Republic of Armenia and establish a procedure according to which each year the National Assembly must approve the characteristic of the debt portfolio.