



**PARTNERSHIP
FOR OPEN SOCIETY**

Report

Implementation of selected articles of ICCPR¹ and UNCAC² in Armenia: 2014-15.

This report has been prepared in the joint effort of several civil society organizations of behalf of the Partnership for Open Society Initiative. The report looks at the implementation of selected articles in the International Covenant on Civil and Political Rights and in the United Nations Convention against Corruption. Reporting timeframe is January 1, 2014 - January 1, 2016.

Partnership for Open Society is an open coalition of over fifty civil society actors striving towards democratic reform promotion in Armenia. Partnership for Open Society Initiative has been actively engaged in monitoring, reporting, advocacy and mobilization of social capital to promote implementation of EU led reform, viewed as a major channel for institutional development of Armenia. For the full list of organizations directly engaged in the preparation of the paper see the list below.

*Armenian Helsinki Committee
Helsinki Citizens' Assembly Vanadzor
Journalists' Club Asparez
Open Society Foundations-Armenia
Transparency International Anticorruption Center*

¹ International Covenant on Civil and Political Rights.

² United Nations Convention against Corruption

Preface

Armenian civil society has considered the country's European integration as the most consistent and holistic agenda for Armenia's democratic reformation and economic development. The Partnership for Open Society supported integration processes by conducting monitoring of their implementation and formulating recommendations for more consistent, not manipulative reforms in the diverse areas of programming including justice, anti-corruption, human rights and fundamental freedoms.

We believe that the GSP+ is one of the most effective frameworks for advancing these values as it provides substantial and much needed benefits to the country's struggling economy and advances its good governance and democratic institutions by grounding its eligibility in proper honoring of the UN Conventions. Importance and value of this framework is further augmented by the fact that this is the most ambitious remaining engagement of Armenia with the EU after Armenia's unilateral decision to withdraw from signing the Association Agreement and joining EEU.

The dynamics of past 3 years provide conclusive evidence how harmful for human rights and freedoms and for democratic aspirations of the country was withdrawal of the EU's normative presence after September 3, 2013. In the course of the three years, systemic backslide in democratic standards, human rights and rule of law were registered. Tolerance towards political, civic dissent and minority groups is at its low³. The unaccountable, non-participatory process of constitutional reform and the uniquely fraudulent referendum epitomized the nature of concentrated, unaccountable political power, holding vast assets and economic control.

To make any economic and democratic advancement country needs real separation of power and immediate improvement of justice and curbing systemic corruption. Thus, we urge the EU to condition provision of GSP+ regime to Armenia with systemic changes in justice and accountability areas. We believe that since the measures we identify are fully in line with the minimal standards required by the UN Conventions, such conditionality is consistent with the policy as recently reinstated in the first report of the Commission on the concrete effects of the GSP+, referring to it as "the EU trade policy instrument devised **to encourage third countries to comply with core international standards in the areas of human rights**, labour rights, environmental protection and good governance".

Unfortunately, we have to state that the current situation of rights and good governance is in violation of Armenia's commitments under the core UN conventions that GSP+ is based on. Indeed the report does mention persisting human rights problems, gender discrimination and fight against corruption as remaining challenges. We certainly agree with this assessment, however, we want to underline that the tendencies in the country where political and civic dissent are under siege with activists and political opponents being detained, harassed and intimidated at unprecedented level, persistent and demonstrative impunity for high profile corruption cases, police brutality, electoral fraud, human rights and governance problems go well beyond those mentioned in the report and need urgent and more radical measures. These measures do not necessarily need years or large financial resources, but they do need political will to reinstate values of respect for human rights and fundamental freedoms and those of the rule of law.

Below we provide collegial civil society assessment of the most critical and urgent shortcomings in honoring the UN commitments and standards and provide recommendations for immediate measures that can be taken to improve the situation.

³ There are political prisoners in the country as per Human Rights Watch and local human rights activist accounts; unlawful detention of peaceful demonstrators rose four times in the last year, taped and recorded violence against journalists remain unpunished, multiple, recorded and testified accounts of electoral fraud and abuse of power are not investigated and/or followed to restore electoral rights.

International Covenant on Civil and Political Rights.

Article 7 Right to be Free from Torture or Cruel, Inhuman or Degrading Treatment or Punishment

During the reporting period, a draft of the Criminal Code was changed⁴, bringing the definition of torture in line with CAT⁵. While this is a step forward, use of torture continues to be a systemic problem, as reported by both national civil society organizations and CPT⁶. Use of torture by police to extract self-incriminating evidence, overcrowding in prisons, inhumane and degrading treatment in psychiatric institutions, elderly homes and orphanages, right to health in closed institutions remain unaddressed. There are no effective mechanisms to respond to these systemic problems through effective and impartial investigation, prosecution of perpetrators or by reverting to the courts as a last resort to exclude evidence obtained through torture. The state does not provide rehabilitation services for victims of torture and ill-treatment.

Among many issues, CPT expressed concern with widespread prison overcrowding, that in some instances may amount to ill-treatment and torture. This issue is being addressed by the government through closure of certain old penal institutions, construction of new ones and introduction of probation service. While this is a step forward, there is a statistical data that imprisonment continues to be a primary measure of restraint, as the prosecution grants almost all the motions for pre-trial detention⁷. In this context, it is of immense importance that the authorities address this issue by viewing imprisonment as the last resort through wider use of alternative measures, improving procedures for early conditional release and securing independence in the appointment of the head of the probation service and its functional independence.

The lack of competent healthcare professionals and lack of access to medication in penal institutions result in serious health-related problems for inmates, including fatalities. Most of the deaths in penal institutions are linked to health issues.⁸ During 2015, twenty eight people died in penitentiaries, of which twenty five for health related reasons. The medical service of penitentiaries is under the jurisdiction of the Ministry of Justice, which results in a conflict of interest for revealing instances of torture.

Civil society reports that torture continues to be used by the police to get self-incriminating evidence. In 2014, according to the reports of Public Monitoring Group Observing the Detention Facilities of the Police of the Republic of Armenia, 53 and 135 bodily injuries were documented in 10 regions and in Yerevan respectively. Most of the torture cases take place during the interrogation process. Interrogations were carried out with numerous procedural violations including lack of access to a lawyer. Investigator's rooms, where interrogations took place, were closed for any oversight. Effective and impartial investigation of torture remains problematic; no accountability mechanisms, such as video/audio recording of the facilities are put in place. The Special Investigative Service, a specialized body responsible for investigation of crimes with participation of state representatives, lacks legally provided structural and operational mechanisms for effective investigation. The Service heavily relies on police data for investigation and subsequently most of the cases under investigation get terminated.

⁴ Article 309.1 of the Criminal Code of Armenia.

⁵ Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment

⁶ European Committee for the Prevention of Torture (CPT)

⁷ According to penitentiary department the total number of detainees (as a primary measure) up to 01.01.2016 constituted 1114 people, out of 3873 total number of imprisoned.

⁸ Assessment is based on official inquires of Group of Public Observers Conducting Public Supervision over the Criminal-Executive Bodies and Institutions of the RA Ministry of Justice.

There were no effective mechanisms for documentation of injuries either in police or in penitentiaries as these institutions do not use the internationally accepted Istanbul Protocol as a standard. Lack of adherence to this standard by these institutions leads to loss of the evidence and thus inability to prove that torture was used. Recent attempts by civil society to present an alternative expert opinion made per Istanbul Protocol standard failed, as the court refused to acknowledge it as liable evidence.⁹

Torture, cruel, inhumane or degrading treatment remain serious issues in settings where there is very little or no public oversight, such as the army, psychiatric institutions, elderly homes. According to the findings of the studies by Helsinki Citizens Assembly Vanadzor; only 41 of the 76 death cases in 2015 were caused by the ceasefire violations¹⁰. Despite the government's official rhetoric of full and impartial investigation into army death cases, nearly all family members of the deceased express distrust towards effectiveness of investigation and prospect that perpetrators are held accountable. Family members of these servicemen regularly protest in front of the presidential administration and other respective authorities as the only remaining method to make their concerns vocal.

Mental health services are provided in psychiatric institutions where people are subject to torture and ill-treatment, namely physical and psychological violence, labor exploitation, excessive use of restraints; necessary health care services are not provided in psychiatric institutions. The right of persons to live independently and be included in the community is violated due to lack of legal mechanisms and alternative community-based mental health services in the country¹¹. The administration of mental health institutions, as a rule, does not ensure provision of legal aid. Cases of deaths in psychiatric institutions are not effectively investigated¹².

The existing medical and legal provisions on compulsory treatment for people with mental disabilities do not provide direct mechanisms for affected individuals to seek review for the measure of compulsory treatment. Many patients undergo compulsory treatment by court order and may be released only through a court application filed by the administrator of the hospital where treatment is provided.

Recommendations

- Provide differentiations of the forms of degrading treatment in the Criminal Code along with the definition of torture.
- Ensure institutionalized implementation of the standards provided by Istanbul Protocol.
- Ensure transparency of interrogation process, open investigation rooms for public monitoring.
- Establish a special mechanism on inadmissibility of evidence obtained through torture, in line with international standards.

⁹ In 2015 Helsinki Citizens Assembly- Vanadzor conducted an alternative psychological expertise regarding a case on torture which was not accepted by the Court.

¹⁰ Helsinki Citizens Assembly Vanadzor. January 2016. Reference on death cases in the RA armed forces and NKR defense Army in 2015. <http://hcav.am/en/publications/reference-09-01-2016-en/>

¹¹ Mental health care and treatment are performed in closed-type institutions. According to the psychiatric services' data out of 46,000 registered patients with mental disabilities. "High proportion of care patients, occupying about 50% of beds in acute hospitals". WHO Assessment of Armenian Mental Health Care, 2014

¹² During the 2014-2015 there were 58 deaths in psychiatric institutions, and only one criminal case was open.

Article 9 Right to Liberty and Security of a Person

Armenian Constitution guarantees the right to liberty and security of persons and the Criminal Procedure Code regulates procedural safeguards against arbitrary detention and arrest. However, legislative loopholes and interpretation of the ruling of the Court of Cassation are used to justify extensive use of apprehensions through circumvention of their procedural rights. Specifically, Court's interpretation stipulates that "arrest" and "deprivation of liberty", i.e. "apprehension", are two different categories, and thus imply a different scope of protection. This strips apprehended persons of the full scope of rights reserved for arrested persons, including right to silence, right to a fair trial with all corresponding procedural safeguards and most importantly the right to be cleared of all charges, if not found guilty. This creates a situation in which the police gain an opportunity to effectively arrest people (usually the participants of pro-oppositional rallies) for three hours – without any fear of potentially being questioned about the reasons for such arrests. Meanwhile, it is exactly during these three hours period that lack of procedural safeguards increases the risk of torture and ill-treatment for detainees. Civil society and Monitoring Board over Police report that torture is practiced in police facilities to extort self-incriminating evidence, while police interrogation rooms remain off-limits for civil society oversight. CPT's latest report confirmed ill-treatment and torture used by police officers¹³.

The data¹⁴ of Helsinki Citizens' Assembly – Vanadzor indicate a four-fold increase in the number of apprehensions following peaceful assemblies. There are numerous civil society reports identifying denial of basic rights to citizens exactly during this apprehension period. Following the dispersal of rally against electricity price hike on June 23, 2015, the police apprehended 246 individuals. They spent an average of 9 hours in detention, in violation of the 3-hour limit and without a clear indication of their status. In some instances, the protesters didn't have access to basic medication, food, and water. The fundamental right of access to lawyer was also breached as lawyers arriving at the police station were prevented from seeing their clients. Nearly half of detainees were referred for drug and alcohol tests on a speculative ground of suspicion of committing a crime and without any notification on the non-mandatory nature of this test. This constitutes a violation of right to private life as seen by the lawyers of the protesters. The apprehended persons were referred to expert examination as suspects, whereas an hour before they had been questioned as witnesses. Following release, none of the protesters (with the exception of organizers) faced charges, which confirms that detention is used as a measure of restraint simply to prevent the protest from happening.

Recommendations

- Restore procedural safeguards for detained participants of peaceful assemblies by considering apprehended persons as arrestees with guarantees for all procedural and substantive protection mechanisms.
- Provide for civil society access to all premises of the police where people may be detained. Ensure accountability of investigator's work through audio and/or video recording of interrogation facilities.

¹³ Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 4 to 10 April 2013 retrieved at <http://www.cpt.coe.int/documents/arm/2015-08-inf-eng.pdf>

¹⁴ While in 2015 there was some 25-30% increase in the number of demonstrations, the number of apprehensions increased by 400% as compared with 2014.

Article 19 the Right to Hold Opinions and the Right to Freedom of Expression.

In the reporting period freedom of expression and pluralism of opinions came under more aggressive government attack both in political and wider civic spaces. For the first time after 2011 pressure, intimidation and detention were used as tools to curb the activity of political opponents of the ruling elite¹⁵. This resulted in a qualitatively different status of rights protection in Armenia where currently there are *thirteen* political prisoners. Members of the “Centennial without the Regime” movement known for their harsh criticism of the ruling elite faced unwarranted criminal charges for contemplating and planning to organize mass disorders. Shant Harutyunyan and his supporters were charged with hooliganism committed with a weapon or another item used as a weapon and received disproportionate sentences for up to seven years. Shant Harutyunyan’s son, a minor, received a sentence of four years of imprisonment, which later was replaced by conditional release¹⁶.

The country’s second largest political party, the leading contender of government’s constitutional reform was discarded in one day when the president threatened the party leader via economic repression and prospect for criminal prosecution. When the head of the party announced that he is leaving politics all investigations were suspended, leaving the ruling power without any sturdy, albeit facade opposition in the National Assembly. Nominally a small segment of the party is still in the National Assembly now, outwardly demonstrating no serious discontent either in regard with prior government policies previously criticized by the party or any of the government’s new policies.

Targeted attacks on human rights defenders by the members of the ruling party increasingly limited the space to exercise a free discourse and protection of the right. Attacks come via media blacklists of human rights defenders presenting them as enemies of the nation and the state; hate speech incited by public authorities, unlawful detention of civic activists, pressure on businesses to abstain from providing venues to oppositional and critical groups or attempts to include restrictive provisions in the law on civil society organizations.

In 2014 three employees of Yerevan subway were fired for expressing open discontent regarding the government policy of the mandatory accumulative pension reform and for participating in a peaceful protest against the reform. Employer’s formal justification has been the “loss of trust towards the three employees” and that “they have not complied with the employers’ alleged request to explain their participation in the protest”¹⁷. Employees exhausted all local remedies to restore the rights and are currently planning to apply to ECtHR concerning the violation on the freedom of expression.

Contractual military servicemen Tigran Mazmanyan was fired from the armed forces on an officially announced basis¹⁸, that he being a military servicemen, has expressed political views. Mazmanyan reported that pressure has started since 2015, when he presented a notice to Yerevan Municipality for a peaceful assembly to demand freedom for Shant Harutyunyan. In 2015 he was given a choice by his commander: either to participate in the assembly or to leave the job; he then has chosen the latter. However, in January 2016 he was fired based on a personal photo retrieved from his facebook page where Mazmanyan is with a man ‘unacceptable’ for the authorities. No references of Mazmanyan to his right of personal life have affected the decision this final decision.

¹⁵ Last political prisoners following the contested elections of 2008, were set free in 2011. Since then Armenia didn’t have political prisoners. The reporting period however brought back the practice of politically biased and retaliatory sentences.

¹⁶ Human Rights Watch. World Report 2015. See more at <https://www.hrw.org/world-report/2015/country-chapters/armenia>

¹⁷ Details of the claim are available in Armenian here:

http://www.datalex.am/dl_case_view_page.php?caseType=2&courtID=0&caseID=14918173765708916

¹⁸ Minister of Defense Seyran Ohanyan declared that military servicemen shall do their job and keep away from politics. See more at <http://www.azatutyun.am/content/article/27540963.html>

Authorities used legal and informal pressure to maintain control over broadcast outlets, the chief source of news for most Armenians¹⁹. The Law on Television and the Radio remains a major policy obstacle to liberalization of the broadcasting sector, the independence of the national regulator, development of competition, as well as diversity of television programs. Pressure also included restrictive government control over free speech exercised through courts decisions; pressure to disclose sources of information²⁰, civil offense of “defamation and insult” used as a political weapon against traditional media, physical violence on journalists and general informal pressure to control broadcast media.²¹ As a result, hidden and self-censorship is prevalent throughout the broadcasting sphere.

In the reporting period authorities applied disproportionate force against journalists hindering performance of their professional duties. Atmosphere of impunity for these violations feed similar offenses. According to the data collected by the Committee to Protect Freedom of Expression, physical violence against journalists increased almost twice in 2015 as compared with 2014.²² Physical violence against journalists peaked on June 23rd 2015²³, when the police specifically targeted media representatives during the peaceful protest against electricity price hike, in order to prevent them from covering the use of force during dispersal of the peaceful rally. There has been no effective and credible investigation into the cases of attacks on journalists; up to now no state official has been legally punished for the offense committed against a journalist.

Recommendations

- Enclose the practice of politically motivated restrictions on freedom of expression by ensuring uniform and unbiased application of the Law.
- Carry out a full and impartial investigation into attacks against journalists, issuing a public report on the results of each investigation.

¹⁹ Freedom House. Freedom in the World. 2016. https://freedomhouse.org/sites/default/files/FH_FITW_Report_2016.pdf

²⁰ OSCE representative concerned about Armenia court decision forcing media outlets to disclose sources. July, 2014. <http://www.osce.org/fom/121541>

²¹ Freedom House. 2015. Report Freedom in the World. Armenia. <https://freedomhouse.org/report/freedom-world/2015/armenia>

²² Violence has been registered towards 23 journalists in 2015 as compared with 12 journalists 2014. There has been significant increase of different types of pressure apart from physical violence-in 2014, 43 media workers have been subject to different types of pressures (court rulings), while in 2015 that same number has increased to 65. Violations of the right to collect and disseminate information have also increased from 13 cases in 2014 to 30 cases in 2015.

²³ On June 23, 2015 14 journalists were physically attacked/subjected to violence and the work of 20 journalists was hindered, their cameras smashed and/or confiscated, footage on the cameras and video materials were deleted. On the day of the constitutional referendum two journalists were subjected to violations, the work of another 13 journalists was hindered.

Article 21 Right of Peaceful Assembly

The Law on Freedom of Assembly is mostly in line with international standards. However, the practice is marred by numerous violations including denials to authorize peaceful assemblies, interventions by law enforcement agencies, use of force to curb peaceful protests as well as use of detention as a measure of restraint. There are a number of provisions in the Law that are manipulated by authorities to put additional burden on organizers of public events. Specifically, the Law prohibits holding events in close vicinity of certain institutions to protect them from disturbance. This prohibition is used to restrict even the smallest public events in vicinity of presidential administration, National Assembly and other government institutions, thus making impossible to deliver the message of protesters in the “sight and sound” of target audience. The Law allows a wide discretion for authorities to terminate or ban a public event, which is routinely used to restrict small scale or mass public events alike.

During 2014 – 2015, demonstrations over a variety of social and human rights problems increased, leading to a fourfold increase in police interventions and detention of peaceful protesters. Violation of the right to freedom of assembly and unlawful police conduct against peaceful demonstrators peaked on June 23, 2015 when the police used excessive force and water cannons to disperse the peaceful sit-in of about 600 protesters. As a result, 237 demonstrators and 16 journalists were apprehended unlawfully.²⁴ Excessive use of force during police operation resulted in request for emergency medical assistance by 25 people, hospitalization of 15 individuals with different injuries. The equipment of 13 journalists was deliberately damaged and their professional activity was hindered. While as a rule, no substantive restrictions are posed to demonstrations organized by traditional opposition, the police routinely impede demonstrations by civic activists and radical opposition, even the ones of a very small scale. In such cases, the police detain people allegedly for “disobeying the lawful demands” of the police, without any specification as to what these demands are. Moreover, a new practice is being instituted by the police as they identify rally participants and intimidate them by visiting their homes to have “explanatory talks” with activists and their families. This new trend of massive detentions of participants of peaceful protests, coupled with police visits to their homes spreads an atmosphere of fear and impunity for police actions and is clearly contradictory to the notion of freedom of assembly.

As a rule, investigation of police misconduct and use of force by police does not happen unless there is a wide public outcry and demand for such investigation, such as the instance when a police officer slapped one of the demonstrators and the video became viral²⁵. The practice of disciplining officers for violation of laws has not become part of culture in law enforcement; on the contrary, impunity for such violations remains widespread and an unwritten norm. While police officers often don't face any reprimand/repercussion for their unlawful actions, participants of peaceful protests face numerous administrative penalties.

Recommendations

- Amend the Law on Freedom of Assembly to remove the blanket prohibition on holding assemblies nearby governmental buildings
- Conduct impartial and transparent investigations of incidents where freedom of assembly has been restricted and police has used force; identify and prosecute police officers for excessive use of force, provide effective remedies to the victims.

²⁴ HCA Vanadzor report on violations of human rights of protesters against electricity price hike, Helsinki Citizens' Assembly – Vanadzor, September 2015, http://hcav.am/wp-content/uploads/2015/09/Electricity-Price-Hike-Protest_2015-ARM.pdf

²⁵ Armtimes. Published on August 21, 2015. <https://www.youtube.com/watch?v=UdWYj23x4Ks> Retrieved on November 27, 2015.

Article 25 Participation in Public Affairs and the Right to Vote

Elections remain among the most problematic institutions in the system of governance of Armenia. As such, the right to elect and to be elected is one of the most violated. While contesting the results of 2008 presidential elections, the opposition organized a sit-in, which was violently dispersed by the authorities, resulting in 10 deaths. To date, no person using arms or giving orders has been identified or punished. Since then, Armenia has undergone through another round of presidential, National Assembly, and local elections as well as a major constitutional referendum, all of which have served to reinforce the corrupt practices witnessed and documented by civil society for the past 15 years.

Trust towards electoral processes is extremely low in Armenia as per the latest Gallup poll, which indicates that only 13% percent of women and 12% of men in Armenia are confident in the honesty of elections.²⁶ This lack of confidence places Armenia as one of the three lowest ranking countries (along with Haiti and Mongolia), within the list of 125, with the lowest trust. Against this background of widespread distrust, civil society reports that voters lists do not reflect the actual number of citizens residing in Armenia: there are various estimations that on average 300,000 – 500,000 people registered in the voter lists do not actually reside in the country. This creates an effective leverage for the authorities to use inflated voter lists in their favor and manipulate election outcomes as the Electoral Code prohibits publicizing the signed voter lists and there are no working mechanisms for civil society's oversight. Observation reports from Citizen Observer Initiative and the European Platform for Democratic Elections²⁷ for the 2015 constitutional referendum once again confirmed use of this leverage by authorities: monitoring missions reported multiple voting and inability to vote because somebody else had already voted on an individual's behalf. Similar problems were registered by the PACE and OSCE monitoring missions and experts teams to Armenia²⁸.

Electoral processes are marred by extensive abuse of administrative resources, multiple voting, vote buying, 'carousel' voting, intimidation, ballot box stuffing and falsification of the voting results²⁹. Despite the prohibition in the Electoral Code, in the pre-electoral period, public officials actively engage in election campaign in favor of the ruling party along with carrying out their official duties and through use of public resources. Educational establishments are pro-actively used to rally support for the authorities through mandatory attendance of faculty and students in campaign meetings of the ruling elite. Representatives of the very same institutions are later engaged in the election processes as campaigners and proxies. Lack of trust towards integrity of elections is further exacerbated as authorities try to amass support for the ruling party through intimidation and putting pressure on voters. In the context of the latest referendum, such pressure was put even on members of civil society observation missions by using threats of retaliation and loss of jobs.

There are no effective mechanisms to challenge the quality and legitimacy of elections based on the revealed inconsistencies. Despite numerous reports of massive electoral fraud, there hasn't been a single successful case of contesting election results by the opposition. In the latest instance of Constitutional referendum, the Constitutional Court did not accept the appeal from the Armenian

²⁶ Women Worldwide Less Confident Than Men in Elections retrieved at <http://www.gallup.com/poll/157997/women-worldwide-less-confident-men-elections.aspx>

²⁷ Citizen Observer Initiative and the European Platform for Democratic Elections (EPDE) observed the entire process of the preparation for the constitutional referendum. On the voting day, about 700 observers were deployed to 500 precincts in all regions of the country. The observers were accompanied by 700 journalists and EPDE experts. Their reports cover the proceedings of the entire voting day – the opening of the polling stations, the conduct of voting and the counting of votes. This information was recorded via SMS reporting and processed by the call center and analyzed by the core team based in Yerevan.

²⁸ Observation of the referendum on the new constitution in Armenia retrieved at <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5932&cat=31> OSCE ODHIR.Final Report of the Expert Team. February 2016. Constitutional Referendum. Republic of Armenia. Retrieved from <http://www.osce.org/odihr/elections/220656?download=true>

²⁹ Report on the Observation Mission on National Assembly Elections of 6 May, 2012. Helsinki Citizens' Assembly Vanadzor, August, 2012. Retrieved from <http://hcav.am/wp-content/uploads/2012/08/Elections-report-final-May-2012-Eng1.pdf>

National Congress opposition party, which collected only 18 signatures of MPs instead of needed 27 as per the Law. Yet, the Court also rejected the appeal from a group of lawyers, journalists and citizens, justifying that the working day is over, which did not correspond to the reality, as there was enough time before the end of the working day and the Court's rejection was illegal as per Law on the Constitutional Court. Moreover, investigation of the irregularities by the Prosecutor's office does not lead to punishment of perpetrators. Based on the data provided by the Prosecutors office for the outcomes of the 2015 Constitutional referendum, as of December 19, 2015, 530 reports on crime have been studied of which only 59 criminal cases were initiated. Up to now 6 cases have been taken to court, there are no detained people so far³⁰.

Recommendations:

- Amend the electoral code so that voters who do not reside in Armenia or are absent for longer periods are identified in the voters' lists and their number is public and available in each electoral precinct.
- Ensure the order and transparency of elections through recording and live-streaming the voting process inside and outside the precincts throughout the country.
- Guarantee adequate investigation and condemnation of electoral violations through improving the procedures of appeals to electoral commissions, judicial and law enforcement bodies and allowing the voters and observer organizations to challenge the legality of electoral process.
- Put maximum restrictions on the use of administrative resources during the election, limiting participation of senior officials in elections campaigns, limiting the capacity of community leaders to serve as proxies of candidates, strengthening mechanisms for punishments for the abuse of administrative resources.

³⁰ Official website of the National Prosecutor General. Subsection on Referendum. January 2016. More info is available in Armenian at http://prosecutor.am/am/news/hanraqve_2015/

Article 26 Rights to Equality and Non Discrimination

There is institutional discrimination, intolerance, harassment and stigmatization when it comes to certain groups or to an entire segment of Armenian population. Expanding gender inequity and increasing rates of domestic violence both constitute major dimensions of gender based discrimination. LGBTI community, religious, ethnic minorities, people with disabilities, drug users, sex workers and people with HIV/AIDS face widespread denial of their rights in spheres of education, healthcare, labor, law enforcement and criminal justice.

The current legal framework is not comprehensive and lacks practical mechanisms of effective protection against discrimination. Apart from the law on gender equality, other legal provisions, scattered throughout the legal system, neither *define* discrimination, nor regulate other types of discrimination such as more widespread indirect and institutional discrimination. The provisions of Criminal Code indicate only national, racial or religious features as aggravating circumstance for the serious crimes. The procedural norms of prohibition of discrimination are not regulated by law: court's approaches to evidence, burden of proof and standard of proof do not comply with international standards of anti-discrimination law further undermining the possibility for victims of discrimination to claim effective legal protection and prosecution of perpetrators. The effective enforcement of the newly adopted law on Ensuring Equal Rights and Opportunities for Men and Women is significantly lowered due to the absence of an authorized body with clearly defined functions and resources. It is very indicative that since the adoption of the law in 2013 up to date, there has not been a single court case based on the application of this law.

LGBT

Gender identity and sexual orientation are not included in Armenian legislative framework limiting legal recourse for many crimes against LGBT people. LGBT persons face limitations in access to justice and in the right to an effective remedy while authorities fail to carry out efficient, prompt and impartial investigation of human rights violations because of sexual orientation and/or gender identity of a person³¹. LGBT people also face challenges when protecting their rights during court hearings, as judges do not take into account the specificities and sensitivities of such cases.³²

Societal attitude toward LGBT people is highly negative: professional communities such as doctors, lawyers and teachers predominantly view homosexuality as a disease. Representatives of the leading political party and media affiliated with them spread and endorse hate speech towards LGBT persons and defenders of their rights labeling them as traitors and enemies of the state. Representatives of the leading political party and media affiliated with them spread and endorse hate speech towards LGBT people³³ strengthening the environment of impunity in the country.

LGBT persons are frequent targets for discrimination in closed institutions such as prisons and army. According to human rights activists, prison authorities force LGBT people to perform degrading labor and separate them from the rest of the prison population. There is an "unwritten law" that gay men should not serve in the army, as the reigning atmosphere of hatred of otherness, and the lack of legal mechanisms to confront hate crimes, does not allow the state to ensure the safety of LGBT people in the

³¹ A representative case occurred in 2012 when a popular spot for activists who promoted equal rights for women and minorities, including LGBT persons was firebombed in Yerevan in 2012. The trial proceeded in an expedited procedure with only two year suspended sentences and fines for damage.

³² Joint submission by a Group of Civil Society Organizations to the UN Human Rights Council 21st Session of the Universal Periodic Review June 2014.

³³ OSCE/ODIHR Hate Crime Reporting. Armenia. 2014. <http://hatecrime.osce.org/armenia?year=2014>

armed forces. Fabricated indications of mental health problems are used as justifications for exemption from military service³⁴.

Women

Armenia does not have a standalone law on prevention of domestic violence that will define and criminalize this specific type of offense and increase awareness on the issue. The draft law reflecting international standards has been put in circulation due to civil society joint effort and the EU conditionality. Adoption of the law in 2016 is a touchstone for government's will to comply with its international obligations.

Meantime, domestic violence increased³⁵ throughout the reporting period without due redress from the part of authorities. During 2010-2015, thirty women died as a result of domestic violence of which fifteen during last two years. Domestic violence cases increased approximately by fifteen percent in 2015 as compared with 2014³⁶, the number of instigated criminal cases on domestic violence almost doubled. Significantly lower charges applied when the crime has occurred in the context of domestic violence³⁷.

Gender inequity expressed through unequal access to employment, wages, political representation and social status remained one of the major dimensions of the social heterogeneity that characterizes today's Armenia³⁸. In the reporting period women were underrepresented in leadership positions, faced high unemployment, and unequal pay³⁹. Authorities systematically used patriarchal rhetoric to reinforce this social imbalance via persistent manipulation of public institutions and public speech. Lack of knowledge on gender equality remained widespread at schools to an equal degree amongst educators and students⁴⁰.

Religious minorities

Throughout the reporting period Armenian Apostolic Church demonstrated increasing presence in various spheres of public life, particularly in education, army, penitentiary institutions, hospitals and civil service. Religious minorities faced limitations in gaining employment in public sector and obstacles to renting space for religious gatherings and building places of worship.⁴¹ The environment of intolerance reinforced by media outlets continued to label minority religious groups as "sects" portraying them as "enemies of the state", criminals and spies.

The compulsory "History of the Armenian Church" course in school curriculum and the teaching practice contradicted to OSCE Toledo principles of teaching religions in public schools. The Armenian Apostolic Church had a strong presence in the army where clergymen of Armenian Apostolic Church have an exclusive right to serve in the army on a paid basis while all new military conscripts undergo forced baptism.

³⁴ US State Department report on International religious Freedom, Armenia 2014.

<http://www.state.gov/documents/organization/238564.pdf>

³⁵ One hundred and fifty cases in 2015 and seventy six in 2014.

³⁶ According to the official Police data a total of 784 domestic violence cases were registered in 2015 and 150 criminal cases were opened as compared to 678 registered cases and 76 criminal cases in 2014.

³⁷ Case of Diana Nahapetyan <http://www.aravot.am/2015/12/27/643519/>

³⁸ http://unfpa.am/sites/default/files/Sex_Imbalance_report_Eng_final-with%20cover-final.pdf

³⁹ Women members of the National Assembly: constitute only 10.7%. Meantime feminization of women unemployment deepens, women now constitute 70% of formally registered unemployed people, accordingly women entrepreneurs are 20-25%; self employed women 2.3% and women employers 0.2%. Data is presented based on available information of the National Statistical Service for 2014.

⁴⁰ This assessment is supported by the report of Council of Europe Commissioner for Human Rights, following his visit to Armenia, from 5 to 9 October, 2014. See more at:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2790589&SecMode=1&DocId=2243332&Usage=2>

⁴¹ US Department of State, Armenia 2014 International Religious Freedom Report.

Although revised Constitution provides that religious organizations shall be separate from the state, it proclaims the exclusive mission of the Apostolic Church in the spiritual life of the Armenian people⁴² thus setting a ground for possible violations of the freedom of thought, conscience and religion. In addition, current Law on Religious Organizations contains gaps, unclear provisions, and contradictions related in particular with the high threshold for registration of organizations; it also prohibits but does not define “soul hunting”⁴³. The Law defines that rights set out there refer only to the Armenian citizens, while the Article 26 of the Armenian Constitution specifies that “everyone shall have the right to freedom of thought, conscience and religion.

Recommendations

- Reflect all vulnerable groups, procedural and legislative gaps as well as the principles of effectiveness, independence, accountability, transparency and accessibility of operation of the national equality body to be created under the new antidiscrimination law.
- Secure access to justice for victims of discrimination via guaranteeing the standing for NGOs in the court for public interest litigation on discrimination cases.
- Adopt standalone law on domestic violence based on the international best practice coupled with respective financial resources and institutional set-ups for implementation of the law.

⁴² Venice Commission suggested to change the word “exclusive” with the word “exceptional” in the English translation, but the word “exclusive” remained in the Armenian text of the Constitution.

⁴³ A term describing both proselytism and forced conversion

United Nations Convention against Corruption (UNCAC)

Armenia's enforcement of the UNCAC has several shortcomings that require serious attention⁴⁴. Public prosecutors, other law enforcement agencies and the judiciary remain subject to the influence of the executive branch of the government⁴⁵. Latest nation-wide survey data reveals that corruption remains one of the five most important problems in Armenia thus threatening economic development, government credibility and political stability of the country⁴⁶. Corruption is systemic and includes all governance institutions, while the fight against corruption in the country is stagnating. Only 21 per cent of Armenians believe that the government is effective in its anti-corruption efforts⁴⁷ and for the fourth year in the row, Armenia's score for the category of Corruption in Freedom House's 'Nations in Transit 2015 study is 5.25⁴⁸. Armenia's score of the Transparency International's Corruption Perception Index (CPI) in 2015 and 2014 equals to 35 and 37 accordingly, which reveals statistically insignificant change from the 2013 CPI score (36)⁴⁹.

Article 6. Preventive anti-corruption body or bodies

Government of Armenia in its decision adopted in February 2015 established anti-corruption Council (Council) with its full-time supporting structures the 'expert group' and 'anti-corruption program monitoring division of the government staff. In its current institutional setup the Council does not function as a specialized preventive, law-enforcement or multi-purpose agency, and is simply meant to *consult* the government on how to target the most sensitive areas and coordinate implementation of anti-corruption policies⁵⁰. Main functions of the Council include discussion and approval of anti corruption strategy; suggestion of changes to the anti corruption action plan; discussion and approval of sectoral action plans based on anti corruption strategy; oversight in the implementation of the anti-corruption strategy, and several other consultative functions. This limited power of the Council has been one of the reasons why neither civil society organizations nor almost all opposition factions agreed to join the Council.

Another institutional structure, the Ethics commission of high-ranking public officials (Commission) is responsible for collection and review of asset and income declarations, consulting of high-ranking executive officials on conflict of interest situations, issuing conclusions on their ethical misconduct. In practice, the Commission is restrained in its functions and capacity of investigation into the asset and income declarations of officials and, moreover, has no sanctioning powers in case of data fraud⁵¹.

According to the government decision adopted in February 2015, the Council shall be headed by the Prime Minister; other members include the Chief of the Staff of the Government, Minister of Justice, Minister of Finance, Prosecutor General, Chair of the Commission of Ethics of High-Ranking Public

⁴⁴ http://transparency.am/files/publications/uncac_cso_report.pdf

⁴⁵ Nations in Transit

⁴⁶ Transparency International. 2015. *The State of Corruption. Armenia, Azerbaijan, Georgia, Moldova and Ukraine*. Full report available at <http://transparency.am/files/publications/1436175393-0-361397.pdf>

⁴⁷ Ibid, page 12.

⁴⁸ Evaluation is based on the scale of 1 to 7, with 1 representing very clean and 7 – very corrupt See

<https://freedomhouse.org/report/nations-transit/2015/armenia>

⁴⁹ Transparency International. Corruption Perception Indexes 2014 and 2015. Evaluation is based on a scale from 0 (highly corrupt) to 100 (very clean). See <http://www.transparency.org/cpi2014/results>; <https://www.transparency.org/cpi2015>

⁵⁰ It is worth mentioning that this Council is not the first one established in Armenia. The first such Council under the same name was established on June 1, 2004 by the Decree NH100-N of the President of Armenia (the Decree was abolished through the presidential Decree NH-233-N from March 9, 2015). The new Council differs from the old one by its composition and powers. It was also a consultative body to the Government, and similar to the new Council was headed by the Prime Minister.

<http://www.arlis.am/DocumentView.aspx?DocID=96013> It

⁵¹ RA Law on Public Service, Article 43

Officials, representatives of the opposition factions in the National Assembly (one from each faction), head of the Public Council, representative of the Union of Communities of Armenia and two representatives from NGOs⁵² on a competitive basis.

Membership of these high ranking officials in the Council compromises its reputation with an engraved conflict of interest. Public perception of the council is further affected by reporting of on-line media outlets not controlled by the government, when they publish on alleged government corruption, embezzlement of state funds, corrupt practices in procurement, involvement in businesses of high-ranking officials and others⁵³. Meanwhile, according to the government decision if members of opposition parties or representatives of civil society refuse to participate, the Council, nonetheless, is considered fully formed and functional.

Another concern with the Council deals with the founding of its expert group. The activities of the Expert Group at the initial stage will be funded by USAID (as was announced at the first meeting of the Council), and it is not clear, how much funds will the Government allocate to the Group in the future. Head of the Council (in this case Prime Minister) and other members participate in the council on voluntary basis and receive no remuneration. While this fact in the given situation is logical, nevertheless, in order to obtain the standard of fully independent body, the Expert Group⁵⁴ shall be void of conflict of interest, include independent members and possess necessary and steady financial resources to conduct their tasks in a due manner.

Members of Ethics commission of high-ranking public officials are also appointed by the President from among the candidates presented by the Prime Minister, head of the National Assembly, chair of Constitutional court, chairman of the Court of Cassation and Prosecutor General. The President also has the power to terminate the work of any Commission member⁵⁵ without any consultation with the above mentioned officials in case where no legislative regulation exists on criteria for removal. Additionally the Commission resides in the President's office and is financed from the budget of the President's staff, implying indirect control of Commission's actions.

Recommendations

- To establish a preventive anti-corruption body void of conflict of interest and in line with Jakarta principles.
- To ensure that membership in the Council is void of conflict of interest.
- To establish rigorous and effective mechanisms for the monitoring of the implementation of the 2015-2018 anti-corruption strategy action plan, with special focus on performance indicators and use of inputs from non-governmental organizations.

⁵² The two NGOs, whose representatives shall be included in the Council, shall be chosen through a competition, organized by the Government and the selected ones shall serve in the Council for two years.

⁵³ See for example <http://hetq.am/arm/news/58437/mihran-poxosyany-tokosov-pox-talun-zugaher-dahk-tsarayutyan-pet-e-ashkhatum.html>; <http://hetq.am/arm/news/58352/hovik-abrahamyani-biznesy-sahmanner-chuni-3.html>; <http://hetq.am/arm/news/27602/asfaltapatoxneric-meky-dardzyal-vanadzori-qaxaqapeti-exbor-yunkerutyunn-e.html>

⁵⁴ This constituent subsection of the Council responsible for all content based consultative functions has not been established yet.

⁵⁵ RA Law on Public Service, article 41, part 2, point one.

Article 20 Illicit enrichment

The Republic of Armenia has not committed to criminalize a significant increase in the assets of an official which exceeds his/her legitimate income and which the official cannot reasonably explain⁵⁶. The government program 2014-2017 has undertaken to draft and implement measures to reveal and neutralize ‘illicit enrichment’, conflicts of interest, incompatible activities and other restrictions, as well as effective institutions to ensure the operation of measures in the event of breaches of ethics rules. The acting Criminal Code does not provide for the criminal offence of illicit enrichment. Meanwhile, the problem on the ground persists. During the reporting period declarations of income and property of high-ranking public officials and close relatives affiliated with them reveal cases of abnormally large income allegedly owned by high ranking officials or their close relatives⁵⁷.

Recommendations:

- To adopt separate legislation on conflict of interest, expand the definition of family relationships in the Public Service Law to include up to fifth degree of kinship.
- To effectively examine publications and reports of media and NGOs on luxurious lives of high-ranking officials with the involvement of press and civil society organizations.
- To amend Public Service Law to enlarge the scope of activities of the Ethics Commission of High-Ranking Public Officials to include mandatory reporting of divergence of data on assets and incomes to the law enforcement bodies and to oversee the conduct of all high-ranking officials, including the president, ombudsman and head of Special Investigation Service.
- Explore implications of criminalization of illicit enrichment based on regional and international experience

Article 30. Prosecution, adjudication and sanctions

Corruption is systemic and includes all governance institutions, while the fight against corruption in the country is stagnating. When compared with alarming rates of corruption measurement indices, in Armenia the number of initiated, investigated and prosecuted cases of corruption are extremely low. During the first half of 2015 materials on 756 corruption crimes were prepared, of which no criminal cases were filed for 426.⁵⁸ It is also important to note that prosecutions for grand corruption crimes are more likely to be politically motivated, demonstrating consolidating fusion of government and business elites in the country⁵⁹.

⁵⁶ Zadoyan K. et al. 2014. *Report on International Experience of the Criminalisation of Illicit Enrichment, and the Possibilities of Criminalising Illicit Enrichment in Armenia*. Yerevan. Full report available at <http://iravaban.net/wp-content/uploads/2014/12/Illicit-enrichment-Eng.pdf>

⁵⁷ Number of cases have been revealed by investigative journalists that didn't result in criminal prosecutions. See for example the following articles available in Armenian <http://hetq.am/arm/news/58437/mihran-poxosyany-tokosov-pox-talun-zugaher-dahk-tsarayutyan-pet-e-ashkhatum.html>; <http://hetq.am/arm/news/58352/hovik-abrahamyani-biznesy-sahmanner-chuni-3.html>; <http://hetq.am/arm/news/27602/asfaltapatoxneric-meky-dardzyal-vanadzori-qaxaqapeti-exbor-ynkerutyunn-e.html>

⁵⁸ See the RA Prosecutor General Report on the statistics of corruption crimes and their state of investigation for the first half of 2015. Full report is available via the following link in Armenian.

[http://prosecutor.am/ckfinder/userfiles/files/Axyusak%201%20Korupcia%20naxaqnutyun1\(1\).pdf](http://prosecutor.am/ckfinder/userfiles/files/Axyusak%201%20Korupcia%20naxaqnutyun1(1).pdf)

⁵⁹ For example, in February 2015 following President's speech, oligarch Gagik Tsarukyan, at that time the leader of the second largest party in the country, was not only removed from the National Security Council for openly demonstrating dissent towards the government policy to amend the constitution, but faced investigations started in his and his affiliates' businesses on the basis of rumors about stolen millions, tax evasion and attempts of money laundry covered up under charity actions⁵⁹. Soon afterwards, when the oligarch announced that he is leaving politics, investigations were suspended.

Systemic corruption and impunity for corruption crimes in the country manifest not only via dangerous consolidation of political and business elites, but largely via systemic capture of core democratic institutions, undermining the effective enforcement of laws. The latest National Integrity Assessment Report looked at thirteen core institutions and their ability to prevent corruption, revealing that the institute of judiciary continues to be perceived as one of the most corrupt in Armenia: respectively 70% of respondents believe that judiciary is not free from government influence⁶⁰.

Article 33. Protection of reporting persons

The legislation does not provide a cohesive framework for the protection of reporting persons. Protection mechanisms for reporting persons exist only for participants of criminal proceedings. The most relevant participants are witnesses and victims. This is a problem because reporting person doesn't get status of witness or victim automatically. Only if the reporting person (whistleblower) will be granted status of witness or victim, then s/he will be entitled to protection mechanisms provided by the Code. Thus, it is essential to stipulate possibility of granting protection measures to reporting persons (whistleblowers) immediately at the moment when they report about crime. Otherwise it may be too late.⁶¹

Recommendations

- Stipulate by law, that the reporting persons shall enjoy the same means of special protection prescribed by the criminal-procedure legislation, as the victims, witnesses and experts.
- In the new Criminal Code prescribe by separate article criminal liability for those persons, who inflict damage to the property or health of the reporting person or his/her affiliated persons for his/her reporting, as well as for those law enforcement officials, who unlawfully shall disclose the reporting person and his/her information.

Article 61. Collection, exchange and analysis of information on corruption

Statistics on corruption-related offences are being compiled and posted for free public access by the Prosecutor General's Office, at its official website, www.genrpoc.am. Statistics on the abovementioned offences are annual and semi-annual. In 2014 the Prosecutor General's office did not publish the statistics of corruption crimes. In contrast with 2014, the Office of the Prosecutor General re-started posting on its website statistics on the corruption crimes in 2015.⁶² According to provided statistics, during the first half of 2015 materials on 756 corruption crimes were prepared, but on 426 of them no criminal cases were filed.⁶³ More than half of those crimes (389) were evasion from paying taxes and other fees (no criminal cases were filed in 311 cases out of 389). At the same time there were only 19 cases of taking bribes and 5 on giving bribes. Similar to the previous periods, there were no cases on a number of crimes, especially those, introduced recently to fulfill international anti-corruption obligations (for example, trade in influence). As international observers expressed their concern about the low numbers, compared to other former Communist countries, of corruption cases initiated,

⁶⁰ Caucasus Barometer 2013. CRRC 2013. <http://www.crrc.am/research-and-surveys/caucasusbarometer/documentation>

⁶¹ For more detailed discussion on this issue please see K. Harutyunyan and V. Hokyanyan "UNCAC Civil Society Review 2013". Pages 9-10. Available online at: http://transparency.am/files/publications/uncac_cso_report.pdf

⁶² As it has been mentioned in the ENP Action Plan 2014 Report, from the second half of 2013 the Office of the Prosecutor General stopped to post materials on corruption crimes, including statistics. However, starting from the first half of 2015, it re-started posting, though only statistics.

⁶³ See [http://prosecutor.am/ckfinder/userfiles/files/Axyusak%201%20Korupcia%20naxaqnutyun1\(1\).pdf](http://prosecutor.am/ckfinder/userfiles/files/Axyusak%201%20Korupcia%20naxaqnutyun1(1).pdf)

investigated and prosecuted.⁶⁴ The failure to prepare and publish reviews of landmark corruption cases is an important shortcoming in this field and could be remedied by law reviews edited and published by academic institutions, private companies or judges. Moreover, due to the peculiarities of the free and public search engine of Armenian case law, www.datalex.am, gaining access to concrete cases is very challenging, as case numbers or names of the defendants are needed to conduct effective research into case law. It must be also mentioned that one of the main shortcomings of the statistics is that they do not provide data on money laundering in general but only in terms of abuse of official position.

Recommendation

- Introduce in the statistics on corruption crimes the number of those, who were granted exemption from punishment due to the application of the provision of effective regret in the corresponding articles of the Criminal Code;

⁶⁴Such concern was expressed in the Round 3 Monitoring Report of the OECD Istanbul Anti-corruption Action Plan (IAAP) on anti-corruption reforms in Armenia adopted at the OECD Anti-corruption Network(ACN) meeting on October 8-10 in Paris, France (see <http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>, p. 34).