

# SPOTLIGHT ON ARMENIA

Edited by Adam Hug

The Foreign Policy Centre



## **Spotlight on Armenia**

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**Disclaimer:** The views expressed in this report are those of the author and do not necessarily represent the views of the Foreign Policy Centre

This report contains articles from authors using both British and American English, in deference to their preferences these differences in spelling and grammar have been retained.

## Acknowledgements

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## Summary of recommendations

Spotlight on Armenia examines a country that has had to grapple with huge economic, political and security challenges in the two decades since independence. While recognising progress in some areas it argues that the pace of reform has been slow, much better on paper than in practice, and that this is undermining the hopes and aspirations of the Armenian people. It has identified three key areas: judicial independence, media freedom and democratic development that are most in need of urgent reform but the editor and authors have addressed a range of other challenges. The publication argues it is essential for the international community to provide adequate incentives, pressure and monitoring to ensure that the progress of reform is hastened. To this end it makes a number of recommendations for Armenia and its international partners. The Armenian Government should:

- Bring forward a new package of constitutional reform in conjunction with civil society and opposition parties that could include:
  - Ending the Presidential appointment of Judges and members of the Council of Justice, replacing the process with selection by Parliament or an independent commission.
  - Transferring appointments to the board of National TV and Radio Commission and the Public broadcaster from the President to the Parliament.
  - Transforming local government in Armenia with the election of regional governors and greater accountability at community level.
  - Liberalising the electoral code to facilitate independent election observers
- Further reform the judiciary by increasing judicial salaries to levels appropriate for their status, improve the transparency of the disciplinary system, widely circulate ethics committee findings, improve training, take measures to prevent undue influence by the executive branch or powerful private individuals and where possible remove corrupt members of the existing bench and Council of Justice.

The international community should:

- Consider international donor funding for a permanent independent polling agency.
- The EU needs to develop a package of incentives and penalties that offer further trade, aid and visa liberalisation incentives that are firmly tied to performance against the priority area benchmarks set out in the 2011-13 National Indicative Programme.
- The EU also should fully consider how it replaces the role of the EU Special Representative to the South Caucasus to ensure that important influence is not lost.
- The Council of Europe needs to provide increased pressure for compliance with outstanding ECHR rulings<sup>1</sup> and for diversity in Armenia's delegation to the Parliamentary Assembly, while working to ensure the press understand the Venice Commission's findings.
- The OSCE must ensure that its election monitoring mission is deployed as early as possible in advance of any early Parliamentary elections with members targeting areas perceived to have been the worst offenders in the 2008 and 2009 elections.

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<sup>1</sup> The report has addressed impact of the current UK problem on this issue

## Introduction: Shining the spotlight on Armenia

Adam Hug

Of the three fully recognised states in the South Caucasus, Armenia is often overlooked (except by its large and vociferous diaspora – most notably in the US), in favour of its larger neighbours, glamorous Georgia with its Rose Revolution and Russia troubles and Azerbaijan with its sizable reserves of oil and natural gas. This publication seeks to go some way towards rectifying this by taking a look at how Armenia is performing in a number of key areas of democratic development, governance and human rights and at how the country is influenced by its international relations and its unresolved conflict.

Spotlight on Armenia argues that the country faces a number of enormous challenges. Landlocked, with its borders to both the east (Azerbaijan) and west (Turkey) closed since the early 90s, limited access to Russia through Georgia, no significant natural resources of its own and mass emigration the country would already be facing some serious difficulties even if it had an exemplary record of political stability and good governance. Sadly, so far in its brief history it has yet to benefit from a sustained period of either.

### A brief history of modern Armenia

In the late 80s and early 90s as the Soviet Union slowly died, independent Armenia was born in a state of conflict, part of nationalism's furious unpicking of the ethnic tapestry across the South Caucasus. In February 1988, as the power of the centre declined, the members of the Supreme Soviet of the Autonomous Oblast of Nagorno Karabakh, the parliament of the majority ethnic Armenian enclave within the Azerbaijan Soviet Socialist Republic (SSR), voted to request that Moscow transferred its control at a Union Republic level to the Armenian SSR.<sup>2</sup> This request, immediately stamped down on by the Gorbachev government, ignited an upsurge in nationalist sentiment in both Armenia and Azerbaijan that helped crystallise political organisation outside the traditional confines of the Communist Party. In the case of Armenia, the so-called Karabakh committee was formed, providing a platform for many of the first generation of post-independence politicians, including its founding President Levon Ter-Petrosian. As tensions mounted, tit-for-tat attacks on minority groups occurred, leading to the flight or expulsion in almost their entirety of the Azeri and Armenian communities from where they had called their home for centuries and the two sides prepared for conflict on behalf of their brethren in Karabakh.

Three years of rising ethnic tension culminated in 1991 with a further three years of bitter conflict at whose end left a grim toll of between 25,000 and 30,000 lives<sup>3</sup>, the displacement of 550,000 Azeris from Nagorno Karabakh and the surrounding regions for Azerbaijan, 190,000 Azeri refugees from Armenia<sup>4</sup>, up to 300,000 Armenian refugees<sup>5</sup> from Baku and other parts of Azerbaijan and the collapse of two Azeri governments<sup>6</sup> (leading to the return of from the political wilderness<sup>7</sup> of Soviet-era boss Heydar Aliyev). The numerically smaller but better organised Armenian forces won control of Karabakh and the seven provinces of Azerbaijan that surrounded the enclave. This position has held ever since, with dozens of deaths annually from sniper fire along the line of control and an ineffectual peace process (led by the

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<sup>2</sup> The author is aware of and apologises for the fact that for reasons of brevity this description is highly simplified. He however makes no apology for not seeking to apportion blame for the overall balance of atrocities committed before and during the conflict as this is not the purpose of this publication, something that is far better covered by a much broader body of literature. Those seeking an introduction to the topic could do far worse than looking at Thomas De Waal's excellent historical account 'The Black Garden: Armenia and Azerbaijan Through Peace and War', while the International Crisis Group provide regular incisive briefings with <http://www.crisisgroup.org/en/regions/europe/caucasus/B60-armenia-and-azerbaijan-preventing-war.aspx> their most recent offering.

<sup>3</sup> Philip Gamaghelyan, Intractability of the Nagorno-Karabakh Conflict: A myth or a reality <http://www.monitor.upeace.org/documents/intractability.pdf> (accessed February 25th 2010)

<sup>4</sup> Thomas De Waal, The Caucasus An Introduction, Oxford University Press 2010

<sup>5</sup> Institute for War and Peace Reporting, Armenia: Refugee Draft Exemption Controversy, February 2010, <http://iwpr.net/report-news/armenia-refugee-draft-exemption-controversy> (accessed February 25th 2010)

<sup>6</sup> Not including several temporary administrations and a military coup.

<sup>7</sup> Otherwise known as the governorship of his home province, the Azeri enclave of Nakhchivan, bordered by Armenia, Turkey and Iran but not Azerbaijan.

OSCE's Minsk Group) that shows little sign of achieving a resolution in the near future. While this publication does not seek to explore the Karabakh conflict in any great detail, beyond Gevorg Ter-Gabrielyan's piece on the role of civil society, due to the significant body of work elsewhere (including notably by the UK NGOs Conciliation Resources, International Alert and Saferworld) it is important to understand the centrality of the issue to Armenian political life.

Despite its military success, Armenia's politics has remained volatile<sup>8</sup> as troubled parliamentary elections in 1995 and Presidential election in 1996, paved the way for the ousting of President Ter-Petrosian in 1998 to make way for his harder line Prime Minister Robert Kocharyan, a native of Karabakh who had moved over from serving as President of the enclave.

### **Armenia's political landscape today**

Robert Kocharyan dominated Armenian politics during his two terms as President, a position cemented by the deaths on the floor of the Parliament of leading political figures Prime Minister Vazgen Sargsyan and Speaker Karen Demirchyan in a shooting at the hands of five gunmen in 1999. Kocharyan's record combined comparative economic and political stability with the deepening of the governance and human rights problems outlined in this publication. After stepping down in 2008 at the end of his second term of office due to a term limit, making him the only leader in the post-independence South Caucasus to have left office by a constitutional process, he remains a powerful figure behind the scenes, building up his fortune in the private sector. At 56 he remains young enough to at least have the potential for a return to public life, a fact not lost on his one time friend, now rival, his successor and fellow Karabakhi, Serzh Sargsyan. One well placed observer made an interesting, if loose, analogy that Kocharyan and Sargsyan were Armenia's Tony Blair and Gordon Brown. Kocharyan, more dynamic, above party (in his case literally as he belonged to no formal party)<sup>9</sup> and in the early days formerly Sargsyan's junior in the hierarchy of the Nagorno Karabakh Communist Party, with Sargsyan more cautious, engaged more directly in political structures (taking over the Republican Party) and uncomfortable that he had to play second (or lower<sup>10</sup>) fiddle to his old comrade as their own relationship became more strained and difficult.

The largest grouping in Armenia's Parliament, comprised of 41 constituency seats and 90 party lists with a reasonably low electoral threshold of 5%, is President's Sargsyan's Republican Party with 64 seats. The Republicans have played a dominant role as a standalone party at the last two Parliamentary elections with roots in previous coalitions in the 1990s.

The Republicans' senior coalition partner is the Prosperous Armenia Party, which won 18 seats in 2007, is the political vehicle of leading Armenian businessman/oligarch Gagik Tsarukyan. Prosperous Armenia has an erratic relationship with Sargsyan's party as there had been persistent rumours that it might form the base for a return to front-line politics of former President Kocharyan, much to his successor's chagrin. The youth wings of both parties have recently been at loggerheads that has included low-level violence and vandalism of property belonging to party members. Tsarukyan's role is also under international investor scrutiny given the legal challenge against him by German investment group Ostinvestor, who claim their investment in a 3.2% stake in the Yerevan Ararat Brandy-Wine-Vodka Factory (YABWV) controlled by the oligarch has disappeared in a forced share consolidation.<sup>11</sup> There had been an expectation that the ruling party would use the Parliamentary election as an opportunity to clip the wings of Prosperous Armenia in favour of the junior coalition partner, Artur Baghdasarian's Rule of Law party. However recent public declarations that the coalition partners pledged to support a common Presidential candidate in 2013<sup>12</sup> and will not seek to 'change the correlation of forces within the coalition' at the Parliamentary elections<sup>13</sup> may indicate a changed dynamic.

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<sup>8</sup> Though not in comparison to the convulsions experienced by the neighbours in the South Caucasus.

<sup>9</sup> In reality a better analogy for Kocharyan than Blair is Putin (who only joined United Russia at the end of his Presidential term)

<sup>10</sup> He was nominally second in command of the Republican Party until the death of former Prime Minister Markarian. Sarkissian has been involved in intra-party conflict with Markarian loyalists.

<sup>11</sup> Hetq Online, German Firm Loses Shares in Armenian Company Owned by Gagik Tsarukyan, July 2009, <http://hetq.am/en/society/ostinvestor/> (accessed February 7<sup>th</sup> 2010)

<sup>12</sup> Although Kocharyan remains powerful the situation is not equivalent to the Putin/Medvedev situation in Russia. This move would seem

Armenia's first President, Levon Ter-Petrossian made a surprise political comeback in time to contest the 2008 elections (of which more below) and now leads the main extra-parliamentary opposition. His Armenian National Congress, with the evocative English acronym (ANC) and a somewhat less so Armenian version (HAK), maintains a seeming Caucasian tradition where the largest opposition forces boycott the Parliament. Seen as more of an intellectual rather than a managerial politician, Ter-Petrossian does not have an unblemished record from his time in office with his associates perceived to have perpetrated significant voter fraud to ensure he achieved a narrow victory in the 1996 Presidential election (and 1995 Parliamentary election). This tainted victory has been hinted at as a reason why he seemed willing to fall on his sword in 1998 when ousted, amid growing discontent at the legitimacy of his government, in response to a nationalist enraging 'War or Peace' article on Karabakh. Some analysts speculate that Ter-Petrossian deliberately engineered the crisis to depart the scene as a martyr for peace rather a weak President of questionable legitimacy, though his true motives are difficult to decipher. His party continues to hold regular street protests although wider public support has recently been seen to be flagging.

The only party to express notable parliamentary opposition on domestic issues has been the Heritage party founded by former foreign minister and American diasporan Raffi Hovannisian, a favourite of Western and Armenian liberals. Some commentators this author spoke to speculate that their 2007 Parliamentary election performance far outstripped its eventual vote tally but has since been squeezed by the arrival of the Ter-Petrossian and some internal issues. While their approach to domestic politics is clearly reformist, their international platform is less obviously liberal. As this publication goes to print it seems that Heritage have taken the decision to launch a boycott of the Parliament, in protest at the decision of the governing coalition to support a single candidate for the Presidency in 2013 and not seek to attack each other in the upcoming Parliamentary election. This move, if it becomes permanent, would remove all significant opposition voices from the Parliament and may potentially re-energise the extra-parliamentary opposition to the ruling elite.

Finally, the Armenian Revolutionary Federation (known the Dashnaksutjun or Dashnaks) is Armenia's oldest political party who held power during Armenia's brief pre-Soviet period of independence and has maintained a major diasporan presence ever since. While nominally a democratic socialist party and member of the Socialist International, in reality their primary platform is hard-line nationalism<sup>14</sup>, having left the Governing coalition in 2009 over the decision to attempt rapprochement with Turkey. Nevertheless, they remain supportive of most aspects of the status quo, maintaining the hardest of hard lines on Karabakh.

It is very difficult to accurately assess the current state of public opinion in Armenia given the lack of a permanent Armenian polling organisation that is fully independent of the parties, something that helps give rise to wildly differing claims of 'true' levels of public support at recent elections before ballot manipulation kicked in. The government has also introduced new restrictions on the ability of citizens overseas to vote.

The prevailing political mood is one of disillusionment, both with the establishment and the current alternatives on offer. At present this translates to a degree of apathy, however as events at the time of writing in the Middle East have shown, such moods do not necessarily hold, particularly if promised reform programmes fail again and the economy tightens. Street protest is not such a novelty in the Caucasus, and Armenia has yet to hold an election without some degree of popular unrest making its presence felt in Yerevan's public spaces.

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to be about securing Sargsyan's position for 2013.

<sup>13</sup> Radio Free Europe/ Radio Liberty, Armenian Opposition Party Walks Out Of Parliament, [http://www.rferl.org/content/armenia\\_opposition\\_parliament\\_walkout/2324071.html](http://www.rferl.org/content/armenia_opposition_parliament_walkout/2324071.html) (accessed March 1st 2011)

<sup>14</sup> An interesting parallel can be drawn with Baykal-era CHP in Turkey, almost a mirror image, although the Dashnaks were if anything probably more nationalist in their approach.

The Yerevan rumour mill suggests that in order to tackle his government's perceived unpopularity and weak mandate, President Sargsyan is likely to move Parliamentary elections forward from 2012 to 2011. Such rumours have been fed by a degree of political positioning by the parties and the rather hurried creation of a new electoral code, the deadline for which has been brought forward to the spring (a draft is now with the Council of Europe's Venice Commission). Such a move would be a calculated risk given the role of elections as a flashpoint for protests against the regime, the build-up to which in the current global environment could lead to the public shaking off its torpor and directly challenging the status quo. So as Armenia begins to gear up for a new round of national elections, it is important to understand the impact of what happened last time, the cause of much of the ill-feeling towards the incumbents.

### **March 1<sup>st</sup>**

In several parts of the former Soviet Union (as in Georgia with November 2007) there is a time period that has become shorthand for the fracturing of trust<sup>15</sup> in relations between Government and its public. In Armenia that is the date March 1<sup>st</sup>. This refers to the brutal response to opposition demonstrations on March 1<sup>st</sup> 2008 brought about by the perception of electoral fraud<sup>16</sup> in the February 19<sup>th</sup> 2008 Presidential elections, which had resulted in a 52.8% first round victory for then-Prime Minister Sargsyan, narrowly avoiding a second round run-off. The events have deeply undermined the credibility of the current government, even amongst those who did not support Ter-Petrosian.

Following accusations of ballot rigging and manipulation, opposition supporters staged 10 days of mass protests in Yerevan's Freedom Square before police attacked the several hundred demonstrators who had remained in the Square overnight with batons and tasers, early in the morning of March 1<sup>st</sup>. This attack in turn brought much larger crowds onto the streets near the French embassy in response, causing the police to retreat under attack from some of the protestors. By evening, riot police returned with tear gas and firing tracer shot into the air, violently dispersing the main crowd before engaging in pitched battles with smaller groups. At 10pm, the outgoing President Kocharyan called a 20 day state of emergency during which public demonstrations were banned, media broadcasts were censored to prevent them straying from the government line and a number of websites were temporarily blocked.<sup>17</sup> At the end of the day, 8 protestors and 2 police were dead, with over 100 protestors arrested, some of whom are believed to have been physically abused and otherwise ill treated. This troubled transition to Sargsyan's Presidency has been a black cloud hanging over the current government ever since.

Human Rights Watch and others have argued that 'Armenian authorities have yet to ensure a meaningful investigation into and accountability for excessive use of force by security forces.'<sup>18</sup> Subsequent Parliamentary investigations were perceived as a whitewash and a Presidential working group including the opposition was dismissed with any findings buried.

While less high profile and controversial, the 2009 municipal elections were also marked by the intimidation of activists, allegations of pressure on municipal employees including teachers to support ruling party candidates, and the Central Election Commission allowing new voter registration without checking that they had met the one year residency criteria, a move ruled illegal by the Constitutional Court but only after 11,000 unchecked voters had been added to the lists without any requirement for re-examination.<sup>19</sup> The perceived lack of progress since the events of three years ago does not bode well for future Parliamentary and Presidential elections.

### **Civil society development**

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<sup>15</sup> It has to be said, not from a very high base.

<sup>16</sup> Republic of Armenia-Presidential election, 19 February 2008-OSCE/ODIHR Election Observation Mission Report <http://www.osce.org/odihr/elections/armenia/32115> (accessed February 25<sup>th</sup> 2010)

<sup>17</sup> Human Rights Watch, Democracy on Rocky Ground, February 25<sup>th</sup> 2009, <http://www.hrw.org/en/reports/2009/02/25/democracy-rocky-ground-0> (accessed February 25<sup>th</sup> 2011).

<sup>18</sup> Human Rights Watch, UPR Submission Armenia, November 2009.

<sup>19</sup> Richard Giragosian, Armenia: Pre-election Political Overview, Armenian Center for National and International Studies

Like many post-Soviet societies, Armenian civil society is fragile, fragmented and with a high proportion of GONGOs (government backed groups). The Armenian chapter of George Soros' Open Society Institute (OSI) suggests that of the 5,000 officially registered NGOs only around 200 are active and of those only a few dozen are fully independent of the government.

Civil society groups critical of the government can be subject to both indirect pressure and overt political attacks. For example, for two years until the autumn of 2010, OSI and its civil society partner organisations were unable to hire hotel or venue space for conferences and meetings anywhere in Yerevan (with the sole exception of the American University Business School) to hold meetings as hoteliers were put under pressure not to host them. When the chair of Helsinki Citizens Assembly of Vanadzor raised concerns about a high number of deaths within the Armenian Army, he found himself at the receiving end of what were believed to be orchestrated denunciations in public and in the local press. NGOs putting forward moderate positions on Karabakh, such as Gorgiy Vanyan's South Caucasus Integration- Alternative Start who have held festivals of Azeri and Turkish films in Armenia, have experienced significant political attacks and pressure.

Adding to the pressure, President Sargsyan made a less than veiled attack on civil society groups in an otherwise interestingly reform-minded speech in December 2010 to the Republican party (discussed in greater detail in the conclusion). After accepting the need for opposition groups, such as the Dashnaks, Heritage and 'constructive' NGOs, he hit out at a so-called third group:

'The third group, which is fortunately not too large, has declared itself the opposition. I am not sure whether it's been done deliberately or not, but they have been steadfastly implementing a distinct program of deprecating the Armenian nation, Armenian statehood and most of all, the Armenian Armed Forces. And it's been done consistently and methodically, with certain calculations, with the employment of financial resources, and use of the vilest political technologies. Moreover, very often we find their precise wording in the Azeri and Turkish propagandist materials.... We don't consider members of the third group to be the opposition; we have another name for them.'<sup>20</sup>

### **Rule of law**

'The corrupt judiciary is the main block on development of Armenia'<sup>21</sup>.

As both Narine Gasparian and Irina Urumova argue later in this publication, there is a fairly mixed picture on rule of law reform in Armenia. As with so many issues in Armenia, it is the gap between the legislation and practice on rule of law issues that is the source of much of the problem, the lack of enforcement to combat entrenched malpractice rather than a poor legislative framework.

While Urumova covers many issues relating to lawyers later on, it is worth mentioning some additional concerns raised during discussions with other experts, including: lawyers having to pay tax on pro-bono work, the lack of opportunities to get international experience or training, the need to properly disseminate the decisions of the ethics committee opinions throughout the legal system, the role of retired police without training as lawyers playing a major role in the provision of civil legal advice and the sad reality that in certain contentious cases lawyers still need to be brave to stand up to the system (to challenge when corrupt judges and practices impede their ability to represent their clients) and the continued existence in some cases of 'pocket advocates' willing to acquiesce to pressure.

Perhaps the greatest impediment to achieving effective rule of law in Armenia however, is the lack of a fully independent and effective judiciary. The Bertelsmann Transformation Index pulls no punches when it says:

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<sup>20</sup> President Serzh Sargsyan speech to mark the 20th anniversary of the Republican Party of Armenia (RPA), <http://www.president.am/events/news/eng/?id=1366> (accessed January 5<sup>th</sup> 2010).

<sup>21</sup> Meeting with a EU member state embassy official.

'Officially, although an independent judiciary does exist in Armenia, it is still largely subordinate to and overly compliant to the demands of the executive branch, which is unquestionably the strongest and most dominant of the branches of government. The judiciary is also directly affected by widespread corruption and general incompetence... The protection of civil rights in Armenia remains incomplete and far too arbitrary, and these deficiencies mainly result from the weak and arbitrary application of the rule of law.'<sup>22</sup>

While the article by the American Bar Association's (ABA) Narine Gasparian in this publication gives a flavour of on-going problems which act to limit judicial independence, it is worth adding some additional details from the ABA ROLI Judicial Reform Index 2008<sup>23</sup>. The report puts it as bluntly as any organisation maintaining a working relationship with the Armenian judiciary can by noting:

'It is widely believed that the President and Government influence judges in cases with political implications or when a business associated with Government officials is involved. Influence from regional governors is also believed to threaten judicial independence in the regions. Attempts to influence judges are not limited to other branches of state power, however, but may take the form of a request from a friend or relative for a favour... While it may be becoming less common than in the past, 'telephone justice' reportedly still exists, and because it was deeply rooted in the legal culture it will be difficult to eradicate... influence need not be overt, however. Sometimes judges know how to decide a case without being told, such as when a state has an interest in the outcome or when a business associated with government officials is involved... When a judge is uncertain about how to decide a case, he/she may reportedly ask the court chairman or even an appellate court judge for advice, in order to avoid issuing the wrong decision.'

The ABA also point out that one of the three judicial dismissals in the 2005-07 period was the removal of Judge Pargev Ohanian, from the Yerevan 'Court of First Instance', ostensibly for serious errors in 20 cases. However, proceedings against him only took place after 'he had acquitted an owner and a senior executive of the Royal Armenia Company of criminal charges including tax evasion, fraud, and smuggling... (a result that was cited at the time as a sign of increasing judicial independence) Those charges were filed after the two businessmen had accused senior customs officials of corruption.' Judge Ohanian's decision was overturned at appeal and the two businessmen were convicted while the Justice was removed from his post.

Despite recent increases and the ending of the need for judges to pay personally for aspects of basic court functions, judicial salaries are still regarded by the ABA as 'insufficient to provide judges with a reasonable standard of living, nor do they adequately reflect the status of judges'. Salaries remain amongst the 'lowest in the former Soviet Union'. Therefore it is perhaps unsurprising that 'according to interviewees, bribery is widespread in civil cases and less common in criminal cases, where bribes are not paid for acquittals, but for reduced sentences.'

Corruption in the police force, particularly amongst Armenia's traffic cops, remains endemic, with the authorities taking an 'evolutionary rather than revolutionary'<sup>24</sup> approach to tackling the problem. Armenia has rejected a Saakashvili style mass sacking of hundreds of officers, instead focusing on the long-term aim of reducing police numbers but increasing their pay and efficiency.

Armenia has an almost non-existent acquittal rate (under 1%), with only 19 not-guilty verdicts in the Court of First Instance over the four years from 2004-2007, with only 12 additional acquittals by the Court of Appeal in the same period and no cases were overturned at the highest level of the Court of Cassation. Given the failings identified throughout the system from arrest to court, this results in the bleak likelihood of a significant number of Armenians being wrongfully imprisoned. This report will therefore

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<sup>22</sup> Bertelsmann Transformation Index 2010 Armenia, <http://www.bertelsmann-transformation-index.de/148.0.html#chap3>

<sup>23</sup> American Bar Association Rule of Law Initiative Judicial Reform Index 2008

[http://apps.americanbar.org/rol/publications/armenia\\_judicial\\_reform\\_index\\_01\\_08\\_eng.pdf](http://apps.americanbar.org/rol/publications/armenia_judicial_reform_index_01_08_eng.pdf) (accessed February 15th 2010).

<sup>24</sup> From discussions with an expert on policing in Armenia.

make recommendations about making the procedures for judicial nomination and promotion more transparent and finding ways to reduce the role of the President in deciding on judicial appointments.

## **Media**

Armenians have limited access to unbiased sources of media. Television remains far and away the main source of news for the Armenian public and there are very limited opportunities for opposition voices to be heard on them as all the stations are devoutly pro-government and restrictive in their approach. For example, it has been recently noted that Arm-TV's broadcasts of programming from Euronews (hardly the world's most controversial broadcaster) would cut to commercials during some of the stories about the recent uprisings in Egypt and Tunisia, while it has also historically tended to leave out Euronews coverage of issues in Armenia. Radio is dominated by music channels, with only the more elderly Armenians using it as a source of news. The only critical voice here is provided by the international station Radio Free Europe/Radio Liberty to a relatively small audience. The print media is much more diverse but little read, with publications tending to take polarised views, both pro- and anti-government. It also faces a real challenge from fast growing online news sources, although internet penetration remains low outside Yerevan and the major cities.

Later in the publication Dr Elizabeth Robson gives a detailed overview of Armenia's media environment, particularly focusing on the technical and regulatory obstacles that are used to restrict competition, something that makes Armenia is one of the few countries in the world where the introduction of digital TV will lead to a reduction in channels. However, it is also worth noting that, as in Russia, physical attacks on journalists have occurred with some regularity. Explaining the nature of the attacks, the head of Yerevan's Press Club, Boris Navasardyan, argues that they are sometimes carried out by bodyguards attached to members of the ruling elite, whose political connections enable them to escape justice, many of which remain unresolved, while the informal nature of their employment gives their masters a degree of deniability. In addition, the informal physical attacks the Committee to Protect Journalists, amongst others, have recorded include cases of police intimidation, politically motivated arrest and assault of journalists<sup>25</sup>. Richard Giragosian has argued that the 'atmosphere of intimidation and outright attacks on journalists have also fostered a degree of 'self-censorship' whereby the normal course of investigative journalism has become especially dangerous and inhibited by the potential danger of physical injury'.<sup>26</sup> One of the experts this author has spoken with, Mark Grigorian from the BBC World Service, was himself a victim of an assassination attempt back in 2002.

Since a spike in numbers with the traumas of 2008, the last two years have seen a reduction in physical violence towards journalists. However, as the country moves towards elections, the international community must be vigilant to ensure that these numbers do not rise, as there is little to suggest the fallback is the result of a government strategy to tackle the problem. While many recent government decisions have continued the restrictions on broadcast media, recent moves to decriminalise defamation are to be welcomed.

## **Fundamental freedoms**

As a country of unusually high ethnic homogeneity (around 97% of the population is ethnically Armenian) and given its recent Soviet atheist heritage, religious pluralism is a relatively new phenomenon for the country. The Armenian Apostolic Church is the dominant religious institution, a reference point in the re-forging of an independent Armenian identity, but 80 years of Communism has taken its toll on the numbers of the faithful. While Armenia is not one of the region's worst offenders in terms of religious freedoms but there remains lingering distrust of evangelical and proselytising groups. So its attempts to

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<sup>25</sup> Committee to Protect Journalists, Attacks on the Press 2010 - Armenia, <http://www.cpj.org/2011/02/attacks-on-the-press-2010-armenia.php> (accessed 25th February 2010).

<sup>26</sup> Richard Giragosian, Armenia: Pre-Election Political Overview, May 2009., ACNIS

restrict religious pluralism do not spring from devotion to the Apostolic Church, from a Soviet heritage approach to maintaining social stability and control in the face of unknown groups in society.<sup>27</sup>

Of particular concern to the authorities of a country with a major unresolved conflict with a neighbour, a heavily nationalist public sentiment and two years of compulsory military service are groups who promote pacifism and contentious objection. The Helsinki Committee of Armenia have noted<sup>28</sup> continuing concerns around Armenia's failure to create a truly independent civilian alternative to military service, worries that have been shared by the Council of Europe (CoE). As a requirement of joining the CoE, Armenia was required to create such a civilian service and it currently provides a three tier set of options: 2 years of military service, 3 years of military service in non-combat roles or 4 years in an alternative labour service. However pacifist groups, mostly Jehovah's Witnesses and Molokans, have protested that the alternative labour service arrangements remained controlled by the Ministry of Defence, with the military police making regular visits to them and insisting that they line-up for inspection. According to the Helsinki Committee, since the protests in 2006, the alternative arrangements have not been taken up and are therefore not fulfilling the role intended for these provisions by the CoE.

Furthermore a recent package of amendments on religious communities has raised a numbers of concerns, not only for the lack of public consultation<sup>29</sup> around their publication, but around their content that would further restrict freedom of conscience and belief. The changes would create a raft of new reporting requirements on aspects of faith and mandatory assessment by a state body providing 'expert opinion' on religiousness in order for groups to meet their legal requirement to register as a religious organisation, something that remains restricted to groups of over 200 adults.

Measures against Proselytism, already banned in Armenia (described as the gothic sounding practice of 'soul-hunting'<sup>30</sup>), would be strengthened by a further clause that states 'Any direct or indirect attempt to persuasion aimed at distortion of religious views of persons through a reward or promise thereof or material aid or deceit, as well as through exploitation of their lack of experience, trust, need, low mental abilities, shall be deemed proselytism', measures that may encroach on the ability to preach. Preaching in religious establishments or unregistered religious activity would be punished with fines of up to 500 times the minimum salary<sup>31</sup>. On a more positive note, the proposed changes would remove the requirement that religious communities must be based on 'historically canonised Holy Scriptures.'

Despite the decriminalisation of homosexuality in 2003 and Armenia's signature of the United Nations Declaration on Sexual Orientation and Gender Identity and the CoE's Convention for the Protection of Human Rights and Fundamental Freedoms<sup>32</sup>, life remains very tough for Lesbian, Gay, Bi-sexual and Transgender (LGBT) Armenians. Societal attitudes remain deeply conservative, based on close family ties and a national identity shaped by nationalism and militarism. There are few legal protections against discrimination in the workplace or in access to services, the media provides a regular source of negative articles and gay Armenians have faced many cases of physical violence, in some instances by law enforcement. Unsurprisingly, given this background, homosexuality is not permitted in the Armenian military and is one of the few grounds for exemption from military service, however it is legally registered for discharge as a mental disorder<sup>33</sup>, a Soviet-era throwback.

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<sup>27</sup> A similar phenomenon to that explained in the FPC's recent Kazakhstan at a Crossroads series article

<sup>28</sup> Helsinki Committee of Armenia, 'Freedom of Religion in Armenia', 2010

<sup>29</sup> Discussed in the conclusion in reference to Armenian engagement with the Council of Europe's Venice Commission.

<sup>30</sup> This includes where 'a person is chase in his apartment, workplace, rest places, or other places or by telephone without his wish or request.

<sup>31</sup> Felix Corley, Armenia: Growing concern over proposed legislative changes on religion, Forum 18, [http://www.forum18.org/Archive.php?article\\_id=1519](http://www.forum18.org/Archive.php?article_id=1519) (accessed February 22<sup>nd</sup>).

<sup>32</sup> Marianna Grigoryan, Eurasianet, Armenia: Gays Live with Threats of Violence, Abuse <http://www.eurasianet.org/departments/civilsociety/articles/eav033110b.shtml>

<sup>33</sup> US Department of State, 2009 Human Rights Report: Armenia, <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136018.htm> (accessed February 25th 2011)

## What our authors say

While these opening remarks have attempted to provide a brief snapshot of some aspects of the democratic and human right challenges facing Armenia, the editor is delighted to have been able to bring together a group of leading Armenian and international experts to address these issues and more in greater detail. Our authors write:

**Richard Giragossian** argues that Armenia has been plagued by tainted elections and a trend of authoritarian rule, with tensions lingering since March 1<sup>st</sup> 2008. He argues Ter-Petrosian's opposition lack momentum and the current leadership was more worried by former President Kocharian. He discusses the rise of so-called 'oligarchs' and their growing political power. He addresses recent attempts at reform, the walkout of Heritage from Parliament and a recent upsurge in street protests.

**Dr Elizabeth Robson** makes a strong case that the standard of media freedom in Armenia leaves a lot to be desired, appearing to adopt European standards, while doing the bare minimum implementation. She looks at the restrictions on the media and the use of digitalisation to further restrict the opportunity for a diversity of views on TV.

**Anna Walker's** take on the business environment in Armenia highlights the gap between a strong legal and regulatory framework and its weak implementation. She gives a rundown of Armenia's varying performance against different international indicators and highlights the perception that more is being done to tackle low- and mid-level corruption rather than graft at the top of society.

**Yevgenya Paturyan and Nairuhi Jrbashyan** get the detailed statistics of public opinion on corruption in Armenia. They find both that corruption is a major concern and they are growing increasingly pessimistic about the capability and willingness of the Armenian Government to tackle it.

**Narine Gasparyan** looks at the findings of the American Bar Association Rule of Law Initiative's Judicial Reform Index over the last decade. She notes that while there have been some recent improvements, there remain a number of significant concerns. She argues that Armenia is yet to achieve 'impartial and objective enforcement of the law by the courts in practice, without an influence from the executive, legislative or any other party.'

**Irina Urumova** gives a broad overview of some of the other important rule of law challenges facing Armenia. She looks at the lack of transparency and consultation surrounding how bills become law. On reform of the legal profession, she outlines some of the recent improvements and outstanding challenges facing Armenian lawyers.

**Tsira Chanturia's** article highlights some of the most topical issues concerning the Armenian penitentiary system, looking at the achievements as well as shortcomings in terms of compliance with international commitments. There is a need in part for policy-level support to assist and guide Armenia's penal reforms and anti-torture actions with the inclusion of the country's civil society.

**Vladimir Shkolnikov** describes European engagement on human rights and democratisation in Armenia as being polite, open and at best achieving incremental results. He argues that the Armenian government is relatively tolerant of European advice and criticism but is slow to act on it and that European tax payers will continue to receive limited benefits for their investment in human rights advancement.

**Alexander Iskandaryan** gives a detailed history of Armenia's recent relationship with Russia, part of a policy of balancing Russian and Western influence known as 'complementarism', where Armenia tries a precarious balancing act. He argues that closed borders with Turkey and Azerbaijan make this approach a necessity and notes that while the EU's position as the largest trade partner, Russia's pre-eminence in security and investment, particularly in Energy makes the relationship with Russia very close.

**Gevorg Ter-Gabrielyan** gives his take on how the conflict in Nagorno Karabakh impacts on Armenian political life, its democratic development and the role of civil society. He critiques the behaviour of some NGOs in mimicking government policy and rejects the argument that Armenia cannot become fully liberal and democratic as it would undermine its war-fighting ability, needing strong centralised power but that reform should be the long-term source of strength.

**Mikayel Zolyan** looks at the troubled and complex relationship between Turkey and Armenia, giving the history of the genocide issue, border closures and other issues. He analyses the recent attempt to finalise the 'Protocols' that would have normalised relations and why this process stalled, arguing that while further movement before the Turkish elections is impossible, the process has paved the way for public dialogue between the two peoples.

## **From Partisan Confrontation to Political Stalemate: The Struggle for Stability in Armenia**

Richard Giragosian

### **Introduction**

Since gaining independence in the wake of the collapse of the Soviet Union, Armenia has struggled to overcome a daunting set of challenges. In addition to the burden of the roughly seven decades of Soviet rule, the course of Armenia's transition to a market economy and a pluralistic democracy was also significantly impeded by the unresolved conflict with neighboring Azerbaijan over the Armenian region of Nagorno Karabakh. In many ways, the Karabakh conflict emerged as the defining issue of Armenian politics and continues to be the central issue of the country's nationalist political discourse.

In terms of democratization, however, Armenia has been plagued by a record of tainted elections and a trend of authoritarian rule. Since the onset of a serious post-election crisis that culminated in a violent confrontation between the Armenian authorities and the opposition on 1 March 2008, there is a serious degree of lingering tension marked by profound political polarization and exacerbated by mounting economic disparities. The Armenian authorities are also hindered by a lack of legitimacy and a "crisis of confidence" that undermines its political mandate and impedes its reform program.

### **From confrontation to stalemate**

Although the Armenian government remains fairly unpopular and unable to fully overcome these challenges, neither the authorities nor the opposition have been able to resolve the political crisis or to reach any constructive compromise. Over the past year, however, there has been a steady erosion of political activism and civic engagement that first emerged during the initial stage of the post-election crisis of early 2008. That initial period was marked by a sudden and fairly unexpected "re-awakening" of the population, seemingly no longer content with its previous apathy and disengagement from politics.

Moreover, as Armenia continued to be defined by the legacy of the violent 2008 post-election crisis, the government faces an increasingly weaker and ineffective challenge from the opposition. The political conflict is serious, but is limited to an emerging clash within the ruling elite itself. On a broader level, the governing elite has yet to fully overcome the combination of unmet demands for political change and mounting economic pressure, which has only plagued an already weakened leadership marked by a lack of popular support and endowed with a meager degree of legitimacy.

Reflecting the unresolved political tension and sharp polarization in the country, the pre-election mood remains tense and prone to sporadic incidents of politically-related violence and intimidation.<sup>34</sup> The increased occurrence and severity of such acts of violence stem from an overall "climate of impunity" that is reinforced by the public perception of an "arrogance of power" among the authorities. And with an already apparent "crisis of confidence" in the state and its institutions, the general population has little trust in the authorities' capacity or willingness to ensure a free and fair election.

Moreover, in the wake of the violence of the March 2008 confrontation, the lack of any real accountability for the abuses and excessive force by the police and security forces, as well as the dubious judicial process and questionable investigations subsequently conducted by the authorities, have only exacerbated a climate of fear among the public. This "climate of fear" has only been compounded by the fact that more than 40 opposition supporters and activists have been detained and later convicted on the questionable charge of organizing "mass disturbances" related to the March 2008 clashes. Further disturbingly, most verdicts were based on incriminating testimony given by police officers or witnesses

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<sup>34</sup> Meloyan, Ruben, "Opposition Youths Hospitalized After New Attacks," Radio Free Europe/Radio Liberty (RFE/RL) Armenia Report, 30 April 2009. <http://www.armenialiberty.org/content/article/1619087.html>

who later recanted their testimony on the grounds that they were coerced or coached by police and prosecutors into making false allegations.<sup>35</sup>

In what has emerged as the earliest political campaign season in recent Armenian history, Armenian President Serzh Sarkisian announced on 2 April 2010 that he would seek reelection in the country's 2013 presidential election. Although the announcement was not a surprise, the president's vow to run again was unusual and seemingly unnecessary. Moreover, the timing was also significant as it tended to confirm the growing rivalry between the current and former presidents. It also demonstrated the competition between rival factions within the government itself, as the president's announcement was also tied to the confrontation between the president's ruling Republican Party and the Prosperous Armenia (Bargavach Haiastan) party, a junior member of the pro-governmental coalition affiliated with former President Robert Kocharian.

President Sarkisian's announcement to run again for another five-year term does little to overcome his own serious impediments, inherited from the violence and deaths incurred during clash between police and opposition demonstrators triggered by his election in February 2008. More specifically, after assuming office in the wake of a serious post-election crisis that culminated in the declaration of martial law by his outgoing predecessor Robert Kocharian, Sarkisian's tenure has been marked by an unprecedented lack of legitimacy and pronounced unpopularity. Although the opposition had forged a broad coalition of political parties and groups under the leadership of the defeated presidential candidate, former President Levon Ter Petrosian, it failed to properly exploit the polarization and dissatisfaction with the Sarkisian government in the wake of the post-election crisis. The Ter Petrosian-led opposition bloc, the Armenian National Congress (ANC), was further weakened by an inability to offer any real policy alternatives, thereby steadily losing its initial momentum and exacerbating a political stalemate.

Against this backdrop of a political stalemate between the government and the opposition, President Sarkisian's unusual announcement to run again in 2013 was a message directed at his more serious rival, former President Robert Kocharian. For his part, however, Kocharian denied rumors of his planned political comeback. Seeking to downplay the rumors, Sarkisian himself sought to ease the situation by dismissing Kocharian's recent criticism of the Armenian government's economic policies but adding that his predecessor had never left the political arena, stating that it was "normal when Kocharian expresses an opinion on one or another" issue. Although the statements by Kocharian and Sarkisian did little to end speculation over Kocharian's possible return, the issue has faded from most political discourse.

One key development that was seen to strengthen Sarkisian's political position against any threat from Kocharian came in April when the "Yerkapah" union of Karabakh war veterans pledged their loyalty to the president and admitted several local government officials from President Sarkisian's Republican Party as new members, despite the fact that none of them had fought in the war. The move was a significant political display of fealty to the president, especially since the veterans' group backed his rival, former President Levon Ter Petrosian, in the February 2008 presidential election and then openly sided with the opposition during the critical post-election crisis in February-March 2008.

### **The closed political system**

Structurally, the closed nature of the Armenian political system, which constitutes the architecture of Armenian politics, has been policed by a narrow, clan-based elite through rigid control over discourse and democracy. Although the emergence of powerful clans has formed a pattern of politics in many of the former Soviet states, Armenia differed in one critical area. Specifically, the avenue to political and economic power for the Armenian elite was the Karabakh conflict. During the first stage of Armenian independence, this new elite emerged during the virtual "state of war" in Nagorno Karabakh that served

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<sup>35</sup> Martirosian, Anush, "Trial Witness 'Tortured' To Incriminate Opposition Leader," Radio Free Europe/Radio Liberty (RFE/RL) Armenia Report, 6 May 2009. [www.armenialiberty.org/content/article/1622952.html](http://www.armenialiberty.org/content/article/1622952.html)

as the primary determinant of Armenian politics. This period not only established a preference for emotional militancy over rational democracy, but discredited moderate political leaders amid the rhetoric of Armenian nationalism. For the government of Armenia's first democratically elected president, Levon Ter Petrosian, it was increasingly apparent that this new elite or clan threatened to impede the overall course of democratic and even economic reform.

With a ceasefire in 1994 that halted hostilities but merely "froze" the underlying conflict, the uneasy period of "neither peace nor war" that resulted only allowed this new political elite to accumulate and consolidate greater power. Steadily securing power from even within the Ter Petrosian government, this elite was quickly dominated by Defense Minister Serge Sarkisian and Prime Minister Robert Kocharian. Both men were natives of Nagorno Karabakh, Sarkisian having led the small but impressive Karabakh armed forces and Kocharian previously serving as the Karabakh head of state. As their power and ambition grew, both men came to be seen as a new political force and, by 1996, combined to force the resignation of President Ter Petrosian.

The most revealing aspect of the end of the Ter Petrosian government was not the resignation itself, but the context. The ouster of Ter Petrosian was orchestrated allegedly for his moderate approach to the Karabakh issue and justified by the pretext of Armenian national security. Assuming the presidency in subsequent elections, the rise of Kocharian demonstrated the ascendancy of this Karabakh elite and set forth to consolidate much of the country's networks of crime and corruption. The end result was a new government dominated by political figures who gained both political and economic power from the Karabakh conflict. It can also be argued that a significant degree of their power lies as much with the unresolved nature of the conflict as well.

### **The new oligarchic elite**

There is a smaller element of this new clan-based elite that has attained significant political power in recent years. Although not as outwardly visible as the ruling elite, a new, wealthy political elite, so-called "oligarchs," have managed to secure a sizable number of seats in the 2003 Armenian parliamentary elections. Their election as deputies demonstrates a convergence of corporate, state, and in some case, even criminal, interests. In addition to gaining serious influence over the formulation of public policy and garnering substantial leverage over the course of governmental policies, this new oligarchic elite has come to embody the difference between the power to rule and the responsibility to govern.

In the case of the other former Soviet economies, this new class of oligarchs has tended to exploit the privatization process to gain economic power first, but has exhibited a subsequent appetite for political power. It is that political role that inherently threatens the course of democratization and political reform. In Armenia, these oligarchs have been able to extend their informal networks of political power through informal cartels and commodity-based semi-monopolies, and now wield significant economic and political power. Generally, such cartels and monopolies flourish within "closed" economies, averting the transparency and competition that dominate the more open marketplace. But in addition to the need for greater anti-trust legislation and stronger state regulatory bodies empowered to limit or breakup monopolies, it is the rule of law and political will that is needed to overcome this "cronyism."

Thus, the closed nature of the Armenian political system, utilized by a dual clan-based and oligarchic elite, has significantly eroded the state's most important asset of legitimacy. This has also been matched by a steady decline in "good governance," with a tendency for both public policy and national security formulated by self-interest over national interest.

### **Strengthening the reformers**

Only weeks before Armenia's traditional week-long New Year holiday, Armenian President Serzh Sarkisian surprised many by instituting a significant cabinet reshuffle. The surprise announcement of a reshuffling of three key ministries (economics, finance and justice) followed the firing of the mayor of Yerevan, the

Armenian capital, and followed the gradual introduction of an amnesty for a group of ten opposition activists detained during the country's March 2008 post-election crisis. With rumors of even more officials set to be dismissed, in a rare weekend speech on 18 December, President Sarkisian also formally pledged to "democratize Armenia's political system" and called for a "civilized dialogue" among all political parties and groups.

After securing the unanimous backing of his ruling Republican Party,<sup>36</sup> Armenian President Serzh Sarkisian dismissed Economy Minister Nerses Yeritsian, appointing current Finance Minister Tigran Davtian as his successor, and naming Armenian Central Bank official Vache Gabrielian as the new finance minister. Party leaders also endorsed the president's choice of Hrair Tovmasian as the new justice minister, filling a position that had remained vacant since 9 December after Gevorg Danielian was fired for what the government described as his "failure to punish" a senior subordinate allegedly involved in "violent and abusive conduct" (although that lesser official has not yet been dismissed or reprimanded).

The appointment of the new justice minister was widely welcomed, as Tovmasian is recognized as a prominent expert on constitutional law and has been outspoken in his calls for deeper reform and the need to strengthen the rule of law in Armenia. In another move, the ruling party also approved the president's selection of Karen Karapetian, the current chief executive of the Armenian-Russian gas distribution company *ArmRosGazprom*, as the party's candidate for the position of Yerevan mayor. During the May 2009 Yerevan municipal election, the 47-year old Karapetian was fifth on the Republican Party's list of candidates HHK official ticket during the May 2009 municipal elections, but subsequently refrained from assuming his seat on the 65-seat Yerevan city council (known as the Council of Elders). In a 17 December 2010 vote by the Council of Elders, Karapetian was duly elected, replacing Gagik Beglarian, who was forced to resign on 8 December after a scandal involving an alleged assault of a presidential administration official.

### **Signs of a political opening**

Following the personnel changes, in a speech on 19 December during the celebration marking the 20<sup>th</sup> anniversary of the founding of the Republican Party, Armenian President Sarkisian warned that the current political situation could lead to "stagnation" without a "deepening of democracy" and a "consistent introduction of European standards into all spheres of our state, public and economic life." The president called for the introduction of "European-style democracy and the rule of law" as a basic "requirement of society," adding that "European rules of the game" must prevail.

Signalling a new political opening, President Sarkisian also praised some elements of the Armenian opposition for "honestly" criticizing the government, stating that "we respect such forces" and noting that "their word carries a lot of weight in the elaboration of our programs." Although implicitly referring to the opposition Armenian Revolutionary Federation (ARF-Dashnaktsutiun) and the "Zharangutiun" (Heritage) party, the president was harshly critical of the Armenian National Congress, an opposition alliance led by former President Levon Ter-Petrosian, for its partisan and "unconstructive" approach. Nevertheless, the speech suggests a new political opening by the authorities, confirmed by the introduction of a gradual amnesty for 10 of the country's 12 opposition activists and supporters (defined by some as "political prisoners" based on their politically-related charges) detained during the country's March 2008 post-election crisis.

### **Conclusion**

Clearly, the Armenian president's recent moves to implement an amnesty for opposition detainees, dismiss the Yerevan mayor and shake up the cabinet represent a significant step forward. Moreover, these moves suggest a new sense of political will, offering new optimism that the government seeks to

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<sup>36</sup> The Republican Party is the dominant political party in Armenia, but according to a power-sharing deal, governs through a coalition with two junior coalition partners, the "Bargavach Hayastan" (Prosperous Armenia) and "Orinats Yerkir" (Country of Law) parties.

move beyond the political parameters of the March 2008 post-election crisis that have hindered President Sarkisian since his inauguration. It also seems quite likely that more dismissals are coming, with signs that several other cabinet-level officials (namely the ministers of agriculture and health, as well as the national police chief, etc.) will also be replaced within the coming weeks.

The president was also able to further strengthen his position by forging a new coalition agreement on 17 February, whereby the Republican Party (HHK) garnered a pledge of support from the Prosperous Armenia and Orinats Yerkir parties, vowing to campaign for the incumbent president's re-election in 2013. That coalition agreement also stated that the three parties would not seek to change "the correlation of forces within the coalition" in the May 2012 parliamentary election. And with the effective control of over 100 seats in the 131-seat parliament, this new coalition agreement led to sharp criticism from the opposition over what they contend is a move to predetermine the election outcome and an attempt to weaken the opposition within parliament. Moreover, several deputies from the Armenian opposition Zharangutyun (Heritage) party walked out of a 28 February session of parliament after accusing the president of using the coalition agreement as an "unconstitutional" means to illegally prolong his rule.

Most notably, these moves also hint that the president may call early parliamentary elections in the coming year, in order to more fully consolidate his power and position prior to the 2013 presidential election and to further distance himself from his lingering lack of legitimacy stemming from the 2008 post-election crisis. But with a massive rally of between 30-40,000 demonstrators timed with the third anniversary of the 1 March 2008 violence, former President Levon Ter Petrosian has stridently challenged the president, reigniting the challenge from the opposition. Specifically, former President Levon Ter Petrosian presented a 13-point ultimatum to the authorities demanding the release of all remaining opposition supporters still in detention, advocating a new, independent inquiry into the post-election violence of 2008 bloodshed, and calling for the firing of several high-ranking state officials, including Prime Minister Tigran Sarkisian. Clearly, with simmering tension within the ruling coalition and mounting pressure from the opposition, the Armenian government will only face a heated and tense period prior to the country's next round of elections.

## Media freedom in Armenia: One step forward, two steps back

Elisabeth Robson

Independent Armenia emerged from the Soviet Union, mired in the conflict with Azerbaijan over Karabakh. Armenia's development as a newly independent state has been constantly compromised by the demands of the war and the associated problems of corruption. The absence of a genuine politically aware class has allowed various clan leaders and powerful individuals who amassed great fortunes on the break-up of the Soviet system to take power by buying political influence. Political debate, to inform decisions on new legislation, was strictly controlled as it had been in the Soviet period (except for the brief opening of the *perestroika* period). In this climate it has been hard for a genuinely free media sector to develop. Nevertheless, the lifting of Soviet-era controls did allow dedicated individuals to work for a free media and to join with like-minded journalists in the attempt to establish a free press and free radio and television.

The old Soviet state broadcasting system was taken over by whoever was in power and put to work supporting the current leader. The free press for a time developed as best it could, in the absence of an advertising market to support it. Newspapers have come and gone, and those that survive have very small circulations (around 5,000-7,000 copies), but the independent journalists are still there, in, for example, some print media, the Asparez Journalists' Club (in Gyumri), in the Yerevan Press Club and in a variety of NGOs. Armenian journalists also contribute to and use internet web sites and foreign media.

For years now there have been efforts at conflict resolution to bring the Karabakh war to an end and there has been funding from a variety of European and American donors for journalists' training at all levels. Anxious to be accepted into the Council of Europe, the Armenian government has discussed and enacted legislation purporting to provide the legislative framework for free media in Armenia. As observers have pointed out, the Armenians have proved extremely skilful at appearing to adopt European standards in all aspects of government, while every time doing the bare minimum to avoid the obloquy of suspension or, worse, expulsion from the Council of Europe. Legislation is frequently reviewed by European experts, amendments are proposed and officially accepted, but then do not make it into the final law passed.

A number of catastrophic events have further hindered Armenia's progress, including the shoot-out in the parliament killing four prominent political figures in 1999. The necessity of supporting Karabakh militarily and financially has hindered the development of the Armenian economy, already weak. Aid from Russia, including military aid, has been crucial to the country's survival. All of these issues have led Armenian leaders to seek to control the media, stifling much necessary debate. The result has been a total loss of trust between the government and the media.

Presidential elections in 2008 were marked by violence against journalists and tight control of all media so that opposition candidates were discredited in the media controlled by the authorities and had limited access to any outlets to present themselves to voters before the elections. During the election campaign the law provides for access to media for all parties. Demonstrations on 1 March 2008 were put down with great force and journalists attempting to cover them were arrested. Also arrested were three members of parliament, the campaign manager of opposition leader Levon Ter-Petrossian's group and leaders and activists of some opposition parties. Some officials in the Foreign Ministry lost their jobs because they criticised the conduct of the elections. Participants in the demonstrations were not necessarily supporters of any of the opposition parties, they were just demanding change in civil society and disenchanted with government actions. All television channels called all demonstrators hooligans, vandals, etc, and minimised numbers on the streets.

A state of emergency was imposed after the demonstrations and remained in force for a month, during which all reporting of events was controlled, opposition meetings were banned and members of opposition parties and groups denied access to the media. The OSCE's human rights arm ODIHR, was charged with following all these cases and many more. The courts were widely believed to be corrupt and

bringing verdicts at the behest of the government. Monitoring proved difficult, not least because many cases were settled by plea bargaining to obtain lighter penalties. Information about cases being tried in the provinces was hard to obtain and harder to check. New legislation limiting the right to free assembly was passed, extending the drastic restrictions brought in under the state of emergency.

Elections for Mayor of Yerevan on 31 May 2009 showed some improvements in the coverage permitted to the media, with limited access to the media for opposition candidates. However, there were, and still are, no legislative safeguards to prevent a return to the old ways. The arrest of the well-known editor of an opposition newspaper, Nicol Pashinyan of Haykakan Zhamanak (Armenia Times), who had given himself up to the police, was eventually charged with organising the 1 March demonstrations. His trial and sentencing in January 2010 to seven years in prison provoked an outcry which has not since died down. Appeals against the sentence failed. Harsh conditions in prison and alleged brutalities have been widely reported<sup>37</sup> and even an amnesty reducing his remaining sentence still leaves him with more than three years to serve.

2009 saw more access to the media for opposition and dissident groups; the Yerevan Press Club, for example, produces a regular political talk show which is carried by various independent broadcasters. However, the institutional framework for the media does not provide adequate guarantees that this will continue. Proposals for the reform of the former state broadcaster, now called the 'Public Broadcaster of Armenia' and for the broadcasting environment, have been worked over and discussed at length, but despite government undertakings that the process would be completed by the end of 2010 there is still not a reformed law on the media.

Print media and the internet have more 'space' to work than television. They do not attract the same audiences, however, and the government can still interfere with impunity. Internet sites were blocked on 1 March 2008 for two weeks, but not since.

The case of Meltex - A1+ - television station is still unresolved. The station first lost its licence in 2002, since which time it has made at least twelve applications for a new licence, all refused. It took the Armenian government to the European Court of Human Rights and won, but is still waiting. Gala TV in the provincial city of Gyumri was punished after a broadcast of a speech by Levon Ter-Petrossian (former President now in opposition) by a visit from the tax authorities, claiming to find many irregularities. It held a telethon for its viewers to raise money to pay the fine, but pressure was then exerted on advertisers to pull out from the station so that its revenues plummeted. It has been struggling to survive with volunteer labour and contributions.

A further concern is the official attitude towards freedom of information: a Freedom of Information Law was passed, but it has not been enforced in more sensitive cases, and the government seems to be attempting to claw back the freedom that had been granted. The lack of transparency in many areas of government and of the media in particular is a continuing problem, despite the passage of the information law. This means that ownership of broadcast and print media continues to be hidden and links with government concealed; it is clear, however, that to remain active, particularly in the sphere of television, stations must be seen to support the ruling group or risk losing their licences.

Political advertising on television is permitted outside elections, but rates are deliberately set at crippling high levels, effectively denying access to more poorly resourced opposition groups. The protection for opposition groups and individuals to make their voices heard is virtually non-existent. There are no clear rules on how differing groups with different political programmes should be treated on television and radio, and how much advertising should be allowed. Some political adverts are disguised - often skilfully - as ordinary programmes.

The main problems with the current media legislation are:

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<sup>37</sup> Editor's note until 2010 Pashinyan was able to still write for the paper and access internet and post but this has since been restricted amid wider accusations of mistreatment.

1. The current regulatory body, the National Commission on Public TV and Radio (NCTR), is heavily pro-government and there is no guarantee of its impartiality. Four of its members are appointed by the President, four are elected by parliament (where the pro-government party is in the majority), selected through nationwide advertising and a 'humiliating' selection process, to which 'no self-respecting journalist would submit.' This reaction came from more than one journalist, including the president of the Yerevan Press Club. The NCTR is supposed to oversee all broadcasting,

2. Public Broadcasting is still effectively under the control of the state and is seen as an arm of government; current law contains no mechanism for the NCTR to supervise public broadcasting. The Public Broadcaster has its own Council of Public Broadcasting whose five members are all appointed by the President.

3. The process of tendering for frequencies is obscure and has been made more obscure by an unnecessary moratorium on new tenders, imposed in 2008 allegedly because of the technical demands connected with the introduction of digital broadcasting. The new rules extending existing licences until the end of 2010 were incorporated into law without proper discussion within 24 hours; it is widely believed this was to prevent A1+ reapplying for its licence after winning its case in the European Court of Human Rights.

In July 2010, tenders were invited for digital licences. The process was not transparent and the result was that fewer licences were granted than before, mainly to existing, pro-government stations. There is now only one regional television station per region, all pro-government and other regional stations, such as Gala TV in Gyumri, will lose their licences when the digital switch-over takes place in 2015.

A1+ reapplied for a licence, its 13<sup>th</sup> application, and was rejected by the authorities who claimed that its business plan was a fiction. A1+ is in the process of filing a lawsuit against the NCTR. The process and results of the licensing exercise have been widely criticised, and Armenia's amendments to its broadcasting law have been described as a serious barrier to the development of free media, by Armenia's own Human Rights Defender, by the US Ambassador to the OSCE, by the Parliamentary Assembly of the Council of Europe and by Human Rights Watch.

Because of the lack of clarity in the law, whose provisions are frequently obscure, and because of a general lack of transparency in the government's approach to digitalisation, there is insufficient information available about the design and size of multiplexes which are the hubs of digital broadcasting, carrying many different programmes simultaneously depending on the size and configuration of the multiplex. Transmission facilities in the analogue world were separate from broadcasting and the preparation of content, although fully government controlled. The Armenian government is apparently seeking to ensure control of the new transmission services as tightly as it does broadcasting.

In Armenia today, the Ministry of Communications controls all the facilities for all communications purposes, including broadcasting. It informs the NCTR which frequencies are available for broadcasting television and radio (to keep them separate from mobile phones, emergency services, etc). The government has the responsibility for creating a national digital network for all broadcasters who have licences. Nothing in law clarifies how broadcasting facilities will be managed or whether they will at some stage be privatised. Nor is the government required to give detailed information about the number of frequencies available. In technical terms, there could be both more frequencies and more multiplexes than the two planned, and they could be owned or managed privately. All the signs so far are that the switch-over will be structured so that the development of a broader media scene is prevented and the growth of competition in delivery systems to broadcasters is also constrained.

4. New Media are developing fast, but are not protected in law from government interference. As the events of 1 March 2008 showed, the internet can be shut down, although currently it is being left alone. Broadcasting via the internet has taken off and is reaching new audiences. The Yerevan Press Club is part of the "Alternative Resources in Media" project supported by USAID. The YPC makes a weekly television programme in a cycle called "E-Club" which is broadcast over the internet in co-operation with A1+.

5. To bring its legislation into line with European practice, the law on defamation was to be decriminalised, while libel law, as part of the Civil Code, strengthened; fears have been expressed in Armenia that this will allow ruinous claims for libel in order to silence critical opinions in the media, and to selective sanctions against journalists. Recent cases, such as the suit for many thousands of US dollars filed by three oligarchs, currently members of parliament, against the founder of 'Haykakan Zhamanak' daily newspaper illustrate the problem. They won the case and were awarded around \$20,000 in "damages".

A distinction between the situation in the capital Yerevan and in the regions of Armenia should be made. In the regions there is much less diversity in the media and much less room for dissident or opposition voices. Students and journalists have much less opportunity to learn about or experience best western practice and there is far less access to foreign-funded training; local administrations can be as ferocious censors of the independent media as the central government.

Just as the independent media in the capital are dwarfed by the resources of state broadcasting and the big, oligarch-owned private media, in the provinces, where media sometimes use the buildings of the local administration for their offices and receive subsidies in kind if not in cash, they are in an even weaker position to stand out for free access to information. Nevertheless, both independent newspapers and broadcasting companies continue to work and to survive the attacks they attract, although newspaper circulations are small and have limited impact.

One of the goals of the local independent press associations and of the outside donors of aid is to develop a body of journalists and editors of all ages and levels of seniority who will, over time, have sufficient weight to promote impartial and fair journalism in Armenia. The offer of journalism training is always welcomed and there is never enough to cover everyone at all levels. Short courses are valuable for working journalists, but better journalism courses in universities and colleges, to meet Bologna standards and raise the quality of graduates will do more in the longer term for free media in Armenia. Soviet-style courses should have disappeared long ago, but are still to be found, being taught by the same teachers, and too often the claimed adherence to Bologna standards is in form rather than substance.

Still today, both basic journalism education and mid-career training for journalists is not good enough. New courses in, for example, investigative journalism, are needed, and help is particularly needed in the provinces. All students need training in reporting parliament, government and opposition policies, economic affairs, the law, covering criminal cases, relations with the courts and police. Courses for medium-rank and senior editors are also needed, as well as training in how to successfully manage a newspaper or broadcasting company.

Independent media themselves have addressed some of these issues and have worked together to produce a voluntary system of self-regulation, with a Code of Conduct that each media outlet commits to uphold. In the Code there is provision for receiving and investigating complaints. As more sign up to this, and so far more than 40 have, there is increasing pressure on editors and owners to join this new media family and observe the code themselves. However, dozens of important media companies have not yet become part of it and the problem of invisible owners and indifferent senior editors, happy to take telephone calls from government officials, remains, while the state-owned Public Broadcaster has not signed up, saying it is working to establish its own code of conduct.

A promising initiative by the OSCE was to take a group of journalists and policemen and police press officers to Lithuania, where they worked together to understand each other's position. The choice of Lithuania was particularly good, because of the shared Soviet background and experience. Both sides returned surprised at how much common ground they had found and hopeful that relations would be better as a result. However, the numbers involved were small, and the Chief Police Press Officer made it clear that he was opposed to the appointment of autonomous provincial press officers. His claim that all requests for information were fulfilled quickly, and that the website contained all necessary information was not supported by journalists who had tried to access both. He was recently replaced, but his successor is in the same mould. One of the journalists who took part in the training observed that, in his

view, training in how to use press officers was needed for bosses themselves, as well as training for press officers in working with journalists.

The state of the media in a country is a good indicator of the progress made towards the democratic norms to which governments claim to aspire. In Armenia, there is still a long way to go, and sadly the political class currently in power shows no real commitment to the full introduction of the necessary democratic freedoms.

## **Armenia's business environment: Sound legislative framework, poor implementation**

Anna Walker

International surveys of Armenia's business climate appear to deliver a contradictory message. The picture that emerges – as in other areas of the country's political and economic environment - is broadly one of a relatively sound legal and regulatory framework clouded by the somewhat less robust application of these rules and regulations.

In terms of bureaucratic procedures, Armenia's business environment ranks comparatively favourably when considered alongside fellow members of the Commonwealth of Independent States (CIS) and, indeed, many of the new EU members from central and eastern Europe in the World Bank's annual *Doing Business* survey. This assesses the ease of doing business across some 180 or so countries in terms of regulations that either enhance or constrain business activity. In the 2011 survey Armenia is placed 48<sup>th</sup> out of 183 countries, second only to the Kyrgyz Republic of the 11 CIS members. Its neighbours in the South Caucasus, Georgia and Azerbaijan, rank 12<sup>th</sup> and 54<sup>th</sup>, respectively<sup>38</sup>.

In several key areas, the World Bank notes that Armenia has reduced the bureaucracy involved in conducting business. Its highest ranking (5<sup>th</sup>) in the 2011 *Doing Business* survey is for the 'Registering property' category, with just three procedures and seven days required. Similarly, for the 'Starting a business' category, Armenia is ranked 22<sup>nd</sup>, reflecting improvements over the years in reducing the number of procedures and length of time needed to get a business established. The introduction of a one-stop shop for business registration, following legislative changes in 2010, should further simplify the process. The 2011 survey also notes that over the previous year, Armenia was the third most improved country in terms of trading across borders, primarily through reforms to its customs administration and strengthening its risk profiling capabilities so as to speed up border post inspections.

The World Bank acknowledges though, that the *Doing Business* survey focuses on the number, efficiency and cost to companies of regulations and procedures, without considering other aspects that affect the business environment, such as corruption or the quality of institutions. A persistent complaint from companies is that though the process of starting a business in Armenia is relatively trouble-free, actually conducting that business can be anything but straightforward. High on the list of factors complicating the business environment are pervasive corruption and the presence of monopolies that distort the playing field. The latter has a particular impact where imports of goods such as basic foodstuffs are concerned, and makes it more difficult for new market entrants.

Armenia's performance in the annual World Economic Forum's Global Competitiveness Index, published in *The Global Competitiveness Report*, reflects these negative factors. In the 2010-2011 index, it is placed only 98<sup>th</sup> out of 139 countries, ahead of only Kyrgyzstan, in 121<sup>st</sup> place, and Tajikistan (116<sup>th</sup>) out of the members of the CIS<sup>39</sup>. Corruption and tax regulations are perceived as the most problematic areas, as well as deficiencies in infrastructure and the lack of judicial independence.

Armenia's progress in tackling corruption is at best limited, and in this area global surveys paint a broadly depressing picture. In the 2010 Corruption Perceptions Index (CPI) compiled by global watchdog Transparency International, Armenia scored just 2.6 out of 10, where 10 is highly clean and 0 is highly corrupt, placing it alongside countries such as Eritrea and Niger<sup>40</sup>. Moreover, although critics of the index question its value as a gauge of corruption (in that, because corruption is inherently difficult to quantify, the CPI measures *perceptions* of corruption that are not standardised across countries), the overall trend of Armenia's score in recent years does not reflect well on the authorities' repeated assertions that they

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<sup>38</sup> World Bank, *Doing Business 2011: Making a Difference for Entrepreneurs*, <http://www.doingbusiness.org/~media/FDPKM/Doing%20Business/Documents/Annual-Reports/English/DB11-FullReport.pdf> accessed on February 18 2011.

<sup>39</sup> World Economic Forum, *The Global Competitiveness Report 2010-2011*, [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2010-11.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf); accessed on February 18 2011.

<sup>40</sup> Transparency International, *Corruption Perceptions Index 2010*, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results); accessed on February 18 2011.

are doing all they can to combat corrupt practices. Armenia scored 3 in 2007, but has registered a year-on-year deterioration in each year since then.

The government's record on corruption as assessed by democracy watchdog Freedom House in the annual *Nations in Transit* survey is similarly poor. In the most recent two published editions (covering developments in 2008 and 2009), Armenia's score was 5.5, where 1 represents the highest level of democratic progress and 7 the lowest; this was a modest improvement compared with the score of earlier years of 5.75<sup>41</sup>.

The weak scores in these surveys cast doubt on the government's commitment to eradicating corruption, and, in particular, the effectiveness of recent anti-corruption strategies. The current such strategy, for 2009-12, was adopted in September 2009 and seeks to ensure that Armenia implements the anti-corruption commitments that it has made to international bodies such as GRECO and the OECD. One common criticism of its previous strategy (which covered the period 2003-07) was that while it resulted in improvements to anti-corruption legislation, it failed at the implementation stage. Moreover, critics have often accused the authorities of focusing on low- and mid-level corruption, while ignoring corrupt practices at more senior levels. Prime Minister Tigran Sarkisyan has in recent months strongly criticised the agriculture, finance, health and education ministers for allowing corruption in their ministries to go unchecked, but prosecutions of high-level officials remain rare.

Linked with the sluggish progress in tackling corruption is the weakness of the judicial system. Like many post-Soviet states, Armenia's constitution in theory enshrines the principle of an independent judicial system, yet in practice the judiciary remains subject to political influence and interference. As far as commercial cases are concerned, one problem has been the use of the court system against domestic political opponents of the authorities. Judicial reforms are under way to improve the functioning of the system and enhance its independence.

One major aspect of the country's political system that distorts the business environment is the existence of close links between members of the political and business elites. Despite pressure from international financial institutions, successive governments have failed to make significant progress in curbing these links, and the introduction of legislation to prevent conflicts of interest does not yet appear to have had much impact. As a result, small and medium-sized enterprises (SMEs) complain that larger businesses with close connections to political circles enjoy significant advantages when it comes to areas such as the enforcement of tax legislation and regulations, putting businesses without these connections at a commercial and financial disadvantage.

As well as creating an uneven playing field and weakening the competitiveness of the economy, the seemingly preferential tax treatment of large, outwardly successful companies has another pernicious impact. It has contributed to Armenia consistently registering one of the lowest tax takes in the world, including against regional low-income peers such as Georgia and Moldova. The tax/GDP ratio for many years hovered around the 13-14% mark, rising only modestly in recent years to 16.4% in 2010, according to State Statistical Committee data<sup>42</sup>. Part of the problem is that the high number of tax payments and substantial time required to fulfil tax requirements each year encourages companies to operate in the shadow economy. The *Doing Business 2011* survey (in which Armenia ranks 159<sup>th</sup> in the 'Paying taxes' category) notes that companies must spend around 580 hours each year complying with tax regulations and make 50 different tax payments each year.

The presence of monopolistic interests is a further factor that distorts the business environment, raises the cost of doing business by preventing market pressures from keeping prices down and has a longer-term impact by impeding broad-based economic growth. Armenia is ranked 138<sup>th</sup> for the category 'Effectiveness of anti-monopoly policy' and 136<sup>th</sup> for 'Intensity of local competition' in the Global Competitiveness Index. The import market for goods such as basic foodstuffs (flour, for example), in

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<sup>41</sup> Freedom House, *Nations in Transit 2010*, <http://www.freedomhouse.eu/images/Reports/NIT-2010-Armenia-final.pdf>; accessed on February 18 2011.

<sup>42</sup> State Statistical Service of the Republic of Armenia, *Socio-economic situation of the Republic of Armenia, January-December 2010, State budget indicators*, [http://www.armstat.am/file/article/sv\\_12\\_10r\\_211.pdf](http://www.armstat.am/file/article/sv_12_10r_211.pdf), accessed February 18 2011.

particular, is dominated by so-called 'oligopolistic' players, making it difficult for new businesses to enter the market.

Concerns over Armenia's political and economic stability also cloud the business environment. In the political sphere, although Armenia has not experienced upheaval in the form of a 'colour' revolution like its northern neighbour Georgia, or fellow CIS members Ukraine and Kyrgyzstan, the poor conduct of all post-independence elections has resulted in widespread apathy towards the electoral process. The violent dispersal of post-election demonstrations in March 2008 contributed to this disillusionment and helped to further erode public trust in the authorities. Personality clashes and divisions over tactics among Armenia's opposition parties have to a large extent weakened their challenge to the government and dampened their calls for fresh elections. However, the flawed conduct of both the parliamentary and presidential elections (in 2007 and 2008 respectively) continues to cast doubt over the legitimacy of the current authorities and their respect, or otherwise, for democratic principles and the rule of law.

As far as macroeconomic stability is concerned, Armenia's reliance on both remittances and the construction sector for growth proved to be key weaknesses in the global economic and financial crisis. From being one of the stellar economic performers of the past decade, regularly posting annual real GDP growth rates of 13% and above, in 2009 Armenia suffered the second-largest economic contraction among the CIS, with GDP declining by 14.2%<sup>43</sup> (only Ukraine's economy performed worse, declining by 15.1%).

Prior to the recession, private transfers from labour migrants and longer-term family members living and working abroad helped to fuel a construction boom in Armenia that proved unsustainable once these remittances fell. Private transfers plummeted from \$1.2bn in 2008 to \$800m in 2009<sup>44</sup>; meanwhile, the contribution of the construction sector to Armenia's economic growth swung from a positive 4.4 percentage points in 2007 (according to the State Statistical Service) to a negative 10.7 points in 2009. Its contribution turned positive again in 2010, but only just, at 0.6 points. Diversification of the economy away from the construction sector clearly remains an important goal as far as future prospects for macroeconomic stability are concerned, although constraints such as the country's closed borders with Turkey and Azerbaijan and related infrastructural challenges will continue to hamper economic growth.

With the authorities clearly keen to avoid another damaging recession, emphasising the positive impact on growth could be one of the more effective ways of encouraging reform of the business environment. The hurdle is that steps such as dismantling the monopolist system and creating a more level playing field are politically difficult for the authorities in that they risk undermining the political system as it stands. Yet the risks for the authorities created by simply letting the current situation drift on are potentially much greater, particularly given the recent context of the unrest across the Middle East and North Africa. Tackling these issues should be at the forefront of the political and economic reform programmes drafted in conjunction with bodies such as the EU, with as much emphasis placed on the implementation of these programmes as on the enactment of the relevant legislation.

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<sup>43</sup> State Statistical Service of the Republic of Armenia, <http://www.armstat.am/ru/?nid=126&id=01001&year=2009&submit=%D0%9F%D0%BE%D0%B8%D1%81%D0%BA>, accessed on February 18 2011.

<sup>44</sup> State Statistical Service of the Republic of Armenia, *Balance of payments in the Republic of Armenia January-December 2009*, <http://www.imf.org/external/pubs/ft/scr/2010/cr10350.pdf>, accessed on February 18 2011.

## Perceptions of corruption in Armenia: Growing disappointment and detachment?

Yevgenya Paturyan and Nairuhi Jrbashyan

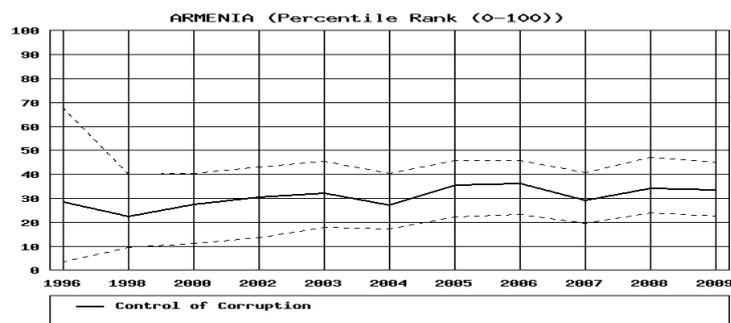
Corruption, generally defined as the abuse of public power for private benefit<sup>45</sup> is one of the most widespread modern social ills, negatively affecting various aspects of development in many countries. Armenia, unfortunately, is among those countries where corruption remains a serious problem.

International measurements of corruption depict a bleak picture without significant improvements over the past decade. Several representative public opinion surveys carried recently out in Armenia show that corruption is a major concern. At the same time, the Armenian public has been growing more pessimistic regarding the possibility to eradicate corruption in Armenia. It is becoming increasingly skeptical of the Armenian Government's ability and will to combat corruption.

Non-Governmental Organisations (NGOs) active in the anti-corruption domain, remain largely unknown, while the opinions about their ability to counter corruption are almost evenly split. Thus, judging by the public opinion data, none of the three social actors (the public at large, the government and the civil society) is in a strong position to initiate change and steer the country towards corruption-free environment.

Corruption in Armenia is by no means a new phenomenon. While it is difficult to speculate about the extent of corruption in Soviet Armenia, and in early years of independence, some data is available starting in the mid-1990s. The World Bank Worldwide Governance Indicators (WGI) Project<sup>46</sup> maps levels of corruption in Armenia over the past 15 years in comparison to the rest of the world<sup>47</sup>. The chart in Figure 1 shows percentile rank i.e. it indicates the percentage of countries worldwide that rate below Armenia. Higher values indicate less corruption. The dashed lines indicate the statistically-likely range of the Control of Corruption indicator at 90 percent confidence level. The graph shows that Armenia ranks fairly low, with some minor upward and downward trends. Roughly about 65 percent of countries perform better than Armenia in terms of corruption.

**Figure 1: World Bank Worldwide Governance Indicators, Control of Corruption Indicator for Armenia (time trend)**<sup>48</sup>



Source: Kaufmann D., A. Kraay, and M. Mastruzzi (2010), *The Worldwide Governance Indicators: Methodology and Analytical Issues*.  
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

In 2003, the Armenian government declared corruption a high-priority issue. Anti-Corruption Strategy

<sup>45</sup> Vito Tanzi, "Corruption Around the World: Causes, Consequences, Scope, and Cures," in *Governance, corruption & economic performance*, ed. George T. Abed and Sanjeev Gupta (Washington, D.C.: Intl Monetary Fund, 2002).

<sup>46</sup> The World Bank Group, "Worldwide Governance Indicators," 2010, [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp).

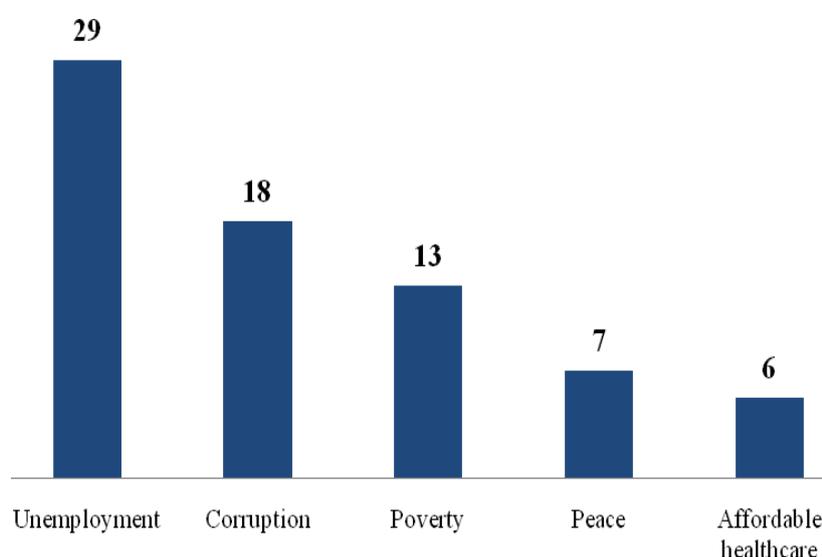
<sup>47</sup> Detailed information about the methodology, access to data and to an interactive chart-builder is available from the website: <http://info.worldbank.org>.

<sup>48</sup> The graph is generated using an online graph builder [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp) accessed on February 15, 2010.

and Implementation Action Plan 2003-2007, incorporating some 100 measures, was finalized and approved. More than 50 laws and by-laws were passed during that period as part of anti-corruption measures, several institutions (such as the Anti-Corruption Council and Anti-Corruption Strategy Implementation Monitoring Commission) were created, international anti-corruption conventions and agreements were signed and ratified. Currently, the second Strategy and Action Plan for the years 2009-2012 is in place to guide the anti-corruption state efforts<sup>49</sup>.

Nonetheless, the results of these efforts are yet to be seen. Corruption, as a serious problem facing the country, remains high on the public agenda, as Caucasus Barometer<sup>50</sup> survey data demonstrates. In 2009, corruption was considered the second most serious problem facing Armenia, unemployment being the first most important issue (Figure 2).

**Figure 2: What do you think is the most important issue facing Armenia at the moment? (top five concerns; %) Armenia CRRC CB 2009**



Caucasus Barometer does not contain any more specific information on the corruption issue. There are, however, other data sources that allow interested researchers and practitioners to have a detailed look at public perceptions and behavioral patterns related to corruption in Armenia.

Three consecutive Corruption Surveys of Households in Armenia in 2008, 2009 and 2010<sup>51</sup> provide a wealth of information regarding the perceptions of the Armenian population on a variety of issues, such as individual experiences with corruption, social and individual behaviors related to corruption, awareness and evaluation of anti-corruption initiatives in Armenia, and the use of media to obtain information about corruption. The nationwide representative surveys included 1,549 respondents in 2008, 1,515 in 2009 and 1,528 respondents in 2010. The surveyed group represents the voting age population in Armenia (18 years and older) across all regions of the country.<sup>52</sup>

As this paper argues, the three corruption surveys of households in Armenia have registered almost no visible improvements in corruption related perceptions over the period of study. Moreover, there are some alarming trends of growing disappointment and detachment.

<sup>49</sup> Government of the Republic of Armenia, "The Republic of Armenia Anti-Corruption Strategy and its Implementation Action Plan for 2009-2012," 2009, <http://www.gov.am/am/anticorruption/>.

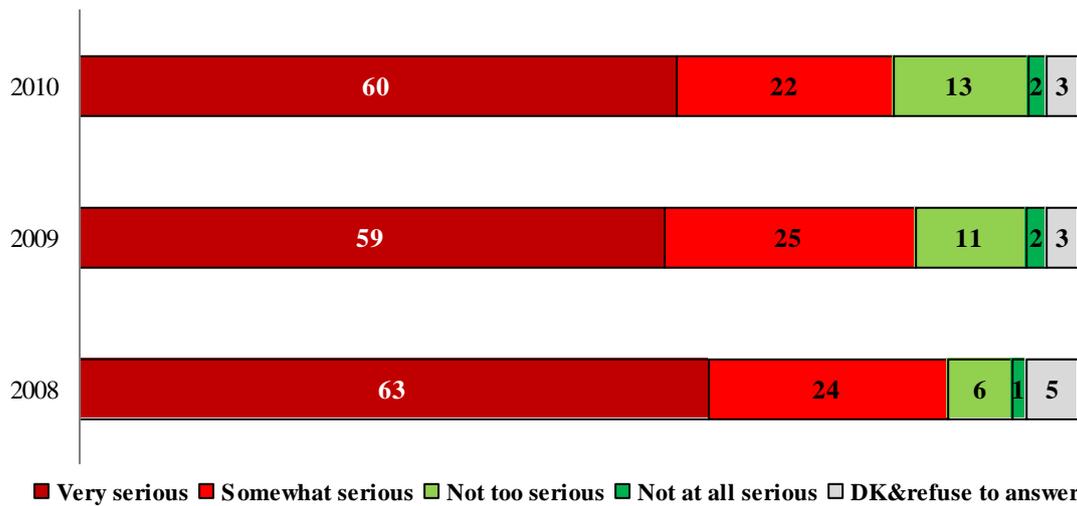
<sup>50</sup> Caucasus Research Resource Centers, "Caucasus Barometer [dataset]," 2009, <http://www.crrccenters.org/caucasusbarometer/>.

<sup>51</sup> USAID MAAC, 2010 Armenia Corruption Survey of Households (Yerevan, Armenia: USAID, 2011).

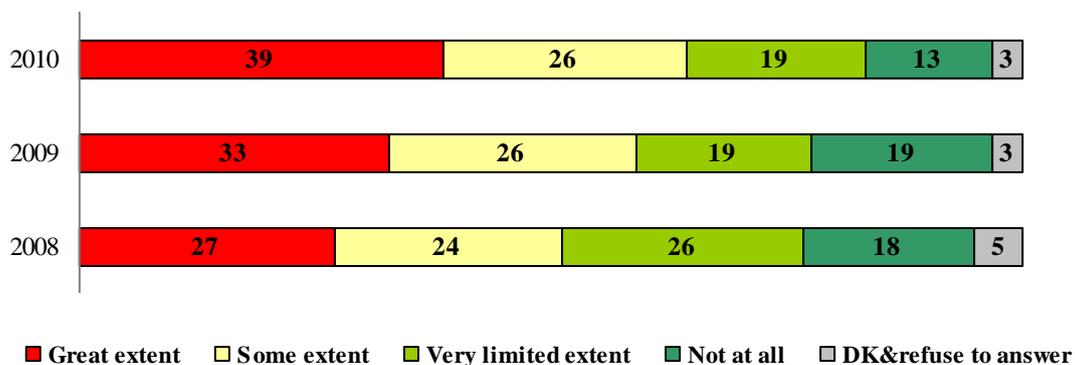
<sup>52</sup> The datasets, supporting documentation and analytical materials for all three years are available at [www.crrc.am](http://www.crrc.am)

An overwhelming majority of survey respondents described corruption as either a “very” or “somewhat” serious problem in three consecutive years (Figure 3). Together with being seen as a serious problem, corruption was also considered to be part of the Armenian reality (“to a great extent” or “to some extent”) by at least half of the respondents (Figure 4). Note that the percentage of people who agreed to a great extent that corruption was a fact of life in Armenia has increased from 27% in 2008 to 39% in 2010.

**Figure 3: Assessment of how serious the problem of corruption is in Armenia (% of respondents) USAID MAAC 2010**

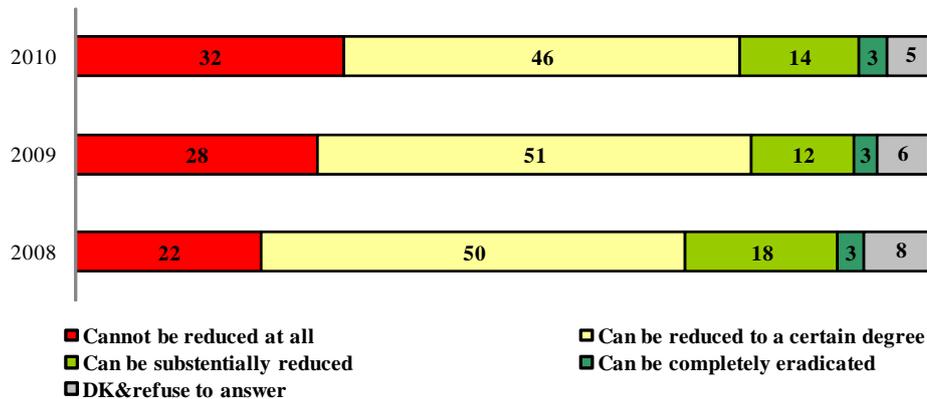


**Figure 4: Do you agree with the statement that citizens of Armenia consider corruption as a fact of life? (% of respondents) USAID MAAC 2010**



Not only is corruption seen as a fact of life by a large (and growing) number of respondents, it is also perceived as a reality that is unlikely to change significantly. Only about one-fifth of the respondents thought that corruption can be either “completely eradicated” or “substantially reduced” (Figure 5). While the good news is that about half of the respondents believed corruption can be reduced at least to a “certain degree,” the amount of pessimists who thought it “cannot be reduced at all” has grown from 22% in 2008 to 32% in 2010.

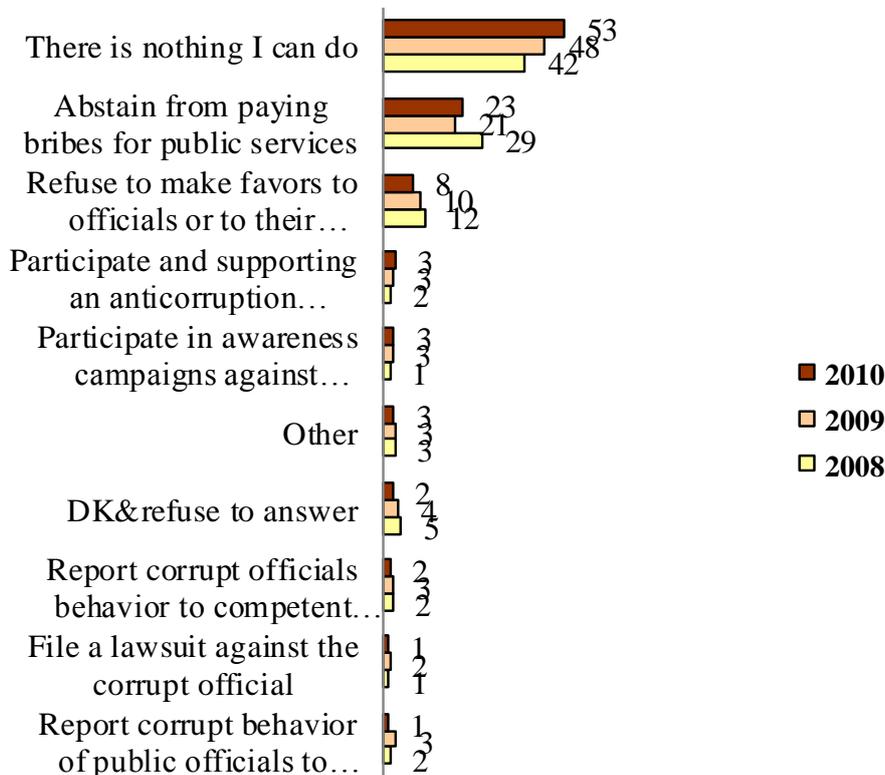
**Figure 5: To what extent corruption can be reduced in Armenia?**  
 (% of respondents) USAID MAAC 2010



Corruption is seen both as serious and a fact of life that can be changed, but only to some extent. While those who agree that corruption is a part of Armenian reality grow in number, so do those who think it cannot be reduced.

Even though about half of survey respondents seemed to believe things could improve at least somewhat, most did not see themselves as agents of change. When asked, “What can you personally do to reduce corruption in Armenia?” the most common answer was “There is nothing I can do” (Figure 6). Note, that the percentage of people who gave this answer has increased over the course of three years the surveys were conducted.

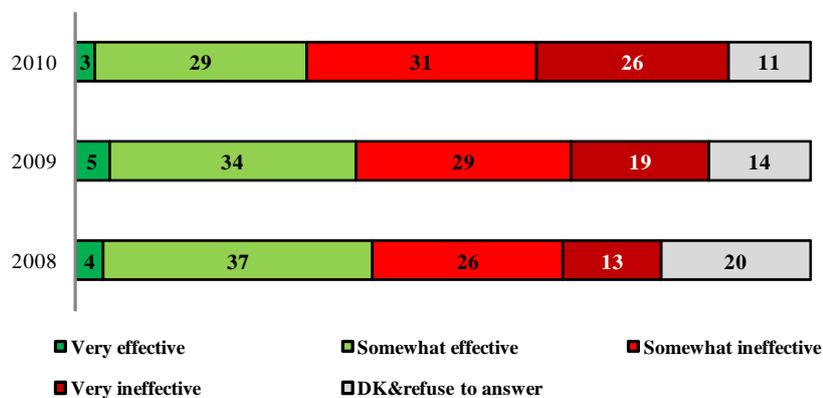
**Figure 6: What can you personally do to reduce corruption in Armenia?**  
 (% of all answers) USAID MAAC 2010



While some decrease of corruption is seen as possible, the changes are unlikely to be initiated by the public at large. Perhaps things would start improving if influential actors would mobilize the public. Could the Government of Armenia play such a mobilizing role? If the respondents of the survey did not think of actions they could undertake to combat corruption, did they consider the Government as a credible agent of change? The corruption surveys included a block of questions that allows us to map the general attitude towards the Government in addition to specific knowledge and experience-related questions.

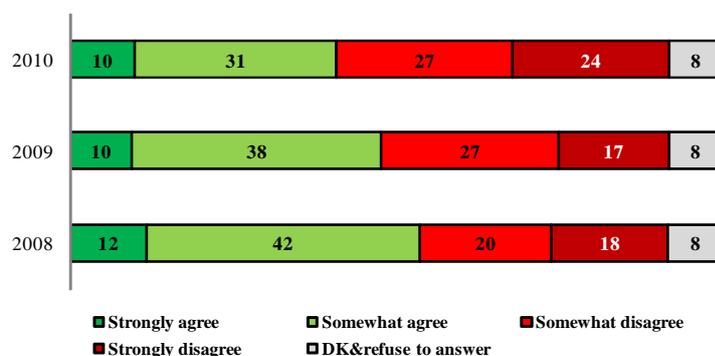
While about one third of the respondents thought the Armenian Government was “very” or “somewhat” effective in its fight against corruption, that group has shrunk from 41% in 2008 to 32% in 2010. The group of respondents who thought the Government was “very ineffective” has doubled over the course of three years, growing from 13% in 2008 to 26% in 2010. The amount of respondents who did not know or refused to answer this question has dropped from 20% to 10% in the period under consideration (Figure 7). The respondents seem to be making up their minds about the Government’s effectiveness, meanwhile growing more critical.

**Figure 7: Perceptions of effectiveness of the government’s fight against corruption in 2008, 2009 and 2010 (% of respondents) USAID MAAC 2010**



A similar trend of growing criticism is visible regarding respondents’ perceptions of the Armenian Government’s will to combat corruption. While 41% of respondents to the most recent survey either “strongly” or “somewhat” agreed that the current government of Armenia has a sincere desire and will to combat corruption, that number was 54% in 2008. So the group of those believing in the government’s intention to do away with corruption in Armenia has undergone a transformation in terms of numbers: from being in a slight majority it has become a minority in 2010 (Figure 8)

**Figure 8: Do you agree or disagree with the following statement: The current government of Armenia has a sincere desire and will to combat corruption (% of respondents) USAID MAAC 2010**

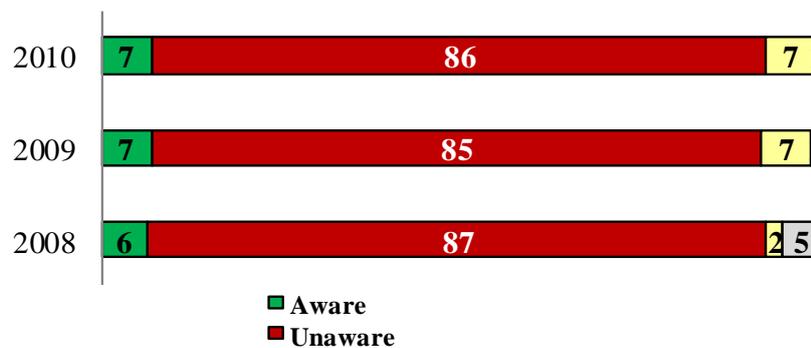


The data from the three surveys shows that while there is still some reservoir of perceived credibility of the Armenian Government’s anti-corruption potential, that reservoir is shrinking. Less and less people see it as willing to combat corruption and effective in doing so.

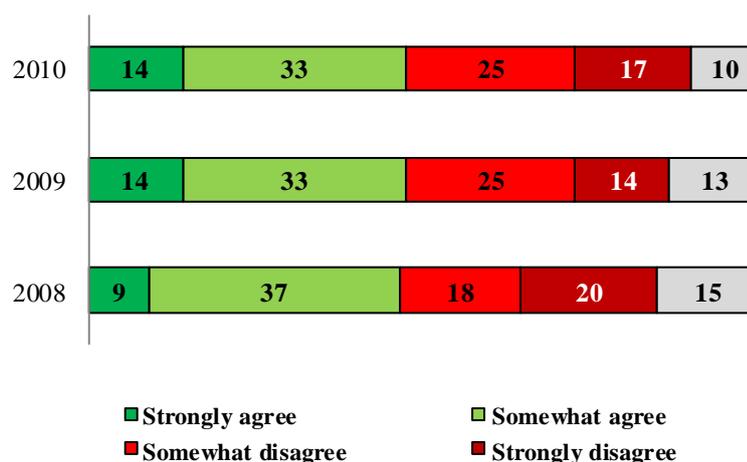
If the disappointment in the Government’s actions grows, do people turn to other actors instead? Current development literature often points to civil society as an agent of change and mobilization “from below.”<sup>53</sup> The three corruption surveys included a block of questions on NGOs, which allow us to assess the attitudes towards, and knowledge of Armenian civil society organizations involved in anti-corruption activities.

The overwhelming majority of respondents are unaware of NGOs involved in anti-corruption activities (Figure 9). However, even though most respondents did not know concrete NGOs, they saw some anti-corruption potential in NGOs in general. About half of the respondents “strongly” or “somewhat” agreed that NGOs are capable of combating corruption in Armenia. The almost even split between those who did and did not agree with the statement has remained fairly stable over the course of three years, while the group of people who did not know or refused to answer has slightly diminished (Figure 10).

**Figure 9: Knowledge of NGOs involved in anti-corruption activities in Armenia in 2008, 2009 and 2010 (% of respondents) USAID MAAC 2010**



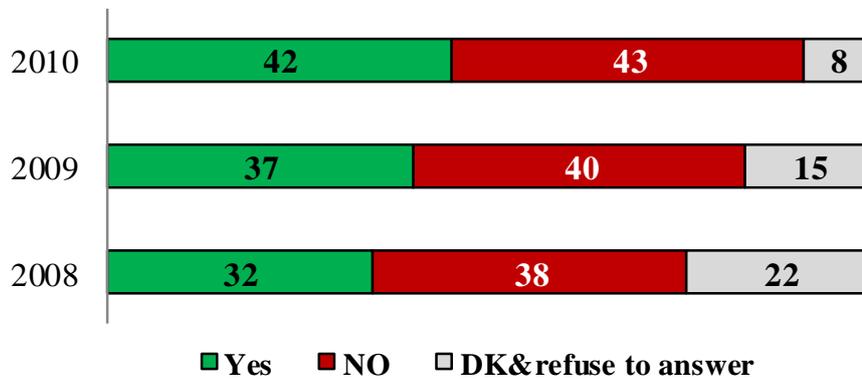
**Figure 10: Do you agree or disagree that NGOs are capable of combating corruption in Armenia (% of respondents)? USAID MAAC 2010**



<sup>53</sup> Larry Diamond, *Developing Democracy: Toward Consolidation* (Baltimore and London: The Johns Hopkins University Press, 1999); Adrian Karatnycky and Peter Ackerman, “How Freedom is Won: From Civic Resistance to Durable Democracy,” April 7, 2006, <http://www.freedomhouse.org>; Robert D Putnam, Robert Leonardi and Raffaella Nanetti, *Making Democracy Work. Civic Traditions in Modern Italy* (Princeton, N.J: Princeton University Press, 1994).

The respondents were asked if they would approach an NGO-run anti-corruption center for assistance in case they were victimized by a corruption case. The opinions were almost equally split in all three years. Note, however, that the percentage of respondents who did not know, or refused to answer has been steadily shrinking from 22% in 2008 to only 8% in 2010 (Figure 11)

**Figure 11: If you were ever victimized by a corruption case, would you approach an NGO-run anti-corruption center to get assistance (% of respondents)? USAID MAAC 2010**



About half of the respondents think that NGOs are capable of combating corruption. Unlike the case of the Government, where disappointment grew over the course of three years, the group of “civil society believers” remains stable. However, the knowledge of active anti-corruption NGOs is almost non-existent. In addition, there are less and less undecided people when it comes to approaching or not approaching an NGO with corruption grievances, while opinions remain equally split about approaching an NGO at all. It is usually easier to convince an undecided person to make a step than to convince someone to make the same step when they are rather reluctant to do so. With the “undecided” group shrinking, it seems NGOs are forgoing some opportunities to increase their support and outreach base.

### Conclusion

Awareness of a problem is a first necessary step if one hopes to address it. The good news for Armenia is that there is no lack of awareness when it comes to corruption. People name it as one of the most important problems facing the country (in a general Corruption Barometer survey which does not sensitize the respondents towards corruption issue in any way). About two-thirds of respondents rank it as a “very serious” problem in surveys specifically focusing on corruption.

Sadly, a high level of awareness is about the only good news regarding public perceptions of corruption related issues in Armenia. Most corruption survey respondents have a resigned position of accepting corruption as a fact of life that they, personally, can do nothing about. To make matters even worse, this group has been growing slowly but steadily over the past three years. The Armenian Government, despite its anti-corruption efforts and activities, has been losing credibility in the eyes of the survey respondents. The opinions towards the civil society sector have remained rather stable (almost equally split between supporters and skeptics), with the exception of undecided people who are in the process of siding with either those supportive of and willing to cooperate with NGOs, or with those skeptical of NGOs’ anti-corruption potential.

Eradicating corruption that has taken hold of a society is never easy. It is even more difficult when large parts of the population are of the opinion that corruption is a fact of life, and that they, personally, can do nothing to change that. While there is some anti-corruption potential in the Armenian public, it remains to be seen if the negative trends of disappointment and detachment can be reversed.

## Trends in judicial reform processes in Armenia

Narine Gasparyan

The American Bar Association Rule of Law Initiative (ABA ROLI), formerly known as the ABA Central and Eastern European Law Initiative or CEELI (ABA/CEELI) launched its judicial reform project in Armenia in 1996. This was only one year after Armenia adopted its Constitution in 1995<sup>54</sup> which was followed by the adoption of a number of key legal acts, including the Civil Code, Civil and Criminal Procedural Codes and the law on the Judicial System, amongst others. These laws were vital for the proper operation of the legal and judicial systems in Armenia. This was declared as the first stage of the judicial-legal reforms of Armenia.

The second phase of the judicial-legal reforms started with the amendments made in the Constitution of the Republic of Armenia in 2005<sup>55</sup>. Those Constitutional amendments were largely related to Armenia's commitments on joining the Council of Europe in 2001 and ratifying the European Convention on Human Rights in 2002. The changes introduced aimed mainly at the reallocation of powers between legislative and executive authorities. There were also certain amendments made to the structure of the Council of Justice, i.e. the President of Armenia was not included in the Council of Justice, which is the body responsible for judicial appointments in Armenia. So, at this time some attempts were being made towards ensuring a more independent judiciary in Armenia. At this time as well, the amendments of the Constitution were followed by the adoption of new laws and legal acts, as well as revisions of the existing legal acts.

During the period of these judicial reform processes, ABA/CEELI supported the judiciary of Armenia to comply with international requirements while amending laws and/or adopting new legal acts, as well as when designing programs to create relevant infrastructure for ensuring better administration of justice. In this article, I will highlight the trends in legal-judicial reform in Armenia with a particular focus on judicial independence. I will particularly focus on some of the key aspects of the institutional and decisional independence of the judicial system in Armenia by using the findings of the Judicial Reform Index (JRI) assessment tool developed and used by ABA/CEELI.

ABA/CEELI has been and is continuing to assess the effectiveness of the legal frameworks and their actual enforcement by applying different tools. One of the most effective tools used by ABA/CEELI is the Judicial Reform Index (JRI), which has been run in 21 countries. The JRI is an assessment tool, which evaluates a country's progress towards judicial reforms based on relevant international standards, including the *UN Basic Principles on the Independence of the Judiciary* and the *Council of Europe Recommendation R(94)12 "On the Independence, Efficiency and Role of Judges."* The JRI evaluates 30 factors, all of which are influential on the judicial reforms process in a certain country. The assessment involves the study and evaluation of the legal framework regulating the judicial and other relevant fields of the country assessed and information obtained during interviews conducted with selected key judicial and legal authorities of a particular country.

In Armenia, the JRI was first implemented in 2002<sup>56</sup>. This was some 7 years after the adoption of the Constitution of Armenia, when the legal-judicial reforms were actively implemented. After that, two other JRI projects were conducted – one in 2004<sup>57</sup> and the most recent in 2008<sup>58</sup>. The latter also contains an assessment of the trends of judicial development in Armenia from 2004 to 2008.

Below is an analysis of the trends of judicial reform in Armenia in 2002, 2004 and 2008:

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<sup>54</sup> See the Constitution of the Republic of Armenia at <http://www.concourt.am/english/constitutions/index.htm>

<sup>55</sup> *Ibid*

<sup>56</sup> See the Official Copy of JRI 2002 at <http://apps.americanbar.org/rol/publications/armenia-jri-2002.pdf>

<sup>57</sup> See the Official Copy of JRI 2004 at <http://apps.americanbar.org/rol/publications/armenia-jri-2004.pdf>

<sup>58</sup> See the Official Copy of JRI 2008 at [http://apps.americanbar.org/rol/publications/armenia\\_judicial\\_reform\\_index\\_01\\_08\\_eng.pdf](http://apps.americanbar.org/rol/publications/armenia_judicial_reform_index_01_08_eng.pdf)

Judicial Reforms Index Factor		Correlation 2002	Correlation 2004	Correlation 2008	Trend
<b>I. Quality, Education, and Diversity</b>					
Factor 1	Judicial Qualification and Preparation	Negative	Negative	Neutral	↑
Factor 2	Selection/Appointment Process	Negative	Negative	Negative	↔
Factor 3	Continuing Legal Education	Negative	Negative	Neutral	↑
Factor 4	Minority and Gender Representation	Neutral	Neutral	Neutral	↔
<b>II. Judicial Powers</b>					
Factor 5	Judicial Review of Legislation	Neutral	Negative	Neutral	↑
Factor 6	Judicial Oversight of Administrative Practice	Positive	Neutral	Neutral	↔
Factor 7	Judicial Jurisdiction Over Civil Liberties	Neutral	Neutral	Neutral	↔
Factor 8	System of Appellate Review	Neutral	Neutral	Neutral	↔
Factor 9	Contempt/Subpoena/Enforcement	Neutral	Neutral	Neutral	↔
<b>III. Financial Resources</b>					
Factor 10	Budgetary Input	Negative	Negative	Neutral	↑
Factor 11	Adequacy of Judicial Salaries	Negative	Negative	Negative	↔
Factor 12	Judicial Buildings	Negative	Negative	Neutral	↑
Factor 13	Judicial Security	Negative	Negative	Neutral	↑
<b>IV. Structural Safeguards</b>					
Factor 14	Guaranteed Tenure	Positive	Positive	Neutral	↓
Factor 15	Objective Judicial Advancement Criteria	Negative	Negative	Negative	↔
Factor 16	Judicial Immunity for Official Actions	Positive	Neutral	Neutral	↔
Factor 17	Removal and Discipline of Judges	Negative	Neutral	Neutral	↔
Factor 18	Case Assignment	Negative	Negative	Negative	↔
Factor 19	Judicial Associations	Neutral	Neutral	Neutral	↔
<b>V. Accountability and Transparency</b>					
Factor 20	Judicial Decisions and Improper Influence	Negative	Negative	Negative	↔
Factor 21	Code of Ethics	Neutral	Negative	Neutral	↑
Factor 22	Judicial Conduct Complaint Process	Negative	Neutral	Neutral	↔
Factor 23	Public and Media Access to Proceedings	Positive	Positive	Positive	↔

Factor 24	Publication of Judicial Decisions	Negative	Neutral	Neutral	↔
Factor 25	Maintenance of Trial Records	Negative	Neutral	Neutral	↔
<b>VI. Efficiency</b>					
Factor 26	Court Support Staff	Negative	Neutral	Neutral	↔
Factor 27	Judicial Positions	Negative	Neutral	Neutral	↔
Factor 28	Case Filing and Tracking Systems	Neutral	Neutral	Neutral	↔
Factor 29	Computers and Office Equipment	Negative	Negative	Neutral	↑
Factor 30	Distribution and Indexing of Current Law	Negative	Neutral	Neutral	↔

The study of the findings in the above table shows that the only factor which was assessed as “positive” in all three JRIs conducted in 2002, 2004 and 2008 is public and media access to judicial proceedings. It is worth mentioning that there were three other “positive” factors defined in 2002, which were assessed as “neutral” in 2004 and 2008.

Meantime, there are five factors which were assessed as “negative” in 2002 and were not improved in the further assessments. Those factors are:

- **[Judicial] selection/appointment process** -- according to the findings of 2008, JRI judges were nominated on the basis of both objective criteria (such as passing a qualification examination) and subjective and unspecified criteria relating to interviews of candidates. The President of Armenia retained the right to accept or reject nominees without specifying any reason for doing so;
- **Judicial decisions and improper influence** – the findings of the 2008 JRI showed that the improper influence and corruption in the judiciary still persisted;
- **Adequacy of judicial salaries** -- the 2008 JRI stated that judicial salaries were widely regarded as insufficient to provide judges with a reasonable standard of living, nor did they reflect the status of the judiciary. The JRI further recommended that significant increases would be required to bring them to a satisfactory level;
- **Case assignment** – according to the 2008 JRI, although the cases were often assigned on a territorial or other random basis, court chairmen reportedly assigned important cases with a view to securing the desired results;
- **Objective judicial advancement criteria** – as of 2008, the judicial advancement was based on both specific criteria, which were, however, difficult to apply in an objective manner, and unspecified criteria resulting from the process of interviewing candidates. The Armenian President’s right to accept or reject nominees without specifying any reasons for the decisions continued unchanged in 2008.

However there are a few factors which improved in 2008. Those factors are:

- **Judicial qualification and preparation**—the 2008 JRI noted that as of 2008, candidates for appointment to the first instance courts must have a higher legal education degree, pass the qualification examination and complete a six-month training program at the Judicial School, unless they were current or former judges. Candidates for appointment to other courts must generally be current or former judges, or other legal professionals who complete the Judicial School’s training course. It should be noted that in 2004, the JRI indicated that there was no legal requirement that judges have practiced before tribunals, not that it was mandatory that they undertake relevant courses upon taking the bench;

- **Continuing legal education**—the continuing legal education (CLE) became mandatory for judges on 1 January 2008, while the 2004 JRI noted that there was no legal requirement that sitting judges participate in CLE program;
- **Budgetary input**—the 2008 JRI recorded that the budgeting process allowed the courts to influence the amount of funding allocated to them and the amounts budgeted for the judiciary had been increased dramatically since 2004;
- **Judicial building**— in 2004, the JRI noted that although judicial buildings were easy for most to find, the vast majority were in a substandard condition. As of 2008, the majority of courthouses were renovated or newly constructed as part of the World Bank’s Judicial Reform Project. By 2012, courthouses of the remaining courts are expected to be renovated or constructed;
- **Judicial security**—the 2008 JRI specified that security was not a significant problem and the resources allocated for judicial security appeared to be sufficient, while in 2004 the JRI recorded that threats and assaults against judges did occur, although rarely and that the use of court security was minimal;
- **Code of ethics** – the 2004 JRI noted, that although the Council of Court Chairmen adopted Rules of Judicial Conduct in December 2001, the impact on judicial behavior had been negligible. Meantime, the 2008 JRI registered that the Judicial Code included a chapter on Rules of Judicial Conduct and the Code of Judicial Conduct was adopted by the Council of Court Chairmen and the Association of Judges of the Republic of Armenia. This was a positive step, however the 2008 JRI also noted that it was unclear to what extent those ethical rules affected the conduct of judges;
- **Publication of judicial decisions**—according to the findings of the 2008 JRI, the Court of Cassation (the highest instance court) and the Constitutional Court decisions are published and can be found on the judiciary’s and the Constitutional Court’s official websites. Judgments of other courts were not yet published as of 2008. According to the findings of the 2004 JRI, the publication of the decisions of Constitutional Court, Court of Cassation and the Economic Court were supported by the international organizations and donors;
- **Maintenance of trial records**—the 2008 JRI noted that digital audio-recording equipment had been introduced in some courts, making it possible for parties to purchase inexpensive CD copies of trial reports, while in 2004 courts did not record verbatim transcripts of proceedings, although longhand transcripts were compiled and were available for review and comments by the parties;
- **Court support staff**—according to the 2008 JRI, judges had adequate support staff to enable them to perform their jobs effectively, whereas as of 2004, the number and quality of court support staff was reportedly inconsistent from judge to judge and from court to court;
- **Computer and office equipment** – in 2004, the JRI recorded that most courts and judges did not have adequate equipment to enable them to manage their work efficiently, while the 2008 JRI noted that about half of the judges and their assistants had computers with internet access. It was expected that the remaining judges and their assistants would be given computers in 2009. In addition, in 2008 all courthouses were reported to have photocopiers;
- **Distribution of indexing of current law** -- in 2008, the JRI noted that important progress had been made in making laws and judicial acts available to judges, such as through the ARLIS and IRTEK legal databases. ARLIS is free of charge and everybody can access it. In 2004, it was reported that the lack of funding impeded the function of informing judges on recent legal developments.

It is noticeable that improvements were made primarily in areas where funds were allocated for improving infrastructure, such as the court buildings, or obtaining court equipment. A remarkable improvement was the establishment of the Judicial School, which trains/prepares judicial candidates and provides continuing legal education to acting judges. However, this positive improvement deals only with the fact of the establishment of such an institution. The quality of the preparation, as well as continuing legal education provided by the Judicial School is to be assessed in future JRIs.

It will be interesting to observe developments in the judicial-legal reforms filed after 2008, since within the frame of the Financing Agreement on “Support to Justice Reforms in Armenia” ENPI-AAP 2008 concluded between Armenia and the European Commission in 2008, some considerable reforms

programs have been designed and implemented for the promotion of rule of law and human rights protection. In April 2009, the President of the Republic of Armenia signed an executive order approving the 2009-2011 Strategic Action Program for Judicial Reforms and the List of Measures Deriving from the Program (Strategic Program)<sup>59</sup>. This Strategic Program includes a number of reform programs in the field of independence of the judiciary, which if implemented, will produce a better and a more independent judiciary.

The above assessment of the JRI findings demonstrates that although the current Armenian judiciary has its origins in 1995, when the Constitution of Armenia was adopted, requiring the separation of the judiciary from the legislative and executive branches in order to ensure the rule of law in the Country, it is still too early to speak about a truly independent judiciary. This requires not only constitutional promulgation of the independence of the judiciary but also impartial and objective enforcement of the law by the courts in practice, without an influence from the executive, legislative or any other party. The sooner Armenia fully achieves this judicial independence, the quicker it will enjoy the benefits of democracy and the rule of law.<sup>60</sup>

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<sup>59</sup> See the text of 2009-2011 Strategic Action Program for Judicial Reforms and the List of Measures Deriving from the Program at: [http://www.translation-centre.am/eng/Translations/HH\\_DEO\\_P.html](http://www.translation-centre.am/eng/Translations/HH_DEO_P.html)

<sup>60</sup> You can learn more about ABA ROLI's work in more than 45 countries worldwide at [www.abarol.org](http://www.abarol.org)

## Rule of law in Armenia: An overview

Irina Urumova

Upon achieving independence from the Soviet Union in 1991, Armenia made its first steps towards building a democratic state governed by the rule of law. Twenty years into the reforms, it is time to take stock of the progress made and the issues still faced by the nation on the way to developing functioning democratic institutions.

This article provides a broad overview of rule of law in Armenia. In doing so, it singles out equality of all before the law, on the one hand, and the legitimacy of the law, on the other, as the essential principles of the rule of law. In order to be legitimate, the law needs to be adopted through a transparent process that allows for public participation, and be publicly promulgated. Equal enforcement of the law, in its turn, is achieved through fair adjudication and access to justice. This means that a transparent legislature, independent judiciary and a vibrant legal profession are indeed the key pillars the rule of law system rests upon. This report looks, in particular, into democratic law-making, the organization, structure and independence of lawyers, judicial independence, and the access of vulnerable groups to justice.

### Democratic and transparent law-making

The National Assembly<sup>61</sup> Rules of Procedure<sup>62</sup> reserve the right of legislative initiative to the National Assembly deputies and the Government of the Republic of Armenia, and require that any draft law submitted for consideration by the legislature be accompanied by a justification note.<sup>63</sup> This requirement is strictly complied with, however, there exists no standard methodology for preparing justification notes and the extent of the analysis varies. There is an on-going effort to introduce regulatory impact assessment (RIA) in Armenia, and the first steps in this direction have been made. RIA introduction in Armenia is supported by the EU Delegation and implemented with the assistance of the Armenian-European Policy and Legal Advice Center (AEPLAC).<sup>64</sup>

The adoption of the Decree on Defining the Order of Organizing and Conducting Public Consultations<sup>65</sup> presented a significant step forward in terms of ensuring transparency and public participation in law-making. It is the first act that expressly requires any government agency developing a law to post it on its website at least 15 days in advance of the planned submission of the text to the legislature. The National Assembly has also continuously improved its web presence and today provides, through its website, access to a database of all draft legislative acts that have been submitted to the legislature.<sup>66</sup> Draft laws posted on the website are accompanied by a note outlining the draft history (the current stage the draft is at, as well as the preceding steps). Also posted are official comments on the draft. A weekly TV program broadcasts news from the National Assembly, including updates on pending bills.<sup>67</sup> However, this progress remains limited, since to date there is no viable public consultation mechanism, but rather an open invitation to submit comments on the draft with no ensuing obligations except for the general acknowledgment of the feedback, if any.

There exists no express requirement that civil society representatives be consulted in the process of drafting a law. The actual cases of consultation present a fragmented picture rather than a distinct pattern, and the decision to involve civil society is left at the discretion of the government agency in question. The report on Armenia's ENP Implementation in 2010 notes with concern the practice of

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<sup>61</sup> The National Assembly of the Republic of Armenia is the national legislature.

<sup>62</sup> The National Assembly Rules of Procedure have the status of a law.

<sup>63</sup> National Assembly Rules of Procedure, Article 47.

<sup>64</sup> For more information, see <http://www.aeplac.eu/en/home/>.

<sup>65</sup> Adopted by the Government on March 25, 2010, to be enforced in 2011.

<sup>66</sup> See <http://parliament.am/drafts.php>.

<sup>67</sup> National Assembly Rules of Procedure, Article 112 ("The coverage of the parliamentary activities of the National Assembly, its committees, factions and deputy groups shall be carried out by the Staff through the series of television programs called "Parliamentary Hour". The factions and deputy groups, as well as deputies who are not members of such equal time, up to 3 minutes, to express their views during one program (the total duration is 60 minutes) in the sequence established by the President of the National Assembly, after which the Staff shall be provided with up to 15 minutes to cover the news on the laws and the resolutions of the National Assembly, their authors (principal reporters) and supplementary reporters.")

“expedient” legislative process when laws are passed in three readings during one day, which reduces to the minimum the effect from consultations.<sup>68</sup> The ENP Implementation Report also notes the emerging trend of “handpicking” civil society representatives single-handedly and in an *ad hoc* manner to involve them in working groups to draft legislation.<sup>69</sup>

The Constitution makes the enforcement of the law expressly contingent on its publication in the Official Bulletin,<sup>70</sup> which is rigorously observed. Since 2005, the Official Bulletin has had a free-of-charge online version, the ARLIS Armenian Legal Information System.<sup>71</sup> Coupled with growing Internet penetration rates, the online availability of enacted legislation presents a positive step towards raising actual awareness of the law in society.

## Legal profession

**Organization and structure.** The 2004 Law of the Republic of Armenia on Advocacy requires bar admission as a prerequisite for practicing the law. While only licensed attorneys are allowed by law to provide representation in criminal (but not civil or administrative) proceedings for remuneration, non-attorneys are allowed to represent others in criminal proceedings on a *pro bono* basis.

Before 2004, the law did not mandate for a unified nationwide bar, and indeed in 1999, three bar associations were established. One (the Union of Advocates of the Republic of Armenia) was the successor of the Soviet-time Collegium of Advocates, while the other two (the International Bar Union; and the International Union of Armenian Advocates) were new groups. The bar associations enjoyed equal rights, with the only exception of the authorization to provide state-funded legal services to indigent criminal defendants, which was exclusively reserved for the Union of Advocates of the Republic of Armenia. This situation changed in 2004, when a requirement for a unified bar (the Chamber of Advocates) was introduced. The extant Law on Advocacy provides in substantial detail for its functions and governance structure. In 2005, the Chamber of Advocates was officially set up and, as of today, counts over 700 attorneys as its members. There also exist voluntary associations of lawyers, of which the Armenian Young Lawyers’ Association (AYLA) is the most prominent.

Most Armenian attorneys choose to pursue solo practice, which is probably due to the relatively high costs involved in establishing and running an office, as well as higher taxes law firms would pay. The few law firms that exist tend to remain small.

**Bar membership and standards of training.** Anyone in possession of a law degree and with a minimum of 2 years experience working in the area of law is qualified to sit for the bar examination. Those who pass may apply for bar membership.<sup>72</sup>

Armenia joining the Bologna Process in 2005 and launching a cycle of reforms to bring the higher education system in conformity with the standards set by the Bologna Declaration on the European Space

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<sup>68</sup> See “Armenia’s ENP Implementation in 2010: Partnership for Open Society Perspective,” at p. 29. Full text is available on the web at [http://www.partnership.am/en/European\\_Neighborhood\\_Policy](http://www.partnership.am/en/European_Neighborhood_Policy).

<sup>69</sup> *Id.*

<sup>70</sup> Constitution of the Republic of Armenia, Article 6 (“The laws shall come into force following the official publication in the Official Bulletin. Other normative legal acts shall come into force following the official publication in the manner prescribed by law.”)

<sup>71</sup> See <http://www.arlis.am/default.aspx>.

<sup>72</sup> Law on Advocacy, Article 28 (“A license for advocate activities may be given to the person who:

- 1) has higher legal education or a law degree, who also has two years’ employment experience in a legal position;
- 2) has passed qualification examination and has received a relevant certificate.

For obtaining a license for advocates’ activities, the advocate shall pass an examination with a program determined by the Board of the Chamber of Advocates and for obtaining a special license the advocate shall pass an examination with a special program. Board of the Chamber of Advocates shall determine rules for giving and taking the examination.

In order to get a license for advocate’s activity, the candidate shall submit to the Qualification Commission an application, a copy of an identification document, CV, copy of employment record book or other document certifying that he or she worked in the legal profession, copy of a document certifying that he or she has a higher legal education or a law degree, as well as other documents required by legislation on advocacy.”)

and Article 29

(“In order to receive an advocate license, a candidate shall submit to the Advocates’ Chamber an application requesting to get a membership of the Chamber of Advocates, and a copy of the certificate issued by the Qualification Commission. [...] An application may be turned down, if the requirements prescribed by articles 28 and 33 of this law have not been met.”)

for Higher Education has brought about an improvement in the quality of education in general and legal education in particular, helping to overcome the general decline in education quality that ensued in the initial post-independence years. The quality assurance mechanism is being created and the European Credit Transfer and Accumulation System has been introduced in most universities. Only state-accredited tertiary educational programs can be implemented in Armenian educational institutions.

Although the modernization of the higher education sector involves content upgrading and the introduction of new teaching methodologies and technologies, the key concerns that stand out are related to course structure and curricula. Most law schools have little autonomy in curriculum design and follow the model curriculum approved by the Ministry of Education and Science.<sup>73</sup> Education remains heavily theoretical, with little or no multidisciplinary or practical courses, which results in the general unpreparedness of new graduates for independent practice. Nevertheless, the recent years have seen content-related improvements. For instance, legal writing and analysis has been introduced in the curriculum of the master's program at the Yerevan State University Law School. Clinical legal education is being expanded beyond the capital to the regions.

Despite the positive change, the reform is marred by a lack of funding that continues to haunt the education sector, resulting in difficulties engaging younger professionals as faculty and staff members. Coupled with the proliferation of universities both in Yerevan and in regional centers,<sup>74</sup> the shortage of adequately prepared human resources poses a particularly serious challenge in terms of quality assurance, resulting in dramatic differences in education quality across schools.

There is no specific requirement that the aspiring bar member complete an internship, but the general requirement of a minimum of 2 years work in the legal field is often met through internships at law firms or with solo practitioners. In contrast, aspiring judges are required by law to serve as interns under the supervision of mentor judges.<sup>75</sup> As of 2008, all judicial candidates (except former judges) must train at the state-funded Judicial School of the Republic of Armenia in order to qualify for appointment as judges. Internship placements are the final step of judicial training and are offered to trainees who successfully complete the 6-month program.

The overall capacity of the Chamber of Advocates and its progress in promoting the interest of the profession and providing continuous legal education is constrained by the lack of financial resources. The resulting heavy dependence on donor funds creates a risk of low sustainability unless an alternative funding mechanism is created.

The scope and procedure of the bar examination is determined by the Board of the Chamber of Advocates.<sup>76</sup> To ensure better transparency, the Chamber of Advocates has involved observers from relevant international and non-governmental organizations to monitor the examinations. Bar admission for candidates who have passed the bar examination and conform to other membership requirements (such as a degree from an accredited law school and 2-year legal working experience) is near-automatic, and discrimination in admission-related decision making<sup>77</sup> is expressly prohibited. Indeed, this prohibition is generally well-respected in practice. The proportion of women bar members is almost equal to that of men, and the negligible proportion of ethnic minorities may be attributed to the fact that ethnic minorities form merely a small segment of Armenian society and their representation among law students is comparably low.

The law provides that an attorney's license to practice law shall be terminated if the attorney requests so, if the license was obtained unlawfully, or if the attorney was subjected to a disciplinary penalty three or

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<sup>73</sup> ABA Rule of Law Initiative, 2007 Legal Education Reform Index for Armenia, at p. 8.

<sup>74</sup> The number of universities with law schools grew from 1 (Yerevan State University) before independence to an estimated 70 by 2002. Presently, legal education in Armenia provided by 4 out of the total of 18 public universities and 43 licensed private universities.

<sup>75</sup> Judicial Code, Articles 190, 191(2)-(3).

<sup>76</sup> Law on Advocacy, Article 28 ("For obtaining a license for advocates' activities, the advocate shall pass an examination with a program determined by the Board of the Chamber of Advocates and for obtaining a special license the advocate shall pass an examination with a special program. Board of the Chamber of Advocates shall determine rules for giving and taking the examination.")

<sup>77</sup> *Id.* ("Discrimination of candidates on the basis of nationality, citizenship, sex, language, religion, political or other opinions, social origin, property or any other condition is prohibited.")

more times within a year.<sup>78</sup> The decision on termination can be appealed in court within a month. An attorney bears disciplinary liability for breaches of the Law on Advocacy, the Code of Advocate's Conduct or the Charter of the Chamber of Advocates, or for failure to perform his or her professional duties.<sup>79</sup> Disciplinary proceedings may be initiated on the basis of written reports or mass media publications, however anonymous reports are prohibited from consideration. The statistics with regard to disciplinary proceedings show that most cases instituted concern non-payment of membership dues.

Some researchers note the Chamber of Advocates' increasingly outspoken attitude in defending the interests of the legal profession. Several attorneys have mentioned that instances of improper behavior by a judge have been followed up on by the Chamber of Advocates, which took a firm stance to support the advocates.<sup>80</sup>

**Independence of lawyers.** The law expressly guarantees the independence of lawyers, prohibits any interference in their professional activities by government bodies, political parties or civil society organizations, and provides that attorneys shall only be guided in their work by the Constitution, the applicable laws, the Code of Advocates' Conduct and the charter of the Chamber of Advocates.<sup>81</sup> The Criminal Code also makes it an offense to threaten a lawyer or other justice professional, such as a judge, a prosecutor or an investigator, with violence, to cause bodily injury, or to inflict property damage.<sup>82</sup>

Studies conducted in Armenia show that attorneys are largely able to exercise their professional duties without interference by government officials, although cases of intimidation by parties to the case or family members of crime victims have been reported, as well as isolated attempts of undue interference by investigators or prosecutors threatening to elevate charges against their clients.<sup>83</sup> Several attorneys interviewed by the ABA Rule of Law Initiative claimed that law enforcement officials or judges sought to exert improper leverage by threatening with disciplinary action or even criminal charges.<sup>84</sup> The OSCE ODIHR Final Report of the Trial Monitoring Project in Armenia states that some defense lawyers were sanctioned "for protesting against actions of the judge and making statements regarding the perceived unfairness of the proceedings" in the highly publicized trials in connection with post-election violence in 2008.<sup>85</sup> While recognizing that the conduct of defendants and their supporters put much pressure on the judges in some of the monitored trials, the OSCE ODIHR report still noted the application of contempt of court sanctions as raising a number of concerns, and that Armenian law would benefit from a clearer distinction between judicial sanctions for contempt of court and prosecution for criminal contempt of court.<sup>86</sup> It should be noted that Armenia took the OSCE ODIHR recommendations into consideration and followed up on them by drafting a package of legislative amendments intended to bring the contempt of court provisions in line with relevant international standards.

### **Cost of services and access of vulnerable groups to justice**

Article 20 of the Constitution of the Republic of Armenia guarantees everyone the right to legal assistance and provides that, in cases set forth by the law, legal assistance shall be provided at the expense of State

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<sup>78</sup> *Id.*, Articles 36 and 37.

<sup>79</sup> *Id.*, Article 39.

<sup>80</sup> USAID/Armenia Mid-Term Evaluation of the Chamber of Advocates 2007-2011 Strategic Plan Implementation.

<sup>81</sup> Law on Advocacy, Article 21.

<sup>82</sup> Criminal Code, Article 347 ("1. Threat to murder a judge or his close relatives, to inflict damage to health, destroy or damage property, concerned with the trial of the case or material in court, is punished with a fine in the amount of 300 to 500 minimal salaries, or with imprisonment for the term of up to 3 years.

2. The same action committed against a prosecutor, an investigator, person in charge of inquiry, defense lawyer, expert, court marshal or their relatives, concerning the preliminary investigation, the trial of the case or material in court, the sentence, verdict or other act, is punished with a fine in the amount of 200 to 400 minimal salaries, or with arrest for the term of 3 to 6 months, or with imprisonment for the term of up to 2 years.

3. The action envisaged in parts 1 or 2 of this Article, committed with violence not dangerous for life or health, is punished with imprisonment for the term of up to 5 years.

4. The action envisaged in parts 1, 2 or 3 of this Article, committed with violence dangerous for life or health, is punished with imprisonment for the term of 5 to 10 years.")

<sup>83</sup> See ABA Rule of Law Initiative, 2008 Legal Profession Reform Index, at p. 14.

<sup>84</sup> *Id.*

<sup>85</sup> OSCE ODIHR, Final Report, Trial Monitoring Project in Armenia, at p. 80.

<sup>86</sup> *Id.*, at p. 82.

resources.<sup>87</sup> Furthermore, every detained or indicted individual is entitled to representation by a defense counsel of his or her own choice.<sup>88</sup>

The right to free legal representation and the relevant eligibility requirements are further detailed in the Law on Advocacy,<sup>89</sup> which entitles indigent criminal defendants to free legal representation. Legal aid is also available to the indigent in cases of levying alimony and of personal injury resulting in disability or loss of breadwinner. Free legal representation is available to Armenian nationals as well as foreign nationals and stateless persons.

Overall, a trend towards a more positive reputation for attorneys in society has been reported by some researchers, with more people using professional lawyers' services for civil cases, which is attributed to the increased professionalism of attorneys.<sup>90</sup>

As far as compensated legal services are concerned, the law affords attorneys the right to set the fee for services provided,<sup>91</sup> and indeed most attorneys would use a sliding scale for the fees, charging more for more complex or protracted cases. The average costs for legal services in Armenia cannot be determined with any precision. While most law firms have websites that delineate the scope of legal services rendered, no information is provided concerning the fee range for each service. Randomly selected attorneys and recent litigants cited the amounts starting from 15,000 Armenian drams<sup>92</sup> (a rough equivalent of 30 euros<sup>93</sup>) for simple divorce and alimony cases to over 300,000 drams for more complex civil litigation (e.g. involving complicated division of property and/or debt). The interviewees insisted however, that no clear and unequivocal correlation existed between the complexity of the case or the attorney's experience and skills, on the one hand, and the amount charged, on the other. Fees are largely a matter of one-on-one negotiations between the attorney and the prospective client, and the consensus is that the more affluent clients are asked for higher fees from the outset, regardless of other factors. Despite the lack of predictability of attorneys' fees, the general preference for all litigants, regardless of their income, is the services of a licensed attorney over those provided by a "knowledgeable" layperson in civil cases and this may attest to the growing affordability of legal services.

In passing the new Law on Advocacy in 2005, Armenia created the legal basis for setting up a national Public Defender's Office (PDO).<sup>94</sup> The PDO forms a structural unit of the Chamber of Advocates<sup>95</sup> and is state-funded. Staff attorneys (public defenders) receive monthly rather than per-case remuneration fixed at the rate of monthly remuneration for prosecutors.<sup>96</sup> The Head of the PDO is elected by the General

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<sup>87</sup> Constitution, Article 20 ("Everyone shall be entitled to legal assistance. In cases prescribed by the law the legal assistance shall be provided at the expense of the state resources.")

<sup>88</sup> *Id.* ("Everyone shall have a right to the assistance of a legal defender chosen by him/her starting from the moment of his/her arrest, subsection to a security measure or indictment.")

<sup>89</sup> *Id.*, Article 6 ("The state shall ensure free legal assistance for criminal cases following the procedure prescribed by the Criminal Procedure Code of the Republic of Armenia and also the procedure prescribed by the RA Civil Procedure Code in the following cases:

1) cases on levying alimony;  
2) cases on compensation for losses incurred upon mutilation or other types of damage to health or upon death of bread-winner of the family.

Free legal assistance shall be provided by the Chamber of Advocates at the state's expense, following the procedure set forth in articles 41-42 of this law.

Free legal services can be provided also at the advocate's initiative.")

<sup>90</sup> USAID/Armenia Mid-Term Evaluation of the Chamber of Advocates 2007-2011 Strategic Plan Implementation.

<sup>91</sup> *Id.* ("Advocate is entitled to receive remuneration for his or her services.

The amount and procedure of remuneration for advocate's activity shall be decided by the written contract signed according to the Civil Procedure Code of the Republic of Armenia between the advocate and the client.")

<sup>92</sup> See <http://www.irtek.am/ENG/Database.html>.

<sup>93</sup> The official EURO/AMD conversion rate of the Central Bank of Armenia as of February 8, 2011 is 1 EUR : 495.87 AMD.

<sup>94</sup> See Law on Advocacy, Chapter 7.

<sup>95</sup> Law on Advocacy, Article 42 ("Public Defender's Office is a structural subunit operating within the Advocate's Chamber and comprised of the Head of the Public Defender's Office and Public Defenders.")

<sup>96</sup> *Id.*, Article 45 ("The work of Public Defenders shall be compensated from the State Budget. The amount of money allocated to the Chamber of Advocates from the State Budget shall be determined by counting monthly payment to a public defender equal to that of a prosecutor of Yerevan City Community as provided by law.

The Public Defender's Office shall be financed from the State Budget of the Republic of Armenia.

The funding allocated to the Public Defenders' Office cannot be spent for other purposes.

The Public Defender's Office may involve additional funds from sources not prohibited by law, which may be used for improving the activities of the Office and for bonuses with the purpose of efficiency of public defenders' activities.")

Assembly of the Chamber of Advocates by secret ballot from among the members with at least 10 years experience in the practice of law. The term in office is 4 years, and the overall length of service cannot exceed 2 consecutive terms.<sup>97</sup> The USAID/Armenia Mid-Term Evaluation of the Chamber of Advocates 2007-2011 Strategic Plan Implementation notes an improvement in the performance of the public defenders. It mentions that there has been careful selection of public defenders in order to select highly qualified attorneys for the position.

## **Conclusions**

Over recent years, Armenia has made considerable progress in a number of areas affecting the rule of law. In particular, steps have been taken to improve transparency in law-making, as evidenced by prompt publication of legislative drafts on the websites of relevant government agencies and the National Assembly. Other examples of positive change include the creation of the national Public Defender's Office, which is an important step to provide access to justice for disadvantaged groups, and the reorganization of the legal profession into a unitary and independent Chamber of Advocates, which has resulted in notable improvements in the professionalism of attorneys, including their ethical behavior and qualification standards, as well as in the public's general attitude towards lawyers.

However, a number of outstanding issues still remain. In particular, to ensure efficiency and transparency in the legislative process and to improve the quality of the resulting legislation, a viable stakeholder consultation mechanism that would involve all affected parties needs to be developed. Furthermore, additional effort is required to enhance the overall quality of legal education and training. Finally, since non-attorneys are allowed to provide legal services in civil and administrative cases, this segment of legal service providers is virtually without regulation. This presents a matter of concern and needs to be addressed on a legislative level.

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<sup>97</sup> Law on Advocacy, Article 43 ("The Head of the Public Defender's Office shall be elected by the General Assembly of the Chamber of Advocates from among the members who have no less than 10 years' advocate's experience, through close secret vote, for a term of 4 years, but for no more than 2 consecutive terms.")

## Armenia's penitentiary system: The case for reform

Tsira Chanturia

### Armenia's commitments

Armenia re-established its independence in 1991 after the disintegration of the Soviet Union. In 1992-94 it was involved in a war with Azerbaijan over Nagorno-Karabakh. The conflict remains unresolved. It has severe consequences for Armenia in terms of reducing economic prospects and preventing regional economic and political co-operation and integration. Armenian authorities frequently invoke the conflict and its economic consequences in explaining limited investments in public institutions, including the penitentiary system.

Armenia is a member of over 40 international organizations, including the UN, the Council of Europe, the CIS, etc with respective international commitments. The Government of Armenia holds European integration as a key priority in its foreign policy and as part of the extension of the European Neighbourhood Policy (ENP) to the South Caucasus, it has agreed an Action Plan jointly with the EU. These Action Plans serve as a primary agenda-setting and benchmarking instrument for progressing EU relations with countries and encourage the governments to implement reforms.

The ENP action plan for Armenia<sup>98</sup> underlines issues such as the rule of law, judicial reform, anti-corruption measures and respect for human rights. The Plan outlines the following reforms as a *Priority area 2: "Strengthening of respect for human rights and fundamental freedoms, in compliance with international commitments of Armenia (PCA, CoE, OSCE, UN)..."*

One of the specific actions to be undertaken in this regard includes: "Further reform of the penitentiary system in line with the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in order to improve detention conditions..." The CPT has undertaken five visits to Armenia's places of detention with two-year intervals (in 2002, 2004, 2006, 2008, and 2010)<sup>99</sup>. Reports from all visits have been published and are available except for the last one (which apparently has not yet been authorized for publication by the Armenian authorities). CPT's recommendations, stated in various reports, have concerned the need to improve health care services for prisoners with a long list of recommendations, to ensure systematic and ongoing renovation of the prison estate, to provide adequate entitlements to prisoners as prescribed by the European standards and the national legislation in terms of minimum space requirements, food, outdoor exercise, proper hygiene and sanitation conditions, work and leisure, etc.

### Prison overcrowding, causes and related problems

There are 12 penitentiary institutions for remand and convicted prisoners and one prison hospital for convicted prisoners with health issues. Armenia has an overall prison population of over 5,000, with a rate equal to 150, i.e. number of prisoners per 100,000 of the general population<sup>100</sup> (based on an estimated national population of 3.25 million at mid-2010 from Eurostat figures). Remand prisoners, who are still under investigation, constitute about 20% of the overall number of inmates, this being largely due to the excessive use of pre-trial detention as a procedural measure of prevention by courts. This measure should be used in exceptional cases while other preventive measures cannot ensure proper conduct of the accused and the administration of justice process.

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<sup>98</sup> EU Armenia ENP Action Plan, [http://www.mfa.am/perspectives/061114\\_armenia\\_enp\\_ap\\_final\\_en.pdf](http://www.mfa.am/perspectives/061114_armenia_enp_ap_final_en.pdf)

<sup>99</sup> Reports from CPT's visits as well as Armenian Government's responses are available at the website: <http://www.cpt.coe.int/en/states/arm.htm>

<sup>100</sup> World Prison Brief, by the International Centre for Prison Studies (ICPS), [http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb\\_country.php?country=120](http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_country.php?country=120)

The official capacity of the prison system is 4,396, however it is considerably exceeded, leading to prison overcrowding, which represents one of the most topical issues in the Armenian penitentiary system today. This has caused concern amongst civil society organizations working on human rights issues and has motivated them to address the authorities with recommendations on the steps to be taken to remedy the situation. The overpopulation particularly affects remand prisons, where prisoners are held for lengthy pre-trial detention periods. For instance, in Nubarashen prison, in a cell designated for 8 persons, twice as many inmates are held, their number at times rising up to 20 people<sup>101</sup>. With insufficient numbers of beds, prisoners have to sleep in shifts, some during the night and others during the day. Space of less than 2 square meters is allocated per prisoner, while the relevant national legislation as well as the CPT standards provide for 4 square meters. The overcrowding exacerbates health and mental problems, leads to increased tensions and conflicts among inmates, and also between prisoners and staff.

Underuse of parole can also partly account for the overcrowding in prisons. The process and criteria by which decisions are taken are rather obscure and lack justification. Most of the members of Independent Parole Commissions, created by Presidential decree in 2006, are representatives of law-enforcement and security agencies. Previously, the process was decentralized, whereby prison administrations would submit to courts lists of convicted prisoners recommended for early conditional release. However, now all the lists have to be initially approved by the Commissions, who tend to reject about 90% of the applications made by the administrations. External observers (such as prison monitoring board members) consider the decisions made by the Commissions to be rather subjective and unsubstantiated. The situation, in which no clear criteria (for instance, good behavior, engagement in work, compensation of civil claim to victims, involvement in rehabilitation programmes, etc) and procedures are present, does leave the prisoners deprived of incentives to behave well, as well as prison staff concerned about increased tensions and risks in penal establishments.

### **Torture and other forms of ill-treatment**

Armenia is a party to the UN Convention against Torture and its Optional Protocol (OPCAT) and thus has binding commitments in terms of combating and preventing torture and other forms of ill-treatment. Following the obligation under the OPCAT, Armenia designated the Human Rights Defender (Ombudsman) as a National Preventive Mechanism for torture, with a mandate to regularly visit places of detention with a view of preventing torture and ill-treatment.

However, at the policy level there are no national strategies or action plans prescribing the government's intentions and commitments for combating impunity and preventing torture and ill-treatment in various places of detention, including prisons.

Since 2001, when the penitentiary system was transferred to the Ministry of Justice system, the incidence of ill-treatment has declined according to independent prison observers, but violence, which sometimes reaches the severity of torture, continues to be applied as punishment for noncompliance and, especially, escape attempts. Ill-treatment is rather frequent when the "Rapid Response Team" of the Penitentiary Department visits Penitentiary Institutions (PIs). According to information received, the Rapid Response Team enters cells with the aim of performing searches, treating prisoners offensively and viewing any reaction by prisoners as "resistance" that is normally followed by violence (battering or, at times, torture), often against all the prisoners in the cell concerned. Considering that the members of the Rapid Response Team are masked, it is very difficult to identify them later.

Manifestations of ill-treatment of prisoners in PIs are hard to identify, mainly due to the lack of proper documentation, for instance failure by health care staff to document the injuries sustained by prisoners, the use of special means (handcuffs, truncheons, and the like). These concerns were also reflected in the

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<sup>101</sup> Report, 2008 of the Group of Public Observers Conducting Public Monitoring Of Penitentiary Institutions and Bodies of the Ministry of Justice of the Republic of Armenia

reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The other reason for the lack of evidence may be “traditions” formed in PIs, stemming from the Soviet-era criminal syndicates, to state complaints or provide information on violence used against them or other prisoners.

CPT noted in its report (2006, Para 41) that the use of physical force and “special means” was generally not notified to the Prosecutor’s Office. In this context, the CPT is particularly concerned by certain allegations of reprisals by prison staff on prisoners who officially complained to outside bodies to make them withdraw their complaints.

As far as the penitentiary system is concerned, there is a need for healthcare staff to effectively document any use of special restraint means in the respective registers in prisons, as well as injuries sustained by prisoners, and any pressure by the administration on prisoners who lodge complaints need to be precluded. There should be also a political will to enhance the effectiveness of prosecutorial supervision over allegations of ill-treatment.

### **Public oversight over prisons**

The transfer of the penitentiary system of Armenia from the jurisdiction of the Ministry of Internal Affairs to the Ministry of Justice started in 2001 and was completed by January 2003. This move marked the independence of the system responsible for enforcing custodial sentences from the one performing criminal investigation. There was a need for increased transparency and better protection of human rights. International organizations (OSCE, OSI, and PRI) encouraged the institution of public oversight by public monitoring boards over penitentiaries according to international best practices.

Public Monitoring Group, the statutory body, comprised of civil society representatives (from human rights NGOs) was established in 2004 by the Ministry of Justice based on Article 47 of the Law on Holding Detained and Arrested Individuals. Initially 11 members were appointed by the Minister of Justice who also approved the Statute of the board which is a product elaborated jointly by the Ministry, the NGOs and international organizations. The Group of Public Observers enjoys a considerable degree of independence from the Ministry, being entitled to take decisions on its own regarding its activities and also the composition of the board. The membership is revolving and the existing members recruit new members who all work on a voluntary, non-paid basis. The Group has received specific training aimed at the development of prison monitoring skills with support from the OSCE Yerevan Office, PRI and OSI and these very organizations proved instrumental in sustaining the operation of the Group by providing technical and financial support. Since its foundation, the Group has actively engaged in monitoring the prison system in Armenia, has exercised public control over the protection of rights of inmates by revealing and responding to cases of violations, by taking preventive measures and reporting to the Minister on the situation in prisons. The mode of operation of the Group consists of planned visits to prisons to examine the overall conditions of imprisonment and ad hoc visits to respond to particular situations or summons by prisoners in terms of ill-treatment or other violations.

Throughout its existence, the Group has prepared a number of different types of reports: current, annual and ad-hoc, reflecting the overall state of affairs in the penitentiaries, specific cases of violations or alleged violations, highlighted the main issues of concern and also proposed solutions. Before these reports are published, the Ministry of Justice has to provide its comments and clarifications with regard to the points raised. Therefore, there is a good possibility for dialogue between the authorities and civil society with regard to issues pertinent to the penitentiary system. However, the Monitoring Group still depends on external support for travel and communication costs to be able to carry out visits to penal establishments throughout the country. This should eventually be provided by the state.

## **Ways forward**

Although some efforts have been undertaken to improve the conditions in prisons, there is still a long way to go for Armenian authorities to ensure compliance with relevant international standards.

Continued monitoring by governmental and non-governmental actors is essential in ensuring further improvements. They could play crucial roles in addressing violations, providing expertise and coordinating international support for prison reforms.

Specifically, policy level support and capacity building should be provided in terms of elaborating national strategies and action plans for the reform of the criminal justice system (including penitentiary/torture prevention), containing realistic target goals given the available resources in the Armenian penitentiary system. An essential part of the process should be the engagement of civil society in policy dialogue and discussions around the issues of penal reform and torture prevention to contribute to the elaboration of policies as well as to monitor the implementation and elicit accountability of the authorities with respect to conducting reforms.

## **European assistance to human rights, democracy and rule of law in Armenia: Incremental results, no breakthroughs**

Vladimir D. Shkolnikov

Armenia's co-operation with European inter-governmental organizations in the sphere of human rights and democracy since the country gained independence in 1991 has been characterized by politeness, openness for discussion and by incremental progress at best. The Armenian government welcomes the co-operation and visits by European human rights officials, receives them at a high level, takes some advice, does not overreact or respond harshly to external criticism and yet takes only slow steps to implement significant reforms. Despite this uninspiring approach, Armenia benefits from regional comparisons with a number of post-Soviet states which are seen as moving backwards in the human rights sphere. Importantly, Armenia takes credit for the 2005 constitutional reform that has moved the country away from the super-presidential political system characteristic of most of the post-Soviet states, as well as for relatively free media, especially newspapers. However, the constitutional provisions notwithstanding, many NGOs and independent observers believe that Armenia cannot showcase a truly independent judiciary. Of particular concern to European institutions is Armenia's record of repeatedly troubled elections which amplify persisting deficiencies in the country's human rights performance and undermine the country's efforts to put its best face forward to Europe.

On the positive side, Armenia successfully conducted a number of joint projects with European organizations that have made some impact on the micro-level. These include working with the OSCE on institutionalizing civil society's monitoring of places of detention, as well improving the human rights situation in the military. Notably, a human rights ombudsman institution was put in place. Both the first ombudsman of Armenia, Larisa Alaverdian, appointed by the President, and the second, Armen Harutyunian, selected in accordance with the 2005 Constitution, proposed by the President and approved by the National Assembly (Parliament) have exhibited a considerable degree of independence and on different occasions have attracted the ire of the executive branch.

On the macro-level, work done on the 2005 Constitution, where the Council of Europe's Venice Commission played an active advisory role, represents the most significant involvement by European institutions in the country. The early drafts of the Constitution were criticized by the Venice Commission and many of the European experts' recommendations were taken on board by the Armenian authorities.<sup>102</sup> The goals of the new Constitution, which replaced the country's basic law that was adopted shortly after Armenia gained independence, included devolving some powers from the Presidency to the Parliament, strengthening local self-governance, notably to introduce elections for the mayor of the capital city Yerevan to replace presidential appointment to that post, as well as strengthening protection of human rights in the country. However, the Armenian authorities took advantage of a loophole in the OSCE's documents which compel the OSCE member states to invite international observers to elections but not to referenda and kept OSCE observers from monitoring the November 2005 Constitutional referendum. With the OSCE absent, the presence of a mere dozen Council of Europe observers kept international scrutiny of the referendum to a minimum. The minimal international monitoring of the referendum opened the door to speculation by the political opposition that the new Constitution did not enjoy the support of the majority of Armenia's population, despite the announced result that some 95% of the votes cast were in favor of the new Constitution.

The failure to invite international observers to a referendum whose aim was to gain approval for a Constitution that would move the country closer to European standards and conclude a successful process of constitutional reform exemplifies tensions that have historically surrounded electoral processes in Armenia. The first competitive post-independence presidential elections in Armenia in 1996 were marked by the refusal of the losing candidate, former Prime Minister Vazgen Manukian, to

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<sup>102</sup> Several successive drafts of the Armenian Constitution along with its final version as well as the interim and final opinions of the Venice Commission can be found at [http://www.venice.coe.int/site/dynamics/N\\_Opinion\\_ef.asp?L=E&OID=313](http://www.venice.coe.int/site/dynamics/N_Opinion_ef.asp?L=E&OID=313)

acknowledge the declared victory by the incumbent President Levon Ter-Petrosian and marred by post-electoral violence and excessive use of force by the law enforcement agencies. The OSCE's election observer body, the Office of Democratic Institutions and Human Rights (OSCE/ODIHR) also noted serious violations in the conduct of the 1998 Presidential elections as well as of the 2003 Presidential elections.<sup>103</sup>

The Presidential elections took even a more dramatic turn in early 2008 when Ter-Petrosian, now an opposition candidate, competed against the establishment's candidate Serzh Sargsian. The bloody events of March 1, 2008, when ten people died amid the protests and violence that followed the elections and declaration of Sargsian as the winner, led to criticism of the authorities by the European Union. The OSCE's Office for Democratic Institutions and Human Rights was allowed to monitor subsequent trials of opposition activists accused of inciting riots and published a critical report.<sup>104</sup> However, no proper investigation into the causes of the March 1 events was carried out, despite numerous calls from the Council of Europe's High Commissioner for Human Rights, Thomas Hammerberg.<sup>105</sup> And continuing electoral problems, as well as problems keeping public rallies from turning violent, diminish the earnest efforts of the OSCE and the Council of Europe who have given ample advice to Armenia on elections and election administration, as well as legislation governing public meetings and demonstrations. These problems also detract from the significant achievement of Armenia having had an incumbent President (Robert Kocharian) leave office after serving the full two terms envisaged by the Constitution without a coup, early or forced resignation or a revolution, and not moving to another public office such as Prime Minister. This is the first and only such case in the South Caucasus and one of very few cases in the post-Soviet space.

Notwithstanding the concerns associated with troubled elections, European organizations have essentially kept to the "business as usual" approach with regard to assistance to Armenia. Rule of law and strengthening the judiciary has been the traditional area of involvement of European organizations in Armenia. The EU-Armenia Action plan emphasizes the strengthening of judicial institutions as the first priority.<sup>106</sup> The EU is not the only European actor in this field. OSCE continues to be involved in criminal justice reform, despite complaints by local and international NGOs about the very slow pace of reform in the country. Despite the failure of the authorities to heed Council of Europe High Commissioner Hammerberg's calls to deal with impunity with the perpetrators of the March 1, 2008 bloodshed, that organization held in Yerevan in October 2010 a large session of the Forum for the Future of Democracy, an annual talking-shop that the Council of Europe has hosted since 2005. This suggests that European organizations continue to hope that Armenia's open door policy and the continuing engagement of these organizations will produce results in the human rights sphere in the long run.

Similarly, in the sphere of media freedom, the European institutions continue their engagement. For example, the international community has long been concerned with the plight of the A1+ television channel that lost its broadcast license in 2002.<sup>107</sup> Despite numerous calls by European organizations to restore the channel, the authorities have continued to keep it off the air. More recently, the OSCE Freedom of the Media Representative Dunja Mijatovic has focused on switchover to digital radio and TV broadcasting, with a particular eye on ensuring that this technological innovation does not result in the monopolization of media ownership and curtailment of media freedoms. This engagement serves two purposes: (1) providing expertise and international experience on a technically complex matter that has significant impact on the state of human rights and democracy and (2) reminding Armenia of

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<sup>103</sup> Office for Democratic Institutions and Human Rights, REPUBLIC OF ARMENIA PRESIDENTIAL ELECTION MARCH 16 AND 30, 1998 FINAL REPORT <http://www.osce.org/odihr/elections/armenia/14192>; Office for Democratic Institutions and Human Rights REPUBLIC OF ARMENIA PRESIDENTIAL ELECTION

19 FEBRUARY AND 5 MARCH 2003 FINAL REPORT <http://www.osce.org/odihr/elections/armenia/14054>.

<sup>104</sup> Office for Democratic Institutions and Human Rights. Final Report Trial Monitoring Project in Armenia (April 2008 – July 2009) <http://www.osce.org/odihr/41695>.

<sup>105</sup> Hammerberg repeated this call during his most recent visit to Armenia in January 2011, see "Greater efforts must be made to heal the wounds of March 2008 and strengthen the protection of human rights", press release of January 2011 at [http://www.coe.int/t/commissioner/News/2011/110121Armenia\\_en.asp](http://www.coe.int/t/commissioner/News/2011/110121Armenia_en.asp)

<sup>106</sup> [http://ec.europa.eu/world/enp/pdf/action\\_plans/armenia\\_enp\\_ap\\_final\\_en.pdf](http://ec.europa.eu/world/enp/pdf/action_plans/armenia_enp_ap_final_en.pdf)

<sup>107</sup> See for example a press release of the OSCE Representative for Freedom of the Media "OSCE Media Representative voices regret that two TV channels in Armenia did not receive licenses" dated 21 July 2003 at <http://www.osce.org/fom/55501>

international standards and “best practices” and backsliding in the area of media freedom. The results of this engagement remain to be seen.<sup>108</sup>

Despite these modest results, the dynamic described in this article is likely to persist. In the South Caucasus region, which the EU is treating as a strategic priority, progress in the area of human rights is slow. And the human rights sphere in Armenia is by no means unique. For example, a recent report of the European Court of Auditors notes at best mixed achievements of the new instruments of the European Union’s assistance to all three countries of the South Caucasus in spheres other than human rights.<sup>109</sup> And while European taxpayers have the right to demand more progress in exchange for the investment they have made in the human rights advancement in the South Caucasus and elsewhere in the post-Soviet space, notwithstanding the efforts of the intergovernmental European organizations, they may end up living with only small gains for some time to come.

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<sup>108</sup>See *Analysis of the Concept Paper on migrating to digital radio and TV broadcasting system in Armenia* issued by the Office of the Representative on Freedom of the Media in April 2010 at <http://www.osce.org/fom/67722>.

<sup>109</sup>European Court of Auditors, *Is the New European Neighborhood and Partnership Instrument Successfully Launched and Achieving Results in the Southern Caucasus (Armenia, Azerbaijan and Georgia)*, Special Report No. 13, 2010, Luxemburg, available at <http://eca.europa.eu/portal/pls/portal/docs/1/6970784.PDF>.

## Armenia-Russia relations: Geography matters

Alexander Iskandaryan

Armenia's official foreign policy doctrine is known as "complementarism." In contrast to its northern neighbor, Georgia, Armenia is not trying to base its policies on a dichotomy between Russia and the West. The way Armenia's approach works, being pro-Western does not necessarily imply being anti-Russian, and being pro-Russian does not require being anti-Western. Such a strategy of balancing between various external players has become the trademark style of Armenian politics. Although the result is that Armenia is perceived in the West as being pro-Russian, and in Russia, as being pro-Western, neither player actually considers Armenia a radical actor. In the final analysis, the West does not treat Armenia on a par with Belarus, nor does Russia treat Armenia on a par with Georgia.

Armenia's rather precarious balancing game can be interpreted as a direct consequence of the region's geographic layout. Although formally Armenia neighbors four countries, it only relates to two of them. As a result of the unresolved conflict over Nagorno-Karabakh, Armenia is in a de-facto state of cold war with Azerbaijan, whereas Turkey, in a gesture of solidarity with Azerbaijan's cause, sealed its border to Armenia back in 1993, and the two countries still have no diplomatic ties. In the current reality, Armenia only has two neighbors: Iran and Georgia. Given the tense relations between the United States and Iran on the one hand, and between Russia and Georgia on the other, it would be suicidal for Armenia to opt for the "orientation" kind of strategy adopted by Georgia. Obviously, by highlighting its alliance with one of the key external players, Armenia would risk seriously damaging relations not just with another external player but also with one of its remaining two neighbors, something it clearly cannot afford to do. Its only solution is to try and sustain a constructive interaction with all stakeholders, regardless of the tensions existing between them.

However, it would be simplistic to interpret Armenia's "complementarism" in terms of percent ratios and try to figure out how much weight each external and regional player has in Armenian politics. In reality, influence is distributed in different ways in different spheres, and here, too, geography is important. For example, two-thirds of Armenia's communications run via Georgia and about one third, via Iran. The EU (mostly Germany) is Armenia's largest trade partner, and in terms of cultural identity also, Armenia has a growing proclivity to Europe. Meanwhile, there are two spheres in which Russia's weight is crucial, and since those two spheres are of prime importance for Armenia, this makes relations with Russia very special. The two spheres are security and investment, chiefly into energy production.

After Armenia gained its independence in 1991, its first government, while being (or trying to be) openly liberal, pro-Western and anti-communist, also managed to become arguably one of the most, if not the most, pro-Russian government in the former USSR. This sounds ironic, especially given the fact that in the years preceding the proclamation of Armenia's independence, Moscow had been strongly opposed to Armenia's newly emerging anti-communist powers and had done its best to crush them. The Kremlin even went so far as to proclaim an emergency situation in Armenia, and then arrest and fly to a Moscow jail almost the entire leadership of the future Republic of Armenia, including its future first president Levon Ter-Petrosyan. The Soviet army was at the time supporting Azerbaijan in the conflict over Nagorno-Karabakh.

However, once Armenia gained independence from the USSR, the political layout underwent a drastic change. After the Soviet Union disintegrated, Boris Yeltsin rose to power in Russia and Levon Ter-Petrosyan, in Armenia. With Yeltsin and Ter-Petrosyan in power, the relationship between the two countries became almost ideal. This was not just about personalities, although the two presidents were certainly on very good terms. There were objective reasons in play. Newly independent Armenia was by now fighting a full-scale war with Azerbaijan, and the Russian army was its only potential source of armaments. At the time, the newly independent post-Soviet states had nowhere else to go for weapons, ammunition, technical assistance or fuel; NATO, or any other bodies or countries, were not options, and consequently, all post-Soviet wars were fought with Russian weapons. In the particular case of Armenia, a

friendly relationship with Russia did not just provide it with weapons but also a “security umbrella” in the shape of the former Soviet army base located on Armenia’s territory and ensuring the non-involvement of Turkey in the conflict over Nagorno-Karabakh. There was no alternative to being on good terms with Russia, and the Armenian leadership worked very hard to use the newly found friendship to its best advantage.

After the war ended in 1994, Armenia’s development focus was no longer merely on survival. Just like its neighbors, Armenia began to engage with European bodies and with the NATO; however, Russia still carries considerable weight in Armenia’s foreign policy priorities. While having the same extent of institutional engagement with the EU and NATO as the other South Caucasus states (in the form of the Eastern Partnership program, the NATO Individual Partnership Action Plan (IPAP), and the involvement of Armenian officers in peacekeeping operations in Kosovo, Iraq and Afghanistan), Armenia remains a member of the Collective Security Treaty Organization and still has the Russian army base on its territory. In fact, as things stand now, Armenia is the only country in the South Caucasus which fully controls its territory; “complementarity” is giving it an opportunity to balance between regional and international players, whereas the conflict over Nagorno-Karabakh, though still unresolved, does not flare up again.

The other special sphere of Armenia-Russia relations is investment. For a developing post-totalitarian country like Armenia, foreign investment is obviously crucial for economic growth. Meanwhile, given the fact that Armenia is landlocked, poor and has little natural resources, there is not much incentive for Western businesses to invest in it. Its market is tiny, and transportation costs are out of proportion because routes to Europe are shut off by the sealed Armenia-Turkey border, so shipments have to take a large detour, crossing many borders. As a result, the Armenian market is chiefly attractive for companies targeting domestic consumers, such as the Coca Cola factory or telecommunications operators<sup>110</sup>. Where Armenia’s export-oriented industries are concerned, they only attract Western capital if there is something special about the product, as was the case with the Armenian brandy factory that was bought by a French company for the sake of the traditional brand, relatively well-known and popular in some parts of the world. Obviously, investment on this scale is insufficient to boost Armenia’s development.

Under these conditions, Armenia is strongly challenged to attract foreign capital to industries that require large investments and do not promise rapid payback. Investments from Russia are an obvious solution for many reasons, including the economic links and networks surviving from Soviet times, and the fact that Russia faces all sorts of challenges when trying to invest its capitals outside the post-Soviet realm. As a result, Russian companies have invested in several key sectors of the Armenian economy, primarily energy production. Since Armenia is the region’s only exporter of electricity, which it sells to Georgia and Iran, the prospects of increasing electricity production using Russian capital can lay the basis for developing other industries, as well as boosting the export potential of a country which has no hydrocarbons of its own.

Russia is Armenia’s only gamble where this type of investment is concerned; no other country has the incentive to commit to Armenian markets on a comparable scale. In this logic, the apparent possibility that Russian investment is politically motivated is more of an advantage than a drawback. Political incentives can lead to investments on a scope that a country with Armenia’s constraints can never hope to receive through purely business initiatives.

The “security umbrella” and energy production are thus the main areas in which Armenia relies heavily on Russia. Despite popular perceptions to the contrary, this does not change much in the Armenian domestic perspective. The reasons are quite plain. Russia need not – and does not – particularly care what sort of domestic policies are in place in Armenia as long as Armenia stays under Russia’s military wing and does not choose an openly pro-Western orientation. Armenia, meanwhile, cannot afford to adopt an orientation of any kind due to geographic constraints, nor can it opt out of partnership with

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<sup>110</sup> Chatschatrjan, Arutjun. 2004. “Wirtschaft und Politik in Armenien.” *Diaspora, Öl und Rosen. Zur innerpolitische Entwicklung in Armenien, Aserbaidschan und Georgien*. Berlin: Heinrich Böll Stiftung, pp. 161-178.

Russia in the military and energy realms as long as the conflict over Nagorno-Karabakh remains unresolved and its borders with Azerbaijan and Turkey remain sealed. Contrastingly, European bodies place very specific demands on the domestic policies of partner countries, pressurizing them to implement reforms and commit to democratic standards. In this aspect, Armenia is under much stronger pressure from Europe than from Russia.

As a matter of fact, military security and energy production and transportation are the two spheres in which Russia extends most – if not all – of its influence over the former Soviet world. It is in these spheres of influence that Russia is heavily present throughout the CIS. For some post-Soviet countries, this presence has become a heavy burden, with Russia manipulating them using the energy lever (as with Ukraine) or even subjecting them to military pressure (as was the case with Georgia). Meanwhile, other post-Soviet countries are successfully using this presence to their advantage by manipulating Russia's geopolitical ambitions. The reasons why some countries fall into the first group and some into the second also often lie in the realm of geography; once again, "geography in this context is no longer an end in itself but a means to an end."<sup>111</sup> In the case of Armenia, a key factor is that, unlike Georgia, it does not border Russia. By virtue of this purely geographical fact, Armenia is not susceptible to the apprehensions and inhibitions that inevitably arise from directly neighboring a huge country, especially a former empire to which its newly independent neighbors were subjugated for centuries (a large country that Armenia does border is Turkey, and the Armenians' feelings toward its powerful neighbor are rather similar to the way Georgians feel about Russia). In the absence of apprehensions and perceived risks, one can try to use Russia's policies to one's own advantage, especially in a situation where Russia's perceived interests (or atavistic motives) may sometimes coincide with Armenia's aspirations.

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<sup>111</sup> Braudel, Fernand. 1995. *The Mediterranean and the Mediterranean World in the Age of Philip II*. Volume 1. Berkley and Los Angeles: University of California Press, p.23.

**The internal and the external:  
Politics, NGOs, conflict and peace in Armenia<sup>112</sup>**

Gevorg Ter-Gabrielyan<sup>113</sup>

Since the early days of the Karabakh conflict, the official peace-making and negotiations processes have been accompanied by people's diplomacy initiatives. Soon after the 1994 cease-fire, the Minsk process became the only official negotiations framework. People's diplomacy and lower than first track initiatives became one of the major elements of Armenian NGO strategies and of Western funding. However, just as in the official process, Azerbaijan would block the fully-fledged engagement of the Nagorno Karabakh (NK) people in non-official dialogue processes. For Armenians, the inclusion of the NK people in such projects became a priority. It made sense. With whom should Azerbaijani NGOs engage: with Yerevani people, often unrelated to the conflict, or with their own populace who decided to secede from them? But it was in Azerbaijan's interest to reshape the conflict from a conflict between its minority with compact residence and a state (a conflict into which the other newly independent state, Armenia, got involved because of its ethnic brethren in Karabakh), into an ethno-territorial interstate conflict between Armenia and Azerbaijan. In that picture, Azerbaijan could claim that Armenia occupied its territories, and could dismiss the bid of NK for independence or unification with Armenia. The highest level compromise to which Azerbaijan was ready was to have NK Armenians inside an Armenian delegation balanced by NK Azerbaijanis (the displaced people originally from Karabakh) inside an Azerbaijani delegation.

Until the early 2000s, this restriction was not absolute. Sometimes Azerbaijani NGOs would visit Karabakh (though risk being attacked back home), even more often they would visit Armenia, and Armenians reciprocally would visit Azerbaijan. Gradually, a ritual of requesting permission from the national security service, being met at the entry point and accompanied by the reps of the security service during one's entire stay in the other country came into being. As for meetings outside Armenia and Azerbaijan, the easiest way to have such meetings was if they had all-Caucasus character and were thus depoliticized. If a Georgian, an Abkhaz, a South Ossetian, an Armenia Armenian, an NK Armenian, and an Azerbaijani met, there was a possibility to present this as a regional dialogue where NGOs did not represent their states, particularly if North Caucasus and Russian NGOs were also involved. Such fora were modeling an alternative approach to the official and usual assumed framework, which was that the conflict is bilateral (Armenians and Azerbaijanis) and should be resolved bilaterally, since there are no two similar conflicts in the world. The all-Caucasus format advanced another assumed framework: that all conflicts in the Caucasus are interrelated and therefore a joint peace movement should come into being to change the situation and look for ways out of all dead ends together.

In the early 2000s, two processes came to fruition. Since President Kocharyan was from Karabakh and he was leading negotiations, he ceased to insist on the proper participation of the NK people in official negotiations. Beforehand, tough diplomatic struggles would sometimes bring about an opportunity to have Karabakhis at the negotiating table. In 1994, the ceasefire agreement was signed by the NK commander-in-chief alongside the Armenia and Azerbaijan leaders. Karabakh was recognized as a side in the conflict. Kocharyan did not capitalize on this relative diplomatic success. Whether this was done by omission or based on sophisticated considerations that it was time to diminish the NK significance as a non-recognized state and prepare the ground for its unification with Armenia, is difficult to say today.

The second process was the rooting of an assumption in Azerbaijan that a status quo based on a ceasefire with no resolution in prospect was against their interests. Azerbaijan gradually moved towards a 'total cold war', so to speak. Large scale anti-Armenian and anti-Karabakh propaganda started inside and

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<sup>112</sup> Some of the theses of this piece are elaborated in earlier publications, such as *European Union and the Nagorny Karabakh conflict: An opportunity for Eastern Partnership engagement*. In: Analytical Journal of the Center for Civilization and Culture Studies, #5, Yerevan State University, Yerevan 2010. *Zero-sum or Positive-sum? Games and Reality Construction in the Caucasus Conflicts*. In: Conflict in Post-Soviet Europe. The South Caucasus: Are there Scenarios for Resolution? Federal Foreign Office, Berlin, 2009. *Armenia and the Caucasus: Crossroads or Dead End?* In: Caucasus Neighborhood: Turkey and the South Caucasus, Caucasus Institute, Yerevan, 2008.

<sup>113</sup> The opinions here are those of the author and do not reflect the opinions of EPF

outside the country. Inside the country this aimed at educating people in anti-Armenian sentiment. This also resulted in an almost absolute prohibition for Azerbaijani people to interact, in any possible way, with Armenians from NK. Azerbaijan insisted with international donors that they should not support any initiative where NK is engaged via Armenia. Every such initiative should be cleared with Azerbaijan, since internationally NK is recognized as a territory of Azerbaijan, though Azerbaijan does not hold actual power there.

Most of the Armenian NGOs, looking for funding and peace talks, had to accept this deal if they wanted their projects implemented. Very few people's diplomacy initiatives supported by Western governments or intergovernmental donors allowed the participation of or work inside NK. The only funding that NK gets consistently is from the budget of Armenia and from the diaspora donors.

With toughening nationalist talk in Azerbaijan, a similar process took place in Armenia and particularly in NK, though not to the same extent, since the Armenians still felt themselves the winners of the 'hot' stage of the war, in no need of a *revanche*. At the same time, economic hardship and the opening up of Armenia to the world resulted in the development of a more liberal and pluralistic, though less mainstream, discourse.

A handful of Azerbaijanis, seasoned NGOs or young bloggers, and the bearers of this liberal discourse from among the Armenians are the most important seed peace constituencies upon whom most of the dialogue projects are relying.

However, there is a difference between a peace message and a defeatist position. In 1998, Levon Ter-Petrosyan left the office after his famous 'War or peace' article, which was interpreted as containing a defeatist message, suggesting giving NK to Azerbaijan and accepting much deeper compromises than the overwhelming majority of Armenians all over the world could imagine. Since then, the security argument has become a major driving force in internal politics. It has several facets. One of them goes like this: 'We cannot become fully liberal and democratic because we have the unresolved conflict and a permanent imminent war threat: we have to have strong centralized and militarized power, and rely on Russian military might, in order to keep the statehood. We cannot fully democratize, get rid of corruption and guarantee the full scale of human rights in a military situation'.

The other goes like this: 'No president, either in Armenia or in Azerbaijan, can be powerful enough to make a compromise; both populations expect full victory from the conflict. To force a compromise on the people is impossible. Any president who will go too far with compromises, even at the level of rhetoric, will lose power'. Thus the conflict becomes antagonistic, a fully zero-sum situation.

The same logic brings about another argument: 'Those NGOs who take money from Western donors and do 'as if' peace projects without engaging NK, are in fact working for Azerbaijan and accepting its rules of the game: they should not take the money and should refuse to take part in such projects'. Even while this is argued, the Armenian government does not torpedo negotiations even if its request to have the NK reps there is not being accepted by Azerbaijan. Thus NGOs are being asked to achieve something which the governments cannot. This demonstrates the NGOs' potential significance in the peace process and in the overall power setting of Armenia and Azerbaijan.

Suggestions for the Armenian state to tackle this situation ranged from the idea of prohibiting such projects, to the idea of at least co-supporting them. If an international donor cannot provide support for the NK engagement by law, the Armenian state may rectify this deficiency via budgetary support to engage the NK people in such projects. So far, however, nothing much has changed. The enthusiasm to work incessantly to engage NK has gone down because of several factors: the further depopulation of NK because of economic hardship; the economic hardship and lack of democratic advancement in Armenia proper; and the lack of clarity in the state leaders' position. If they regard Karabakh as a remote Armenian province, what is the sense then in trying to play it as if it is an independent entity deserving a treatment similar to that of at least an Abkhazia?

The recent interest of the EU to engage NK in NGO projects is, not surprisingly, treated as controversial by Armenia, as a threatening way of sidetracking the Minsk group and taking over the official mediators' role. It is assumed that, as different from OSCE, an EU framework for dealing with the conflict may result in pressure on Armenia to yield with no clear security guarantees, a pressure worse than the Minsk group co-chairs' system can ever exercise.

A bigger and somewhat overlooked problem, however, is that the majority of NGO peace initiatives treat the dialogue projects as an opportunity to 'kid' the other side into accepting their side's way of seeing things, both by Armenian and Azerbaijani NGOs. 'Who are you, a citizen (or 'soldier') or a professional'? This dilemma, a daily occurrence in Armenia, becomes modified in this case into a feeling that every NGO personality is a state or nation envoy in charge of defending the national cause rather than a free member of the global civil society in charge of looking for unexpected positive solutions to his or her society's problems.

The fact that a genuine second track or grassroots conflict transformation process should be based on attempts to find a joint common vision rather than merely a positional negotiations process, mimicking the official one, is not recognized by the majority of Armenian NGOs. They sincerely believe that dialogue is about forcing the other side to accept their view, which is so clear, logical and convincing, *n'est-ce pas?*

Of course, one can blame Azerbaijan for this failure: it takes two to tango, and if one sees the situation as zero-sum, the other will be foolish not to do the same. However, this demonstrates also that the effectiveness of the investments that the international community puts into educating the people of the region in conflict transformation skills has been low. Well, this is not news either: international assistance for democracy advancement, which was of a much larger scale than the NGO dialogue assistance, has also had a limited effect. Azerbaijan is far from a democracy in almost all respects. Armenia is in some respects closer to democracy, however, 10 people were killed on March 1, 2008, after the controversial presidential elections, because the government unleashed military forces against a rallying and rebellious public. As some jokingly say, Armenia is not strong enough to be a fully fledged autocracy, otherwise it would be one, no doubt.

Thus, the main security dilemma of Armenia can be formulated as follows: Armenia is afraid of democratizing because this may bring about instability and let Azerbaijan attack. Those who do not want Armenia to democratize, because they benefit from the corrupt system as it is, claim that it should not democratize exactly because of that: the external danger. They claim that everything is almost perfect in this almost perfect country as it is. Thus, Armenia does not democratize under the pretext that it may bring about conflict escalation. Its internal conflict, however, stays unresolved and may escalate; because of economic hardship and lack of democracy, it may lose in the global competition and become weaker. This increases the danger of conflict escalation in all directions and seriously jeopardizes state security. Armenia wants to stay competitive, provide security, and face global challenges. For this, as well as in order to find new ways of satisfactorily resolving the NK conundrum in dialogue with Azerbaijan and with the help of international community, there is no alternative but democratization.

**From foes to neighbors:  
The successes and failures of the Armenian-Turkish normalization process**

Mikayel Zolyan

Rarely can one find two countries so driven apart by the burden of tragic history and political controversy as Armenia and Turkey. However, in 2008 it seemed that the ice was about to break after Armenian president Serzh Sargsyan invited his Turkish colleague Abdullah Gül to Yerevan to attend a football match between the national teams of Armenia and Turkey. When Gül accepted the invitation, this signalled the beginning of the so-called “football diplomacy”. Negotiations between the two sides continued, with strong support from the international community. Protocols on the normalization of relations between Armenia and Turkey were signed in October 2009. However, since then the process has slowed down, hampered by internal opposition in Armenia and Turkey, as well as by the position of Turkey’s ally Azerbaijan, which is involved in a dispute with Armenia over the region of Nagorno-Karabakh. There are, however, hopes that the process will be revived after the Turkish elections in June 2011.

Probably the most well-known aspect of Armenian-Turkish relations is the tragic historical legacy. Armenian collective memory, both in Armenia and among the Armenian diaspora, has been dominated by memories of the genocide of Armenians in Ottoman Turkey in 1915<sup>114</sup>. The memory of the genocide has formed the most important focal point for Armenian national identity, particularly among diaspora communities. While the Armenian psyche is dominated by memories of what happened in 1915, in Turkey the complete opposite was true: Armenians, who had once had an important place in Ottoman society, have been almost completely erased from the official narrative of history in republican Turkey. In the rare cases when Armenians were actually mentioned, they were presented as a hostile group that became a tool for “Western imperialism”.

The clash of memories over what happened in 1915 might be the most well-known to the outside world, but it is not the only controversy between the two neighbors. Many Armenians refuse to accept the current border between the two countries, arguing that it is a result of the controversial Kars treaty, concluded in 1921, after a disastrous Turkish-Armenian war, and signed not by Armenia’s legitimate government, but by a Bolshevik regime imposed on Armenia by the Soviets. Adding insult to injury, the Armenian-Turkish border was drawn in such a way that it left two of the most sacred Armenian national symbols, the Ararat mountain and the ruins of the ancient capital Ani, on the Turkish side. The Armenian government’s official position on the issue is somewhat ambiguous: while no Armenian officials have voiced any territorial claims to Turkey, they had also refrained from officially acknowledging the legitimacy of the Kars treaty. In any case, real or perceived territorial claims by Armenians have been a constant source of anxiety for the Turkish government for years.

The Turkish government’s closing of the border with Armenia and the refusal to establish diplomatic relations by Armenia is related to Armenia’s conflict with Azerbaijan, a country that has deep ethnic and cultural links to Turkey. Turkey also reacts extremely painfully to the Armenian genocide recognition campaigns, conducted by diaspora Armenians in the countries of their residence, particularly the campaigning of Armenian American organizations for official genocide recognition by the US government. In order to attract attention to genocide recognition demands, a terrorist campaign was launched by a Diaspora Armenian organization ASALA (Armenian Secret Army of Liberation of Armenia) in the late 1970s and early 1980s. ASALA, which specifically targeted Turkish diplomats, had stopped its activities by the time Armenia became independent, however the image of “Armenian terrorists” remains one of the elements that contributes to hostile perceptions in Turkey. There are also other issues that complicate Armenian-Turkish relations, among them the problems of Turkey’s diminishing Armenian minority, the

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<sup>114</sup> The Armenian genocide has become a subject of controversy, with Turkish government denying that the events of 1915 constituted a genocide, and Armenians, especially the Armenian Diaspora communities, pushing forward with a campaign for recognition (see D. Bloxham, *The Great Game of Genocide: Imperialism, Nationalism and the Destruction of the Ottoman Armenians*, Oxford University Press, 2005; T. Akçam, *Shameful Act: the Armenian Genocide and the Question of Turkish Responsibility*, Metropolitan Books, , New York, 2006).

issues of recent labor migrants from Armenia to Turkey, the issue of Armenian cultural heritage on the territory of Turkey.

When Armenia became independent after the collapse of the USSR, Armenia's first government under president Levon Ter-Petrosyan adopted a conciliatory stance towards Turkey, even though the Armenian public and diaspora communities expected Armenia to put forward demands for genocide recognition. These divisions in Armenian society found their way into Armenia's government: Armenia's first minister of foreign affairs Raffi Hovannisian had to resign after voicing the demand that Turkey should recognize the 1915 genocide<sup>115</sup>. Eventually, Ter-Petrosyan's approach became dominant in Armenia's foreign policy, in spite of fierce criticism from the diaspora and the government's internal political rivals, namely the Dashnaksutyun party. However, Ter-Petrosyan's initiatives did not find a warm reception on the Turkish side. While Turkey's intentions of playing a major role in the newly independent states of the South Caucasus required establishing workable relations with Armenia, the feelings of pan-Turkic solidarity ensured that it took an openly pro-Azerbaijani stance regarding the Nagorno-Karabakh issue. As well as closing the border with Armenia in April 1993, Turkey's leaders also threatened Armenia with military intervention in case fighting spread to the Azerbaijani exclave of Nakhijevan, which borders Turkey<sup>116</sup>. These threats were seized upon after a rebuke by the Russian authorities, and security cooperation with Russia started to be perceived by Armenian society as the only formidable guarantee against a potential security threat from Turkey.

Ter-Petrosyan's soft stance on relations with Turkey contributed to his unpopularity in the 1990s, therefore the new president Robert Kocharyan, decided to strike a different tone. Kocharyan declared genocide recognition to be one of the goals of Armenia's foreign policy, marking a symbolic break with Ter-Petrosyan's legacy. This change was enthusiastically supported by the Dashnaksutyun party, which joined a government coalition formed in support of Kocharyan. However, Kocharyan's government repeatedly stated that Armenia was ready to establish diplomatic relations and start a dialogue with Turkey without any preconditions, while contacts between Armenian and Turkish diplomats continued during Kocharyan's presidency<sup>117</sup>.

A new opening for Armenian-Turkish normalization attempts came in 2008, when Armenia's third president Serzh Sargsyan came to power. In the elections of 2008, both Sargsyan, who was the pro-government camp's candidate, and his main rival, Ter-Petrosyan, who returned to politics as an opposition leader, both emphasized the necessity of normalization of relations with Turkey. Post-election developments, when the opposition challenged the legitimacy of the elections' outcome, had weakened the government's internal standing. Against this background, the normalization of relations with Turkey and opening of the border could become a major foreign policy success, which would strengthen both the internal and international standing of the Armenian government. It was against this background that Sargsyan announced his invitation to president Gül in April 2009.

By that time, the Turkish government was more willing to reach out to the hand extended from Yerevan than it had been in the early 1990s. There had been certain changes to the way the Armenian issue was perceived inside Turkey. Since 2002, when the moderately Islamist Justice and Development Party (AKP) came to power in Turkey, the positions of military establishment and nationalist circles in Turkey's public life were diminishing, which led to an opening for the discussion of certain topics that had hitherto been strictly taboo. In spite of intimidation by nationalists and the threat of legal persecution<sup>118</sup>, several Turkish intellectuals, journalists and human rights activists did raise their voices to talk about the extermination of Armenians in 1915 and issues currently faced by Turkey's Armenian minority. One of the most courageous voices was that of Hrant Dink, an Armenian journalist and newspaper editor from

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<sup>115</sup> Gerard Libaridian, *Modern Armenia: People, Nation, State*, Transaction Publishers, New Brunswick, New Jersey, 2004, p. 269.

<sup>116</sup> A. Zverev. "Ethnic conflicts in the Caucasus: 1988-1994" in B. Coppieters (ed.), *Contested Borders in the Caucasus*, VUB University Press, Brussels.

<sup>117</sup> International Crisis Group, "Turkey and Armenia: Opening Minds, Opening Borders", Europe Report N199, April 14, 2009, p.3.

<sup>118</sup> Turkey's penal code contains the controversial article 301, making "insulting Turkishness" illegal (the wording was changed in 2008, replacing "Turkishness" by "the Turkish nation").

Istanbul. Dink's vocal position earned him many enemies among Turkish nationalists. On January 19 2007, Dink was murdered in Istanbul by a member of an ultra-nationalist group. Dink's murder immediately created a public outcry not only in Turkey but all over the world. Leading public figures in Turkey, including senior Turkish officials, rushed to condemn the murder. In a development unimaginable in Turkey several years ago, thousands of Turks joined the funeral procession on the day of Dink's funeral, holding signs that read "we are all Hrant Dink" and "we are all Armenians". Contrary to the intentions of his murderers, Dink's tragic death helped to put the debate about the Armenian issue into the center of debates over democracy and human rights issues in Turkey.

It was against this background that in 2008 Turkish politicians started to talk about the normalization of relations with Armenia. Though the AKP did not share the liberal intellectuals' stance on the Armenian issue, it was willing to reject the ideologically motivated hard-line position of nationalists in favor of a more pragmatic approach shaped by the principle "zero problems with the neighbors". For years Turkey had cooperated with Azerbaijan in its effort to enforce an economic blockade on Armenia, which meant that all major communication and energy transportation routes from the South Caucasus to Europe were passing through Georgia. After the Russian-Georgian war in August 2008, it became obvious that this strategy could backfire. Another reason why the Turkish government was inclined to engage in a dialogue with Armenia was the high probability of official genocide recognition by the USA: during his presidency campaign, Barak Obama had made an unequivocal pledge to officially recognize the Armenian genocide, a stance shared by several influential figures in the US Congress.

Taking all this into consideration, Sargsyan's invitation to Gül came at a convenient time for Turkish diplomacy. In September 2008, Gül visited Yerevan and the two presidents had a meeting prior to attending the football match together. Gül invited Sargsyan to attend the next football match which was scheduled to take place in Turkey in October 2009. On April 22 2009, Armenia and Turkey announced the existence of a text of protocols and a roadmap for the normalization process. As a result of the April 22 announcement, the Armenian government came under severe criticism both at home and in the diaspora communities. Critics argued that by releasing the statement, Armenia's government had helped Turkey to avert the danger of the American president recognizing the Armenian genocide in an address to Armenian Americans scheduled for April 24<sup>119</sup>. The Dashaktsutyun party left the ruling coalition in protest.

The text of the protocols on the establishment of diplomatic relations and development of relations between Armenia and Turkey was published in late August 2009<sup>120</sup>. According to the protocols:

- Armenia and Turkey agreed to establish diplomatic relations;
- Armenia and Turkey mutually recognized existing borders;
- The border was to be opened within two months after the protocols came into force;
- Armenia and Turkey agreed to create an intergovernmental commission, with several sub-commissions dealing with different spheres of bilateral relations, including a sub-commission on the "the historical dimension".

Some of these points were perceived by many in Armenia and in the diaspora as unacceptable. The sub-commission on the historical dimension was considered unacceptable by critics of the government, who argued that its existence could be used by the Turkish authorities to question the reality of the genocide and to hinder the genocide recognition campaigns in other countries. The criticism was especially harsh in the diaspora, and during Sargsyan's visit to diaspora communities in France, the USA, Lebanon and Russia

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<sup>119</sup> April 24 is the day of remembrance of the Armenian genocide and US presidents usually publish an address to the American Armenian community on that day. In 2009 many Armenians expected that Obama would use the word "genocide" in his address. However Barak Obama's refrained from using the word "genocide", replacing it with the Armenian word *Eghern* ("the great catastrophe").

<sup>120</sup> What is usually referred to as "the protocols" actually consists of three documents: "Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey", "Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey" and "Timetable and elements for the implementation of the Protocol on development of relations between the Republic of Armenia and the Republic of Turkey" ([http://armeniapedia.org/images/2/21/Armenia-turkey\\_protocol.pdf](http://armeniapedia.org/images/2/21/Armenia-turkey_protocol.pdf), accessed on 20.02.2011).

he was greeted by angry diasporian Armenians who turned out in large numbers to protest against the protocols. Ironically, while the Armenian government was accused of selling out national interests, similar criticism was directed at the AKP government in Turkey. In particular, they were accused of disregarding the interests of Turkey's ally Azerbaijan. AKP officials responded by claiming that the protocols would not go forward without substantial success in the Nagorno-Karabakh resolution. In spite of all this, the protocols were signed on October 10, 2009 in Zurich, by the ministers of foreign relations of Armenia and Turkey in the presence of the heads of foreign relations offices of the USA, Russia, EU, France and Switzerland.

The protocols contained a provision that entailed ratification by the parliaments of the two countries. The ratification turned out to be problematic, as Azerbaijan and pro-Azerbaijani politicians in Turkey put strong pressure on the AKP government to take into account the interests of Azerbaijan. AKP leaders, wary of disappointing the nationalist part of the electorate, tried to placate the worries of Azerbaijan by announcing that the protocols would not be ratified unless there was progress in the Nagorno-Karabakh peace process. This created a conundrum that proved impossible to solve: progress on Nagorno-Karabakh depended not only on Armenia, but also on Azerbaijan, which in turn, was not interested in the progress of Armenian-Turkish relations. The prospects for ratification were becoming bleak. In January 2010, Armenia's constitutional court examined the protocols' compatibility with Armenia's laws. Even though it gave a positive ruling, it also issued a commentary that the protocols could not be used to justify questioning the reality of the Armenian genocide. This commentary was interpreted by Turkish officials as an unacceptable modification of the protocols, and the US State Department had to interfere, declaring that they did not agree with the Turkish interpretation of the ruling. In any case, it became obvious that the Turkish parliament was not going to ratify the protocols any time soon. In April 2010, Armenia announced that it was suspending the ratification process until there were signs of progress from the Turkish side. However, it seems highly unlikely that the Turkish government would consider new moves in the direction of normalization before the parliamentary elections in June 2011.

Even though it was ultimately unsuccessful, the normalization attempt in 2008-2010 was important. The developments of 2008-2010 helped to make the problem of Armenian-Turkish relations an issue for discussion in both countries, challenging existing clichés and stereotypes. The normalization attempt in 2008-2010 showed that Armenian-Turkish normalization is not something that can be achieved at one strike of a pen; it is a lengthy process, painful for both sides, which demands a lot of resources, time and motivation. However, if the governments and societies of Armenia and Turkey are able to draw correct lessons from the failure of the 2008-2010 process, a new attempt for normalization could be more successful. These developments also paved the way for a public dialogue between the societies of the two countries, which will go on, even if at the government level, relations remain frozen.

## Conclusion: Finding a way forward for Armenia

Adam Hug

The need for radical and sustained political reform in Armenia is absolutely clear. While noting several areas of improvement, some of which are more notable on paper rather than in practice, our experts have outlined in great detail some of the deep challenges that continue to restrict the freedoms of the Armenian people. In conclusion, this publication will examine what steps can be made to achieve political reform and the role of the international community in helping or hindering steps in that direction.

### A new agenda for reform?

Despite, and indeed because of, Armenia's significant political problems, it is worth noting two recent initiatives by President Serzh Sargsyan in December 2010 that may mark an attempt by him to address his weak legitimacy and tackle some of the country's more entrenched problems. Firstly, he used a major speech to mark the 20<sup>th</sup> anniversary of the founding of the ruling Republican party to announce a public commitment to the reform agenda. Sargsyan stated:

"While we have been and will continue to display utmost tolerance toward dissent, there will be zero tolerance toward corruption, bribery and squandering of budget money. Many people have things to do in this area; however I am confident that it is first of all the political responsibility of the Republican Party. Arrogance and corruption must be punished harshly, and party affiliation or any other connections must be dismissed..."

He then made a surprisingly strong pitch for a European future for Armenia:

"When we talk about strengthening democracy, firm implanting of the European standards, these are not just slogans or idle words meant for other audiences. It is Armenia which needs them foremost, not Europe. This is our conscious course and our conviction. European democracy and rule of law are demands of our society, confirmed firmly on many occasions - at the elections, in criticizing the political forces, or in encouraging the same forces. The European standards - from the produce displayed in the shop window and up to the state and legal structure, must become exemplary for us. Today, the issue of becoming a full member of the European Union is not yet on our foreign policy agenda, however I would like to repeat that the European rules of the game and European standards must take roots in our country because these are high and time-tested standards. We need these standards to make considerable progress, to change lives of our citizens and to build up the organizational strength of our society.<sup>121</sup>"

Secondly, as explained in Richard Giragosian's piece, he announced a major reshuffle with the replacement of his Ministers of Finance, Economy and Justice, with three ministers who are seen as relatively unconnected to vested interests and competent. While three technocrats don't make a democracy, it is at least a step in a more promising direction, and their progress turning around the oil tanker needs to be monitored and supported. The real test will come when the economic agenda runs up against the business projects of the politically connected oligarchs and the new broom at Justice has to challenge the entrenched special interests in the legal system. In the same period the President engineered the removal of the Mayor of Yerevan following a bizarre incident where he was alleged to have physically assaulted one of Sargsyan's advisors. His replacement with ArmRosGazprom chief Karen Karapetian is a less clear signal for reform but will boost Presidential influence over this influential post.<sup>122</sup> This period has also seen the release of 10 of Armenia's 12 opposition activists detained for politically-related matters, such as allegations of resisting arrest during the March 1<sup>st</sup> crackdown, seen by many as political prisoners.

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<sup>121</sup> President of the Republic of Armenia Official Website, President Serzh Sargsyan participated at the solemn event dedicated to the 20th anniversary of the Republican Party of Armenia (RPA) <http://www.president.am/events/news/eng/?id=1366> (accessed January 15<sup>th</sup> 2011)

<sup>122</sup> Approximately 1/3<sup>rd</sup> of Armenia's population lives in Yerevan. Karapetian was not actually a Republican party member at the time.

The governing party's track record on reform does not inspire confidence that the changes President Sargsyan is hinting at will become a reality, with Prime Minister Tigran Sargsyan's previous reform drive having stalled, unwilling to take on difficult problems or entrenched interests according to analysts. The fear remains that changes will be primarily cosmetic in nature, using such positive public relations messages to consolidate its position in advance of elections, fending off fears of a political return for Kocharyan as Ter-Petrosian's opposition appears to be losing momentum. As recent revolutions have shown, the lack of clear, popular opposition leadership is not necessarily a barrier to radical change, particularly given the lack of reform and the recent economic squeeze that Armenia has experienced. However, it is not yet clear that public disapproval of the system has crystallised into the level of anger that would drive Armenians to the streets in the numbers required to bring down the current government, the failures of past street movements in Armenia and elsewhere in the former Soviet Union to achieve sustained political change encouraging disillusionment rather than revolutionary rage. The withdrawal of the Heritage party from Parliament may change the situation over the coming months.

To be fair to President Sargsyan, there remains a chance that these statements and changes are a recognition that real reform is the only way in which his unpopular regime can gain the legitimacy it lacks given its the controversial election and the events of March 1<sup>st</sup>. Rumours abound that the President intends to bring forward Parliamentary elections from 2012 into 2011, most probably in the autumn as part of this process.

Either way, it is therefore critical that the international community, and in particular the EU, holds the President and his party to account for the commitments it has made to 'European values' and political reform, shaping its engagement accordingly with a more clearly defined mix of larger 'carrots and sticks' with which to push for reform.

## EU in Armenia

'Brussels, arguably the least imposing of the three power centres.'<sup>123</sup>

Armenia's largest trade partner by some margin, Europe is widely perceived not to be punching its weight in terms of influence in Yerevan. Comments from leading Armenian analysts included, 'the EU needs to sell itself better to the Armenian public, few really know it is Armenia's main trade partner and ENP investment is not as visible as the US Millennium challenge funding' and 'the EU is too technical, it focuses on process rather than outcomes'<sup>124</sup>. The country's relationship with the EU is built around a jointly agreed European Neighbourhood Policy Action Plan, working within the framework of the 2007-2013 Country Strategy, with specific plans through its National Indicative Programme (NIP) for work in three priority areas, one of which is on strengthening 'Democratic Structures and Good Governance'<sup>125</sup>. The direct funding of projects to back up this up totalled €98.4 million for the 2007-10 period,<sup>126</sup> though encouragingly this has increased to €157 million for the remaining three years of the strategy, of which up to 35% of which will be channelled to the democracy and human rights strand,<sup>127</sup> perhaps a recognition of previous perceived weakness in this regard.

The central thrust of EU-Armenia engagement is around moving towards an Association Agreement, whose centrepiece would be the creation of a 'Deep and Comprehensive Free Trade Area' (DCFTA), to enhance trade through Armenian harmonisation with EU law in a range of technical areas allowing freedom of movement for goods across the EU single market. While the precise details of what is on the table remains behind closed doors, the Civiltas Foundation outlines the differing perspectives from the

<sup>123</sup> The Civiltas Foundation, Armenia in 2010: A Year of Uncertainty <http://www.civiltasfoundation.org/cf/publications/525-a-year-of-uncertainty.html> (accessed February 14th 2011)

<sup>124</sup> Made during the editor's research visit in February 2011

<sup>125</sup> Part of the EU's perception problem with the Armenian public may be down to the myriad different, but similar, documents outlining exactly what it is supposed to be doing for the country.

<sup>126</sup> EU EEAS, Armenia [http://www.eeas.europa.eu/armenia/index\\_en.htm](http://www.eeas.europa.eu/armenia/index_en.htm) (accessed February 25th 2011)

<sup>127</sup> European Union, European Neighbourhood and Partnership Instrument, Armenia National Indicative Programme 2011-2013 [http://ec.europa.eu/world/enp/pdf/country/2011\\_enpi\\_nip\\_armenia\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/2011_enpi_nip_armenia_en.pdf) (accessed February 25th 2011)

two negotiating partners. 'Armenia expects to benefit from the trade allowances while Europe continues to insist on standardization, certification, intellectual property rights and public procurement procedures, as well as pressing for economic monopolies to be dismantled in order to allow maximal benefit from new opportunities. It is uncertain how far the Armenia authorities are prepared to go to meet these expectations.'<sup>128</sup> While regulatory harmonisation and improved safety standards may ease the flow of Armenian goods into the single market without testing or quality control, delivering the required improvement in standards may cause frictions with Armenia's business elite whose economic interests may be jeopardised, limiting the internal desire for reform.

While trade liberalisation may be important at a governmental level, every expert the editor has spoken to argues that what matters most for ordinary Armenians is the issue of European visa liberalisation. Negotiations are due to take place in 2011 around setting up what would be known as an EU-Armenia Mobility Partnership that would enable work towards a Visa Facilitation and Re-admission Agreement, similar to that coming into force in Georgia on March 1<sup>st</sup> 2011<sup>129</sup>. The Georgian agreement reduces the requirements for supporting documentation from a wide range of applicants for short-stay visas, guarantees a 10 day maximum processing time and reduces visa fees from €60 to €35<sup>130</sup> and Armenia would expect a similar set of changes. The eventual goal of visa-free travel may be a long way off but remains perhaps one of the biggest incentives the EU has to offer. It should of course be noted that this process is relevant only for the Schengen area and it is important that Britain takes similar steps to make it easier for Armenians to visit the UK on short stays, while continuing to undertake its wider improvements on enforcement and prevention of abuse of student visas.

Armenia's last Human Rights Dialogue in December 2010 is not perceived to have gone well. The Armenian delegation comprised two deputy ministers without sufficient civil service support that left them unable to answer many of the specific questions they were asked. The dialogue is usually quite a technocratic process whose main drawback is that concerns addressed are not properly fed up the chain to the level of strategic discussions between both sets leaders of leaders. Despite December's setback, the general perception is that the Armenian side is more willing to respond positively to criticism, both inside the dialogue process and more generally, than may have been the case with outside pressure a decade ago. The perception is that the Armenian government is willing to asking for funding and technical assistance related to concerns raised, but it still lacks the commitment to deliver substantive change in practice on these issues.

Although the EU<sup>131</sup> does not send election observers to OSCE member states, leaving the latter body to coordinate monitoring teams, comprising many member state personnel, this is not to suggest that Brussels should or will be disengaged from the election process. The EU needs to consider how best to boost its data gathering capacity in advance of the Parliamentary elections, particularly in the build-up period prior to the arrival of the OSCE team, to formally document cases of media and registration process manipulation.

According to the EU's new 2011-2013 NIP, 'sufficient progress towards the principles and values of democracy, the rule of law and respect for human rights is one of the main preconditions for upgrading contractual relations under the Eastern Partnership.'<sup>132</sup> This commitment is welcome and it is imperative that it is stuck to in order for the EU to maintain credibility on its human rights agenda. It must be matched by more detailed official monitoring of progress against the ENP implementation tools agreed with the Armenian government, building on the important work of the OSI-supported civil society coalition who have been providing an independent assessment against these targets for the last 4

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<sup>128</sup> The Civilitas Foundation, Armenia in 2010: A Year of Uncertainty <http://www.civilitasfoundation.org/cf/publications/525-a-year-of-uncertainty.html> (accessed February 14th 2011)

<sup>129</sup> EU External Action Service, Implementation of Eastern Partnership: Report to the meeting of Foreign Ministers, 13<sup>th</sup> December 2010 [http://www.eeas.europa.eu/eastern/docs/eap\\_meeting\\_foreign\\_affairs\\_131210\\_en.pdf](http://www.eeas.europa.eu/eastern/docs/eap_meeting_foreign_affairs_131210_en.pdf) (accessed February 25th 2011)

<sup>130</sup> Council of the European Union, Conclusion of two agreements with Georgia on visa facilitation and re-admission. [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/118885.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/118885.pdf) (accessed February 25th 2011)

<sup>131</sup> A policy challenged in this author's 2009 publication, Spotlight on Georgia.

<sup>132</sup> European Union, [http://ec.europa.eu/world/enp/pdf/country/2011\\_enpi\\_nip\\_armenia\\_en.pdf](http://ec.europa.eu/world/enp/pdf/country/2011_enpi_nip_armenia_en.pdf)

years<sup>133</sup>. The EU's narrative progress reports provide a helpful if very cautious overview of general performance<sup>134</sup> against ENP objectives but this author would argue that future reporting should, inline with the three strategic priority areas under the framework of the NIP, clearly state if the amount of progress towards the policy's 'specific objectives' was in line with EU expectations and list which 'indicators of achievement' have been met.

There needs to be a clearer linkage between progress against these benchmarks and both the level of aid funding provided to non-priority areas<sup>135</sup> and progress on trade and visa liberalisation. This linkage must be negative as well as positive by reviewing existing trade benefits (within the strictures provided by the WTO framework) and reconsidering long-term visa access for certain influential people if there is significant backsliding in the areas of human rights, governance and democracy. By strengthening its package of trade, aid and visa liberalisation measures, if buttressed by an improved human rights monitoring capacity and willingness to speak out when it feels the Armenian government is underperforming, the EU can make its influence felt more strongly in Yerevan and reassure civil society that it is doing all it can to ensure President Sargsyan sticks to his publicly-stated commitment to European values.

### **The end of the EUSR**

At time of writing, EU Special Representative (EUSR) for the Caucasus, Peter Semneby, had just completed his valedictory tour of his region as his term expired on February 28<sup>th</sup>, with the role ceasing to exist. Whether or how his functions will be replaced is as yet unclear. There are three important reasons why this move would appear to be a mistake. Firstly, it sends a signal to all three South Caucasus states (and the unrecognised territories) that they are a lower priority for the EU than before. Secondly, while some Armenian observers have questioned the perceived low profile of the role (and the EU presence in general), others have noted his behind-the-scenes presence as an important conduit and broker between government and opposition in Armenia, his outside presence lending political weight to what can be provided by the EU delegations. Thirdly, and perhaps most critically,<sup>136</sup> the EUSR had an essential role to play mediating between the respective governments and representatives of Nagorno Karabakh, South Ossetia and Abkhazia that will be physically impossible for members of the respective country delegations due to travel restrictions, even if staff were able to maintain full political objectivity despite their presence in one of the parties of the dispute.

The mooted alternative, a Special Representative for 'Protracted Conflicts' could add to the remit responsibilities for further conflicts in the wider region (e.g. Moldova/Transnistria) or potentially many more across the globe, would dilute the expertise and lose focus on these most complex of issues. Revisiting the remits of the Special Representatives is an understandable part of configuring the EU External Action Service but to lose the coverage of this critical region may be a mistake that could undermine EU efforts to increase their influence in the region and might undermine the momentum behind Eastern Partnership. The EU also faces some related practical challenge due to the split in responsibility between Baroness Ashton for the External Action Service as a whole and Štefan Füle, the Enlargement and European Neighbourhood Policy Commissioner who leads on Eastern Partnership.

### **Council of Europe & OSCE**

As has already been noted, since gaining membership in 2001, the Council of Europe (CoE) has a very important role to play in supporting the cause of reform in Armenia through the country's interaction with three important bodies.

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<sup>133</sup> Partnership for Open Society, Armenia's ENP Implementation in 2010, [http://www.partnership.am/en/European\\_Neighborhood\\_Policy](http://www.partnership.am/en/European_Neighborhood_Policy) (accessed February 23rd 2011)

<sup>134</sup> European Commission, Implementation of the European Neighbourhood Policy in 2009, Progress Report Armenia, May 2010 [http://ec.europa.eu/world/enp/pdf/progress2010/sec10\\_516\\_en.pdf](http://ec.europa.eu/world/enp/pdf/progress2010/sec10_516_en.pdf) (accessed February 25<sup>th</sup> 2011)

<sup>135</sup> This author would in fact argue that it should be linked to all funding outside democracy and governance support, which may even include work on identified economic priority areas.

<sup>136</sup> Although outside the remit of this publication.

As already has been touched upon, Armenia's engagement with the Venice Commission is to be warmly welcomed. However complaints about the process have come in two main strands, notably that the government has sent some draft laws to the Venice Commission without any prior public or civil society consultation, something that would only take place after the Government has received it back from the Commission and submitted the final text to Parliament<sup>137</sup>, with groups finding out about proposed changes from the Commission rather than the Government. Secondly, it has been argued that, while recognising the need to give the Armenian government space to digest the Venice Commission's findings, the CoE body needs to be clearer in its engagement with the Armenian press about where and how its opinion differs from that of the Government, to prevent its engagement in the process of legislative development being portrayed by the Armenian authorities as approval of draft laws, to a greater extent than may be the case. On this point it may just be a reflection of the Armenian press, both of a general government pro-government bias and perhaps of the time limitations experienced by journalists around the world that make it more difficult to digest long documents, as certainly to this author the recent Venice Commission reports seem fairly clear in their analysis.

The CoE's European Court of Human Rights (ECHR) has played an important role, finding 12 cases against the Armenian government in a range of cases including restriction of freedom of assembly in relation to the 2003 election protest, illegal extension of detention periods, inhuman and degrading treatment, several breaches of fair trial due to coerced confessions and failures of due process and the case of Meltex A1+, discussed earlier in this publication. Few rulings have been complied with to the full satisfaction of the court authorities. Armenia is just one example of the importance of the ECHR in providing pressure on countries across the former Soviet Union to tackle substantive human rights failings. British MPs should be aware that the way some of the debate over the controversial issue of the right of prisoners to vote was framed (with certain MPs calling for UK withdrawal from the court's jurisdiction) will have a detrimental impact on the ability of the UK and other international actors to press Armenia for compliance with critical rulings on substantive human rights issues. A renewed focus instead on reform and capacity building at the ECHR and CoE to enable it to focus on core human rights issues would perhaps be a more productive approach for Westminster parliamentarians to take.

With respect to the OSCE, local media representatives have favourably compared robust engagement by ODIHR's Freedom of Media representative with the Armenian government to that of the EU on this issue, while it undertakes a series of low-key but worth reform programmes to improve governance processes in a number of areas such as policing, but as always the difficulty is ensuring implementation matches progress on paper, with the OSCE lacking real tools in its day-to-day operations to press for compliance.

Where the OSCE does possess a clear 'bully pulpit' is its role in election monitoring, the primary organisation to be given an invitation by the Armenian Election Commission, which allows it to assess its performance against OSCE standards. Human Rights Watch have noted that in 2008, the initial findings of the OSCE mission were moderately positive before later statements and their final report listed more substantial concerns, stating that there was 'an insufficient regard for standards essential to democratic elections and devalued the overall election process. In particular, the vote count demonstrated deficiencies of accountability and transparency, and complaints and appeals procedures were not fully effective', outlining examples of counting fraud in around 16% of polling stations observed by the team and implausible turnout figures in at least 100 places around the country.<sup>138</sup> Some observers have criticised OSCE giving the Armenian government access to its final post-election reports before publication, however there is always a balance to be struck here between giving the government the time to provide further technical information and pressure to water down the findings. What is certainly true is that the OSCE must ensure it has a team on the ground significantly in advance of the upcoming

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<sup>137</sup> In discussions and see Forum 18 Armenia: Growing concern over proposed legislative changes on religion.

<sup>138</sup> OSCE/ ODIHR, Republic of Armenia Presidential Election, 19<sup>th</sup> February Election Observation Mission Report, May 2010, <http://www.osce.org/odihr/elections/armenia/32115> (accessed February 25th)

Parliamentary elections to monitor the pre-election build up and to ensure that it has teams on polling day targeting areas believed to be the worst manipulators in 2008.

## UK

Visitors to Yerevan may be surprised that the British Council sits directly opposite the Parliament building while the UK Embassy is sat one door down from the President's residence. However, perhaps a more accurate indicator of the importance that Britain attaches to the country is that the last visit by a full cabinet member to Yerevan was by then Foreign Secretary Rt Hon Sir Malcolm Rifkind MP in 1996, while Rt Hon Geoff Hoon MP and Baroness Scotland were the last Ministers of State to visit in 2006. Nevertheless, the British Council has an important role to play providing support to the promotion of the English language and working with organisations such as the John Smith Memorial Trust to give Armenian high flyers UK-based opportunities. As an aside, it should be noted that in terms of UK priorities in Armenia, the previous Labour government had three overarching themes: conflict, human rights/governance and EU integration. It will not come as much of a surprise that, under the new Coalition government, the latter theme has been watered down and rolled into the second area in order to make way for a new 'Prosperity' priority with a British trade delegation due in the spring.

## The role of Russia

"There is no discrepancy between this reality (the desire for closer EU cooperation) and Armenia's being the CIS and CSTO member and Russia's strategic partner. Our close and multifaceted, I would say in many instances exemplary, cooperation with the Russian Federation can not disagree with the values which are proclaimed by Russia itself. Furthermore, I am confident that our friends – Russia, the West, and all others, will be only happy for our success."<sup>139</sup>

While the EU remains Armenia's biggest trading partner, as has already been explained, Russia remains the source of capital inflows through investment in its economy and the personal transfers of Armenian migrant workers. According to the Armenian Central Bank, Russian remittances equated to \$515.8 million out of a total \$776.9 million in remittances to Armenia for January-July 2010 (compared to \$71.2 million from the US and \$11.8 million from Germany in third place). This was a significant decrease from the previous year, with net cash inflows down by 18.5%<sup>140</sup> and the EBRD arguing that Russian remittances had declined significantly<sup>141</sup>. These half-year figures should be set against the overall GDP estimate for Armenia of \$8.83 billion<sup>142</sup>. Back in 2004, Armenia was the world's 19<sup>th</sup> highest recipient of remittances<sup>143</sup>, a position unlikely to be much changed in recent years. Russia's delayed dip into the global economic slowdown was a contributing factor to Armenia's own delayed dip, the 14.2% fall in 2009<sup>144</sup>, while seasonal migration to Russia has clearly fallen back as a result of the economic climate. However, Armenians have been less badly affected than many other groups by Russia's upsurge in anti-immigrant sentiment (and specifically negativity towards Caucasian people, particularly from Russia's own republics in the North Caucasus). Russia apparently still provides grants to Armenian families to migrate to under-populated areas such as Siberia, and the wider trend of out-migration is perceived to be continuing to Russia and other countries.

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<sup>139</sup> President of the Republic of Armenia Official Website, President Serzh Sargsyan participated at the solemn event dedicated to the 20th anniversary of the Republican Party of Armenia (RPA) <http://www.president.am/events/news/eng/?id=1366> (accessed January 15<sup>th</sup> 2011)

<sup>140</sup> Panarmenian.net 9.1% drop recorded in private remittances to Armenia in January-July 2010

[http://www.panarmenian.net/eng/economy/news/53193/91\\_drop\\_recorded\\_in\\_private\\_remittances\\_to\\_Armenia\\_in\\_JanuaryJuly\\_2010](http://www.panarmenian.net/eng/economy/news/53193/91_drop_recorded_in_private_remittances_to_Armenia_in_JanuaryJuly_2010)

<sup>141</sup> <http://www.ebrd.com/pages/country/armenia/focus.shtml>

<sup>142</sup> Global Finance, Armenia Country Report <http://www.gfmag.com/gdp-data-country-reports/327-armenia-gdp-country-report.html#axzz1EtmPfZUa> (accessed February 24<sup>th</sup> 2011)

<sup>143</sup> World Bank, Migration and Remittances [http://siteresources.worldbank.org/INTECA/Resources/257896-1167856389505/Migration\\_Chapter2.pdf](http://siteresources.worldbank.org/INTECA/Resources/257896-1167856389505/Migration_Chapter2.pdf) (accessed February 24<sup>th</sup> 2011)

<sup>144</sup> Global Finance, Armenia Country Report <http://www.gfmag.com/gdp-data-country-reports/327-armenia-gdp-country-report.html#axzz1EtmPfZUa>

Russia remains by some margin Armenia's biggest investor, with Russian finance accounting for 37.7% of total foreign investment into Armenia, around \$116.885 million (part of a \$2.8 billion investment between 1999 and 2010)<sup>145</sup>. This position has been bolstered by major debt/equity swaps transferring Armenian state assets to Russian companies. Today, the gas supply is controlled by joint venture ArmRosGazprom (ARG), Russian Railways have taken over the operation of the Armenian rail network and 80% of its electricity generation<sup>146</sup> is in Russian hands. As of 2006, the Russian-owned VimpleCom, operating under its Beeline brand name, also owns the Armenia Telephone Company, the former telecoms monopoly. While foreign firms taking stakes in former public utilities is hardly an Armenian innovation, it must be noted that these are much less competitive markets than in comparable Western European models.

In the chaos of the early 90s, Russian units fought both for and against Armenia's forces, former Soviet military equipment was both hawked to the highest bidder between the warring parties on the black market although Russia officially sold arms to both sides in an attempt to maintain a balance. Nevertheless, as the conflict wore on Russian military involvement tended to favour Yerevan over Baku and since the end of the war, Russia has acted as the ultimate guarantor of Armenian security through its continued military presence in the country. As part of a round of lease extensions that will maintain the presence of the Black Sea Fleet in Ukraine, Russia will retain its military base in Armenia at Gyumri beyond its original 2015 departure date. The lease has been extended to 49 years so that Russia will retain access to Gyumri until 2044<sup>147</sup>.

During a recent research visit to Yerevan, the majority of the experts this author spoke to<sup>148</sup> expressed concern about the extent of Russian engagement in Armenia and the impact this has had on the cause of political and economic reform in Armenia. For example, Gevorg Ter-Gabrielyan<sup>149</sup> said "After the March 1, 2008 events and the Russian-Georgian war, Russian influence in Armenia has increased. There are concerns that this relationship has a negative impact on governance and business practices, because it is well known that corruption in Russia is rampant. Armenia is being left to Russian influence. While Medvedev and Putin have been regular visitors to Yerevan, the US President has never visited (unlike Georgia) nor have many Western European leaders." However in his article here, Alexander Iskandaryan gives a slightly different view that 'Russia need not – and does not – particularly care what sort of domestic policies are in place in Armenia as long as Armenia stays under Russia's military wing and does not choose an openly pro-Western orientation.'

To this observer, it seems that the significant Russian investment in strategic sectors of the Armenian economy, particularly by state-owned companies, and its sizable military presence, makes it the most influential international actor in the country. Russia may not attempt to micro-manage the relationship in the way the EU may attempt to<sup>150</sup>, and it certainly would not condition its engagement on reform, given that certain aspects of Armenian political practice and governance mirror its own. However, if its economic, political or strategic interests were at stake, it is clearly in a position to exert significant influence on the Armenian government. How regularly it chooses to or needs to exert that influence is open to debate. While at risk of making a sweeping generalisation about Russian corporate governance, it is likely that such firms may place less onerous formal demands on their Armenian partners, while wielding greater political influence than potential Western alternatives. Russia's role as Armenia's 'strategic partner,' as it was recently described by President Sargsyan, places limitations on the level of influence other international actors can bring to bear to promote governance reform.

## America and other influences

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<sup>145</sup> *Vestnik Kavkaza* Russia increases investment in Armenia, <http://vestnikkavkaza.net/news/economy/7427.html>

<sup>146</sup> <http://www.eurasianet.org/departments/insight/articles/eav101708.shtml>

<sup>147</sup> Marianna Grigoryan Eurasianet.org Russia Signs Base Lease Extension with Armenia, <http://www.eurasianet.org/node/61780>

<sup>148</sup> Admittedly it was primarily amongst Yerevan's liberal academics and NGO activists.

<sup>149</sup> Interview with Gevorg Ter-Gabrielyan February 2010.

<sup>150</sup> In some senses this publication is actually calling on the EU to do more interfering, particularly in regards to political reform.

Given the Foreign Policy Centre's London base, this publication has focused on influences on Armenia from the eastern side of the Atlantic. The focus therefore to some extent underplays the important role of the US in influencing Armenia's policy trajectory. America's Armenian diaspora (particularly in California) is a vocal and well-organised advocate on behalf of Armenia's interests although, as with many diasporas, sentiments are sometimes expressed more radically than at home. The diasporan presence leads to a strong lobbying operation on Capitol Hill to push the case of Genocide Recognition and ensures political and aid engagement beyond what would be expected for a country with no US natural resource interests and comparatively limited bilateral trade. The US's Millennium Challenge Fund has been much more effective in penetrating Armenian public consciousness than the EU's investment, in part given the former's focus on major infrastructure projects as opposed to many smaller projects, but it is also a reflection of the greater scale of money on the table, with \$235 million initially committed for a 5 year programme compared to the €98.4 million provided by Brussels for the 3 year period to 2010. While NGOs have argued that the US has been slow to respond to human rights challenges following the continued problems with the 2009 local government elections, they noted that \$70 million has been docked from the proposed road building programme and, encouragingly, during her recent visit Secretary of State Hillary Clinton made freedom of the media one of her two priority issues.

Mikayel Zolyan and Gevorg Ter-Gabrielyan have already deftly addressed some of the main issues relating to Armenia's troubled relationship with Turkey and Azerbaijan, the closure of whose borders understandably necessitates Armenia's deepening engagement with another controversial partner to its south – Iran. Armenia imports Iranian gas in return for the export of generated energy and its border provides only one of Armenia's two land routes to market. The growing international pressure on Iran will pose challenges for Armenia both in its relations with the US and EU and, in the event of broader economic sanctions being imposed on Tehran, economically.

### **Some ideas for action in Armenia**

As our expert authors have shown in great detail, there is considerable scope for improvement in the way Armenia is governed. This last section aims to bring together the points they have raised along with suggestions from other experts that have helped inform the editor's recommendations<sup>151</sup>.

Perhaps the most important institutional change that needs to be made is removing or reducing the role of the government in the appointments process for key officials across Armenia. Firstly, Armenia should move to end the government appointment of Armenia's 10 provincial governors (marzpetner)<sup>152</sup>, an overly centralised practice shared with Russia, which leads to officials of widely varying quality wielding considerable authority with no popular mandate. It is perceived that several governors were at the root of some of the more egregious violations of the electoral process in recent elections. Interestingly, an analyst<sup>153</sup> suggested that not all of this would have been the result of direct instruction by the ruling party, but out of a desire to be of assistance and prove their usefulness. They claimed that there is a recognition within the Presidential administration that there is a problem with some of the current crop of governors but that they are waiting until after the upcoming Parliamentary elections, with its potential for further violations – a Presidential strategy that if true begs the question, why not act now? If they were serious about tackling the problem, they could perhaps take the opportunity to finally deliver an authoritative report on the failings of 2008 to engineer the removal of past transgressors. Ultimately, there is a strong argument for moving to their direct election by the public or alternatively indirectly by the regional council if linked to a root and branch reform at the level of community government to deliver full democratic accountability.

Secondly, the procedures used by the Government and Council of Justice (CoJ) in the selection and promotion of judges is in need of radical reform. Currently, the President has the power to accept or reject candidates on the list of nominees put forward by the Council of Justice without specifying a

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<sup>151</sup> Please note- the recommendations are the responsibility of the editor alone and may not necessarily reflect the thinking of our authors

<sup>152</sup> David Tumanyan, Local Government in Armenia, <http://lgi.osi.hu/publications/2001/84/Ch6-Armenia.pdf> (accessed February 25th 2011)

<sup>153</sup> From a discussion with a leading Armenian think-tank figure

reason for doing so or by failing to come to a decision within the timeframe allowed. It is clear that the process could be improved by removing the role of the executive in forming the judicial branch of government. The role in selecting judges could pass to the Parliament who could hold open discussions of the candidates in committee, although the dominant role of the governing coalition in the chamber should be noted. Alternatively, there could be a system of judicial self appointment, either through the CoJ or through the creation of an independent commission (the current UK model) separate from the politicians, however this model would run a transparency risk by giving the current pool of judges the power to select their own which may limit outside pressure to reform corrupt practice. Either model, however, is preferable to the current system and should be combined with the removal of Presidential appointees from the CoJ. In any case, under the current format, clear reasons should be given for judicial rejections by the Presidency.

At present, the media regulator, the National Commission on TV and Radio, is made up of half Presidential appointees, half Parliamentary appointees, while the managing body of the public broadcaster is made up entirely of Presidential picks. At present, the constitution firstly restricts Parliament taking sole responsibility for appointments and secondly prevents the legislature from allocating representation between the political parties as decisions are required to be made by majority votes. Short of the constitutional reform suggested below it must be possible for Parliament to choose to put forward, after public hearings, a panel of candidates to be agreed by majority vote that included members of the Parliamentary opposition (at least one of whom should be from the independent party Heritage, dependent on the resolution of its current parliamentary boycott, or future full opposition parties).

As has already been identified, there are real problems around how digitalisation is being used not only to reduce the number of channels available but to make it even harder for opposition voices to be heard on television. The ECHR ruling in the Meltex A1+ case has been interpreted to create one specific news channel under new media legislation rather than to give a licence to long-time applicant in A1+, while local media provisions will prevent the local Gala channel from continuing to broadcast. If the Armenian government believes it has a legitimate argument for restricting the use of the spectrum, then it should publish the findings of a review of available frequencies, conducted for it by Canadian consultants. If national security is raised as a reason for reducing the number of available channels, it must explain why the number of channels available in Georgia is going up, despite facing similar military challenges. Irrespective of the political debate over who gets to have their voices heard on television, on a practical note, the move to digitalisation also risks leaving many elderly and low-income Armenians without access to television at all as the Armenian government is not currently planning to provide financial assistance to help people get a digital box.

Worryingly, the National Commission on TV and Radio has occasionally made noises about requiring all streaming services on the internet to have a license, something that would prevent A1+ from continuing with its online programming. It is difficult to understand a justification for a move such as this given that it would not restrict the spectrum available in anyway, appearing to be a straightforward attempt to restrict freedom of expression. More broadly, there may be a role for international investment, perhaps through the European Bank for Reconstruction and Development (EBRD), to upgrade Armenia's broadband network, whose connection currently passes through Georgia, to enable costs to be brought down, download speeds and penetration to go up, providing both economic benefits and increased access to what is currently a more diverse platform for news and comment. The temporary blocking of internet sites in the wake of March 1<sup>st</sup> 2008 was a deeply worrying precedent and international observers must be vigilant to avoid a repeat.

There are arguments around liberalising the restrictions on election observation, as currently the provisions restrict observers to those given central clearance by the Ministry of Foreign Affairs and the Central Election Commission, meaning that permission is limited beyond the main OSCE delegations at national elections and representatives of the CoE Congress viewing the 2009 local elections. By opening up this process, it could provide a greater role for civil society and diplomatic observation beyond these

more formal channels. Furthermore, there may be a case for electoral reform to address the issue of oligarchs gaining access to Parliament through constituency seats, something that incidentally grants them Parliamentary immunity.

While some of the measures suggested above, such as parliamentary control of appointments processes could be brought in on a de-facto level by creating a policy of automatic Presidential approval of Parliamentary decisions, to formalise many of these reforms would require changes to the constitution, a matter that would require a referendum. Given that, on their own, they may struggle to inspire public enthusiasm, they could be brought together as part of a wider package of constitutional reforms to be brought to a national vote. Such a package should be developed in consultation with independent NGOs and opposition groups, wherever possible given Armenia's fractured political life, in order to build the widest possible consensus for the reforms, something not achieved in the previous constitutional referendum in 2005.

There are a number of additional measures that should be addressed that do not require constitutional change to bring to fruition. Firstly, the small but important complaint raised by local experts (and mentioned in the introduction) is the lack of an independent organisation, based permanently in Armenia, that conducts fully independent political opinion polling<sup>154</sup>. International donors should consider whether this capacity would be helpful to give both experts and the public a clearer picture of the strength of the parties, something that may help clarify the validity of claims that certain parties actually polled three or four times their officially allocated number of votes.

There remains a clear need to maintain political pressure on Armenia to fully comply with the rulings against it made against it by the ECHR, something made slightly more challenging by recent events in the UK parliament. International pressure will be needed to encourage Armenia to turn its international commitments to sexual and gender equality into concrete measures that protect LGBT Armenians from discrimination or attack. Recent proposals on restricting religious freedom should be reconsidered so that they are consistent with their commitments and to the principals of religious toleration and freedom of conscience.

As already discussed, visa liberalisation will help make Armenians feel more wanted by Europe and enable them to more easily experience its culture and way of life. However, it is important to note that exposure to alternative political systems and opportunities does not necessarily translate into a desire to change the system. As elsewhere in the Soviet Union younger people are taking the educational benefits of the Western experience, but are understandably often using their skills to achieve the personal goals within the system or in the private sector, given an acceptance of the Armenian system or lack of faith in its ability to change. As Gevorg Ter-Gabrielyan pointed out, one of the newer regime-supporting parties, the United Liberal National Party (MIAK) actually has its roots in the British Alumni Association of Armenia. Nevertheless, the John Smith Memorial Foundation continues to do important work in this regard, engaging with future civil society and political leaders, alongside the British Council. As the flip side to visa liberalisation for the Armenian public, one of the leading experts the editor met with argues for a restriction of long-term 'gold-plated' visas issued to businesspeople and officials close to the government accused of malpractice and to use international mechanisms developed to track the funding of international terrorism to examine corrupt money flows in and out of Armenia.

There is a critically important role for the UK, EU, US and the international institutions of the Council of Europe and the OSCE in bringing significant pressure to bear on the Armenian government to deliver the changes it has promised. They must prioritise the three interlinked challenges of democratic accountability, media freedom and judicial independence that do more than anything else to undermine the quality of Armenian governance and limit its people's freedoms. The EU in particular must provide clear incentives and penalties through the nature of their trade, aid and visa policies while monitoring

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<sup>154</sup> The Caucasus Research Resource Centres do excellent opinion polling work, as demonstrated here, however they deliberately stay away from measuring the performance of Armenia's political parties.

progress and speaking out firmly but fairly when the Armenian government fails to meet its human rights commitments. However Western governments and institutions must also show that they are committed for the long-haul, making them a credible alternative partner to the Russians who are likely to ask for less and have so far given much more. They must be committed to reinvigorating the moribund Minsk peace process over Nagorno Karabakh and working with Armenia and Turkey to resolve their differences. Achieving progress or resolution to either problem (or both) will help transform Armenia's political and economic landscape but it must also be argued that political reform will enable the country to address both issues from a greater position of strength.

Armenia is country that has had to grapple with huge economic, political and security challenges in the two decades since independence. However, the progress of reform remains slow, much better on paper than it is in practice, with lack of judicial independence, media freedom and democratic development the biggest challenges. It is therefore essential that the international community continues to shine the spotlight on Armenia so that in partnership it can fulfil its potential.

### **Spotlight on Armenia recommendations:**

Spotlight on Armenia makes a number of recommendations for Armenia and its international partners. The Armenian Government should:

- Bring forward a new package of constitutional reform in conjunction with civil society and opposition parties that could include:
  - Ending the Presidential appointment of Judges and members of the Council of Justice, replacing the process with selection by Parliament or an independent Commission.
  - Transferring appointments to the board of National TV and Radio Commission and the Public broadcaster from the President to the Parliament.
  - Transforming local government in Armenia with the election of regional governors and bringing greater accountability at community level.
  - Liberalising the electoral code to facilitate independent election observers
- Further reform the judiciary by increasing judicial salaries to levels appropriate for their status, improve the transparency of the disciplinary system, widely circulate ethics committee findings, improve training, take measures to prevent undue influence by the executive branch or powerful private individuals and where possible remove corrupt members of the existing bench and Council of Justice.

The international community should:

- Consider international donor funding for a permanent independent polling agency.
- The EU needs to develop a package of incentives and penalties that offer further trade, aid and visa liberalisation incentives that are firmly tied to performance against the priority area benchmarks set out in the 2011-13 National Indicative Programme.
- The EU also must fully consider how it replaces the role of the EU Special Representative to the South Caucasus.
- The Council of Europe should provide increased pressure for compliance with outstanding ECHR rulings and for diversity in Armenia's delegation to the Parliamentary Assembly, while working more with the press on Venice Commission findings.
- The OSCE must ensure that its election monitoring mission is deployed as early as possible in advance of any early Parliamentary elections with members targeting areas perceived to have been the worst offenders in the 2008 and 2009 elections.

**Spotlight on Armenia** provides a clear analysis of the major challenges Armenia faces regarding democratic development, rule of law, media freedom, corruption and other human rights issues, while examining the impact of its international relationships on domestic politics. It argues for greater UK, EU and Western engagement in Armenia but that increased incentives must be matched by stronger pressure for reform.

Edited by Adam Hug (Foreign Policy Centre) the pamphlet contains contributions from leading Armenia experts including: The Caucasus Research Resource Centers, Tsira Chanturia (Penal Reform International), Gevorg Ter-Gabrielyan (Eurasia Partnership Foundation), Narine Gasparyan (American Bar Association Rule of Law Initiative), Richard Giragosian (Armenian Center for National and International Studies), Alexander Iskandaryan (Caucasus Institute), Dr Elisabeth Robson (East-West Insight), Vladimir Shkolnikov, Irina Urumova, Anna Walker (Control Risks) and Dr Mikael Zolyan (Brusov University).



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