ARMENIA'S ENP IMPLEMENTATION IN 2008

PARTNERSHIP FOR OPEN SOCIETY PERSPECTIVE

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PREFACE

Partnership for Open Society and its Engagement in ENP Process

The Partnership for Open Society (POS), a coalition of civil society representatives, has acknowledged the European Neighborhood Policy (ENP) as an exceptional opportunity for implementation of democratic, political, economic, and social reforms in Armenia. In our view, introducing the Eastern Partnership format will give a further impetus to the ENP in general and to its political component in particular. We believe that this differentiated approach towards the ENP countries that brings together a group of the Council of Europe members promises a more consistent approach to the democratization agenda of the Action Plans in conformity with the CoE standards and obligations.

The POS has had a systemic engagement with the ENP process in Armenia. Since the early stages of the ENP in Armenia, i.e. development of the Country Report, the POS has been keen to promote and support the ENP process. The POS organized a public discussion of the Country Report and the outlined priorities; later we attempted to take on an active role in conceptualizing and developing the Action Plan (AP). Despite the fact that cooperation of civil society with the responsible government agencies did not take place, POS members, with the support of the Open Society Institute Assistance Foundation – Armenia, embarked on analysis of certain priority areas and development of suggestions for the AP. As a result, a package of suggestions[1] in the areas of rule of law, judiciary, local government, human rights and fundamental freedoms, freedom of information, media and expression, information society, minorities and regional cooperation was prepared and distributed to the government of Armenia, the European Commission (EC) and the Armenian public. It was encouraging to see that some of the suggestions did get included in the final AP, countersigned in 2006.

Since then POS has reflected on each step of the ENP AP development, reinforcing its initial position that the ENP process must be an inclusive process, open to all stakeholders. Thus, civil society experts analyzed the Implementation Tools for 2007, prepared by the Armenian government and made public in September of 2007, comparing it against the AP, and made concrete recommendations[2] on making the process of planning and implementation efficient, thorough and accountable to the stakeholders. One year into the implementation of the AP, the civil society experts reviewed the progress in implementation of actions in certain priority areas in 2007 and developed a set of recommendations[3] for both the Armenian government and their counterparts in the EC before the EC issued the Progress Report. The experts were critical of the overall positive assessment by the EC in the Progress Report for Armenia in April 2008, especially since the report made a reference to parliamentary and presidential elections. As a result, a formal review[4] was conducted comparing the civil society experts' view on progress in key areas to POS and the EC assessment.

In this document the experts reviewed the progress in implementation of actions in the same priority areas a year later, in 2008. While the methodology of the monitoring was the same, the process was different due to the absence of Implementation Tools for 2008. Since the existing draft document was not shared with the civil society and has been officially a closed document, our point of reference will be the AP and the Implementation Tools 2007, in view of the fact that most of the activities in Implementation Tools for 2007 were not implemented.

[1] "Conceptual Recommendations on ENP-Armenia Action Plan ," 2005, available on www.partnership.am
[2] "Analysis of 2007 Implementation Tools of the ENP Action Plan ," 2007, available on www.partnership.am
[3] "European Neighbourhood Policy and Armenia's Reform Agenda, "2008, available on www.partnership.am
[4] "Civil Society Experts Assessment of Progress Report Armenia "Implementation of the European Neighborhood Policy in 2007", " 2008, available on www.partnership.am

It was our plan to monitor the ENP AP implementation through all five years of its cycle. However, the February presidential elections and following March events and the State of Emergency cardinally changed the conditions and the atmosphere in the country altering all future developments and relevance of the previous plan and benchmarks. Due to this we believe that the 2008 Report cannot be limited to a pure comparison of the delivered action to the commitments in the AP. Along with the ENP AP and other large-scale reforms that the government of Armenia has committed to, there are now outstanding PACE resolutions that focus on phenomena unprecedented in the Armenian political life as political prisoners, investigation of police brutality and restoration of suppressed freedoms of assembly and demonstrations. The resolutions explicitly assess the level of freedoms, such as free speech, independence of media, and judiciary at substantially different levels that the ENP assumed as the baseline.

Indeed, the events of 2008 have brought changes in the country: problems with dysfunctional democratic institutions that we have been pointing out for years have become more acute and obvious; new even larger problems (incl. unprecedented developments) have been brought about by the crisis:

- No people had been killed in protest actions since the country's independence in 1991 until March 2008 events.
- Never before had the country been internationally accused of having political prisoners until the massive arrests of opposition members before and after March 1 events.
- No preemptive censorship had been registered in media until the declaration of state of emergency and the period following it.
- No laws had ever gone through such a rapid procedure of adopting/making amendments as those adopted in 2008 (e.g. draft FOI law, amendments to the law on TV and Radio, creation of a body to oversee and regulate media, draft law on Public Chamber, amendments to the law on Ombudsman), with obvious violations of required procedures.
- Never before had government pressure been explicitly exercised on businesses not to rent out halls. Since the end of the emergency situation we have registered numerous cases of rental space refusals for holding civil society events for public debates and discussions due to their perceived "political" nature.
- Never before had so many rejections been received from municipalities in response to requests for organizing public protests, rallies, opposition mass actions, etc.

The new situation that has emerged in the country makes us strongly believe that it is important that the EC re-evaluate the situation and the impact that the crisis and its consequences have had on the situation in Armenia and adjust the priorities and the actions in the Action Plan to adequately address the new reality. It is important to do so not only to come up with concrete steps to overcome this crisis and its negative impact, but also to identify a reform agenda that would allow for the change to be systemic and not purely superficial. This will add to the quality of the democratic institutions, judiciary and the governance vs. cosmetic changes in the legislation and restore public confidence.

The analyses and recommendations compiled in this document have been prepared with support of the OSI AF Armenia by the following experts:
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Avetik Ishkhanyan, Helsinki Committee of Armenia
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ENP AP Priority Area 1: *Strengthening of democratic structures, of the rule of law, including reform of the judiciary and combat of fraud and corruption.*

Reform of the Judiciary

Overview of the Situation

- *De-facto* non-independent judges remained within a *de-jure* independent judiciary, as illustrated by many examples in both the legislation and practice. An overview of the legislation shows that the Council of Justice and, therefore, the whole judiciary remain under the President's influence.

- All of the sensitive cases related to the events of February and March 2008 were, under various excuses, were transferred to and centrally investigated by the Special Investigative Service, and the aforementioned "innovation" would be "successfully" used for the Prosecutor's Office to exercise total control and guidance of certain criminal cases or cases involving certain individuals. In effect, the former powers of the Prosecutor's Office were restored in full, failing to match them with any duties or accountability.

- During the events that took place in 2008 and the legal processes that ensued, several provisions of the Law on Operative-Investigative Activities paved the way for the performance of total surveillance and persecution; in some cases, they were abused to instill an atmosphere of intimidation and restraint among certain parts of society. In other words, many of the unlawful practices of the relevant state bodies were "legitimized."

- The initiative /amending just one article of the Republic of Armenia Law on Advocacy/, being incomplete and absolutely ineffective, has been presented as an example of the state's compliance with its commitments assumed under the ENP in this field.

PRIORITY AREA 1 SPECIFIC ACTIONS

- *Following the reform of the Constitution (concerning separation of powers, independence of the judiciary), develop/adapt laws for the status of judges, the judiciary and the Council of Justice accordingly*

A new legal act on the status of judges, the judiciary, and the new Council of Justice was adopted (the "Judicial Code of the Republic of Armenia"), but genuine safeguards of the independence of judges were not created, and their practical application was not ensured.

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

A new Law on the Prosecution of the Republic of Armenia was adopted, which reduced some powers of the Prosecutor's Office, but later, through further legislative amendments, not only the former position of the Prosecutor's Office was restored, but also this structure was given further privileges in the sphere of

criminal justice. In effect, the former powers of the Prosecutor's Office were restored in the absence of serious responsibilities and accountability.

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

The Council of Justice, which acquired a new status under the Amended Constitution, is effectively unable to guarantee the independence of the judiciary and to act as the final instance with regard to issues related to the activities of judges, because it remains under the influence of the President of the Republic.

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

The free legal aid system has not been improved, because, instead of making the necessary conceptual changes, only episodic and cosmetic changes are being made to the legislation, which is presented as an example of the state's compliance with its commitments assumed under the ENP in this field.

- *Establish administrative courts*

An administrative court has been established, but further in-depth monitoring and review are needed to assess the performance of this crucial institution administering justice.

REFORM OF THE JUDICIARY

Overview of the Present Situation

The amendments to the Constitution adopted on November 27, 2005 marked the beginning of the second phase of the judicial reform in the Republic of Armenia. While maintaining the general framework of the judiciary enshrined in the 1995 Constitution, which is built around the principle of the separation of powers, the constitutional reform aimed at improving the existing system.

The 2005 constitutional amendments in the judicial sphere generally encompass the following:

- Prescribing more democratic and thorough rules on the Constitutional Court;
- Changing the status of the Cassation Court;
- Introducing additional safeguards of the independence of judges;
- Expanding the scope of the constitutional foundations of justice and providing more detailed regulation of some of the existing foundations; and
- Revising the composition and operational procedures of the Council of Justice, etc.

Main Issues

Though the constitutional amendments were followed by the adoption of a number of new laws and amendments to various existing laws, it has still not been determined to what extent the recent amendments are in line with the spirit and substance of Armenia's commitments under the EU-Armenia ENP Action Plan.

Moreover, at hindsight, the analysis of the events that took place in February and March 2008 leads to the conclusion that the majority of the amendments followed a certain pattern and was designed to achieve specific goals.

THE JUDICIARY

Overview of the Present Situation

The primary objective of the reform was to create a comprehensive, independent, and impartial judiciary. This was reflected in the Judicial Code of Armenia adopted by the National Assembly of Armenia on February 21, 2007.

The newly-adopted Judicial Code addressed a number of key issues. For the first time ever, the Code systematically regulated various issues related to the organization and performance of the judiciary, which were previously regulated by separate laws (the Law on the Council of Justice, the Law on the Judiciary, and the Law on the Status of Judges). Moreover, specialized courts (criminal and civil courts, as well as an administrative court) were created. The role and significance of the Cassation Court have changed completely: presently, the main function of the Cassation Court is to ensure the consistent application of law and to facilitate the development of law. Self-governing bodies of the judiciary (the General Assembly of Judges of Armenia and the Council of Court Chairmen) have been contemplated by the Code. A school for the training of judge candidates (the Judicial School) has been created to ensure the supply of qualified professionals to the judiciary.

Main Issues

Nevertheless, the judicial reform in general and the Judicial Code in particular have failed to address the main problem, which is to create safeguards for the true independence of judges and to ensure their implementation in practice. The measures aimed at the independence of the judiciary could not secure the genuine independence of individual judges. As a result, *de-facto* non-independent judges remained within a *de-jure* independent judiciary, as illustrated by many examples in both the legislation and practice.

The Council of Justice, which gained a new status under the Amended Constitution, was designed to be one of the main safeguards of the independence of both the judiciary and independent judges. However, an overview of the legislation shows that the Council of Justice and, therefore, the whole judiciary remain under the President's influence.

Below are some telling examples of this influence:

- By law, the Council of Justice has the right to compile the List of Judge Candidates, but the President of the Republic issues a decree to approve the List compiled by the Council of Justice, with the names of the candidates that are acceptable to him (Article 117(4) of the Judicial Code);
- The Official Promotion Lists of judges of first instance specialized courts and appellate courts, too, are compiled by the Council of Justice through a secret vote, but the President of the Republic leaves in the List the names of candidates that are acceptable to him and issues a decree within a 10-day period supplementing the Official Promotion List. If the List is not supplemented during such period, it is deemed rejected (Articles 137(9) and 138(8) of the Judicial Code);
- The procedure is effectively the same for the appointment of candidates nominated for the vacant position of judges of the universal jurisdiction court. If the candidate agrees, the Chairman of the Cassation Court proposes the candidacy to the Council of Justice. Through an open vote, the latter issues a positive opinion on the proposed candidacy, if the procedures stipulated by the Code have not been violated. If the Council of Justice issues its positive opinion, the candidacy is presented to the President of the Republic. If the President does not appoint the judge within two weeks of receiving the proposal, the candidacy is deemed rejected, the person's name is removed from the List of Judge Candidates, and the nomination for the vacant position starts anew (Paragraphs 9 and 10 of Article 123 of the Judicial Code).

In this situation, it is no surprise that the judges appointed through this procedure mostly convicted persons charged in connection with the events that took place in February and March 2008 (with the rare exception of only one or two cases). Therefore, one cannot but agree with the statement made by the

Parliamentary Assembly of the Council of Europe in Resolution 1609: "…despite successful legislative reforms, the courts still lack the necessary independence to inspire the public's trust as impartial arbiters…"

"The same lack of judicial independence is also reflected in the fact that the courts do not appear to question the necessity of keeping people in detention pending trial and generally respond favorably to requests by the prosecutors without properly weighing up the grounds for this, as required by … the European Convention on Human Rights."

THE PROSECUTOR'S OFFICE

Overview of the Present Situation

The constitutional reform was aimed at creating not only an independent judiciary, but also a Prosecutor's Office independent from all the branches of the power. It also implied a structural change of the prosecution system, which was reflected in the new Law on the Prosecution of the Republic of Armenia, adopted on February 22, 2007.

The Law enshrined the main principles of the organization and functioning of the Prosecutor's Office, the new procedure for the appointment of the Prosecutor General of Armenia (upon nomination by the President of the Republic, the Prosecutor General is now appointed by the National Assembly for a term of 6 years; in cases prescribed by law, the National Assembly may, upon recommendation by the President of the Republic, remove the Prosecutor General by a simple majority vote of the members of the National Assembly), the prosecution system, structure, the terms and procedure of the subordination, appointment, and dismissal of prosecutors, as well as guarantees of immunity and material and social safeguards for the prosecutor. Undoubtedly, the main achievement of the Law was the removal of the criminal case investigation function from the Prosecutor's Office, as a result of which the Prosecutor's Office is now expected to focus mainly on supervising the lawfulness of the pre-trial investigation of criminal cases.

Main Issues

The subsequent events showed that there was no real intent to remove the investigation function from the Prosecutor's Office. Persistent legal amendments not only restored the former position of the Prosecutor's Office, but also delegated further privileges to this organization in the sphere of criminal justice.

The first step was the adoption on November 28, 2007 of a Law on the Special Investigative Service, which created a new, formally independent body to investigate criminal cases (the Head of the Investigative Service is appointed by the President of Armenia upon nomination by the Prosecutor General).

In line with this Law, amendments were also made to the Criminal Procedure Code of Armenia to provide that investigators of the Special Investigative Service shall conduct the pre-trial investigation of cases related to crimes committed by or with the participation of senior officials of the legislative, executive, and judicial authorities of Armenia or persons performing special state service in connection with their official position, as well as of criminal cases related to the electoral process (Articles 149, 150, 154.1, and 154.2 of the Criminal Code of the Republic of Armenia).

Besides, another provision stipulated that, if necessary, the Prosecutor General may take from the investigators of other investigative bodies and transfer to investigators of the Special Investigative Service criminal cases related to crimes committed by or with the participation of the aforementioned persons, or cases in which such persons were recognized as victims (Article 190(6) of the Criminal Procedure Code of Armenia).

Later, it became obvious that all of the sensitive cases related to the events of February and March 2008 were, under various excuses, transferred to and centrally investigated by the Special Investigative Service, and the aforementioned "innovation" would be "successfully" used for the Prosecutor's Office to exercise total control and guidance of certain criminal cases or cases involving certain individuals. In effect, the former powers of the Prosecutor's Office were restored in full, failing to match them with any duties or accountability.

OPERATIVE INVESTIGATIVE ACTIVITIES

Overview of the Present Situation

The reform process affected the sphere of operative investigative activities performed by the state. The Law on Operative Investigative Activities adopted on October 22, 2007 was a significant step towards regulating this type of state activity, because previously, criminal intelligence and special operations were not regulated at all: the acts prescribing rights and responsibilities in this sphere were not only not published in accordance with the procedure stipulated by law, but were also treated mainly as state secrets, on which there was no record-keeping.

Main Issues

The analysis of the Law shows that it contains provisions that clearly overshadow the upsides and advantages of this legal act. The Law does not prescribe clear safeguards to protect the rights, freedoms, and lawful interests of persons subjected to operative investigative actions. Moreover, the Law does not prohibit restrictions of certain rights. There is no possibility to appeal against the acts of bodies performing operative investigation and so on.

Besides, the Law has unfairly reduced the scope of prosecutorial supervision of this type of state activity: under the Law, the prosecutor may supervise the lawfulness of operative investigative activities only in the context of the prosecutorial guidance of pre-trial investigation activities, even though operative investigative activities may be performed also prior to the instigation of a criminal case.

Under the Law, operative investigative activities called "surveillance of telephone conversations" may be performed only by an agency that functions within the auspices of the National Security Service Headquarters, which is placed completely under the direct control of the President of the Republic: the President may appoint and dismiss the head of this agency upon nomination by the Head of the National Security Service Headquarters, and approve the by-laws, structure, and staffing of this agency.

Finally, the Law provides that the findings of a number of operative investigative activities may be treated as evidence, which directly contradicts the relevant provisions of the Criminal Procedure Code of Armenia, whereby the findings of operative investigative activities may not be admitted as evidence.

During the events that took place in 2008 and the legal processes that ensued, several provisions of the Law on Operative Investigative Activities paved the way for the performance of total surveillance and persecution; in some cases, they were abused to instill an atmosphere of intimidation and restraint among certain parts of society. In other words, many of the unlawful practices of the relevant state bodies were "legitimized."

ACCESS TO JUSTICE

Overview of the Present Situation

An integral component of judicial reform is the provision of effective access to justice, especially the creation of a sound system for providing free legal aid. The experience of the structures created in the first phase of the judicial reform, compared to the international practice, has shown that this component of access to justice can only be achieved through systemic reform, which would have been addressed by the draft Law on Free Legal Aid Provided by the State, drafted with the support of the OSI Assistance Foundation-Armenia and circulated for a public discussion.

Main Issues

Nonetheless, a different solution was preferred in the judicial reform process, namely, amending just one article of the Republic of Armenia Law on Advocacy, through the Chamber of Advocates, to regulate a sphere that previously was not regulated at all.

This prospect is negative for a number of reasons. Firstly, there are no clear criteria for determining who is insolvent. Secondly, there are no mechanisms for providing the needed aid, which can have far-reaching negative consequences of the relevant stakeholders.

Besides, the current number of public defenders employed by the Office of the Public Defender (34, of which 7 are half-time employees) simply cannot ensure the provision of free legal aid to the indigent groups of society, especially in the regions.

This initiative, being incomplete and absolutely ineffective, has been presented as an example of the state's compliance with its commitments assumed under the ENP in this field.

RECOMMENDATIONS:

The overview of these problems leads to the conclusion that the reforms in the judiciary have not addressed the majority of the existing problems; rather, new problems have been created, which require a comprehensive and persistent solution. In this respect, it is necessary:

1. To amend the Judicial Code of Armenia comprehensively to introduce safeguards of the genuine independence of judges;
2. To amend the Criminal Procedure Code of Armenia and the Law on Operative Investigative Activities to preclude the *de-facto* performance of criminal investigation functions by the Prosecutor's Office and to abolish total control of the Prosecutor General over the investigation agency; and
3. To amend the Law on Operative Investigative Activities with a view to maximize its conformity to the international standards.
4. To implement effective measures to submit to the National Assembly the circulated draft Law on Free Legal Aid Provided by the State, to have it adopted, and to amend other legal acts in connection therewith.

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

Corruption

Overview of the Situation

The Anti-Corruption Strategy expired at the end of 2006. Nevertheless, the Terms of Reference for the development of a new Strategy was approved only in late 2007, while the development of the new Strategy was commenced by the expert group in 2008.

In 2008, numerous legislative and sub-legislative acts focusing on anti-corruption were adopted and/or enacted; along with several other anti-corruption initiatives. Some of them are listed below:

- The Chamber of Control revealed serious violations and abuse cases related to urban development, agriculture, city heating and gasification as well as distribution of apartments[5]. So far, there has been no information about the consequences of these findings.

- In 2008, the Prosecutor's Office conducted discussions with the participation of law enforcement, tax and customs services as well as representatives of other interested organizations and journalists in Yerevan and marzes on specificities of prevention, detection and investigation of corruption crimes.

- The new judiciary system has been established based on the amended Judicial Code[6] and Administrative Procedure Code[7], due to which courts, the new system of court chairman appointment and remuneration, the judicial department (service), the judicial school, etc. are made operational.

- During the first six months of 2008, the Special Investigation Service examined 29 criminal cases; 13 out of them being against 19 persons (including 14 officials)[8]. In accordance with the law[9], this entity is authorized to examine criminal cases involving high ranking state officials, law enforcement representatives and persons related to electoral processes. However, according to media reports[10], the cases were mainly initiated against low and medium level officials.

- The Republic of Armenia Law on Declaration of Assets and Incomes by Physical Persons[11] has enabled revealing assets and incomes illicitly acquired by state officials and their relatives/associates. Nevertheless, there is no information on non-filed declarations, declaration of wrong information and appropriate sanctions applied.

[5] "Hayastani Hanrapetutiun" daily, September 18, 2008 and November 6, 2008
[6] Official Gazette of the Republic of Armenia, #20 (544), April 18, 2007
[7] Official Gazette of the Republic of Armenia, #64 (588), December 19, 2007
[8] "Hayastani Hanrapetutiun" daily, August 5, 2008
[9] Official Gazette of the Republic of Armenia, #61 (585), December 5,,2007
[10] http://www.transparency.am/media_archive.php
[11] Official Gazette of the Republic of Armenia, #2 (592), June 9, 2008

- A number of laws on Making Amendments and Modification to the Republic of Armenia Law on Organizing and Conducting Audits in the Republic of Armenia[12], on Trade and Service, on Application of Cash Registers, on State Duty, on Taxes, on Licensing and others[13] are targeted at fighting shadow economy in the private sector and decreasing corruptions risks in the tax system. The Tax Service conducted audits in large stores and revealed violations related to cash registers in all of them[14].

- Procedures of Passport Departments have been simplified. For instance, samples of 7 different application forms have been distributed to all Passport Departments.

- Extra budget was formed due to the Traffic Police reforms, 30% of which is earmarked for the payroll fund of traffic police leading to 35% increase of the police funding.

Over this period, reforms were implemented in other sectors as well (e.g. Customs Service), however, this report covers only measures related to anti-corruption actions implemented or planned in the scope of ENP.

Despite the above-mentioned steps, Armenia's score in 2008 Corruption Perception Index of Transparency International[15] is "2.9", and it still remians among the most corrupt countries having an index below "3" (according to "1-10" range, where "1" means "highly clean" and "10" – "highly corrupt").

The data published by Freedom House in 2008 ("Countries in Transit" Report[16]) prove that the corruption index remained the same - 5.75 (according to "1-7" range, where "1" means "highly clean" and "7" – "highly corrupt) compared to the previous years.

Building on the reports of local and international organizations related to the 2008 presidential and local elections[17] as well as numerous reports of the media, we can conclude that political corruption, i.e. abuse of administrative, media, financial and other resources, vote bribing, etc. particularly deepened in Armenia during the reporting period.

In June 2008, the First and Second Round Evaluation by the GRECO experts[18] was published, according to which Armenia has implemented satisfactorily only 7 recommendations out of 24 and 3 of them were not implemented at all. According to the Foreign Ministry of Armenia, in early 2008 the Government of Armenia submitted a self-assessment checklist on the UNCAC (UN Convention against Corruption) Secretariat which was a mandatory requirement for the countries having joined the Convention but the report is not subject to publication.

In April 2008, evaluation of the progress made by Armenia in the implementation of the ENP Action Plan during 2007 was released,[19] where parallel to a number of positive steps it was indicated that the issue of effective application of anti-corruption legislation and policy has not been addressed yet.

[12] Official Gazette of the Republic of Armenia, #59 (649), September 24, 2008
[13] Official Gazette of the Republic of Armenia, #59 (649), September 24, 2008
[14] "Hayastani Hanrapetutiun" daily, September 29, 2008
[15] http://www.transparency.org/policy_research/surveys_indices/cpi/2008
[16] http://www.freedomhouse.hu/nit.html
[17] http://www.transparency.am/elections.php, http://www.transparency.am/elections_2008.php, http://www.transparency.am/monitor_archive.php, http://www.transparency.am/monitor_archive_2008.php
[18] http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC1&2(2008)3_Armenia_EN.pdf
[19] "European Neighbourhood Policy and Armenia's Reform Agenda, "2008, available on www.partnership.am

PRIORITY AREA 1 SPECIFIC ACTIONS

- *Establish administrative courts.*

See below.

- *Review progress made in the implementation of the national Anti-Corruption Strategy through the implementation of the corresponding Action Plan and ensure active participation of civil society and business representatives in monitoring implementation (during 2006).*

The progress in the implementation of the Anti-Corruption Strategy has been somewhat evaluated in the draft new Strategy. As of November 2008, only three of the five chapters of the new 2008-2012 Strategy have been elaborated; of these three, the second and third have been presented to a number of non-governmental organizations for discussion. At the suggestion of NGOs, especially the Transparency International Anti-Corruption Center, the different chapters of the draft Strategy were posted on the website of the Armenian Government (http://www.gov.am/armversion/premier_2/primer_council_6hashvet_new1.htm) in October 2008. The new strategy and its action plan will be finalized only in 2009.

- *Evaluate the process of introduction and formation of the civil service system and ensure continuous improvement of the civil service system in accordance with European norms and standards (during 2006).*

An evaluation of the situation with the civil service will be presented in the upcoming "Monitoring Report on Democratic Reforms in Armenia" to be published in the beginning of 2009 by the Yerevan Press Club, the Partnership for Open Society Initiative and the Open Society Institute Assistance Foundation-Armenia.

The Action Plan contemplates eight anti-corruption actions, which are listed below.

1. *Ensure an adequate prosecution and conviction of bribery and corruption-related offences by improving procedures on appeals to courts against administrative decisions, taking into account the establishment of administrative courts in 2006 following the signature of the UN Convention against Corruption in May 2005.*

Though the Law on Administration Principles and Administrative Proceedings was adopted in Armenia on January 1, 2005[20], administrative courts were created only on January 1, 2008[21]. Administrative courts hear disputes of public law, in which one side is a state government or local self-government body or official, and the other is a private person. According to Tigran Mukuchyan, the Chairman of the Administrative Court of Armenia, the Court receives a large number of claims related to payment orders, which are mainly connected with the activities of tax and customs bodies, the traffic police, the Yerevan municipality, local self-government bodies, the state register, and the real estate cadastre. At the end of August 2008, 60-65% of 2,288 cases were adjudicated in favor of the private person. The Administrative Court has had "open house" days for citizens, on which it disseminated free of charge the text of the Law on Administration Principles and Administrative Proceedings, as well as the commentaries to the Law.

Nonetheless, given the absence of statistical and analytical data, it is now difficult to draw any conclusion on whether the first year's performance of the Administrative Court has contributed significantly to the adequate prosecution and conviction of bribery and corruption-related offences. Experts believe that, with the exception of cases of economic nature, the decisions of the Administrative Court are normally in favor

[20] Official Gazette of the Republic of Armenia, #18 (317), March 31, 2004.
[21] Official Gazette of the Republic of Armenia, #20 (544), April 18, 2007.

of the state body involved (for instance, the appeals against decisions made by the Yerevan Municipality under the Republic of Armenia Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations).

2. *Ensure that the Criminal Code, in particular the definition of bribery and corruption-related offences, is in line with international standards such as the UN Convention on Corruption, the Council of Europe Criminal Law Convention on Corruption and Civil Law Convention on Corruption and, once ratified, the OECD Convention on combating bribery of Foreign Public Officials in International Business Transactions, in order to ensure adequate prosecution and conviction.*

The definition of bribery and corruption-related offences in the Criminal Code of the Republic of Armenia[22] (Articles 311 and 312) is mostly in line with the international standards. As for the classification of corruption-related offences, given the requirement under the OECD Istanbul Anti-Corruption Action Plan to clarify what are corruption-related offences, initially 22 and later 59 articles were identified in the Criminal Code of Armenia. According to Armen Ashrafyan, the Head of the Department against Corruption and Organized Crime in the Office of the Prosecutor General of Armenia, the number of these offences has now been reduced to 22, considering the international experience, and certain crimes against the economic order have been added, bringing the total number of such offences to 28.

In 2008, the Criminal Code of Armenia was supplemented with several offences, which, given their substance, are directly corruption-related offences: Article 311.1, in particular, concerning the receipt of unlawful compensation by public servants, or Article 311.2 concerning the use of real or assumed trading influence, or Article 312.1 concerning the giving of unlawful compensation to public servants who are not officials.[23]

As the Office of the Prosecutor General of Armenia does not provide segregated statistics on each of the 28 corruption-related offences, it is difficult to understand the extent to which the current definition and classification ensure the adequate judicial prosecution and conviction of corruption-related offences.

3. *Implement and enforce specific anti-corruption measures within the law enforcement agencies (police, state border service and judiciary), including the development of Codes of Ethics for prosecutors and judges and the implementation of the European Code of Police Ethics as adopted by the Council of Europe Committee of Ministers on 19 September 2001.*

There are Codes of Ethics for judges (see Chapter 12 of the Criminal Code[24]), prosecutors (Decree 17 dated May 30, 2007 of the Prosecutor General of Armenia[25]), and police officers (the Republic of Armenia Law on Approving the Disciplinary Code of the Police[26]). It has been impossible to receive any information on the border service, as the leadership of the National Security Service of Armenia (which is in charge of the border service) did not respond to the interview request of the Transparency International Anti-Corruption Center.

The Commentaries to the Code of Conduct for Judges of the Republic of Armenia were published in 2007 in the form of a separate brochure. According to information received from Misak Martirosyan, the First Deputy Head of the Judicial Department of Armenia, Secretary of the Council of Court Chairmen, the Judicial Ethics Committee under the Council discussed 9 cases related to the Code of Conduct for Judges

[22] Official Gazette of the Republic of Armenia, #25 (260), May 2, 2003.
[23] Official Gazette of the Republic of Armenia, #33 (623), June 4, 2008.
[24] Official Gazette of the Republic of Armenia, #25 (260), May 2, 2008.
[25] http://www.genproc.am/main/am/23/2153
[26] Official Gazette of the Republic of Armenia, #29 (401), May 18, 2005.

in 2007, and 3 cases as of September 2008. The materials of the Ethics Committee mainly consist of complaints from citizens. The cases are referred to the Disciplinary Committee, if the Ethics Committee considers that a judge should undergo a disciplinary sanction. In 2007, 3 of the 9 cases were submitted to the Disciplinary Committee.

If the Code of Conduct for Prosecutors is breached, a prosecutor undergoes a disciplinary sanction in accordance with Article 46(3) of the Republic of Armenia Law on Prosecution[27]. The Prosecutor General of Armenia is the guarantor of compliance with the Code of Conduct for Prosecutors; one of the deputies of the Prosecutor General is the Chairman of the Prosecution Ethics Committee. According to information provided by the Head of the Department against Corruption and Organized Crime in the Office of the Prosecutor General of Armenia, the Committee had only one session in 2007-2008, during which it discussed a complaint regarding a breach of the Code of Conduct by the Prosecutor of the Erebouni District of Yerevan and decided to remove the Prosecutor from office.

According to Gevorg Mheryan, the Deputy Chief of Police of Armenia, the Police has adopted a different approach: there is a Collegium in which various, including ethics issues are raised. The Collegium consists of senior officials of the Police and the Heads and Deputy Heads of main departments, and is chaired by the Police Chief. The Collegium must convene sessions semiannually; however, there may be additional sessions when necessary. The Collegium discusses any breach of ethics and decides whether or not to apply a disciplinary sanction. Previously, most of the complaints were against the Passport and Visa Departments and the Traffic Police. The Deputy Chief of Police says there have been major changes, and the previous difficulties have been minimized. However, no information was provided concerning a number of ethics-related complaints.

4. *Ensure the effective monitoring of the declaration of assets and income by officials through an amendment to the Law on Declaration of Assets and Income by High-level State Officials to establish sanctions in case of wrong declarations.*

The Law on Declaration of Assets and Income by High-level State Officials was repealed effective January 1, 2008. It has been replaced with a Law on Declaration of Assets and Income by Phisical Persons. Article 5 of the new Law requires such declarations to be filed by all the employees of state government and local self-government bodies, regardless of the amount of their salary. Under this Law, the deadline for submitting declarations for 2007 is April 15, 2008. Chapter 8 of the Law prescribes more severe sanctions for submitting wrong declarations than the previous law. Nevertheless, the enforcement of the Law was postponed by one year.[28]

According to information received from Aharon Chilingaryan, the Deputy Chairman of the State Revenue Committee of Armenia, about 50,000 declarations were received as of September 2008 in the frameworks of the old law. No information has been published on the statistics for 2007, including the number of officials that have not submitted declarations, how many submitted wrong declarations, and what sanctions were applied.

5. *Ensure progress in implementing the recommendations of the Council of Europe Group of States against Corruption (GRECO).*

[27] Official Gazette of the Republic of Armenia, #19 (543), April 11, 2007.
[28] Official Gazette of the Republic of Armenia, #2 (592), January 9, 2008.

In June 2008, the First and Second Round Evaluation by the GRECO experts[29] was published, according to which Armenia has implemented satisfactorily 7 recommendations, dealt in a satisfactory manner with 5 recommendations, partly implemented 9, and has not implemented 3.

6. *Ensure the possibility of court appeals against all levels of administrative acts, including through establishment of administrative courts in 2006.*

See Paragraph 1.

7. *Increase the salary of judges to a level which ensures service with dignity in order to reduce corruption.*

The salaries of judges of the first instance, appellate, and cassation courts were increased under the Judicial Code that took effect on April 7, 2007 (see Article 75 of Chapter 11 of the Code)[30], but only by 15-30%, which cannot ensure service with dignity. A newly-appointed judge who does not get any bonuses will typically have a payroll salary of 220,000 drams (approximately US $700). As for the remuneration of judicial servants, the Judicial Code[31] makes references to the Law on Civil Service, as there is no separate law on judicial servants.

8. *Ensure the implementation of procedures to implement the Codes of Ethics for judges and prosecutors including the introduction of effective oversight systems to monitor the compliance of judges and prosecutors with the Code of Ethics.*

There is no information in addition to that presented under Paragraph 7.

RECOMMENDATIONS:

1. In the process of elaborating documents for the new anti-corruption policy, demand the authorities to ensure a high degree of transparency and participation (especially by organizing public discussions and consultations with public officials, members of parliament, experts, NGOs, and specialized journalists).
2. Analyze all of the failures of the last five years' "fight against corruption in Armenia," including various reasons for such failures, and adequately assess the current situation and future plans.
3. Make sure that the new Anti-Corruption Strategy not only includes all three principles (detection, prevention, and public support), but also reflects appropriate measures in the Strategy Implementation Action Plan.
4. In the elaboration of the Anti-Corruption Strategy, the concept of a National Integrity System in relation to the key institutions should be applied (the executive, the legislature, the judiciary, elections, political parties, supervisory agencies, law-enforcement bodies, the private sector, civil society, the mass media, international organizations, etc.).
5. Strengthen the capacity and authority of anti-corruption bodies (ensuring external and international oversight) and safeguard effective communication and coordination among them and with other state agencies.
6. Ensure measurable indicators to monitor the implementation of the Anti-Corruption Strategy and prescribe specific arrangements to safeguard the effectiveness of the monitoring to be performed by the state and the public.

[29] http://www.coe.int/t/dg1/greco/evaluations/round2/GrecoRC1&2(2008)3_Armenia_EN.pdf
[30] Official Gazette of the Republic of Armenia, #20 (544), April 18, 2008.
[31] Ibid.

7. In the documents for the new anti-corruption policy, include all of Armenia's international commitments regarding the fight against corruption and appropriate measures in accordance with such commitments.
8. Develop a procedure requiring regular official reporting on the implementation of the new Strategy, including progress towards meeting of the country's international commitments.
9. Request the international organizations to tighten control over Armenia's compliance with international commitments and to apply sanctions for the frequent failure to honor such commitments without a reasonable excuse, and efficiently coordinate the international support (programs) to curb corruption in Armenia.
10. Pay special attention to such widespread issues in Armenia as vote buying, the abuse of administrative, human, and media resources for a particular candidate, lack of transparency in campaign financing, other forms of political corruption, and the integration of political and economic interests, and contemplate adequate measures to curb corruption in these spheres.

Amalia Kostanyan
Chairwoman of the Transparency International Anti-Corruption Center

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

Human Rights and Fundamental Freedoms

Overview of the Situation

Violations of human rights in Armenia are widespread at times of political tension, especially during elections. The authorities, identifying themselves with "the state," utilize all of the state machinery and administrative resources. Vote buying has played a significant role since 1998. The presidential election of February 2008, for which the campaign started in 2007, was no exception.

The tension peaked after the preliminary results of the election were publicized on February 20. A permanent sit-in of the opposition began, accompanied with demonstrations and rallies with many thousands of participants. Early in the morning of March 1, 2008, special units of the police used force to disperse the demonstrators gathered in the Freedom Square. According to the official version of the events, the law-enforcement bodies had initially pursued the aim of performing a search, but, having encountered resistance by the demonstrators, had engaged additional forces and dispersed the sit-in. The opposition claims that the police used violence to disperse the peaceful demonstrators. The opposition, with several dozen thousand of its supporters, gathered in the area near the French, Italian, and Russian embassies, barricaded themselves, and prepared for resistance. During the evening of March 1 and very early on March 2, there was a clash between the opposition and law-enforcement agencies, during which firearms were used. As a consequence of the clash, 10 people (eight civilians and two officers of the interior troops) died, and 210 (including 55 military servicemen) were injured.

A decree of President Kocharyan dated Mach 2 introduced a 20-day state of emergency in the City of Yerevan; this was done in the absence of a law on the state of emergency. The next day, the National Assembly of the Republic of Armenia endorsed the presidential decree. Restrictions were imposed on the freedom of expression, the freedom of assembly, and the freedom of movement, which also paralyzed NGO activities. Under the decree on the state of emergency, the mass media had the right to publish only official news reports; however, the pro-government mass media, especially the Public Television, were effectively filled with programs and publications criticizing the opposition. As for the opposition press, censorship was introduced, and their publication was effectively prohibited. The websites supporting the opposition were blocked, as well. Even before introducing the state of emergency, opposition activists were being arrested; after March 2, the arrests became widespread. According to official reports, 106 people were detained, while four others were declared fugitive. They were mainly charged with Article 225 of the Criminal Code of Armenia ("mass disorder"), Article 300 ("usurpation of the state power"), and Article 316 ("violence against a representative of the power"). The detainees were frequently subjected to ill-treatment both while being arrested and later in the police stations. Most of them were deprived of the right to have legal counsel and, contrary to the law, were at times kept in police stations for two or more days. In addition to those officially declared to have been detained, opposition supporters were persecuted throughout Armenia: they would be apprehended to police stations, and their apartments were searched. The repression continued even after the end of the state of emergency, when the opposition began "political strolls" in the Northern Avenue of Yerevan. The people that took part in the "strolls" were being apprehended to police stations, kept for several hours, and then released.

On March 17, during the state of emergency, the National Assembly adopted amendments to the Law on Holding Meetings, Assemblies, Rallies, and Demonstrations, which severely restricted the freedom of assembly; one of the amendments permitted the local authorities to prohibit demonstrations for a certain

period. Under these circumstances, the Parliamentary Assembly of the Council of Europe adopted Resolution 1609 on Armenia on April 17, which made a rather objective assessment of the situation in Armenia and set a number of obligations to be fulfilled by the authorities and the opposition prior to the June part-session of the Assembly.

The following should be considered a priority for the country:

- Political prisoners (especially those charged with Articles 225, 301, and 316 of the Criminal Code of Armenia, since these articles leave room for arbitrary interpretation) must be released as soon as possible.
- More attention should be paid to the independence of the judiciary, and ensuring pluralism and the freedom of expression.

PRIORITY AREA 2 SPECIFIC ACTIONS

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

Paragraph 10 of the Government Decree dated July 19, 2007 (on the Implementation of the EU-Armenia ENP Action Plan) refers to enforcing, rather than amending the Law. Effectively, the Government decree does not refer to improving the Law.

On March 1, 2008, a presidential decree introduced a 20-day state of emergency in the City of Yerevan, during which any assembly was prohibited. On March 17, the National Assembly of Armenia passed amendments in the Law, which, contrary to more favorable expectations, completely jeopardized the right to assemble.

Under these amendments, Article 9(4)(3) of the Republic of Armenia Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations was restated to provide that the competent authority may prohibit a public event, "*if, according to credible information, the event is aimed at forcibly overthrowing the constitutional order, inciting national, racial, or religious hatred, advocating violence or war, or may result in mass disorder or crime, undermine the state security, the public order, or the public health and morals, or infringe upon the constitutional rights and freedoms of others*." This means a longer list of possible grounds based on which the competent authority may prohibit the event. The next sentence of the Law provides that such information may be considered "credible," if an official opinion on such information has been submitted by the Police or the National Security Service of Armenia. Given that Armenia is not yet a rule of law country, in case of an unacceptable assembly for the government, the competent authority will always provide this "credible" information.
Following the amendments of March 17, 2008, dozens of requests filed by the opposition and non-governmental organizations were rejected by the competent authority (the Yerevan City Administration) on the basis of the restrictions stipulated by Article 9 of the Republic of Armenia Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations.

On May 6, the Helsinki Committee of Armenia notified the Yerevan City Administration of its intention to conduct a rally commemorating one year since the death of Levon Gulyan (the latter died in police custody on May 12, 2007). The Yerevan City Administration rejected the notification, citing Article 9(6) of the Law. Though the requesting organization received the rejection letter on May 13, it was obstructed by the Police in its attempts to conduct the rally on May 12.

On March 28, 2008, the OSCE/ODHIR and Venice Commission issued a joint statement (474/2008) on the amendments to the Law, strongly criticizing the amendments, pointing out that the amended Law was illegitimate, and suggesting to revoke some of the provisions and to supplement the Law in some cases to provide the right of appeal to court.
The proposals regarding the amendments concerned the following:
- Article 9(4)(3) of the Law, which provides that the threats must be imminent, also to define that the official opinion of the Police or the National Security Service must be substantiated;
- Remove Article 9(6) and supplement Article 9 with the right to file a court appeal against the decision to prohibit an event;
- Supplement Article 12(8) with a provision requiring to review the notification specified in Article 12(1) within 72 hours;
- Restore the possibility of conducting a spontaneous public event without any specific notification or event, which cannot last more than six hours.

On April 17, 2008, in paragraph 12.3 of Resolution 1609 on the functioning of democratic institutions in Armenia, the Parliamentary Assembly of the Council of Europe demanded that the Armenian authorities, with immediate effect, revoke the amendments recently adopted by the National Assembly to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, in line with the recommendations of the Venice Commission.

On June 11, 2008 the National Assembly yet once again amended the RA Law on Meetings, Assemblies, Rallies and Demonstrations, which aimed to incorporate the recommendations made by the OSCE/ODHIR and Venice Commission. Nevertheless, the 2008 amendments to the Law made it more restrictive, whereas under the ENP commitments the Law should have been further improved. In practice, the restrictions introduced with the amendments of March 17, 2008 have remained in force.

In paragraph 4.1 of Resolution 1620 dated June 25, the Parliamentary Assembly of the Council of Europe welcomed "the adoption of the Law on Amending and Supplementing the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations in line with Council of Europe standards" and considered "that the condition of the Assembly in this respect has been met by the authorities." In Paragraph 4.2 of the same Resolution, the Parliamentary Assembly reiterated "its demand that freedom of assembly should also be guaranteed in practice in Armenia." Therefore, the Assembly insisted "that the Armenian authorities should ensure that no undue restrictions are placed on rallies organized by the opposition in compliance with the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations, especially with regard to the venues requested."

Despite this, dozens of requests filed by the opposition have been rejected by the Yerevan City Administration invoking Article 9. The opposition representatives have taken more than 40 appeals to the Administrative Court against the decisions of the City Administration, but the Administrative Court has mainly rejected the opposition claims, with the exception of two cases: on September 3, the Administrative Court granted the claim of the ARF "Dashnaktsutiun" Party (a member of the ruling coalition) on conducting a demonstration, and on October 8, the Court partially granted a claim of the Armenian National Congress, suggesting to change the venue of the October 17 demonstration, whilst prohibiting the planned rally. Despite the refusals by the City Administration, the opposition has conducted four demonstrations (on June 20, July 4, September 26, and August 1), which took place without incidents.

The 2008 amendments to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations made the Law more restrictive than regulative. This holds particularly true for the provisions of Article 9. The practice of enforcing the Law is even more concerning. Without any serious reasons, the competent authority obstructs and prohibits demonstrations and rallies in particular. The court appeal practice is

inadequate, too, and falls short of both the fair trial requirements under Article 6 of the European Convention on Human Rights and the proportionality principle enshrined in Article 11 of the Convention.

RECOMMENDATIONS:

- Amend the Law on Conducting Meetings, Assemblies, Rallies, and Demonstrations;
- Revise Article 9 of the Law, especially to revoke paragraph 1.4(3);
- Ensure the effectiveness of the court appeal procedure; and
- Require the competent authority (the Yerevan City Administration) to immediately post on its website all assembly notifications received by it.

- *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;*

Decree 927-N of the Government of Armenia dated July 19, 2007 established the List of Priority Actions and Measures to be implemented during 2007 under the EU-Armenia Action Plan. Paragraphs 12 and 13 of this List provide:
- Further reform of the penitentiary system (implement measures to facilitate the public oversight of conditions in prison structures and temporary detention places); and
- Reform the police system (closely cooperate with OSCE and CoE in order to eliminate torture, other mistreatment, and corruption).
As part of the country's Council of Europe membership commitments, places of detention were to be transferred from the jurisdiction of the Ministry of Interior to the Ministry of Justice. As of October 2001, the Penitentiary service has been under the jurisdiction of the Ministry of Justice. As of then, a number of reforms have been implemented such as construction of a new Vanadzor penitentiary as well the renovation of the buildings of Artik, Goris and Abovian prisons.

According to the Group of Public Observers'[32] report level of medical services in penitentiary institutions is inadequate; specifically, the injuries of detainees subjected to ill-treatment are usually not registered in the journals, and the requests of detainees to be checked by outside forensic doctors are rejected. Incidents of the use of force and special means are generally not reported to the Prosecutor's Office.

The medical checks of detainees are performed very superficially, often in the presence of the law-enforcement officers, which restrains the detainee's ability to tell the truth. There is no possibility for detainees to notify their relatives of their status from the very beginning of their imprisonment. There has been no progress in this field, either.
Detained persons are often deprived of the services of a lawyer from the very beginning. This practice, too, continues, especially following the March 1 events.

- *Closely cooperate with OSCE and CoE to reform the police, in order to eliminate torture, other mistreatments and corruption and to set up more trust between police and society.*

The situation in police stations and other investigative bodies is even more disturbing. There are numerous complaints of illegal holding, intimidation, and violence against persons in police stations. Violence in police stations is mainly committed to extorting confessions or testimony against other persons. The apprehension and arrest procedures are not being followed. Interrogations are often

[32] Under Article 27 of the Law on Holding Arrested and Detained Persons, the Group of Public Observers for Places of Holding Detainees in the Penitentiary Service of the Ministry of Justice of Armenia was formed on May 14, 2004.

conducted without an advocate being present. Surveys carried out by the Helsinki Committee of Armenia among detainees in penitentiary institutions have revealed that about 60% of them had been subjected to inhuman treatment in police stations. The public becomes informed of ill-treatment in police stations only at times of political tension, when opposition activists are apprehended to police stations, or when persons apprehended to the police stations die in custody.

CPT's last regular report on the situation in the country was in 2006. Nevertheless, all concerns and recommendations made by the CPT remain relevant for 2008 (CPT conducted an extraordinary visit to Armenia in light of the March post electoral developments but the report is not published yet).

Since 2006, the police has not changed its practice of holding suspects in criminal cases for prolonged periods (keeping a suspect in the police for more than four days). After the March 1, 2008 developments there have been numerous cases of arrested persons kept in the police for four days and longer.

The rule requiring pre-trial detainees to be transferred to designated pre-trial prisons within a maximum of three days is breached mainly because of the inefficient performance of the police escort staff. Besides, there are frequent and lengthy transfers. All of this increases the risk of inhuman treatment.

The CPT highlighted the need to invest in obtaining the most advanced methods of criminal investigation for the professional training of law-enforcement officers and to pay more attention to objective evidence acquired through forensic means. Nevertheless, the Armenian law-enforcement authorities continue to rely predominantly on confession as the main evidence; unlawful acts are committed against witnesses and suspects in police stations with the aim of extorting testimony against another person. A person is often interrogated first as a witness, after which his/her own statements are used to turn him/her into a suspect.

At any stage of police custody, arrested persons may file a complaint with a judge, alleging ill-treatment by the police; the judge must register such an allegation in writing, decide to appoint a forensic doctor, and follow up on the investigation. However, courts continue to base their decisions on statements made by the defendants during the pre-trial investigation, which are often obtained through unlawful acts; moreover, the courts usually ignore statements made and evidence adduced by the defendants and their advocates.

During its visit in 2006, the CPT delegation received a number of confirmed allegations of physical ill-treatment of arrested persons by the police. Almost all of these statements were made by persons kept in preliminary detention places (including women and minors), who had recently been in the police places for keeping arrested persons. The alleged ill-treatment had also taken the form of hitting the soles of the feet and suffocation with plastic bags. In some cases, the ill-treatment had been so grave that it could qualify as torture. Almost all the allegations concerned the initial interrogation by intelligence officers (rarely the interrogation by detectives and senior police officers); the alleged ill-treatment had been used to obtain confessions, evidence, and other information. Later, the CPT delegation had interviewed several individuals (including women and children) who had reported unacceptable psychological pressure used against them to obtain a confession in the crime, including insults, humiliation, and threats to use physical force or sexual violence against them or their relatives or friends. (In this respect, no one has been punished.)

In the beginning of the visit in 2006, the Prosecution Office of Armenia had informed the delegation that, during 2005, no complaints had been filed about ill-treatment by law-enforcement officials. It is suspicious that such a situation may actually exist in the law-enforcement system of any country. Yet, the Armenian Police was unable to provide the CPT delegation any information on complaints regarding police ill-treatment due to non-availability/existence of such data on this matter.

In practice the courts continue to disregard statements made by defendants in court about the fact that their pre-trial statements had been extorted by force. No official has so far been punished in Armenia on charges of ill-treatment or torture. This was also highlighted by the CPT in its recent report.

According to official reports, Levon Gulyan, who had been apprehended to the police, jumped out of the window of the Police building and died on May 12, 2007. A criminal case was instigated on the basis of Article 110(1) of the Criminal Code of Armenia. The pre-trial investigation was carried out by the Yerevan City Prosecutor's Office, and on December 12, 2007, the proceedings were transferred to the Senior Investigator for Highly Important Cases in the Special Investigative Department of the Republic of Armenia. On March 12, 2008, G. Petrosyan, a Senior Investigator for Highly Important Cases in the Special Investigative Department, decided to discontinue the proceedings in the aforementioned case on the ground that elements of the crime were not present.

On March 26, 2008, Z. Tadevosyan, a Senior Prosecutor in the Office of the Prosecutor General of Armenia, decided to reject the appeal of the representatives of the victim's successors for being groundless. The advocates for the victim's successors appealed against this decision to the Universal Jurisdiction Court of the Kentron and Nork-Marash Communities of the City of Yerevan. The court quashed the prosecutor's decision on discontinuing the criminal case and decided to resume the case proceedings.

On July 21, 2008, the Criminal Appellate Court of Armenia upheld the June 6 decision of the Universal Jurisdiction Court of the Kentron and Nork-Marash Communities of the City of Yerevan, which had declared the decision to discontinue the proceedings in the aforementioned case groundless and unlawful. The pre-trial investigation of this criminal case resumed on August 16, 2008.

In their decisions, the courts had stated that the pre-trial investigation had not been comprehensive, complete, and objective; it had been marred by many violations of law; necessary measures had not been implemented to discover the truth in the criminal case; the participation of the representatives of the victim's successors in the performance of investigative activities had not been ensured; and the unlawful acts committed by a number of police officers had not been properly assessed from a legal standpoint.

Though two months have passed since the day of resuming the pre-trial investigation, the behavior of the pre-trial investigation authority supports the conclusion that the Special Investigative Service of Armenia is not very eager to comply with the requirements prescribed in the court decisions. Specifically, it continues to ignore the other hypotheses of Levon Gulyan's death; the only two individuals questioned were the two police officers involved; an investigative experiment using a mannequin has not been performed; no one has been engaged in the criminal case as a suspect or accused; and no one has been charged with any crime.

GENERAL OBJECTIVES AND ACTIONS

- *Ensure ratification and implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

In 2008, the National Assembly of Armenia amended the Law on the Human Rights Defender to designate the Defender as the OPCAT National Mechanism. The Law does not contemplate the participation of civil society in the national mechanism. Thus, the participation of civil society will depend on the willingness of the Human Rights Defender. Seven months have passed since the adoption of the Law, but there has been no progress towards either the structure or the activities of the Mechanism.

RECOMMENDATIONS:

1. Change the procedural practice, including:
2. Apply the relevant provisions of the criminal law, which require an immediate investigation by the court into a defendant's allegation of torture; and
3. Abolish the practice of accepting confession evidence as the dominant evidence.
4. Apply the sanctions prescribed by the criminal law in relation to police officers guilty of committing torture.
5. Under Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, declare that it recognizes the competence of the UN Committee against Torture to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation of the provisions of the Convention.
6. Amend the criminal legislation, including:
7. Amend and supplement the Criminal Procedure Code provisions on the interrogation of suspects, the accused, and witnesses to define an exhaustive procedure to be followed by the police in such interrogations.
8. Organize training of police officers and recruit new officers on the basis of criteria such as professionalism and knowledge of the international standards.
9. Perform adequate medical checks of detainees admitted to penitentiary institutions and obtain information about injuries in the absence of the escorting police officer.
10. Safeguard the independence of the medical personnel of penitentiary institutions; consider the possibility of making them subordinate to the Ministry of Health of the Republic of Armenia.
11. Make amendments to the law creating the OPCAT national mechanism to prescribe the participation of civil society.

Avetik Ishakhanyan
Chairman, Helsinki Committee of Armenia

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

Media

Overview of the Situation

During the 2008 presidential election, both the public and private broadcast media showed bias in their coverage of the campaigns of the two main candidates: the bias was mostly expressed during the period preceding the start of the official campaign. The National Commission of Television and Radio, to oversee broadcasters' compliance with the legislation, did not react to the violations in any way. This was also mentioned in the Final Report of the OSCE/ODIHR Election Observation Mission for the 2008 Presidential Election of the Republic of Armenia: "Longstanding concerns exist over the independence of the broadcast media. OSCE/ODIHR EOM interlocutors were particularly concerned about the high degree of influence over editorial decisions by political and business interests, financial vulnerability of media outlets, inadequate regulation by and independence of the National Council for Television and Radio (NCTR), as well as actions against journalists and media outlets."

During the state of emergency introduced in the City of Yerevan by presidential decree from March 1 to 20, 2008, *de-facto* prior censorship was applied in not just Yerevan, but all of Armenia, for the first time ever in the 17-year history of independent Armenia. As a consequence, the publication of some countrywide newspapers was prohibited because of content. Some publications, having encountered unlawful obstacles, refused to work, because they were unable to present opposition and critical views, while the publication of statements, often aggressive, dishonoring and insulting the opposition in other newspapers and television stations, including the public television, was not restricted in any manner. According to information received from the mass media, prior censorship was performed by individuals that introduced themselves as officers of the National Security Service. A number of Internet publications ("lragir.am", "A1+", and others) were shut down, and the broadcasting of the "Liberty" Radio Station in Armenia was discontinued. The news programs of television stations were strictly controlled.

The most unusual legislative amendment was that adopted hastily to the Law on Television and the Radio, providing that no tenders for television and radio broadcasting licenses shall be announced up to July 20, 2010: in other words, no new broadcaster will be able to obtain a license any time before January 2011. In this respect, concerns were also expressed by Miklos Haraszti, the OSCE Representative on Freedom of the Media, and the international human rights organization "Article 19." In his letter to the President of Armenia, Miklos Haraszti in particular pointed out that "by cutting off any potential applicant broadcasters from entering the market until 2010, the limited pluralism in Armenia's broadcasting sector will be further diminished. He added that "Armenia will not be able to comply with the June 2008 decision of the European Court of Human Rights that upheld the case of the "A1+" TV Company." The organization "Article 19" urged the Armenian Government to repeal that law, which contradicted the decision of the European Court of Human Rights in the case of the "A1+" TV Company and Article 10 of the European Convention on Human Rights.

PRIORITY AREA 2 SPECIFIC ACTION

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

GENERAL OBJECTIVES AND ACTIONS

4.6.3. Information Society and Media

Progress in the development and use of Information Society applications

- *Elaborate a national policy on the development of the sector including regulatory, economic, technological and social aspects, including advanced services and promote the use and exchange of views on new technologies and electronic means of communications by businesses, government and citizens in areas such as e-Business (including standards for e-signatures), e-Government, e-Health, e-Learning, e-Culture;*

To date, the Republic of Armenia has not developed the concept for a national policy on the development of the sector: there has been no visible work in this direction in the last two years, and no significant progress has been achieved.

- *Work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs, numbering, Universal Service and users rights, privacy protection and data security;*

On August 28, 2008, the Government hastily approved draft amendments to the Republic of Armenia Law on Television and the Radio, which the public could access only on September 8, the day on which the draft was submitted to the National Assembly for discussion. On September 10, in an extraordinary session convened specifically for that purpose, the amendments were adopted in full. Under these amendments, no tenders for television and radio broadcasting licenses shall be announced up to July 20, 2010. In other words, no new broadcaster will be able to obtain a license any time before January 2011. This means in 2009 alone 22 tenders for television and radio broadcasting licenses will not be carried out. The amendments were adopted without developing a concept paper in advance, which contradicts the requirements of the Law on Legal Acts. They were adopted without any discussion with the relevant parliamentary committee, international organizations, and civil society, though government officials had given multiple assurances that any draft legislation on the sector would not be circulated unless discussed with the relevant stakeholders.

- *Work towards adopting audiovisual legislation in full compliance with European standards with a view to future participation in international instruments of the Council of Europe in the field of media. Promote an exchange of views on audiovisual policy, including co-operation in the fight against racism and xenophobia;*

The adoption of the amendments contradicts Armenia's international commitments and the resolutions on Armenia adopted by international organizations. Resolution 1620 of the Parliamentary Assembly of the Council of Europe dated June 25, 2008, states directly the following: "The Assembly recalls that there is a need for a pluralistic electronic media environment in Armenia and, referring to the decision of the Court concerning the denial of a broadcasting license to the television channel A1+, calls on the licensing authority to now ensure an open, fair and transparent licensing procedure, in line with the guidelines adopted by the Committee of Ministers of the Council of Europe on 26 March 2008, and with the case law

of the Court." Instead of following this call, the authorities postponed the holding of licensing tenders by two years.

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

By adopting these amendments, the Government of Armenia selectively took one purely technological provision of the Action Plan, placing it out of context, in contradiction with the others ("Work towards adopting a comprehensive regulatory framework including licensing, access and interconnection, cost-orientation of tariffs…"; "Work towards adopting audiovisual legislation in full compliance with European standards"; and the need for freedom of expression and a pluralistic environment for broadcasting). Of course, the technological issue of digitalizing the broadcast is very important, and civil society representatives were and are still ready to work with the Government on this program; however, the Government has not taken any real steps in this direction during the last two years. The discussion of the technological modalities of digitalization is just starting, and it is still unclear whether or not solutions have been found.

RECOMMENDATIONS:

1. Immediately to repeal the September 10 amendments to the Law on Television and the Radio, and not to link the broadcast licensing tenders with the digitalization process; if necessary, the licensing terms could include a requirement on transition to digital broadcasting before a certain deadline.

2. A new law regulating the broadcast sector should be drafted to define the formation procedures of the National Commission of Television and Radio and of the Public Television Board in such a way as to maximum public participation in those bodies. Such concepts have already been elaborated by both the Yerevan Press Club and other media organizations.

3. In the framework of the investigation into the events of March 1 and 2, to investigate also the circumstances of the unlawful censorship applied during March 1-20, 2008, as well as the blocking of the websites, and to sanction those that ordered and performed such unlawful acts.

Boris Navasardian
President, Yerevan Press Club

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

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

Economic Development

Overview of the Situation

Annual macroeconomic indicators for Armenia have not been officially finalized yet, but the general trends and the official figures for the first nine months of 2008 support certain assessments of the economy in 2008.

The Armenian economy has generally maintained the recent years' trends, including: 1. Double-digit economic growth (in January-September 2008, year-on-year GDP growth was 10.3%); 2. A predominantly import-based economy and import growth being higher than export growth (the volume of Armenia's foreign trade increased by 27.2% over the same period in 2007 to reach US $3,837,000,000 in 2008: exports fell by 1.8% to US $813,800,000, while imports grew by 38.3% to reach US $3,232,000,000); and 3. An economy dependent on private remittances from abroad (money remitted by Armenian labor migrants, according to various estimates, annually totals US $2-3 billion).

Economic growth continues to be driven mainly by construction (12.1%) and services (14.5%), which (especially construction) have shown decline trends relative to previous years.

The national currency remains "strong" against foreign currencies: in 2008, however, the exchange rate of the Armenian dram against the US dollar was stable, fluctuating only around 300-310 drams for the dollar. The "strong" dram and the Government's tax pressure have significantly aggravated the conditions for local producers, especially exporters. This can explain why import volumes are growing, while exports are declining. The annual deficit of Armenia's foreign trade will exceed US $3 billion. There are now imports of goods that are starting to substitute similar products of local producers. It means that the domestic economy is starting to lose competitiveness.

Private remittances, which are a key factor for the Armenian economy, have continued to grow at a stable pace. Private remittances fuel the solvent demand of many thousands of Armenian citizens. It explains how, with industrial output growth of 3.4% and agricultural gross output growth of 4.2%, retail trade has grown faster by 7.5%. Imports and import consumption, too, have grown rapidly.

In 2008, the economic situation and business climate in Armenia have been rather seriously influenced by the 2007 parliamentary and 2008 presidential elections. Various expectations (especially irrational ones) reduced the volume of investments, caused an outflow of capital, and politicized the business framework.

The Armenian economy now faces domestic and external challenges, which will materialize mostly in 2009.

The domestic challenges threatening economic growth include the domestic instability and the Government's fiscal policy. While domestic tension has lessened compared to the beginning of the year, the effects of the Government's fiscal policy have worsened: compared to 2007, the state 2008 budget

expenditures grew by more than US $800 million, which is a heavy burden for SMEs given the lack of free competition. Large businesses, being mainly interrelated with the power, have managed to avoid tax pressure. As a consequence, the domestic price increase has been driven more by the state's fiscal policy than by the situation in international markets. In 2009, the state budget expenditures are planned to grow to US $3.2 billion. In other words, over the course of two years, the state budget expenditures will approximately double, posing a very heavy burden on businesses, especially in view of the external challenges faced by Armenia.

The situation in international markets affected the Armenian economy in the beginning of 2008 first in the form of higher prices, and later, in the form of reduced financial inflows. At yearend, banks faced liquidity problems.

The decline in international prices, which was observed in the second half of the year, has not been reflected proportionately in the various segments of the commodity market of the Armenian economy, which heavily depends on imports. When international prices grew, the prices of the same commodity (wheat, fuel, etc.) in Armenia grew immediately. When international prices fell, prices in Armenia either did not fall or fell not at the same proportion as international prices, and the decline in domestic prices followed after a rather long time interval. This indicates that either various segments of the Armenian economy are under monopolistic or oligopolistic control, or there are anti-competitive arrangements between several entities.

There are concerns about inflation deviating from the 4%+/-1.5% inflation target. For two years now (2007 and 2008), the inflation target has not been met. For the first nine months of 2008, the GDP index deflator was 110.5%.

Economic developments in 2009 will be greatly affected by a significant decline in private remittances due to the stagnation of the construction sector in Russia, given that a large share (about 80%) of Armenian labor migrants transfer money from Russia, where the majority of them (about 90%) are employed in the construction sector.

To avoid external and domestic downside shocks, it is necessary to fundamentally revise the monetary and fiscal policies of the Republic of Armenia.

PRIORITY AREA 3 SPECIFIC ACTIONS

1. While the list of "Specific actions" under "Priority area 3" in the EU-Armenia ENP Action Plan provides: "Maintain macro-economic stability by implementing prudent monetary and fiscal policies";

a) The 4%+/-1.5% inflation target prescribed in Paragraph 15.3 of the aforementioned Government Decree was not met in either 2007 or 2008 (according to preliminary estimates, 2008 yearend inflation will be at least 9%).

Comments: We believe that inflation in Armenia is due not only to the situation in international markets, but also the monopolization or oligopolization of the economy, because a decline in international prices does not lead to a proportionate price decrease in Armenia. Meanwhile, any increase in international prices is immediately followed by proportionate increases in domestic prices in Armenia. When international prices decline, importers either fail to reduce the prices of consumer goods (wheat, vegetable oil, liquid fuel, and the like) or reduce prices with a considerable time lag and not in an amount proportionate to the decline in international prices. The Central Bank of Armenia with its toolkit is often

unable to contain inflation, and resorts to a simplistic tool such as the appreciation of the Armenian dram against international currencies (notably against the US dollar). During the last four years, the Armenian dram has appreciated about two-fold against the US dollar. While the dram stopped appreciating against the US dollar in 2008, and the Central Bank, in the frameworks of its inflation program, is mostly resorting to an increase in the refinancing interest rate (having raised it to 7.75%), the inflation target is not being met. The Government's fiscal policy also contributes to high inflation.

RECOMMENDATION: Implement a persistent policy of promoting free competition and adopting anti-monopoly legislation. This legislation is expected to create an independent anti-monopoly agency, which will primarily focus on preventing the creation of artificial monopolies. Furthermore, it is necessary, through a progressive taxation system, to promote competition and facilitate the development of SMEs, helping to avoid unjustified inflation and meeting the fiscal revenue collection targets, while avoiding negative inflationary consequences.

b) Though Paragraphs 15.4 and 15.5 of the Government Decree stipulate tax administration reform, the *de-facto* practice is still largely based on the collection of tax prepayments or tax credits, not prescribed by the Armenian laws or Government decrees. Moreover, the measures implemented to modernize tax administration (the installation of cash registers, enhanced requirements on invoicing and documentation, and the like) have affected mostly SMEs, while large businesses are still not fully covered by the tax administration process of the state. Though the system of filing reports has been improved, and bureaucratic red-tape minimized, the business climate has not changed much, largely due to tax collection pressures, which offset the positive effects anticipated from reforms.

The implementation of risk-based audit procedures under Paragraph 15.5 of the Decree has been slow. It is expected to be operational in January 2009.

RECOMMENDATION: Streamline the tax system and preclude any ambiguity in the language of the law. The legislation should restrict the number of audits and prohibit the collection of tax credits from private businesses. The tax administration should focus primarily on large businesses. Reasonable tax rates should be prescribed. To improve the business climate, the Armenian legislation should be amended to preclude import VAT collection on the border and to permit deferred VAT collection (until after the imported goods have been sold).

c) There is a trend to criminalize violations of the economic laws of Armenia. This was also mentioned by the President of Armenia Serzh Sargsyan in his statement.

RECOMMENDATION: Liberalize the tax legislation with a focus primarily on the application of economic sanctions.

2. The list of "Specific actions" under "Priority area 3" in the EU-Armenia ENP Action Plan provides: "Continue implementation of the existing Poverty Reduction Strategy…" This provision is related to the Program of the Government adopted by decree of the Government dated April 28, 2008. The Program provides: "*By 2012, the Government expects significantly to reduce poverty, to achieve a poverty rate of below 11.2% and an extreme poverty rate below 1.6%.*" The Government's estimates now need to be revised completely in view of high inflation in Armenia and changes on the international scene. The estimate of the minimum consumer basket used for the calculations can no longer be used. Besides, the unjustified tightening of the Government's tax pressure without any liberalization of the economy has led to price increases, which in turn have rendered virtually useless any of the benefits paid by the state to vulnerable groups of society.

3. Paragraphs 17.1 to 17.7 of the Government Decree, adopted in connection with the fourth bullet of the "Specific actions" under "Priority area 3" in the EU-Armenia ENP Action Plan, are mostly of

declarative nature, and therefore, difficult to monitor. Despite agriculture growth compared to the same period in 2007 (4.2% growth in 2008), the pace of growth has slowed down. The year 2009 may be very difficult for the agriculture sector, because the Government has decided to introduce VAT on agricultural products starting from 2009. Such an approach may contribute to social tension and exacerbate poverty.

4. The "Specific actions" under "Priority area 4" in the EU-Armenia ENP Action Plan provide: "Develop and implement a comprehensive programme to improve the business climate…"; however, Paragraph 23.1 of the Government Decree only stipulates the "development" of a programme to improve the business climate, but not its implementation, which will make impossible any assessment of the effectiveness of the programme. Moreover, the "Specific actions" contemplate **programmes related to specific areas of the business climate**, while the programme to be developed under Paragraph 23.1 of the Government Decree will not include actions to improve the conditions of hiring and firing workers, registering property, getting credit, protecting investors, enforcing contracts, and closing a business.

   RECOMMENDATION: Implement all the actions contemplated by the "Special actions." In addition, it is necessary to implement legislative amendments concerning employee protection in the frameworks of the Law on Trade Unions to be adopted. As for the development and implementation of a "comprehensive programme to improve the business climate" under the "Special actions," it should also stipulate electronic procedures for business registration, closure, and filing of documents to state bodies (reports, licensing applications, etc.). The electronic communication procedure between the private sector and the state was introduced in the tax system in 2008; its application is due to start in 2008, so it is still difficult to assess.

5. The "Specific actions" under "Priority area 4" in the EU-Armenia ENP Action Plan provide: "Continue the modernization and simplification of the tax administration in order to simplify the tax system, to improve coherence and reliability of the system and to reduce corruption risks and shadow economy." The recent amendments to the Law on the Simplified Tax adopted by the National Assembly contradict this objective, as they significantly reduced the scope of entities eligible for this tax, which may contribute to the growth of the shadow economy and does not encourage SME development, which in turn contradicts the whole philosophy of the Action Plan.

   RECOMMENDATION: the National Assembly of Armenia should revise the substantive provisions of the amendments to the Law on the Simplified Tax adopted on July 3, 2007. The amendments, which exempt businesses with an annual turnover of less than 58.35 million drams (about 190,000 US dollars) of the VAT and require them instead to pay profit tax, cannot fully replace the simplified tax; besides, SMEs have problems in obtaining invoices from wholesale businesses. In other words, small businesses, unable to justify their expenses, will face a rather significant tax burden (profit tax of 20%). Therefore, the large businesses should be first brought completely to the taxation and invoicing sector before tightening the tax administration of other segments.

6. The "Specific actions" under "Priority area 4" in the EU-Armenia ENP Action Plan provide: "Define the necessary administrative structures and procedures, including a fiscal control strategy, audit and investigation methods, co-operation with the tax payers in order to increase tax compliance and effectiveness of tax collection. Identify all needs in terms of financial, human, logistic and IT resources." The Government Decree does not reflect this commitment altogether.

7. Another priority under in "Specific actions" under "Priority area 4" is "to continue efforts to develop the network of bilateral agreements between Armenia and EU Member States on avoidance of double taxation." This commitment, too, is missing from the Government Decree.

8. The Government Decree does not contain a provision requiring to "provide the customs administration with sufficient internal or external laboratory expertise."

9. The "Specific actions" under "Priority area 4" in the EU-Armenia ENP Action Plan provide: "Strengthen the overall administrative capacity of the customs administration, in particular, to increase transparency of customs rules, procedures and tariffs, to ensure the correct implementation of customs valuation rules." The discretion of customs officials continues to play a very important role in customs valuation, which carries a high risk of corruption. Besides, the customs valuation of a number of commodities increased abruptly during 2008 due to the situation in the international market. The purpose was simply to generate fiscal revenue. Throughout the year, there was an over-collection of the customs revenue target, which negatively affected the business climate and led to the underperformance of the tax revenue target.

   RECOMMENDATION: Introduce legislation requiring the customs bodies to make the valuation on the basis of the invoice price submitted by the importers, to accrue the customs payment on the basis of the declared price, and to detect alleged fraud through the tax administration.

10. The objective in Paragraph 24 of the Government Decree and the measures contemplated in Paragraph 24.1 for achieving that objective are mostly declaratory; no specific actions are prescribed, and it will be impossible to make any qualitative or quantitative assessment in the future. The improvement of SME access to finance, which is stipulated by Paragraph 24.1, is currently only a statement of wish given the high cost of lending and the insufficient integration of the banking system with the real sector of the economy. The international financial crisis has further aggravated the aforementioned problems concerning business lending.

    While the "General Objectives and Actions" section of the EU-Armenia ENP Action Plan attaches great importance to **improving the public procurement system**, the Government Decree contains no provision on this sector. The public procurement system is considered prone to corruption risks and urgently in need of reforms in terms of improved legislation on both procurement procedures and public scrutiny of procurements. Permanent monitoring of the procurement process is necessary. Besides, the practice of procuring the same goods from the same supplier for several consecutive years should be virtually precluded.

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

Protection of the Environment

Overview of the Situation

There are controversial developments in the field of environment and use of natural resources.
Along with moderate actions to improve the environmental policy, institutionalize commitments for sustainable development and demonstrate public involvement in decision-making, there is an unprecedented exploitation of natural resources combined with infringements and corruption and no apparent efforts to stop proliferation of ill practices.

2008 was marked with a large number of controversial initiatives of the Armenian government related to environmental protection and natural resource management. Positive developments in these fields include the separation of management and oversight functions in the fields of mining in May 2008, previously done by the Ministry of Nature Protection. The Second National Environmental Action Plan for 2008-2012 was adopted in July 2008. A critical episode was the adoption of the Sustainable Development Program 2008-2021 in late October 2008 - a long-anticipated document, which, in fact, replaced the Poverty Reduction Strategy Plan. Since May 2008, government institutions started a more active interaction with non-governmental organizations, inviting them to a number of public discussions. In reaction to NGO complaints and actions a number of initiatives were taken by the government to improve the legislation related to environmental assessment, environmental taxation and mining policy. Access to information is promoted via better update of the Ministry of Nature Protection website. About 10 NGOs have got a preliminary invitation to take part in the Sustainable Development Council.

Yet, the mentioned initiatives have serious drawbacks, which raise a concern over their effectiveness. For example:

- Management of mining was delegated to the Ministry of Energy (now renamed to Ministry of Energy and Natural Resources), which is a user entity and cannot take an impartial role in mineral resource management.[33] Meanwhile, both policy making and management for biodiversity resources are not separated and remain with the Ministry of Nature Protection.
- According to NGO experts, the Sustainable Development Program needs to be revised as it has been formulated on the basis of the PRSP and, though targets a wide range of issues, it does not cover all the aspects of a sustainable development strategy.
- Ministry of Nature Protection website is often assumed by the Ministry to be an adequate and sufficient mechanism for public notification and most of the time replaces the institute of public discussions. Thus, the public does not get engaged in the discussion of serious matters of concern, such as the NEAP 2.
- Public participation, by and large, continues to remain as imitation of environmental democracy as the government's efforts to engage the public in decision-making take place for issues which do not have strategic importance or occur at later stages, when the decisions actually are made.

In general, corruption remains to be the major obstacle for the rational management of natural resources. Most of environmental violations are somehow connected with names of business oligarchs or high level

[33] Similarly forest management is governed by the Ministry of Agriculture.

officials (including the present and previous Ministers of Nature Protection). None of the latter has been punished so far, instead there are cases of people being rewarded.[34]

Recorded progress in public participation largely depends on the political will of the current leadership of the executive and is not institutionalized in a form of regulations and structures. Thus, replacement of the respective official might simply result in the country's withdrawal from the principles of environmental democracy.

Such shortcomings put under question the quality and trustworthiness of respective reforms and promises of change.

Actual practices of environmental decision-making diverge from main principles of good governance with short-term perspectives of gaining immediate benefits prevailing over the legacy and sustainable exploitation of natural resources.

A typical example is the decision-making on the release of water from Lake Sevan taken place twice in 2008 – months of June and August. Based on the legislative initiative of the Armenian Government, the National Assembly took a decision to increase the release from Lake Sevan from the prescribed 170mln. cubic meters to 240mln. - in June and further to 360mln. - in August 2008. These decisions were mainly justified by the "draught", "shortage of water" in irrigation reservoirs and "increase of demand". Meanwhile, there were no adequate arguments brought in by respective entities (specifically, the Committee of Water Economy) to justify any of these arguments, while the data from Ministry of Agriculture and Hydrometeorological Service contradict those statements. Ministry of Nature Protection did not undertake any effort to clarify the situation with inconsistent data or to analyze the potential environmental impacts of such a decision. Neither the experts, nor the environmental NGOs and local communities have been informed about the issue and involved in decision-making in advance.

According to media coverage as well as to the general perception of the public, water release was increased to save the businesses of certain oligarchs and public officials (including the Minister of Nature Protection),[35] illegally built along the shores of the lake. This perception also was based on the fact that the government does not take any concrete measures increase the level of the Lake, as planned in the Lake Sevan Action Plan and prescribed by the Law on Lake Sevan. Instead, representatives of ruling parties in the National Assembly are raising an issue on the need to change the latter law.

According to experts and respective scientific institutions, the increased water intake will result in a negative water balance, thus violating the respective legislation, increasing the risks for the whole ecosystem of the lake and causing social impacts for local communities, not mentioning the Lake's strategic value for the whole country.

GENERAL OBJECTIVES AND ACTIONS AREA 3: Economic and social reform, poverty reduction and sustainable development

- *Development of the forest industry (forest management, protection, maintenance, rehabilitation, balanced and sustainable use of forest resources)*

Forest resources continue to remain under danger. According to experts, the main problems in the forestry sector are associated with legal shortcomings, institutional weaknesses and poor capacity of human resources. New forest legislation - the Forestry Code and stemming regulations - was rapidly adopted in

[34] See "Serop Der-Boghosian Receives an Award from the Prime Minister" on Hetq Online at http://hetq.am/eng/ecology/8402/
[35] See "The Nature Minister's Private House on the Shores of Sevan" on Hetq Online at http://hetq.am/eng/ecology/8489/

2005 without consideration of certain specifics of country's forests and thus it fails to prevent their destruction or promote rehabilitation.

Some forest areas do not yet have forest management plans. The plans developed for other areas, particularly their inventory data and maps, do not adequately reflect the existing situation, thus contributing to increased volumes of logging.

Forest resources continue to remain under danger due to the illegal use (logging, hunting, construction, etc.) of those.

- *Taking steps to improve integration of environmental considerations into other policy sectors.*

There is no determined course of actions to integrate environmental considerations into other policy sectors. The major tool for integration of environmental considerations into sectoral planning is the strategic environmental assessment of plans, programs and policies, which is assumed to be reflected in a new legislation on environmental assessment. Such a legal act - the draft law on State Environmental Review - was drafted in 2004, concurred among government entities, passed through several international assessments and included within the draft Strategy for Implementation of the SEA Protocol, which appeared to be one of the actions envisaged by the ENP Government Action Plan for 2007. However, adoption of this law gets postponed for various reasons.

Another mechanism to balance sectoral interests with environmental considerations at the government-level is the collective body of the ministers, where one would anticipate the input of representatives of the Ministry of Nature Protection in reconciling conflicting interests. Yet, the practice has shown that this Ministry does not actually perform its designated powers of environmental protection, but mostly concurs with suggestions/decisions proposed by other entities.

One of the outcomes of discrete policy-making for individual sectors and incompatibility with the environmental concerns is unreasonable development of the mining sector. There is no policy document for the mining sector, which would state about the expediency of extraction of certain minerals and/or provide a long-term plan for exploitation or geological exploration of mines. There are no adequate regulations on the economic assessment environmental impacts, neither there is proper environmental taxation for mining activities and waste management. These deficiencies create an exceptionally favorable climate for investors to make profits without much liability. As an outcome, on the territory of only 29.740 square kilometres of the there are more than 380 mines exploited in present, 12 of which are metal ores, operation of which particularly causes serious environmental degradation.

GENERAL OBJECTIVES AND ACTIONS AREA 6: Cooperation in specific sectors, including transport, energy and the environment

- *Establishment of procedures regarding access to environmental information and public participation, including implementation of the Aarhus Convention*

There is only limited progress in dissemination of information, while no regulatory work has been done to improve free access to information and public participation

The environmental democracy did not experience much progress except for better implementation of Article 5 of the Aarhus Convention and promotion of active dissemination of information via the website of the Ministry of Nature Protection and some of its structures. At the same time, the government initiated a draft law on provision of information, which is intended to replace the existing law on Freedom of Information and considerably limit the access to environmental information.

Armenia did not take any concrete steps to implement recommendations adopted in late March 2006 by the Aarhus Convention Compliance Committee[36] and the decision adopted in June 2008 by the Meeting of Parties[37] related to compliance by Armenia with its obligations under the Convention.

There are increased efforts by the Ministry of Nature Protection to engage the environmental NGO community in certain discussions, however, most of the latter relate to non-strategic issues or take place at late stages of decision-making, when the decisions are actually taken and there is only chance for minor and cosmetic changes.

- *Reinforcement of structures and procedures to carry out environmental impact assessments*

There is no apparent progress in the field of environmental impact assessment

The quality of the environmental impact assessments remain to be a critical issue. There is no unified system and practices for ensuring proper quality of assessments, reports, public notification, access to documents[38] and public participation. As most of the steps aimed at strengthening the environmental impact assessment process (e.g. public participation regulations, EIA methodologies or economic assessment of environmental impacts) are being tied to the adoption of a new legislation on environmental assessment, they get postponed as well.

EIA in a transboundary context is a serious issue, recorded also by the Fourth Meeting of the Parties to the Espoo Convention in May 2008.[39]

RECOMMENDATIONS:

1. Consider establishment of a separate entity for natural resource management, including all natural resources, thus clearly separating the policy-making, management and use functions for all the resources.
2. Revise and improve the quality of the Sustainable Development Program and create the necessary grounds for an effective operation of the National Council for Sustainable Development.
3. Ensure the transparency and effectiveness of implementation of the Second National Environmental Action Plan as well other environmental programs being implemented by the Government (e.g. those funded by the World Bank or UNDP).
4. Analyze the actual workings of major legal acts in the field of natural resource management (e.g. Forest Code and Land Code), identify loopholes and revise provisions, which prohibit those to serve objectives for sustainable development.
5. Improve legislation in the fields of environmental assessment and environmental taxation as soon as possible to provide for better mechanisms for protection of the environment, basing those on the best international practices.
6. Base exploitation of natural resources on the inventories of those and long-term strategies for use: freeze allocation of new resources until such documents are available.
7. Strengthen the enforcement functions of the Ministry of Nature Protection and other respective structures to ensure appropriate implementation of legislation and punishment of criminal offenses as well as administrative violations related to the environment.

[36] See Report of the Eleventh Meeting at http://www.unece.org/env/pp/compliance/cc11reportadd1eng.doc
[37] See Report by the Compliance Committee http://www.unece.org/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_add_2_e.pdf
[38] Only a few environmental reports are posted on the Ministry of Nature Protection website.
[39] See Report by the Implementation Committee at http://www.unece.org/env/documents/2008/eia/ece.mp.eia.2008.7.e.pdf

8. Plan for introducing the state-of-the-environment reports to become a regular practice for the national as well as local level and be allocated adequate resources.
9. Institutionalize public participation in environment-related decision-making by developing and improving regulations of public notification and engagement in early stages of any type of environment-related decision-making and guaranteed consideration of public comments.
10. Develop public monitoring mechanisms for management and use of natural resources to ensure adequate quality of control and accountability.
11. Arrange for capacity building of professionals in environmental and natural resource economics and environmental assessment (SEA and EIA).

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