



PARTNERSHIP FOR OPEN SOCIETY

www.partnership.am

CONCEPTUAL RECOMMENDATIONS

ON

EUROPEAN NEIGHBORHOOD POLICY- ARMENIA ACTION PLAN

*The work was conducted with the financial support of Open Society Institute Assistance
Foundation - Armenia*

*October, 2005
Yerevan*

Table of Contents

Preface	3
1. Constitutional Amendments	4
1.1. <i>Separation of Powers</i>	4
1.2. <i>Fundamental Human Rights and Freedoms</i>	5
1.3. <i>Independence of the Judiciary</i>	6
1.4. <i>Local Government</i>	7
2. Constitutional Justice	8
3. Independence and Efficiency of the Judiciary	9
3.1. <i>Appointment of Judges</i>	9
3.2. <i>Appointment of Court Chairmen</i>	10
3.3. <i>Financing of the Judiciary</i>	11
3.4. <i>Fighting Corruption in the Judiciary</i>	12
3.5. <i>Access to Justice</i>	13
4. Administrative Justice	14
5. Elections	15
6. Local Government	16
7. Yerevan	17
8. Human Rights Defender	18
9. Torture and Degrading Treatment	19
10. Freedom of Information	21
11. Mass Media and Freedom of Expression	22
12. Religious Minorities and Organizations; Freedom of Conscience	24
13. Alternative Service	25
14. National and Ethnic Minorities	26
15. Regional Cooperation	27
16. Information Society	28
<i>Appendix 1</i>	30
<i>Appendix 2</i>	31
<i>Appendix 3</i>	32
<i>Appendix 4</i>	33
<i>Appendix 5</i>	34
<i>Appendix 6</i>	35
<i>Appendix 7</i>	36
<i>Appendix 8</i>	37
<i>Appendix 9</i>	38

Preface

PREFACE

The Partnership for Open Society, a coalition of civil society representatives, acknowledges the ENP as an exceptional opportunity for implementation of democratic, political, economical, and social reforms that would enable Armenia to have a closer relationship with the EU. The Partnership considers the primary goal of the ENP to be one of building the efficient institutions necessary in a democratic state based on the rule of law with an open and competitive market economy in the EU's neighbors.

In the meantime the POS notes that as opposed to many previous policies implemented by the Armenian government the ENP provides for a comprehensive and country-tailored plan of actions that encompasses almost all aspects of public life. Based on all the above the POS would like to state its firm belief that achieving these ambitious goals will be impossible unless through democratic reform is prioritized and being addressed according to specific and clearly stated measurable objectives.

Following its earlier statement to participate in developing of relevant provisions of the European Neighborhood Policy Action Plan specifically concerning those of democratic institution building, the Partnership for Open Society has embarked on detailed background analysis and formulation of recommendations to the Action Plan. The areas of the POS analysis address the issues of justice, human rights, free speech, fundamental freedoms and we believe they are the ones that precede Armenia's true and sustainable development into a prosperous democratic state. They are also the ones that have been identified in the Country Report of the ENP initiative. More concretely the Partnership has addressed the following areas:

- Constitutional Amendments;
- Constitutional justice;
- Independence and efficiency of judiciary;
- Administrative justice;
- Elections;
- Local government, city of Yerevan;
- Human rights defender;
- Torture and degrading treatment;
- Freedom of information;
- Mass media and freedom of expression;
- Religions minorities and organizations; freedom of conscience;
- Alternative service;
- National and ethnic minorities;
- Regional cooperation;
- Information society

The POS believes that as well as encouraging these reforms in the negotiations of the future EU-Armenia Action Plan, the EU should also re-focus its financial assistance to support implementation of the priorities of the Action Plan and should ensure that the progress of the Armenian government is monitored according to clear benchmarks.

The presented materials are draft recommendations. The POS does not view it as a comprehensive package or a final document. We urge all interested bodies, the government of Armenia, the European Commission, and civil society of Armenia to engage in discussion of the issues that we believe are of high priority for the country.

The Partnership wants to thank all contributors to this document and those who shared with us their analyses, thoughts and concerns during the POS meetings and roundtables.

1. Constitutional Amendments

1.1. Separation of Powers

Overview of Present Situation and Issue Statement

- ✓ In Armenia, political authority with virtually no limitation is concentrated in the hands of the President. The President has predominance over the legislature, the executive, and the judiciary.
 - The main tool for exercising predominance over the legislature is the President's virtually unlimited power to dismiss the National Assembly.
 - The main tool for exercising predominance over the executive is the President's power to form the Government and his right to dismiss the Prime Minister at any time (the President unilaterally appoints the Prime Minister and, upon nomination by the latter, also the ministers), though the President is not the head of the executive power under the Constitution. The President chairs the Government's sessions and endorses Government decrees.
 - The strongest tool of the President in respect of the judiciary is the Justice Council, of which the President is *ex officio* the Chairman. Moreover, upon advice from the Justice Council, the President appoints judges and takes decisions on all matters of judges' professional activities.
- ✓ Despite the vast political powers, the President does not carry any political responsibility, i.e. the President cannot be impeached on political grounds prior to the end of his term

Recommended Solution

Implement a semi-presidential system of government, including:

1.1.1. Stable, effective, and collegial separation of powers

1.1.2. The President as:

- (i) An official ensuring respect for the nation's supreme values; and*
- (ii) An institution that performs some functions of executive power.*

1.1.3. The Government as:

- (i) The supreme body of executive power; and*
- (ii) The body that is politically responsible for development and implementation of domestic and foreign policies.*

1.1.4. The Government should be politically responsible only in respect of the National Assembly.

1.1.5. Overall steering of foreign policy by the President, with some powers vested in the Government.

1.1.6. Defense and national security policy coordination by a National Security Council created on the basis of the Constitution.

1.1.7. Enhanced powers of the National Assembly to exercise control.

1.1.8. Clearly prescribe the relationship between the Government and the National Assembly (vote of confidence, dissolution, etc.).

Necessary Preconditions

- Constitutional amendments and laws stemming out of the Constitution.

1.2. Fundamental Human Rights and Freedoms

Overview of Present Situation and Issue Statement

- ✓ Numerous articles in the Constitution either are inadequate or do not contain adequate safeguards for the fundamental human rights.
- ✓ The Constitution does not differentiate between civic, political, and social rights of person, and does not draw a line between such rights and the policy objectives of the state.
- ✓ The grounds for restricting human rights are broader than those prescribed in the European Convention on Human Rights.
- ✓ The human rights restrictions are not clearly defined.
- ✓ The Constitution does not directly enshrine the principle of proportionality.

Recommended Solutions

- 1.2.1. *The Constitution should prescribe a number of new rights and safeguards for their exercise.*
- 1.2.2. *Rights subject to judicial remedy should be prescribed in a separate chapter, whereas the remaining rights should be defined as policy objectives of the state.*
- 1.2.3. *The grounds for human rights restrictions should be harmonized with:*
 - (i) *The European Convention on Human Rights; and*
 - (ii) *The case law developed by the European Court of Human Rights.*
- 1.2.4. *The grounds for restricting each right should be specifically prescribed.*
- 1.2.5. *The principle of proportionality should be directly prescribed.*

Necessary Preconditions

- Constitutional amendments and laws stemming out of the Constitution.

1.3. Independence of the Judiciary

Overview of Present Situation and Issue Statement

- ✓ The judiciary is directly dependent upon the President of the Republic.
 - Under Article 94 of the Constitution, the President is the “guarantor” of the independence of the judiciary and the head of the Justice Council.
 - The Minister of Justice and the Prosecutor General are Deputy Chairmen of the Justice Council.
 - The Justice Council comprises 14 members appointed by the President for a five-year term, of which two represent the academic legal community, nine are judges, and three are prosecutors.
 - Three members of the Justice Council are appointed from among each of first instance courts, appellate courts, and cassation court judges. The General Assembly of Judges votes in camera to nominate three candidates for each seat in the Justice Council.
- ✓ Under the current procedure for the Justice Council formation, when all of its members are appointed by the President, as well as the fact the President has a dominant role in the formation of the judicial corps, the Minister of Justice—who is directly dependent upon the President—has the monopoly over initiating disciplinary proceedings against judges, and judges and courts are yet to receive adequate financing, the independence of the judiciary is far from conceivable.

Recommended Solutions

1.3.1. *The Justice Council:*

- (i) *Should be free from the political influence, including the influence of the executive in terms of its formation and activities; and*
- (ii) *Should become the last resort in all matters related to the professional activities of judges (appointment, promotion, service, training, dismissal, and disciplinary proceedings).*

1.3.2. *The Constitution should prescribe:*

- (i) *The power of the Cassation Court to take final decisions in cases provided by law;*
- (ii) *The existence of administrative courts;*
- (iii) *The obligation of the state to provide a separate budgetary line for adequately funding the activities of each court;*
- (iv) *The requirement to create sound conditions for the performance of judges as well as the adequate remuneration of judges;*
- (v) *The requirement of having a university degree in law and some experience with legal work in order to be appointed as a judge;*
- (vi) *The grounds for terminating the mandate of a judge;*
- (vii) *A restriction on any interference with judges’ activities and punishment for such interference by law;*
- (viii) *A restriction on demanding a judge to report on a case; and*
- (ix) *Provisions to support publicity throughout the appointment and early dismissal of judges.*

Necessary Preconditions

- Constitutional amendments and laws stemming out of the Constitution.

1.4. Local Government

Overview of Present Situation and Issue Statement

- ✓ Local government bodies are directly dependent upon the executive power.
- ✓ Communities are too small.
- ✓ Sources of sufficient funding are not provided in order for local governments to perform their functions.
- ✓ The status of Yerevan is such that it does not secure the exercise of the public's right to self-government through elected representatives.

Recommended Solutions

- 1.4.1. Ensure the autonomy of local government.*
- 1.4.2. Prescribe the accountability of the community head before the community council.*
- 1.4.3. Prescribe the creation of inter-community unions both on voluntary grounds and on the basis of law.*
- 1.4.4. Prescribe the constitutional possibility of community consolidation by means of introducing provisions on the possibility of a consultative referendum.*
- 1.4.5. Grant Yerevan the status of a community, the bodies of which shall be directly elected by the residents of Yerevan.*

Necessary Preconditions

- Constitutional amendments and laws stemming out of the Constitution.

2. Constitutional Justice

Overview of Present Situation and Issue Statement

- ✓ The Constitutional Court (CC) does not properly function as a constitutional court in a democratic state:
 - The CC does not fully perform its function as the highest body of constitutional control; and
 - The CC is not autonomous and independent in the performance of constitutional court (i.e. it does not fully safeguard the prevalence and direct application of the Constitution or the constitutionality of laws, their application, and the activities of the authorities).
- ✓ There are hundreds of laws and sub-legislative acts that contain unconstitutional provisions. Constitutional provisions are not adequately reflected in real-life situations.
- ✓ During the nine years of its activities, the CC has only examined five laws for their constitutionality. It has not reviewed the constitutionality of any presidential or governmental decree.
- ✓ The CC does not have the power:
 - To determine the conformity of all legal acts to the Constitution.
 - To determine the constitutionality of a matter proposed to the referendum.
 - To resolve disputes between public authorities, or between public and local authorities concerning their powers; and
 - To resolve individual petitions.
- ✓ The scope of entities eligible to apply to the CC is extremely narrow.

Recommended Solutions

- 2.1. *The Constitution should prescribe guarantees of the independence and immunity of CC members, as well as an exhaustive list of grounds on which the powers of a CC member may be terminated (for details, see **Appendix 1**).*
- 2.2. *A fixed term of office should be prescribed for CC members, not to exceed 15 years, and the retirement age should be fixed at 65.*
- 2.3. *The powers of the CC should be expanded (for details, see **Appendix 2**).*
- 2.4. *The scope of entities eligible to apply to the CC should be expanded (for details, see **Appendix 3**).*

Necessary Preconditions

- Constitutional Amendments
- Amendments to the Law on the Constitutional Court

3. Independence and Efficiency of the Judiciary

3.1. Appointment of Judges

Overview of Present Situation and Issue Statement

- ✓ The appointment procedure is not transparent and is largely influenced by the executive (the Ministry of Justice).
- ✓ There are no clear and objective criteria for appointment.
- ✓ Appointment is in practice affected by political considerations.
- ✓ There are large corruption risks in the appointment process.
- ✓ The commission examining candidates is appointed by a decree of the Minister of Justice.
- ✓ After the exam, candidates pass an interview with the Minister of Justice, but there are no objective criteria regarding the interviews.
- ✓ In order for a candidate to become listed as “qualified,” he/she must be nominated by the Minister of Justice, and the list is annually approved by the President.

Recommended Solutions

- 3.1.1. *A clear and transparent procedure of selection and appointment should be developed and implemented, where the executive (Minister of Justice) will have a minimum role, or have nothing to do with this process at all.*
- 3.1.2. *A School of Judges should be created as an institutional mechanism for professional education (for details, see **Appendix 4**).*

Necessary Preconditions

- Constitutional amendments
 - Adoption of a Law on the Procedure of Judicial Appointment
 - Amending the Law on the Justice Council
 - Amending the Law on Judiciary Formation
-
- ❖ *The Law on the Procedure of Judicial Appointment should provide detailed regulation of this process, including the creation and activities of the School of Judges and the examination commissions, as well as the judicial appointment procedure.*
 - ❖ *The School should be independent of the Ministry of Justice, the Justice Council, and the judiciary.*
 - ❖ *The management and staff of the School should have no relationship with the School admission and graduation exams.*
 - ❖ *Independent examination commissions should be created, comprising judges, legal scientists, representatives of the public, and foreign experts.*
 - ❖ *The composition of the commission should be decided on the exam day by means of a publicly-conducted lottery drawing.*
-
- ✓ Reforms in the judicial appointment process should be accompanied with the political will of the authorities. Otherwise, the process will turn into a formality and create possibilities for abuse.
 - ✓ The success of the reform will depend on the participation of the public, the mass media, international organizations, and experts throughout the process.

Proposed Timeframe 2006-2008

3. Independence and Efficiency of the Judiciary

3.2. Appointment of Court Chairmen

Overview of Present Situation and Issue Statement

- ✓ The court (chamber) chairman is the “manager” of the court in terms of the following:
 - Administrative matters (budget, personnel, and the like); and
 - Procedural matters (selection of cases and case assignment to judges).
- ✓ The aforementioned circumstance is a real threat hanging over the independence of both the judiciary and individual judges.
- ✓ In such a situation, corruption risks and the possibilities for “telephone justice” grow significantly (in other words, the executive can influence judicial decisions through the court chairman).

Recommended Solutions

- 3.2.1. *Develop and implement rotation procedures for the appointment and activities of court (chamber) chairmen.*
- 3.2.2. *Limit the term of court (chamber) chairmen to one year.*
- 3.2.3. *After the end of the one-year term of a current chairman, the judge who is the next in the alphabetical list of the names of judges in that court shall be appointed as court chairman by a decree of the President of the Republic.*

Necessary Preconditions

- Amending the Law on the Justice Council
- Amending the Law on Judiciary Formation
 - ❖ *The amendments to these laws will guarantee the automated performance of the court (chamber) chairman rotation arrangement.*
 - ❖ *These amendments are possible without even amending the current Constitution.*
 - ✓ These reforms require no financial or organizational resources.
 - ✓ The court chairman appointment rotation procedure can be achieved by simply amending some of the relevant laws.

Proposed Timeframe

2006-2007

3. Independence and Efficiency of the Judiciary

3.3. Financing of the Judiciary

Overview of Present Situation and Issue Statement

- ✓ Chronic under-financing of the judiciary limits its independence and places it in a situation of constantly having to “ask” the executive for something.
- ✓ During the last three years, state budget funding for the judiciary has been disproportionately smaller than the financing of other branches of the power:
 - US \$1.5 million during 2002;
 - US \$1.2 million during 2003; and
 - US \$2.4 million during 2004.
- ✓ The salaries of judges should be increased in order to reduce the threat of corruption.
- ✓ At present, judges’ salaries are comparable to the salaries of senior state officials (US \$420-490 per month), but it is insufficient to ensure the well-being of judges and their family members.

Recommended Solutions

- 3.3.1. *Financing of the judiciary should be increased.*
- 3.3.2. *The law should define the minimum level of financing for the judiciary at 1% of GDP (in 2004, it was 0.7% of GDP).*
- 3.3.3. *The law should define that at least 30% of collected judicial fees be earmarked for financing of the judiciary.*
- 3.3.4. *The control of the executive over the spending of budgetary funding by the judiciary should be ruled out.*
- 3.3.5. *The law should define that audit of the judiciary be conducted only by the Chamber of Control of the National Assembly and by the Central Bank.*
- 3.3.6. *Judicial salaries should be increased significantly to reach 20-fold the average monthly statistical salary reported in the country.*

Necessary Preconditions

- Adopt a Law on Procedure of Financing the Judiciary
 - Amend the Law on the Budgetary System
 - Amend the Law on Judiciary Formation
 - Amend the Law on the Status of Judges
 - Amend the Law on the Central Bank
 - Amend the Law on the Chamber of Control
- ❖ *The adoption and amendment of appropriate legislation will ensure a sufficiently automated system of judiciary financing, which will be free from administrative considerations at the budgeting stage.*
 - ❖ *The adoption and amendment of appropriate legislation should provide a mechanism for the calculation and annual indexation of judicial salaries, which should be free from administrative or agency influence.*
- ✓ State budget funding should be reallocated in a justified manner in view of medium-term and long-term benefits.
 - ✓ These reforms should not be contingent upon external or donor support, because the very aim of reports is to develop a sustainable arrangement for financing the judiciary.

Proposed Timeframe

2006-2008

3. Independence and Efficiency of the Judiciary

3.4. Fighting Corruption in the Judiciary

Overview of Present Situation and Issue Statement

- ✓ According to various estimates, there is corruption, bribery, and unlawful interference with the examination of cases in the judiciary, including administrative and political pressure.
- ✓ This situation is facilitated by the weak safeguards of judicial independence, the lack of accountability and transparency arrangements, the inadequate social situation of judges, and the low ethical and legal culture.

Recommended Solution

*Express political will to carry out targeted complex measures to eliminate the root causes of corruption (for details, see, page **Error! Bookmark not defined.**).*

Necessary Preconditions

- Adopt a Law on the Judicial Inspectorate
 - Amend the Law on the Justice Council
 - Amend the Law on Judiciary Formation
 - Amend the Law on the Status of Judges
 - Amend the Criminal Code and Criminal Procedure Code
-
- ❖ *The Judicial Inspectorate should be an absolutely independent body exercising control over the judiciary.*
 - ❖ *The independence of the Judicial Inspectorate should be a safeguard of judicial independence.*
 - ❖ *The Director and Board of the Judicial Inspectorate should be irreplaceable and be appointed by the National Assembly for a seven-year term from among qualified lawyers that should possess undisputed morality and reputation.*
 - ❖ *The Director and Board of the Judicial Inspectorate should receive salaries and social guarantees on equal grounds with judges.*
 - ❖ *The Inspectorate staff should be formed by its Board upon nomination by the Director.*
 - ❖ *The Inspectorate shall not have the right to investigate judicial cases pending before courts or exert any influence on the judicial review of cases.*
 - ❖ *Reports submitted to the Justice Council by the Inspectorate and all decisions of the Inspectorate must be published.*
-
- ✓ Funding will be required for the creation of the Judicial Inspectorate, which can be financed by donors.
 - ✓ Experience sharing and other methodological support in effectively fighting corruption will be required, as well.

Proposed Timeframe

2006-2007

3. Independence and Efficiency of the Judiciary

3.5. Access to Justice

Overview of Present Situation and Issue Statement

- ✓ Access to justice, including access to professional legal aid, is an issue for vulnerable groups of society.
- ✓ Low legal awareness and an underdeveloped legal culture negatively affect access to justice.
- ✓ The system of free legal aid is ineffective and highly limited.
- ✓ The Public Defender's Institution, though prescribed by law, is not operational yet. When it starts to operate, problems will arise in respect of the Defender's narrow mandate, which will make legal aid inaccessible for a large share of the public.
- ✓ There are only two or three types of civil cases for which individuals may be eligible for the Defender's services, which means that the Defender's free legal aid services might be rendered to some people who are not insolvent, whereas some vulnerable groups in need of free legal aid would be deprived of such aid in other cases.

Recommended Solution

- 3.5.1. *Introduce fundamental reform in the system of legal aid to ensure the provision of aid only to those in need of such aid.*
- 3.5.2. *Make legal aid contingent upon the social status of the person in need of such aid, rather than the type of the case.*
- 3.5.3. *Define clear eligibility criteria for free legal aid, including the requirement to evaluate the assets and income of those in need of such aid (by using the recently-introduced scheme of social cards).*

Necessary Preconditions

- Adopt a Law on Free Legal Aid
 - Amend the Law on Advocacy
 - Amend the Civil and Criminal Procedure Codes
- ❖ *The Law on Free Legal Aid should regulate the provision of free legal aid, the eligibility criteria for such aid, the institutional process, and the mechanism of state funding.*
 - ❖ *The Law on Advocacy and the Civil and Criminal Procedure Codes should be amended in line with the philosophy of the Law on Free Legal Aid.*
- ✓ Targeted legislative and administrative efforts are required to implement appropriate mechanisms and adequate funding. However, Armenia objectively faces difficulties in this respect.
 - ✓ Therefore, it is appropriate to raise support from abroad (technical assistance and financial support/co-financing) in order to successfully carry out these reforms.

Proposed Timeframe

2006-2008

4. Administrative Justice

Overview of Present Situation and Issue Statement

- ✓ The Constitution does not directly provide the existence of administrative courts, but this possibility flows from Article 92(2) of the Constitution.
- ✓ Disputes related to administrative bodies are currently examined by regular courts subject to regular adversarial proceedings for civil procedure, when parties present their respective arguments, and it is not up to the court to proactively collect evidence, though administrative cases are not only disputes between two parties, as they may extend broader and have an infinite number of parties involved.
- ✓ The procedural codes do not clearly prescribe effective remedies against administrative bodies.
- ✓ The extant laws do not pay sufficient attention to the peculiarities of administrative procedure, such as:
 - A significant share of the acts of public authority are in effect beyond the scope of effective judicial control, because they are reviewed and solved on the basis of civil, rather than administrative procedure rules.
 - The Civil Procedure Code on the basis of which disputes related to administrative bodies are reviewed does not secure an effective and adequate procedure for reviewing public disputes, and natural persons or legal entities that have disputes with public bodies almost always lose the case.
- ✓ There are no courts specialized in public law disputes, and there is no separate code of administrative procedure.

Recommended Solutions

- 4.1. *Create specialized administrative courts.*
- 4.2. *Adopt a separate code on administrative procedure (for details, see **Appendix 6**).*

Necessary Preconditions

- Amend the Constitution to require the existence of specialized administrative courts
- Adopt a code on administrative procedure
- Amend the Law on Judiciary Formation

5. Elections

Overview of Present Situation and Issue Statement

- ✓ There are problems related to the electoral legislation, but the administration of extant laws is even a more serious problem.
- ✓ Despite Armenia's national legislation and international commitments, there still remain serious problems in respect of carrying out democratic elections.
- ✓ There are political and legal obstacles to carrying out democratic elections (for details, see **Appendix 6**).
- ✓ The public conscience still does not perceive encroachments upon electoral rights as criminal acts.
- ✓ There is an atmosphere of impunity.

Recommended Solutions

- 5.1. *Fundamentally change the procedure of electoral commission formation to ensure that they be balanced, impartial, and professional (for details, see **Appendix**).*
- 5.2. *Limit the largely biased influence that the executive and its de-facto head—the President—currently have over the activities of electoral commissions.*
- 5.3. *Considerably facilitate the registration of candidates and rule out the requirements of a large electoral deposit and a large number of signatures.*
- 5.4. *Minimize breaches of equality between candidates and preclude the use of administrative resources to gain advantages over other candidates.*
- 5.5. *Ensure access to the mass media throughout the campaign.*
- 5.6. *Significantly reduce and control the impact of finance on the outcome of elections.*
- 5.7. *Carry out targeted nationwide programs to raise the electoral culture.*
- 5.8. *Shift to a system based fully on the party-proportional contest.*

Necessary Preconditions

- Amend the Constitution
- Amend the Electoral Code
- Develop and adopt a National Action Plan to Improve the Electoral Culture

6. Local Government

Overview of Present Situation and Issue Statement

- ✓ Functions and powers are not proportionately divided between central, regional, and local authorities, and there remain overlapping functions and ambiguously-defined powers.
- ✓ The legislation is far from perfect (for details, see **Appendix 8**).
- ✓ Local government, as a new system for Armenia, is objectively not free from flaws.
- ✓ The entrenched culture of resolving all public matters “from one center” has not been overcome yet. Local government, which is new to Armenia, faces subjective difficulties of psychology and mental perception. The ideology-saturated Soviet inheritance of public administration is yet to be overcome.
- ✓ Public administration bodies are not interested in yielding their de-facto powers to newly-emerging local government bodies and are reluctant to take steps in this direction.
- ✓ A regional government body, i.e. the Regional Governor, which is appointed by the executive, has the power to dismiss a mayor that is elected by direct suffrage.

Recommended Solutions

- 6.1. *Amend the Constitution to enhance safeguards for the development of local government (for details, see **Appendix 9**).*
- 6.2. *Enact or amend legislation to regulate human resource matters (appointment, promotion, testing, and training) in local government.*
- 6.3. *Define criteria on the size of communities and promote consolidation in order to reduce the number of small communities.*
- 6.4. *Shape a favorable environment for the creation of inter-community unions.*
- 6.5. *Revise the procedure of calculating and providing state budget subsidies on the basis of the financial equalization principle.*
- 6.6. *Raise soft loans for community development and provide fiscal and monetary incentives to communities.*
- 6.7. *Amend the legislation to clearly divide powers between rural, urban, and district communities.*
- 6.8. *Give communities the right to own land. Consequently, transfer to each community the state-owned land within the administrative boundaries of that community, provided that such land is not necessary for the exercise of state functions.*
- 6.9. *Improve program budgeting and execution of community budgets.*
- 6.10. *Decentralize some functions of tax policy and administration by delegating them to communities.*

Necessary Preconditions

- Amend the Constitution
- Amend the Law on Local Government and the Law on the Administrative-Territorial Division
- Amend the Law on Condominium
- Amend the Laws on the Budgetary System, the Law on Local Duties and Fees, the Law on Stamp Duties, the Law on Presumptive Taxes, and the Law on Financial Equalization
- Amend the Law on Urban Development
- Amend the Law on the Use of State-Owned Reserve Land in the Administrative Territory of Rural Communities
- Amend the Law on Privatization of State Assets

7. Yerevan

Overview of Present Situation and Issue Statement

- ✓ Local government is not carried out at the level of the City of Yerevan, as the Mayor of Yerevan is appointed and dismissed by the President of the Republic upon nomination by the Prime Minister.
- ✓ Governance in Yerevan is regulated by a Presidential decree, rather than a law enacted by Parliament.
- ✓ The city does not have a unified budget and has to rely on district budgets or the state budget for various needs, which often creates friction between district communities of Yerevan as to the fair share of each district in financing matters of city-wide significance.
- ✓ There are development discrepancies between different district communities of Yerevan, partly due to the absence of a unified city budget.
- ✓ In the absence of a representative body authorized to take decisions at the level of Yerevan, there are no open or comprehensive discussions of matters concerning Yerevan, and decisions are predominantly taken by one individual.
- ✓ There is some overlap between the powers of Yerevan's appointed mayor and those of the elected district mayors, which often results in clashes.
- ✓ There is a lack of feedback, public discussions, and a participatory process between the people of Yerevan and the appointed mayor.
- ✓ Since about 40% of Armenia's population lives in Yerevan, one can assert, on the basis of the aforementioned arguments, that Armenia does not have fully-fledged local government.

Recommended Solutions

- 7.1. *Amend the Constitution to provide that the City of Yerevan is a community in which local government shall be carried out at the level of both the City and its districts.*
- 7.2. *Amend the Constitution to provide that local government bodies in Yerevan (the Community Council of Yerevan and the Mayor of Yerevan) be elected by residents of Yerevan that have voting rights.*
- 7.3. *Provide Yerevan with a city budget, which should be approved by the Community Council of Yerevan upon submission by the Mayor of Yerevan.*
- 7.4. *Introduce provisions stating that Yerevan is made up of communities, the local government bodies of which shall be elected by the residents of the district that have voting rights.*
- 7.5. *Provide districts with their own autonomous budgets, which shall be approved by the District Community Council upon submission by the District Mayor.*
- 7.6. *Adopt a Law on Yerevan defining the procedures of budgeting for the City of Yerevan and the district communities of Yerevan, as well as the powers of and relations between local government bodies of the City of Yerevan and its districts.*

Necessary Preconditions

- Amend the Constitution
- Amend the Law on Local Government
- Adopt a Law on Yerevan

8. Human Rights Defender

Overview of Present Situation and Issue Statement

- ✓ The Armenian Human Rights Defender is not a parliamentary institution.
- ✓ When appointing the Human Rights Defender and her Deputy, the President of Armenia did not honor his obligation under Articles 3, 22, and 27 of the Law on the Human Rights Defender to consult with the groups and factions of the National Assembly.
- ✓ The Government has proposed legislation to incorporate the Human Rights Defender and her Staff into civil service. In this way, the Human Rights Defender institution will become fully controlled by and dependent upon the executive power.
- ✓ In April 2005, the Constitutional Court of Armenia ruled, on the basis of an application filed by the President, that Article 7(1) of the Law on the Human Rights Defender is not in conformity with the Constitution of Armenia and that the Human Rights Defender has no right to make suggestions to court, but rather, has the right to receive from courts only such information which is not related to the administration of justice in a specific case and does not relate to matters of legal substance and procedure in a case pending before court.
- ✓ In effect, the Defender no longer has the power to assist those whose fundamental human right to a fair trial has been breached.

Recommended Solutions

- 8.1. *Amend the Constitution to provide the Defender's appointment by the National Assembly by qualified majority of votes.*
- 8.2. *Amend legislation to empower the Defender to form her staff and introduce provisions that will require the Defender to do so publicly, through a commission appointed by the Defender.*
- 8.3. *Expand the Defender's powers in respect of ensuring respect for the right to a fair trial within the judiciary.*

Necessary Preconditions

- Amend the Constitution
- Amend the Law on the Human Rights Defender
 - ❖ *Immediately after the Constitution is amended, a Defender should be appointed by a vote of at least 2/3 of the Members of Parliament.*
 - ❖ *The Defender should create a commission in order to form her staff, and subsequently, the Defender's staff should be formed.*
 - ✓ Quorum should be ensured necessary for the constitutional referendum to take place.
 - ✓ Consensus should be reached between Members of Parliament as to the appointment of the Defender.

Proposed Timeframe

2006

9. Torture and Degrading Treatment

Overview of Present Situation and Issue Statement

- ✓ The Republic of Armenia has failed to honor its following commitments in this sphere:
 - A continuous monitoring procedure in accordance with Council of Europe standards has not been created to ensure effective review of allegations regarding ill-treatment in prisons and in the army.
 - State bodies have not ensured the effective application of national legislation and international law in this sphere.
- ✓ There are frequent cases of ill-treatment during police custody, mainly due to the insufficient competence of police officers to solve cases by other means.
- ✓ There are an excessive number of verdicts in which courts primarily base the judgment on the defendant's self-incriminating testimony (which is extorted by means of cruel or inhuman treatment and punishment).
- ✓ During the trials, 80 percent of the defendants repudiate the statements made by them during pre-trial proceedings, explaining that they made such statements under torture, violence, and threats.
- ✓ Torture allegations are left virtually without any investigation.
- ✓ The number of torture cases increases abruptly at times of political tension, which means that torture is used as a means of political pressure.

Recommended Solutions

- 9.1. *Amend criminal procedure rules and practices to prohibit the use of self-incriminating testimony as primary evidence used to convict.*
- 9.2. *Amend the legislation to oblige courts to immediately take measures to investigate all allegations of ill-treatment.*
- 9.3. *Rule out impunity in cases in which torture facts are proven.*
- 9.4. *Eliminate administrative detention.*
- 9.5. *Amend the Criminal Procedure Code to enshrine a clear procedure to be followed by pre-trial investigative authorities during interrogations.*
- 9.6. *Ensure the recruitment of new staff for police and prosecution authorities based exclusively on criteria of professionalism and willingness to apply the principles of international law.*
- 9.7. *Provide continuous training for all levels of staff in police and prosecution authorities, including some training by outside experts (that do not work for such authorities).*

Necessary Preconditions

- Amend the Criminal and Criminal Procedure Codes
 - Amend the Law on Holding the Arrested and Detainees
 - Amend the Penitentiary Code
 - Adopt a new Code on Administrative Infringements
-
- ❖ *Broaden the mandate of the Public Observer Group that already conducts public monitoring in penitentiary institutions to cover also police stations and temporary detention facilities*
 - ❖ *Create a standing arrangement in accordance with Council of Europe standards to investigate allegations of ill-treatment in imprisonment facilities*
 - ❖ *Ensure that those guilty of torture, battering, and inhuman treatment be punished in accordance with law*

- ✓ Willingness to join the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment
- ✓ Willingness to make penitentiary institutions, police stations, and temporary detention facilities accessible to the public for oversight
- ✓ Experience sharing and methodological assistance required to make changes in human resources

Proposed Timeframe

2006

10. Freedom of Information

Overview of Present Situation and Issue Statement

- ✓ The Law on Freedom of Information (2003) has to date not been adequately enforced due to the lack of appropriate sub-legislation and institutional control mechanisms.
- ✓ Access to information is often restricted on the pretext that it is state, official, or commercial secrecy, which is not always true. The lack of objective criteria and transparent procedures for information classification is an obstacle to the exercise of information rights by individuals and legal entities.
- ✓ The activities of public bodies are not sufficiently transparent; in particular, the authorities do not adequately raise the awareness of the public on legislative work, events, and initiatives.
- ✓ Public officials and civil servants are not duly aware of the requirements of the Law on Freedom of Information and their duties under the Law.

Recommended Solutions

- 10.1. *Create safeguards for the exercise of the right to receive and impart information by means of developing and enacting sub-legislation stemming out of the Law on Freedom of Information.*
- 10.2. *Provide institutional safeguards for the exercise of citizens' information rights by means of creating a special supervisory body in the sphere of information and a body to resolve information disputes.*
- 10.3. *Develop and enshrine in the legislation objective criteria for classification of information constituting state, official, and commercial secrecy and special procedures for the classification of confidential information.*
- 10.4. *Provide legislative safeguards to ensure public awareness of the activities of state bodies and governmental initiatives and events.*
- 10.5. *Ensure transparency of law-making activities carried out by the authorities and public discussion of government-initiated draft legal acts that are of public significance.*

Necessary Preconditions

- Develop and adopt legal acts required under and necessary to ensure the effective enforcement of the Law on Freedom of Information.
- Amend the Law on Legal Acts to provide arrangements for mandatory public discussions of legislation that is of public significance.
- Introduce legislative provisions to define objective criteria and clear procedures for the classification of confidential information.
- Enact legislation on non-judicial arrangements to settle claims of individuals, legal entities, and the mass media that had their information requests rejected by state bodies.

11. Mass Media and Freedom of Expression

Overview of Present Situation and Issue Statement

- ✓ Serious concerns exist regarding the independence of media, as the members of the two regulatory bodies for public and private broadcasters are appointed by the President.
- ✓ There are concerns regarding the impartiality and integrity of broadcast license tenders organized by the National Television and Radio Commission.
- ✓ Activities of the mass media, especially broadcast media, are tightly controlled by the authorities. In effect, there are mechanisms for latent censorship.
- ✓ The leading mass media (especially television and radio companies) are effectively concentrated in the hands of just a few groups of owners.
- ✓ The Criminal Code (Article 318) discriminates between citizens and public officials: the punishment for insulting a public official is more severe than that for insulting an ordinary citizen, thus offering greater protection to public officials than ordinary citizens.
- ✓ There are issues related to the enforcement of the Law on the Mass Media and the Law on Freedom of Information due to some clashes with other laws and the lack of several essential pieces of sub-legislation. For instance, there is a conflict between the journalists' right not to disclose their source of information (Article 5 of the Law on the Mass Media) and the list of persons that may not be summoned as witnesses (Article 86 of the Criminal Procedure Code). There are no procedures either on the filing, classification, and maintenance of information developed or received by a custodian of information, or on the provision of information or copies of documents by central and local authorities and public institutions.

Recommended Solutions

- 11.1. *Enshrine freedom of expression safeguards in the Constitution and directly prohibit any expression of censorship.*
- 11.2. *Amend the Constitution to provide the involvement of the National Assembly in the formation of media broadcast regulatory bodies.*
- 11.3. *Amend the legislation to provide representation of civil society in public and private media regulatory bodies. Support the formation of truly independent public broadcast media and prescribe transparent and impartial procedures for broadcast license tenders.*
- 11.4. *Revoke Article 138 of the Criminal Code.*
- 11.5. *Eliminate inconsistencies between media laws and other legislation (including, in particular, the Criminal Procedure Code) and adopt other legal acts as necessary.*
- 11.6. *Strengthen media independence and pluralism safeguards. In particular, develop means to promote diverse publications and broadcast content that facilitates the achievement of European standards and values in line with the public demand.*

Necessary Preconditions

- Amend the Constitution
- Amend the Criminal Code
- Adopt a new Law on Television and the Radio
- The Government to approve procedures on the filing, classification, and maintenance of information developed or received by a custodian of information, or on the provision of information or copies of documents by central and local authorities and public institutions

- ❖ *Change the current composition and, in general, the formation procedure of the National Television and Radio Commission and the Public Television and Radio Board*
- ❖ *Develop funds to support the formation of independent self-regulatory bodies of the mass media and the dissemination of publicly-important information*
- ❖ *Carry out mass media monitoring and audit to rule out censorship, control by the authorities, and mass media monopolies*
 - ✓ Collaboration between the Republic of Armenia and European structures
 - ✓ Need for strong and effective civil society organizations

Proposed Timeframe

2006-2008

12. Religious Minorities and Organizations; Freedom of Conscience

Overview of Present Situation and Issue Statement

- ✓ The Law on Freedom of Conscience and Religious Organizations suffers from inadequacy for the present situation in Armenia and contains uncertainties, such as the following:
 - The Law declares that the Armenian Apostolic Church has the monopoly of freely spreading and preaching its faith throughout the Republic of Armenia.
 - The Law does not define the terms “proselytism” and “religious organization.”
 - The Law does not provide safeguards for civil society to conduct impartial oversight of the religious organization registration process.
 - The Law does not adequately regulate the interaction between religious organizations.
- ✓ There is a climate of intolerance and tension among the religious organizations and groups of different confessions.
- ✓ The public is generally unaware of the differences between existing confessions, their activities, and goals.
- ✓ Due to the lack of awareness, there is mistrust towards certain religious groups and their respective organizations.

Recommended Solutions

- 12.1. *The new Law on Freedom of Faith and Religion should safeguard the equality of all natural persons and legal entities before the law.*
- 12.2. *Ensure that human rights organizations be represented in the commission dealing with registration of religious organizations.*
- 12.3. *Incorporate the requirements of Article 6 of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in the domestic laws.*
- 12.4. *Create a radio program that will present the activities, practices, and confession of various religious groups to the public. Here, representatives of different religions should be able to present their views and spiritual ideas to the public. Such an initiative would aim at building an atmosphere of confidence and tolerance.*

Necessary Preconditions

- Amend the Constitution to clearly prescribe the freedom of conscience and the equality of religious organizations under law
- Adopt the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- Adopt a new Law on Freedom of Conscience and Religious Organizations
 - ❖ *Combine efforts of religious organizations, NGOs, and state bodies to develop a new Law on Freedom of Conscience and Religious Organizations in accordance with principles of international law*
 - ❖ *Amend the legislation to provide appropriate procedures for state bodies to be obliged to respond to the findings of NGOs’ and the Human Rights Defender’s monitoring over the enforcement of laws*
 - ✓ Willingness to develop and adopt appropriate legal procedures
 - ✓ Evaluation by independent expert teams

Proposed Timeframe

13. Alternative Service

Overview of Present Situation and Issue Statement

- ✓ The term of alternative service is excessive—36 months for alternative military service and 42 months for alternative labor service, whereas the term of mandatory military service is only 24 months.
- ✓ The law does not prescribe alternative civil service.
- ✓ Those who undertake alternative service will later be unable to work in any sphere related to the right to carry, keep, or use weapons.
- ✓ The law does not oblige state bodies to notify conscripts about the Law on Alternative Service and its requirements.
- ✓ By its nature, alternative service is not civil, because:
 - Alternative servants have to wear uniforms.
 - Alternative servants are supervised by the Military Police.
 - In case of illness, alternative servants are taken to army hospitals, rather than civilian ones.

Recommended Solutions

- 13.1. *Introduce legislation on alternative civil service.*
- 13.2. *Reduce the length of service from 42 to 36 months.*
- 13.3. *Ensure that civil authorities supervise alternative civil service.*
- 13.4. *Have alternative civil servants treated in civilian hospitals.*
- 13.5. *Define a list of institutions in which alternative service may be performed in view of the peculiarities and requirements of such institutions, as well as the professional skills of servants.*

Necessary Preconditions

- Amend the Law on Alternative Service
- Amend the Government Decree on Approving the List of Institutions in which to Perform Alternative Service
 - ❖ *Create a mechanism for continuous monitoring over alternative service*
 - ❖ *Ensure effective investigation into complaints regarding alternative service*

14. National and Ethnic Minorities

Overview of Present Situation and Issue Statement

- ✓ There is no single law on national minorities. Different provisions exist in separate laws.
- ✓ The extant legislation does not adequately provide:
 - A definition of national and ethnic minorities;
 - The rights of national and ethnic minorities and the available remedies; and
 - Possibilities for maintaining and developing the identity, language, culture, and education of national and ethnic minorities.
- ✓ There is no regular financing of textbooks. There is insufficient support for training teachers of the minority language and the state language. So far, only one textbook is printed in Assyrian, and another one in Yezidi language is being prepared for publication.
- ✓ There is insufficient funding for printing literature that reflects the cultural values of national and ethnic minorities. Due to their small numbers, they are unable to have their own print press and television and radio programs without state support.

Recommended Solutions

- 14.1. *Adopt a Law on National Minorities, which will address the aforementioned problems.*
- 14.2. *Publish minority literature in their mother tongue and in the state language.*
- 14.3. *Organize joint theatre performances of the minority and the majority.*
- 14.4. *Support and finance broadcasting of at least one radio station and television content for minorities in both the minority languages and the state language of Armenia.*
- 14.5. *Organize bilingual and multilingual training courses for teachers that work in minority schools, bearing in mind the European best practices in this field.*

Necessary Preconditions

- Adopt a Law on National Minorities
 - ❖ *Prior to parliamentary submission, legislative amendments should be discussed and agreed upon with the relevant state bodies and, subsequently, the national minorities, the public at large, and the Council of Europe*
 - ❖ *The legislative amendments process should be monitored by NGOs and organizations of national minorities*
 - ✓ Willingness to develop and adopt the necessary legal procedures
 - ✓ Methodological support

Proposed Timeframe

December 2006

15. Regional Cooperation

Overview of Present Situation and Issue Statement

- ✓ Difficulties in the relationship with two of the four neighbors (Azerbaijan and Turkey) significantly impede Armenia's active involvement in the regional integration process, which in turn obstructs the European integration of the country and, more broadly, the South Caucasus.
- ✓ The main issues have to do with the radically divergent positions of Armenia and Turkey regarding the events that took place at the beginning of the 20th century and regarding the Karabagh issue, as well as the lack of a constructive dialogue with Azerbaijan towards settling the Karabagh conflict and normalizing the bilateral relationship.
- ✓ The lack of regional integration leaves economic potential unrealized, and the situation cannot be overcome so long as there are different security systems in the region, which is an additional source of instability.

Recommended Solutions

- 15.1. *Based on the principles underlying the European Union, develop initiatives and proposals to strengthen regional cooperation and facilitate regional integration of the South Caucasus, compromise-based conflict settlement, and mutual respect for the parties' interests.*
- 15.2. *During the forthcoming two to three years, place a greater emphasis on the opening of the Armenian-Turkish border and the negotiations with Turkey on establishing diplomatic relations.*
- 15.3. *Develop and start to use transport and other communications linking Armenia with European states through the territory of Turkey (including roads and railways, as well as the use of Mediterranean ports).*
- 15.4. *Promote Armenia's economic cooperation with Turkey and Georgia and develop a favorable environment for implementing projects in this field.*
- 15.5. *Make progress towards settlement of the Nagorno Karabagh conflict and, in this context, discuss and implement projects in different spheres between Armenia and Azerbaijan to build mutual confidence and to eliminate hostility, xenophobia, racism, and aggression in the mass media and in different walks of public life.*
- 15.6. *Further strengthen economic cooperation with Iran, especially in respect of energy resource transportation and a more active use of the transit capacity of the two states.*
- 15.7. *In the frameworks of the EU-Iran cooperation strategy, develop and implement projects between Armenia and Iran.*
- 15.8. *Explore the prospects of a regional security system in the South Caucasus and build such a system on the basis of the principles of European and Euro-Atlantic systems.*
- 15.9. *Expand cooperation with OSCE and NATO and take an active part in their initiatives and projects in the South Caucasus, which will reduce peace threats and bring stability to the region.*

Necessary Preconditions

- Develop a foreign policy concept paper and have it adopted by the National Assembly.

16. Information Society

Overview of Present Situation and Issue Statement

- ✓ Poor vision of tasks and priorities of the development of information society and lack of a comprehensive strategy and a detailed action plan.
- ✓ Inconsistencies with European policy and legislation in area of electronic communication, electronic commerce, intellectual property rights, personal data protection, and other IT related legal standards.
- ✓ Absence of a clear strategy and detailed action plan for the development of electronic governance.

Recommended Solutions

- 16.1. *Revise the Armenian legislation on IT and telecommunications including, but not limited to the law on electronic communication, to harmonize it with the EU policies in the field of electronic communication.*
- 16.2. *Ensure the conformity of individual data protection legislation with the EU Directive on Individual Data Protection and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.*
- 16.3. *Supplement the commercial legislation of Armenia with rules on e-commerce and ensure harmonization with EU legislation on e-commerce.*
- 16.4. *Develop a clear strategy on e-government and a thorough action plan.*
- 16.5. *Clarify the objectives of state policy in e-communication and implementation ways by revising the Telecommunication Development Concept Paper.*

Necessary Preconditions

- Develop and enact sub-legislation stemming out of the Law on Electronic Communication
 - Develop and enact a number of legislative acts regulating e-commerce and protection of consumer rights in e-commerce
 - Revise intellectual property legislation and harmonize it with European standards
- ❖ *Action pursuing long-term objective: Organization of National Summit on Information Society aimed at identification of the priorities for the development of information society in Armenia in the light of the European strategy (eEurope).*
 - ❖ *Actions aimed at the achievement of short-term goals related to the European integration process:*
 - *Organize public hearings on the draft legislation and individual consultations with Members of Parliament and representatives of the Government.*
 - *Develop an e-commerce concept based on the European legal standards, and lobby for the inclusion of its relevant provisions in the Government's Action Plan.*
 - *Initiate reform of intellectual property legislation and provide support to the respective state bodies in this field*
 - *Promote the adoption of the e-government strategy and action plan*
 - ✓ Create organizational committee for National Information Society Summit and engage the Government Staff to support this Committee (to provide the Summit venue and bear other expenses)

- ✓ Organize evaluation of e-communication policies by international and local experts
- ✓ Organize evaluation of intellectual property and e-commerce legislation by international and local experts
- ✓ Support of other donors implementing e-government initiatives (World Bank mainly). Expertise in IT application in e-government and e-signature technologies.

Proposed Timeframe

For 16.1: November 2005
For 16.2: 2005-2006
For 16.3: 2005-2006
For 16.4: 2005-2006
For 16.5: 2005-2006

Proposed Exhaustive List of Grounds for Terminating the Powers of a Constitutional Court Member

It is proposed that the powers of a Constitutional Court (CC) member be subject to termination only if one or more of the following grounds are present:

- (i) *If a CC member has, by reason of temporary labor incapacity, not been at work for more than six consecutive months;*
- (ii) *If a CC member fails to take part in the Court's sessions for one month without any excusable reason;*
- (iii) *If a CC member was appointed as a judge in violation of the law;*
- (iv) *If a CC member has breached the incompatibility requirements enshrined in the Constitution; or*
- (v) *If a CC member has performed an act that diminishes the honor and dignity of a Court member.*

Proposed Jurisdiction of Constitutional Court

The Constitutional Court should have the following powers:

- (i) *Determine the constitutionality of laws and other normative legal acts;*
- (ii) *Prior to ratification, determine the constitutionality of commitments enshrined in an international treaty;*
- (iii) *Prior to a referendum, determine the constitutionality of the matter on which the referendum is to be held;*
- (iv) *Prior to the National Assembly adopting constitutional amendments, determine their conformity to the chapters of Constitution that prescribe the foundations of constitutional order and fundamental human and civic rights, freedoms, and duties;*
- (v) *Resolve disputes between state bodies or between state bodies and local government bodies as to their respective powers;*
- (vi) *Resolve individual petitions;*
- (vii) *Resolve the matter of terminating the activities of or banning parties;*
- (viii) *Resolve disputes related to disciplinary sanctions against judges or the early termination of the office of a judge;*
- (ix) *Issue an opinion on whether there are grounds to impeach the President of the Republic;*
- (x) *Issue an opinion on whether the President or Prime Minister are unable to perform their duties; and*
- (xi) *Issue an opinion on the termination of the powers of a CC member or restricting his/her freedom in any way.*

Proposes Scope of Entities with the Right to Apply to the Constitutional Court

The following entities should have the right to apply to the Constitutional Court for various issues:

- (i) *Factions of the National Assembly;*
- (ii) *At least 10 Members of the National Assembly;*
- (iii) *The President of the Republic;*
- (iv) *The Government;*
- (v) *The Human Rights Defender—on matters related to the sphere of the Defender’s activities;*
- (vi) *A judge;*
- (vii) *A community;*
- (viii) *The bodies of an inter-community union; and*
- (ix) *In cases defined by the Constitution—everyone.*

Recommendations on the School of Judges

- (i) *Admission to the School should be conducted in conditions of transparency and competition, with the involvement of the public and international and foreign experts.*
- (ii) *The admission and graduation examination commissions should be separate from one another and should be formed on the exam day by means of lottery drawing from among a pool of pre-selected candidates.*
- (iii) *Upon successfully graduation of the School, a person should be automatically included in the Professional Qualification List of Judges.*
- (iv) *Interviews for appointment as judges should be carried out by the Justice Council in conditions of publicity in the presence of the public and the mass media.*
- (v) *A person nominated by the Justice Council should automatically be appointed as a judge by a Presidential decree.*

Important Recommendations concerning the Code of Administrative Procedure

A Code of Administrative Procedure should be adopted, which will, *inter alia*, meet the following standards:

- (i) *The Code should contain provisions of both substantive and procedural law.*
- (ii) *The Code should define:*
 - a. *The powers of administrative courts;*
 - b. *Provisions regarding the judicial composition; and*
 - c. *Specific provisions enshrining the right to bring a case to court.*
- (iii) *The Code should contain a combination of special legal principles, norms, and tools, which will enable natural persons and legal entities to protect their public rights by challenging the decrees and decisions of central and local executive authorities (administrative bodies).*
- (iv) *The Code should provide the possibility of comprehensively resolving all disputes of public-law nature, including disputes arising out constitutional matters, over which the Constitution Court does not have jurisdiction.*
- (v) *The Code should outline the structure of administrative justice, which should be administered mainly through administrative courts, i.e. the Administrative Court of Armenia and the Administrative Case Chamber of the Cassation Court of Armenia.*
- (vi) *The Code should provide the review and adjudication of administrative cases under special rules.*
- (vii) *The Code will be a means of judicial oversight over the legitimacy of the actions of the executive.*
- (viii) *The Code should provide a framework to address disputes arising out of the power-subordination relationship, including the power to order revocation of a challenged act, to perform a certain action or to refrain from doing so, to determine whether there is a dispute of public law, to support social solidarity in other ways, and to prevent crisis.*
- (ix) *The Code should prescribe the principle of examining disputes ex officio.*

Some Political and Legal Obstacles to Holding Democratic Elections in Armenia

- (i) *In Armenia, the authorities do not have the will to conduct free and fair elections.*
- (ii) *Under the governance system of Armenia, which is a de-facto super-presidential one, with all the political power concentrated in the hands of one person—the President, there is an unfavorable climate for political competition and the development and strengthening of civil society.*
- (iii) *In Armenia, there are no democratic traditions; civil society and a multi-party system are just emerging. There is no sustainable legislation. The existence of mass media independent from the state is questionable.*
- (iv) *As a result of rigging elections in Armenia, elections do not become a means of expressing the majority will, resolving political conflicts, and developing a political elite. In fact, the power is not legitimized through elections.*
- (v) *With the exception of the 1990 parliamentary and 1991 presidential elections, the results of elections held in Armenia have not been found fair by either the public or other stakeholders. Therefore, elections in Armenia do not provide political stability, but rather, become a source of domestic confrontation.*
- (vi) *As a consequence of regularly rigging the elections, the political regime that has formed in Armenia is characterized as a “nomenclature democracy,” i.e. a democracy of limited opportunities, which limits all such rights that, if exercised, might lead to a government change.*
- (vii) *The political elite of Armenia do not recognize that the economic and social problems faced by the country cannot be addressed without democratic political institutions, including but not limited to elections.*
- (viii) *As a result of rigged elections, people and political forces with an unknown and suspicious past come to the power, which have very little to do with the collective will of the public.*
- (ix) *The results of elections are influenced more by administrative and financial resources than the collective will of voters.*
- (x) *Elections in Armenia have transformed from a democratic institution to an institution that serves the narrow interests of individuals or groups.*
- (xi) *With underdeveloped political parties, the campaigns turn into a struggle between individuals. There is almost no debate and discourse around fundamental values and possible avenues of development.*
- (xii) *The election culture is low in Armenia. There are no election traditions. The requirements vis-à-vis candidates are not clearly articulated. Under these circumstances, everyone aspires to come to the power, including reputable neighborhood characters, scientists, shopkeepers, and large businesses.*
- (xiii) *There remains a prevalent belief, as inherited from Soviet times, that access to the power depends on possession of administrative and financial levers, rather than elections and the popular vote.*
- (xiv) *In Armenia’s political system, having the power remains the best shortcut to becoming wealthy. In addition to other benefits, it means an advantageous position in the redistribution of assets. Having the power is the strongest guarantee for the protection of assets acquired in questionable ways. Under these conditions, the “price” of having the power is greater in Armenia than in any democratic country. Therefore, political forces do not hesitate in their choice of means and methods.*
- (xv) *The so-called “related rights” that indirectly support the administration of free and fair elections are inadequate in Armenia. Political life in Armenia cannot be conceived without breaches and limitations of the right to freedom of expression, the freedom to hold beliefs, the right to peaceful assembly, and the right to association.*
- (xvi) *Those who perpetrate election fraud remain unpunished.*

Some Recommendations on the Formation of Electoral Commissions and Their Activities

- (i) *Taking into consideration the peculiarities of Armenia, it is necessary at the present stage to introduce a party-balanced model of forming electoral commissions, which will mean that all members of commission will be appointed by the parties and alliances that have factions in the National Assembly. None of the political forces represented in the commissions should have a predominant position within the commissions. To ensure compliance with this requirement, a procedure of determining electoral commission chairmen, deputy chairmen, and secretaries by lottery drawing could be considered.*
- (ii) *The potential negative impact of any method of electoral commission formation could be mitigated, if the commission activities were public, transparent, and accountable. In order to achieve this objective, proxies and observers should be given broader powers.*
- (iii) *The administration of elections should be improved considerably.*
- (iv) *Electoral commission members should have sound knowledge of the electoral legislation.*
- (v) *Special attention should be paid to training electoral commission members.*
- (vi) *A certificate of competence in electoral law should be a precondition for one's appointment as an electoral commission member.*

Overview of Legislation on Local Government

In 1995, after the Constitution of the Republic of Armenia was adopted, the first Law on Local Government was adopted on June 30, 1996 and became effective on November 10, 1996. On this day in November, the first direct elections of local government were held in the history of Independent Armenia.

This Law was a first attempt in Armenia to regulate the foundations of local government and lay the groundwork for strengthening local government in Armenia.

The Law defined the notion of local government, the bodies of local government, their functions, powers, their relationship with each other and with regional authorities, the procedures of community budgeting, the structure of community budgets, budget execution oversight mechanisms, the procedure of forming inter-community associations, and the like.

In view of the fact that the previous experience did not facilitate the quest for an efficient model to institutionalize in this sphere, numerous issues arose during the first few years of applying the law due to the lack or inadequacy of the existing provisions. Therefore, not long after the adoption of the Law, the need for a new law on local government became apparent, which would define new principles and approaches to facilitate the development and strengthening of local government.

It became necessary to introduce clear regulation of the relationship between the community council and mayor, the functions of community head's staff, the formation of such staff, some tax revenue collection powers of communities, community budgeting procedures, execution oversight mechanisms, and community ownership-related issues.

The possibility for the executive to dismiss a community mayor, the scarcity of funds, the dependence of a large share of communities on state budget subsidies and, therefore, the state, are the main obstacles to the development of local government.

Recommendations concerning Constitutional Safeguards for the Development of Local Government

- (i) *The Constitution should prescribe the minimum functions and funding of communities, as well as the proportionality of funding with the functions.*
- (ii) *Further decentralization should be achieved and financial bases of communities strengthened by delegating local taxes and partially other taxes to community budgets.*
- (iii) *The Constitution should preclude the possibility for the Government or any other body to terminate the office of community bodies (mayors or councils) prematurely.*
- (iv) *Prescribe the right of community bodies to bring cases related to their powers to the Constitutional Court.*
- (v) *Remove the constitutional restriction on the number of community council members, which will allow larger cities to have larger councils that can provide effective oversight over the mayor.*
- (vi) *The Constitution should prescribe the possibility of creating inter-community unions and the legislation should promote their creation.*