

STATEMENT

on the Drafting of the New Electoral Code of the Republic of Armenia

12 February, 2016

Taking into consideration that genuine reform of the electoral system is crucial for the democratic development of the Republic of Armenia;

In view of the violations and fraud committed in elections over the last 21 years and as recently as during the 2015 referendum;

Comprehending the daunting challenges faced by our country and society; and

In light of the forthcoming elections;

We, a number of representatives of civil society, deem it necessary to present to the public and the authorities our concerns and recommendations related to the drafting and substance of the new Electoral Code.

1. It is vital to safeguard the transparency of the drafting of the new Electoral Code and the engagement of all interested civil society stakeholders and political parties. We believe that the complete transparency and participatory nature of these efforts are a condition *sine qua non* for genuine reform.
2. Introducing the following tools and solutions in the new Electoral Code is viewed inevitable for securing integrity and transparency of the electoral system, accountability of the process and opportunity to redress violated electoral rights should such violations occur:
 - i. No substantive progress in securing integrity of the electoral process and increasing trust towards the institute of democratic elections among Armenian people is possible unless the state assumes a positive obligation to publish the list of citizens who voted. Introduction of E-voting alone, which is currently considered by the authorities, is not going to address violations, specifically that of ballot stuffing, which was routinely used at the last referendum and past elections. Hence, publication of the list of voters that voted is the most essential safeguard for the prevention of mass vote rigging. Introduced without such safeguard, the e-voting would become a controversial tool, as it might be ineffective and counterproductive in terms of wasting valuable resources.
 - ii. The Electoral Code shall provide for posting of segregated lists of voters residing and not-residing in Armenia at the time of voting. Such lists shall be available and posted for each polling station ahead of the election.
 - iii. The law should acknowledge substantial deviations from the internationally accepted statistical pattern of fair elections as grounds for reasonable doubt in fairness of the vote and mandate further investigation into fraud, stipulating recount in all such precincts where normal Gaussian distribution is distorted and has tails indicating ballot stuffing.
 - iv. The capacity for public oversight shall be extended in a number of ways to secure accountability of the vote and increase public trust in the process. First, the test-based accreditation of observers should be eliminated so as to preclude differentiated treatment of local and foreign observers, on the one hand, and to exclude undue restriction of observer rights, on the other. Furthermore, the authority of observation missions and observers should be broadened, allowing them to act as

- representatives of public interests who will have the right to appeal the voting results based on the reported violations.
- v. As a positive obligation, the State should be required to install multiple video cameras (up to 5) in each polling station, with proper video-recording and live online broadcasting capacity. State authorities should also assume the obligation to archive such recordings and to store them as non-classified information. The Code shall provide for admissibility of the footage as court evidence in case of alleged violations.
 - vi. As a positive obligation, the State should be required to ensure not only *de jure*, but also *de facto* gender equality between the elected candidates with a view to securing women's fully-fledged participation and representation in the legislative power. The extant 20% quota prescribed by Article 108 of the Electoral Code does not meet the UN standards of having at least 30-40 percent representation of each sex in order to safeguard gender equality.¹
 - vii. The Electoral Code should contain provisions precluding any use, including for the benefit of any candidate, of state and municipal administrative resources (workforce, immovable or movable property, budgets, off-budgets, communication means, official positions, expendable supplies, work time, and the like). Violations of those provisions should trigger clear, and measurable sanctions instead of currently applied inadequate dismissive measures.
 - viii. The Electoral Code and the relevant laws should prescribe clear mechanisms and the obligation of the Central Electoral Commission and the tax authorities to check the credibility of campaign financing sources and declarations filed by parties and candidates.
 - ix. The deadlines for possible electoral violation appeals, recounting, and related activities should be prescribed in such a way as to ensure reasonableness and effectiveness.
 - x. Protection of voting rights in the army should be fundamentally revised with a view to precluding one or several servicemen or commanders to influence, through their actions or inaction, the free expression of the voters' will, and to grant all candidates equal opportunities to represent themselves and their programs to servicemen. Servicemen should be free to exercise or not to exercise their voting right. All of this should be subject to genuine and effective public oversight.
 - xi. The law should prohibit the membership in electoral commissions of teachers and faculty working in the state and municipal education system: in this manner, they will not be involved in potential electoral crimes and fraud, and the future generation will be spared the risk of being taught by potential fraudsters. This cannot be viewed as limitation of the rights of education community to participate in public life, as it is presented currently by officials, but rather this measure protects them from becoming victims of threats and manipulation.
3. Apart from the above provisions in the electoral code, we recommend that the Criminal Code of the Republic of Armenia be amended to safeguard free formation, expression, and protection of expression of the voters' will, including by means of prescribing discouraging and adequate sanctions for the perpetrators of electoral fraud. Specifically, waiver of criminal liability for accepting an electoral bribe

¹ UN, "The Worlds' Women 2010: Trends and Statistics", *Chapter 5: Power and Decision Making*, page 116 // [http://unstats.un.org/unsd/demographic/products/Worldswomen/WW2010%20Report_by%20chapter\(pdf\)/Power%20and%20decision%20making.pdf](http://unstats.un.org/unsd/demographic/products/Worldswomen/WW2010%20Report_by%20chapter(pdf)/Power%20and%20decision%20making.pdf)

when a person voluntarily reports it to the authorities will make reporting of crime, and hence its investigation and redress of rights more attainable.

The above list of recommendations is not exhaustive. There are means and methods to further improve the process and make free and fair elections attainable. However, these are the ones that we consider paramount for curbing sustainable abuse of integrity of vote in national and local elections and referenda. Hereby we reinstate our willingness to discuss these and related recommendations and to engage in the participatory drafting of the new Electoral Code.

Statement is open to signature.

Armenian Helsinki Committee
“Asparez” Journalists’ Club
For Equal Rights
“HETQ” Investigative Journalists’ Association
Helsinki Citizens’ Assembly Vanadzor office
Open Society Foundations – Armenia
Rule of Law
Transparency International Anticorruption Center
Women Resource Center – Armenia