



**Constitutional Referendum  
Pre-referendum Assessment by  
Citizen Observer Initiative and European Platform for Democratic Elections  
Republic of Armenia  
December 6, 2016**

The Citizen Observer Initiative is a coalition formed in May 2013, consisting of the following NGOs: Transparency International Anticorruption Center, Europe in Law Association, Journalists' Club "Asparez," and Helsinki Citizens' Assembly Vanadzor Office. Citizen Observer monitored the pre-referendum campaign in all regions of the country. European Platform for Democratic Elections (EPDE) is supporting the Initiative by organizing press conferences and round tables with domestic and international election experts.

**I. Political context**

On September 4, 2013, President Serzh Sargsyan made a unilateral decision to introduce amendments to the Constitution of the Republic of Armenia, and convened a Specialized Commission for Constitutional Reforms under the President's Administration. The Specialized Commission developed the concept of constitutional amendments and drafted amendments to the Constitution, which were shared with the European Commission for Democracy through Law (Venice Commission). The Venice Commission published its opinion on the draft concept paper in September 2014 and the preliminary opinions on various sections in August and September 2015. These opinions were contested by the citizen observers groups in Armenia for the de facto promotion of the constitutional referendum. Citizen Observer Initiative called for reconsideration of the Venice Commission's opinion in the light of the political framework in which the proposed constitutional changes may favor particular political factions and agendas.

The referendum was pushed forward by the authorities rather quickly and aggressively. The last and complete version of the text of amendments was published on August 21, 2015, and

submitted to the National Assembly. On October 5, 2015, the RA National Assembly passed a decree to Approve Holding a Referendum on the RA Constitutional Amendments Draft. The referendum takes place on December 6, 2015.

The proposed amendments to the Constitution of the Republic of Armenia embrace a large volume of issues and propose changes to all but the first two articles. Hence the move should more properly be qualified as a proposal for an altogether new constitution rather than for an "amendment." Most importantly, the draft proposes a change in the system of government from a semi-presidential to a parliamentary one.

The main objection to the proposed constitutional changes is that they seem designed to ensure that the incumbent president stays in power, given that his second term in office expires in 2018 and he is not allowed to nominate himself for a third term. The constitutional changes will allow him to continue his leadership role in the position of the speaker or prime-minister, as well as secure the monopoly power of his political party – the Republican Party of Armenia.

The main findings of the pre-referendum campaign highlight the following violations and concerns:

- Manipulation of number of voters,
- misuse of administrative resources,
- lack of action on previous recommendations on election legislation reform,
- non-compliance of referendum with international standards and Armenian law
- human rights consequences of the proposed amendments

## **II. Manipulation of number of voters**

Research done by the EPDE partner Helsinki Citizens Assembly Vanadzor demonstrates clear evidence that the number of registered voters in Armenia has been artificially increased. Over the last 22 years, the RA population has decreased by 500,000. However, in the same period, the number of voters has increased by the same number.

According to the RA National Statistical Service (RA NSS), the population in the Republic of Armenia in 1991 was 3,512,000, of which 58% (2,051,473) had the right to vote. In 2013, the RA population was 3,017,100 and the number of voters was 2,509,434, or 83% of the population.

Data from Armenia's third largest city, Vanadzor, illustrates this practice on a local level:

According to the results of the 2001 population census, the actual population of Vanadzor was 93,823, while the de jure population was 107,394. According to the 2011 population census, the actual population was 82,327, while the de jure population was 86,199. Hence, the number of Vanadzor voters in 2001 should have been 75,000-80,000, and the number of voters in 2011 should have been 60,000-65,000.

However, according to the data on the official website of the Central Electoral Commission, the total number of Vanadzor voters in 2005 was 101,205. Meanwhile, the number of de jure population in 2005 was 105,700 – i.e. 96 % of the population had the right to vote.

Parallel to the population decrease in 2012-2013, the number of voters increased. As a result of this, Vanadzor voters comprise 112-113 % of de jure population, which is 34,000 or 50 % higher than the assumed number (See Table 2). As the number of school children in Vanadzor has decreased significantly over the last several years, an increase in adult voters over the same period is far from logical.

The RA Police has provided various explanations to the effect that the data of the RA NSS are not based on the RA State Population Register data and do not include the persons absent for over a year from the country. Without even broaching the question of the veracity of the population figures in the RA State Population Register and RA NSS, such data suggests that, while at least 15% of voters in RA voting lists no longer reside in the Republic of Armenia and have no opportunity to vote, these citizens are unable to know for sure whether someone illegally voted in their name, as the signed voting lists are unavailable for examination.

The findings show clear evidence of intentional fabrication of statistical data and manipulation of voter lists, with the goal of swelling the number of voters.

### **III. Misuse of administrative resources**

The Citizen Observer campaign has compiled a list of 17 cases of misuse of administrative resources in the first half of November. These examples illustrate established trends:

- Voter list irregularities continued along with official clarifications by Armenia's Police. Further, 5,400 voters were found to be registered at a mere 58 home addresses, 4,700 voters had no address, and more than 37,300 voters lacked a date of birth.
- Employees of schools and kindergartens, as well as parents of pupils and their relatives, and visitors of medical centers were recruited to ensure their "Yes" vote
- Governors of several provinces, and the mayor of one community, issued guarantees to reporters that there will be a large "Yes" vote in their area.
- Three individuals who had expressed a willingness to serve as observers during the referendum pulled out after pressure from the local mayor.
- Republican Party of Armenia ministers participated in the "Yes" campaign alongside Armenia's prime minister and provincial governors.
- People were visited in their apartments with the offer of changing (renewing) their passports for free. Others were asked by mayoral office employees whether civil servants resided at the premises, and whether they would be voting "Yes," so they could report it higher up in the system. Inquiries were made as to who might be voting "No," in order that attention could be turned to these individuals.
- Events of the civic campaign against the constitutional changes, the so called "No-campaign" have been cancelled due to pressure from local police or local administrators. On one occasion, the event had to be cancelled because the only road

leading to the village where the event would have taken place was blocked with cement bags.

- Common and long-standing ills such as gasoline and job shortages get sudden attention from regional governors, MPs, and even the prime minister.

#### **IV. Lack of action on recommendations from international election observation missions**

The Helsinki Citizens' Assembly Vanadzor has carried out an extensively researched study of the development of electoral legislation and administration in Armenia in light of the IEOM recommendations made by the Venice Commission, OSCE/ODIHR, and PACE.

International election observation missions have been observing Armenian elections since 1996, and election legislation and administration have improved significantly with their assistance.

HCA Vanadzor analyzed the implementation of 193 recommendations (336 total, including repetition over the years) submitted to the Armenian authorities after the 2003 Presidential Elections. About 53% (102) of the recommendations were repeated several times over the 10-year period.

The recommendations touch upon a wide range of topics, which are described in detail in the HCAV report. Here we highlight recommendations relevant to the main topics of the current EPDE report.

**Accessibility:** Only 1 of 4 recommendations was implemented.

**Adjudication of Election Disputes:** The recommendations pertain to the clarification of complaints and appeals procedures (including who and how is allowed to submit applications and complaints), the proper investigation of all complaints and provision of grounded decisions, and the issue of criminal and/or administrative liability for electoral violations. Domestic observers have made attempts to appeal electoral violations, including the inaction of electoral commissions. Their appeals were rejected on the ground that they are only entitled to submit complaints about violations of their individual and personal rights.

As a general rule, the RA CEC, TECs, and law-enforcement bodies took only formal measures in regard to reports of violations of the Electoral Code – and those measures were in fact targeted at a denial of the reports, rather than proper investigation and prosecution. Only 15 of the 26 recommendations on the adjudication of election disputes were implemented, of which 13 proved effective.

**Administrative Detention:** The provision on administrative detention has been removed from the Administrative Procedures Code.

**Campaign Finance:** Seven recommendations were submitted by OSCE/ODIHR advising better regulations for campaign financing, including expansion of the expenditure list,

clarification of reporting requirements, and proper oversight. Domestic observers report that campaign expenditures by some candidates and parties seem to be significantly higher than the reported amounts. The list of campaign expenditures to account for does not include such expenses as remuneration of campaign staff, office rent, or transportation costs.

4 of 7 recommendations on campaign finance regulations have been implemented; however, none of them have been effective in preventing further violations.

**Candidate Registration:** 11 of 16 recommendations were implemented; 8 were effective.

**Central Electoral Commission:** All 7 of the recommendations were implemented; only 3 were effective.

**Citizen Observers:** 4 recommendations were submitted by non-partisan observers regarding domestic observation. In short, only 1 of the 4 recommendations was implemented.

The first recommendation suggested that organizations stamp observer certificates. (This recommendation used to be implemented when the previous Code was in effect.) The second recommendation proposed better regulations for ensuring that domestic observers are not in international missions, and vice-versa. This provision is effectively implemented; however, in 2013, a domestic observer organization, Free Society Institute, announced that it had invited a group of British experts to observe the elections. There was no record, however, of the experts' official registration with the CEC, and it is unknown whether the delegation actually visited polling stations and conducted any observations.<sup>1</sup>

The final two recommendations disapproved of the mandatory knowledge test introduced with the new Electoral Code, and of the rule of excluding an observer organization if an observer is found to be biased toward a candidate. Neither recommendation has been implemented.

It should be noted that, in its earlier comments, the Venice Commission argued for decreasing the agency and powers of election observers, so as to ensure there be no opportunity for their interfering with the voting process. In its most recent statements, however, the Commission has argued for increasing the agency and powers of observers, including their right to apply to electoral commissions and courts with election disputes.

**Election Campaign:** Only 1 of 5 recommendations has been implemented.

**Electoral Commissions:** 10 of 18 recommendations were implemented; only 1 was effective.

**Fairness and Integrity of Electoral Processes:** 7 recommendations were made, none were implemented.

**Implementation of Recommendations:** OSCE/ODIHR and PACE made 2 recommendations encouraging the Armenian authorities to prepare legislative amendments to address their recommendations, to work with civil society and political parties to ensure their participation,

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<sup>1</sup>International Election Observers' Promote Government Line, Civilnet, April 30, 2013, <http://civilnet.am/2013/04/30/international-election-observers-promote-government-line/#.Va3qqfIViko>

and to cooperate with the Venice Commission and PACE in monitoring the implementation of the recommendations. Neither recommendation was implemented.

**Incorporation of Constitutional Court Decisions and Legal Conformity:** Neither of 2 recommendations was implemented.

**Media:** 24 recommendations were made on media regulations, including allocations of media time, broadcast time, impartial coverage, independence of regulating bodies, fair licensing, and coverage of women's participation. Aside from some online media, a few print media, and one regional TV station, all media in the country is controlled by the authorities. Independence of journalists cannot be ensured if the use of violence against them is not prosecuted. Balanced media campaign coverage is not consistent and largely depends on pressure from IEOMs. Further media and related provisions were introduced with regards to private media, for instance through the NCTR. However, the Committee itself is dependent on the president, hence its regulatory power can be abused. Only 7 of 24 recommendations on media were implemented, and only 1 was effective.

**Military:** 1 of 2 recommendations was implemented, but ineffectively.

**Participation:** 1 recommendation was implemented, again ineffectively.

**Participation of Women:** 3 recommendations were made by OSCE/ODIHR on encouraging the participation of women through quotas. Only the recommendation on the minimum quota on candidate lists was implemented. However, this recommendation is not effective, since when elected women withdraw their candidacy, they are generally replaced by a man: maintaining the gender of the civil servant is not required by law.

**Police:** 2 recommendations were made; 1 was implemented in 2013, but not effectively.

**Polling Stations:** All 3 recommendations were implemented but only the recommendation pertaining to the setup of transparent ballot boxes was effective.

**Prevention of Violations:** 1 recommendation was made on the prevention of violations, urging action against violations. The recommendation was not implemented.

**Proxies:** Only 1 of 2 recommendations was effectively implemented.

**Publication of Results:** All 5 recommendations were implemented but not effectively.

**Recording of Violations:** The law reflects the recommendation but it is not generally implemented.

**Suffrage Rights:** None of the four recommendations were implemented.

**Tabulation of Results:** All 3 recommendations were implemented, only one effectively.

**Use of Administrative Resources:** 14 recommendations were made on the use of administrative resources, including separation of party and the state, campaigning and official

duties, and fair use of local and central government resources for campaigning. 3 of the recommendations were implemented but not effectively.

**Vote Buying:** 4 recommendations were made on vote buying, including its criminalization and prevention measures. 2 of the 4 recommendations were implemented but not effectively.

**Voter Education:** 1 recommendation was made on continuous voter education. The recommendation is being implemented but not effectively.

**Voter List:** 11 recommendations were made on voter lists, including determination of the constituencies, maintenance of computerized voter lists, and proper mechanism for ensuring their accuracy. 6 recommendations were implemented but only 2 were effective.

**Voting Procedures:** 11 of 12 recommendations were implemented, 6 of which were effective.

## V. **Non-compliance of referendum with international standards and Armenian law**

Transparency International Armenia has thoroughly analyzed the proposed amendments and contextual indicators – the latter being crucial for understanding the consequences if the amendments are to be approved.

First of the **contextual indicators** is the serious concern that the work of the Specialized Commission for Constitutional Reforms was influenced by a conflict of interest, as at least 6 of its 9 members are immediately dependent on incumbent president Serzh Sargsyan.

Secondly, there has not been any objective necessity – such as a political crisis or public demand – that could justify such a hasty change of the governance system. In absence of objective preconditions, such a controversial transformation should have been subject to broad and lengthy consultations with political and civil society actors, and should have undergone a substantial process of public discussion and open debate – none of which took place. From the publication of the full text of the amendments, the Armenian public is given only 2 months to react to a proposal for radical change in the founding document of the state.

Finally, the constitutional referendum is planned in a situation where, according to the latest relevant surveys, only 13% of women and 12% of men believe in the legality of the electoral process, and about 81% of people do not trust the process at all – or rather, do not trust the constitutional reform process. In a true democracy, the founding document of the state can undergo a radical transformation of this kind only if the citizens trust the authorities to carry out their will and adhere to the letter of the law. The legitimacy of the process and its outcome are otherwise going to be highly suspect.

The planned referendum also fails to meet the **international standards for referendums**, set forth in Venice Commission's Code of Good Practice on Referendums (2007), for the following reasons:

- Failure to ensure universal suffrage
- Failure to ensure reliability of electoral registers
- Failure to ensure equal voting rights
- Failure to ensure equality of opportunity
- Failure to ensure freedom of voters to form an opinion
- Failure to ensure freedom of voters to express their wishes and action to combat fraud
- Lack of general respect for human rights
- Lack of stability of referendum law
- Failure to ensure organization of the referendum by an impartial body
- Failure to ensure effective observation of the referendum
- Failure to ensure an effective system of appeal

Finally, according to Article 4(2)(c) of the RA Law on Referendum, “issues related to human and civil rights, freedoms and obligations, elimination or restriction of constitutional guarantees for their implementation and issues directly assigned by the Constitution to the exclusive competence of national and local governments,” shall not be put on referendum.

As the constitutional amendment draft implies elimination of the constitutional guarantees for exercising and restricting some of the human and civil rights in the current Constitution, the October 5, 2015, RA National Assembly decree to Approve Holding a Referendum on RA Constitutional Amendments Draft is in direct violation of Armenian law.

## **VI. Human rights consequences of the proposed amendments**

In the current Constitution, the phrase “democratic society” is one of the key concepts of the human rights provisions. In the Draft, however, the articles on right restrictions do not invoke “a democratic society.” This implies that such restrictions might be arbitrary rather than the result of a democratic process.

The Constitutional Amendments introduce a new chapter – Chapter 3: Legislative Safeguards and Key Public Policy Objectives in Economic, Social and Culture Areas. The safeguards in this Chapter are rather vague. This opens up opportunity for arbitrary use and renders it difficult to assess compliance with constitutional regulations, since the articles do not declare these rights as constitutional norms but rather envisage their stipulation by law.

Other proposed amendments

- Restrict the right to direct application of constitutional rights,
- open opportunities (not available in the current Constitution) for restricting the freedom of marriage based on claims about the protection of health and morals,
- no longer declare the right to work as a constitutional norm but prescribed by law,
- no longer declare the right to free basic medical services as a constitutional right but prescribed by law, opening opportunities for arbitrary wording and thereby restricting the exercise of this right,



- restrict the right to apply to the RA Constitutional Court to seek protection of economic, social, and cultural rights.

According to Transparency International's analysis, the proposed amendments to the Constitution of the Republic of Armenia would change all but the first 2 articles and affect a wide range of issues – which means that the proposal qualifies as a call for an entirely new constitution rather than for amendments to the current one.

Most importantly, the proposed amendments introduce a plan to change the governance system of the country from a semi-presidential to parliamentary one, strengthen and make sustainable the majority rule in the parliament, radically change the system of checks and balances, dilute some critical responsibilities, and weaken the state's role in the protection of a number of human rights.

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EPDE and Citizen Observer Initiative continue to follow the situation.

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