

Country Report: Armenia's Complete Structural Revolution

1. EXECUTIVE SUMMARY

Armenia has undergone several stages of judicial reform, beginning in 1995 shortly after their independence from the USSR. The most recent 2015 constitutional reform remapped Armenia's judiciary, including the creation of a Supreme Judicial Council with new procedures for appointing, disciplining, and removing judges.¹ The subsequent implementation of that reform has been shaped by the after-effects of the 2018 Velvet Revolution, a popular nonviolent uprising that replaced the Prime Minister and the ruling party in favor of a government more responsive to the people.² Judicial independence and corruption were major concerns motivating the Revolution, and they remain major concerns motivating the efforts to reform the judiciary. After the Revolution in 2018, civil society groups pressured the government to begin a judicial vetting process like the one done in Albania.³ While judicial vetting has been done since then, the scope of the inquiry has been significantly scaled back. Reform efforts have also been monitored, influenced, and motivated by Armenia's membership in the Council of Europe.

Reforms have been both structural and substantive, including the vetting process, an anti-corruption commission, substantive law rewrites, and thinner legal education and association work. The success of Armenia's vetting process is contested, with some civil society groups viewing it as moving too slowly to affect real change and other actors viewing the vetting and discipline process as major executive overreach into the judiciary. Many other reforms are in early stages, making it

¹ Open Society Foundation, "The Impact of Judicial and Legal Reform Programs on Establishing Independent Judiciary in Armenia." HASMIK HARUTYUNYAN (2018). <https://www.osf.am/wp-content/uploads/2019/06/The-Impact-of-Judicial-and-Legal-Reform-Programs-on-Establishing-Independent-Judiciary-in-Armenia-policy-brief.pdf>

² See generally Miriam Lansky & Elspeth Suthers, *Armenia's Velvet Revolution*, 30 J. OF DEMOCRACY 85 (2019).

³ Zoom interview with Hasmik Harutyunyan, Lawyer at Protection of Rights without Borders and Expert at the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (March 30, 2022).

difficult to yet assess their efficacy. Additionally, because the reforms were designed by the pre-Revolution government but have been largely implemented by the post-Revolution government, they have been entangled in the politics and anti-corruption efforts surrounding the Revolution. Furthermore, the Nagorno-Karabakh War brought all reform efforts to a temporary halt and resulted in devastation for the country, and the pandemic has continued to stifle progress.⁴ Armenia is also considering reforming their constitution and the structure of their judiciary again as part of the post-Revolution restructuring, meaning that some of the current reforms may not last long enough to be sufficiently tested.

2. MOTIVATIONS

Armenia's reforms since 2018 have been motivated by a desire to root out the corruption and executive capture of the old regime. The Velvet Revolution forced Serzh Sarkisian, leader of the Republican Party of Armenia, and his entire government to resign after he attempted to maintain power--despite term limits--by becoming Prime Minister after his two terms as President.⁵ The subsequent government, led by Prime Minister Nikol Pashinian, has criminally charged members of the former government with corruption and abuse of office.⁶ As evidence of the depth of the corruption that had previously kept Sarkisian in power, when Armenia held "free and fair elections" after his regime's deposition in December 2018, Sarkisian's Republican Party lacked the votes to clear the 5% threshold for representation in Parliament, when in previous fraudulent elections they had been the majority party.⁷ Pashinian, by contrast, was elected Prime Minister of

⁴ Zoom interview with Yeghishe Kirakosyan, Armenian Representative to the European Court of Human Rights and Deputy Chairman of the Constitutional Reforms Council (March 16, 2022); Freedom House, *Nations in Transit: Armenia* (2021), https://freedomhouse.org/country/armenia/nations-transit/2021#footnote1_n89xjzk.

⁵ Lansky & Suthers, *supra* note 2, at 85.

⁶ *Id.* at 85-6.

⁷ *Id.* at 86.

a coalition government in these elections.⁸ Indeed, the preservation and strengthening of democratic institutions in Armenia is a focus not only for Armenia but also for their European allies.⁹

Judicial reforms are motivated by the connected needs for judicial independence and for the public to trust the judiciary. According to 2019 work done by Caucasus Barometer, only 3% of the Armenian population fully trusts the judiciary, while 47% fully or rather distrusts it.¹⁰ This distrust may stem from the “anecdotal evidence that some judges remain loyal to the previous regime” reported by Freedom House, who determined that the judiciary is among the least-trusted institutions in Armenia.¹¹ Thus, the vetting and restructuring projects are centrally motivated by a need to weed out members of the old regime, establish judicial independence, and rebuild public trust in the judiciary. Indeed, 82% of Armenians believe judicial reform should be a top priority for their nation.¹² When the Armenian Government approved the 2018-2023 Strategy for Judicial and Legal Reforms, it listed “raising the level of public confidence in the judiciary” as the first “main performance indicator” by which the success of the Strategy would be measured.¹³ Other enumerated “fundamental principles” of the Strategy include “legal certainty, predictability of the legal system and justice, access to justice and justice effectiveness,

⁸ *Armenia: Nikol Pashinyan elected as new prime minister*, ALJAZEERA (May 8, 2018), <https://www.aljazeera.com/news/2018/5/8/armenia-nikol-pashinyan-elected-as-new-prime-minister>.

⁹ See Eur. Parl. Ass., *The functioning of democratic institutions in Armenia* (2021), <https://assembly.coe.int/LifeRay/MON/Pdf/TextesProvisoires/2021/20211217-ArmeniaInstitutions-EN.pdf>.

¹⁰ Caucasus Research Resource Center, *Caucasus Barometer 2019 Armenia* (2020), <https://caucasusbarometer.org/en/cb2019am/TRUCRTS/>.

¹¹ *Nations in Transit: Armenia* (2021), *supra* note 4.

¹² Lusine Sargsyan & Nerses Kopalyan, *Resolving the Constitutional Court’s Crisis of the Legitimacy*, EVN REPORT, Jun. 25, 2020, <https://evnreport.com/politics/resolving-the-constitutional-court-s-crisis-of-legitimacy/>.

¹³ On Approving the 2018-2023 Strategy for Judicial and Legal Reforms in the Republic of Armenia and the Action Plan Deriving Therefrom December 2017, Ministry of Justice, Government of the Republic of Armenia, https://www.moj.am/storage/files/legal_acts/legal_acts_172042756181_Strategy_ENG_Final_1_.pdf, 7, [hereinafter, the Strategy]. Note that only the draft is available in English.

independence, impartiality of the judiciary, quality justice, public accountability, and principles ensuring transparency.”¹⁴

Additionally, Armenia’s reforms may be motivated by a desire to form increasingly close bonds with Europe, particularly through their affiliation with the Council of Europe and with the European Court of Human Rights. As discussed below, Armenia has at every turn largely consulted with the international community regarding how to proceed with its reforms and has accepted advice and help from groups including the Venice Commission and USAID. The issues of corruption facing Armenia are in part thought to result from remnants of Soviet ideas and attitudes, and there is a desire to rid the system of this influence in favor of a more European model.¹⁵

3. DESCRIPTION OF REFORMS

(A) JUDICIAL SELECTION AND VETTING PROCESS

The 2015 constitutional reform created the Supreme Judicial Council as “an independent state body meant to guarantee” judicial independence.¹⁶ The Council is a 10-member body, comprised of 5 academic lawyers elected from Parliament and 5 judges elected by their peers.¹⁷ These appointments are subsequently confirmed by the President. The Supreme Judicial Council appoints, disciplines, and terminates judges, along with other enumerated powers.¹⁸ The power to initiate disciplinary hearings against judges is retained by the Corruption Prevention Commission and the Minister of Justice as well, which has enabled the executive branch to play a significant role in the judicial vetting process.¹⁹

¹⁴ *Id.* at 9.

¹⁵ Zoom interview with Yeghishe Kirakosyan, *supra* note 4.

¹⁶ AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF ARMENIA, Dec. 6, 2015, ch. 7, art. 173.

¹⁷ AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF ARMENIA, Dec. 6, 2015, ch. 7, art. 174.

¹⁸ AMENDMENTS TO THE CONSTITUTION OF THE REPUBLIC OF ARMENIA, Dec. 6, 2015, ch. 7, art. 175.

¹⁹ Zoom interview with Hasmik Harutyunyan, *supra* note 3. For an extended discussion of whether the shared power between branches to initiate judicial disciplinary procedures is an overall positive structure, see Eur. Comm. For

The vetting process began as a result of popular protests, called by Prime Minister Pashinian, in May 2019, as direct response to the judiciary's role in the corruption of the previous regime.²⁰ A court of first instance allowed the release of former President Robert Kocharyan from pre-trial detention, who had been charged with various offenses regarding a 2008 anti-government protest in which 10 people died.²¹ This release sparked outrage regarding the judiciary's role in upholding the former regime, and Pashinian called for a comprehensive vetting process that would particularly investigate which judges had made decisions "which constituted gross violations of human rights and were recognized as such by the European Court of Human Rights [ECHR]."²² The vetting process, in its final form, includes this review, as well as a procedure to verify judges' financial declarations for anti-corruption purposes, and other disciplinary review.²³

However, it is restrained from the original approach, which was broad sweeping and would have approached the entire judiciary at once.²⁴ In general, the final procedure, designed in dialogue with the Council of Europe, was approved of by the Venice Commission, but was controversial in Armenian society for abandoning a more radical cleansing of the old regime.²⁵ Civil society groups and experts, including Hasmik Harutyunyan, a lawyer who works for the NGO Protection of Rights without Borders, have been extremely displeased by this constrained vetting process.²⁶ While Ms. Harutyunyan explained that a comprehensive vetting process, such

Democracy through Law, *Arm.: J. Opinion of the Venice Comm. and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Eur. on the Amendments to the Judicial Code and Some Other Laws* [hereinafter, the *Venice Commission Opinion*], 120th Sess., Opinion No. 963, § IV (2019), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)024-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)024-e).

²⁰ *The functioning of democratic institutions in Armenia*, *supra* note 9, at §5.2.1, para. 100.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ The *Venice Commission Opinion*, *supra* note 19 at § III, para. 12.

²⁵ *Id.* at §III, paras. 13-14.

²⁶ Zoom interview with Hasmik Harutyunyan, *supra* note 3.

as the one done in Albania, is not allowed under the current Armenian constitution, it is the approach she and others would have preferred.²⁷ Civil society groups wanted the grounds necessary to initiate proceedings against judges to be much broader, and they wanted the entire government to be vetted, not just the judges.²⁸ Because of these weaknesses, Ms. Harutyanyan views the vetting process as having “failed.”²⁹

There is some indication that this system is working in vetting newly appointed judges, but it has struggled to oust previously appointed judges affiliated with the old regime. In addition to the political controversies discussed in the results section *infra*, the ECHR review provision of the vetting process has a fatal systemic flaw of over-and-under inclusivity, as identified to me by both civil society and government experts.³⁰ The ECHR may decide that a decision violated human rights, but often it is unclear whether the judge is the party responsible for the human rights violation and it remains difficult to make judge discipline decisions from the ECHR decisions.³¹ For example, in cases of unlawful detention, the judge is not responsible for the initial violation, though he might be responsible for its extension.³² However, the Supreme Judicial Council did allow for the investigation of the judge who released Kocharyan, indicating some ability to oust judges who are obviously and publicly loyal to the pre-Revolution regime.³³

(B) ANTI-CORRUPTION COMMISSION

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Zoom interview with Yeghishe Kirakosyan, *supra* note 4; Zoom interview with Hasmik Harutyunyan, *supra* note 3.

³¹ Zoom interview with Yeghishe Kirakosyan, *supra* note 4.

³² *Id.*

³³ Karlen Aslanian, *Armenia's Supreme Judicial Council Agrees To Investigate Kocharian Trial Judge*, RADIO FREE EUROPE/RADIO LIBERTY (July 29, 2019), <https://www.rferl.org/a/armenia-s-supreme-judicial-council-agrees-to-investigate-kocharian-trial-judge/30081058.html>.

Armenia has also established several anti-corruption bodies, including most notably the Corruption Prevention Commission. This group is responsible for reviewing the asset declarations made by judges and other civil servants to force candidates to account for their sources of income and thus identify potential corruption issues.³⁴ While Ms. Harutyunyan thinks this group is doing a “great job” at reviewing new candidates for these positions, the Commission cannot review officials from before 2017, and if a violation is found among these older officials, the prosecution bodies are not allowed to go back and charge them, on the basis of Armenian principles about preventing “retroactive justice,” convictions for crimes made criminal *ex post facto*.³⁵ Therefore, the Commission is forced to rely on the social shame of the investigations as its primary mode of sanctions, making it ineffective at ousting officials loyal to the pre-Revolution regime.³⁶ The Venice Commission’s review of the exact operating of the Commission balanced the needs for judicial independence of this commission with governmental transparency and suggested a sharing of power to open investigations and check financial declarations between multiple state bodies.³⁷

(C) SUBSTANTIVE LEGAL REFORMS

In the same document where the Ministry of Justice enumerated the judicial reforms’ guiding principles and goals, there is also a roadmap for revamping significant portions of the substantive law of Armenia.³⁸ Areas of focus include the implementation of a newly written Criminal Procedural Code and Criminal Code, developing the juvenile justice system, reviewing the criminal punishment scheme, implementing reforms to both the substance and procedure of

³⁴ Zoom interview with Hasmik Harutyunyan, *supra* note 3.

³⁵ *Id.*

³⁶ *Id.*

³⁷ The *Venice Commission Opinion*, *supra* note 19 at § IV, Art. B, para. 27.

³⁸ The Strategy, *supra* note 13 at 17-18.

Armenian administrative law, protecting personal data, and reviewing the enforcement system.³⁹ Armenia has also done significant recent work on domestic violence reform.⁴⁰

(D) “THIN” REFORMS TO LEGAL EDUCATION AND ASSOCIATIONS

USAID implemented a package of efforts in Armenia, in partnership with the Ministry of Justice, to assist with establishing the Center for Development of Legislation and Legal Studies and does a variety of other thin institution-strengthening work in Armenian elections, civil society, and other arenas.⁴¹ The Legal Studies project ran from September 2019 to March 2021, but unfortunately USAID has removed a long, detailed comparative report about it from its website, so exact details of the educational changes made have become unavailable.⁴² A job posting, now closed, made by the American Bar Association’s Rule of Law Initiative, indicated that they were seeking candidates for their work partnered with USAID to participate in reforms that “improv[ed] legal and professional education.”⁴³ The ABA ROLI is now working with USAID to assist the Corruption Prevention Commission with its work in Armenia as well.⁴⁴ A State Department report detailing the US government’s spending in Armenia in fiscal year 2020 mentioned the State Department’s involvement in “legal education curriculum development and distance learning resources for prosecutors, investigators, and judges across Armenia” via its

³⁹ *Id.*

⁴⁰ *Nations in Transit: Armenia* (2021), *supra* note 4.

⁴¹ *Armenia: Current Activities*, USAID 5 (Sept. 2020),

https://www.usaid.gov/sites/default/files/documents/USAID_Armenia_Current_Activities_Sept_2020.pdf.

⁴² *Id.* The removed report was the initial basis for my interest in Armenian legal reform, but I did not retain enough of the specifics from my first read of it to confidently write more about them here.

⁴³ *USAID-funded Armenia Rule of Law/Justice Sector Support Program Job Posting*, DEVEX (Aug. 19, 2020), <https://www.devex.com/jobs/usaid-funded-armenia-rule-of-law-justice-sector-support-program-773203> (last visited Apr. 4, 2022).

⁴⁴ *Our work in Armenia*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/advocacy/rule_of_law/where_we_work/europe_eurasia/armenia/programs/#2 (last visited Apr. 4, 2022).

Bureau of International Narcotics and Law Enforcement Affairs.⁴⁵ Overall, the US government has spent over \$2.9 billion in supporting various reform efforts, judicial and otherwise, in Armenia since 1992.

4. NOVELTIES OF REFORMS

While judicial councils are becoming increasingly common around the world, the exact structure and power of Armenia's structure, particularly its composition and the sharing of disciplinary power between the Supreme Judicial Council, the Corruption Prevention Commission, and the Minister of Justice, is likely novel. As will be addressed below, this structure may have some underlying issues, though these issues may be connected to the unsettled state of Armenian politics and democracy more broadly. Future work should directly compare the structure and power of judicial councils to determine how many truly novel ones exist and identify the key areas of similarity and difference between them.

An additional novelty, as discussed below, is Armenia's desire to move in the future to a high court structured more explicitly like the United States Supreme Court, as discussed below. This is rare among judicial reforms seen in the policy lab, especially in the context of a post-Soviet civil law country with much greater political, cultural, and juridical ties to Europe than to the United States. Indeed, given the recent US Supreme Court Commission Report and the raging debate within the US about whether the structure of the Supreme Court should be reformed to include features like term limits, Armenia's approach to incorporating features of the US Supreme Court should be closely watched for new ideas.⁴⁶

⁴⁵ Office of the Coordinator of U.S. Assistance to Europe, Eurasia, and Central Asia (ACE), *Foreign Assistance Fact Sheet: Armenia*, UNITED STATES DEPARTMENT OF STATE (June 2021), https://www.state.gov/wp-content/uploads/2021/08/Armenia_FY-2020-Country-Assistance-Fact-Sheet.pdf.

⁴⁶ See e.g., Digging a Hole: The Legal Theory Podcast, Noah Feldman & Christopher Kang (Oct. 4, 2021)(available on Spotify).

5. RESULTS

(A) STRUCTURAL STRENGTHS AND WEAKNESSES

In general, the structure of the Supreme Judicial Council was approved of by Venice Commission.⁴⁷ However, an ongoing issue is the lack of appeal process from the disciplinary decisions made by the Commission.⁴⁸ Judges and judicial officials cannot be prosecuted on charges arising from professional activity without the Council's consent under the Armenian constitution, so it is very important that the decisions of the proceedings from the disciplinary process include full due process rights.⁴⁹ The Venice Commission has recommended introducing an appeals process in order to comply with Article 6 of the European Convention on Human Rights and provide these rights.⁵⁰

Furthermore, the success of the judicial vetting process is mixed. Given that the goal of the reform is to increase judicial independence, the excessive executive and legislative interference in the judiciary that has occurred during the process has made achieving these goals difficult. The structure of the Supreme Judicial Council, with its role for the Minister of Justice to initiate disciplinary proceedings, explicitly allows for this executive interference, making it unclear how these issues will be resolved. Additionally, the Anti-Corruption Commission's investigation of candidates' financials is very invasive and may raise due process and privacy concerns.⁵¹

(B) CONTROVERSIES AND CIVIL SOCIETY'S VIEW ON REFORMS

Armenia still faces political standoffs within the judiciary and between branches of government, despite these reforms, which demonstrate their mixed record. In response to

⁴⁷ *The Venice Commission Opinion*, *supra* note 19 at § IV, Art. D, para. 31.

⁴⁸ *Id.*

⁴⁹ Satenik Hayrapetian, *Armenian Judicial Watchdog Sued By Suspended Chairman*, RADIO FREE EUROPE/RADIO LIBERTY (July 26, 2021), <https://www.azatutyun.am/a/31378214.html>.

⁵⁰ *Id.*, at § IV, art. D, para. 34.

⁵¹ *The Venice Commission Opinion*, *supra* note 19 at § IV, Art. B, para. 29.

concerns about the potential capture of the Constitutional Court by the previous regime, in 2019 the government tried to pressure the Court's Chair, Hrayr Tovmasyan, who was affiliated with the Republican Party, to resign.⁵² Tovmasyan had exempted himself from the 12-year term limits imposed on Constitutional Court judges in the 2015 reforms by writing them so as to grandfather in judges appointed before 2018 to retain their mandatory retirement age of 65.⁵³ He and two other judges on the Court were replaced by Parliament once this loophole was closed in a 2020 package of amendments that instituted universal 12-year term limits for Constitutional Court judges.⁵⁴ However, tensions continue, as in April 2021 the Chairman of the Supreme Judicial Council, Ruben Vartazarian, was indicted and suspended from office due to tensions with the Prime Minister.⁵⁵ The Armenian judiciary had refused to allow the government to arrest opposition protestors during the Nagorno-Karabakh war, resulting in tension between the branches.⁵⁶ The Prime Minister replaced Vartazarian with a government ally as part of the continued desire to purge everyone connected to the pre-Revolution government.⁵⁷ However, in July 2021, Vartazarian was reinstated, as a court ruled that his prosecution was illegal due to his legal immunity from prosecution connected to his professional duties.⁵⁸ These examples show that despite the reforms and vetting, the battles over the governance of the judiciary are far from over.

Perhaps because of this mixed record, civil society experts in Armenia, such as Ms. Harutyunyan, believe that the government has completely failed at doing judicial reform and

⁵² *Nations in Transit: Armenia* (2021), *supra* note 4.

⁵³ Sargsyan & Kopalyan, *supra* note 12.

⁵⁴ *Nations in Transit: Armenia* (2021), *supra* note 4.

⁵⁵ Hayrapetian, *supra* note 49.

⁵⁶ *Nations in Transit: Armenia* (2021), *supra* note 4.

⁵⁷ *Id.*

⁵⁸ *Id.*

judicial vetting.⁵⁹ Ms. Harutyunyan gave several reasons for this failure, including the lack of human, financial, and professional resources in Armenia, particularly in the Ministry of Justice.⁶⁰ Because resources are an area of weakness for Armenia, the international community's value to reform efforts in Armenia in her view is their continued resources provided for judicial reform efforts. International organizations have been supporting a "transitional period" in Armenia for over twenty years now, but Ms. Harutyunyan criticized this support as being very formal in nature.⁶¹ This formal support provides financial resources and experts but is not actually invested in the quality of the Armenian judiciary, and does not assess whether actual positive, tangible change has occurred.⁶² She suggested that financial support after substantive changes have been made would be beneficial in assuring that progress is actually made.⁶³ She cited internal institutional instability as a source of issues as well, as in the past three years there have been three different Ministers of Justice in Armenia.⁶⁴ The Nagorno-Karabakh War contributed to this instability, as has the COVID-19 pandemic.⁶⁵

Overall, she considers the professional approach of the Armenian government to have failed and sees no specific regime change between the current situation and the pre-Revolution government.⁶⁶ Her frustrations are mostly focused on the lack of political will for systemic reform, as she maintains that the continuing focus on transition periods results in only formal change and has done since 1995.⁶⁷ Ms. Harutyunyan does not expect such systemic reform

⁵⁹ Zoom interview with Hasmik Harutyunyan, *supra* note 3.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

efforts to be flawless, and considers Albania to be a useful example.⁶⁸ However, she would prefer a reform effort like in Albania, where the entire system is overhauled over a period of more than two or three years and there are some failures along the way, but the end result is systemic change, to the petty changes Armenia has seen, such as “improvements” to disciplinary hearings.⁶⁹ She also criticized the lack of transparency that has accompanied these smaller reforms.⁷⁰

Ms. Harutyunyan attributed a significant amount of this lack of political will to the lingering Soviet culture present in Armenia and described public officials as behaving like Soviets to make change difficult.⁷¹ Her view is that civil society is much more liberal and open-minded, and described how Armenia has institutionally lagged behind Georgia and Ukraine in terms of making progress away from Soviet culture, attitudes, and thinking.⁷² The Velvet Revolution was a major sign of the Armenian population’s desire to move away from a corrupt regime dependent on Russia.⁷³ However, because of the Nagorno-Karabakh War, which Armenia lost, these ideas have lost ground, as the war showed some people that if Armenia stood for democratic values, it would have security problems.⁷⁴ They lost territory, lives, and became more dependent on Russia, all of which is damaging progress towards a cultural where substantial judicial and democratic reform could take hold.⁷⁵ Ms. Harutyunyan expressed admiration for Georgia and Ukraine as examples where the cultural shift towards democratic values has been more

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

permanent and has not been damaged by armed conflict, though she is still hopeful about Armenia's ability to shift its values and make progress in the future.⁷⁶

(C) THE FUTURE OF REFORMS AND A GOVERNMENT OFFICIAL'S PERSPECTIVE

Going forward, Armenia continues to seek substantive constitutional reform of the judiciary, reflecting the continuing political tension and community unhappiness with the extant system. According to Yeghishe Kirakosyan, who is currently Deputy Chairman of the Constitutional Reforms Commission, the Commission is currently considering reforms that would bring the Armenian judiciary in line with an American-style judiciary.⁷⁷ These new proposed reforms include creating a Supreme Constitutional Court, which would serve both to adjudicate constitutionality, as the current Constitutional Court does, and would also serve as the highest court of appeals, as the Cassation Court does now.⁷⁸ This Supreme Constitutional Court would be explicitly modeled on the United States Supreme Court.⁷⁹ Such a reform would resolve the power struggle between the two high courts which he identified as a major problem with the Armenian judiciary.⁸⁰ Merging the high courts would also increase efficiency, as it currently takes 10 years or more to resolve a case if it must go through both court structures.⁸¹ However, there is some indication that the major efficiency issues plaguing the Armenian judiciary are due to the extremely small number judges in the country.⁸² The Constitutional Commission's work is

⁷⁶ *Id.*

⁷⁷ Zoom interview with Yeghishe Kirakosyan, *supra* note 4.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² A 2009 report indicated there might only be somewhere between 186 and 234 judges for the entire country, spread over all levels and types of the court system. See Eur. Comm. For The Efficiency of Justice, *Arm.: the organization of courts*, (May 28, 2009), <https://rm.coe.int/european-commission-for-the-efficiency-of-justice-cepej-organisation-o/1680747319>.

only just resuming after being terminated by the Nagorno-Karabakh War, and the final results are still unclear.

In some contrast to Ms. Harutyunyan’s view as a civil society expert, Mr. Kirakosyan identified two main sources of difficulty in creating successful and lasting legal and judicial institutions in Armenia: the hodgepodge structure by which they are currently enacted, and the lack of sufficient legal education to shape on-the-ground actors to make the reform work.⁸³ His views are less based in frustration with the current government, but he shares Ms. Harutyunyan’s worries about the lingering effects of Soviet culture and lack of resources. Armenia inherited a legal system from the Soviet Union, which it then edited with features from the German and French legal systems, due to Armenia’s close affiliation with the Council of Europe.⁸⁴ Mr. Kirakosyan described this institutional design as a “weird grab bag” that is not really Armenian and identified a desire to move towards their own system through further Constitutional reform.⁸⁵

At the same time, he noted that Armenia lacks robust legal education.⁸⁶ In his view, this issue will in the long term jeopardize the success of any structural reform, as a lack of professionals qualified to implement the reforms will ultimately result in the failure to create legal norms surrounding anti-corruption, democracy protection, and judicial independence.⁸⁷ Mr. Kirakosyan—who noted that significant portions of his Armenian legal education was either in Russian or using Russian textbooks translated into Armenian (despite Armenia’s move towards a more Western legal system)—believes legal education reform is the most important long-term need to make the system work.⁸⁸ This insight vindicates the USAID report and the “thinner”

⁸³ Zoom interview with Yeghishe Kirakosyan, *supra* note 4.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

associative and educational reforms to be worthy of more inquiry and study in future, and is also consistent with scholarship that identifies “legal education...[a]s the foundation of development in the formal justice system as well as in ancillary institution[s].”⁸⁹

(D) OVERALL: MUDDIED WATERS

As this report has shown, judicial reform in Armenia continues to muddle along, despite significant obstacles—political, lack of financial and human resources, corruption, war, and the global pandemic have all played roles in the disruptions catalogued here. Additionally, different actors on different sides of the situation have contrasting views about the efficacy of the reforms that have been tried so far, as the contrasting views of Mr. Kirakosyan and Ms. Harutyunyan have demonstrated.⁹⁰ Untangling which of these views proves more empirically accurate may be impossible in the long run, given the ongoing instability and likelihood of continuing drastic reform. However, Armenia is a nation to watch, given the strength of both the internal and international commitment to reform.

⁸⁹ Erik Jensen, *The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers' Responses*, in BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW 336, 360 (Erik Jensen ed., 2003).

⁹⁰ Zoom interview with Yeghishe Kirakosyan, *supra* note 4; Zoom interview with Hasmik Harutyunyan, *supra* note 3.