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Elections and Democracy: Armenia, A Case Study

ELIZABETH F. DEFEIS*

I. INTRODUCTION

Following the breakup of the former Soviet Union, a movement towards constitutionalism has enveloped Eastern Europe. Yet, events indicate that the adoption of a constitution, even one with a strong human rights component and separation of powers, is merely the first step towards the development of a culture based on the rule of law and reflective of democratic principles. Indeed, following the adoption of new constitutions based on accepted democratic models, governments have toppled because of political fraud and corruption. Moreover, brutal repression of human rights sometimes continues while new leaders espousing totalitarian ideologies have been elected. One of the most daunting challenges facing fledging democracies, however, is the ability of a government to conduct elections consistent with international standards and, more importantly, to accept the outcomes of such elections.

Free and fair elections are the *sine qua non* of a democratic society.¹ Such elections reflect a society ruled by the people

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1. See Christina M. Cerna, *Universal Democracy: An International Legal Right or the Pipe Dream of the West?* 27 N.Y.U.J. INT'L L. & POL. 289, 295 (1995). The existence of a democratic government—evidenced by fair and free periodic elections, three branches of government, an independent judiciary, freedom of political expression, equality before the law, and due process—is *sine qua non* to the enjoyment of human

who have openly participated in its governance.² Characterized as a democratic entitlement, self-governance is emerging as an internationally-protected human right.³ Yet, the premise that free elections are a significant indicator of a democratic society has been challenged.⁴ Critics note that some democratically-elected governments continue to infringe on the basic civil rights guaranteed under their own newly-adopted constitutions.⁵ These critics further contend that these governments usurp power in violation of Constitutional limits.⁶ For example, elections in Kazakhstan and Kirgizstan have resulted in few civil liberties, and a weak judiciary and legislature.⁷ In Azer-

rights. *Id.* at 295. Elections are indispensable to representative government and comprise the sine qua non of any democratic entitlement. Kifi Darko Asante, *Election Monitoring's Impact on the Law: Can it be Reconciled With Sovereignty and Nonintervention?*, 26 N.Y.U.J. INT'L L. & POL. 235, 276 (1994).

2. See Fareed Zakaria, *The Rise of Liberal Democracy*, COUNCIL ON FOREIGN RELATIONS INC., Nov. 21, 1997, at 3, available in LEXIS, Allnews File.

3. See Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992); see also Gregory H. Fox & Georg Nolte, *Intolerant Democracies*, 36 HARV. INT'L L.J. 1, 3 (1995); JAMES CRAWFORD, *DEMOCRACY IN INTERNATIONAL LAW* 6 (1994); Babacar Ndiaye, *International Co-operation to Promote Democracy and Human Rights: Principles and Programmes*, 49 REV. INT'L COMM'N JURISTS 23 (1992); Gregory H. Fox, *The Right to Political Participation in International Law*, 86 AM. SOC. INT'L L. 249, 252 (1992); Melida N. Hodgson, *When to Accept, When to Abstain: A Framework for U.N. Election Monitoring*, 25 N.Y.U.J. INT'L L. & POL. 137, 152 (1992). See, e.g., Jon M. Ebersole, *The United Nations' Response to Requests for Assistance in Electoral Matters*, 33 VA. J. INT'L L. 91 (1992).

4. See Jennifer Denise Rogers, *Miller v. Johnson: The Supreme Court "Remaps" Shaw v. Reno*, 56 LA. L. REV. 981-56 ("The right to vote in free elections and participate in the political process is the most basic right in a democratic society.").

Consider first the difficulty of deciding which national experiences test the efficacy of liberal democracy. Most would agree that a nation, to count as a liberal democracy, should have free and fair elections, effective channels for the expression of dissent, equality before the law coupled with effective implementation of legal guarantees, and a market economy based on private property rights.

Paul B. Stephan III, *The Fall—Understanding The Collapse Of The Soviet System*, 29 SUFFOLK U.L. REV. 17, 28 (1995).

5. See Fox & Nolte, *supra* note 3, at 1-2.

6. See *id.*

7. See Fred Hiatt, *Kazakhstan's Stability Teeters on Ethnic, Economic Woes*, WASH. POST, Feb. 14, 1994, at A17; see also Steve LeVine, *Kazakhstan Elects Parliament; Campaign Set Up to Favor Authoritarian President*, WASH. POST, Mar. 8, 1994, at A14; Steve LeVine, *International Observers Condemn Kazakhstan's Parliamentary Elections*, WASH. POST, Mar. 9, 1994, at A12; Steve LeVine, *Kazakh Chief Controls New Parliament*, WASH. POST, Mar. 11, 1994, at A19; *Kazakhs Must Vote in Runoff*, WASH. POST, Dec. 11, 1995, at A18; see also Margaret Shapiro, *Kirgizstan: New Freedom Amid Poverty; Reformer Leads Country on China's Western Border*, WASH. POST, Apr. 4, 1992, at A17; Steve LeVine, *Ex-Leaders Rebound in Central Asia; "Unreconstructed Soviets" Bringing Back Strong-Arm Politics*, WASH. POST, Dec. 26, 1992, at A25; R. Jeffrey Smith, *Gore*

baidjan, a democratically elected government was overthrown by a military coup which resulted in a severe repression of human rights.⁸ In subsequent elections, however, an overwhelming majority elected the leader of the coup as the country's next president.⁹

Brings Praise to Kirgiz Republic; Vice President Visits Central Asian Nation to Encourage Reforms, WASH. POST, Dec. 13, 1993, at A16.

8. See Lally Weymouth, *Azerbaijan—Who'll Stop the Russians?*, WASH. POST, Oct. 11, 1994, at A17; see also Margaret Shapiro, *Fighting Escalates Anew in Nagorno-Karabakh: Car Bomb Misses Georgian Official, Kills 4*, WASH. POST, June 14, 1992, at A31; Michael Dobbs, *Opposition Forces in Azerbaijan Seize Capital, Government Buildings*, WASH. POST, May 16, 1992, at A17.

9. See Fred Hiatt, *Many Ex-Soviet Republics Find Democracy Elusive*, WASH. POST, June 8, 1995, at A1; Margaret Shapiro, *Azerbaijani Leader, Restored to Power, Imposes Emergency Rule*, WASH. POST, May 15, 1992, at A31.

In those countries that are continuing to struggle with adoption of democratic principles, electoral concerns remain problematic. For example, in November 1996, opposition parties in Croatia boycotted meetings of Parliament because "of the governing party's refusal to honor the spirit of the municipal elections last year in Zagreb, the capital." See Chris Hedges, *Hard-liner Are Regarded as Likely to Succeed Croatia's Ailing President*, N.Y. TIMES, Nov. 8, 1996, at A8.

Serbia also suffered from election tampering claims. In November of 1996, the opposition party won several municipal elections and warned President Slobodan Milosevic, head of the Socialist Party, to "not tamper with the vote." Furthermore, allegations arose regarding the "irregularities during the balloting" and the barring of opposition monitors from several polling stations. See *Serbia Opposition Claims Municipal Vote Victory*, N.Y. TIMES, Nov. 19, 1996, at A12. Ten months later, in September of 1997, the opposition parties "refused to compete" and accused Milosevic, the former President of the republic, of fixing the election in his favor by changing certain voting laws. These charges prompted the Helsinki Commission to release a declaration, "We shall not observe Serbia's Elections." Relevant sections of the report state:

These conditions make impossible even remotely free and fair elections. Beyond that, they show the Serbian Authorities' clear disregard for the advice of the international community has given them regarding elections. Given these facts and the record of manipulation and intimidation in previous Serbian elections, some of which the commission had observed, we strongly believe that these elections do not deserve the credibility that international observations by the OSCE could give them.

We call upon the Belgrade authorities to respect the human rights and fundamental freedoms of the people of Serbia—all the people of Serbia—instead of trampling upon those rights in order to maintain power.

Helsinki Commission "We Shall Not Observe Serbia's Elections," CSCE NEWS RELEASE, Sept. 11, 1997, at 1-2.

Bosnia has also confronted election problems. In late 1995, the "question of elections" was a "highly charged one." See Roger Cohen, *Clinton Seeks to Shore up Muslim-Croat Federation*, N.Y. TIMES, Nov. 3, 1995, at A12. These questions centered on how the people would elect central parliament. Bosnia held presidential elections on September 14, 1996. In that election, there were allegations that materials were missing from ballot boxes, that names of qualified citizens did not appear on voter registration lists, and that about five to ten percent of the longtime residents of each village did not appear on the final OSCE produced voter registration list. See Nigel Purvis, *Observations on the*

International organizations, particularly the United Nations and the Organization on Security and Cooperation in Europe (OSCE), devote substantial resources to developing international norms pertaining to electoral rights.¹⁰ Additionally, these organizations assist in conducting and monitoring elections in the new nations.¹¹

The Universal Declaration of Human Rights of 1948 affirms that, "[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine election which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."¹² Article 25(b) of the International Covenant on Civil and Political Rights (CCPR) states that the right "to vote and to be elected at genuine periodic elections . . . shall be by universal and equal suffrage and shall be held by secret ballot."¹³ U.N. Resolution 150, of December 18, 1990, reaffirmed these principles.¹⁴ The resolution stressed the following:

[P]eriodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that, as a matter of practical experience, the right of everyone to take part in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights.¹⁵

Bosnian Elections from Prijedor, Repulika Srpska, 21-SPF FLETCHER F. WORLD AFF. 15, at 23-24. Further, "about half the rural population remains illiterate or cannot afford needed eye glasses. Therefore, they cannot mark their ballots in secrecy as the rules require." *Id.* Fraud was a clear concern. One observer remarked, "It is almost impossible for Americans to understand what democracy means to people who have known only totalitarianism and the chaos of war." See Michael Miller, *Ballots Not Bullets: One Attorney's Experience as an Election Supervisor in Bosnia*, 69 N.Y. ST. B.J., 811 (1997).

10. See Hodgson, *supra* note 3, at 153-54.

11. See *id.*

12. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR 3d Sess., at 71, U.N. Doc. A/810 (1948).

13. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

14. See Hodgson, *supra* note 3, at 141 ("Resolution 45/150 further affirms the Organization's commitment to electoral assistance at the request of member states. Its significance stems from the unprecedented level of U.N. commitment to election monitoring that has been carried on so far without a formal mandate.").

15. Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections, G.A. Res. 150, art. 2, U.N. Doc. A/150 (1991).

Furthermore, the resolution declared “determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in co-operation with others, as provided in national constitutions and laws.”¹⁶

International standards pertaining to the conduct of elections have been developed. For example, the OSCE Document of the Copenhagen Meeting of the Conference of the Human Dimension of the CSCE, sets forth the requirements that participating states must follow:

(7.1) hold free and fair elections at reasonable intervals, as established by law;

(7.4) ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.7) ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;

(8) The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place.¹⁷

The OSCE Commitments can be summed up in seven key words central to democratic tradition: “universal, equal, fair, secret, free, transparent and accountable.”¹⁸

16. *Id.* art. 3.

17. See Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, June 29, 1990, *reprinted in* 11 HUMAN RIGHTS L.J. 232 (1990).

18. OSCE/ODIHR ELECTION OBSERVATION HANDBOOK (2d ed. 1997) [hereinafter ELECTION HANDBOOK].

II. ARMENIA: A CASE STUDY

Some have characterized Armenia as an "island of democratic reform" among the former Soviet Republics.¹⁹ Nevertheless, the international community has expressed concerns following the flawed first election of deputies in 1995, the referendum on the adoption of the Constitution in 1995, the Presidential election of 1996, and more recently the 1998 Presidential Election.²⁰

From Armenia's initial movement towards independence, the nation's leadership was committed to establishing—through existing legal norms—a new republic based upon the rule of law. In 1990, by a vote of 183 to 2, the Armenian Supreme Soviet adopted the Declaration on Armenia's Independence as the basis for a new Constitution.²¹ In 1991, in full compliance with the Soviet Constitution, ninety-nine percent of the voters adopted a referendum for secession.²² The President of Armenia then established a Constitutional Commission to draft a new constitution, which would guarantee individual rights and freedoms, as well as to promote

19. See Daniel Sneider, *Democracy Teeters in Three Ex-Soviet States*, CHRISTIAN SCI. MONITOR, May 30, 1995, at 6; see also *Armenia and Karabakh* (BBC broadcast, Aug. 19, 1993), available in LEXIS, BBCSWB File (acknowledging the United States' offer of assistance to aid Armenia with its "democratic and economic development"); Fred Hiatt, *Even for Armenia, Democracy has Some Limits*, INT'L HERALD TRIB., June 9, 1995. In addition, U.N. Secretary-General Boutros Boutros-Ghali said that Armenia's 30 political parties "are contributing to the deepening of democracy." See *UN Chief Praises Armenia, Warns of Hard Road Ahead*, AGENCE FRANCE PRESSE, Nov. 3, 1994, available in LEXIS, AFP File.

20. See Elizabeth F. Defeis, *Constitution Building in Armenia: A Nation Once Again*, 2 PARKER SCH. J.E. EUR. L. 153 (1995); see also Elizabeth F. Defeis, *Armenian Constitutional Referendum: Towards a Democratic Process*, 9 TEMP. INT'L & COMP. L.J. 269 (regarding background information on the democratic developments in Armenia following its dissolution from the former Soviet Union).

21. See Leyla Boulton, *Armenia Adopts Declaration of Independence*, FIN. TIMES, Aug. 24, 1990, at 16 (stating that the Declaration called for a new constitution and provided that only Armenian laws were to be valid in the Republic of Armenia); see also David Remnick, *Armenia Declares Its Independence; Soviet Republic Claims Control Over Its Own Army, Economy*, WASH. POST, Aug. 24, 1990, at A18 (reporting that the Declaration was to supplement the Soviet Constitution in the Republic of Armenia and to serve as a foundation for a new Armenian Constitution).

22. See *Armenia: Tiny Republic in Unfriendly Neighborhood*, REUTERS, Sept. 23, 1991, available in LEXIS, REUWLD File (stating that 99% of the participants voted in favor of independence). Armenia became the twelfth of the fifteen republics of the former Soviet Union to declare independence from Moscow. *Id.*; see also Carol Williams, *Armenia Declares Independence*, L.A. TIMES, Sept. 24, 1991, at 11 (stating that over 99% of the voters "endorsed a free Armenia in Saturday's referendum").

the prosperity of Armenia's economy.²³ The Commission favored legislation in modular blocks, to deal with major issues which could then be incorporated into the constitution at a later time.²⁴ This method of creating the constitution would allow for change and evaluation.

In June 1992, frustrated by the perceived lack of progress on the adoption of a new constitution, opposition groups formed a "National Alliance."²⁵ The National Alliance initially called a Constitutional Convention of elected delegates²⁶ to draft the Constitution, institute new Parliamentary elections,²⁷ and seek the resignation of the President.²⁸

In June 1993, the Constitutional Commission, headed by the President and the opposition parties, each completed their own draft constitutions.²⁹ The main distinction between the two drafts was the concentration of power.³⁰ In the Constitutional Commission's draft, power was concentrated in the Executive branch.³¹ By contrast, in the opposition parties' draft, Parliament wielded more power.³²

In 1995, Parliament accepted the Constitutional Commission's

23. See Armen Sarkisian, *Armenia: Building a Democracy*, ARMENIAN INT'L MAG., Aug. 1992, at 16. Sarkisian provides a thorough analysis of the Armenian governmental and political power structure, and observes that "Armenia's body politic has embraced the best and sometimes the worst values of Western democracy." *Id.*

24. See *id.* at 20. The Armenian government would consult American, French and German legal experts. One group of Armenian experts was to study the constitutional history of a number of Western countries. A second group was to elaborate the specific standards required by the situation in Armenia. Sarkisian provides a thorough analysis of the Armenian governmental and practical power structure, and observes that "Armenia's body politic has embraced the best and sometimes the worst values of Western democracy." *Id.* at 16.

25. See *Report on Armenia's Presidential Election of September 22, 1996*, COMM'N ON SEC. AND COOP. IN EUR. (U.N. Doc. AR 5/2), Dec. 1996, at 5 [hereinafter *Presidential Report*].

26. See Defeis, *supra* note 20, at 166 n.54. Fifty members were to compose the Constitutional Convention. They were to complete their work within three to six months with each delegate having the honorary title of "Founder." They were to determine the method of adoption of the Constitution, subject to approval by the Parliament. The Bill did not pass.

27. See *Presidential Report*, *supra* note 25, at 5.

28. See *Angry Armenians March on Palace*, THE GUARDIAN F., Feb. 6, 1993, at 14.

29. See *President Speaks in Favour of Presidential Form of Government for Republic*, BBC SUMMARY OF WORLD BROADCASTS, June 15, 1994.

30. See *id.*

31. See *id.*

32. See *id.*

draft.³³ Subsequently, in July, Armenia held both Parliamentary elections and a referendum on the Constitution.³⁴ The referendum on the Constitution carried sixty-eight percent of the vote cast³⁵ and members of pro-government parties constituted the overwhelming number of deputies elected.³⁶ Armenia scheduled presidential elections for the following year. In 1996, President Levon Ter-Petrossian was re-elected as President.³⁷

III. THE CONSTITUTION

A. An Overview

Initially, the Constitution of Armenia sets forth general philosophical and legal principles for the Republic of Armenia.³⁸ The Constitution vests power in the people, affirms constitutional supremacy, guarantees human rights, assures equal protection of property, and affirms freedom of economic activity.³⁹ Furthermore, to foster favorable relations with all nations, the Constitution bases its foreign policy on international laws.⁴⁰ Accordingly, international treaties prevail over domestic law.⁴¹

33. See *Sixty-Eight Percent Back New Constitution for Armenia*, AGENCE FRANCE PRESSE, July 8, 1995, available in LEXIS, AFP File.

34. See *id.*

35. See *id.*

36. See *id.*

37. See *Presidential Report*, *supra* note 25, at 14.

38. See CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Gisbert H. Flanz ed., 1997).

39. See *id.* The Armenian Constitution provides the following: "The state guarantees the protection of human rights and freedoms based on the Constitution and the laws, in accordance with the principles and norms of international law." ARM. CONST. art. 4.

The right to property is recognized and protected in the Republic of Armenia. The owner of property may dispose of, sue, and manage the property at his or her discretion. The right to property may not be exercised so as to cause damage to the environment, or infringe on the rights and lawful interests of other persons, society or the state. The state shall guarantee the free development and equal legal protection of all forms of property, the freedom of economic activity and free economic competition.

Id. art. 8.

40. Article 9 states: "The foreign policy of the Republic of Armenia shall be conducted in accordance with the norms of international law, with the aim of establishing good neighborly and mutually beneficial relations with all states." *Id.* art. 9.

41. Article 6 states:

The supremacy of the law shall be guaranteed in the Republic of Armenia. The Constitution of the Republic has supreme judicial force and its norms are applicable directly. Laws found to contradict the Constitution, as well as other judicial acts found to contradict the Constitution and the laws shall have no judicial

Armenia's Constitution protects the fundamental rights, liberties, and duties of individuals. These protections reflect the western tradition of inalienable rights and individual autonomy as well as the socialist tradition of collective economic and social rights. Specifically, the Constitution includes the following: the rights of privacy and expression; the right to form political parties; due process;⁴² and certain procedures in criminal matters, such as the rebuttable presumption of innocence.⁴³ Furthermore, the Constitution affirms family values, calls for the payment of taxes, and requires participation in the national defense.⁴⁴ Most importantly, it affirms the rule of law and declares that "everyone shall uphold the Constitution and the laws."⁴⁵ Despite the controversy surrounding the status of the Diaspora,⁴⁶ however, the Constitution lacks a clear definition of citizenship.⁴⁷

The Armenian presidency as empowered by the new Constitution has been characterized as the strongest in the world.⁴⁸ The

force. Laws shall take effect only after official publication. Unpublished judicial acts pertaining to human rights, freedoms and duties shall have no juridical force. International treaties signed on behalf of the Republic of Armenia shall take effect only after ratification. International treaties that have been ratified are a constituent part of the legal system of the Republic. If norms are provided in these treaties other than those provided by the laws of the Republic, then the norms provided in the treaty shall prevail. International treaties that contradict the Constitution may be ratified after making a corresponding amendment to the Constitution.

Id. art. 6.

42. Under Article 39, every Armenian "has the right to the public hearing of his case by an independent and impartial court maintaining all requirements of justice under conditions of equality in order to regain his rights that have been violated as well as to ascertain the justification of an accusation presented him." *Id.* art. 39.

43. *See id.* arts. 21, 24, 41.

44. *See id.* arts. 32, 46, 47.

45. Article 48 of the Armenia Constitution provides:

Everyone shall uphold the Constitution and the laws, and respect the rights, freedoms and dignity of others. The exercise of rights and freedoms shall not serve toward the violent overthrow of the Constitutional order, for the instigation of national, racial or religious hatred, or for the incitement to violence and war.

Id. art. 48.

46. For an explanation on the concept of the Diaspora, see *Armenia: Tiny Republic in Unfriendly Neighborhood*, REUTERS, Sept. 23, 1991 available in LEXIS, News Library, REUWLD.

47. Article 14 of the Armenian Constitution provides: "The procedures for acquiring and terminating citizenship of the Republic of Armenia are determined by law. Individuals of Armenian origin shall acquire citizenship of the Republic of Armenia through a simplified procedure. A citizen of the Republic of Armenia may not be a citizen of another state simultaneously." *Id.* art. 14.

48. *See* Chrystia Freeland, *Armenia Polls Test Fragile Democracy*, FIN. TIMES, July 5,

President is responsible for the execution of the laws⁴⁹ and controls the agenda of the legislative body.⁵⁰ In addition, the President manages foreign policy, confers citizenship, and maintains control over the government and the Prime Minister. The President also appoints the government of Armenia, which is composed of the Prime Minister, and other subordinate ministers.⁵¹ The government develops and implements financial, economic and tax policies⁵² as well as state policy regarding science, education, health and culture, national security and foreign relations policy.⁵³ Moreover, the President appoints the judges⁵⁴ and is empowered to schedule special elections after consulting with the President of the National Assembly and the Prime Minister.⁵⁵ Most importantly, the President of Armenia can dissolve the National Assembly any time before the last six months of the President's term.⁵⁶

Legislative authority is vested in the National Assembly, a unicameral body composed on 131 deputies elected for a four-year term.⁵⁷ Each delegate must be twenty-five years old, a citizen for at least five years preceding candidacy, a permanent resident for at least five years, and have the right to vote.⁵⁸

The powers of the National Assembly are "fixed by the Constitution."⁵⁹ The National Assembly is similar to the constitutional framework of the United States, wherein the legislature acts only pursuant to powers specified in the constitution. There are no inherent powers in the legislative body⁶⁰ and no equivalent of a "necessary and proper clause" which might broaden the power of

1995, at 2 (quoting Professor Herman Schwartz, a Professor of Constitutional Law, American University, Washington College of Law).

49. See ARM. CONST. art. 49.

50. See *id.* art. 55.

51. See *id.* arts. 55(4), 85.

52. See *id.* art. 89.

53. See *generally id.*

54. See *id.* art. 55(11).

55. See *id.* art. 55(3).

56. See *id.*

57. See *id.* art. 63.

58. See *id.* art. 64. Once elected, a delegate cannot be prosecuted for activities related to his status. In addition, the Assembly must approve the criminal prosecution of one of its members. *Id.* art. 66.

59. *Id.* art. 62.

60. See *id.* ch. IV.

the legislature.⁶¹ The National Assembly has power in three instances: (1) at its own initiative (such as the creation of commissions to draft legislation);⁶² (2) on the proposal of the President (such as demanding a new discussion of a law);⁶³ and (3) on the proposal of the Government (such as the presentation of the work plan).⁶⁴

While both the Government and the individual delegates may initiate legislation, the Government to a large extent controls the legislative agenda by setting the sequence for discussing draft laws.⁶⁵ The Government presents the budget to the National Assembly for certification⁶⁶ while the National Assembly oversees the implementation of the budget.⁶⁷

Further weakening the legislative branch is the controversial provision that the National Assembly can be dissolved by the President and new members elected through special elections. The President may veto actions of the Parliament,⁶⁸ but Parliament in turn may override the President's veto by a majority vote of the overall number of delegates.⁶⁹ Finally, the President may convene an extraordinary session of the National Assembly and set the agenda.⁷⁰

The Armenian Constitution creates a Constitutional Court, a Tribunal Court, Review Courts, Courts of Appeals, Economic Courts, and Military Courts.⁷¹ Judges are appointed for life and cannot be members of a political party.⁷² The Justice Council,

61. *See id.*

62. *See id.* art. 73.

63. *See id.* arts. 55, § 2, 72.

64. *See id.* arts. 74, 89. The Government exercises the executive authority of Armenia. It is composed of the Prime Minister, appointed by the President, and the ministers who are also appointed by the President after consulting with the Prime Minister. *Id.* arts. 55, § 4, 85.

65. *Id.* art. 73.

66. *Id.* art. 76.

67. *Id.* art. 77.

68. *Id.* art. 55. Article 55 does not specifically provide for a presidential veto. Rather, article 55, § 2 provides that the "President can demand a new discussion of the law." *Id.* art. 55, § 2.

69. *Id.* art. 72. In the past, Parliament was unable to pass significant legislation because it failed to achieve a quorum. Because of the ban on outside employment, one might anticipate better attendance; thus, a quorum based upon a majority vote of all the delegates might be achieved.

70. *See id.* art. 70.

71. *See id.* art. 92.

72. *See id.* arts. 96, 98.

headed by the President,⁷³ oversees judicial nominations and discipline.⁷⁴

The judiciary's role, however, is not defined with specificity.⁷⁵ In fact, the judiciary of Armenia may be characterized as feeble and lacking judicial independence. Central to this problem is the fact that the judiciary is subject to considerable political pressure.⁷⁶ The constitutional provisions, which govern the judiciary, do not insulate the judiciary from this pressure. This lack of constitutional protection weakens the judiciary and limits its effectiveness.⁷⁷

B. Elections: A Testing Ground

Elections have proven to be the testing grounds for fledgling democracies. Recent elections have subjected Armenia to international criticism.⁷⁸

The constitutional provisions pertaining to elections are specific and provide for regulation at both the national and local levels.⁷⁹ The Constitution provides that "the people exercise their power through free elections and referenda, as well as through state and local self-governing bodies and public officials as provided by the Constitution."⁸⁰ Article 3 of the Constitution states that presidential elections will occur "by secret ballot on the basis of a general, equal and direct right to vote."⁸¹ Regarding disputes over election results, only the President, presidential candidates, and at least one third of the delegates may appeal to the Constitutional Court for review.⁸²

73. See *id.* art. 94.

74. See *id.* art. 95. The Constitutional Court reviews Court decisions and legislative acts.

75. See *Armenian Country Report on Human Rights Practice for 1996*, BUR. OF DEMOCRACY, HUMAN RIGHTS AND LABOR (U.S. Dept. State), Jan. 30, 1997, at 4 [hereinafter *Country Report*].

76. See *Country Report*, *supra* note 75, at 4.

77. See *id.*; see also ARM. CONST. arts. 104-10.

78. See *Country Report*, *supra* note 75, at 1.

79. See ARM. CONST. art. 3

80. *Id.* art. 3.

81. *Id.*

82. See ARM. CONST. art. 39.

C. *The Electoral Process*

In addition to the Constitutional provisions, two laws—The Presidential Election Law and The Elections of Local Self-Governing Law—and a series of implementation regulations, govern the Armenian elections.⁸³ The Central Electoral Commission (CEC) is responsible for the overall implementation and interpretation of election laws.⁸⁴ The structure of the subordinate Electoral commissions, however, is complex. Eleven Regional Electoral Commissions (REC) aggregate and verify election results, and exercise substantial administrative control.⁸⁵ There are also 930 Community Electoral Commissions (CoEC).⁸⁶ These Commissions provide the draft voter lists, gather Precinct Electoral Commissions (PEC) results, count voter coupons, and pass this information to the REC.⁸⁷ The PECs administer the election in polling stations and count the votes.⁸⁸

D. *Armenian Election Process in 1995, 1996 and 1998*

The first democratic election of the Armenian National Assembly and a referendum on the Constitution occurred in 1995. The timing of the election and the referendum were severely criticized. On January 13, 1995, prior to the scheduled election, President Ter-Petrosian charged the leading opposition, the Dashnak Party,⁸⁹ with being a secret terrorist organization⁹⁰ and banned the party and its newspaper.⁹¹

The Armenian Supreme Court subsequently reduced the ban to a six month suspension, which expired the day after the re-

83. See SIMON OSBORN, ARMENIAN PRESIDENTIAL ELECTIONS SEPTEMBER 24, 1996 FINAL REPORT, (Office of Democratic Institutions and Human Rights, 1996) [hereinafter OSCE FINAL REPORT].

84. See *id.*

85. Parliamentary parties nominate the members of both commissions. The parties retain the right to remove and replace members. See *id.*

86. See *id.*

87. See *id.* By law, each CoEC compiles voter lists for each PEC in their area and displays the lists in the polling stations. In addition, the military prepares its own lists, which are presented to the REC and allocated to the PECs.

88. See *id.*

89. The Dashnak Party is also referred to as the Armenian Revolutionary Federation. It is the oldest political party in Armenia.

90. See *Presidential Report, supra* note 25, at 4. The President made this change on Jan. 13, 1995. See *id.*

91. See *id.* at 4.

scheduled election in July of 1995.⁹² This suspension effectively prevented the Dashnak party from participating in the election. More than 600 observers from foreign countries witnessed the election.⁹³ The Report of the OSCE/UN Joint Operation concluded that the parliamentary election constituted an important first step in establishing a democratic process in Armenia and characterized the process as generally free, but not fair.⁹⁴

While criticism of the 1995 election centered primarily on the banning of the Dashnak party,⁹⁵ the criticism of the 1996 Presidential election focused on ballot tampering, voter calculation discrepancies and subsequent repression of opposition leaders.⁹⁶ The 1996 Presidential election was bitterly contested. Observers noted that voter lists were often not displayed, polling stations were inadequate, and voters registered on election day without proper identification.⁹⁷ In addition, the Commissions, especially at the regional level, became more partisan in favor of the incumbent as election day approached.⁹⁸ Furthermore, although Presidential Election Law provides equal access for candidates to free television and radio advertising, Ter-Petrossian, the incumbent, had a clear advantage because the other candidates were not allowed to use their remaining free television rights during the week immediately preceding the elections.⁹⁹

92. *See id.*

93. *See* Tigran Liloyan, *Elections and Referendum to be held in Armenia Today*, TASS, July 5, 1995, available in LEXIS, World Library, TASS File. Before monitoring the elections, the observers met with representatives of the authorities, the opposition, and electoral commissions. *Id.*

94. *See Country Report, supra* note 75, at 1 (local and international observers characterized the 1995 elections as "generally free, but not fair.").

95. *See, e.g., Dashnak Party Suspended for Six Months By Supreme Court*, BBC Broadcast, Jan. 16, 1995, available in LEXIS, News Library, BBCSWB File.

96. *See* Lawyers Committee for Human Rights Critique of the U.S. Department of State's Country Reports on Human Rights Practices 1996, at 36 (July 1997) [hereinafter Critique]. "Observers noted significant breaches of international election standards during the elections, including harassment and intimidation of voters, non-secret voting in one-third of its observations, stolen ballot-boxes, ballot-box stuffing, ballot tampering and irregularities in vote calculations at polling stations and election offices." *Id.*

97. *See* OSCE FINAL REPORT, *supra* note 83. OSCE observers noted that the lists were late and members of the REC were not always allowed to verify their accuracy. Further, some lists were amended on election day without PEC chairman approval. OSCE observers noted that over half of polling stations correctly conducted the election process. Breach of the law was found in only 23% of polling stations. Further, only 2.6% of voting stations allowed voting without photo identification. *Id.*

98. *See id.*

99. *See id.* at 6.

The election results were further stigmatized by the brutal crackdown on opposition leaders, who were arrested and detained following demonstrations protesting the election results. Seventeen prominent opposition leaders and over 100 participants in the 1996 elections were arrested or detained for "participating in mass disorder."¹⁰⁰ The State Department's Armenian Country Report on Human Rights Practices for 1996 notes that "international observers reported that serious breaches of the election law and numerous irregularities resulted in a lack of confidence in the integrity of the overall election process."¹⁰¹ Following the release of the State Department Reports, The Lawyer's Committee published a Critique, noting that the government's conduct following the presidential elections "precipitated a crisis without precedent in the short history of the newly independent republic."¹⁰²

IV. CONSTITUTIONAL CHALLENGES TO THE ELECTION PROCESS

Two presidential candidates, Vazgen Manoukian and Ashot Manoucharian, challenged the results of the 1996 election against the CEC in the Constitutional Court in an attempt to invalidate the results.¹⁰³ Under Article 9 of the Law on the Election of the President of Armenia, The CEC is responsible for the organization and supervision of the election.¹⁰⁴

100. See *Critique*, *supra* note 96. The Report gives even higher figures. It alleges that the government arrested 200 opposition party members, banned two leading opposition parties that had participated in the election, destroyed their equipment and shut down their offices. "The government also banned all public political gatherings and arrested any persons who happened to pass by the area where demonstrations had occurred." *Id.* at 36-39 Most of those arrested were "severely beaten," held in "secret prison cells" and were forced to "sign statements confession their guilt in 'actions against the government.'" *Id.*

101. *Country Report*, *supra* note 75, at 1.

102. *Critique*, *supra* note 96, at 35-39. The Critique alleges that the government attacked and imprisoned almost 200 opposition party members and concludes that this incident highlights the "structural weaknesses of the Armenian government and the laws that permitted these violations to occur." *Id.* at 39. Fraud was widespread that there was a call for new elections. The critique goes on to describe the storming of the parliament building, on the rumor that an opposition leader was being detained inside, and notes that the speaker, Babken Araktsyan and deputy of the parliament Ara Sahakyan were attacked. The Courts have not yet addressed these incidents. See *id.*

103. See *id.* at 8.

104. The Constitutional Court is responsible for resolving "disputes relating to referenda and results of elections for the president of the Republic and delegates and the Law of the Republic of Armenia." ARM. CONST. art. 100. Specifically, the Constitution provides:

Article 100. The Constitutional Court, in accordance with the law; . . . shall rule

The plaintiffs contended that the right to support their claim to direct elections by secret ballot was violated during the preparation and implementation of the election, thereby directly affecting the results of the election. To support their claim, documents evidencing numerical discrepancies, testimony of eyewitnesses and foreign observers were presented including the final report of the OSCE and the Observer's mission of October 16, 1996.¹⁰⁵ In addition, they presented special opinions of the proxies and members of the electoral commissions, protocols, certificates and analyses prepared by the appealing party, and copies of the final protocol of the electoral commission.¹⁰⁶ The CEC countered the plaintiff's evidence with summarized protocols, members' special opinions, REC protocols, and results from 930 communities and 1155 precincts.¹⁰⁷

In a key ruling, Armenia's Constitutional Court held that allegations of voting infringement should have been presented to the Electoral Commission itself or to the court of general jurisdiction as prescribed by law.¹⁰⁸ Since the Plaintiffs did not follow this procedure, the Court elected not to consider their evidence.¹⁰⁹

on disputes concerning referenda and the results of Presidential and parliamentary election;

....

Article 101. The Constitutional Court may hear cases submitted by: . . . Presidential and the parliamentary candidates on disputes concerning election results; *Id.* arts. 100(3), 101(3). Regarding issues raised under Point 3 of Article 100 of the Constitution, the following may appeal to the Constitutional Court:

- (1) The President of the Republic
- (2) At least one-third of the members of the National Assembly
- (3) Candidates for the President of the Republic and for members of the National Assembly, on issues connected with referenda, the results of the election of the President and National Assembly members within a month after the official pronouncement of results.

Id. art. 101(1)-(2), (4). The appeal to the Constitutional Court on issues connected with referenda, the results of the election of the President and deputies of the National Assembly within a month after the official publication of the results.

105. See generally OSCE FINAL REPORT, *supra* note 83.

106. See *Presidential Report*, *supra* note 25, at 19.

107. See *id.*

108. See *Country Report*, *supra* note 75, at 8.

109. See The Decision of the Constitutional Court of the Republic of Armenia regarding the case on the litigation of the results of the September 22, 1996, election of the President of the Republic of Armenia. The decision provides:

The investigation of the concrete arguments of the appealing parties on the facts of infringements during the preparation, implementation and summarizing of the results of the election of the President of the Republic are beyond the scope of jurisdiction of the Constitutional Court. The Constitutional Court considers, that the opportunities given by the law regarding the solution of disputes con-

The Court, however, did find discrepancies between the number of actual and registered voters, between invalidated ballots and duplicative names on main and supplemental voter lists.¹¹⁰ The Court recommended that changes be made in the Electoral Laws and noted the CEC and REC's failure to effectively organize the election results.¹¹¹ Nonetheless, the Court dismissed the appeal regarding the invalidation of the CEC decision and the presidential election.¹¹² Pursuant to the provisions in the Constitution, the Court's decision is final, not subject to reconsideration, and self-executing from the moment of its publication.¹¹³ Consequently, the Court's decision validated the 1996 Presidential election. This decision was criticized both in Armenia and by other governments.

V. RECOMMENDATIONS IN ELECTION LAW

A. U.S. State Department Recommendations

The U.S. State Department stated that "the Court's handling of the case did not dispel doubts about the credibility of the official election results."¹¹⁴ Further it noted that international observers reported that serious breaches of the election law and numerous irregularities concerned the overall integrity of the electoral process.¹¹⁵ To avoid such detrimental consequences, the State Department urged the Armenian Government to implement international experts' recommendations to address the flaws and rebuild

nected with the preparation, implementation and summarizing of the elections had not been sufficiently used by the candidates for the President of the Republic and their proxies.

Id.

Further, the Court found that the documents offered by the Plaintiffs could not serve as evidence as they represented mere impressions, suppositions and unverified rumors. The Court organized a special investigation of all documents from 162 electoral precincts and found only a discrepancy of 3 to 5 votes between the final protocols. The documentation, serving as the basis for voting, was observed in 41 precincts. Partial inconsistencies were found in the data of only 9 precincts. No numerical distortion had taken place in the CEC regarding the presidential election results. The REC's data had been summarized correctly.

110. See Presidential Report, *supra* note 25, at 20.

111. See *id.*

112. See Country Report, *supra* note 75, at 8.

113. See Presidential Report, *supra* note 25, at 20.

114. Country Report, *supra* note 75, at 8.

115. See Presidential Report, *supra* note 25, at 16.

public confidence in the electoral process.¹¹⁶

*B. Office for Democratic Institutions and Human Rights
Recommendations*

On September 24, 1996, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) released its Final Report of the Armenian Presidential Election, and cited several recommendations for future Armenian elections.¹¹⁷ The recommendations addressed such issues as the authorization of persons in polling stations, the alleviation of pressures placed on military members to vote for a particular candidate and called for a revision of election law.¹¹⁸ The OSCE specifically evaluated the election law relating to "vote count, verification and aggregation of the results."¹¹⁹ The Report questioned the partisan nature of electoral commissions and addressed the breakdown in the counting process.¹²⁰ It suggested standardized training for the members of the CEC, and the creation of remedial regulations and responsibilities within the CEC.¹²¹ Furthermore, the Report called for "formal written agreements" in applying for campaign television airtime, more accurate voting lists and military voter lists, and a "consistent criteria" for invalidating ballots.¹²² To secure the implantation of electoral reforms, the Report emphasizes that "those authorities who do not administer the law correctly should be sanctioned."¹²³

The ODIHR issued a final report on January 23, 1997, concluding that Electoral Code changes needed to be made¹²⁴ and focused on the need for addressing candidate withdrawal, ballot and protocol processing, and publishing complete election results within a reasonable time period after election day.¹²⁵

In accordance with the suggestions of the OSCE, Armenia began the process of reform of the electoral code and process.

116. See *Country Report*, *supra* note 75, at 8.

117. See *id.*

118. See *id.*

119. OSCE FINAL REPORT, *supra* note 83.

120. See *id.*

121. See *id.*

122. See *id.*

123. *Id.*

124. See Office for Democratic Institutions and Human Rights, Mission on Implementation of Recommendations in Final Report on Presidential Election in Armenia, ORG. SEC. COOP. EUR., Jan. 23, 1997, at 3.

125. See *id.*

Both the Standing Committee of the National Assembly on State and Legal Issues and members of the opposition in the Assembly submitted comprehensive drafts to address the concerns and irregularities noted in the previous elections. However, in February 1998, before the Assembly was able to act on the proposals, President Levon Ter Petrossian, weakened by allegations and suspicions that the 1996 election victory was achieved through fraud, resigned.¹²⁶ Although his resignation was prompted primarily by disputes over foreign policy, his questionable role in the contested election eroded his authority and credibility.

As provided by the Constitution, elections took place on March 18, 1998, within forty days of the resignation. Twelve candidates stood for election, including acting President Robert Kocharian.¹²⁷ Once again, foreign observers led by the OSCE and Council of Europe monitored the election and once again found the results less than satisfactory.¹²⁸ Serious irregularities were recorded in 15% of the 800 polling stations including "problems with the voting process, voting by the military, the use of state resources, the presence of police and other unauthorized personnel at polling stations, media bias, and campaign violence."¹²⁹ Overall, the election was characterized as "deeply flawed" by the OSCE.

Five candidates for the presidency issued a statement declaring "that the extraordinary elections for the post of president of the republic of Armenia, regardless of the results cannot be considered free and fair."¹³⁰ Because none of the candidates received a majority of the votes, a second round of elections involving the two candidates who received the highest vote was scheduled for March 30, 1998.¹³¹ Although the elections of March 16, 1998 and

126. APS Diplomat Redrawing the Ismac Map Arab Press, APSRIM, March 1, 1993, available in 1993 WL 2498733.

127. Five Candidates Say Poll Not Free and Fair, BBC Broadcast, Mar. 9, 1998, available in LEXIS, World Library, BBCSWB File (listing the candidates and their respective parties).

128. OSCE Observers Condemn Election Irregularities, BBC Broadcast, Mar. 20, 1998, available in LEXIS, World Library, BBCSWB File (quoting a OSCE statement: "The electoral reforms put off because of these elections must continue.").

129. David Stern, CIS: OSCE Slams "Deeply Flawed" Armenia Poll, Mar. 9, 1998, AAP Newsfeed, AAP Info. Services Pty. Ltd., at 1.

130. Five Candidates Say Poll Not Free and Fair, BBC Broadcast, Mar. 9, 1998, available in LEXIS, World Library, BBCSWB File.

131. See Stern, *supra* note 129, at 1; see also Kocharyan Wins Round of Armenia Vote by 8 Percent, DEUTSCHE PRESSE AGENTUR, Mar. 19, 1998 (the "runoff" was "necessary

March 30, 1998 did not meet the OSCE standards, they "showed improvement in some respects over the 1996 election."¹³² The OSCE, however, recommended a "thorough, impartial and vigorous investigation" of any irregularities and made further recommendations to the Armenian election law."¹³³

VI. CONCLUSION

Clearly the leadership in Armenia, which has espoused democratic values, must act now and continue the task of democratization. A reform of the electoral code is critical to this process but is only the first step. As with many laws, it is the implementation of the law that might prove to be the most difficult task.

The conduct of an open and transparent election process in accordance with established legislation is fundamental to a democratic society. Not only is the right of political participation linked to the electoral process, but free and fair elections "presupposes adherence to other basic human rights such as the right to freedom of expression, movement, peaceful assembly and association."¹³⁴ Indeed, it has been stated, "Elections are a celebration of fundamental human rights."¹³⁵ While free and fair elections are a vibrant measure of democracy, transfer of power through the electoral process is particularly important in emerging democracies. It is only when all parties accept and abide by electoral results achieved through free and fair elections that it can be concluded that democratic principles have become entrenched.

because none of the twelve candidates received more than fifty percent of the ballots cast); Armenia's PM, Former Leader Enter Presidential Runoff, THE XINHAU GENERAL OVERSEAS NEWS SERVICE, Mar. 19, 1998; Tigar Liloyan, *Kocharian Stand Chances to Emerge Armenian President*, ITAR-TASS NEWS AGENCY, Mar. 19, 1998.

132. REPUBLIC OF ARMENIA PRESIDENTIAL ELECTION MARCH 16 AND MARCH 30, 1998, FINAL REPORT (Office of Democratic Institutions and Human Rights, 1998).

133. *Id.*

134. ELECTION HANDBOOK, *supra* note 18, at 1.

135. *See id.*