

Recommendations on Constitutional Reforms based on the public opinion and expert research

Section	Expressed Opinions	Recommendations
Need for Constitutional Reforms	• The priority for the Government is to overcome the issue of trust and Constitutional Reforms are timeless as there is no public demand. • Distrust results in formation of a committee dealing with Constitutional reforms. • Objectives and real goals of Constitutional reforms are unclear. • Part of experts has a negative attitude to the fact that the Committee was established by the President and the majority of members are state officials. • Majority of experts thinks that Constitutional reforms can't solve or partly solve issues the country is facing. • Majority of experts thinks that the solution to the problem is the change of regime, ruling principles and/or public consciousness. • Absolute majority of experts thinks that Constitutional reforms can't solve weak aspects of the current Constitution entirely. • According to some experts Constitutional reforms can positively affect following issues: - Issues of separation of power, counter balances and balances, - Issues of limiting the rights of state authorities, - Issue of lack of trust and negative attitude to electoral institutions, - Issue of independence of the Judiciary system, - Decreasing/eliminating electoral falsifications due to introduction of the Parliamentary system - Issue of ensuring the rule of law - Internal and foreign issues, including social-economic, political etc • Majority of experts thinks that the winner of Constitution reforms will be the one who initiated Constitutional reforms, namely state authorities. • In regard to ensuring public participation some experts think that the Constitution is certainly a complicated document and	• It's necessary to improve the electoral system, eliminate all grounds discrediting the outcomes of voting including meaningless legislative restrictions, particularly ban on publication of signed voter lists. It's also important to raise the level of reliability of the Central Electoral Commission as a responsible structure for organizing and conducting elections. Otherwise after recent elections when the society sees CEC as the main falsifier upcoming referendum for Constitutional reforms will be endangered. • The draft Constitutional reforms of RA should be developed by independent, neutral and professional groups who are not constrained and particularly have no political ambitions.

	it's not an object for public decision, while others think that unfortunately our population doesn't have civil consciousness and here experts outlined the need for public mobilization.	
General issues of the Concept (H. Tigranyan)	- Although the draft of the Constitutional Concept includes almost all issues existing in Armenia their possible solutions remain unclear. - The draft concept covers all shortcomings revealed during the application of the current Constitution but because of lack of the draft text of the Constitution we can't state that those issues will be solved as a result of reforms. - Entirely changing the Constitution contains risks including suspension of activities of state apparatus, instability as well as loss of human and financial resources.	- Clarify possible solution options for voiced issues as final regulation mechanisms. - Clarify and reduce risks conditioned with Constitutional reforms.
Human Rights (T. Matinyan)	- Summarizing responses by experts the term "Rule of Law" should mean a) prevalence of the rights over other regulations, b) correspondence of the law to the essence of the right. - Majority of experts thinks that there is no vital need for ensuring additional guarantees for application of rights at the level of constitutions. Current guarantees are enough if applies and in case of availability of will. - Experts agree with the Concept statement that human rights freedoms are not applied and their immediate application should be ensured and think that ensuring immediate application of rights and freedoms is also possible also with the current Constitution. - According to experts following facts become obstacles inaction of rights and freedoms: ➤ Low level of civil consciousness, ➤ Political reality when human rights protection is not a priority as a value, ➤ Cultural and civilization issues,	- Second section of each article on rights should include situations prescribed for limitation of the given right. - Formulation of restrictions should be not ambitious and clear without any context to prevent misinterpretation and to ensure uniform application. "European Convention on Protection of Human Rights and Fundamental Freedoms" is a great example of norms containing restrictions which defines the right protected by the state followed by cases which are not considered as violation of that right¹. - The article defining the right of life should supplement with exclusive provisions when depriving a person of life is not considered illegal. - Define the formulation of the term "Torture" at the Constitutional level taking into account that prohibition of torture is an absolute right as well as concern that ECHR has currently issued 106 verdicts against Armenia (which include verdicts and decisions on acceptability or partly acceptability, decisions on unacceptability or partly unacceptability, decision on communicating the case etc)

¹ Example: Article 2 of "The European Convention of Protection of Human Rights and Fundamental Freedoms" says, "The right of life of any person is protected by the law. No one can be intentionally deprived of life through means other than conducting execution decided by the court for committed crime for which the law has defined such penalty

Depriving of life is not a violation of this article if it's a consequence of use of force necessary:

- to protect anyone from illegal violence,
- to implement legal detention or to prevent escape of person arrested on legitimate grounds,
- to suppress riot or rebellion in accordance with the law.

	➤ Situation when executive and legislative authorities are not legitimate. • Responses to the question to experts on whether there is need for structural and editorial clarifications of rights, freedoms and responsibility were different. Minority urges that there is such need but outlines that they will certainly not have significant impact while the majority thinks that there is no need for that. • Majority of experts thinks that restriction of rights should be defined at the Constitutional level. • Some experts think that all rights are comprehensively presenting in “Human Rights” section. • Viewpoints of respondents on the right for life match as after the elimination of death penalty the issue of ensuring the right for life wasn’t solved. • Formulation of torture defined by internal legislation doesn’t correspond to provisions UN Convention on Preventing Torture. • Reflecting on the question on the level of protection of freedom and the right for personal immunity, right for the respect of personal and family life respondents mostly outlined that the practice is more important than its legal formulation. • As for the fair trial experts think the Judiciary system should be entirely independent and, in general, competitive to ensure comprehensive implementation of the presumption of innocence and the principle of competition. • There are certain issues connected with ensuring the right for effective legal protection conditioned with the institute of public defender, quality advocacy services and opportunity of having defender from the moment of arrest. • Experts mostly have the same viewpoint on the issues of the right freedom of religion, thought and consciousness as the Constitution declares that the Church is segregated from the state but in reality it’s not the case. • In terms of freedom of movement experts mostly don’t see any problems but state that during political tensions some restrictions are applied. • All respondents see problems in ensuring the right for free use of property which are, again, conditioned with ruling principles/order.	where violations of the article prohibiting torture is one of the most frequently violated rights along with the rights of fair trial and personal immunity. • Replace “detained” term with “when detained” in the provision “<i>any detained person is immediately explained in accessible language</i>” within the article 16 of the Constitution. This formulation will enable to use the guarantee (Miranda’s rule) during detention defined by this provision and not after detention during which several serious intimidations of personal rights occur as practice shows. • Any detained person has the immediate right for legal defense. • Taking into account section 2 of the article 10 of the European Convention on Human Rights the Constitution in parallel to the right of freedom of expression should also define the range of restrictions. Namely, “Implementation of those freedoms which results in obligations and responsibility can be connected with formalities, conditions, restrictions or fines defined by the law and necessary for the democratic society for the sake of state security, territorial integrity or public peace, to prevent disorders and crimes, to protect personal dignity or rights, to prevent publication of confidential information or to ensure prestige and impartiality of Justice”. • Define forms and grounds for restriction of the right of property. • To provide suffrage to convicts. • To define within the Constitution that the state ensures the equality of state and private educational institutions with state accreditation. • Taking into account that the right for free movement is broadly limited during political tensions its necessary to define grounds and means of limiting free movements.
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	• Almost all respondents agreed that there are a lot of issues in regard to the right for vote and being elected, including legislative and practical. • As for the right for education it was stated that there are some issues in this spheres conditioned with ensuring equal conditions for education and meaningless interference of the state. • Experts see issues in the right of free movement which bear systematic character in other human right systems.	
Governance System (A. Ghazaryan)	• Opinions expressed in regard to Parliamentary and Presidential systems don't coincide. While the majority of experts states that the Parliamentary system is effective and in such case transformation to that system is desirable and even inevitable a considerable part of interviewed population prefers Presidential system. However all have the same position that the Semi-Presidential system has become Presidential and the President has almost unlimited power as the Parliament has stopped acting as a counter balance. As a result the power is centralized in the hands of one party and in this regard the opinion of interviewed people matches with concerns expressed in the concept that a political monopoly has been formed where the institutes of the President, Government and Parliament are merged. According to experts the reason is shortcomings of the electoral system. The reason to the current situation is legally disproportional interference into electoral processes which result in illegitimacy of electoral institutions and breaking political balance in the Parliament with its all consequences. • In the current situation the concept suggests changing the Government system to Parliamentary one. They think that the Parliamentary governance system will exclude political monopoly as the Governance will be transferred from the Presidential institute to the Parliament which will elect a President who has no connection with political processes and will control the Prime-Minister with his/her Government. So everything will depend on how balanced and representative the composition of the Parliament is as only in that case the Parliament will be able to control the political majority with the Government and its cabinets responsible for that. In this context the conceptual idea of enlargement political parties is	• The political crisis is so much deeper that it's even impossible to recover minimum attributes of the Semi-Presidential Governance System. Therefore it's more appropriate to change the Governance system than to try to restore the previous discredited system. The Parliamentary Governance system is promoting force of democracy. Therefore it's appropriate to move to the Parliamentary Governance system. • But for the effective functioning of that institution it's necessary to ensure legitimacy of electoral institutions otherwise political monopoly will be formed with another Governance center. • Having Presidential and Parliamentary elections on the same day is not welcomed. It's desirable to have elections of one primary mandate institute followed by another as in case of elections on the same day or close dates will result in mostly same results. • With a view to ensure the controlling role of the Legislative body it's necessary to ensure representation of Parliamentary minorities in oversight processes of ad hoc or standing committees to have investigative and fact finding committees based on minority demand. • The law should define responsibility for legal and physical entities for not implementing requirements of committees including false testimonies, submission of data, disorientating the committee or other illegal action. • It's necessary to define as much as possible narrow range of issues to be put to referendum as broad application of the referendum institution will weaken the role of the National Assembly particularly in the Parliamentary system. • In the Parliamentary system it's necessary to establish a specialized committee or body within the Parliament for control over the Government which will be intermediate structure between the Government and Parliament and will have its regulations (defined by

	very important promoted by the increase role of the Parliament as well as revision of some legislative mechanisms (enlargement political parties will itself increase the role of the Parliament). In spite of above mentioned experts unanimously agree that any Semi-Presidential system results in Presidential monopoly as the conflict between to main institutions – President and Parliament - becomes inevitable and each of them tries to dominate over the other and the conflict ends only when the President gets the majority seats in the Parliament which is gradually making the country presidential resulting in formation of super-Presidential system. In this regard countries with no democratic traditions including Armenia become more vulnerable.	the law) which will include all control mechanisms. - We think that in the Parliamentary system the President will have the power of verifying laws adopted by the parliament. If that's the case the President should have the right for legislative veto which can't be eliminated by the Parliamentary majority as well as the right to apply to the court on issues related to the legitimacy of laws. This power can replace the right for veto which can be more preferable by the President. - The President should also be provided with some traditional powers in the executive sphere, for instance, declaring amnesty, appointment of ambassadors, verification of international agreements etc. Thus the President will be able to ensure functioning of the Constitution, effectively apply counter balance or restrictive powers and if necessary act on the behalf of the population (including minority) as arbitrator. In this context it's important for the President to be non-partisan as suggested by the Concept. - In order the President can fulfill his/her role of "public arbitrator" he/she should certainly be provided with some opportunities for participation in political processes in addition to above mentioned. For instance, he/she should be enabled to approve the composition of the Security Council, appointment of the Prosecutor General and other official by the Parliament. - Termination of President's power (impeachment) should be done through referendum.
Electoral right and electoral system (T. Matinyan)	- Almost all respondents² had a positive attitude to having absolutely proportional electoral system as suggested by the concept. They mentioned following arguments: ➤ This is an opportunity for preventing/reducing politics being impolitically. ➤ That decreases opportunities for reach people (oligarchs) to access the National Assembly. ➤ Increase the level of responsibility of elected members of the Parliament before voters. ➤ In case of proportional electoral system risks for corruption, bribe distribution and other similar issues decrease.	- Preserve current mixed electoral system and at the same time promote enlargement of political parties at legislative level and in practice (for instance, conduct LSD elections exclusively based on party lists, which will increase the interest and importance of local level structures. It should be at the same time piloted in several communities to identify its efficiency and shortcomings). - Provide suffrage to convicts.

² This question was answered by members of the Constitutional committee and MPs elected through proportional system from opposition party lists.

	➤ Proportional elections are more democratic and tend to reflect peoples will rather than majority elections. ➤ Activities of MPs elected through proportional electoral system are more effective than those elected through majority system. • The only MP elected through majority system who expressed disagreement with passing to proportional system pointed out following counter arguments: ➤ National Assembly carries out legislative function which is a professional work and party and political interests shouldn't dominate. ➤ As for oligarch access to the National Assembly it's worth mentioning that in case of elimination of the majority system there is no obstacle for such persons to become MPs through party lists. And even current party lists have a lot of reach people. ➤ The level of accountability of MPs is high when they personally carry the responsibility. • Part of experts raised following issues on passing to reformed electoral system suggested by the concept: ➤ Constitutional status of the electoral system, financial independency and personal responsibility, ➤ Opportunity for e-voting, ➤ Publication of signed voter lists, ➤ Life broadcasting of the voting process at all precincts, ➤ Initiating cultural changes – change of legal consciousness, formation of demanding citizens. • All respondents mentioned that rating voting will increase the level of democracy within political parties. • Experts voiced concerns on voting for preferred candidates from proportional lists which may result in having electoral constituencies with no elected MPs and constituencies with several MPs. • In regard to providing suffrage to detained people respondents	
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	mentioned that they should be provided with suffrage as all other RA citizens if there is a trust in electoral processes. As for military conscripts experts expressed opinion that their right for voting should be temporarily suspended otherwise it will cause falsifications.	
Judiciary system (A. Ghazaryan)	- Opinions on the need to change the Judiciary system are not the same. Although all experts pointed out the lack of independent judiciary system as the main gap, only the small part of interviewed citizens think that was and the majority thinks that courts make fair decisions. At the same time almost all respondents mentioned that the Judiciary power doesn't act as enough counter balance to other branches of power which is conditioned not with the structural gap of the judiciary system but shortcomings of the Governance system, lack of political will and existing political monopoly. - The justice Council also appeared in the center of attention. Many experts see the potential in this structure as a guarantee to the independency of Judiciary system with a condition that the procedures of its formation and the range of responsibilities should be revised. Different models of formation of the Justice Council were suggested including also models which correspond to the Parliamentary Governance model. - The majority of respondents had a negative view on passing to two-layer judiciary system stating that there was no objective need for that. The majority had also negative position on the institute of juries.	- It's necessary to increase the range of responsibilities of the Justice Council (JC) at the expense of functions of the Council of Courts' Chairmen (CCC). JC should become a policy maker and its responsibilities and range of power should be more than initiating disciplinary procedures as well appointing and career promotion of judges. - Some of CCC powers should be transferred to JC particularly those which enables CCC to develop judiciary policy, such as judiciary administration, definition of human resource management rules as well as the power of managing budget policy. - In order to make the above mentioned powers function JC should become a permanently functioning structure. Thus there will be two main structures – the Justice Council as a policy maker and Judicial Department as policy implementer. - The Judiciary system should be provided with the right to come up with legislative initiatives and that function should be certainly provided to JC. - Independent of the JC model a principle should be adopted that at least 1/3 of JC members should be judges elected “from inside” by judges. - Current legal regulations according to which the list of candidates for judges and career promotion are adopted by the RA President are relevant to be applied in the Parliamentary Governance system where the President will have limited range of power. - Either we should move to the two-layer Judiciary system which will result in considerable savings of judiciary resources (including citizen resources) or preserve the current tree-layer Judiciary system with the condition that the court investigation should end within the Court of Appeal and the Court of Cassation should remain as a tool for the case review and not appeal. - It's necessary to rename the Court of Cassation “Supreme Court” taking into account article 92 of the Constitution defining functions of this court and activities of the court since 2005.

		We think that there is no objective need (in terms of general interests of justice) and real public demand for the institute of juries.
Constitutional guarantees of referendum (H. Tigranyan)	- According to experts referendum is certainly considered as the most important tool for democracy which is, unfortunately, applied in Armenia only during Constitutional reforms. At the same time citizens don't stress the importance of referendum and find participation in referendum meaningless. - The range of issues to be put to referendum is not clear which can become a reason for selective abuse of this power by state authorities. - The role of population in referendum initiatives as the population doesn't feel the ownership of referendum.	- It's necessary to increase population's trust in referendum and petitions. - Develop specific mechanisms for organization and conduction of referendum to make the process transparent. - Improve mechanisms of elections, increase the level of trust in and accuracy of results of elections. - To provide the public with the right to initiate referendum. - Clarify the range of issues within the framework of which the public can come up with an initiative for referendum.
Conceptual provisions of constitutional and legal reforms of Local Self-Government (H. Tigranyan)	- There are a lot of issues in the Local Self-Government system that are not comprehensively reflected in the concept. Those issues touch not only democracy but also democracy of Governance. The concept doesn't provide means of solutions except for establishment of inter-community unions and increase of the role of local councils. - One of the biggest issues of local self-government is the budgeting and impossibility to manage funds. - Local Self-Government is not enough independent from central authorities. - Community mayor has a decisive influence on the decision making by the council so the council doesn't have enough freedom. - The level of participation in local management is low which is conditioned with unawareness of community population of their right to participate in the council meetings.	- Ensure real independence of local self-government. - Define optimal regulations for local budgeting and budget utilization. - Ensure participatory management in local self-government. - Increase the role of local councils in decision making on community level issues.