

## **Constitutional Wrangling in Armenia**

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Despite revisions to the proposed constitution, the opposition is urging voters to reject it – but in the end, low turnout may pose a bigger risk.

Armenia is gearing up for a national referendum on a constitution widely regarded as a vast improvement on the old one. The government has made substantial revisions to the draft, and the Council of Europe, CoE, is now happy with it. So why are opposition parties still calling for a no vote?

The first post-Soviet constitution was approved in 1995 and few would doubt it is in need of revision. “The current constitution is simply obstructing the country’s future development,” Tigran Torosyan, deputy speaker of the Armenian parliament, told IWPR. “The mechanisms for protecting human rights are not precisely specified. Nor is there a precise division of powers. In addition, we want an objective and fair judicial system.”

The process was given impetus when Armenia joined the CoE in 2001 and came under pressure to implement a raft of changes as part of its membership commitments.

Early drafts of the new constitution - the first came out in 2004 - were criticised as deficient by the CoE’s advisory body on constitutional matters, the Venice Commission, as was a subsequent revised text.

The Armenian opposition said the constitution was likely to make the country less rather than more democratic, by enhancing the already considerable powers of the president.

But over the summer, the authorities set about amending the document in light of the recommendations from their international partners.

By September 2005, many of the most problematic clauses had been rectified and the Venice Commission said it was happy with the draft. “A successful constitutional referendum on the basis of this text would constitute a good basis for ensuring the compliance of the Armenian constitution with the European standards in the fields of respect for human rights, democracy and the rule of law,” said a final opinion approved by the commission in October

European and United States officials as well as international bodies, including the Parliamentary Assembly of the Council of Europe, PACE, are now urging Armenians to vote for the new constitution.

The authorities in Armenia are themselves mounting a strong pro-constitution campaign arguing that a yes vote is crucial to progress.

At a PACE session in June when the constitutional reforms were discussed with Armenian politicians, it seemed that a dialogue between government and opposition would be possible as so many of the latter’s concerns were identical to those of the Venice Commission, and it was clear these would now be included.

However, despite the apparent rapprochement in views, no such dialogue emerged. When parliament gathered on September 28 to approve the third and final reading of the much-altered draft, the opposition boycotted the vote, so the bill sailed through without a single no vote or abstention.

## FEARS THAT PRESIDENT WILL RETAIN TOO MUCH POWER

All the opposition parties continue to object violently to the document and are calling on voters to reject it. The constitution will only be passed if it is supported by more than 50 per cent of the voters who turn out, and the majority must equal at least one third of all people listed on the electoral rolls.

Since the beginning of October, the 17 opposition parties hostile to the draft have begun a campaign to urge voters to say no. Eight of the 17 are also part of the nine-member Justice bloc, which has started its own campaign of rallies around Armenia. It is urging people to either vote no or boycott the referendum on November 27, and then come to Yerevan to take part in a massive rally the same day to call on President Robert Kocharyan to resign.

Some in the opposition object to the constitutional draft on principle, arguing that even in revised form it still fails to address key concerns.

Many object to a clause that was not present in the 1995 document, giving the president immunity from prosecution. Others say the post still carries too many powers over the legislature and judiciary, which will mean they enjoy only limited independence.

"We have provided arguments as to why one must not vote yes – not least, because the president is becoming untouchable, and the National Assembly acquires the right to change state borders," said Grigor Harutyunyan, secretary of the Armenian Popular Party.

Government supporters say the president will only enjoy limited immunity, and could be impeached while in office, or prosecuted after retirement for some offence unconnected with his position. The measure is to protect him from politically-motivated lawsuits, they say.

"In Armenia the scope of presidential immunity [will not be] greater than in other CoE member countries," said Torosyan. "In the draft we have specified those areas for which the president is responsible during his presidency."

The opposition is also unhappy about provisions for local government; principally the opposition demand that the mayor of the capital Yerevan - an important post equivalent to that of provincial governor - should be directly elected rather than appointed as is the case now. Earlier drafts envisaged that the post would continue to be by appointment, but the latest text says it will be an elected position. However, the wording leaves it to future legislation to define whether the election is by the public or indirectly, by members of the city council.

## KARABAKH AND BORDERS

Finally, there is alarm at the implication that the president could push through changes to Armenia's national borders without consulting the nation in a referendum.

This is an emotive issue as it relates directly to the long-running negotiations over Nagorno Karabakh, which has been a self-declared republic since the 1992-94 war but over which Azerbaijan still claims sovereignty. One element among the various solutions proposed so far would involve Azerbaijan formally ceding control of the Lachin district, a narrow strip of land running between Karabakh and Armenia, and getting in return part of Armenia's Meghri district bordering on Iran. Lachin is controlled by the Karabakh

Armenians but is technically regarded as lying outside Karabakh proper.

The point of the exercise - which is still only one of many proposals in talks that are a long way from resolution - would be to make Karabakh contiguous with Armenia itself. Azerbaijan would acquire for the first time a land connection with Nachichevan, an exclave territory currently cut off from the rest of the country by southern Armenia.

Even if the ultimate prize is recognition for a Karabakh Armenian state, the loss of a part of the Armenian motherland is a keenly felt political issue.

The National Assembly's deputy speaker Torosyan counters this concern by citing numerous previous government statements that the borders will never be changed. At the same time, he added, "Suppose Nagorny Karabakh unites with Armenia. Will they [critics] be against that?"

Shavarsh Kocharyan, a member of parliament from the Justice faction who was part of the talks with PACE, accepts that there have been significant changes for the better, but that, crucially, "loopholes have been left in to allow this regime to continue in its old ways".

#### SAYING NO TO AN "ILLEGITIMATE" GOVERNMENT

But the real pressure for a no vote seems now to be less about legal details than about simply dealing a political body blow to the Kocharian administration and all its works.

"The main purpose of the constitutional reform is to legitimise the administration and prolong its power. The unequal terms set for the authorities and the opposition in the campaign period are evidence of this," said a statement by the 17 opposition parties in late October.

Among opposition parties there is even talk of mobilising for a Ukraine- or Georgia-style popular revolution. "I am sure November 27 will be the last day that the current authorities rule the country," Aram Sargsyan, leader of the Hanrapetutiun (Republic) party told a rally at the end of October.

"We reject this [constitutional] process and say no to the ruling regime. Under such circumstances, regime change is needed as soon as possible," said the parties' joint statement.

Outside observers might ask why the opposition believes it is justifiable to derail a potentially good law, even to get rid of what in their view is a bad government.

The opposition argument is that the two are closely linked - that this government has no right to go to the people with a constitution, good or bad, because it is itself illegitimate. The two main opposition factions, Justice and National Unity, have been boycotting most parliamentary business since 2003.

They claim Kocharian won the 2003 presidential election, and his supporters swept the board in a parliamentary poll the same year, only by fixing the results. The authorities deny that assertion.

"Illegitimate authorities do not have the right to change the constitution," said Viktor Dallakyan, a member of parliament with the Justice bloc.

"Only authorities that have been elected by the people can initiate a constitutional referendum," said the statement signed by 17 parties.

## OPPOSITION ACCUSED OF SHIFTING GROUND

The authorities say the opposition is behaving in an unprincipled way over a key reform measure. They argue that first the opposition objected to the content and to their concerns being ignored – but now that these concerns were incorporated into the final draft they continue to fight it for no good reason.

Torosyan believes that a section of the opposition deliberately undermined any possibility of a real dialogue on the constitution because they were wrong-footed by the government's readiness to make concessions.

"Within the opposition, a small but aggressive group has formed which is putting pressure on the others. They have failed to overcome a psychological barrier and to understand that this issue is in no way linked to the struggle for power. Unlike the authorities, they have failed to shape their position within these frameworks," said Torosyan.

Armen Rustamyan, a member of the Armenian Revolutionary Federation which is allied with the Kocharian government, warns that "those who promote a no vote will have to bear the responsibility if the constitution isn't passed and negative consequences ensue".

The government is no doubt sensitive to the risks of pushing constitutional change in Armenia, since a previous attempt to introduce a revised document fell flat when less than half the electorate voted for it in 2003.

The authorities have mobilised their own propaganda machine to counter the opposition no campaign. A special headquarters to promote a yes vote has been working since mid October and 24 pro-government parties have banded together with the slogan "Yes in the Name of Progress, Development and the Future".

## APATHY, NOT HOSTILITY COULD SINK CONSTITUTION

Most observers seem to think the real danger facing the authorities comes not from the "no" campaign, but from voter apathy which might fail to produce the required one-third turnout.

Taxi driver 45-year-old Ashot is fairly typical of the undecided. "Are you a journalist?" he asked this IWPR contributor. "So tell me whether I should vote yes or no. How can I make a decision? They are using Europe to intimidate us - but what right does Europe have to decide and dictate to us? Why are they [Armenian authorities] not explaining things to us to allow us to make up our own minds."

Independent political analyst Aghasi Yenokyan says both the opposition and the authorities have been "lazy", and most voters are apathetic. "The result will be that people remain asleep and do not vote in the referendum. Of course the constitutional reforms will not be adopted unless the authorities resort to major violations."

Excessive government campaigning might not help, either. "The threat to the constitutional referendum

comes from bad propaganda [in favour of it] rather than good propaganda against it," independent political analyst Alexander Iskandaryan told IWPR.

For the moment it seems likely that the government's superior access to media will allow it to carry the referendum.

Some fear that given the need to hit the 50 per cent threshold there could be some ballot-rigging that could undermine the vote's credibility both domestically and internationally

Avetiq Ishkhanyan, who heads the Armenian Helsinki Committee, said, "If violations do take place, I think that the European observers will announce that there were violations, but they won't say this has affected the overall results."

## OPPOSITION PLAYS FOR HIGH STAKES

In view of the predicted "yes" vote, many observers are now questioning the wisdom of the opposition's all-or-nothing stance – and whether it can really deliver on its threat of Georgia-style protests.

"I think we won't have a Georgian-type revolution – although life and politics are unpredictable," said Ishkhanyan. "In the event of a no vote, the opposition will have more opportunities to hold massive rallies. But if the constitution is passed, the opportunities for this will be reduced to a minimum."

Aharon Adibekyan, director of the Sociometer, an independent centre for social research, predicts that whatever the outcome of the referendum, it will be bad for the opposition.

"The adoption of the constitutional amendments will mean that the majority of the population has not backed an opposition that urged them to vote no," he said. "But if the referendum fails, the state propaganda machine will become active to cast the blame on the opposition, because of which we will have disgraced ourselves before the European community."

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