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"Increasing the Role of the Civil Society
in Political Processes in Armenia" project

Report on Research on RA Constitutional Reforms



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Introduction

The Constitution of the Republic of Armenia was adopted in 1995. That was one of the most important activities targeted at the establishment of democracy. The Constitution was a step towards the gradual establishment of state institutions, ensuring Constitutional guarantees for Human Rights protection etc. But further processes in the public practice, shortage of experience in Constitution, new challenges in developing public relations and establishing democracy and countries commitments for legal reforms for the membership to the Council of Europe brought to the necessity of Constitutional reforms. Taking into account those needs several changes and amendments were made to the Constitution in 2005.

In 2013 the RA President's initiative to undertake Constitutional Reforms in the country became one of the most important political processes. Based on the President's decree as of September 4 a Specialized Committee on Constitutional Reforms was founded with the main function of comprehensive analysis of the RA Constitution and development of recommendations for reforms. The Committee took the responsibility for implementing that function taking into account the need for improving the implementation of the principle of rule of law and constitutional regulations ensuring main human rights and freedoms, as well as ensuring the balance of power and increasing the efficiency of public management. A Concept of RA Constitutional Reforms was developed by the Committee which is currently an object of discussions and is in the phase of revision.

In April 2014 "Advanced Public Research Group" (APR Group) NGO launched "Increasing the role of the civil society in political processes of Armenia" project with the support by **European Endowment for Democracy**. The main goals of the project is to increase the participation of RA citizens in political processes within the country, particularly collect opinions and recommendations of different social groups through research initiatives as well as increase population's awareness on initiated reforms.

The project has two main components – **conducting research actions** on Constitutional Reforms, collection of information, development and submission of recommendations on reforms and **awareness raising / advocacy** through public events, TV/Radio broadcasts etc. Thus the results of the research will be broadly circulated among professional as well as social groups and campaigns on constitutional reforms will be initiated.

The project involves experienced experts such as A. Ghazaryan, H. Tigranyan, T. Matinyan, sociologist L. Balyan etc. The project manager is R. Sargsyan who is at the same time the chairman of APR Group NGO.

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Methodology

Within the framework of the project qualitative and quantitative research actions were undertaken in April-July 2014. The results of the research were analyzed and commented from sociological and legal perspective and a package of recommendations was developed.

Qualitative research

The main **goal** of the qualitative research was to identify expert opinions on Constitutional reforms.

Objectives are to reveal a) gaps of the current RA Constitution, if any, b) gaps of the “Concept of RA Constitutional Reforms” developed by the Specialized Committee on Constitutional Reforms attached to the President of RA, c) required amendments and d) expert recommendations.

Information collection activities started with in-depth interviews with experts. Face-to-face interviews with experts were arranged with the format of free conversation which allowed to get their assessments and opinions on Constitutional reforms. As an information collection tool questionnaires covering several groups of issues and with open-ended questions were used. Questionnaires were developed in advance as a result of joint work of jurists/experts and sociologist based on the current RA Constitution as well as taking into account the draft Concept of RA Constitutional Reforms. During interviews interviewers had an opportunity to go deeper into information received on specific questions depending on the level of competency (awareness) of experts on those issues.

Interviews were mostly conducted within the framework of following groups of issues:

1. Need for Constitutional Reforms
2. General issues of the Concept
3. Human Rights
4. Governance System
5. Electoral right and electoral system
6. Judiciary system
7. Constitutional guarantees of referendum
8. Fundamental provisions of the Concept on Constitutional and legal reforms within Local Self-Government
9. Concluding questions.

The selection of experts was done jointly with the group of experts formed in advance. The sphere of employment and competency were considered as criteria for the selection of experts. 9 initial groups were formed according to spheres of employment:

1. Constitutional Committee,
2. Lecturers/professor (Chair of the Constitutional right, Sociology faculty of the Yerevan State University etc),
3. Chamber of Advocates,
4. Experts in the sphere of Constitution,
5. Human Rights NGOs,
6. Human Right Defender's office,
7. Parliamentary factions and independent MPs,
8. Judges,
9. Experts in the sphere of Local-Self Government.

In average interviews with 4 experts were planned (except for the Parliament – 7 MPs and Ombudsman's office – 1 representative). Well aware experts were selected through the assessment of the competency level. The assessment was done through a) assessment of expert by other colleagues and b) self-assessment by the expert oneself.

In spite of efforts the research team failed to conduct interviews with several experts (structures¹) conditioned with availability of experts and/or specific approaches of some experts to this sphere. They were replaced by experts from other spheres.

As a result 36 in-depth interviews with experts were conducted.

Majority of interviews were recorded and relevant transcriptions were developed followed by analysis of the results of qualitative interviews through qualitative sociological methodology. Based on the results of the qualitative research jurists/experts developed recommendations submitted to the Committee².

The qualitative research became the base for preparations for qualitative interviews.

Quantitative research

The main **goal** of the quantitative research was to identify the population's opinion on Constitutional reforms.

Objectives were to *a) reveal the population attitude towards several processes in the country, including Constitutional reforms, b) identify their level of awareness on those reforms, c) reveal their*

¹ Judges, Ombudgman's office and 1 MP.

² Recommendations are presented in the Annex 1.

expectations from those reforms, d) collect their recommendations and make them participants of political processes in country and particularly Constitutional reforms.

Quantitative interviews were conducted among adult citizens of Armenia over 18. Interviews were conducted through household visits and face-to-face interviews. As an information collection tool questionnaire with structured and semi-structured questions were used. The questionnaire was developed in advance as a result of joint work of jurist-experts and sociologists based on the need to study issues revealed during the qualitative research. During interviews interviewers were exclusively guided with the in-advance developed questionnaire.

Questions in the questionnaire touched the following main group of topics:

1. Satisfaction from the social and economic state of the country
2. Need for Constitutional reforms
3. Human rights
4. Governance system
5. Electoral right and electoral system
6. Judiciary system
7. Constitutional guarantees of referendum
8. Local Self-Government structures
9. Democracy
10. Social-Demographic data

Quantitative research sampling. Quantitative interviews were conducted in all marzes of RA (including capital Yerevan). Participants of interviews were people over 18. The research sampling was built on statistical formulas. The sampling made up 1300 respondents with the margin of error of 2.7 % and with 95% reliability. A stratified cluster sampling was developed based on the principle of random selection.

The calculated sampling size was proportionally distributed among the number of population in RA marzes. Aftermath the number of respondents in each marz was divided into equal clusters. The number of respondents and clusters in each marz is presented in the Table 1 below.

Marz	Number of respondents in marz	Number of clusters in marz
Yerevan	442	40
Aragatsotn	55	5
Ararat	110	10
Armavir	110	10
Gegharkunik	88	8
Lori	121	11
Kotayk	121	11
Shirak	121	11
Syunik	55	5
Vayots Dzor	22	2
Tavush	55	5

Total	1300	118
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In each cluster apartments were selected through systemized random step and right turn method with respondents with the principle of “the closest birthday”. Interviews were conducted by interviewers. Field work was supervised by field supervisors and quality-controllers. Data of interviews were checked through following means:

- 1) Through direct participation in the interview
- 2) Through phone calls after interview
- 3) Through household visits after interview

Following check and processing (summarizing open-ended questions, re-coding etc) of questionnaires the questionnaire data was inserted into SPSS statistical database. Data check and analysis of Database were conducted. Analysis of quantitative data was conducted through statistical method; probabilities were calculated, cross and factor analyses were conducted, interdependencies were calculated etc. Results of quantitative research also served as a basis for legal analysis. A recommendation package was developed by jurists-experts.

Part 1. Results of the Qualitative Research

Need for Constitutional Reforms

During qualitative interviews the opinion of experts on the need to conduct Constitutional reforms was revealed. To the question **how often the country Constitution should be changed** almost all respondents had the same opinion that Constitutional reforms should be consistent with the country development. In case when the existing country Constitution doesn't contribute but hinders the state development a need for Constitutional reforms arises. Frequent Constitutional reforms are typical for transitional societies and/or newly established democratic states such as Armenia as changing approaches, values as well as structural changes in those countries require appropriate response. In countries with sustainable political traditions there is no need for frequent Constitutional reforms. It's worth referring to one of advocates, "...any tradition, culture or behavior has stronger defense mechanisms than written rules".

Thus it's extremely important why Constitutional reforms take place, why it is necessary and how to justify the need for reforms. Head of one of NGOs which was previously dealing with human rights mentioned during the interview reasons for Constitutional reforms, "*Constitutional reforms should be initiated in the following cases: 1) if there are issues that need Constitutional regulation, 2) when there are regulations that are not clear, 3) when there is sufficient experience to understand the most optimal solution, 4) in case of available funds. Thus there should be same time availability of two factors, namely objective need for reforms and organizations and financial resources for initiating reforms*". One of members of the Committee on Constitutional Reforms mentioned, "*Preconditions for Constitutional reforms can be objective and subjective. Objective preconditions include trends of democratization of international legal regulations, collapse or revival of specific ideologies, geopolitical changes, creation, integration or disintegration of specific information, cultural and legal sphere*". According to one of experts in Constitution, "*1) main reasons for Constitutional reforms are conflicts between the Constitution and reality...., 2) Constitutional reforms, if they are implemented through nation-wide referendum from time to time is a mean of updating public agreement/pact when all participate in the process of re-confirmation/restoration of trust...*".

Thus, on one hand, Constitutional reforms should support to the country development and, on the other hand, ensure sustainability and balance. In addition through participation in Constitutional referendum the population becomes enabled to express its position and attitude towards state authorities. This ensures also participatory management. But the level of population awareness of

Constitutional reforms is not that much high. According to interviews only 46.8% of the population is aware of Constitutional reforms and 53.2% - not³.

According to respondents, the Constitution, as a political document, should have a very important feature. That's the sustainability. Respondents share the opinion that it's not acceptable to have quickly changing Constitutions, *"that's not a law to be changed every five or ten years..."*⁴, *"the Constitutions is the main document which all laws are based on and it must be perfect and sustainable..."*⁵, *"if we are changing the Constitution frequently, that means that we can't achieve our goals as the main law is eventually a basis for all other laws and normative acts which require a certain period of time for adoption. And if we don't provide such timeframe to the executive structures it means that we hamper the work of those structure..."*⁶.

According to respondents reforms conditioned with objective preconditions are **positive**, while reforms based on subjective interest are **negative**. Constitutional reforms are positively perceived when there is an objective need deriving from the reality and in case when it's guided, initiated and conducted from top, by the Government, to strengthen its own power that gets the negative response of different social groups as well as experts. *"If Constitutional reforms are conducted to ensure and legitimize the comfort of state authorities, that's negative"*⁷, *"... they can ensure reproduction of state authorities or mechanisms to preserve power through Constitutional reforms"*⁸, *"... it's bad when state authorities initiate reforms to make its power permanent and increase its competencies"*⁹.

According to respondents in many cases reforms are not positive, firstly, because of the issues of the sustainability and gradual development of the legal system and thus frequent and timeless reforms may result in instability. According to respondents one of other negative aspects of Constitutional reforms is that there is a need for time to get adapted to reforms and changes.

To qualify Constitutional reforms positive or negative it's very essential not only to see why reforms are initiated, but also how they are initiated. In general Constitutional reforms can have negative impact in case the public doesn't accept and confide in results of referendum. Falsified results of referendum can create the atmosphere of distrust within the society and, just the opposite, when the society is sure that the Constitution has been approved by the majority regardless of the fact they voted against this may lead to solidarity despite of differences in ideas.

³ See Part 2: Results of the Quantitative research. Graphic 1

⁴ Quotation from MP speech

⁵ Quotation from the speech of an executive at human rights NGO

⁶ Quotation from the speech of a member of the Committee on Constitutional reforms

⁷ Quotation from a lecturer from the Chair of the Constitutional Right at the Yerevan State University

⁸ Quotation from the speech of an executive at human rights NGO

⁹ Quotation from the speech of an executive at human rights NGO

Thus the issue of shortage of reliability in the electoral system has been raised. According to many respondents, in case when there is no trust in elections, referendum and other similar processes the need of Constitutional reforms becomes a point for doubts. **Therefore, it's necessary to improve the electoral system as the referendum will be conducted and its results will be summarized according to regulations defined by the Electoral Code. Thus grounds for mistrust in results of voting should be eliminated including unnecessary legislative restriction, particularly ban on publication of signed voter lists. It's also important to increase the reliability of the Central Electoral Commission as a main body responsible for organization of and conducting election otherwise Constitutional referendum is seriously endangered.**

If qualitative characteristics of officials responsible for the implementation of the Constitution are not improved again there will be no positive expectation from Constitutional reforms.

To the question **whether there is need to change the existing RA Constitution** the opinion of experts tends to be negative taking into account specific circumstances, while generally all expressed view points state that the current Constitution needs amendments and changes.

Those who think that there is a need to change the Constitution while comparing the current Constitution with Constitutions of developed states, state that there is a need to make more advanced and *"...as a document it needs to be changed formally as well as from structural and contextual perspectives"*¹⁰. Reforms are necessary to *"...to create legal grounds for political and economic development"*¹¹, *"...to be in line with developments of public relations"*¹² as well as *"...public relations has developed and the state has new goals which need new procedures to adjust itself to those relations"*¹³.

One of the Parliament members who is in favor of Constitutional reforms states that *"...countries with transitional democracy tend to have misinterpreted legal systems "and "... reforms are the enforcement of democracy mechanisms"*¹⁴.

However reforms will contribute to regulation and clarification of several issues, particularly unclear definition of *"...counter balancing mechanisms"*¹⁵ in the current Constitution.

Among interviewed respondents only 1 MP and experts in Constitutional Science were against Constitutional reforms and their position was justified by following`

- Reforms presented in the concept are mostly unacceptable,

¹⁰ Quotation from the speech by an expert in Constitution

¹¹ Quotation from the speech by a member of the Committee on Constitutional Reforms

¹² Quotation from the speech by a member of the Committee on Constitutional Reforms

¹³ Quotation from the speech by an advocate

¹⁴ Quotation from the speech by MP

¹⁵ Quotation from the speech by MP

- The current Constitution doesn't create any essential obstacles or impossible situations for ongoing processes in the country,
- Constitutional reforms require serious organizational efforts and are expensive,
- Previous reforms in 2005 didn't improve the Constitution and there is a concern that current reforms won't do that either,
- Lack of trust in the electoral system and instable legal situation are obstacles for reforms.

Thus experts firstly stress that reforms presented in the concept are unacceptable and that *"...there is no need within that format"*¹⁶, *"...there is no need for reforms in that context..."*¹⁷, *"...in fact there is no concept in the Draft Concept"*¹⁸, *"...there is still no need for that"*¹⁹, *"...in our country the Constitution is changed more often than some unnecessary laws"*²⁰ etc. One of the experts in Constitutional science stated that the Constitution should be changed only when *"...if it doesn't promote the country development, doesn't promote social development or human self-expression or protection, but hinders....seriously hinders the country developments"*. Another experts in Constitutional science is against reforms as *"...if there is a need for reforms that need should be conditioned also with public or individual dissatisfaction. In this case the state separates itself from the population when starts pursuing its own corporative interests. And in that case the state won't initiate any reform which will increase its responsibilities and improve human rights and all that will simply result in situation which will make protection of state corporative interests easy. The state will create new opportunities for its interests which will be implemented at the expense of human rights and opportunities"*. To justify mistrust in Constitutional reforms the expert in Constitutional science brings comparisons, *"It's a serious threat. It's the same thing as if you have unprofessional driver who has crashed the car for a long time and who is offering you a trip through mountains and dangerous roads to get to destination without knowing whether it's good for you and knowing that your car's brakes don't work"*. **In fact negative position towards constitutional reforms among some of experts is conditioned with the current state policy which doesn't create atmosphere of trust and belief in sincerity of initiated reforms. Reasons for initiating such process creates a space for different comments.** Some experts refer to Constitutional reforms in 2005 and state that as a result the Constitution wasn't improved. They particularly stress that particular provisions of the Constitution, *"... Normative acts and laws contradicting to the Constitution have no legal force. Previous Constitutional reforms (2005) removed that and now we have the ridiculous situation around accumulative pensions"*²¹.

¹⁶ Quotation from the speech by advocate

¹⁷ Quotation from the speech by advocate

¹⁸ Quotation from the speech by MP

¹⁹ Quotation from the speech by MP

²⁰ Quotation from the speech by expert in Constitutional science

²¹ Quotation from the speech by MP

Another group of experts who are in favor of Constitutional reforms and amendments point out that there is a lack of reliability in the electoral system which makes reforms through referendum meaningless. Moreover “...*thousands of issues can be solved through the current Constitution which is not done...when this trust is restored then we can speak of Constitutional reforms*”²².

To the question when is the most relevant time for Constitutional reforms experts point out current challenges and situations which will make reforms inevitable particularly “...*currently doing such thing is strongly not recommended as we have a serious challenge with legal sustainability*”²³, “...*extremely high threshold should be ensured to justify reforms within the Constitution. The threshold is that the current Constitution creates obstacles for country development*”²⁴, “...*when Constitution doesn't allow us to breath and doesn't allow us to normally leave and get developed*”²⁵, “...*Constitutional reforms is an important step in case when we all come to the situation that the public development process has stopped and we face faced Constitutional obstacles. In that case Constitutional reforms are conducted*”²⁶. **In fact, this group of expert finds the initiative of Constitutional reforms untimely and not justified with public demand.**

Experts who had positive position on Constitutional reforms specified their approaches particularly stating to what extent those reforms should be – fully or partly. And if fully why? If partly which sections, articles and provisions should be changed? Almost all preferred partial reforms at the same time focusing on parts (sections, articles and provisions) which need to be improved and changed according to them.

Only a few experts supporting full change of the Constitution stressed out that “...*the philosophy of the current Constitution should be changed*”²⁷, as well as “...*a new structure should be established through full reforms to adjust it to the logic of contemporary constitutions*”²⁸.

Supporters of partial reforms think that reforms should touch spheres that have obvious, global and large scale issues as well as provisions that are in contradiction with other provisions should be revised.

According to professors reforms should promote “...*definite formulation of constitutional objects*”²⁹ and provisions should be placed in a specific logic.

²² Quotation from the speech by MP

²³ Quotation from the speech by MP:

²⁴ Quotation from the speech by MP;

²⁵ Quotation from the speech by MP:

²⁶ Quotation from the speech by MP

²⁷ Quotation from the speech by head of human rights NGO

²⁸ Quotation from the speech by expert in Constitutional science

²⁹ Quotation from the speech by professor

Human Rights NGO representatives emphasized sections that need to be revised particularly sections that cover human rights issues, main human and citizen freedoms. They also point out the importance of changing governance mechanisms, particularly “...*strengthening separation of branches of power, defining counter-balancing mechanisms, making mechanisms of formation of power more protected and less vulnerable to interventions*”³⁰. Specific provisions and recommendations for reforms are listed below:

- *Remove provision on the Armenian Church which contradicts with the provision of freedom of conscience,*
- *Improve the section on Judiciary system to make it independent and to prevent other branches of power from having decisive and selective role in its formation,*
- *Structure responsible for organization of elections (Central Electoral Commission) should have Constitutional status,*
- *Define and ensure implementation of commitments according to international treaties,*
- *Provide Constitutional solutions to the issues of conflict of interests, particularly addressing MPs to prevent them from running a business,*
- *Clarify the section on territorial administration of local self-governance,*
- *Define the section on referendums,*
- *Make the National Assembly bicameral so the Senate is elected through majority electoral system and Lower Chamber – through proportional electoral system in accordance with the principle of territorial division.*

Experts in Constitutional science also touched issues of human rights, local self-government, judiciary system and governance system which need revisions. They also emphasized importance of referendums.

Jurists had more critical approach to the concept, “...*it’s only about re-formulations, in doesn’t contain any reform and change of system*”³¹. They pointed out problematic provisions which are not functioning effectively, particularly provisions related to main human freedoms or uncertainty of the right for effective court protection. In particular, “...*it’s written some human rights can be limited based on the law. They are limited by the law but to what extent can those rights be limited by the law? ...the Constitution can identify limits so state authorities are disabled to exceed them selectively*”³². Another jurist stated that “...*some Constitutional norms need improvement in terms of their operability. Particularly, while stating main rights the Constitution doesn’t prescribe guarantees and doesn’t ensure their direct implementation...Constitutional counter-balance of separation of power also needs improvement through Constitution*”³³.

³⁰ Quotation from the speech by head of human rights NGO

³¹ Quotation from the speech by jurist

³² Quotation from the speech by jurist

³³ Quotation from the speech by jurist

Members of the Committee on Constitutional reforms also referred to changes reflected in the draft concept, particularly rule of law and guarantees of its implementation, human rights and preconditions for establishment of social state, separation of power and articles on the governance system, electoral system, electoral right, referendum, local self-government and judiciary system as well as some procedures on justice and entire structure of the Constitution.

One of them referred to issues that were not included in the draft but should have been, for instance *“...should the Constitution be changed only through referendum or should there be selective approach depending on the sections to be revised; can this be done based on the majority of parliament (e.g. through 2/3 of votes); is there always a need to put any and even technical reform to referendum?”*³⁴

Thus viewpoints and approaches of respondents are quite different and that certainly is connected with their business, practical activities and personal experience. One point should be outlined that any change that promotes improvement is welcomed particularly if there is a public demand such reform. Therefore the main discontent on such reform initiative is conditioned with the lack of public demand. It's proved by the population survey where 60.1% mentioned that there is no need for Constitutional reforms, 25.4% think the Constitution should be changed and for 14.5% it was difficult to say³⁵.

In addition the current Constitution hasn't ever provoked Governance crisis or such threat and thus statements by the Committee on Constitutional reforms are not convincing. According to quantitative interviews 48% stated that they don't trust the process of Constitutional reforms, 33% mostly doesn't trust this process, 15% mostly trusts and only 3% fully trust the process.

The conclusion from this is that the priority for state authorities is to overcome the crisis of trust and Constitutional reforms are timeless in terms of lack of formed public demand.

Answering to the question **who should be involved in the process of Constitutional reform or who should develop the draft of Constitutional reforms and why they think so** experts divided the process of Constitutional reforms into the phases of initiative and development. Jurists state that *“...according to the RA legislation 2 structures have the right to initiate Constitutional reforms – RA President and RA National Assembly”*³⁶ and in this case the RA President has initiated it through establishment of the Committee on Constitutional reforms. All experts from human rights NGOs and some experts in Constitutional science think that this initiative should come from the bottom based on the formed public demand. As for the development proves all experts have the same opinion that Constitutional reforms should be participatory and broad representation of the population should be ensured.

³⁴ Quotation from the speech by member of the Committee on Constitutional reforms

³⁵ See Section 2: Quantitative research results, Graphic 4

³⁶ Quotation from the speech by MP

Experts agree that the draft should be developed by independents and unbiased professional groups which have no political constraints. During public hearings and generation of recommendations participation of broad social classes/groups should be ensured. Discussions shouldn't be formal and recommendations should be considered by professionals to proceed with them and identify relevant legal formulations. *"...the professional group should be capable to transform public opinion into legal formulations"*³⁷.

Different experts mentioned who should be involved in the process of Constitutional reforms and what qualifications they should have:

- Politicians,
- Public figures,
- Jurists, lawyers, advocates and experts in Constitutional science,
- Experts in social science, political scientists and philosophers,
- Sociologists, psychologists, historians and economists,
- Representatives of business sector,
- Experts in culture,
- Representative of science, particularly academics,
- Representatives of local self-government,
- Representatives of Mass Media, particularly opposition media,
- Active citizens / civil groups,
- Experts from international community,
- Think-tank groups.

As for qualifications of members of the Committee on Constitutional reforms practical and available international experience were highlighted as well as *"...person with academic skills and with the conscience of historical responsibility before generations shall have the right to be a member...conceptual and systemized thinking are required"*³⁸.

The given question should be observed at several layers:

- **Grounds and reasons for necessity,**
- **Initiators,**
- **Procedures.**

Grounds and reasons for the necessity: It's interesting that several opposition parties whose representatives announce today that there is no need for Constitutional reforms have directly or indirectly defined the Constitutional reforms³⁹ or increasing efficiency of state governance system⁴⁰ as

³⁷ Quotation from the speech by MP

³⁸ Quotation from the speech by professors

³⁹ <http://www.heritage.am/hy/about/program?start=1>

provisions of their programs in their past pre-election campaigns. Thus taking into account the fact that parties include all this in their pre-election programs which was important for the society at that moment and the issues of Constitutional reforms has been defined as public demand that was formally perceived as a demand coming from the bottom. Moreover, active civil society has the opportunity to participate in the development of the new draft of Constitution and can “promote” its formulations and recommendations.

Initiators: It’s important to emphasize the fact that article 11 of the current RA Constitution says that “the Constitution is adopted and changes within it are done through referendum with the initiative by the RA President or National Assembly”. Therefore there can be no other bodies initiating Constitutional reforms except for these two structures.

Procedures: The Committee founded based on RA President’s decree is specialized committee which is welcomed but there is an acceptable and justified concern that this committee doesn’t involve specialists who are truly independent of the current power or are unbiased who can make the final results of activities of the committee reliable and trustworthy through their unbiased, non politicized and non-partisan views and recommendations.

Expert opinion on **the Committee of Constitutional reforms at the President and its necessity** is the following: the majority of experts has negative attitude towards the fact that committee was founded by the President and majority of members are state officials. As for the initiative in fact, “...*the President has the Constitutional right and has used it*”⁴¹, but the majority of representatives of human rights NGOs, MPs and experts in Constitutional science have the opinion that “...*a wish for reforms arises from the President’s initiative and a committee is founded through President’s initiative and members are appointed based on his initiative or wish and thus it doesn’t represent the public and at the end the will of the President wins*”⁴² and moreover this is done in case when “...*the power is illegitimate*”⁴³. Several times the opinion was voiced that such initiative should come from the public. As for the composition of the committee experts also don’t have trust in it as “...*7 out of 9 members are state officials and only 2 of them are not state officials*”⁴⁴, in case when “...*the moral and psychological atmosphere are not favorable...there is also a deficit of trust in political institutions*”⁴⁵. The other group of experts with negative attitude emphasized the conflict of interest due to appointment of Gagik Harutyunyan as the head of the committee. Another expert thinks that “...*the Chairman of the Constitutional Court can’t deal with reforms covering his sphere. There should be proper monitoring from outside as he has his institutional interests which results in different impact*”

⁴⁰ <http://www.bhk.am/datas/media/elections2012/Pages1-16.pdf>

⁴¹ Quotation from the speech by the member of the Committee on Constitutional reforms

⁴² Quotation from the speech by head of human rights NGO

⁴³ Quotation from the speech by head of human rights NGO

⁴⁴ Quotation from the speech by expert in Constitutional science

⁴⁵ Quotation from the speech by expert in Constitutional science

⁴⁶. Those who have positive attitude toward the committee don't touch technical aspects of the issue but emphasize the content and as they say "...the process on how discussions on Constitutional reforms take place"⁴⁷. "...it's not important who founded the specialized committee, it's more important to see what the content and deepness of reforms are, and if they are comprehensively discussed with participation of the broad public, at the end we'll be able to a draft of Constitutional reforms based on public needs"⁴⁸.

All interviewed members of the Committee on Constitutional reforms and professors have also positive attitude. Experts who think that there is no need for Constitutional reforms didn't answer this question as well.

Thus involvement of independent experts in the committee who are not constrained with their position or political and partisan affiliation can highly promote public trust in activities and recommendations of the Committee.

Here the results of the quantitative survey on this issue are quite interesting. 33% of respondents mentioned that the draft recommendations for reforms should be developed by the special committee (comprised of jurists, judges, scientists and other experts), presented to citizens to discuss and identify its opinion, 31% outlined that reforms should be developed by specialists and citizens should express their opinion through referendum, 16% stated that as soon as draft reforms are developed citizens should be informed through TV or other means followed by identification of the public opinion on suggested reforms through survey, 12% mentioned that the population should develop recommendations for reforms and submit to the President and 4% think that the population should not participate in the process of Constitutional reforms and that's the business of specialists⁴⁹.

It's interesting that the society has expressed position that the development of such serious and specialized document should be trusted to a professional committee.

To the question on **what the strengths and weaknesses of the current Constitution are and whether Constitutional reforms will solve enlisted weaknesses** *experts outlined the following as strength:*

- First two articles which are not subject for change,
- The section on Human Rights which was adjusted to European standards on human rights, "*...it was amended and strengthened in comparison with the previous version. They took those standards from international treaties, alliances, conventions...*"⁵⁰,
- Establishment of the institution of individual applications within the Constitutional Court,

⁴⁶ Quotation from the speech by MP

⁴⁷ Quotation from the speech by expert in Constitutional science

⁴⁸ Quotation from the speech by MP

⁴⁹ See section 2: Results of the Quantitative research, Graphic 7

⁵⁰ From professor's speech

- President's institution
- Lack of Constitutional crisis and the fact that the Constitution was written in accessible and understandable language.

Some experts outlined that the Constitution can't have strengths and weaknesses which was explained in this way *"...the Constitution stipulated provisions that justify themselves and that's good. If they don't work that doesn't mean they are bad but weren't properly selected for this society. In this case we should say that some provisions of the Constitution have become a declaration and doesn't work. That means that they are not weak but are timeless and don't take into account the logic of the social development"*⁵¹. A number of lawyers and experts in Constitutional science think that our Constitution is good enough and issues or *"...misinterpretations come either from legislative or normative acts"*⁵², as well as from bad implementers *"...the Constitution wasn't functioning not because of lack of stipulated mechanisms for utilizing and implementation of the Constitution but because implementers of those practice mechanisms didn't understand and most importantly didn't wish to implement them"*⁵³.

Experts outlined following weaknesses:

- Regulations on formation of the executive and governance system
- Limitation of rights
- Judiciary system
- Referendum
- Political system
- Electoral system
- Insufficient regulations
- The Constitution allows selective implementation of provisions and selective attitude
- The structure doesn't correspond to the content,
- Several powers and responsibilities don't match with each other,
- It doesn't correspond to the logic of ensuring and protecting rights,
- There are no sufficient norms that ensure balance so the society can interact with the state. *"...the Constitution doesn't have norms which would function. We always depend on, for instance, speech or action of a Minister or President"*⁵⁴,
- Fundamental terms are not clearly defined (sovereignty, Armenian population, citizen, religion etc) which become a subject for disputes,
- Uncertainty of counter-balancing and balancing mechanisms.

⁵¹ From speech by member of the Committee on Constitutional Reforms

⁵² From speech by expert in Constitutional science

⁵³ From speech by expert in Constitutional science

⁵⁴ From speech by jurist

The majority of experts thinks that “...*Constitutional reforms can't solve issues*” or will solve part of them. They see the solution in the change of regime, existing rules and/or public self-conscience. “...*even if the Constitution is changed that doesn't mean that the Constitution will be enforced automatically...institutes function due to people and many things depend on how people working in those institutions, namely the President, Government, National Assembly and judicial system will apply that Constitution*”⁵⁵.

Strengths and weaknesses of the Constitution should be viewed from the perspective of what is well defined and guaranteed currently (as a result it's necessary to live them in the same form in the new draft) as well as what needs to be fundamentally changed or amended with additional guarantees. One of achievements of the current Constitutions is the introduction of institution of individual applications within the Constitutional Court. It's, indeed, practical mechanism to promote development of the institution of rights through this precedent. The section on human rights is very well formulated which can be considered successful in spite of available limitations. The institute of balances and counter-balances of power branches as well as strengthening guarantees of independence of the judiciary system needs serious revisions. However it's very important to state that any change can be considered positive and effective only in case if there is a political will with guarantees of their proper implementation.

As for the question whether Constitutional reforms will promote solution of revealed issues their further implementation mostly depends on a number of factors which again derive from political will.

Although the majority of experts thinks that Constitutional reforms can't fully solve issues related to weaknesses of the current Constitution. However the other question tried to find out **whether they will solve challenges the country is facing and if yes, what particularly will be solved and who (public, power and state) and how will benefit.**

Professors and experts from human rights NGOs agree that Constitutional reforms are not able to solve issues the country is facing both in general as well as taking into account the content of the draft concept. They also outlined that the key is not in the “ideal text” of the Constitution but in its implementers as well as population legal conscience.

Although another group of experts was not sure that these specific reforms would be able to solve issues however they hope that “...*probably it will create favorable conditions for solution of specific issues*”⁵⁶.

Those who think that these reforms will have possible impact on challenges the country is facing outlined following issues/spheres:

⁵⁵ From speech by member of the Committee on Constitutional Reforms

⁵⁶ From speech by expert in Constitutional science

- Separation, counter-balancing and balancing issues of power
- Issues of limitation of power through right
- Issue of negative attitude towards and lack of trust in electoral institutions
- Issue of independence of the Judiciary power
- Elimination/reduction of electoral falsifications through introduction of parliamentary system
- Issue of ensuring the rule of law
- Internal and foreign issues starting from social-economic and ending with political ones.

To the question on who will benefit the majority of experts think that institution which initiated Constitutional reforms, namely authorities will benefit. According to them the public won't benefit as reforms were initiated without public demand and the population didn't participate in the process of reforms. It won't be accepted by the public conditioned with the atmosphere of absolute unreliability in state authorities. While making judgments on the draft concept experts think that the change of the governance system has a political context it *"...creates trends for authorities to get some dividends...the monopolistic style of the power will be more strengthened through making their reproduction easier"*⁵⁷. One of experts in Constitutional science has serious concerns about worse situation the public may appear in as a result of lack of benefit, *"...they initiate dangerous things in the sphere of human rights protection...the standard of human rights protection will be essentially limited meaning that our rights will be remitted...at that time (auth. after reforms) the situation will be the same, even a bit worse but we won't be able to say that a violation of the Constitution has occurred"*⁵⁸.

Another group of experts avoided expressing any opinion as reforms are at the level of the draft concept, *"...the final text is not ready and it's difficult to say; possibly after the availability of the final text we'll see some hidden things"*⁵⁹. They urge that firstly the public SHOULD benefit and therefore the state will benefit as well and final reforms should be led only with the public interest in mind.

Interviewed members of the Committee on Constitutional Reforms unanimously stated that *"...the whole public will benefit if it's implemented in directions recommended at least by the draft concept"*⁶⁰. They state that not only the public and state but also the power will benefit *"...if it can solve or maintain public issues, this will become a benefit"*⁶¹ as well as *"...authorities will benefit to the extent that will be obliged to work more efficiently"*⁶². One of the members of the committee outlined the concern that *"...the main law is written or changed for a specific state official"*⁶³ but

⁵⁷ From speech by expert in Constitutional science

⁵⁸ From speech by expert in Constitutional science

⁵⁹ From speech by jurist

⁶⁰ From speech by member of the Committee on Constitutional Reforms

⁶¹ From speech by member of the Committee on Constitutional Reforms

⁶² From speech by member of the Committee on Constitutional Reforms

⁶³ From speech by member of the Committee on Constitutional Reforms

referring to the draft concept stated that *“...I don’t see any provision that tends to serve to interest to a specific branch or person in power and thus the document is balanced and objective”*⁶⁴.

As for the issue who will benefit as a result of reforms it is important how anthropocentric are they and whether they tend to strengthen democracy and rule of law in the country. Any initiative coming from power independent of its real goal becomes an object for severe criticism by the society as the society has low level of trust in authorities. However judging from text formulations, the whole society will benefit if authorities perform political will to transform those changes into real reforms.

As for the question on **how RA citizens can participate in the process of Constitutional reforms** experts mostly point out participation in discussions and presenting recommendations as well as participation in referendum. Experts in Constitutional science state that there is no practical format for citizen participation and therefore their participation will be more effective to be organized in a mediatory way, namely through institutions *“...through civil society, NGOs, political parties and their representatives”*⁶⁵. Citizens can individually present their recommendations to the committee but that’s a passive process and theoretical opportunity at this moment. That passive approach can be conditioned with the fact that *“...citizen has no trust in initiator”*⁶⁶. One of jurists stated that the committee is ready to accept any recommendation but *“...there is no guarantee that those recommendations will be accepted and incorporated”*⁶⁷.

Some experts think that *“...the Constitution is incomparably more complicated document and that’s not the business of the society”*⁶⁸ and representatives of human rights NGOs think that *“...our society and population, unfortunately don’t have civil conscience”*. In this case experts outline *“...the need for mobilization of expert groups”*⁶⁹.

In any case while emphasizing the importance of the participatory proves experts think that the public should be informed about reforms, public discussions should be organized and the society should be involved as much as possible and perform initiative and submit recommendations. Members of the committee think that no desirable activity for public participation in these processes has been formed yet.

It’s worth mentioning that it’s the first time in the history of adopting RA legislation/law when the society becomes participants in the development of the Constitution in its initial stage. In 1995 the Constitution was presented to the public in its final version during the referendum and in 2005, for reminder, several alterative drafts were circulated but it’s the first time when the broad part of the

⁶⁴ From speech by member of the Committee on Constitutional Reforms

⁶⁵ From speech by expert in Constitutional science

⁶⁶ From speech by head of human rights NGO

⁶⁷ From speech by jurist

⁶⁸ From speech by professor

⁶⁹ From speech by expert in Constitutional science

society is invited to participate in the development of the new draft Constitution and perform active civic thinking. This step is very welcomed and there is a hope that if the society wishes to participate it can voice its recommendations and thoughts through NGOs and civil groups.

The initiating and expert group of this project hopes that public and expert research initiatives and analyses will be studied by the Committee and considered during the development of the new draft Constitution based on the Concept.

General provisions of the Concept

Speaking about the draft concept of Constitutional reforms developed by the Committee on Constitutional Reforms at the President of RA and answering to the question on **whether the presented draft is better and corresponds to the current state of RA than the current Constitution** some experts mentioned that those two documents can't be compared as *"...the Constitution is a normative act and this is only a concept"*⁷⁰ and some of them hasn't done comparative analysis.

Representatives of human rights NGOs and some experts in Constitutional science have negative position on the draft concept and if recommendations within the draft are also incorporated into the Constitution in some cases there will be serious concern. Particularly those who think that the draft concept is very bad are convinced that it's adjusted to the reproduction of power, namely *"...positions of the current power and tendencies for reproduction will be more strengthened"*⁷¹. Opponents think that *"...the concept doesn't provide solutions and there are problems, but solutions are not clear"*⁷², as well as transformation to the Parliamentary system and combination of days of elections is not relevant today. Moreover *"...the Concept de-facto corresponds to the Constitutional order and providing de-jure status to de-facto situation means legal text to make de-facto situation last forever"*⁷³.

Another group of experts who support Constitutional reforms think that the draft *"...reflects changes with some reservations"*⁷⁴. According to them today there is a real need for reforms.

As the draft concept only points out current issues, outlines possible Constitutional developments and doesn't provide solutions to voiced issues difference in opinions of experts is quite normal. Although the draft contains specific solutions for some of institutions they are not defined as a final regulation. In addition there is a big concern that the concept contains "hidden" tools for reproduction of power which will be further included in the Constitution.

To the question on **whether the concept takes into consideration gaps and shortcomings of the current Constitution** experts think that almost all issues are presented and taken into consideration in

⁷⁰ From speech by expert in Constitutional science

⁷¹ From speech by expert in Constitutional science

⁷² From speech by head of human rights NGO

⁷³ From speech by head of human rights NGO

⁷⁴ From speech by expert in Constitutional science

the draft concept “...solutions are not understandable...those are unclear recommendations”⁷⁵. There is also an issue “...how they will be reflected in specific articles...the concept is only one direction” namely “...it’s meaningless to make any judgment until the text of reforms is ready”⁷⁶. One of the experts in Constitutional science thinks that “...the concept has well revealed shortcomings of the current political system which don’t have that much connections with the Constitution...”.

Some experts emphasized the idea that nothing will be changed after reforms as “...they try...to take the situation of life and defined it in the Constitution...”⁷⁷ This can’t be qualified as reforms as “...de-facto Constitutional order won’t be changed by this existing legal document will be adjusted to de-facto situation”⁷⁸.

One of experts in Constitutional science expressed another opinion that “...the Constitution should be commented in the light of life and reality and should have specific changes based on those comments...”⁷⁹

Those who stated that the concept more or less reflects gaps and shortcomings of the current Constitution also outlined spheres/shortcomings which haven’t been reflected, particularly:

- The issue of separation of branches of power is not regulated,
- Risks of reproduction of power weren’t reduced,
- The issue of independence of the Constitutional Court is not addressed,
- Conflicts of interests are not regulated, particularly for member of the Constitutional Court,
- The mechanism of independence of courts as well as local-self government is not ensured.

Concept reforms which were considered positive by experts are following:

- Section on main Human and Citizen rights and freedoms
- Role of the Office or Prosecutor
- Role of the Justice Council within the Judiciary System.

In fact experts have the same opinion that the draft concept presents almost all shortcomings of the current Constitution but opinions are different on how they are included in the concept and what solutions are offered. Indeed shortcomings are clearly outlined in the concept as legal practice has proved inaction of some regulations but it’s still difficult to make clear judgments on to what extent they will be addressed through reforms.

To the question addressed to experts on **whether a number of risks will arise as a result of adoption of entirely new Constitution planning to introduce several new systems and approaches**⁸⁰ some of them

⁷⁵ From speech by head of human rights NGO

⁷⁶ From speech by professor

⁷⁷ From speech by jurist

⁷⁸ From speech by head of human rights NGO

⁷⁹ From speech by expert in Constitutional science

think that certain risks may arise particularly “...expenditures, time, use of administrative resources which...which won't result in restoration of the Constitutional order in Armenia”⁸¹. As a risk they also outlined that “...it will result in one party system justified through Parliament...when the logic of Constitutional reforms is aiming at legal justification of de-facto existing Constitutional order that already a danger”⁸². One of experts looked at the situation from a different angle and stated that “...the risk is that the thinking of our population is inertial thinking and the population is not ready for new Constitution, is not ready for autonomy; it's scared and at the same time dissatisfied and therefore are afraid of Constitutional reforms”⁸³.

One of experts in Constitutional science brought an example of risks that “...risks after moving to the Parliamentary system are that firstly we'll make one big step back in terms of democratic tendencies, democratic consolidation and creation of favorable conditions for the development, secondly less favorable conditions will be available for separation of power in conditions of the Parliamentary governance system and thirdly I think and believe that we'll make a big step back in regard to the sustainability of power”⁸⁴.

As a guarantee for overcoming those risks they think that “...it's the lack of ability to take the risk” and “...it's necessary to directly implement the principle of sovereignty of population” which can be implemented through “...nationwide outbreak, civil disobedience and revolt”⁸⁵.

Instability can also be considered as a risk which can become a result of the transformational period. Introduction of new systems and institutes will inevitably require additional time expenditures which are irrelevant during this period of time taking into account country's social and economic situation.

Human rights

To the question on **what the rule of law means in their view** experts presented it as a situation when the principle of right is prevailing in social relations namely any relations are built based on the priority of human rights or when the natural right dominates over the formal right. If the formal right contradicts with the natural right, the natural right prevails.

⁸⁰ It's result in revision of big number of laws and Codes, establishment of state structures which will have a high cost for the state budget etc

⁸¹ From speech by head of human rights NGO

⁸² From speech by head of human rights NGO

⁸³ From speech by head of human rights NGO

⁸⁴ From speech by expert in Constitutional science

⁸⁵ From speech by expert in Constitutional science

Human rights defenders in terms of rule of law stated that it's possible to have provisions violating human rights within legislations but the right should prevail over the frames defined by the law. Unfortunately, in Armenia previously and presently there is an opportunity for periodical and permanent illegal limitation of human rights.

One of professors expressed opinion that *“rule of law is the domination of the force of the right and to prohibit domination of the rights of force...the force of right should exclude the right of force...on another hand we should adopt proper and logical format of the constitution aiming at the rule of law as the Constitution itself is restrictions of right and its materialized form...firstly the rule of law should exclude the right of force and secondly the legal system should be placed in the logical frame of the natural right...”*⁸⁶

In fact interviewed experts explained in accessible manner the essence of the rule of law. To summarize, we can say that the term “rule of law” prescribes following requirements: a) prevalence of the rights over other social regulations, b) compliance of the law as a form of expression of rights to the principles of rights and its essence.

To the questions on **whether it's required to have additional guarantees for ensuring direct implementation of rights at the level of Constitution** experts expressed different opinions. At the same time experts were reminded that the option offered with the draft has no difference from the current Constitution⁸⁷. The majority believe that there is no need for including additional guarantees and current guarantees are sufficient if there is desire and wish to implement them. One of experts in Constitutional science expressed opinion that *“...indeed, the rule of law is well reflected in the Constitution and implementation of the rule of law in our everyday life is conditioned with activities of specific persons, the level of respect of the Constitution by those persons and performance of that respect”*.

According to some experts *“...some members of that committee were also involved in the development of previous Constitution...why do they make mistakes every time? They can write about that guarantees in 400 pages but there is no need for that”*, and they suggested that *“...it's necessary to separate poles of the power to have independent and define clear sanctions for cases of violation”*⁸⁸.

The other part of experts which thinks that there is a need for such guarantees brought the following justifications, *“...we have serious issues within the Constitution; all rights including political, civil and social are formulated in the same way both for limitations and defense which makes their*

⁸⁶ From speech by professor

⁸⁷ The draft emphasizes that the Constitution should prescribe necessary and sufficient Constitutional and legal guarantees for direct action of rights. However article 3 of the current Constitution says, “...the state is limited with main human and citizen rights and freedoms as directly functioning right”.

⁸⁸ From speech by head of human rights NGO

*implementation unrealistic...therefore it's necessary to separate them...in the first case only those mentioned within the Constitution, their limitations and opportunities, in the second case it should define frames for the legislative branch to identify limitations and guarantees and define regulations, and in the third case the legislative branch should be provided with broader opportunities conditioned with the social and economic perspectives of the country*⁸⁹.

As an argument for need to define guarantees one of professors clarified that “...*the current constitution defines that the state is restricted with human rights and freedoms as directly functioning right...in fact this statement has a declarative nature. The Committee on Constitutional Reforms doesn't want to change this but wants to ensure declarative mechanisms...of course, guarantees need to be defined at the level of the Constitution*”.

We agree with the majority of experts that the current Constitution ensured sufficient guarantees for implementation of rights. At this moment it's difficult to imagine what the Committee offers in regard to these issues. At the same time realizing that any additional guarantee in the Constitution can bring benefits to individuals however it's worth stating that there can be no essential expectation from these reforms.

To the question on **what the direct implementation/action of main human rights means** experts referred to the idea in the Concept that “main human rights and freedoms are not functioning directly and their direct action should be ensured”. Experts in Constitutional science reminded that it's a principle and means that independent of the fact whether the right is defined by the law, the law functions as much as it's defined by the Constitution. They added that rights defined by the Constitution should function immediately namely when making decisions the state and courts should refer to rights and freedoms defined by the Constitution.

One of experts in Constitutional science brought very illustrative examples and clarified how the principle of direct implementation/action of the right should be viewed from different aspects and understood. Thus “...*the Constitution defines that person has the right for freedom of expression. Through utilizing this right person can stand at the square and shout about his/her political views. If in the Situation #1 we accept that there is no law regulating implementation of the right to express political views and in this situation article 27 of the Constitution is enough for the police not to approach to the person expressing his/her political views publicly. Thus independent of the fact whether it's defined by the law or not it functions as it's a Constitutional norm. If in the Situation #2 we accept that there is a law which prescribes that if the person is publicly voicing his/her legal political position and the police is liaised to arrest him/her based on specific laws, when this person is brought to the court where the police refers to specific provisions of the law and implementation of requirements of the law, the person will simply refer to the article 27 of the RA Constitution stressing*

⁸⁹ From speech by expert in Constitutional science

out that the right is being implemented directly and is not conditioned with implementation of any law and that right doesn't require availability of any law. As a result when referring to the case the court should start analyzing not at the level of law but the Constitution clarifying whether it's a Constitutional right or not. If it's a Constitutional right it should be protected".

It's also important that experts looked at the verticality of implementation/action of the right namely the rule of law and direct implementation/action of the Constitutional right mean that it can be applied for any case of citizens vertically and without any conventionalities and against the state but not a second citizen or any legal entity. One of the biggest civilized values of the Constitution is that it's the agreement between the state and citizen which can't cover third part and it is not essential whether separate citizen has voted in favor of that "agreement". That agreement becomes signed and obligatory for everyone it has received approval of the majority of the population.

To summarize experts' opinions, it's worth adding that direct implementation of rights and freedoms also assumes relations between person, society and state which guarantees necessary and sufficient legal preconditions for enforcement of rights by individual. In this regard direct action of human rights guides state functions, including implementation of the legislative function. When implementing its functions the legislative body should refer to directly functioning human rights and freedoms and adopt laws that won't unnecessarily limit human rights and won't contradict with requirements of the state Constitution.

In response to the Concept idea according to which **human freedom and rights are not functioning and their direct action should be ensured** respondents are mostly agree that ensuring direct action of human rights and freedoms is possible also in case of the current Constitution conditioned with political will and desire through referring to the provision on ensuring the right for life defined by the Constitution which is violated not as a result of inactivity of that right but disproportional decrees and activities.

Here it's worth mentioning that article 3 of the Constitution says that "the state shall be limited with main human and citizen rights and freedoms as directly functioning right", which is enough and is a guarantee for ensuring their action and it's another issue why these Constitutional rights and guarantees are not ensured.

To the question on **what the reason is for direction inactivity of human rights and freedoms in the country** experts listed factors such as:

- Low level of civil conscience
- Political reality when protection of human rights is not a priority in the value system,
- Cultural and civilization issues,
- Situation when executive and legislative powers are illegitimate.

The other outlined reason was that after seizing the power officials don't believe that the best way of the country development is the rule of population, namely democracy. According to head of one of human rights NGOs the reason is the Judiciary system, *"...I have the right, it's written in the law but I can't implement it as there are no mechanisms..."* One of experts in Constitutional science thinks that in our country human rights and freedoms don't function directly as the majority of citizens are unaware of their rights and freedoms. The other expert urges that *"...it's difficult to say that they don't function directly. We can say that they don't function fully. It just seems to me that because of lack of sufficient mechanisms there is no opportunity for direct action of those rights"*⁹⁰.

According to quantitative interviews main reasons for lack of protection of human rights in Armenia are following⁹¹: 56% - the reasons is that laws are not implemented, 53% - the reasons is the power as it doesn't respect those rights, 34% - the reason are people as they don't stand for their rights, 12% - the reason is the state governance system, 7% - the reason is the current Constitution as human rights are poorly and incompletely defined in the Constitution, 5% - the reason is that courts are not independent, 3% - the reason are police discriminations and 2% mentioned other options.⁹² Thus opinions of citizens and experts on this issue coincide.

To the question **whether experts think that there is a need for content and editorial clarifications on rights, freedoms and responsibilities**, opinions were diverse. Part of respondents stated that there is a need for that but at the same time stress out that it won't have essential impact on the process of protection of rights. Particularly one of experts in Constitutional science mentioned that *"...content and editorial issues will simply ease the burden of implementers of the Constitution. That's not a global thing; it just needs literate grouping – personal rights in one section, social rights in another one – with a view to make them more coordinated. Although that doesn't solve any global issue it has more a technical character"*⁹³.

Part of the interviewed experts mentioned that there is no such a need as there is necessity to change Constitution every time in parallel to development of life conditions. The Constitution only defines principles and the rest is regulated through legal acts (but this responsibility is assigned to the Judiciary System based on precedents).

One of chairmen of human rights NGOs suggested writing the Section on rights and freedoms of the Constitution in accordance with the European Convention on Human Rights. In our view that's not much welcomed idea as the Convention defines the minimal requirements and the Constitution is broader and more comprehensive.

⁹⁰ From speech by expert in Constitutional science

⁹¹ Respondents had the opportunity to choose several response options

⁹² See Section 2: Quantitative research results, Graphic 10

⁹³ From speech by expert in Constitutional science

To summary above mentioned, it's worth mentioning that the Human Rights and Freedoms Chapter of the Constitution is defined well enough and simple change of orders or formulations (not content related) can't have any impact on the increase of level of protection of human rights and freedoms.

Experts were presented with the idea of the Concept suggesting to define main human rights separately from other rights (e.g. social), as well as limitations for each right and not grouped as in the current Constitution. Experts were asked **whether they think that would promote efficient and direct action of human rights**. Opinions of experts were quite different. Particularly a part of them urges that there is no such need as it has declarative character and can have no essential impact on ensuring or implementation of rights and freedoms. The other part thinks that there is such need and justify it in following manner: *"...the Constitution takes the list of our main rights and, in fact, grounds for limitations are assigned to the legislative branch – National Assembly...in the offered version they inserted the methodology of the "European Convention on Protection of Fundamental Human Rights and Freedoms"...thus specific article defines specific rights and that concrete article clearly lists grounds for limitations, so the legislative branch has no opportunity for selective interventions"*⁹⁴.

It's necessary to agree with the part of experts who think that the version offered by the Concept is fully acceptable and demanded as in practice the principle of the rule of law is frequently ignored by the country's legislative and executive structures, who prescribe limitations in normative acts that result in serious consequences. According to the logic of the current Constitution some articles contain list of situations when limitation of defined rights is allowed (e.g. article 16: "Each person has the right for personal freedom and immunity. Person can be deprived of freedom based on cases and regulations defined by the law. The law can prescribe deprivation of freedom only in following cases...") while other articles, for instance, on the right for life ("Each person has the right for life. No one can be sentenced to death") can have no limitation.

To the question on **what semi-solved or unsolved issues within fundamental human rights they see and what changes should be done in case of each sphere** experts' opinion were different however there was one commonality – the issue is not well or bad definition of rights by the Constitution but their legal application/action; *"...I don't see any issues in formulation of rights but we have challenge with enacting them"*⁹⁵. All respondents have the same opinion that the practice needs improvement which would promote introduction of the institute of guarantees. As unsolved right related issue respondents pointed out limitation of electoral rights of detainees, issues related to the right of live in correctional facilities, low level of awareness on rights, as well as lack of independent Judiciary System which makes proper investigation of cases on violation of rights impossible, restoring and protection of rights in general. One of respondents outlined human rights issues within correctional

⁹⁴ From speech by expert in Constitutional science

⁹⁵ From speech by expert in Constitutional science

facilities: “... *where severe diseases, casualties and other similar cases are not properly investigated as it’s under the state control*”⁹⁶.

In relation to the right of life opinions of respondents match that although death penalty institution was removed however the issue of ensuring the right of life was not solved. For each case of death the state should undertake fundamental and multi-sided objective investigation as an objective and that should be defined as state’s Constitutional obligation.⁹⁷

Our views on the right of life are following: Article 15 of RA Constitution says, “Each person has the right of life. No one can be sentenced to death”. However, to ensure this right it’s very important to revise the practice and state positive practice, particularly conducting comprehensive and objective investigation on each case within its structures and facilities (all types of semi-closed or closed facilities such as correctional institutions, army, medical facilities, special schools etc, as well as those cases occurred as a result of actions by law enforcement bodies). As a result several cases on the right of life⁹⁸ against Armenia were sent to the European Court of Human Rights and most probably ECHR will define it as a violation by the state.

Those who have neglecting approach to solution of human rights issues through Constitutional reforms think that nothing should be changed, “*all rights are presented properly within the chapter on human rights*”⁹⁹. The state should simply ensure action and implementation of those rights while the state itself frequently violates those rights. One of the justifications for not supporting Constitutional reforms is that some rights such as the right of apartment is defined by the Constitution but the state can’t fulfill the obligation of ensuring that right so it’s possible that limitation will be prescribed for that right, “*the Constitution prescribes the right for apartment while the state is not capable to provide any apartment. But that doesn’t mean that you need to change the Constitution to limit that right; that means that you should develop your economy to ensure that Constitutional right*”¹⁰⁰.

Speaking about ban on torture one of experts expressed opinion that the ban on torture can’t be applied in practice through Constitutional reforms; it’s the practice that needs to be revised. While making comparisons between international documents and national legislation some experts urge that we have a big issue in relation to the legislative formulation as formulation of torture defined by the law doesn’t correspond to UN torture prevention provisions as torture refers to cases undertaken by state officials or other persons under the state sponsorship while the national legislation says that

⁹⁶ From speech by head of human rights NGO

⁹⁷ From speech by head of human rights NGO

⁹⁸ Cases of death occurred on March 1 2008 such as Yengibaryan against Armenia, Voskanyan against Armenia, Ayvazyan against Armenia etc

⁹⁹ From speech by head of human rights NGO

¹⁰⁰ From speech by expert in Constitutional science

it has no relation with state authorities. Respondents also agree that zero tolerance should be formed in regard to torture.

Here we need to take into account that prohibiting torture is classified as an absolute right and therefore no limitation can be defined for this right. Therefore independent of facts and situation torture still continues to remain one of main methods in activities of law-enforcement system. As a result Armenia has 30 lost cases in ECHR which states that the Republic of Armenia has violated article 3 of the European Convention on Protection of Human Rights and Freedoms. This speaks about the fact that torture has become more popular in Armenia in spite of the fact that it's defined in the Constitution.

According to our estimations, the provision of torture within the Constitution is unclear and doesn't correspond to the UN Convention against Torture and severe, inhuman or degrading attitude or any other form of punishment also ratified by Armenia. According to goals of this Convention "torture" means any action through which state official or any other person liaised intentionally causes severe pain or sufferings, physical or mental, to another person based on their order, knowledge or silent agreement to get information on them or third person or confession, to scare them or a third person or for any other purpose based on the principle of discrimination. While article 119 of the RA Criminal Code says that torture is an action through which any person is inflicted pain or physical or mental suffering. Thus, RA legislation doesn't define the initiator of torture and what purpose it's being done. In practice, all cases when human rights activists and citizens speak about success in cases on torture by state official were qualified as abuse of state power.

Referring to the question on the protection of the right of freedom and personal immunity respondents stressed that it's not the legal formulation which is important but the actual practice. The issue of ensuring those rights doesn't depend on the text, moreover *"...in case of the right of immunity of freedom I think that formulations of the current Constitution are well enough but due to lack of independent Judiciary System internal independence, financial independence, legislative independence don't function or function very poorly"*¹⁰¹.

It's worth mentioning that although the Constitutional formulation of this right can be qualified as successful, ensuring this right in Armenia is a point for serious concern. In fact there is no need for any changes at the level of Constitution to ensure this right; all problems are within the practice.

Respondents didn't refer to the right of respect of personal and family life and stated that this issue is closely connected with other systems. **In our opinion this right is constitutionally well defined.**

Speaking about the right of fair trial two experts mentioned that in one case that isn't an issue connected to the Constitution and again is an issue of practice and in another outlined that the

¹⁰¹ From speech by experts in Constitutional science

Judiciary System should be fully independent, should be generally competitive to ensure the implementation of the principle presumption of innocence and competition at its full scale. **To ensure this right it's necessary to revise the entire Judiciary System to ensure its independence.**

As for ensuring the right of efficient legal protection one of respondents mentioned that there are some issues without specifying them. There was an opinion that executive structures should be fully defined by the Constitution as they de-facto adopt normative and legal acts which interfere with personal rights. In expert's view, to ensure effective means of legal protection it's important to have accountability of the political power, implementation of direct democracy, ensuring the right participation in the state governance and local self-governance, participation in and influencing on decision-making process. As a solution one of respondents suggested developing the institute of public defender, having highly qualified jurists, as well as providing opportunity to person to have a lawyer starting from the moment of arrest. In the current situation there are situation when a person "is invited" to police to provide explanation and when the person comes to police with lawyer investigator frequently states that as the law doesn't directly define participation of lawyer in that category of cases it becomes investigators decision not to allow lawyers participation in the process of writing explanation. **In order to exclude such situations it's necessary to define an imperative provision that any person can utilize the right for efficient legal protection.**

Expert views on the right of freedom of thought, conscience and religion mostly coincide in terms that although the Constitution declares segregation of the Church from the state, however the reality is different and *"...in reality the Church is segregated and frequently interferes with secular life"*¹⁰². According to one of voiced opinions the state should not interfere with religious organizations and should ensure tolerant attitude towards all religious organizations. However experts didn't exclude the possibility of some limitations by the state in vase of serious threat to human life and health, namely propagation of sacrifices and self-sacrifices. **In our view the issues is not related to the definition of the norm but again with practice.**

Referring to the question on the right freedom of expression one of experts in Constitutional science who totally rejects any opportunity for reforms through changes in the Constitution thinks that the Constitution can have no impact. Another expert thinks that functioning of this directly functioning right should be ensured. One of the interviewed chairmen of human rights NGOs has the opinion that this is not a fundamental issue for the country although cases of limitations occur during political tensions. Particularly some issues within the public television should be revised. **We think that the current Constitution provide enough successful formulation to the right of freedom of expression but doesn't prescribe the frame of limitations.** As it was mentioned by experts issues related to the implementation of this right in Armenia mostly occur during political tensions and are expressed

¹⁰² From speech by experts in Constitutional science

through limitation of other rights, for instance, limitation of freedom of movement and freedom of rallies.

Experts referred to mismatches between legislative and legal-operational practice outlining that the law related to the right of freedom of rallies and unions is perfect but it doesn't operate. **Thus the issue is not in the definition of the legal norm but practice.**

Speaking about exclusion of discrimination respondents had different opinion. A part of them gave a negative answer that "...there is no discrimination", the other part summarized this point with other rights related issues. They particularly stated that there are different reflections of discrimination against religious organizations, people with disabilities particularly violation of the principle of equal accessibility at workplace. The issue of discrimination is obvious in case of socially vulnerable groups and sexual minorities. In order to exclude discrimination state authorities should exclude discrimination through their own examples and practical steps and not only through legislation.

European Convention on Human Rights defines all factors that prohibits discrimination independent from	RA Constitution defines factors that prohibit discrimination independent from
<ol style="list-style-type: none"> 1. Race 2. Color of skin 3. Language 4. Religion 5. Political or other believes 6. National or 7. Social origin 8. Ethnical belonging (national minority) 9. Capability 10. Property status 11. Birth 12. Other factors 	<ol style="list-style-type: none"> 1. <i>Gender</i> 2. Race 3. Color of skin 4. <i>Ethnical or</i> 5. Social origin, 6. <i>Genetic specifications,</i> 7. Language 8. Religion 9. <i>Outlook</i> 10. Political or other views 11. Belonging to any national minority 12. Property status 13. Birth 14. <i>Disability</i> 15. <i>Age or</i> 16. <i>Personal or</i> 17. Other factors of social nature

As it can be seen from the comparative list the RA Constitution clarifies also a number of other additional factors which are taken into account in the process of excluding discrimination. **Thus the national legal norm is quite good, but the practical implementation of this norm results in challenges.**

All respondents outlined issues related to ensuring the right of free use of property which is again conditioned with legal mechanisms. One of the respondents expressed opinion that *"the right of property is the strictest rights within democratic and legal country which doesn't function in Armenia and moreover, that's why there is a severe fight for and preservation of power in Armenia*

*through falsifications, in other words, no one is insured from losing his/her business or property; it's a serious issue*¹⁰³.

Article 8 of the RA Constitution defines that “The right of property is recognized and protected in the Republic of Armenia. The freedom of economic activity and free economic competition are ensured in the Republic of Armenia”. But all know that the legislative body has created space for disproportional limitations (particularly considering it as an issue of public priority interest etc). **Currently at the legislative level Armenia faces a situation when human property/financial means can be put under arrest through justice regulations thus violating the principle of protection of the right of property.**

Respondents had almost the same opinion on the right of voting and right of being elected and mentioned that there were a lot of issues both legislative and practical. There are certain legislative barriers, such as high deposit for implementation of passive electoral right, ban on publication of signed voter lists, which are meaningless and need revision. One of experts mentioned that this right doesn't function at all and all elections are falsified. **In our opinion there are a lot of issues connected to the electoral right and right for being elected but they deprive from legislation or court precedential right. At the Constitutional level, the issue of limitation of the electoral right of prisoners is a point for concern.** However no argument on this topic has any justification on why the electoral rights of prisoners should be limited through defining disproportional legal limitation. Definition of disproportional electoral deposit, as well as issues related to the publication of signed voter lists are major obstacles which cause mistrust but those are issues to be addressed at the legislative level.

As for the right for education experts didn't considered themselves as narrow specialists however pointed out some issues existing in this sphere such as ensuring equal conditions for education and elimination of meaningless state interference. Equal opportunities should be ensured for all universities no matter state or private. One of respondents emphasized the importance of separation of educational institutes from power, “...education should not be an institution providing diplomas but education and science”¹⁰⁴.

Speaking about labor right all experts mentioned that this sphere contains issues including legislative formulations. One of respondents referred also to the issue of trade unions, their declarative character as in fact they don't function and implement their main function. A viewpoint was voiced that the Constitution should define that *“each citizen should have the right for ensuring minimal living conditions and those minimal living conditions should correspond to dignified living conditions. It*

¹⁰³ From speech by head of human rights NGO

¹⁰⁴ From speech by jurist

should be constitutionally defines as it comes from the ideology of the social state”¹⁰⁵. Here again issues are related not to the legal norm but practice.

Experts also outlined issues related to the right of freedom of movement which have systemized character in the system of other human rights. Article 25 of the current Constitution defines that; “Each person residing in the Republic of Armenia on legal basis has the right to freely move and choose place of residence within the territory of the Republic of Armenia” but constitutionally forms and cases of limitation of this right is not prescribed while particularly during pre- and post-election periods wide limitations of the freedom of movement becomes a popular practice.

Observations from the results of the quantitative research also provide interesting picture on human rights.¹⁰⁶

Governance System

During expert interviews Constitutional provisions on the Governance system and recommendations within the concept were discussed. To the question on **whether the population is better represented in the Presidential, Semi-Presidential or Parliamentary Governance system** respondents mentioned that there is no specific definition or classification on which system is more democratic or well functioning. Study of international experience allows to state that the development of the country is not conditioned with the Governance system. *“There are countries with high economic growth which have Presidential system and vice versa...There are developed states which have Presidential system or are monarchies...So it’s difficult to say which Governance system is efficient or democratic...”¹⁰⁷* A view point was voiced that in the Presidential system population elect President and Parliament and also Prime-Minister, mayor, local council etc, thus the population is well represented in the Presidential system. This opinion was also outlined during quantitative survey. To the question on who should elect the President of the Republic 94% mentioned that citizens and 5.6% - National Assembly¹⁰⁸. Supporters of the opposite view state that in the Presidential Governance system the President has no political responsibility before the population, while in the Parliamentary system the Prime Minister is assigned with responsibility before the Parliament, namely representatives of the population. Thus the main voiced idea is that it’s necessary to develop mechanisms of organization of election for the development of institution representing population as well as strengthen relations between the society and power. *“The population is better represented*

¹⁰⁵ From speech by head of human rights NGO

¹⁰⁶ See Section 2: Results of the Quantitative Research, starting from Graphic 10

¹⁰⁷ From speech by MP

¹⁰⁸ See Section 2: Quantitative research results, Graphic 24

*during the power which was elected and is ready to stand for the country and the elected power loyally serves to its population...systems have no relation to it*¹⁰⁹.

According to respondents selection of any model in many cases is conditioned also with the subjective approach of political forces on which specific issues should be solved during that period etc.

For the transformation to another system selection of the mechanism is not as much important as factors that have impact on the country during that historical period. As for these factors respondents pointed out foreign factors, cultural factor, legal conscience of the society, political traditions etc. According to experts, it's important not to take into account which is model is the most ideal but to understand which Governance system allows to solve existing issues in order to endure smooth transformation to a specific system.

Thus there is no unified expert opinion on Presidential and Parliamentary Governance systems. Similar answers were received also during the quantitative survey. 35% of respondents mentioned that the Presidential governance system is desirable and 31% - Parliamentary system. And only 9% outlined Semi-Presidential system as the desirable Governance system.¹¹⁰ **Data of the quantitative survey comes to prove that the public mostly thinks that the semi-presidential system couldn't be established in Armenia and in fact Presidential system is functioning in Armenia.**

Respondents also referred to the question on **what should be inter-relations between the President, Parliament and Government**. According to experts the issue of interrelations between different branches of power is mostly conditioned with gaps in the electoral system. According to them as elections in the country are not organized in proper manner and election results are not trustworthy, the power, in fact, is not formed through elections. As a result we have a situation when the President, Parliament and Government should be separate bodies and take mutual responsibility and sometime oppose to each other but in fact all of them form one system. *"Today the President, Government and Parliamentary majority are in hands of one **political force**. As a result all Constitutional institutions lose their prestige and decisions that are to be made, for instance, in the Parliament, Government or by the President, are in fact made in the office of the party's office. Thus Constitutional institutions become malformed, including Parliament, Government and President's institution"*¹¹¹ **In difference to opinion mentioned by experts we have highlighted above that the reason for the current situation is not in the poor electoral legislation or judiciary practice but disproportional interference of political structures with electoral processes resulting in a situation when results or elections don't express the real will and position of voters.**

¹⁰⁹ From speech by member of the committee on Constitutional reforms

¹¹⁰ See Section 2: Quantitative research results, Graphic 20

¹¹¹ From speech by MP.

According to committee members transformation to the Parliamentary system in this situation can positively influence on the development of the political system thus ensuring counter-balance between branches of power. According to them it's necessary to create opportunities through Constitution so allow reasonable contradictions between branches of power at the same time trying to make sure that those contradistinctions don't destroy the country but contribute to collaboration and unification.

Interviewed respondents think that justifications for transformation to the Parliamentary system are presented in the concept but it lacks details of its implementation. During interviews respondents tried to explain how they see the implementation of this process. Briefly, it assumes following; taking into account the need that *it's necessary to create a system of balances and counter-balances between 3 branches of power*, all structures should have the opportunity to participate in the process of formation of other structure. In this case, firstly, the Parliament, the highest legislative body, is formed through democratic elections. It forms the Government and they jointly form the Judiciary system namely the Justice Council. Thus to ensure clarity and unbiased approach of those mechanisms not only Parliamentary majority and minority, but also executive power should participate in the process of formation of the judiciary power. Three branches of power form the fourth tier, the President's institute who will not manage them but take the conciliatory function and ensure that all Constitutional conflicts between three branches are solved. According to the offered model the President's institutions should be non-partisan to exclude possible conflicts. All three branches should participate in the formation of the President's institutions. Their joint session elects the President meeting specific requirements through 2/3 or 3/5 of votes. Both these three branches and the society should have the right to nominate a candidate for the President. For instance, Presidential candidate can be nominated supported with 100,000 signatures. Here is how respondents see the issue of interrelations between the President, Parliament and Government which should be independent from each other, responsible before each other, sometimes oppose to each other and seekers of objective solutions to those contradictions etc.

The above mentioned question was in more clarified during the discussion of the next question on **whether it's justified or relevant to move from the Semi-Presidential Governance System to Parliamentary**. According to the qualitative survey only 31% of respondents supported moving to the Parliamentary Governance System, 35% preferred the Presidential Government system (9% - Semi-Presidential system) ¹¹². At the same time the majority of experts thinks that that Armenia is approaching to the phase when the Semi-Presidential system creates obstacles and moving to the Parliamentary system becomes a need. *“From this perspective RA has gradually moved from Presidential to Semi-Presidential system and with the Constitution in 2005, Constitutional norms of Semi-Presidential system were finalized...however in case of scenario the current form the Semi-*

¹¹² See Section 2: Quantitative research results, Graphic 20

*Presidential system may make the state appear in political or government crisis*¹¹³. **We agree with this viewpoint, but find that the political governance system in Armenia is in crisis for a long time and the crisis so deep that it's impossible to restore mechanisms of the Semi-Presidential Governance system and that's why it's relevant to move to Parliamentary system.**

Respondents also presented **gaps** that exist with the current Semi-Presidential system. One of those gaps is the **over-centralization of power**. **In this regard it should be mentioned that when declaring that "Semi-Presidential" governance has been introduced in Armenia since 2005, more frequently it's referred in declarative manner as in fact Armenia has remained Presidential country taking into account over-centralization of branches of powers and power tools in the Presidential institution. If we take into account also the fact that the Parliament practically is not a counter-balancing tool against the President, the system become ultra-presidential.** This is also confirmed by the quantitative research according to which 73% thinks that the National Assembly is fully depending on the President of RA and 17% outlined that partly. As for the Prime Minister, 79% of respondents outlined full dependency.¹¹⁴ These statistical data are characteristic for super-Presidential system and nothing proves that the National Assembly is effectively counterbalancing the President which would make the argument about Semi-Presidential system true. According to the quantitative survey data 59% of respondents fully agree that the power of the President, National Assembly and Government are merged, and 27% partly agrees with this statement¹¹⁵. **Thus the approach that the President and Parliamentary majority is represented by one political force is undeniable and as a result the principle of separation of power, in fact, doesn't function.**

The other gap following over-centralization is the existence of over-individualized system due to which the society has the impression that everything depends on one person. In such situation there is a risk for government crisis even in case of prediction that the power should be concentrated not in hands of one force. If the country President and Parliamentary majority have different party affiliation conflicts and discontent are not excluded even during the process of the Government formation. There is a risk of formation of incapable Government even in case when there is no majority in the Parliament and several political forces form the majority based on comparative majority. **The other important factor** is conditioned with the fact that having two institutions with priority mandate (in case of Semi-Presidential system) creates **conflict** between the Parliament and President as the holder of one mandate will always tend to push its viewpoint without taking into account the other side. However this is not the most important issue in Armenia as those structures are represented by one force, but in future, when the President and Parliament will have different political forces the conflict will be inevitable. Therefore, some experts think that again the conflict

¹¹³ From speech by MP.

¹¹⁴ See Section 2: Quantitative research results, Graphic 27

¹¹⁵ See Section 2: Quantitative research results, Graphic 21

desirable as it result in efficient governance system as in this case balancing and counterbalancing mechanisms start functioning.

The next important gap of the Semi-Presidential governance system is the **dualism of the executive power** characteristic for this system when the executive power is divided between the President and Government. In case formation of a Parliamentary majority politically opposed to the President the Government relies on the Parliamentary majority. In this case foreign policy, defense and national security become more vulnerable spheres.

We find that possible conflict between two structures with the priority mandate shouldn't be considered as a ground to refuse the Semi-Presidential system. Everything depends on the main counter-balancing force, namely the representative composition of the Parliament. If political forces within the Parliament are balanced and taking into the political culture that political forces refuse the principle of “winner takes all” the Parliament can counterbalance the President and efficiently collaborate with the Government and this format can become the efficient Governance system. By the way similar situation was observed till 2002 when Parliamentary parties were collaborating mostly with the Government, and the Parliament, Government and President's institutions were counterbalancing and controlling each other. The principle of counterbalancing and division (not separation) of power were functioning. Everything changed during 2002 Parliamentary elections when because of electoral falsifications the political balance was broken and the Parliament stopped acting as a counterbalancing tool against the President. **As a result the role of the Parliament and the public trust in political institutions decreased, the Semi-Presidential system gradually transformed into Presidential and then Super-Presidential. The principle of division of power stopped functioning as the political power became singular.**

Taking into account above-mentioned gaps of the Semi-Presidential system in Armenia experts find that the solution to this situation can be transformation to the Parliamentary system. Respondents presented advantages of moving to the Parliamentary system which are:

- There won't be any conflict between the President and Parliament as the President won't be involved in political processes,
- As the President is not directly elected there is no threat of election of populist President,
- The risk of over-individualization of power will decrease. It will decrease but not excluded as within the Parliamentary system it's possible that to have high power but that's not that much dangerous, as it will depend on the Parliamentary majority,
- Government's political responsibility before the Parliament will promote collective management, thus the range of decision-makers on the country policy will increase considerably,
- The political role of the Parliament will increase, including legislative and oversight,

- As the Parliamentary system assumes collegial governance the country can react more flexibly to foreign policy challenges as the whole process of decision making will be more collegial and less individualized. That won't be possible in Semi-Presidential system as decisions on foreign policy will mostly depend on the President and therefore outside influence on the President will be higher than within Parliamentary system where the opinion of the Prime Minister won't be enough without Parliamentary majority. Therefore the process of solution to any foreign political challenges will be transferred to the Parliamentary open forum and not the President's closed office. That will enable to ensure transparency and public control over the process of solving national vital issues.
- The President of the Republic will have the function to ensure the implementation of the Constitution and he/she will have the right to apply to the Constitutional Court both before and after adoption of the law exclusively from the perspective of Constitutionality and not political relevance. Today the President has the right to apply to the Constitutional Court but as a rule he doesn't utilize that right as there is no need for that as he has absolute majority and is the acting role player in the political arena,
- The term of office of the President of the Republic will be separated from the term of office of the National Assembly. As the President will be allowed to be elected once for a longer period than the Parliament it will ensure unbiased and neutral approach. Even if the Parliamentary majority (that elects the President) is in negotiations with the President that won't be possible during the next Parliament.

In spite of positive comments on transformation the Parliamentary system respondents also voiced some concerns and possible risks. Firstly they emphasize the importance of **the issue of instability and frequently changing Governments**. In the Parliamentary system there is no fixed term of office for the head of the executive power. In other words the head of the Government works as long as he/she enjoys the support of the Parliamentary majority. The situation will become critical if no Parliamentary majority is formed. That's why the concept offers the need of creation of Parliamentary majorities. In addition to that transformation to the Parliamentary Governance System is dangerous in case when there is a factual **threat of war**. In case of the Parliamentary Governance system when the control over armed forces is not centralized there is high risk that they can be consolidated to pursue their corporate interests. In the Presidential Republics the army is concentrated and controlled by the President.

There were people among respondents who were against of transformation to the Parliamentary system at this moment. International experience shows that in Parliamentary countries the density of Parliamentary competences results in dominant role over other branches of power which, according to some experts, is more dangerous that high role of the President in Presidential countries. The reason is that there is no **principle of individual responsibility** within the Parliament. In the

Parliament activities are initiated by groups so neither political nor legal responsibility has individual nature.

At the same time in the conditions of the Presidential system both political and legal responsibilities are individualized and are conditioned with the President's personality. Counterarguments on moving to the Parliamentary system emphasize that it's not applicable for societies **with no sustainable democratic traditions**. The point is particularly about imperfection of electoral systems, low level of trust in electoral institutions, low level of public legal conscience etc.

To the question on **whether the formation of RA President's and Government institutions by the National Assembly ensures the separation of power and counterbalance** respondents mentioned that, first of all, it's necessary for all those structures to participate in formation and election of others to create mechanism of separation and counterbalance. In the Parliamentary system the President is non-partisan and, classically, has no relation to political processes. The head of the Government (both President and Prime Minister) are **responsible** before the Parliamentary majority. The latter can always express no confidence in the head of the Government and disagree with his/her policy as well as replace the Prime Minister. As a result both of them are interested in effective work. Here it's very important to increase the role of the Parliamentary minority, particularly for oversight purposes. Counterbalance should be ensured in power-opposition relations, for instance, through ensuring balanced participation of the power and opposition in independent committees. According to the formulation by a member of the Committee on Constitutional Reforms *"Balanced system doesn't mean only balance between legislative and executive bodies; that also means balance between majority and minority...so rights of the minority are respected, and the minority should have enough means to control whether the majority doesn't abuses the advantages of its majority"*¹¹⁶. In spite of the fact that the concept offers options for introduction of counterbalancing mechanisms, respondents stated that such mechanisms exist also in the current Constitution. Here again the issue in their implementation.

During interviews experts answered the following question; **"According to the draft "...in the conditions of lack of majority supporting the President of the Republic within the Parliament the risk for political crisis and conflict increases", but at the same time it prescribes that "...in case of the absolute majority of the President of the Republic within the National Assembly the risk of political monopoly increases". Does such formulation bring to the conclusion that in all cases there is a risk for political crisis?"** According to respondents political crises may always occur and no one should avoid it. Simply mechanisms for solution should be developed. *"There should be a fight, fight of ideas to result in development. All sides should simply know what solution mechanism should be applied in specific situations. If the Government program is not approved by the Parliament twice new elections*

¹¹⁶ From speech by member of the committee on Constitutional reforms

take place till the situation gets balanced"¹¹⁷. During interviews with members of the Committee on Constitutional Reforms it became clear that such formulations refer not to the Parliamentary system, but Semi-Presidential. And based on this justification the concept offers to move to the Parliamentary system. *"In fact, the Semi-Presidential system functions in three modules... **first modus** is that the President and Parliamentary majority are merged which becomes over-centralization, **second modus** is that those structures are opponents and the President opposes to the Parliamentary majority and in this case we have fight which is dangerous for a country like us and **third modus** is when there is no Parliamentary majority. None of this three gives specific institutional guarantee that Semi-Presidential Governance system will effectively function and supervision over that process will be ensured..."*¹¹⁸.

During interviews expert views on **the concept approach on electing non-partisan President of the Republic (in case of moving to the Parliamentary system)** were identified. In general respondents expressed two opposing views. One group thinks that in case of transformation to the Parliamentary system having non-partisan President will simply be necessary while others find that President's party affiliation can't be considered as a criteria. Experts who are against of having non-partisan President justify their position in the following way:

- That violates the principle of excluding discrimination defined by the Constitution as person becomes limited because of political views.
However this justification is not grounded as not all means of selective approach are considered as discrimination. It's important to take into account whether selective approach is conditioned with objective justifications or motives. If election of non-partisan President is conditioned with the necessity to ensure political neutrality, that can be considered as an objective justification. In that case selective approach can't be considered as discrimination.
- Individual tending to take of the Government of the country should have specific ideology and vision,
- It's not realistic to elect a political figure from representatives non-political sector as in case of election of a political figure should be guided by the political factor, otherwise that will result in election conditioned with economic factor, namely having President oligarch,
- Party affiliation doesn't prove that person will be bad President,
- In case of election of President representing any political force that political force will take the responsibility for President's activities and it depends on Presidents activities whether how many votes this political force may get during next election.

As an intermediary option between this and opposite views respondents stated that the person who tends to take the President's post should stop initiating any political party activity, convening any

¹¹⁷ From speech by MP

¹¹⁸ From speech my member of the Committee on Constitutional Reforms

party sessions etc. *“The minimal conditions is that during his/her office as President of the Republic he/she should suspend all types of party activities”*¹¹⁹. According to this group of respondents for the post of the President not party affiliation but patriotism and law-abidance, trustworthiness and charisma, availability of negotiation skills and proper presentation of the country abroad are important. According to them in the Parliamentary system **the role of the President is symbolic and his/her party affiliation is not that much essential.**

The other group of respondents is in favor of the idea of having non-partisan President. According to them in the Parliamentary system the President should be the representative of the state and not the power. While being out of political processes the President should tend to ensure normal operation of all branches of power and have the role of neutral and unbiased judge/arbitrator. *“That’s the advantage of the Parliamentary system, namely we’ll have a very important institute – the President of the Republic – who will make sure that game rules are not broken and who has the right to apply to the Constitutional Court exclusively on issues related to Constitutionality and not political relevance”*¹²⁰.

However presented opinions are accompanied with concerns on difficulties of ensuring this condition. According to respondents the issue of non-partisan President will have a declarative nature in case when electoral institutions in the country are imperfect. Presumably respondents refer to shadow mechanisms which are outlined in the Concept. That’s reflected in the following opinion, *“If there is a legal requirement that the President should be nominated by the Parliamentary minority the majority would form a declarative minority and in that case they will nominate and elect the President”*¹²¹, *“challenges won’t be solved unless we have conscious political figures in the National Assembly and not businessmen and celebrities”*¹²². Thus positive consequences of having non-partisan President are also connected with the political culture and electoral processes.

Respondents expressed also their opinions on **the concept offer to organize Presidential and National Assembly elections on the same day.** The majority of them are mostly against it. First of all, the concept proposal to move to the Parliamentary Governance system makes this offer meaningless as the President is elected not by the population but by the Parliament. In addition having Presidential and Parliamentary elections on the same day is dangerous and contains negative aspects. The first main discontent is that it’s impossible to ensure its **periodicity and continuity.** It may bring to several issues in case of early termination of Parliament’s or President’s (death, health issues etc) competences and therefore it won’t be possible to ensure continuity. Either the principle of having elections on the same day will be broken or other structure will have to terminate its competence which is meaningless and ungrounded. The next issue is when **competencies of the President and**

¹¹⁹ From speech by head of human rights NGO

¹²⁰ From speech by MP

¹²¹ From speech by expert in Constitutional science

¹²² From speech by professor

Parliament finish at the same time in may create a vacuum of power. If the solution to that issue within the concept was definition of different terms for these two structures (4 years for the National Assembly and 7 years for the President) this is also not a solution as it already violates the requirement of having elections on the same day. Thus **in longer term perspective that doesn't ensure sustainable development.** In addition it seems that in terms of bi-mandate institutions the society has stronger representation as country development prevails over the political situation. This means that having elections on the same day require the same situation during next elections while the society won't have an opportunity to change the incorrect electoral process. This contradicts to democratic values. **Having elections on the same day deprives the society of direct governance mechanisms.** *"More elections date are scattered in terms of time better... as it's the only tool of the society for power"*¹²³. It creates the risk of limitation of democratic institutions. The next important threat respondents see in having elections on the same day is that it can create risk of favorable conditions for reproduction of power, as well as decrease of consolidation of power resources and possibilities of coalitions.

In addition to risks mentioned above respondents highlighted also their opinion the justification on having elections on the day described in the concept. *"It's unacceptable for me to limit elections only because it creates instability in the country...if it creates instability during elections **the election quality should be improved and not limited**"*¹²⁴. Other positive opinions defined in the concept bring up some arguments, as: 1) **cost efficiency**, 2) opportunity to cut people from their jobs only once, 3) excluding change of political positions and public demand which creates sustainability (*"...we exclude possible conflicts conditioned with differences in electoral cycles which may provoke larger scale conflicts"*¹²⁵), 4) opportunity for establishment of **competitive Governance System**, 5) opportunity for **collaboration** between different political forces and 6) **increase of the role of the National Assembly**. The idea of cutting expenditures was supported also by experts who are against having elections on the same day. According to them it'll enable to cut not only state spending on elections but also bribe distribution during elections.

To the question on **whether having elections on the same day will promote increase of the civil control of electoral processes**, the majority of experts had negative attitude. *"I don't see any connection between increase of the civil control and this"*¹²⁶, *"...when we have several elections we have better mobilization, in case of several elections both the opposition and civil society will control the process better/more than during one-time elections..."*¹²⁷ According to respondents it's necessary to create additional mechanisms and guarantees to ensure increase of the civil control to be able to control elections so they are not violated and to be able to find solution in case violations are

¹²³ From speech by head of human rights NGO

¹²⁴ From speech by expert in Constitutional science

¹²⁵ From speech by member of the Committee on Constitutional Reforms

¹²⁶ From speech by member of the Committee on Constitutional Reforms

¹²⁷ From speech by member of the Chamber of Advocates

discovered. *“If there are fundamental political traditions, it’s not essential, when elections take place it’s important that power is taken by those elected by the population... Thus there is a need for trust in electoral processes”*¹²⁸.

Only one respondent thinks that having elections on the same day can increase the civil control. He/she justified his/her view with following *“...if any political party has no Presidential candidate it doesn’t participate in elections. And if elections are organized on the same day that party will also participate through its proxies etc...thus we’ll have real control tools also over Presidential elections”*¹²⁹.

To the question **on which Constitutional guarantees would promote increase of the civil control** some respondents mentioned that it’s the issue of implementation and not the Constitution (regulated by the law). And here again issues of the electoral system and trust in elections, political culture and public legal conscience are very important.

There were several recommendations on these issues such as:

- Development of the institution of public petitions,
- Holding referendums base on civil initiatives,
- Having mandatory referendum in case of very serious issues,
- Definition of the Public Council in the Constitution which will become a tier for accumulation and transfer of initiatives of the civil society,
- Ensuring independence of the Justice Council,
- Ensuring independence of the Judiciary power
- Providing Constitutional status to the Central Electoral Commission (regulation mechanisms, selection regulations, accountability and definition of provisions on individual responsibility)¹³⁰.

To the question on **how the concept statement that it’s necessary to strengthen the role of the National Assembly structures in legislative activities should be perceived** respondents mentioned that the point is about standing and ad hoc committees. Committees should be responsible for fulfilling certain tasks, provide tools, decision on issues of legislative initiative (even if the Government submits legislative initiative to the National Assembly and the committee provides positive feedback, that becomes committee’s ownership and it will be responsible for further process in terms of quality and control over the process of making changes within the draft), conducting oversight, approving budgets etc. According to respondents particularly parliamentary minorities should be involved in oversight processes which should have the right of creating investigative committees.

¹²⁸ From speech by professor

¹²⁹ From speech by expert in Constitutional science

¹³⁰ It should be appointed not by the President but elected by the National Assembly, be responsible before NA and be financially independent and have individualized responsibility in case of violations.

The next important concept recommendation that was created during expert interviews refers to **political party enlargement**. Opinions of respondents were divided into two main groups; those who support decrease of number of political parties in Armenia through party enagements and those who think that the idea of party enlargement limits the right of creation of unions defined by the Constitution. These two groups at the same emphasize that should be not an artificial process regulated by the Constitution. *“Political arena should ensure free **competition** of political ideas and unions with viable ideology...parties should have more votes and those whose ideologies are weak, not viable or who are criminals...number of those parties should decrease”*¹³¹. Respondents who think that there is a need to enlarge parties in Armenia at this stage justified their position with the following: 1) political parties will be more **responsible**, 2) the political arena will be cleaned and only parties with ideologies will remain, 3) that will enable voters to **clearly orientate**, 4) in case of party majority in the National Assembly programs of that party will be **feasible** and 5) that will ensure political **sustainability**. One of respondents even compared the diversity of political parties with vanished potential emphasizing that it won't be efficient in any case. However experts outlined the ideological consolidation of political parties and their members. According to them current Armenian parties don't have **value basis and development visions** and party members are even unaware of provisions on the party charter. Thus they should have the conscience that it's not the issue of personality but group leadership and development of value teams. Therefore, for party enlargement there are several issues to be solved such as party working style, way of thinking, and change of ideologies of statehood. Respondents also mentioned that in case of certain changes in ideological and political cultures when transformation to the absolute proportional system will be done parties will enlarge themselves.

To summarize the above mentioned it's worth stating that opinions on both Parliamentary and Presidential Governance system expressed by experts and population are quite different. If the majority of experts mentioned that the Parliamentary system is efficient and transformation to that system in the current situation is relevant and inevitable, a considerable part of the population gives preference to the Presidential system. In parallel to this the general position is that previously operating Semi-Presidential system has gradually transformed into the Presidential system when the President has almost unlimited power as the Parliament stopped acting as a counterbalance. As a result, the power has been centralized within hands of one political force and the opinion of respondents coincides with the concern stated within the concept that a political monopoly has been created where Presidential, parliamentary and government institutions have been merged. As a reason experts outline gaps in the electoral system. We see the reason of the current situation in legally disproportional interference in electoral processes by political structures resulting in loss of legitimacy be electoral institutions and elimination of political balance in the Parliament with its all current consequences.

¹³¹ From speech by head of human rights NGO

In the current situation the concept suggests changing the Governance system and move to the Parliamentary Governance system. Majority of experts accepts this idea. They think that the Parliamentary Governance system will exclude political monopoly as the Government pole will move from the President's institution to the Parliament which will elect a President who has no relations with political processes and will control Prime Minister with entire Government. In fact, everything will depend on how balanced representative composition of the Parliament as only in that case the Parliament will be able to control the political majority and Prime Minister with the entire cabinet will be responsible before this majority. In this regard the concept idea of party enlargement is very important which could be supported by the increase of the role of the Parliament as well as revision of some legislative mechanisms (party enlargement in its turn will also support the increase of the role of the Parliament).

In addition to above mentioned experts almost agree on the issue that any Semi-Presidential system eventually brings to Presidential monopoly as it's impossible to prevent conflict between two institutions with priority mandate when each institution tries to dominate over other and the conflict ends at the moment when the President has majority in the Parliament and thus the system is gradually becoming Presidential and even Super-Presidential. In this regard countries with no democratic values become more vulnerable including Armenia.

Electoral rights and electoral system

Interviews allowed to reveal expert opinion on changes in the electoral system offered by the concept. In parallel to number of **issues on relevance of moving to the proportional electoral system, shortcomings of parallel application of the majority system and possible risks in case of proportional system** were discussed.

Almost all respondents gave a positive response to moving to the proportional electoral system at this moment offered by the concept. According to experts, justifications for the relevance of transformation to 100% proportional electoral systems were following:

1. That's a step to reduce or prevent politics from becoming non-political. According to respondents only people who are in politics should deal with politics.
2. That enables to reduce access to NA for rich people (oligarchs). Their goal is to protect own interests through political power. *"...Majority electoral system, as the practice has showed, serves mostly interests of big capital, in other words the majority electoral system reduced*

*real opportunities for identifying peoples opinion...it creates space for oligarchs to strengthen their role through majority system*¹³².

3. It increases the level of responsibility of elected members of the Parliament before voters. According to respondents it's the parties that have history. Each party member is responsible for that history and therefore they are obliged to follow political traditions, values and goals. MP elected through majority electoral system can refuse following one's election program and taking any responsibility before voters. *"That's the USA where the connection between voter and candidate nominated through majority system is preserved; that's not the case in Armenia"*¹³³, *"Currently we have only one MP elected through majority system who was elected from region and is responsible before voters. All other majority MPs are rich people who spend money before elections and never meet voter after being elected"*¹³⁴.
4. In case of having elections based on proportional electoral system the probability of corruption, bribe distribution and other similar issues decreases. *"...in electoral constituencies bribes are wide spread more than in proportional electoral system and here political directions or ideology are left in background"*¹³⁵.
5. Proportional elections are more democratic and tend to reflect population's real will that majority elections. *"In today's Parliament in terms of proportional or party elections the Republican party is not a majority but has got the majority of the Parliament through majority electoral system. It appears that the society doesn't consider the political force as a majority but that a force appears in the Parliament which is absolute majority"*¹³⁶.
6. Activities of MPs elected through proportional system are more efficient than MPs elected through majority system. *"The majority of MPs elected through majority electoral system have almost delivered no speech at NA as they don't have political views but they have weight – financial, social etc – which allowed them to become MP. Almost all such MPs with some exceptions tend to have zero efficiency coefficients in NA and the National Assembly is not the place for gatherings of rich or influential people; it has certain functions..."*¹³⁷

Only one respondent was against moving proportional electoral system¹³⁸. According to him/her voters shouldn't be deprived of opportunity to elect MP from their province as relations become impersonal decreasing accountability and connections with voters.

¹³² From speech by MP

¹³³ From speech by MP

¹³⁴ From speech by MP

¹³⁵ From speech by member of the Committee on Constitutional reforms

¹³⁶ From speech by expert in Constitutional science

¹³⁷ From speech by member of the Committee on Constitutional Reforms

¹³⁸ The given MP was outlined during another interview as one of the rare persons elected through majority system who preserves connections with voters and follows goals of his program

In our view it's important not only to take into account opinions of supporters and authors of moving to reformed electoral system and 100% proportional system but also counterarguments of opponents of this offer. Thus:

1. NA carries out legislative function which is a professional task are not about party or political interests which should dominate. Therefore, in order to have legislation respecting human rights high specialized qualifications for candidates should be priority rather than the fact whether they are dealing with politics or not.
2. As for access for oligarchs to NA, it's worth mentioning that in case of removing majority electoral system there is no obstacles for such persons to take NA mandate through getting involved in party lists. And even today the number of rich people in party lists is high.
3. In regard to accountancy of MPs following factors are very important:
 - The level of transparency is high when there is a connection. Today no MP elected through proportional lists feels responsible for a specific province or people living in the province,
 - Provincial offices of parties operate only during elections and the rest of the time they are closed,
 - Citizen is unaware whom to address when writing a letter to NA and whom to expect answer from
4. To exclude the idea that introduction of proportional electoral system will reduce risks of bribes, it's necessary to refer to local long-term observation missions and reports by human rights defenders which show in the monetary form what party and how much bribe it has distributed.
5. And one of the most important factors is that, as mentioned in the concept, parties are not yet well established and at the current stage it's necessary to pay special attention to the strengthening and establishment of parties.

Respondents discussed the concept offer on **moving to the reformed electoral system**. Members of the Committee on the Constitutional Reforms commented on its meaning: 1) create direct connection between voter and candidate through proportional electoral system, namely majority quotas (elimination of closed party lists), 2) reduce as much as possible decisive influence of the management on the opportunity for any party candidate to take or not to take the mandate, 3) main specifications of electoral system for elections of the National Assembly should be defined by the Constitution (both for majority and proportional systems), 4) ensure political majority within the Parliament through the following mechanism: Parliamentary elections should take place in two stages even in case of 100% proportional electoral system with all parties and alliances participating in the first phase and those alliances, if formed, can never be changed and if no party of alliance gets 50% + 1 vote in the National Assembly the second phase of elections take place with participation of two parties or alliances the most of votes casted. According to members of the Committee any electoral

system will have defects without ensuring these conditions and that will affect the quality of democracy.

A part of experts suggested their understanding about the reformed electoral system: 1) Constitutional status of the electoral commission, financial independence and individualized responsibility, 2) opportunity to vote through e-voting mechanisms, 3) publication of signed voter lists, 4) ensuring immediate broadcast of electoral processes in the precinct, and 5) promoting cultural changes through change of legal conscience and formation of the generation of demanding citizens. According to respondents ensuring above mentioned requirements will promote the quality of elections and increase the level of confidence.

In our view the offer of the Constitutional committee reminds of a situation when in fact majority electoral system exists under the name of proportional electoral system with a difference that candidate should be a member of any party. **Indeed, it's difficult to make final judgments on this issue however offered solution more arise questions that give answers.** Referring to the above mentioned recommendation this verifies again that the proportional electoral system should be introduced though newly suggested mechanism with parallel application of the majority electoral system which would enable to reveal gaps of the suggested system without intention to destroy the already established electoral system where issues depend more on political will and not the form.

In fact the solution to the above mentioned concern is given in answers to the next question of discussions. The question is **whether there is a need to provide opportunity to citizen to vote directly for his/her preferred candidate which would ensure immediate connection between voter and elected persons, while at the same time it's suggested to move to 100% proportional system according to the draft and how the direct connection between voter and elected persons is possible within the proportional electoral system.** Almost all respondents gave a positive response to this initiative believing that rating voting will increase the level of democracy within parties. Respondents presented several options to ensure direct connections between voter and elected person within the proportional electoral system.

- In case of rating voting party lists are put for voting and voter casts one's vote for a party person which means that the vote goes both to the party and a person. As a result the places in the National Assembly (party list numbering) are not decided by the management, but those candidates get elected to the NA due to their rating.
- The number of electoral constituencies in the Republic is equal to the number of MPs to be elected. The right of nomination of MP candidates should be owned exclusively by the party. In that case citizen votes for a certain candidate nominated by a specific party.
- In case of the mixed mechanism some of MPs (e.g. 70% of total seats) are elected through open party lists through proportional system, and, for instance, in 30 constituencies parties nominate their candidates under the majority electoral system. In that case it's possible for a

candidate not to become MP even in case of majority of votes, as votes of all party candidates under the majority system are added to the total number of votes cast for the party under the proportional system and based on the number of party votes the number of mandates for that party is identified. At the end candidates with the highest number of votes get mandates.

In regard to voting for preferred candidate from proportional lists experts expressed concern that it may result having constituencies with no elected MPs and constituencies with several elected candidates.

In our view, the suggested mechanism is a duplication of the majority electoral system **with the exception that the right of self-nomination is removed and the implementation of the right of the person to get elected is limited to party affiliation. So if a person wants to fulfill the right of being elected she/he should become member of a party or be nominated by a party in case when supporters of this offer state that parties are not established and there are lots of issues in relation to the sustainability and enlargement of parties.**

In parallel it's worth paying attention to the risk that there might be constituencies with no elected MPs. **As a result citizens will face unequal representation.**

It's worth looking at the results of the quantitative survey, particularly the question on how should MPs be elected – through majority of proportional system. 21% of respondents mentioned that MPs should be elected through majority electoral system, 19% - proportional system as voting for one party allows to vote for several candidates, 49% - MPs should be elected from specific constituencies as in case of voting in a small constituency citizens know their candidate and can control his/her activities after elections and for 12% it was difficult to say.¹³⁹ Thus, the majority of citizens prefers to vote for a specific candidate who will take responsibility for specific territory and who will be expected to fulfill concrete tasks.

In addition to issues on electoral right and electoral processes experts discussed such issues as **the need of revision of opportunities and limitation of the voting right of convicted persons and prisoners, military conscripts and RA citizens living abroad.** In relation to prisoners, experts mentioned that if there was trust in electoral processes prisoners should have electoral right as other RA citizens. The issue of the process of elections is different. To the question whether all should have that right, expert opinions were divided in two groups. According to one standpoint it's necessary to distinguish between prisoners who committed serious and lesser crimes. In their opinion those who committed serious crime should be deprived of the electoral right as it may endanger the public security: *“as a rule in other countries people, like representatives of mafia are deprived of the electoral right as through participation in elections a power can be formed that may become dangerous...but that doesn't refer to those who convicted lesser crimes or have been sentenced to*

¹³⁹ Please Section 2: Results of the Quantitative Research, Graphic 34

*short-term imprisonment*¹⁴⁰, “that corresponds to the Guidelines of the Venice Commission on elections”¹⁴¹. In their view those who convicted medium size or minor offence shouldn’t be deprived of the electoral right as a situation is created through those elections where those persons will live some time later. The other option voiced by experts is that no one can be deprived of the electoral right as the political right doesn’t influence on the correction of that person. Thus it’s irrelevant to distinguish between standards limiting the electoral right of prisoners as even the person sentenced to life imprisonment has the right to dispute one’s verdict.

According to respondents the number of prisoners is not high and that can have no essential impact on results of elections.

As for **military conscripts** experts expressed opinion that their electoral right should be temporarily suspended as it creates space for falsifications. As an alternative, experts suggest giving soldiers the right to vote at precincts at their registered place of residence which is hard to do.

As for voting by **RA citizens living abroad**, respondents outlined complications related to the organization of elections as it will need creation of centralized electoral precincts. Many of them may be located far from the place of residence and create difficulties for citizens. Thus it’s irrelevant for citizens living abroad to participate in elections.

Above mentioned issues can be solved through introduction of methods of electronic democracy. As Armenia has started using ID cards, e-signatures and other information technologies it’s possible to promote e-voting mechanisms.

To summarize above mentioned it’s worth mentioning that technical and other formal obstacles should not become a ban for person to implement one’s electoral right.

Convicts who are kept in prison continue to be members of the society with right to participate in the decision making process. Therefore **depriving them of the electoral right within the democratic society is meaningless step**. For the case of Hirst against the United Kingdom (CASE OF HIRST vs THE UNITED KINGDOM (No. 2) application no 74025/01) processed by High Chamber of ECHR the Court found that limitation of the electoral right of prisoner is a violation of article 3 of the Protocol N 1 of the European Convention on Human rights and fundamental freedoms according to which “High sides of the agreement are obliged to conduct free election with reasonable intervals through secret voting and in conditions which ensure free expression of people’s will when electing legislative authorities”.

As for experts’ opinion that it’s necessary to deprive military conscripts of the electoral right to reduce the risk of falsifications the same could be stated also for state officials who are under pressure

¹⁴⁰ From speech by member of the Committee on Constitutional Reforms

¹⁴¹ From speech by member of the Committee on Constitutional Reforms

and influence during electoral processes. **Thus limitation of right of a group of persons to prevent illegal actions by political forces is not justified.**

Speaking about implementation of the electoral right of citizens living abroad, it's worth mentioning that technical obstacles can't hinder the electoral rights of citizens taking into account that many Armenian citizens leave for labor migration, education or temporary residence **therefore it's necessary to ensure implementation of the electoral right of RA citizens living abroad at the same time designing and introducing relevant mechanisms and means.**

Judiciary System

During qualitative interviews experts expressed their opinion on the **concept provisions on the Judiciary system**. All respondents mentioned that the Judiciary system in Armenia is not independent and needs independence. In difference to this, results of the quantitative research don't have such assessments at all and here opinions are different. For instance 64% of respondents mentioned that courts make fair verdicts¹⁴² and to the question on what is the main gap of the Judiciary system only 29% percent pointed out the shortage of independence. In this regard other responses included contradicting decisions of courts (42%), structural shortcomings (11%) and corruption (4%)¹⁴³. It's worth mentioning that the independence of the Judiciary system, as a rule, is often associated only with the political independence while the independence of the Judiciary system, as frequently stated by the Constitutional Court¹⁴⁴, defined by international law¹⁴⁵ and outlined by the Concept¹⁴⁶, refers to functional, structural, material and social independence. However referring to the general assessment of respondents on the Judiciary power they mostly reflect concerns highlighted by the concept that **the balancing role of the Judiciary system is not fully guaranteed as required by standards of the legal state and one of the main reasons is the shortage of independence.**

¹⁴² See Section 2: Quantitative research results, Graphic 37:

¹⁴³ See Section 2: Result of the Quantitative Survey, Graphic 40

¹⁴⁴ Decision of the RA Constitutional Court SDO-647 as of 20.09.2006 on the compliance of the article 1 (new edition of the article 18) of the RA Law on „Making changes and amendments to the RA Law on the Status of Judge“ to the Constitution of RA

¹⁴⁵ „Magna Carta of Judges (fundamental principles)“ (Document of the Advisory Committee of European Judges (CCJE) which was developed for submission to the Committee of Ministers of the Council of Europe); Document CM(2010)169 of the Committee of Ministers of the Council of Europe adopted by the Committee of Ministers on January 19 2011 at the session N 1103, paragraph 2-3

¹⁴⁶ Page 7, point 5:

Some of expert assessments on the above mentioned come to prove that the independence of the Judiciary system itself ensures the rule of law in the country and the state security and further development depend on this factor. Particularly the following opinions were raised: *“The fundament/backbone of the state is the Judiciary system; if there is an independent Judiciary system, rights will be protected, economic competition will be ensured and the country will develop...”*¹⁴⁷, *“...solution to all issues is the establishment or creation of independent justice system, which we don’t have...”*¹⁴⁸, *“full independence of the court from the executive power, as well as full autonomy of other bodies, autonomy of the police, independence of investigative bodies and there won’t be any conflict of interests...that’s the solution...if the Judiciary system is independent from authorities the majority of issues will be solved”*¹⁴⁹, *“The Judiciary system should be totally independent, fully competitive so to ensure the implementation of the principle of presumption innocence and competition with its full volume...competition of all sides of the trial...”*¹⁵⁰.

Thus opinions of respondents mostly match with the concern highlighted in Concept that among current challenges the most important ones are the lack of independence of the Judiciary system and lack of role of the Judiciary system counterbalancing legislative and executive powers.

In difference to above mentioned opinions respondents on the question **whether it would be possible to ensure the independence of the Judiciary system through the Constitution** were quite different. A part of them thinks that *“...the current Constitution doesn’t have any guarantees ensuring the independence of the Judiciary System...”*¹⁵¹, while others state that *“...our current Constitution and existing laws already prohibit any interference with the Judicial activity”*¹⁵², *“...within the framework of what we have today, if judge, as an implementer of justice, preserves one’s role guarantees will be available...it’s another issue that as those judges mostly fulfill those roles pressure on them should be limited”*¹⁵³. According to quantitative interviews only 25.4% of respondents were favoring the need of Constitutional reforms, while 60.1% were against it¹⁵⁴. If the main issue is to create *inter alia* independent and unbiased court as mentioned in the Concept¹⁵⁵ the majority of respondents finds that set goals can be achieved with the current Constitution. Thus the issue is not the lack of Constitutional or legal mechanisms, but lack of political will as a result of which laws are applied either inefficiently or selectively. Eventually, as for the independence of courts they have proved for several times that they can develop legal and sustainably established judiciary practice in

¹⁴⁷ From speech by head of human rights NGO

¹⁴⁸ From speech by jurist

¹⁴⁹ From speech by MP

¹⁵⁰ From speech by expert in Constitutional science

¹⁵¹ This viewpoint was mostly expressed by members of the Committee on Constitutional Reforms

¹⁵² Experts in Constitutional science, jurists, heads of human rights NGOs and representatives of NA

¹⁵³ From speech by independent jurist-expert

¹⁵⁴ See Section 2: Results of Quantitative research, Graphic 4

¹⁵⁵ See Section 2.4.2., § 1:

specific spheres¹⁵⁶ which lack signals of external interference. By the way, this issue is also referred by the Concept which says that lack of counterbalancing mechanisms results in expansion of “shadow relations”. Eventually, according to our belief the political monopoly which is the main issue of concern of the Concept and most probably the main reason for Constitutional reforms, was established not as a result of poor legislation or Constitution (e.g. Electoral Code amendments and changes of which were constantly agreed with international structures and made in compliance with international norms) but political interference. It’s not excluded that in case of other state governance system (e.g. Parliamentary) such shadow regulations are preserved and Constitutional or legislative counterbalancing mechanisms will simply not function.

In addition to the above mentioned the majority of respondents finds that the Concept presents all issues existing in the Judiciary system which need to be solved through Constitutional reforms particularly the framework of functions and procedures of establishment of the Justice Council¹⁵⁷. According to experts the Justice council members should be elected from spheres that won’t make courts dependant on the Council. *“On one hand, we should look at the issue in the way to ensure no interference in the formation of the Justice Council of the Judiciary system but on the other hand solutions should not result in high autonomy of activities of the Justice Council...including and not limited to appointment of judges and the issue of applying disciplinary measures against judges which is also important”*¹⁵⁸.

We think that both the procedures of the formation of the Justice Council and the range of its functions on appointment and career promotion of judges, including relations between the Council and courts are, in general, counterbalanced. The current system was adopted during Constitutional reforms during 2001-2004 as result of series of consultation with the Venice Commission. As a result Venice Commission provided positive feedback in the text of the Constitution which was adopted on November 27 2005¹⁵⁹.

However there were viewpoints that, for instance, for the formation of the Judiciary power other popular principles can be applied to ensure its independence. One of the options is when the Justice Council, based on procedures, submits the list of judges to the President that has no connection with the executive power (in case of the Parliamentary Governance system) President appoints judges without the right of their future dismissal. In this case there is no dependence on the executive power. Another option is when the Justice Council submits the list of candidates for judges to the

¹⁵⁶ For instance, courts have been preserving the court practice within the framework of libel and defamation since June 2010 thus protecting mass media from meaningless interference with dissemination of information.

¹⁵⁷ Some respondents mentioned that however the document doesn’t clearly indicate solutions of above mentioned issues. We find that such opinions are not justified as we should bear in mind that we are speaking about the Concept document.

¹⁵⁸ From speech by member of the Chamber of Advocates

¹⁵⁹ See Venice Commission document CDL(2005)052 as of 24/06/2005 based on which the Venice Commission and RA authorities signed a Memorandum of Understanding on the final draft text of the new Constitution.

Parliament it approves the list through the qualitative majority of votes. Another “mixed” option was offered when judges of the first instance court are appointed by the President and judges of the Court of Cassation are appointed by the Parliament.

In the light of diversity of above mentioned recommendations it’s necessary to take into account that fact that judges are appointed by the executive power puts their independence under the question mark. It’s necessary to take into account counterbalancing factors against outside interference and pressure such appointment procedures, terms of office etc¹⁶⁰. The counterbalance mechanism is that the list of candidates is developed exclusively within the Judiciary power and the executive power only confirms the list. This model was accepted by the Venice commission in the form of the current Constitution (when the Justice Council is developing the list of candidates for judges and the President approves it). The above mentioned recommendations preserve the same approach but it suggests using the same model under other Governance system.

Among issues related to the Judiciary system respondents outlined the need for clarification of functions of different court instances which would exclude the existence of unnecessary tiers. For instance, there are two highest instances; Constitutional court in regard to Constitutional justice and Court of Cassation in regard to unified application of laws, and their functions can be merged. **We find that this issue exists not only in Armenia but also in countries with continental legal system with a traditionally and historically formed system where Constitutional issues are solved through separate specialized court.** In difference to that in the Anglo-Saxon system Constitutional issues are solved at the highest instance (e.g. in USA). Jurists agree that in case of existence of 2 highest instances conflict between them on certain issues is inevitable which sometimes takes place in Armenia. However the experience shows that these two courts can co-exist peacefully within the framework of their competencies and supplementing each other¹⁶¹. **We find that the issue has no enough significance and perspective to be initiated through upcoming reforms.**

Respondents also suggested clarifying the role of the Constitutional Court in the formation of the legal system. They think that decisions issued by the Constitutional Court which assume legislative changes, are sometimes not implemented in the National Assembly and there is need for development of a mechanism to limit that. Constitutional court has itself referred to the issue of not

¹⁶⁰ *Galstyan against Armenia, N26986/03, 15/11/2007, § 62*

¹⁶¹ The sphere of libel and defamation is one of the outstanding examples when CC issued a decision SDO-997 on November 11 2010 which explained Constitutional and legal content of the article 1087.1 of the Civil Code and several months later the Court of Cassation adopted two important precedent decisions (EKD/2294 and AVD/0179 as of 27.04.2012 on civil cases) which defined guidelines for practical meaning of implementation of the above mentioned articles for courts which, in practice, are being implemented by courts in mandatory manner.

implementing its decisions through two decisions and annual report¹⁶². We find that not fulfilling Constitutional Court's decisions is conditioned with the lack of political will and not system gaps.

The Concept approach that **it's necessary to move from tri-lateral court system to bi-lateral one through merging competencies of the Court of Appeal and Cassation** was considered timeless and meaningless by almost all respondents. According to them it's better to improve not functioning tiers and ensure independence of judges than just remove them. *"There is no difference whether it's bilateral or trilateral system; it's more important to make them function properly"*¹⁶³. While almost all respondents were against replacing the current system with bilateral one there were respondents that are in favor of creation of local courts. *"If we have local courts they will conduct preliminary content hearings on acceptability of proves...it's important that here we have separate courts which discusses the acceptability of proves and as a result unacceptable issues will never appear at judge investigating the case"*¹⁶⁴, *"We should pass to a trilateral system which has supreme, provincial and local courts"*¹⁶⁵. **To the extend it covers human rights, moving from trilateral system to bilateral doesn't create any issues if the opportunity of full hearing of the case at the first instance and opportunity and the right to dispute the case at least for once is ensured. In this context transformation to bilateral system will effectively cut resources and time for court hearing.**

As for **the concept approach on introduction of the institute of juries**, the idea was mostly rejected by interviewed experts. The majority of them thinks that taking into account current Armenian legal and political culture, level of legal conscience of population, decisive role of the social capital, traditions etc introduction of the institute of juries is too early. Another opinion was voiced that it's an old idea as they were used when there were no specialized judges and the justice was being implemented by Church and thus the institute of juries (members of the society) was the only way to issue a right verdict. From this perspective, the introduction of the institute is meaningless as currently Armenia has very skilled specialists. Meaningless of introduction of the institute of juries is irrelevant because of the following reasons: a) it's a time consuming process of work in relation to juries, b) not cost-effective, c) decision are usually made at not professional level etc.

In regard to the introduction of the institute of juries only 3 respondents (experts in Constitutional science, members of the committee) favored the idea and stated that in spite of counterarguments it can be utilized in case of serious crimes. That can solve the cost efficiency issue, as annually there are not more than 30 cases. To summarize opinions of respondents it's worth mentioning that those

¹⁶² See decision SDO-1114 (on not implementing of CC decisions by the Court of Cassation) and 2013 Annual Report which states that the practice of implementation of CC decisions proves that this regulation continues being not fulfilled and everything is left at discretionary approach of the Government and separate MPs.

¹⁶³ From speech by professor

¹⁶⁴ From speech by expert in Constitutional science

¹⁶⁵ From speech by MP

experts who were against the institute of juries outlined essential spheres which need focus and solution of issues through the institute of juries. The outline spheres are following:

- Nature of cases which need application of the institute of juries (particularly for serious and very serious cases),
- Basis and regulations of selection of juries (how and where they should be selected from(place of residence, age, education etc)),
- What issues should juries solve (the issue of guilt and/or the size of penalty),
- The role of the judge in the court hearing (judge only as arbiter, judge should accept the decision made, judge's instructions to juries etc).

We also find that along with its all gaps the institute of juries can be applied for only limited case in RA when the case relates to serious crime investigation and touches vital interests of the society, for instance, organized crime, terrorism, drug circulation etc.

Thus opinions on the need to change the Judiciary system are not definite. Although all experts pointed out the lack of independence of the Judiciary system as the main gap only a part of citizens thinks that way and the majority thinks that courts make fair decisions. In addition to that, almost all respondents agree that the Judiciary system can't sufficiently counterbalance other branches of power which is conditioned not with shortcomings of the Judiciary system but with the lack of political will and political monopoly.

The Justice Council appeared in a particular focus. Many experts see in this body the potential to guarantee independence of the Judiciary system with a condition that regulations and range of power of this body should be revised. Different models of JC formation were suggested including models that corresponds to the Parliamentary Governance system.

The majority of respondents had negative position on the concept suggestion to move to bilateral Judiciary system stating that there is no objective need for that. General opinions on the institute of juries were mostly negative as well.

Constitutional guarantees of referendum

During expert interviews all respondents had a positive view **on the need for definition of Constitutional guarantees for the process of referendum**. Thinking that the concept beautifully presents the need for referendum, respondents at the same time emphasize that the concept doesn't provide clarifications on referendum and it has no clear mechanisms. According to respondents referendum is one of the most democratic important tools which is applied in Armenia very rarely. *"Referendum as a mean for implementation of people's direct government had rare application and*

*was applied only for Constitutional reforms, but never for adopting laws which people would like to adopt themselves and make it a tool for implementation*¹⁶⁶, *“...referendum is the mean for direct implementation of democracy which is not implemented in our country as it should be; its development will promote general democracy and population’s activism”*¹⁶⁷. Therefore it was suggested to make this tool comprehensive for direct implementation of democracy. While emphasizing importance of the need to develop the institute of referendum, some experts, however, think find that first of all it’s necessary to improve public trust in such events and develop mechanism to make the organization and implementation of such processes transparent. According to them referendum doesn’t differ from elections as the voting process goes in the same way and electoral commissions and control mechanisms are same. Therefore it’s suggested to improve mechanisms of electoral processes, ensure independence of the Central Electoral Commissions from the power and increase the level of trust and accuracy of electoral processes which will increase the public trust in these processes. For the development of the institute of referendum people should feel the ownership. The latter is an important pre-condition for the development of the institute of referendum as survey among the population shows general indifference or neglecting approach of the population in solution of any issue themselves. Although the need of referendum is realized and 52.5% of respondents agree that it is important for solution of the most important issues of the population, however, 46.3% find it as meaningless expenditure for the budget. People, who have neglecting approach towards referendum which makes up 50% of respondents, find that it’s meaningless thing and the position of population is not taken into account and everything is decided in advance. 24% consider participation in referendum as obligation and 21% accept it as a form of participation in state governance. 5% of respondents find it meaningless work as the population can’t make decisions on important issues. Thus it appears that the majority of respondents (52.5%) realizes the importance of referendum but 55% finds it meaningless to participate in it as they don’t think that their votes will make a decision¹⁶⁸. This proves that we have an issue of overcoming the shortage of trust in results of referendum. According to experts conducting referendum as a democratic tool needs insurance of specific mechanism. Respondents supported following mechanisms:

- Provide public with the right to come up with the initiative for referendum through collecting signatures and/or public hearings and in such case, it’s necessary to define the optimal quantity of signatures and some percentage of survey results.
- Clarify the range of issues within the framework of which the public can come up with the initiative of referendum and cases when referendum is mandatory.

One of members of the Committee on Constitutional Reforms formulated the issue in the following way: *“...here we have an issue with developing the institute of referendum, defining the range of*

¹⁶⁶ From speech by MP

¹⁶⁷ From speech by member of the Committee on Constitutional Reforms

¹⁶⁸ See Section 2. Quantitative research results, Graphic 42

*issues in case of which referendum is mandatory and create opportunities for coming up with initiative for referendum...*¹⁶⁹ Thus it's necessary to clearly define grounds that make referendum obligatory and is not left at Government's discretion. Secondly, not only the power but also population should be provided with the opportunity to come up with initiative for referendum on certain laws or decisions as well as possible changes within them etc. When clarifying the range of issues the value of solutions to those issues is raised. Thus according to one of jurists *"when such issue is settled through referendum, for instance, membership to international organization, there can be no pressure on that country... Thus one person/President is very vulnerable, but public isn't"*¹⁷⁰.

When speaking about preferred range of issues for referendum, it's worth looking at results of the survey among population. 49.9% of respondents think that any issue should be put to referendum (moreover this is expressed for case when only 21% of respondents consider referendum as a form of participation in the Governance). 34.1% is in favor of referendum on issues of public interests and 13.9% - only on national security issues¹⁷¹.

According to interviewed experts if the civil society is the carrier of ideas and has high level of legal conscience it'll be possible to avoid many risks. In that case the best solution would be the institute of public survey which assumes study of public opinion and collection of signatures. Thus the referendum should include a series of planning activities and start with public survey followed by development of scenarios on issues to be put to referendum and their presentation to the public based campaign regulations so the population can make conscious choice when participating in referendum. According to other standpoint if the NA is, indeed, formed by the population, the population itself will push forwards the idea of that referendum and/or promote democratic initiatives.

Interviews allowed to identify expert approaches to the concept provision that **the development of the institute of referendum needs creation of Constitutional and legal pre-conditions for civil initiative to provide in-advance conclusion on an issue or draft law put by the National Assembly to referendum**. Referring to possible risks members of the Committee on Constitutional reforms stated that NA conclusion is necessary to avoid issues, which can threat the national security, as well as principles of democracy and laws and decisions. One of members of the Committee stated: *"It's necessary as the National Assembly is responsible for legislative actions and it could provoke creation of illegal tendencies and contradict democratic values and contain other risks...currently adoption of any legal act is adopted and guided based on conclusions, provision of opinions by the Government and other interested structures but that conclusion aims not at artificial limitation but protection of*

¹⁶⁹ From speech by member of the Committee on Constitutional Reforms

¹⁷⁰ From speech by member of the Chamber of Advocates

¹⁷¹ See Section 2. Quantitative research results, Graphic 43

*certain standards and values through other legal processes....such mechanisms are obligatory from the controlling perspective*¹⁷².

In regard to NA conclusion and related risks experts highlighted a concern that the idea of referendum can remain on the paper in case if the final decision on holding referendum is made by NA.

Indeed, the role of NA is risky as current legal regulations, particularly connected with local referendum, are first of conditioned with the position of the local self-government and if the local council is against the initiative of referendum it will fail. Although during the operation of the RA law on Local Referendum no local referendum was conducted, we think one of the reasons for that are imperfection of mechanism and LSG “heavy” role in this issue.

Putting aside the theoretical dispute on the availability or unavailability of the conclusion by NA on issues to be put to referendum, let’s refer to the question if the population is the initiating subject of referendum what issues would be put forward for referendum?¹⁷³ According to the survey among population, 53.3% of respondents think that any important community issue should be decided through referendum, 20.9% are in favor of referendum on the issue of change of the country borders and 17.4% - on the issue of the state sovereignty¹⁷⁴.

In difference to the expert opinion that public should be the owner, namely initiating subject of referendum, 4.8% think that citizens shouldn’t have the right to initiate referendum. This position can be conditioned with two circumstances, low level of legal conscience of the population, underestimating its role as well as neglecting approach as a result of previous experience.

As an implementation mechanism respondents suggested the following model: citizens initiate collection of signatures on specific issue and after having a specific number of signatures the issue is submitted to NA. NA provides either positive or negative feedback. In case of negative feedback when the collection of signatures is in process the NA conclusion can be revised and sometimes ignored. In that case it’s important to define threshold for number of signatures. Therefore experts offer studying international experience on what percentage of the population the number of signatures should make up. The percentage shouldn’t be very low in order not to become populism¹⁷⁵. Thus interviews with members of the Committee revealed that the NA conclusion shouldn’t have obligatory nature and it should be possible to skip it. In our view it’s necessary for the Constitution to clearly define what would be the legal status of NA conclusion, whether it will be a final decision or

¹⁷² From speech by member of the Committee on Constitutional reforms

¹⁷³ The survey didn’t distinguish between local and national referendum.

¹⁷⁴ See Section 2: Results of Quantitative survey, Graphic 44

¹⁷⁵ Expert opinions on percentage are quite different. There was a viewpoint that optimal percentage would be 25% as citizens not always actively participate in referendums. According to another opinion the optimal percentage is 75% as referendum may cover issues that are dangerous for the country.

it will be possible to change, in what cases conclusion can be changed etc. All stakeholders, interested individuals and members of the society should be informed about this.

In addition to that as an alternative mechanism, in case of availability of specific number of signatures on any issue which has been supported by the majority of NA factions, shall result in autonomic inclusion of that issue in NA agenda and NA positive conclusion won't be required.

According to one of interviewed experts application of information technologies can promote development of the institute of referendum. According to him we have all grounds to initiate e-democracy actions (ID cards, e-signatures, citizen access to internet etc).

Respondents also discussed what Constitutional and legal regulations effective functioning of the institute of public petition require. In this regard there was a suggestion to define specific regulation on reaction by state officials to petitions (response should be provided within a specific period of time, it should be clear and comprehensive etc).

Concept provisions on Constitutional and legal reforms in Local Self-Governance

During expert interviews **the concept approaches on issues related to the system of Local Self-Government** were discussed. All agreed that in this regard the concept is poor and doesn't fully reflect issues which exist in today's Armenian local self-government not only from the perspective of immediate democracy but also effective governance/management. The concept focuses more on some sensitive issues which are essential, but are not important for more radical and fundamental reforms under the current governance system. According to respondents the main issue of LSG is lack of management of funds and thus they find that LSG should have independence and the right to manage their resources and not depend on subsidies. According to head of one of human rights organizations, *"LSG are depending on the Government as the principle of subsidies is broken in Armenia...for instance, the land and property taxes are defined by the state through laws but according to the European Charter on Local Self-Governance (ratified by Armenia) community should be free in defining taxes and fees within the community"*¹⁷⁶. The dependency affects electoral processes, which, in its turn, influences on the general state of the community.

According to members of the Committee on Constitutional Reforms two important issues should be constitutionally defined for LSG. Those are: 1) establishment of self-governing inter-community unions as an alternative to community enlargement and 2) local self-government's alignment issue which will make changes within the principle of community subsidies. While emphasizing that

¹⁷⁶ From speech by head of human rights NGO

Concept doesn't contain comprehensively developed and justified solution mechanisms, almost all respondents had a positive opinion about both community enlargement and need for revision of subsidy mechanisms. *"There are small communities which, in fact don't have local self-government in place...they don't have neither financial nor human resources...it's almost meaningless to keep them...the suggestion is the enlargement"*¹⁷⁷. According to experts, enlargement should be done taking into account territorial and geographical position. As a result, it will be possible to support to the improvement of efficient use of resources and access to services. *"Large territorial units will have all services and following enlargement of several communities they will have a picture on common wealth"*¹⁷⁸. As a result it will become possible to reduce the tax burden of community members and spend the community budget within the community. According to one of experts on LSG issues it's necessary to define the principle of mandatory establishment of inter-community unions as the current Constitution defines voluntary basis.

Speaking about possible community enlargement it's worth looking at risks that can arise as a result of enlargement:

- Risk of disappearance of small communities
- Making power far and aliened from the population
- Inaccessibility of services
- Poor infrastructures – communication, transport, roads etc.

In addition to that, the current administrative and territorial division and LSG system is in the process of establishment and it's too early to state that this system has no potential for development. Maybe it'd be more relevant to develop this system instead.

Results of survey among the population on the preferred form of territorial division show that the current system (marz-community) is supported by 40.2% of respondents, 30.3% are in favor of provincial (rayon) divisions and for 29.4% the type of territorial and administrative division doesn't matter¹⁷⁹.

We think that such indifference is mostly conditioned with everyday economic and social issues of the community and villagers that seem insoluble. In that case it's difficult to convince that the new administrative and territorial structure will solve those issues.

To the question on **which defined guarantees can promote LSG independence** experts stated that there is no need for additional guarantees and the current Constitution simply needs minor changes. *"What we have there is already a guarantee and the rest is depending on the legislation on how that*

¹⁷⁷ From speech by expert on LSG issues

¹⁷⁸ From speech by MP

¹⁷⁹ See Section 2: Results of Quantitative Survey, Graphic 49

*independence is ensured...simply the Constitution can define in one sentence that LSG is guaranteed and is an independent body*¹⁸⁰. According to experts it's necessary to follow requirements of the European Charter on Local Self-Government ratified by Armenia. Implementation of those principles will solve issues existing in this sphere.

It's worth mentioning that the Charter defined also the right of citizens to participate in local self-government which is not ensured in Armenia. **Therefore, we share the expert opinion that the solution is not in Constitutional reforms but fulfilling international commitments and ensuring people's participation in the community government.** The population survey at the same time showed that 94.5% of respondents have never participated in local council sessions and only 5.5% have sometimes participated¹⁸¹. Moreover reasons for not participating community council sessions were different; 56.6% weren't interested, 23% weren't aware of council sessions, 19% have not participated because of unawareness of such a right and 1% had unsuccessful experience and wasn't allowed to participate¹⁸².

When speaking about **provisions on Local Self-Government system presented in the Concept** respondents stated that the concept lacks *provisions on two-tier governance system in marzes and Yerevan. "For instance, the current Constitution doesn't have clear definitions on local taxes...it should clearly identify rates of which local taxes are defined by LSG"*¹⁸³. In addition it's necessary to constitutionally define that central and local government structures should have equal relations.

Respondents also referred to issues on relations between community mayor and council. According to them, the fact that sessions of the community council as a local level legislator are facilitated by mayor (who has the right of advisory vote) weakens this representative body as in many cases the mayor dictates his/her will to the council.

The question on the dependence of the council on the community mayor was also asked to citizens and collected responses prove that there is no real independence of councils. 58.4% of respondents found that the council has no enough independence from the community mayor, 17.1% thought that it's independent and for 24.5% it was difficult to say¹⁸⁴.

According to experts, the solution to this issue will be possible in case of selection of another principle of election of mayor and council as a result of community enlargement. Respondents brought forward the idea that it's necessary to revise requirements for LSG representatives – mayor and council. According to them requirements for the election of community mayor shouldn't be the same as for MP, namely age, certain years of residence in that community, but they should focus on

¹⁸⁰ From speech by expert on LSG

¹⁸¹ See Section 2: Results of Quantitative Survey, Graphic 53

¹⁸² See Section 2: Results of Quantitative Survey, Graphic 54

¹⁸³ From speech by expert on LSG

¹⁸⁴ See Section 2: Results of Quantitative Survey, Graphic 52

experience, presented program, professionalism and education. In that case it's not important whether mayor is from that community or not but whether his/her program is good or bad. Thus the village mayor is not a person holding a position but a "manager" presented and won the program and should manage that program during his/her term of office. Village mayor's job should be management tasks. As for requirements for the member of community council the age requirement should be revised. According to respondents council member shouldn't be very young. He/she should have experience, know the community history and development trends and possess resources. Under such model the village mayor should be appointed by the provincial council (which selects one of submitted programs) and in case provinces mayor should be elected.

Population survey on formation LSG showed that the majority of respondents is in favor of having elected village mayors¹⁸⁵. 92.2% is in favor of elected village mayor and 7.2% - appointed mayor. 92.2% is in favor of having elected district mayors and 7.8% - appointed. In case of regional governors / marzpets the picture is a bit different with 14.6% favoring appointed governor vs 89.3% wanting elected one. To the question who/which structure should appoint mayor, 46.3% mentioned the National Assembly, 21.2% - Prime Minister and 28.4% - RA President.¹⁸⁶

To identify to what extent community members are aware of LSG they were asked whether they know their community council members. Only 16.3% knows all members, 32.8% knows part of them and 50.9% don't know anyone.¹⁸⁷

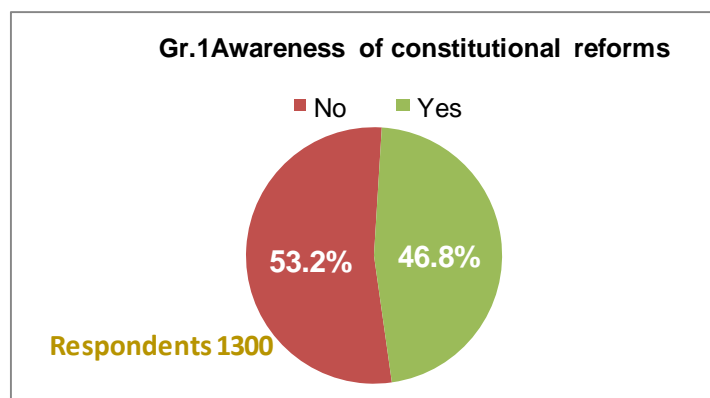
Section 2: Results of Quantitative Research

Need for Constitutional reforms

During quantitative interviews among population questions on the need for Constitutional reforms were raised.

Awareness on Constitutional reforms

First of all we tried to find out to what



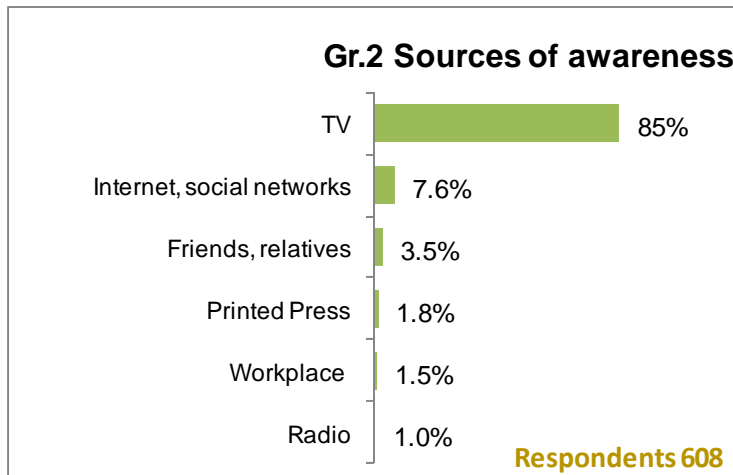
¹⁸⁵ See Section 2: Results of Quantitative Survey, Graphic 47

¹⁸⁶ See Section 2: Results of Quantitative Survey, Graphic 48

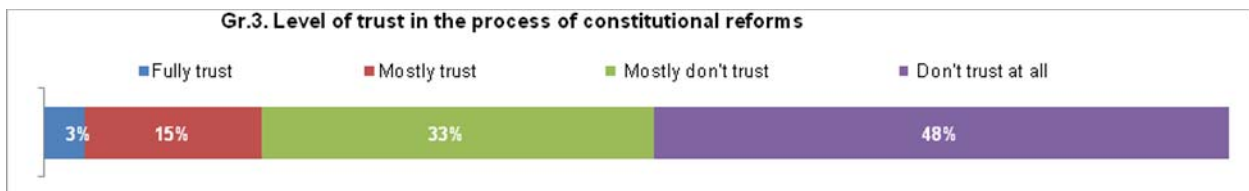
¹⁸⁷ See Section 2: Results of Quantitative Survey, Graphic 51

extent the population is aware of the initiative of Constitutional reforms. Results are presented in Graphics 1.

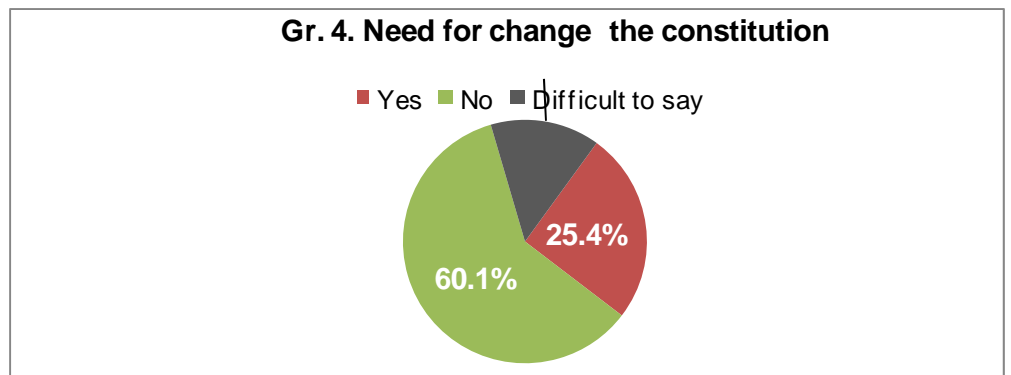
608 respondents answered to the question where they got information on the initiative on Constitutional reforms from.



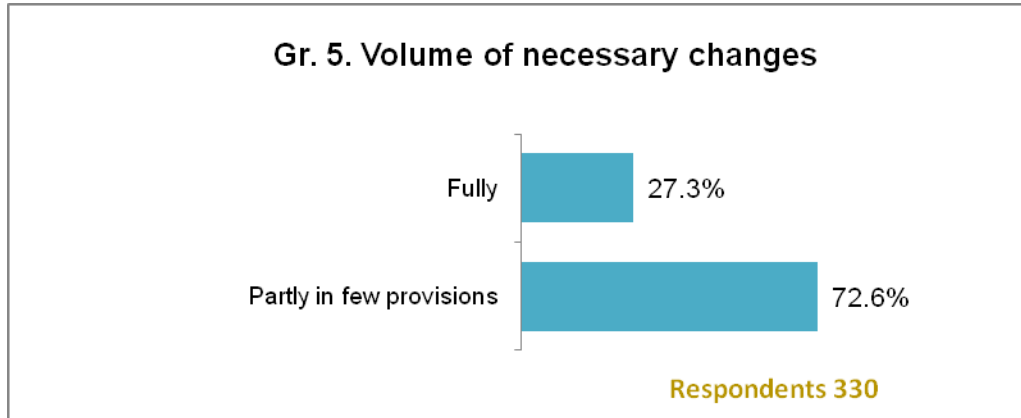
To the question as to what extent they trust in Constitutional reforms initiated by authorities responses were distributed in the following way:



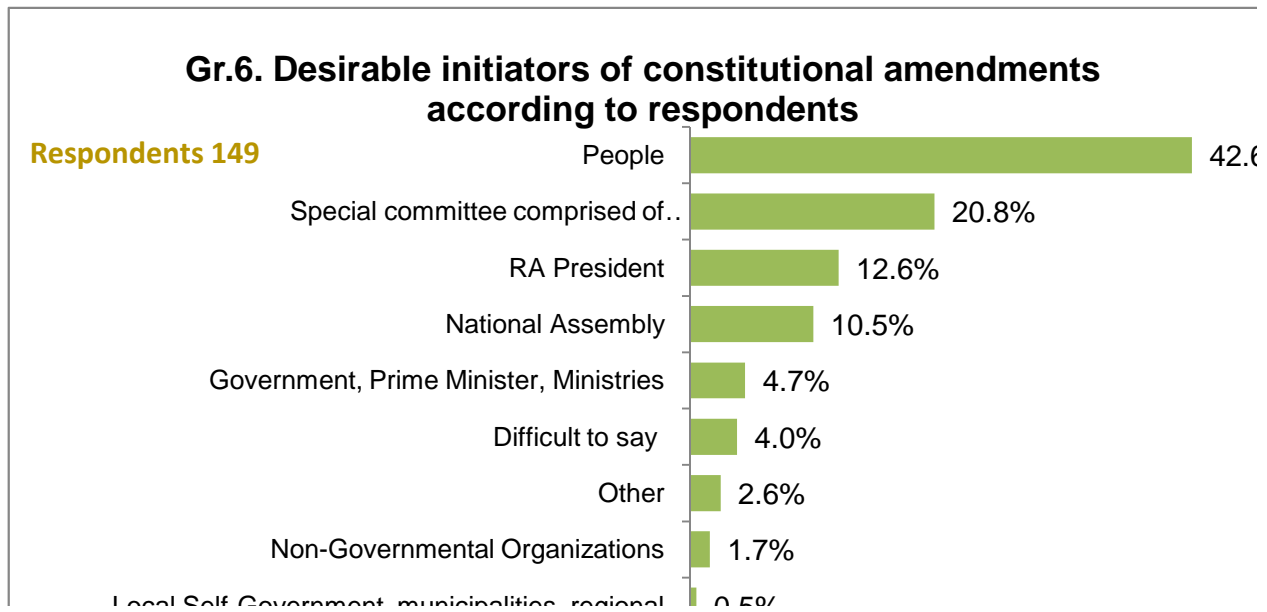
Then respondents answered to the question whether there is a need to change the current Constitution according to them.



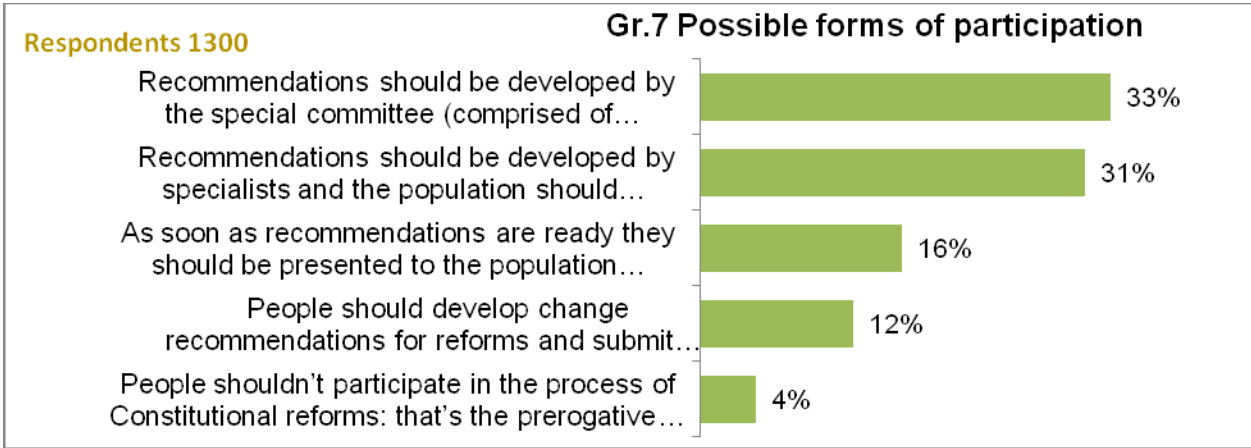
781 respondents, who stated that there is a need, mentioned to what extent those changes should be. Responses are presented in the Graphic 5.



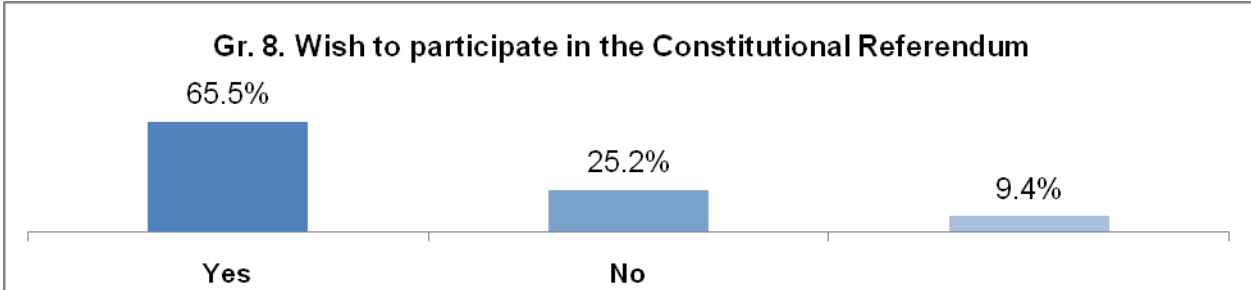
Respondents were asked who, in their view, who should initiate (start) Constitutional reforms.



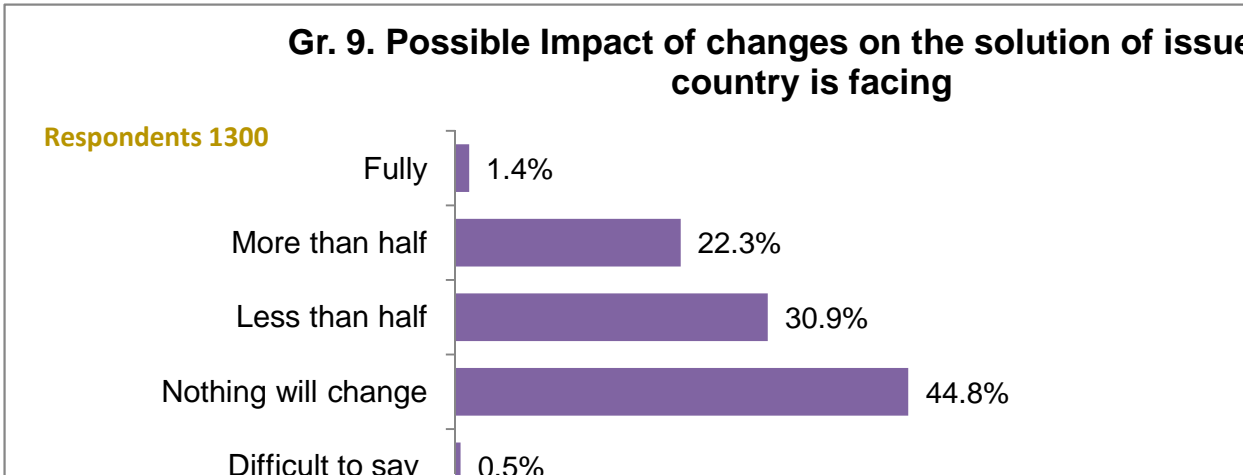
To the question how the population (NGOs and active groups) should participate in the process of Constitutional reforms respondents gave the following answers:



Afterwards we found out whether respondents would like to participate in Constitutional referendum.

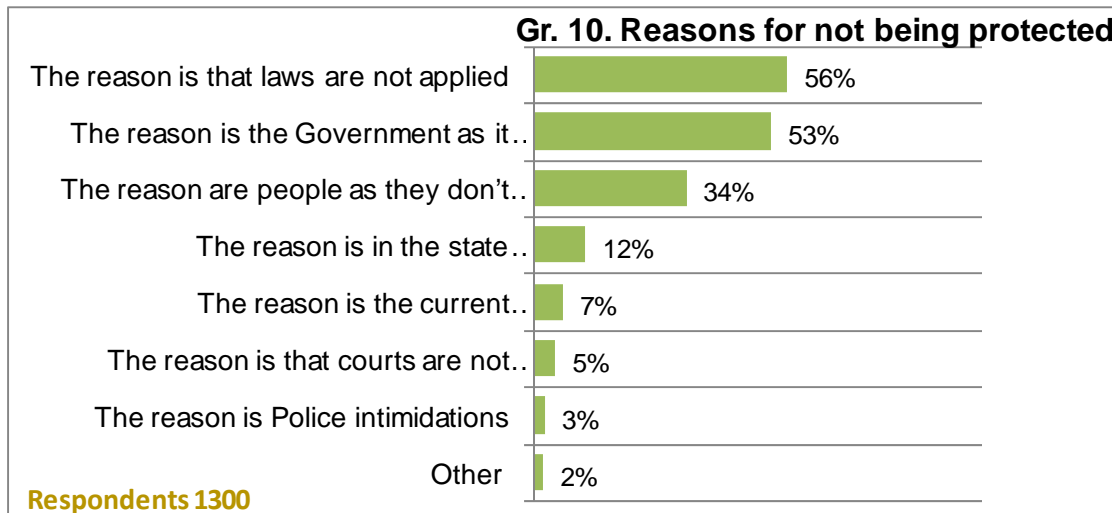


To the question as to what extent will the challenges the country is facing be solved if the RA Constitution changes the answers of respondents were the following:

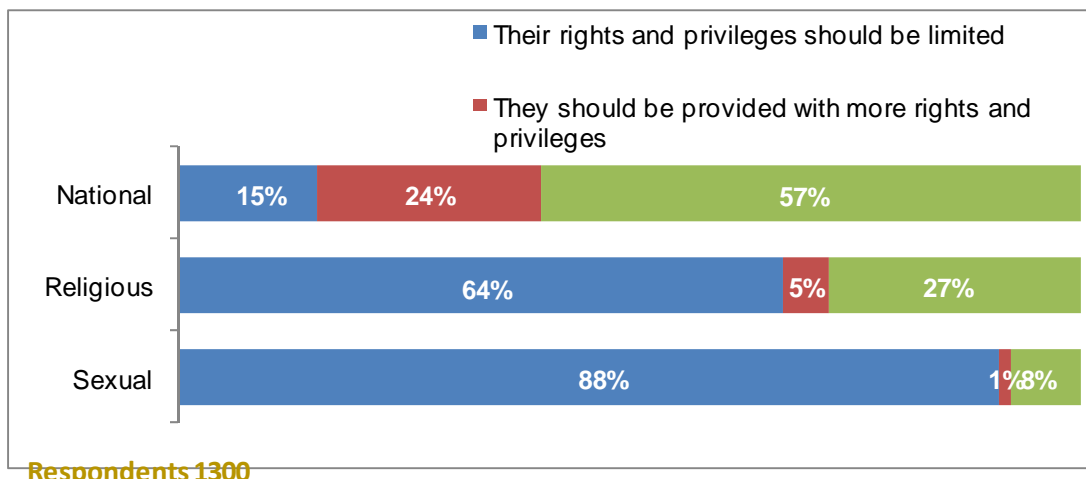


Human Rights

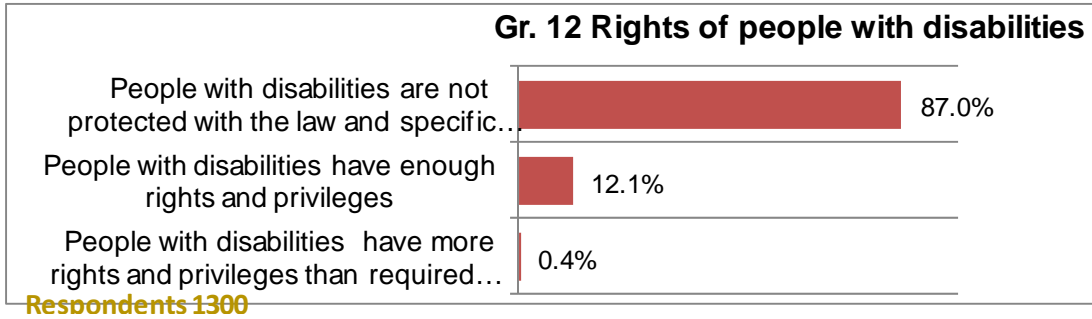
During interviews respondents answered a number of questions on human rights issues. To the question as what are the reasons that human rights are not protected in our country respondents answered in the following way (each respondent has the opportunity to choose up to 3 options):



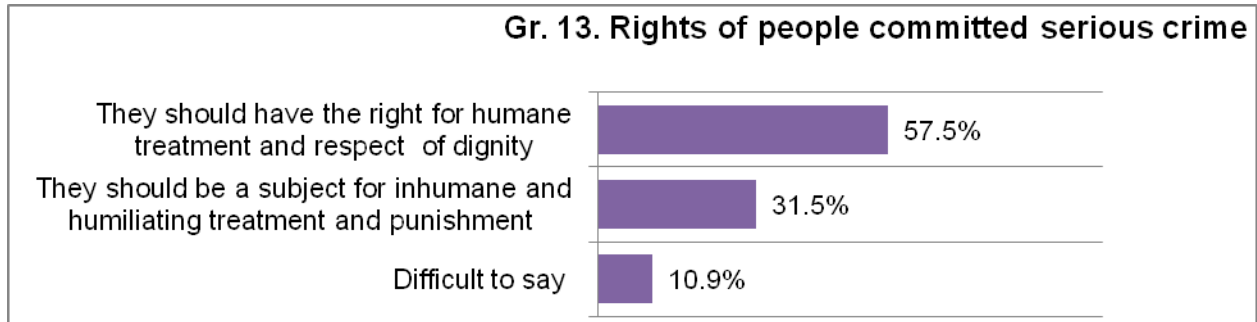
A question on protection and advantages of rights of national, religious and sexual minorities was asked to respondents. Answers are presented in the Graphic 11.



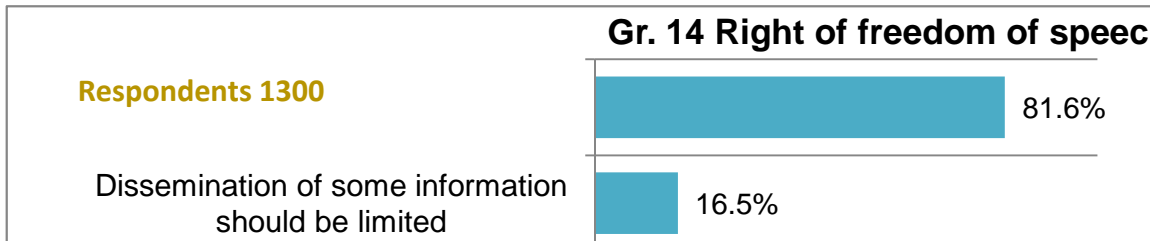
The attitude of respondents towards rights of people with disabilities is the following:



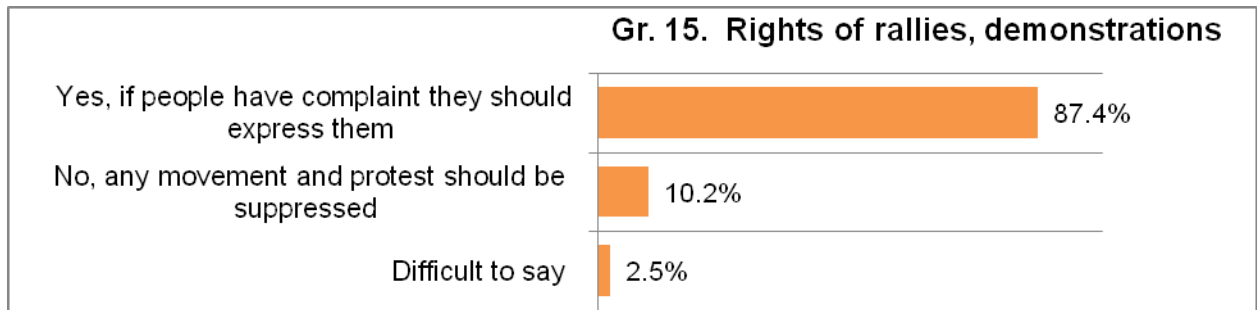
Respondents have the following attitude towards people who committed serious crime:



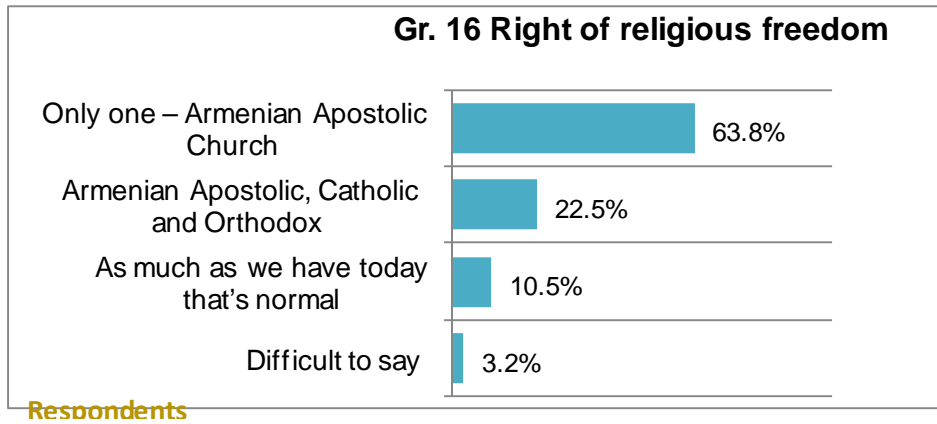
Opinions of respondents on the freedom of speech are the following:



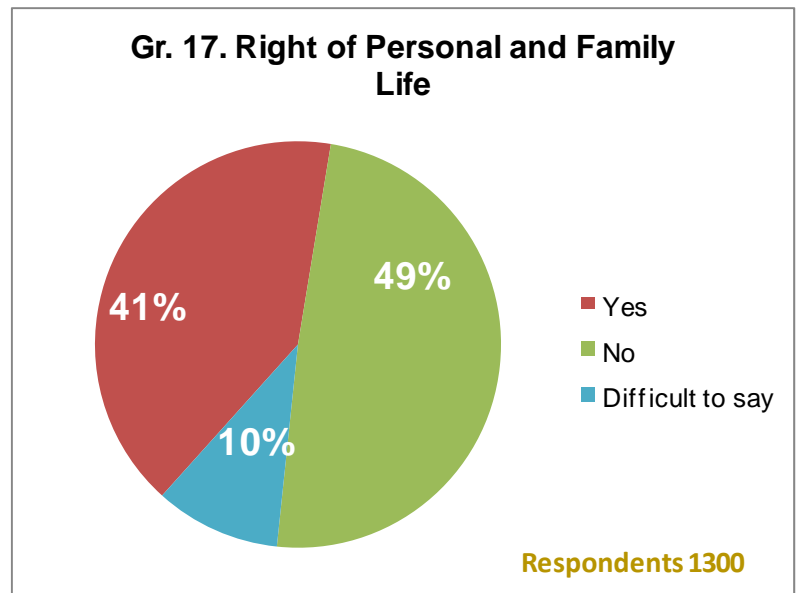
To the question “If you were the head of the country would you allow rallies, demonstrations etc in the country?” respondents provided the following answers:



The next question to respondents was “What do you think, how many religious organizations should exist in Armenia?”

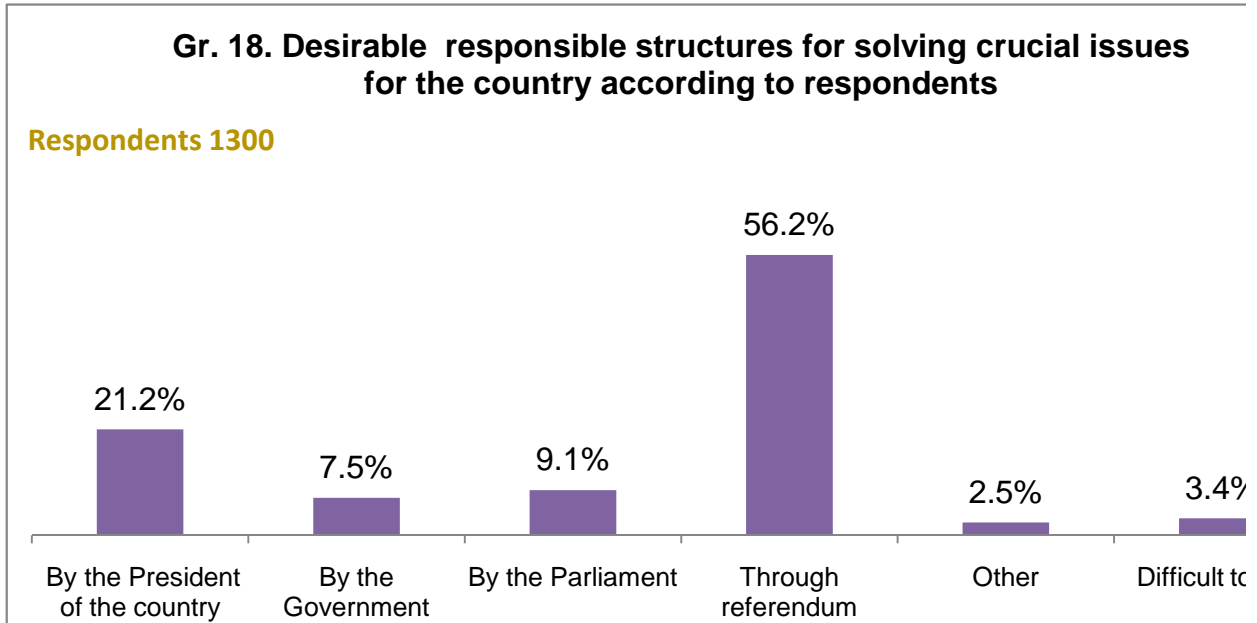


According to the results of interviews 49% found that personal and family right is not respected in Armenia.

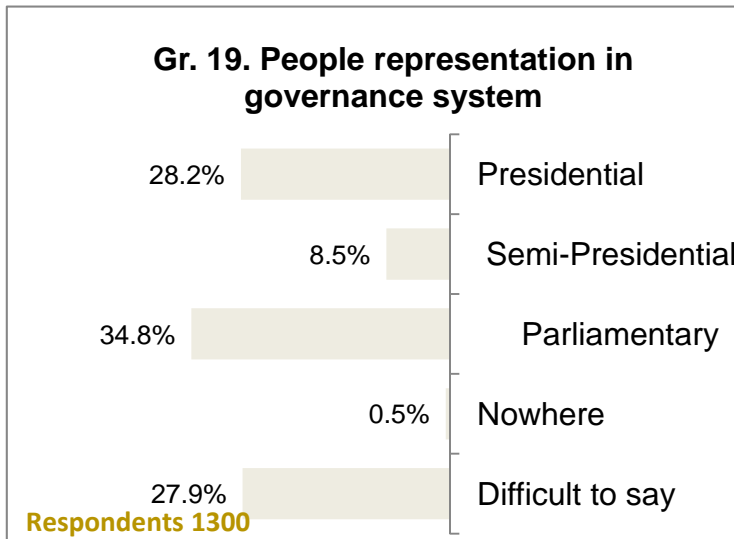


Governance System

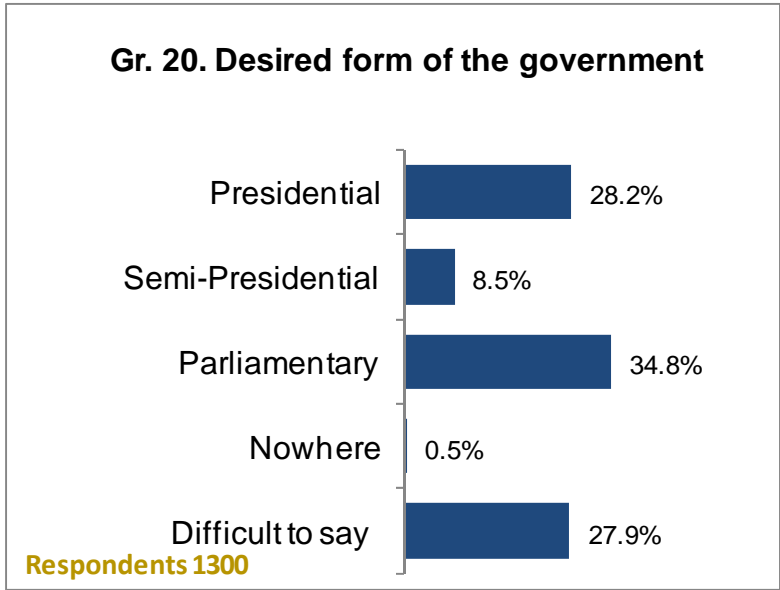
From questions related to the Governance system respondents answered to the following question; “Would you wish vital national issues (e.g. Armenia’s membership to the Customs Union or European Union) to be decided by...?”



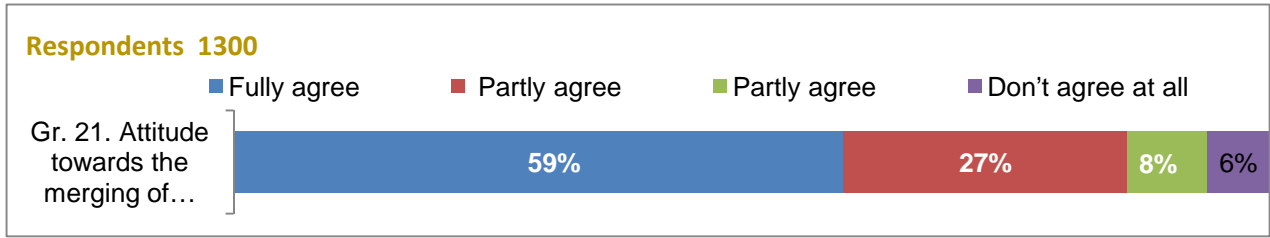
According to respondents, population is better represented in the Parliamentary Governance system (34.8%) than in the Presidential system – 28.2%. It is interesting that 27.9% of respondents couldn't reply to this question.



To the question, which the desirable country governance system is, respondents provided the following answers:

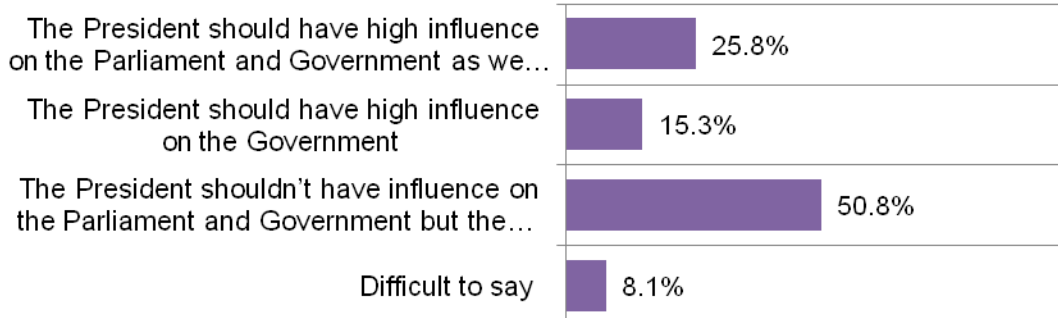


Answers to the question “Do you agree that currently Presidential, Parliamentary and Government institutions are merged (political monopoly)?” are the following:



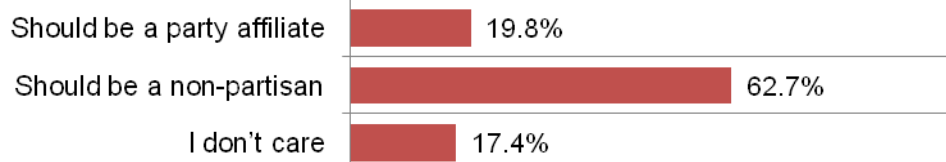
To the question how respondents would like to see relations between the President, Parliament and Government, respondents answered:

Gr. 22. Desirable correlation of government circles according to respondents



Respondents answered also to the following question: “What do you think, should the President be a member of a party or non-partisan?”

Gr. 23. President's Political orientation

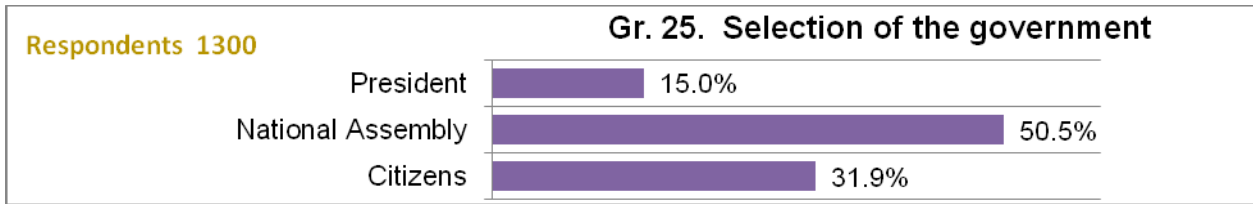


As for who should elect the President of the Republic opinions of respondents were the following:

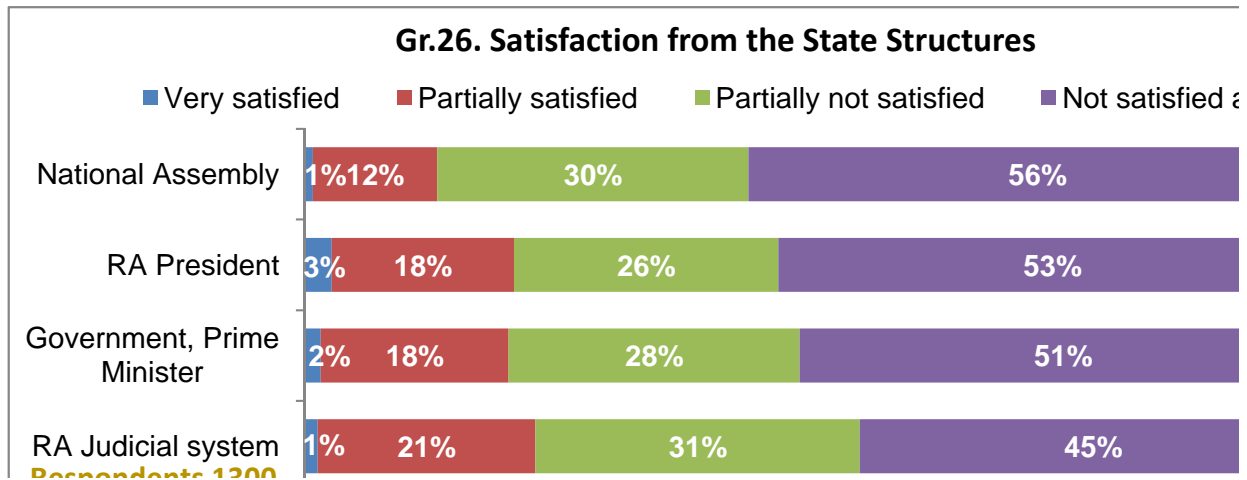
Gr. 24. Right to elect the president



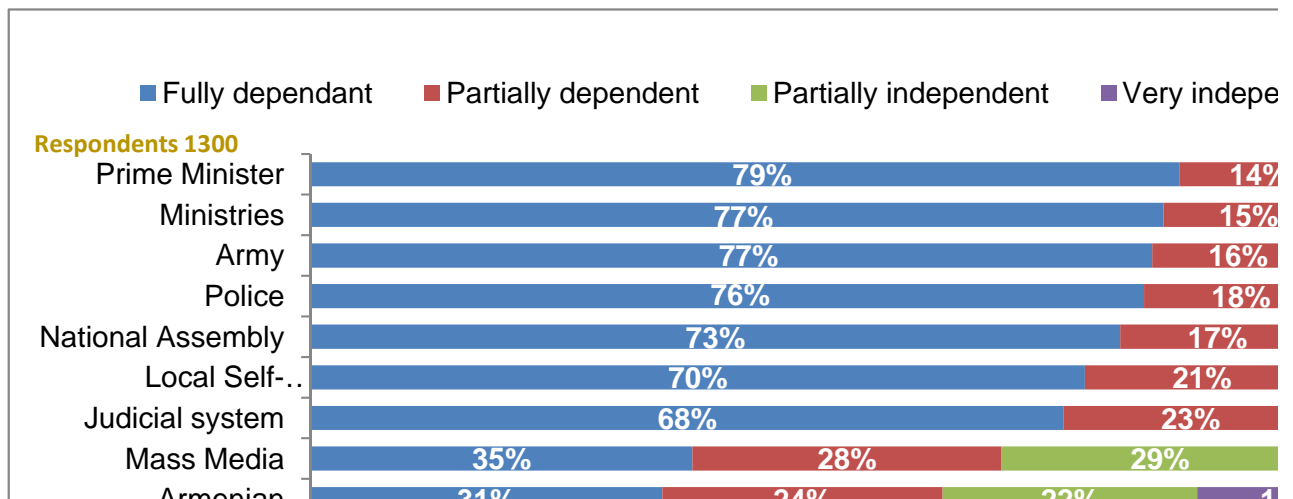
To the question who should appoint Prime Minister and form Government respondents answered:



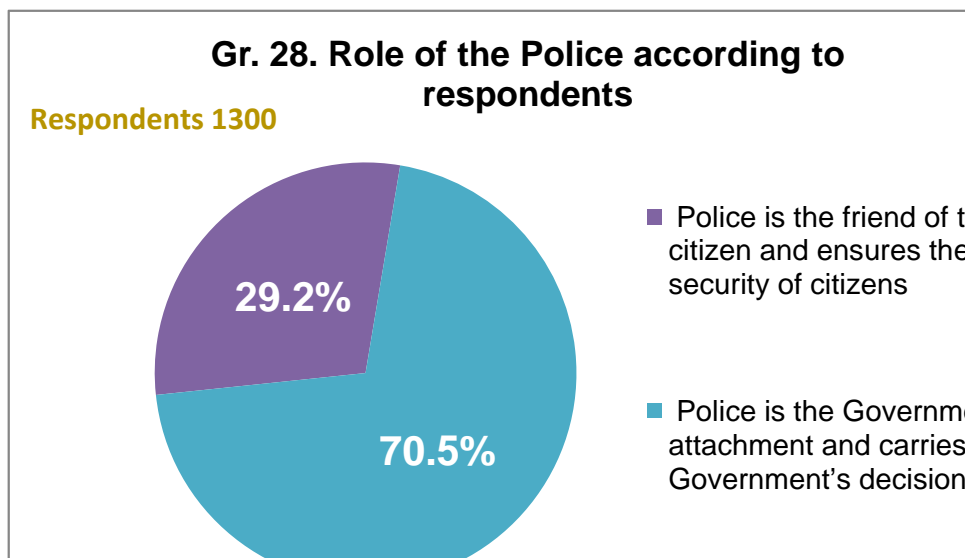
During interviews we tried to find out to what extent respondents are satisfied with the work of state structures. Answers were following:



To the question how dependant the following structures are from the President, answers of respondents were the following:

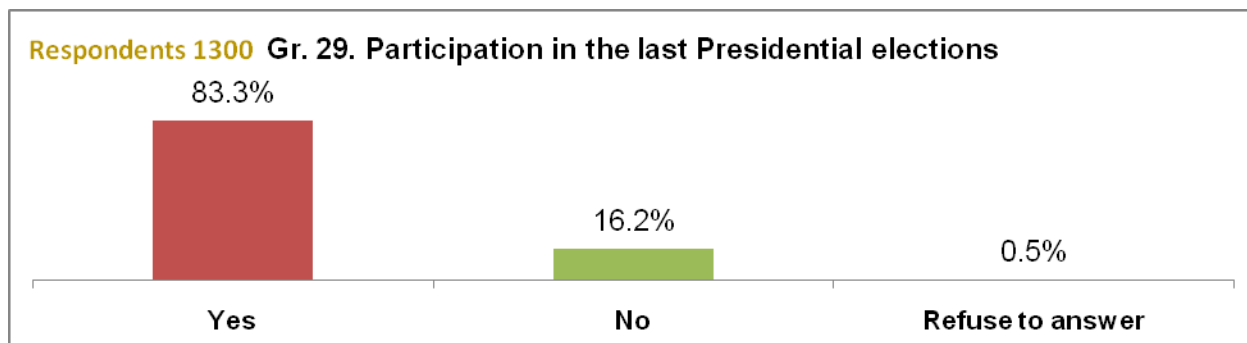


Respondents' opinions on the role of police officers were the following:

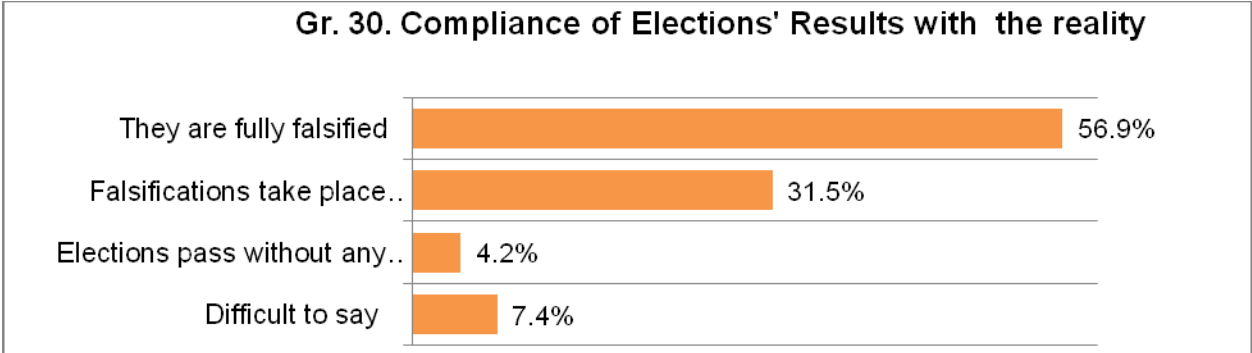


Electoral Right and Electoral Systems

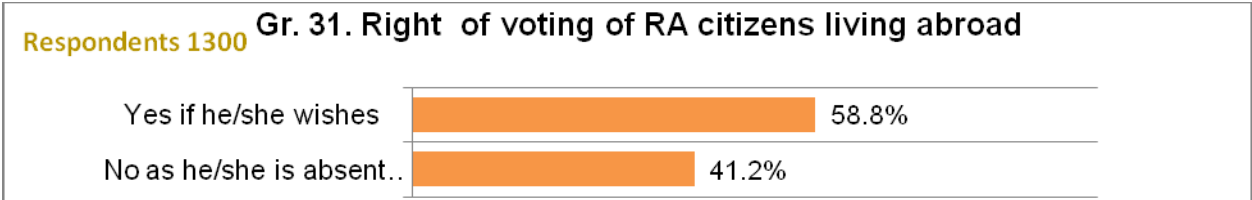
To the question whether respondents participated in the last Presidential elections the following responses were received:



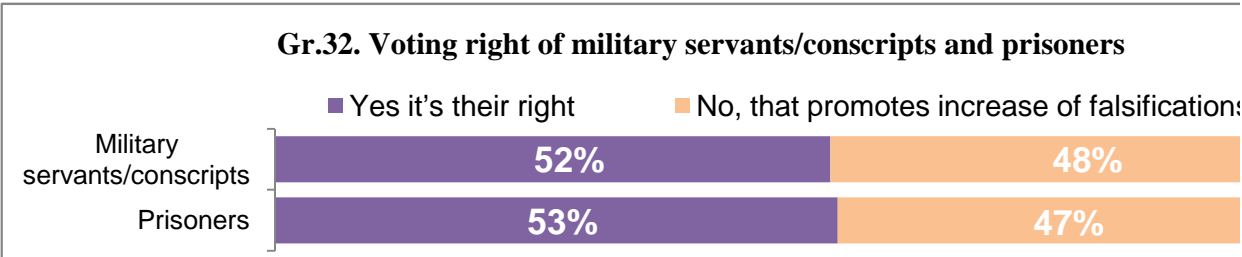
Answers to the question to what extent results of elections in Armenia correspond to the reality are the following:



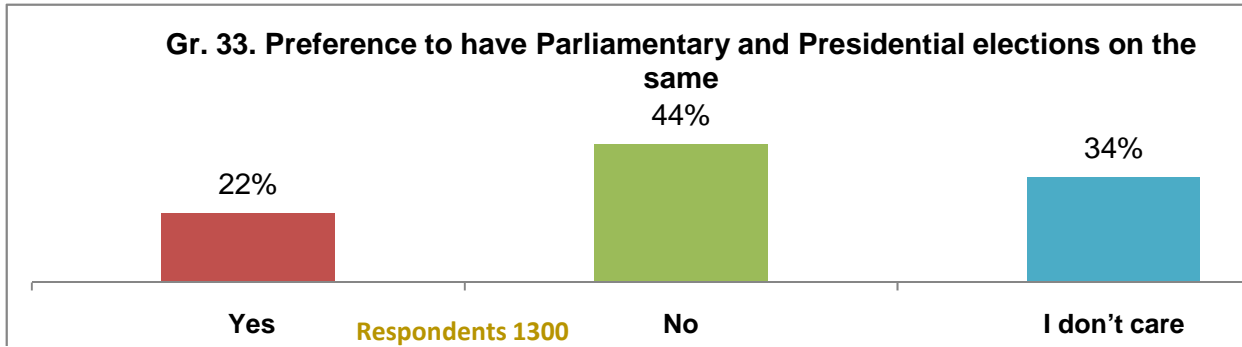
During the survey, the following question was asked: “Can (should) RA citizens living/staying abroad participate in elections taking place in Armenia?” The Answers were:



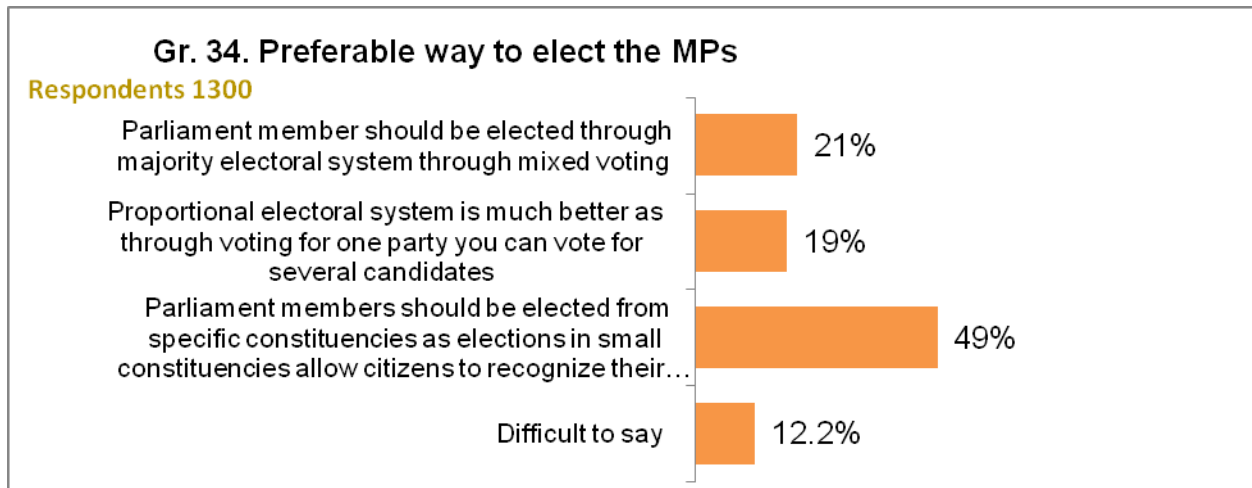
To the question whether military servants or convicts should participate in elections, respondents provided following answers:



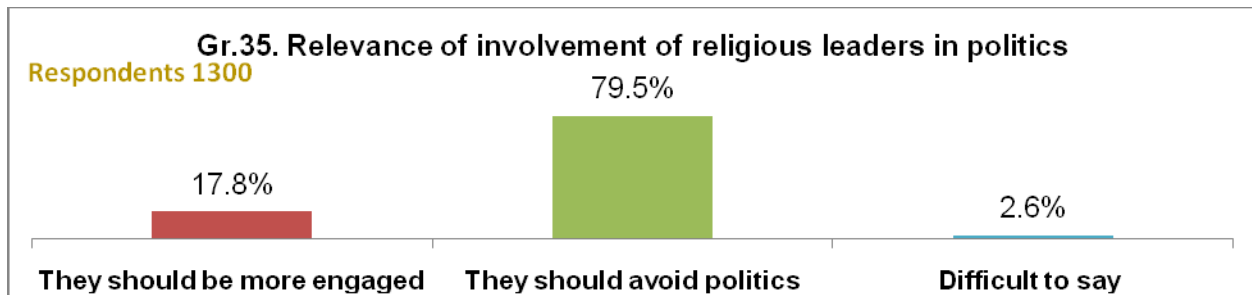
Respondents were asked: “Would you like NA and Presidential elections to take place on the same day?” Answers are following:



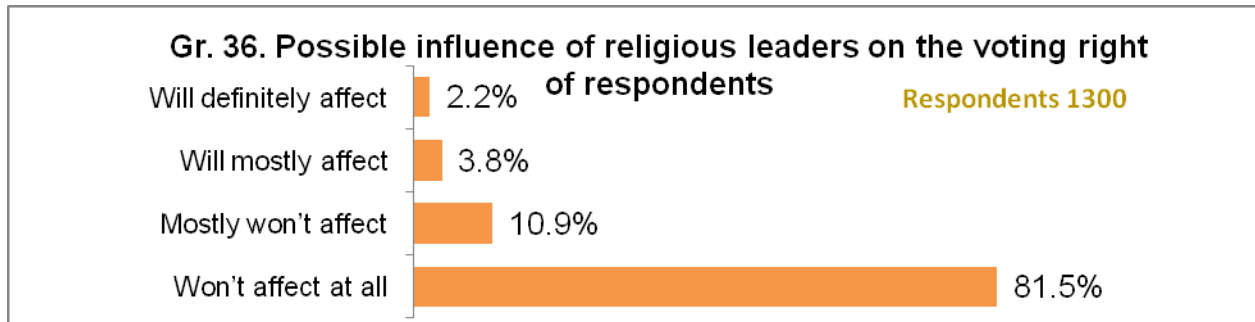
To the question how NA members should be elected; through majority or proportional system, respondents' replies were the following:



During the survey, we tried to find out the role of religious leaders in political, particularly electoral processes. The following question was asked: "There is a viewpoint that religious leaders should be more involved in politics while others think that they should avoid interfering with secular activities and focus on religious and moral issues. Which one is more acceptable for you?" Respondents answered:

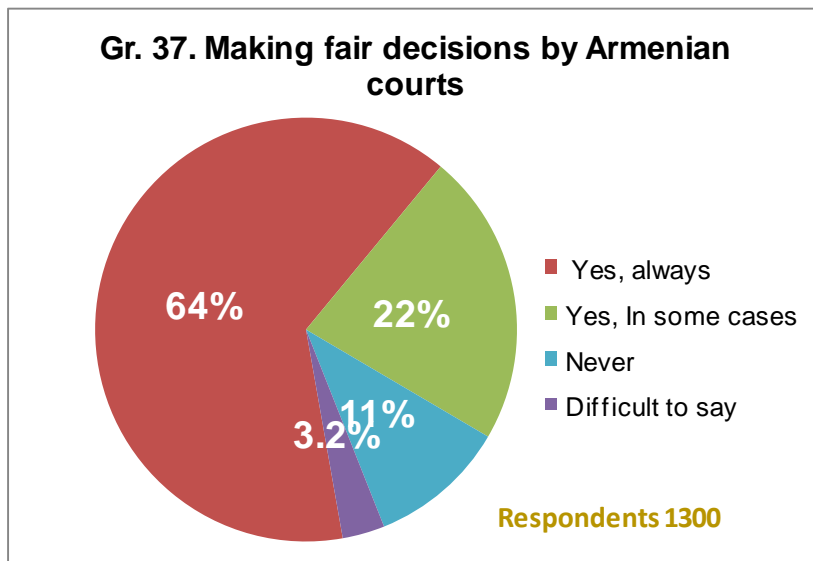


Answers to the question to what extent advice of community religious leader can affect the decision of citizen on supporting any political party or candidate were the following:

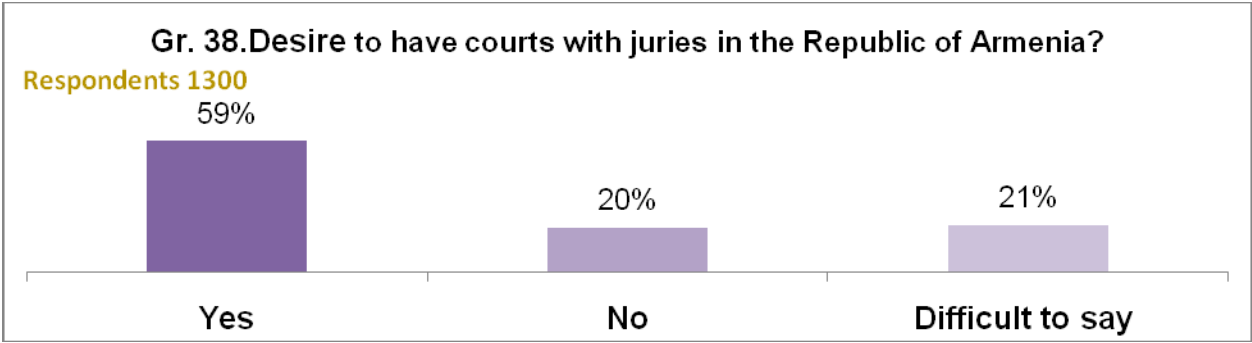


Judiciary System

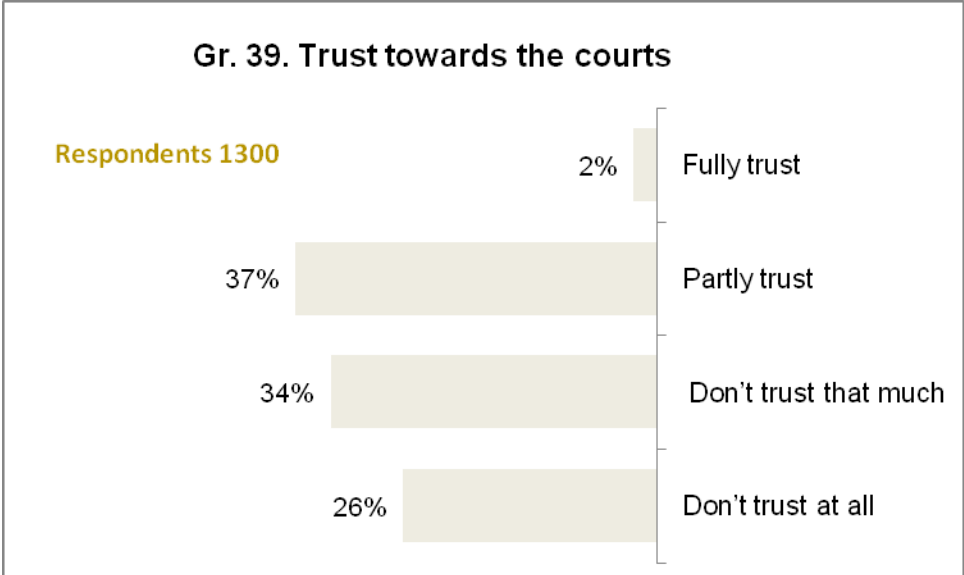
As for the Judiciary system, respondents answered a series of question. Particularly to the question on the justice of the Judiciary System (In your view do courts make fair verdicts in Armenia?) answers are the following:



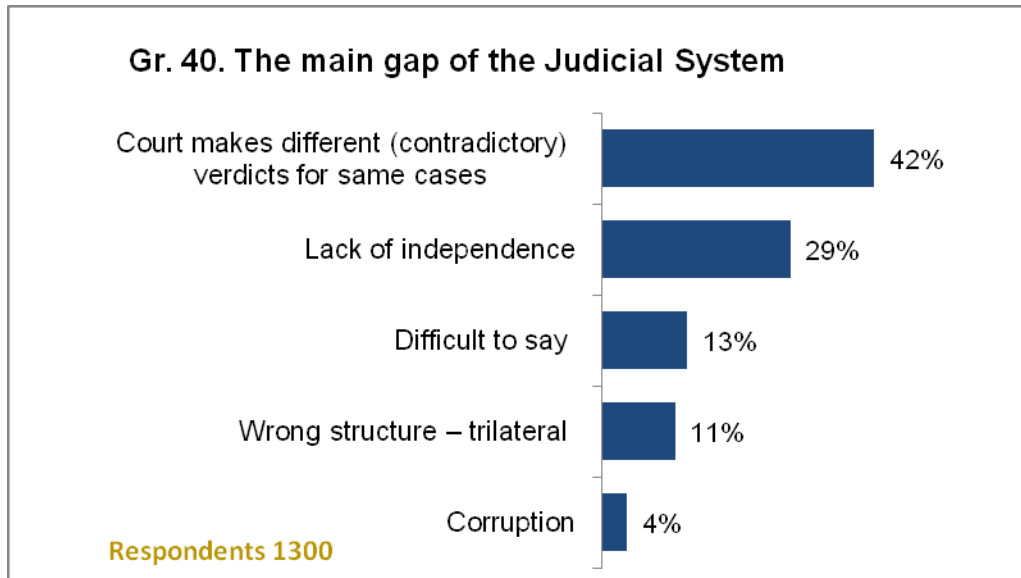
To the question whether respondents would like to have an institute of jurists in Armenian, answers were the following:



The picture on o what extent respondents trust in courts was the following:

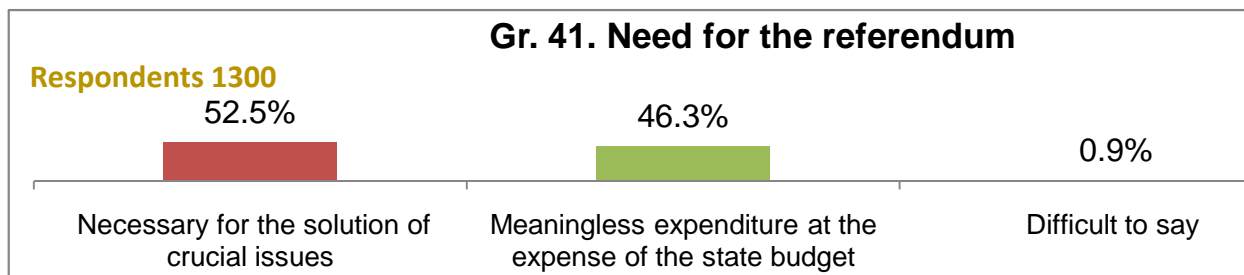


Opinions of respondents on gaps of the Judiciary system are the following:

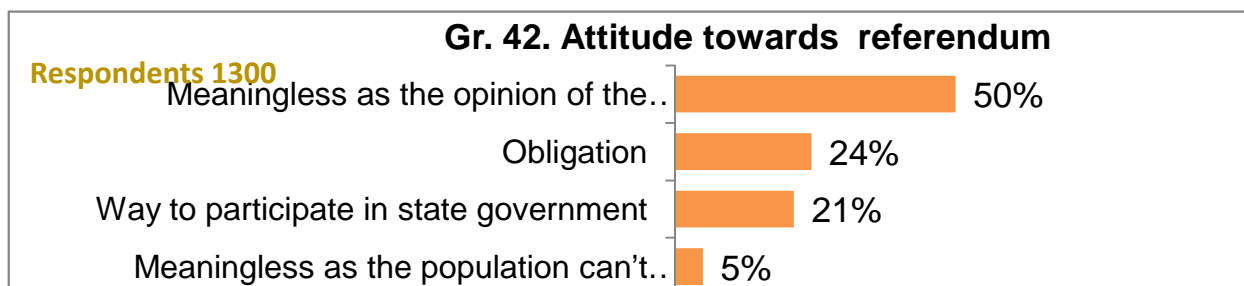


Constitutional Guarantees of Referendum

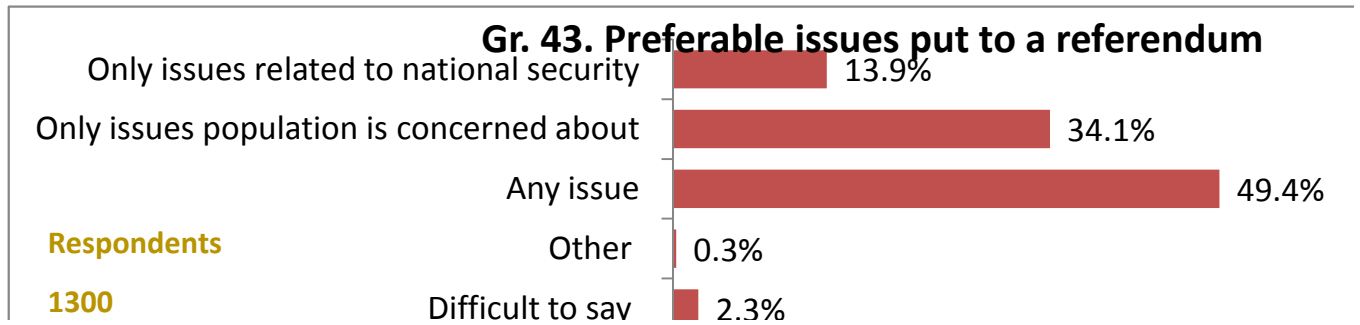
The next group of questions relates to referendum. According to respondents referendum is:



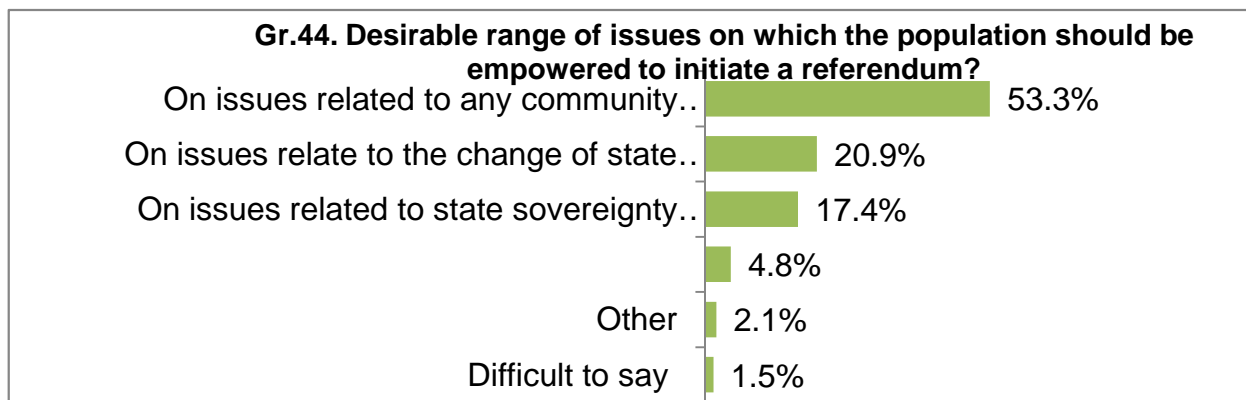
Respondents considered participation in referendum...



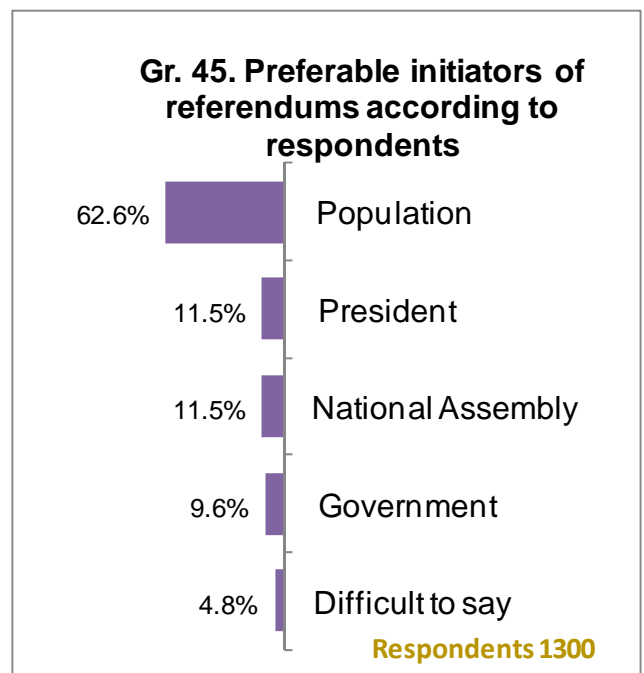
To the question what issues should be put to referendum respondents answered:



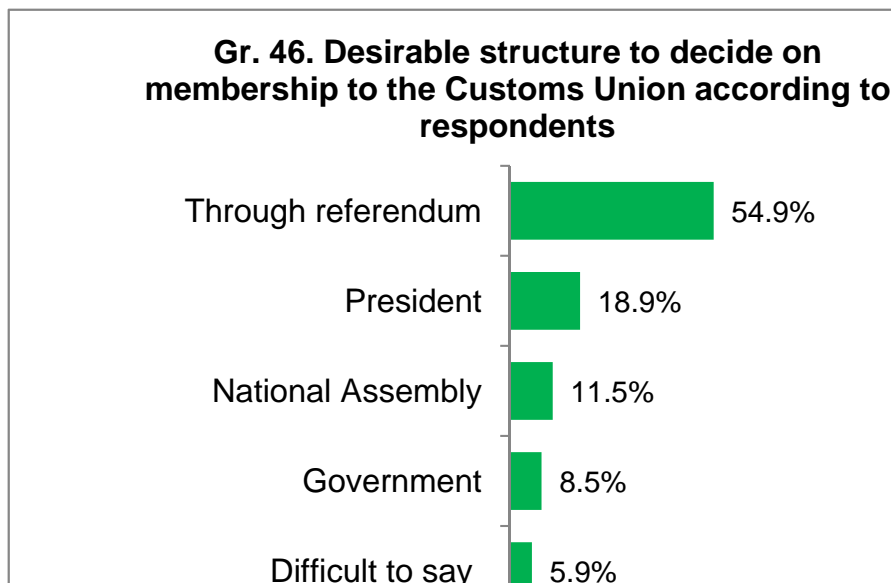
To the question as on what issues the population should have the right to initiate referendum: respondents answered in the following way



The opinion of respondents on preferred initiators of referendums is the following:

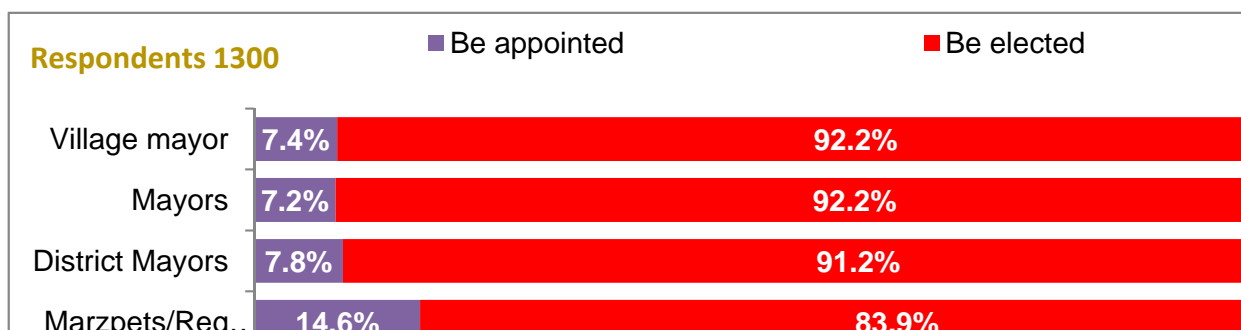


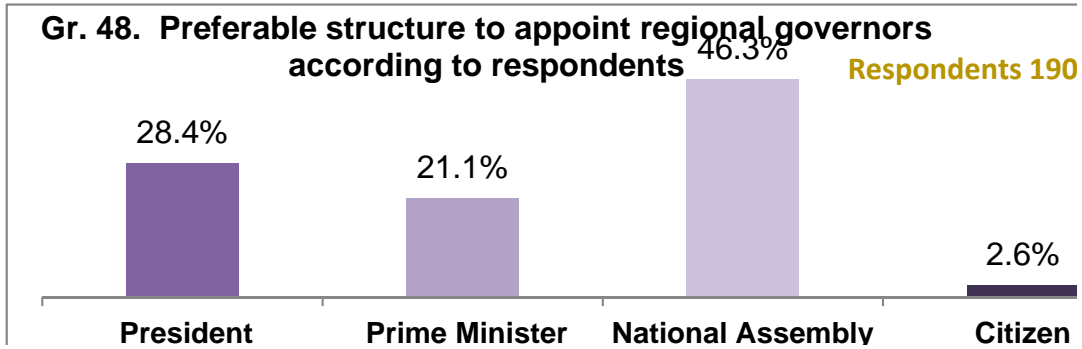
Respondents answered to the following question: “According to you should the issue of membership to the Customs Union be decided by the President, Government, National Assembly or through referendum?” Answers are the following:



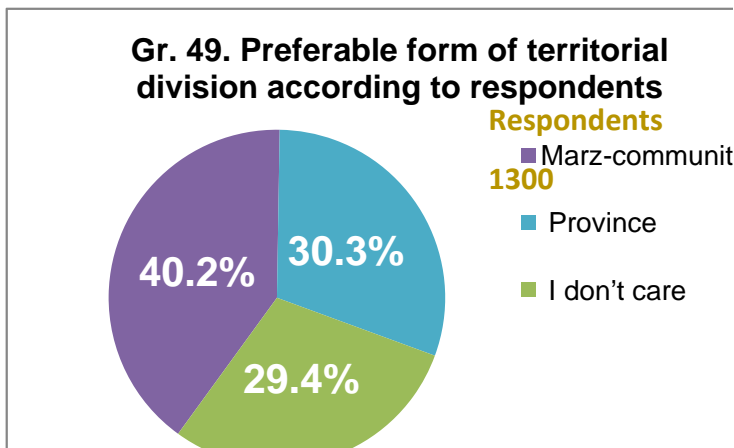
Local Self-Government

Respondents answered to the question as how village mayors, city mayors, district mayors and governors should be elected / appointed. Then respondents who think that regional governor should be appointed answered to the question who should appoint regional governors. The picture is the following:

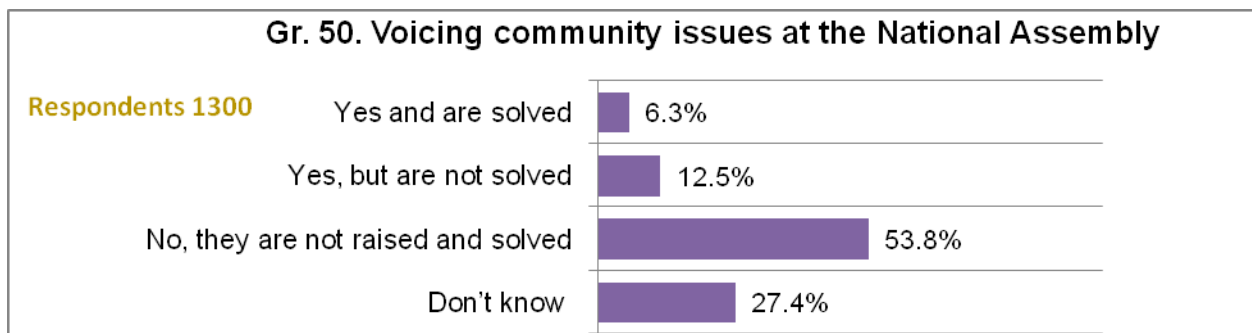




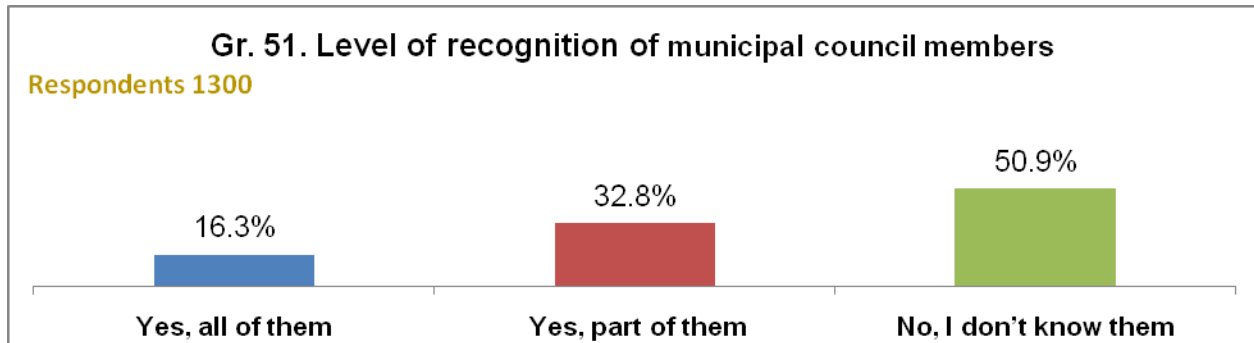
To the question what form of territorial division respondents support following answers were following:



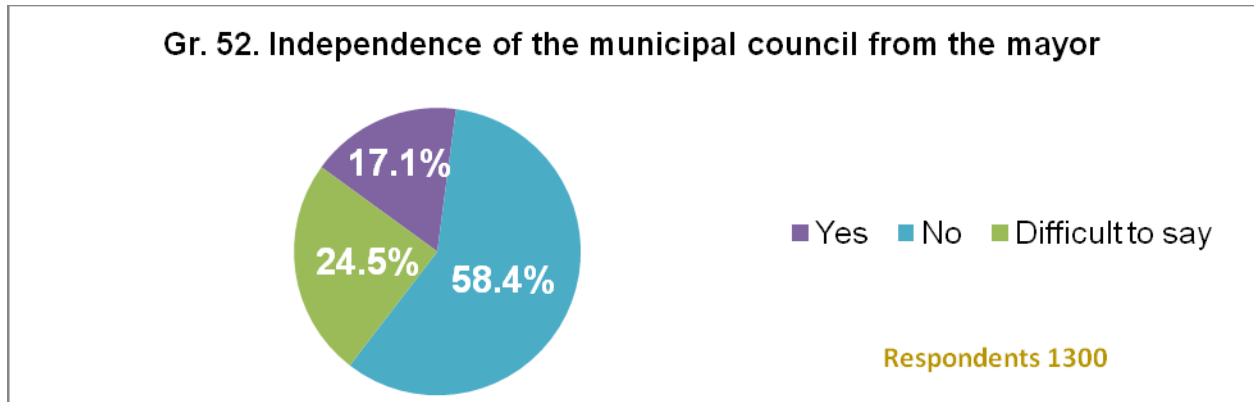
During the survey respondents answered to the following question: “Does MP elected from your community voice issues of your community issues in NA?” The answers are presented below:



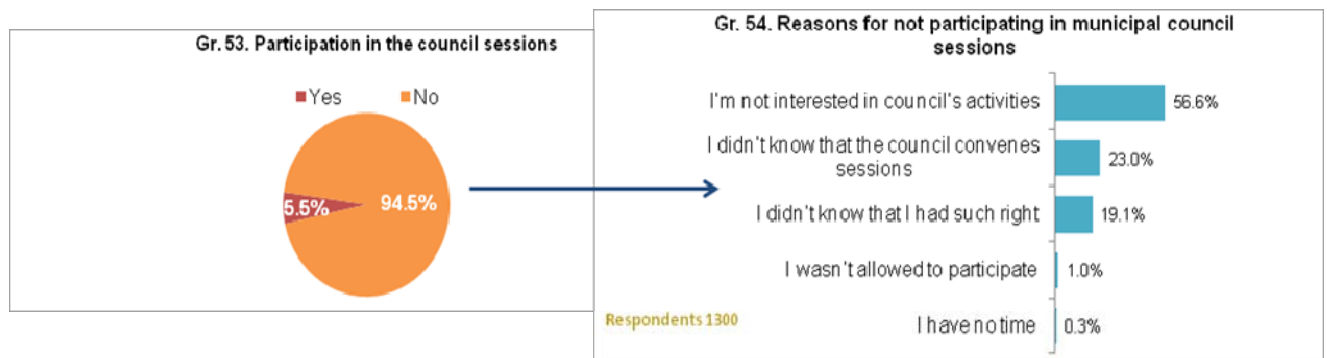
To the question whether respondents know their community council members the following answers were received:



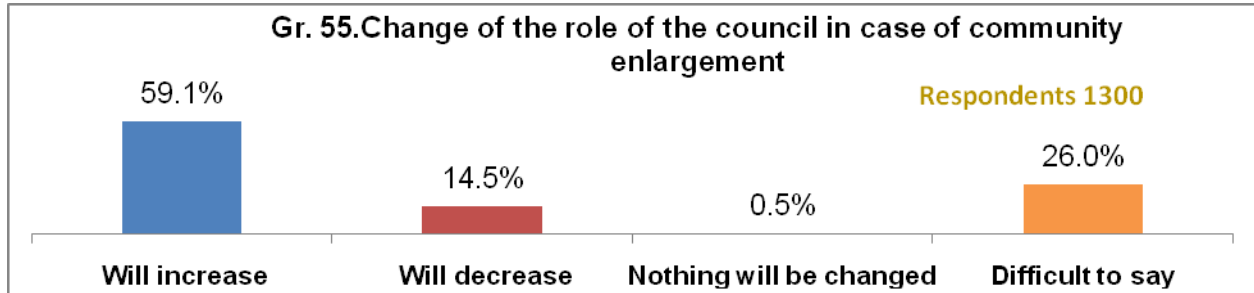
According to 58.4% of respondents, the community council doesn't have independence from mayor.



To the question whether respondents participated in community council sessions 94.5% of respondents provided negative response. They also answered to the question as what were the reasons for not participating. The picture is the following:

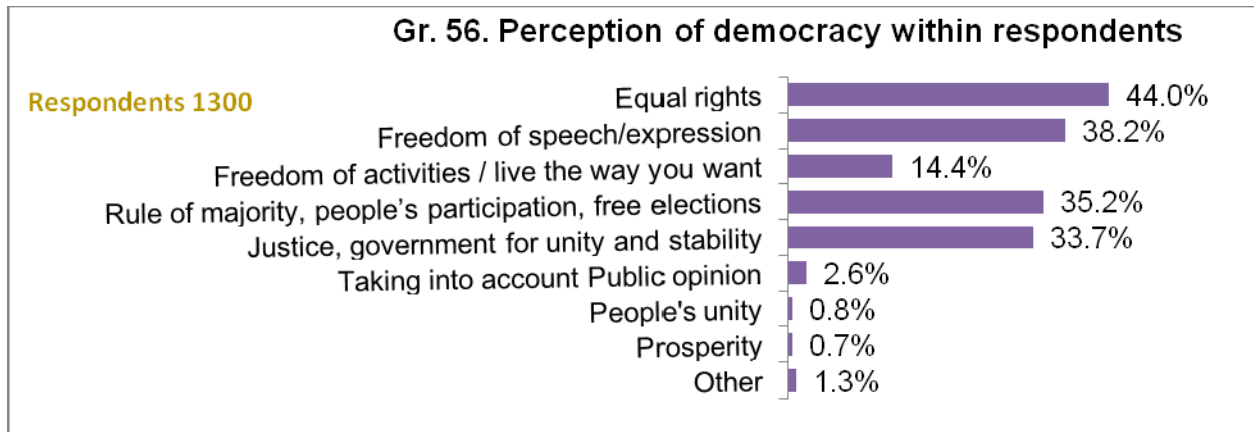


Respondents answered also to the following question: “What do you think, if in Armenia several communities are merged and communities are enlarged, the role of the council...?”

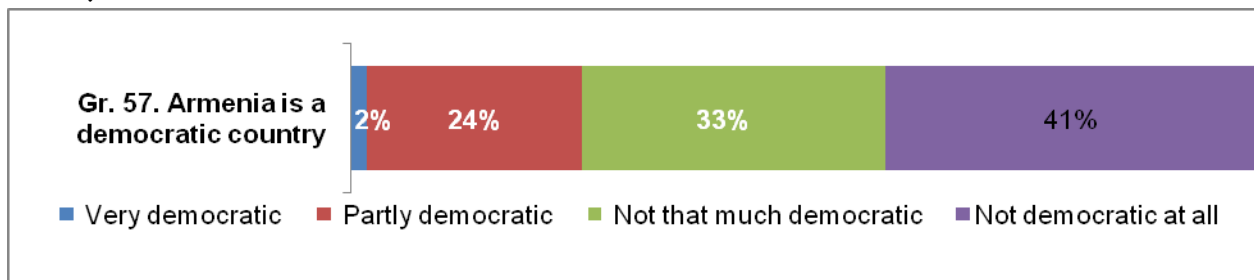


Democracy

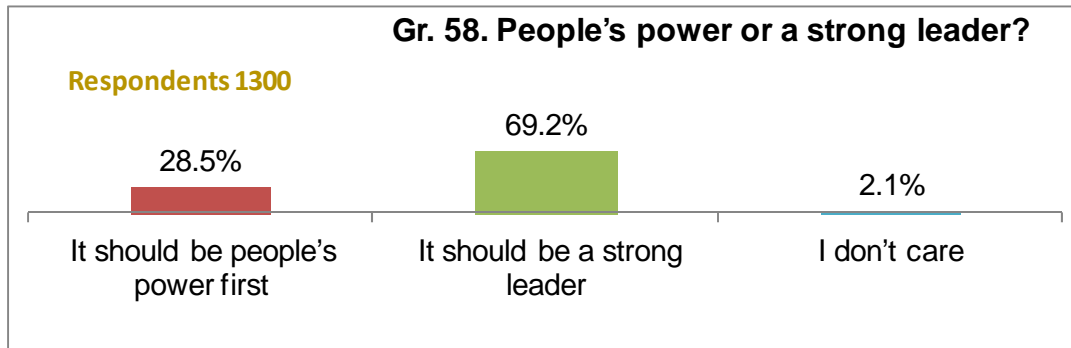
During the research democracy, related issues were also discussed. To the question what respondents understand by saying democracy following answers were received:



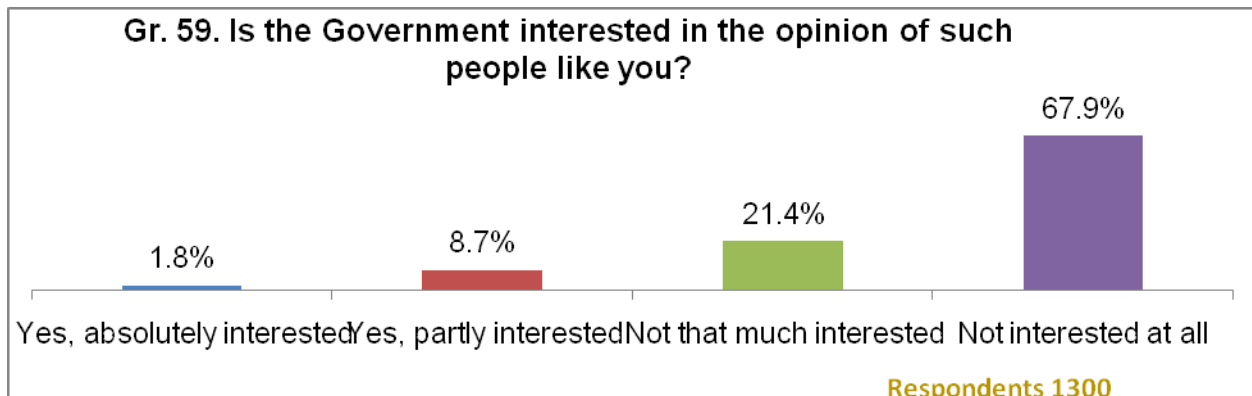
And to what extent is Armenia a democratic country?



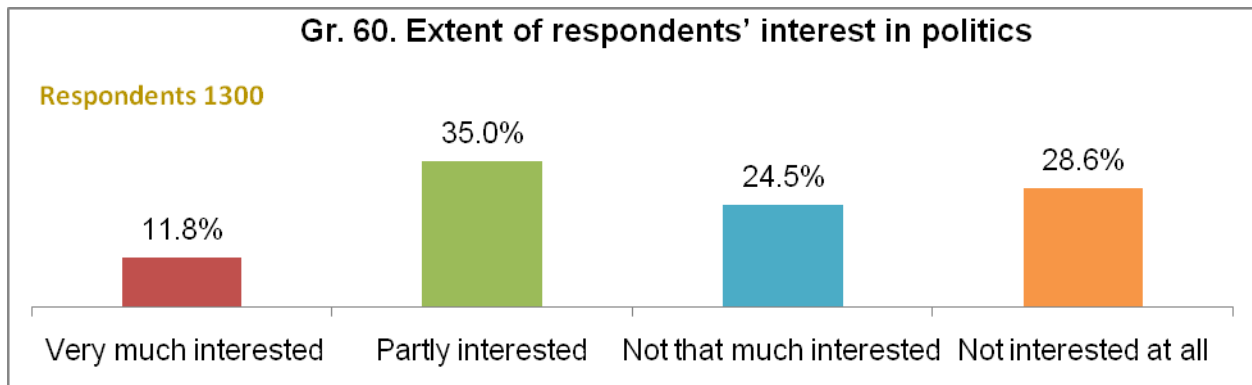
In parallel to this 69.2% of respondents think that Armenia needs strong leader instead of democratic power.



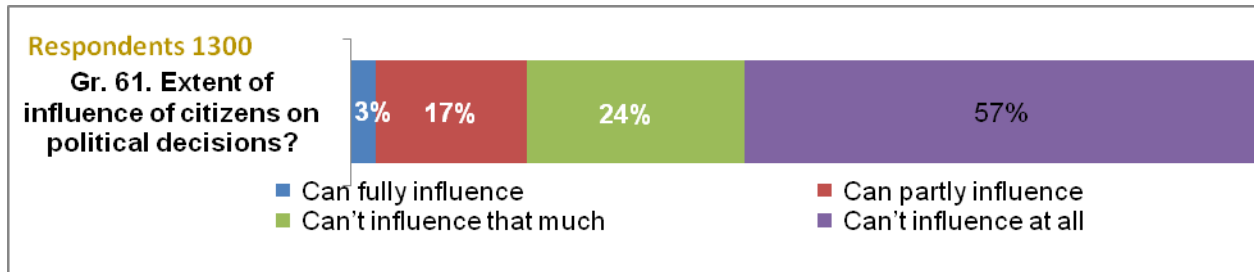
To the question whether the power is interested in the opinion of the civil society respondents answered:



The level of interest of respondents in politics is the following:

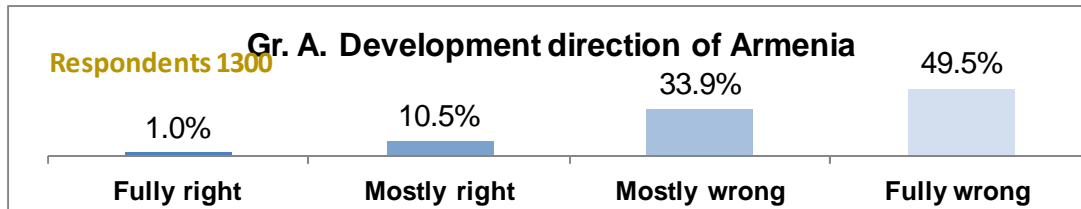


To the question as to what extent citizens can influence on political processes and decisions respondents replied:

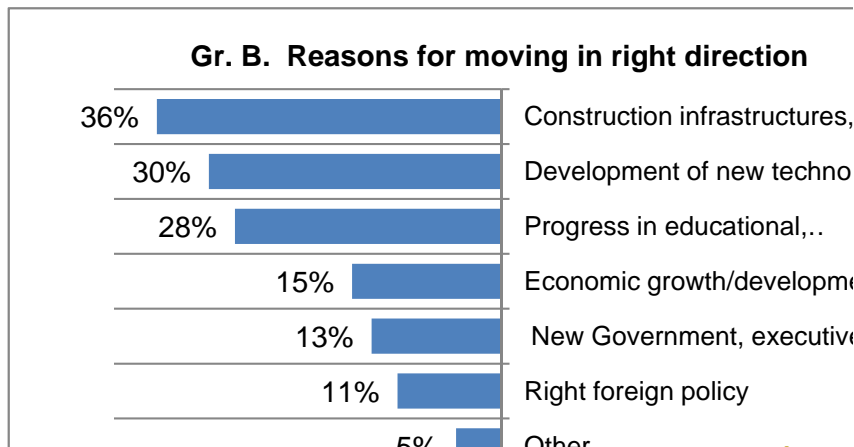


Satisfaction from the social and economic state of the country

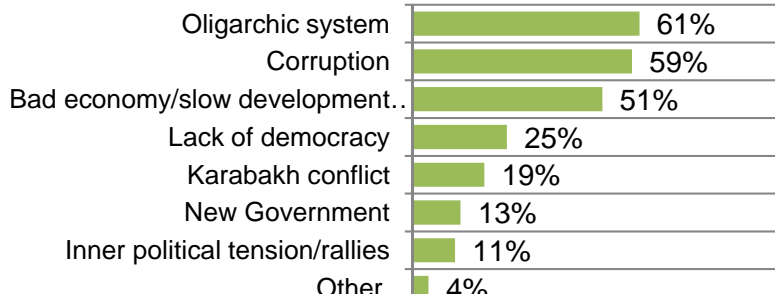
During the survey we tried to identify the level of satisfaction of respondents from country's social and economic situation. The most interesting questions are presented below: To the question whether Armenia goes in correct or wrong direction, respondents answered:



“Correct” or “Wrong” responses were justified by respondents with following consequences:

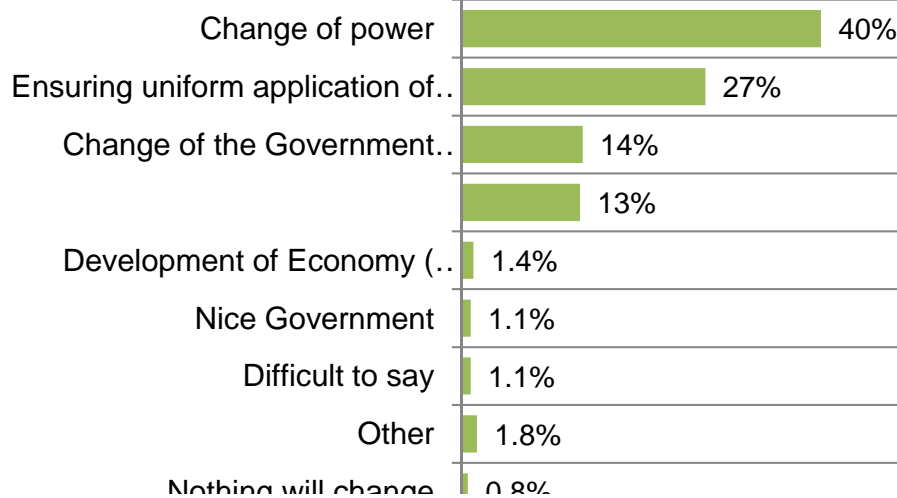


Gr. C. Reasons for moving in wrong direction

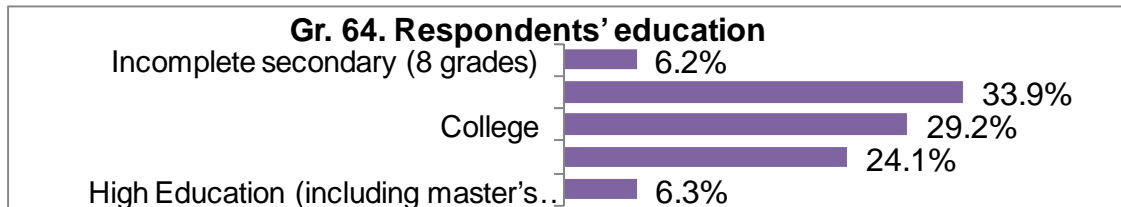
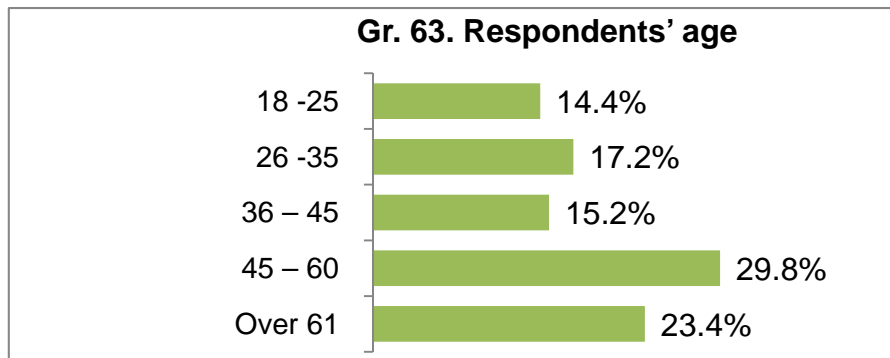
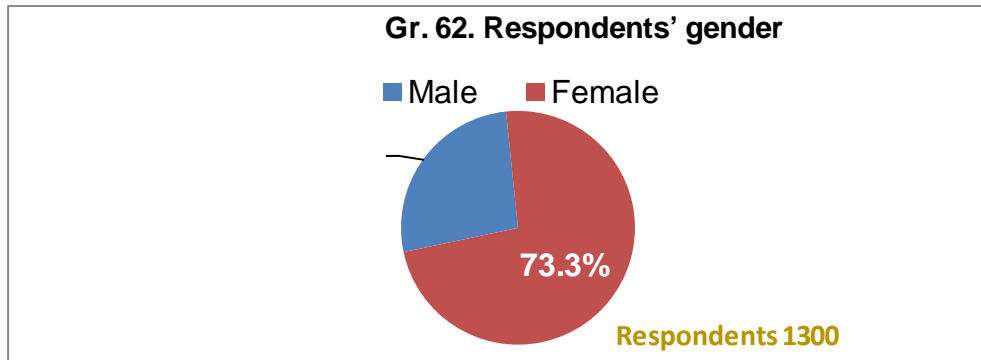


To the question what respondents think what should be done first of all to solve main issues the country is facing, following answers were received:

Gr. D. Ways to solve

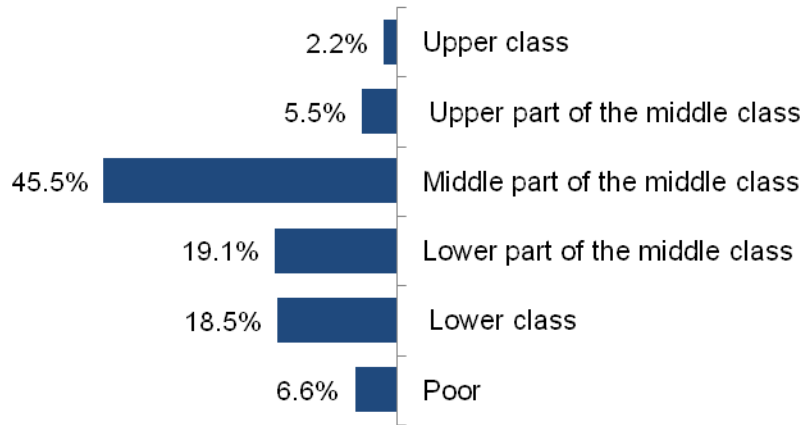


Social and Demographic data

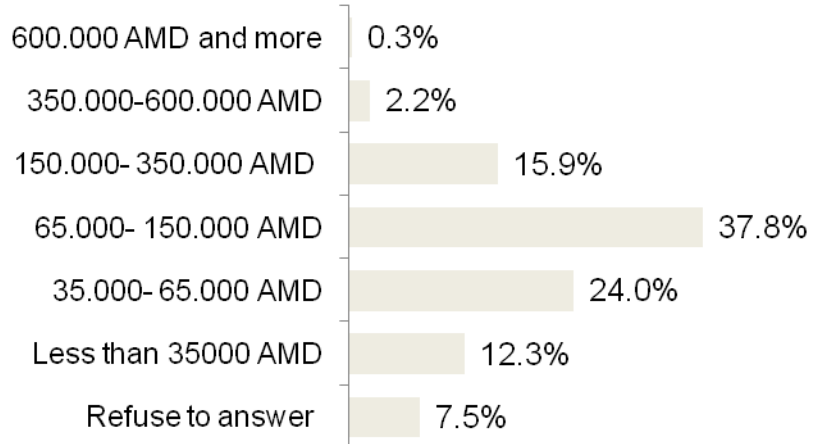


Gr. 66. Classification of respondents

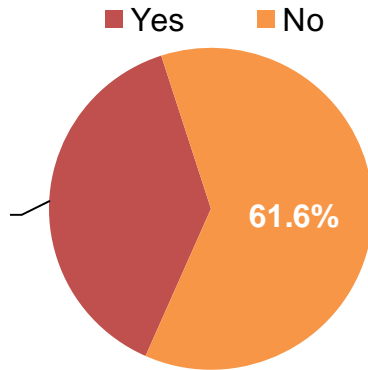
Respondents 1300



Gr. 67. Respondents' family's average monthly salary

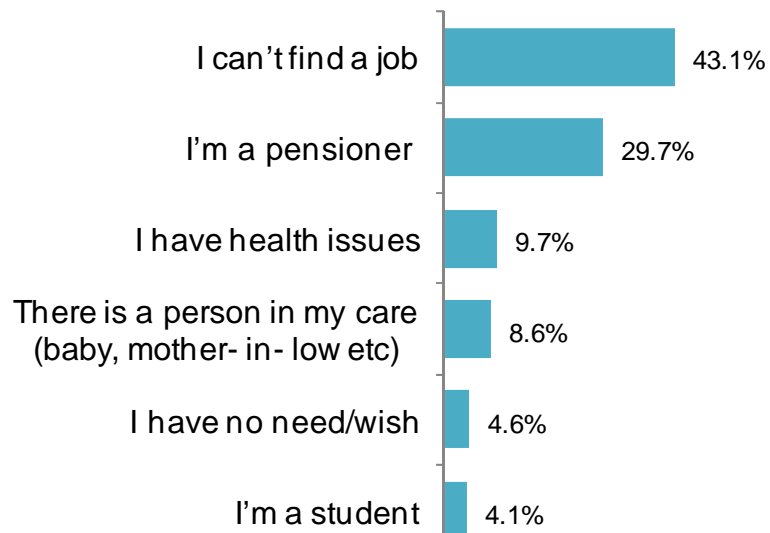


Gr. 68. Availability of job providing income



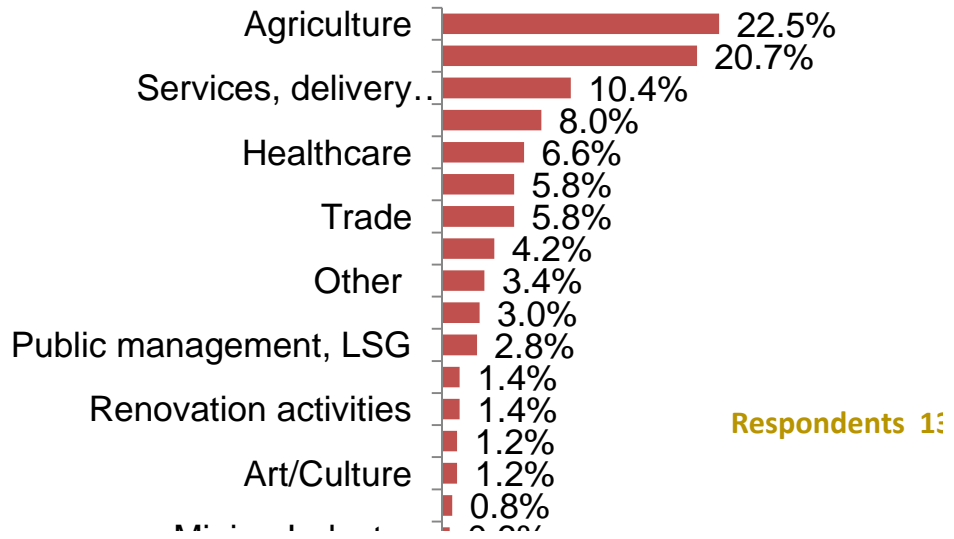
Respondents 1300

Gr. 69. Reasons for not working

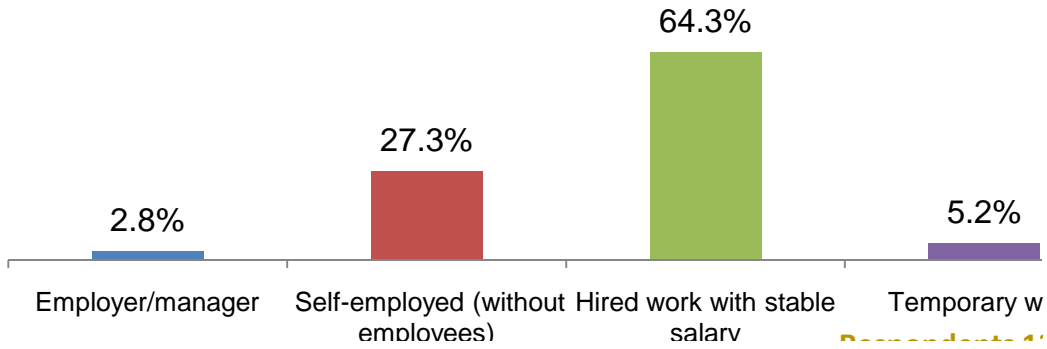


Respondents 801

Gr. 70. Sphere of employment of respondent



Gr. 71. Job nature of respondents



Conclusion

To summarize results of qualitative and quantitative research, it's worth mentioning the following outstanding findings:

- The priority for the power is the issue of overcoming the crisis of trust and Constitutional reforms are timeless as there is no public demand.
- There is no reliability in the composition of the Committee dealing with Constitutional reforms.
- Reasons and real goals of Constitutional reforms are not clear.
- Part of experts has a negative attitude towards the fact that the establishment of the Committee was initiated by the President and majority of members are state officials.
- The majority of experts thinks that Constitutional reforms can't overcome issues the country is facing and some issues will be partly solved.
- The majority of experts sees the solution of the existing issue in change of regime, ruling order and/or public conscience.
- The majority of experts tend to agree with the opinion that Constitutional reforms can't fully solve issues of the current Constitution.
- According to some experts Constitutional reforms can have positive impact on solution of following issues:
 - Issues of separation and counterbalancing power,
 - Issues of limitation of power through law,
 - Issue of lack of trust in and negative attitude towards electoral institutes,
 - Issue of independence of Judiciary power,
 - Elimination/reduction of electoral violations through introduction of the Parliamentary system,
 - Issue of ensuring the principle of rule of law,
 - External and internal issues starting from social and economic to political ones.
- Majority of experts thinks that as a result of Constitutional reforms the initiator of reforms will win, in this case it's the power.
- As for ensuring public participation some experts find that the Constitution is incomparably a complicated document and that's not public's business while all others think that, unfortunately, there is no civil conscience within the society and population and in this case experts see need for mobilization of the society.
- Although the draft Constitutional Concept reveals almost all issues existing in Armenia but their possible solutions are very unclear, so there is a conflict of opinions of experts.

- The draft concept presents almost all gaps revealed during implementation of the current Constitution but lack of the draft text of the Constitution it's difficult to say for sure that as a result of reforms issues will be solved.
- Full change of the Constitution contains risks including termination of activities of state apparatus, instability as well as waste of human and financial resources.
- To summarize expert responses the term “rule of rights” should be perceived as: a) domination of right over other social regulations and b) correspondence of the law as a form of expression of right to the main essence of the right.
- Majority of experts finds that there is no vital need for ensuring additional guarantees for direct implementation of rights at the level of Constitution and currently defined guarantees are enough in case of wish and will to apply them.
- In response to the concept, argument that human rights and freedoms are not implemented and their immediate operation should be ensured, experts mostly agree that direct implementation of rights and freedoms is possible under the current Constitution.
- According to experts following factors result in failure to apply human rights and freedoms:
 - Low level of civil conscience,
 - Political reality when protection of human rights is not a priority as a value.
 - Cultural and civilization issues,
 - Situation when executive and legislative powers are illegitimate.
- To the question whether experts think that there is a need for content, structural and editorial clarifications of rights and freedoms, opinions are different. The minority insists that there is such need but emphasized that they won't have significant impact while the majority believes there is no need.
- Majority of experts thinks that limitations of rights should be defined by the Constitution.
- Some experts find that all rights are comprehensively presented in the Human Rights section.
- Viewpoints of respondents on the right of life coincide that although death penalty was removed but that didn't solve the issue of ensuring the right of life.
- Formulation of torture defined by the law doesn't correspond to provisions of UN Convention on preventing torture.
- Referring to the issue of protection of the right of freedom and personal immunity, respect for personal and family life, respondents mostly mentioned that the importance is not in legal formulation but actual practice.
- As for fair trial experts think that the Judiciary system should be fully independent and competitive to ensure full implementation of the principle of presumption of innocence and competition.
- In terms of the issue of ensuring the right for effective legal protection there are some issues related to opportunities of applying for services of the institute of the public defender, high quality of lawyers and advocates starting from the moment of arrest.

- Experts have mostly the same position on the issue of right of freedom of thought, conscience and religion that although the Constitution defines segregation of the Church from the state, however the reality is different.
- In terms of the rights of freedom of movement experts don't see any issue at the Constitutional level but state that during political tensions there are some limitations.
- All respondents see issues in the right of ensuring free utilization of property which are again conditioned with structural regulations.
- Almost all respondents agreed that there are lots of legislative and practical issues related to the right of election and getting elected.
- As for the right of education it was mentioned that there are several issues connected with ensuring equal conditions for education and eliminating meaningless state interference.
- Previously declared Semi-Presidential Governance System has transformed into the Presidential system where President has almost unlimited power as the Parliament stopped acting as a counterbalance. As a result the whole power is concentrated in the hand of one political force.
- The reason for the situation is legally disproportional interference with electoral processes resulting in loss of legitimacy of electoral institutions and breaking political balance in the Parliament with its all consequences.
- Whether political monopoly will be overcome or not depends on the level of balanced composition of the Parliament as only in that case the Parliament will be able to control political majority and the Prime Minister with his/her entire cabinet is responsible for it. From this perspective the concept idea of party enlargement is very important which can support to the increase of Parliament's role as well as revision of some legislative mechanisms (party enlargement, in its turn, will also promote increase of the role of the Parliament).
- Any Semi-Presidential system eventually results in Presidential monopoly as permanent conflicts are inevitable between two structures with priority mandates – President and Parliament. In this regard countries without established democratic values, including Armenia become more vulnerable.
- Almost all respondents¹⁸⁸ had a positive view on moving to absolute proportional electoral system during that period offered by the concept, justifying it with following arguments:
 - That's a step to prevent or reduce risks of politics from being depoliticized.
 - That creates an opportunity to decrease access of rich businessmen (oligarchs) to NA.
 - That increases the level of responsibility of MPs before voters.
 - Organization of elections under the proportional electoral system decreases probability of corruption, bribe distribution and other similar issues.
 - Proportional elections are more democratic and aimed at reflecting real will of population than majority elections.

¹⁸⁸ This question was answered by members of the Committee on Constitutional reforms and MPs representing opposition parties elected under the proportional system.

- Activities of proportionally elected NA members are more effective than of those elected through majority system.
- Only one MP elected through majority system was against the proportional system bringing forward following counterarguments that:
 - NA carries out professional functions, which is a professional work and party and political interests shouldn't prevail.
 - As for access of oligarchs to NA, it's worth mentioning that in case of removal of the majority system there won't be any obstacles for such persons to get NA mandate through being included in party lists. And even today NA party lists have a big number of rich people.
 - The level of accountability is high when they personally take the responsibility.
- Part of experts voiced issues in terms of the concept suggestion on moving to reformed electoral system, particularly:
 - Constitutional status of electoral commission, financial independence, individualized responsibility,
 - Opportunity for e-voting,
 - Publication of signed lists,
 - Ensuring immediate broadcast of elections in electoral commissions,
 - Initiating cultural changes, namely change of legal conscience and formation of generation of demanding citizens.
- Almost all respondent stated that the level of democracy within parties can be improved through rating voting.
- As for voting for preferred candidate from proportional lists experts expressed concern that result in situation that some constituencies won't have elected MPs and some may have several ones.
- In terms proving suffrage to prisoners respondents stated that if there is a trust in electoral processes prisoners, as all other RA citizens should be provided with electoral rights.
- According to experts opinion on military conscripts it's necessary to temporarily suspend their suffrage as it may cause electoral falsifications.
- Many experts see the potential ensuring independence of the Judiciary system in the Justice Council with a condition that regulations of formation of this body and the range of its competencies should be revised.
- Majority of respondents have a negative position on moving to two-layer Judiciary system finding that there is no objective need for that. The position on the institute of jurists was mostly negative.
- According to experts referendum is definitely perceived as the most important democracy tool which is applied in Armenia only during Constitutional reforms while citizens don't emphasize the importance of referendum that much and find meaningless to participate in it.
- Issues to be put to referendum are not clear which can become a reason for the power to initiate discretionary referendum.

- The role of the population in referendum initiatives is passive as the population doesn't feel ownership.
- There are lots of issues in the system of Local Self-Government which are not comprehensively referred in the Concept. Those issues cover not only local democracy but also Governance efficiency. The concept doesn't outline possible mechanisms for solution of LSG related issues except for formation of inter-community unions and increase of council's role.
- One of the most important issues of Local Self-Government is the formation of the community budget.
- LSG is not independent enough from the central government.
- Community mayor has decisive influence on decisions of the council thus the council doesn't have enough freedom.
- The level of local level participatory government is very low which is conditioned also with unawareness of community members of the right to participate in the council sessions.

Recommendations

- It's necessary to improve the electoral system as referendum will be implemented and results will be summarized based on regulations defined by the Electoral Code. Thus it's necessary to eliminate all grounds that put results of voting under suspicion including meaningless legislative limitations, particularly ban on publication of signed voter lists. It's also very important to increase the level of trust in the Central Electoral Commission the main body responsible for organization and conduction of elections otherwise Constitutional referendum can become risky.
- The draft of RA Constitutional reforms should be developed by independent and neutral professional groups which are not constrained with anything particularly have no party affiliation.
- Clarify possible solutions of voiced issues as final regulations.
- Clarify and reduce risks related to Constitutional reforms.
- Section 2 of article defining each right should clearly define situations for limitation of that right.
- Formulations of limitations should be clear and without any other context which won't create space for different interpretations and will ensure uniform application.
- An excellent example of limitation norms is the European Convention on Protection of Human Rights and main freedoms which defines the right ensured by the state followed by specific cases which are not considered as a violation of that right¹⁸⁹.

¹⁸⁹ For instance article 2 of the European Convention on Protection of Human Rights and Freedom says: "The right of life of each person is protected by the law. No one can intentionally deprive person of life in ways other than death sentence verdict issued by the court for committed crime which has such penalty defined by the law.

Depriving of life is not a violation of that article if it's a result of use of force necessary for:

- a) protection of any person from violence,
- b) prevention of escape of person imprisoned or arrested on legal grounds
- c) suppression of unrest or rebellion in accordance with the law".

- The article defining the right of life should be supplemented with the list of exclusive cases when depriving person of his/her life is not a limitation of that right.
- Taking into account the fact that ban on torture is an absolute right and being concerned with the fact that currently ECHR has issued 106 decisions against Armenia (including verdicts, decisions on acceptability or partial acceptability, decisions on unacceptability or partial in acceptability, decisions on communication the case etc) cases of violations of the article prohibiting torture are in the most frequent cases of violation of rights after the right of fair trial and personal immunity. Thus we recommend formulation of the term “torture” in the Constitution.
- In the provision on *“each detained person is immediately informed in understandable language”* of the article 16 of the Constitution the word “detained” should be replaced with the phrase “during detention”. Such formulation will enable application of the guarantee (Miranda’s rule) defined by this provision during the detention of person and not some time later during which, according to practice, serious interventions into person’s rights take place.
- Each detained person has the right for immediate legal protection.
- Taking into account the text of the Section 2 of the article 10 of the European Convention on Human Rights, in parallel to defining the right of freedom the range of limitations should be defined constitutionally. Thus: “Implementation of those freedoms which results in obligations and responsibility can be connected with formalities, conditions, limitations or fines which are prescribed by law and are necessary for the society in terms of state security, territorial integrity or public order to prevent disorders and crimes, to protect dignity or rights of people, to prevent publication of confidential information or to ensure prestige and unbiased approach of Justice”
- Define forms and grounds for limitation of the right of property constitutionally.
- Provide suffrage to convicts/prisoners.
- Define constitutionally that the state defines equality of state and private (with state certification) educational institutions.
- Taking into account the fact that during political tensions the right of free movement is mostly limited, grounds and means of limitations of free movement should be clearly defined.
- The political crisis has gone deep to the extent that it’s impossible to restore minimal attributes of Semi-Presidential governance system. Therefore it’s more relevant to change the governance system than to try to restore the destroyed system. Parliamentary governance system is the driving force of democracy. Therefore moving to the Parliamentary system is relevant.
- But in order to ensure operation of that system, it’s necessary ensure the 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 for elections of these two bodies with priority mandate to be followed one by another as having elections dates close to each other may bring to similar results.

- In order to ensure the oversight role of the legislative body presence of Parliamentary minorities in oversight processes of ad hoc or standing committees which should have the right to demand establishment of investigative and fact collecting committees.
- The law should define responsibility for not fulfilling requirements of such committees by legal and physical entities including false testimonies, submission of false data, disorientating committee and other illegal action.
- It's necessary to identify narrow scope of issues that can be put to referendum as extensive utilization of the institute of referendum may weaken the role of the National Assembly particularly in Parliamentary government systems.
- In order to ensure control of the Parliament over the Government in Parliamentary system it's necessary to establish ad hoc specialized committee or body which will intermediate between the Parliament and Government with its own regulations (defined by the law) and detailed procedures of oversight.
- We find that in Parliamentary system President will have the right to approve laws adopted by the Parliament. In that case President should have the right for veto which can't be eliminated by the Parliamentary majority as well as can't be disputed through the Constitutional Court appeal. The latter power can replace the right for veto which can be more preferable for President.
- President should be provided with some traditional rights in the sphere of executive power, for instance, pardon, amnesty, appointment of ambassadors, confirmation of international treaties etc. Thus President will be able to ensure preservation of Constitution and efficiently utilize counterbalancing power and if necessary, act on population's behalf (including minority) as arbiter. In this sense it's extremely important that President should be non-partisan as suggested by the Concept.
- To ensure President's capacity to fulfill the role of "people's arbiter" he/she should be provided with opportunity to participate in some political processes (in addition to those mentioned above). For instance, he/she should have opportunity to approve the composition of the Justice Council, appointment of Prosecutor General and other officials selected by the Parliament.
- The issue of suspension of President's power (impeachment) should be solved through referendum.
- Preserve current mixed electoral system but at the same time promote party strengthening both through legislation and practical work (for instance, for local democracy it's recommended to organize LSG elections solely through party lists which will increase interest and importance of this level and it will be piloted to reveal its efficiency and gaps at the local level).
- The range of competencies of the Justice Council (JC) should be increased at the expense of functions of the Council of Courts' Chairmen (CCC). JC should become a policy making body and in this regard its competencies should be more than just competencies of initiating disciplinary cases as well as appointing and promoting judges.

- JC should have CCC competencies of developing Judiciary policy, for instance, Judiciary administration and management, definition of rules for HR management, including maintenance of budget policy.
- JC should be permanently functioning body in order to be able to fulfill above mentioned competencies. Thus only two structures will remain – 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 initiative and the competency should be transferred to JC.
- No matter what the regulation model of JC is, the following main principle should be ensured: At least the majority of JC should be judges who will be elected “internally” by judges.
- The current regulations that the lists of candidates of judges and promotion of judges is adopted by the RA President, is relevant to be applied in the Parliamentary governance system where President will have limited power.
- Either the Judiciary system should move to two-layer system to promote savings of judicial resources (including resources of citizens) or trilateral system should be preserved with a condition that court hearing ends at the level of the Court of Appeal and the Court of Cassation will remain as a place for revision and not disputing the case.
- It’s necessary to rename the Court of Cassation to Supreme Court taking into account functions of this court based on the article 92 of the Constitution and its activities since 2005.
- We find that there is no objective need and public demand for application of the institute of juries coming from general interests of justice.
- It’s necessary to improve populations trust in referendum and petitions.
- Develop clear mechanisms to make the process of organization and conduction of referendum transparent.
- Improve mechanisms of conducting elections as well as the level of trust and accuracy election results.
- Provide the public with the right to come up with the initiative of referendum.
- Clarify the range of issues within the framework of which the public can come up with the initiative of referendum.
- Ensure real independence and autonomy of LSG.
- Define optimal regulations for LSG budget formation and utilization.
- Ensure participatory governance of LSG.
- Increase the role of community council in solution of community issues.

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

Section	Expressed Opinions	Recommendations
<p>Need for Constitutional Reforms</p>	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> • 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.

	<ul style="list-style-type: none"> • 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 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)	<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • Clarify possible solution options for voiced issues as final regulation mechanisms. • Clarify and reduce risks conditioned with Constitutional reforms.
Human Rights (T. Matinyan)	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 right¹⁹⁰.

¹⁹⁰ 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 live is not a violation of this article if it's a consequence of use of force necessary:

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

	<p>should be ensured and think that ensuring immediate application of rights and freedoms is also possible also with the current Constitution.</p> <ul style="list-style-type: none"> • According to experts following facts become obstacles inaction of rights and freedoms: <ul style="list-style-type: none"> ➢ Low level of civil consciousness, ➢ Political reality when human rights protection is not a priority as a value, ➢ Cultural and civilization issues, ➢ 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 	<ul style="list-style-type: none"> • 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) 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
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	<p>effective legal protection conditioned with the institute of public defender, quality advocacy services and opportunity of having defender from the moment of arrest.</p> <ul style="list-style-type: none"> • 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. • 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. 	<p>limited during political tensions its necessary to define grounds and means of limiting free movements.</p>
<p>Governance System (A. Ghazaryan)</p>	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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

	<p>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.</p> <ul style="list-style-type: none"> • 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 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. 	<p>same day or close dates will result in mostly same results.</p> <ul style="list-style-type: none"> • 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 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
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		<p>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.</p> <ul style="list-style-type: none"> • Termination of President’s power (impeachment) should be done through referendum.
<p>Electoral right and electoral system (T. Matinyan)</p>	<ul style="list-style-type: none"> • Almost all respondents¹⁹¹ had a positive attitude to having absolutely proportional electoral system as suggested by the concept. They mentioned following arguments: <ul style="list-style-type: none"> ➤ 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. ➤ 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: <ul style="list-style-type: none"> ➤ 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 	<ul style="list-style-type: none"> • 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.

¹⁹¹ This question was answered by members of the Constitutional committee and MPs elected through proportional system from opposition party lists.

	<p>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.</p> <ul style="list-style-type: none"> ➤ The level of accountability of MPs is high when they personally carry the responsibility. <ul style="list-style-type: none"> • Part of experts raised following issues on passing to reformed electoral system suggested by the concept: <ul style="list-style-type: none"> ➤ 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 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. 	
<p>Judiciary system (A. Ghazaryan)</p>	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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

	<p>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.</p> <ul style="list-style-type: none"> • 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. 	<p>disciplinary procedures as well appointing and career promotion of judges.</p> <ul style="list-style-type: none"> • 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.
<p>Constitutional guarantees of referendum</p>	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • It's necessary to increase population's trust in referendum and petitions. • Develop specific mechanisms for organization and conduction of

<p>(H. Tigranyan)</p>	<p>same time citizens don't stress the importance of referendum and find participation in referendum meaningless.</p> <ul style="list-style-type: none"> • 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. 	<p>referendum to make the process transparent.</p> <ul style="list-style-type: none"> • 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.
<p>Conceptual provisions of constitutional and legal reforms of Local Self-Government (H. Tigranyan)</p>	<ul style="list-style-type: none"> • There are a lot of issues in the Local Self-Government systems 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. 	<ul style="list-style-type: none"> • 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.



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