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# INTEGRITY SYSTEMS AND THE RULE OF LAW IN ARMENIA

## An Evidence Review for Learning, Evaluation and Research Activity II (LER II)

FEBRUARY 2019

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## I. EXECUTIVE SUMMARY<sup>1</sup>

This evidence review covers two separate topics: Integrity Systems and the Rule of Law. As context, Armenia has substantial challenges with respect to all forms of corruption. In that sense it is like other countries in the region. And yet there may be a model in Georgia's reforms to address corruption. With respect to the rule of law, the conditions in Armenia declined in the 1990s but have been relatively stable in the 2000s, with some particular improvement in recent years with regard to judicial independence. Improvements in access to legal representation and in the professionalization of lawyers, in particular, may have made a positive impact on perceptions of judicial independence. Rule of law reforms in terms of improving contract enforcement, regulation, and equal application of commercial law would correspond with the priorities currently being laid out by the Armenian administration. Both integrity systems and rule of law have been key areas of focus and, while seeing some reforms, they also could benefit from further attention. After providing some background on each area, we turn to a discussion of the challenges, possible solutions, and ideas about sequencing. We devote considerable attention to the menu of options facing countries similar to Armenia, where possible identifying specific similar post-transition countries. Among the paths forward to consider, we note:

- Integrity Systems:
  - Engagement with Small- and Medium-Sized Enterprises (SME) Associations. Engaging with SME associations constitutes a particularly promising path to gradually erode state capture in Armenia.
  - Instituting a lottery system to start with randomized audits would likely be beneficial for Armenia. By randomizing the audit schedule and keeping it frequent, the threat of an audit could deter corrupt behavior and make audits less susceptible to political forces.
  - As we highlight in the Governance Evidence Review also under this tasking (USAID, 2018), addressing petty corruption is a less risky way to start an anti-corruption effort. It may be best to start any anti-corruption initiatives at the lower level, with the objective of gradually shifting norms, thereby making it easier to tackle grand corruption over the longer term.
  - Armenia should ensure that all government employment contracts require signing of codes of ethics and compliance with disclosure requirements regarding assets, conflicts of interest, and tax records, which can be used in conjunction with external audits, making those ethics commitments enforceable and actionable. This recommendation is not only applicable to national-level civil servants but also subnational employees and persons with discretionary positions in government.

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- Addressing transparency too early in the process could be risky because it alerts people to problems and deters citizen from taking public action in a situation of state capture. They may want to institute transparency reform later in the process.
  
- Rule of Law:
  - Reform of the courts to go beyond judicial independence and instead to greater court efficiency and administration would likely be important. Numerous positive and negative examples, from Kyrgyzstan to the Baltics, illustrate the importance of taking a holistic view, and eschewing a pure focus on judicial independence.
  - Much attention could be given to the development of Bar Associations that could improve the overall quality and commitment of judges to the rule of law.
  - While legal education has generally improved over the years, greater independence from national government standards and directives would be helpful for establishing greater rule of law.
  - The Armenian government may want to consider expanded engagement with a variety of civil society actors, including think tanks and other forward-thinking non-governmental actors. Taken together, the collective set of non-governmental actors may encourage greater progress towards better governance and democratization.

## 2. INTRODUCTION

### 2.1. CORRUPTION, INTEGRITY SYSTEMS, AND ARMENIA: AN OVERVIEW

Before turning our focus to Armenia, we first define corruption and outline the various components of an integrity system. The most-cited definition of corruption is “the misuse of public office for private gain”.<sup>2</sup> It maps well to bribery, which entails a supply side (i.e., those providing the bribes—the private sector) and a demand side (i.e., those accepting/requesting the bribes—the public sector).<sup>3</sup> As we detail in Table I, though, corruption entails much more than bribery, and not all types of corruption entail a transaction between the public and private sectors. For example, collusion and financial fraud are corrupt activities that mostly do not involve the public sector.

More fundamentally, corruption relates to societal power dynamics and has a very strong cultural dimension (Fukuyama and Receanatini, 2019). What some societies consider “corrupt” may be legal or, if not, highly tolerated in others (Kaufmann and Vicente, 2011). The extent of legal campaign financing in many countries provides one example. Another comes from Indonesian dictator Suharto, who once told former World Bank President James Wolfensohn: “What you consider corruption, I consider family values” (Wolfensohn, 2010). Although Suharto was clearly one of the most corrupt people to ever inhabit the earth,<sup>4</sup> the quote is emblematic of the larger problem of corruption. Drawing on insights from evolutionary biology, Fukuyama (2011, 2018) compellingly argues that controlling corruption is so difficult because it is against humans’ natural instincts.<sup>5</sup> These are among the reasons why corruption is a behavioral norm that is extremely hard to break (Fisman and Golden, 2017).

**TABLE I: DIFFERENT TYPES OF CORRUPTION**

<i>Term</i>	<i>Definition</i>
Bribery	“The explicit exchange of money, gifts in kind, or favors for rule breaking or as payments for benefits that should legally be costless or be allocated on terms other than the willingness to pay. [It i]ncludes both bribery of public officials and commercial bribery of private firm agents” (Rose-Ackerman and Palifka, 2016, 8).
Kickbacks	“Payment made secretly to a buyer or seller who has directed a contract or facilitated a transaction or appointment illicitly. It can also refer to the way a person in a supervisory position takes a portion of a worker’s wage in return for a certain benefit, as when a supervisor arranges for a worker to get a job” (Søreide, 2014, 2).
Coercion/extortion	“[I]mpairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party” (World Bank, 2016, 3).
Nepotism	Hiring a family member for a job, instead of on the basis of merit.
Cronyism	Hiring one’s friends, instead of hiring on the basis of merit.
Financial fraud	“[A]ny act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation” (World Bank, 2016, 3).

<sup>2</sup> For a discussion of the various definitions of corruption, refer to Rose-Ackerman and Palifka (2016) and Fisman and Golden (2017).

<sup>3</sup> For a discussion, see Dixit (2016).

<sup>4</sup> See, for example, Fisman (2001).

<sup>5</sup> More specifically, the successful control of corruption entails the construction of rational political order (see Weber, 1978), which does not entail giving benefits to family, friends, lineage, clans, etc. (Fukuyama, 2011, 2018).

<b>Term</b>	<b>Definition</b>
Electoral fraud	“[M]anipulation of election results, through vote buying or threats to the election, or by falsification or destruction of votes” (Rose- Ackerman and Palifka, 2016, 8).
Petty corruption	Bribery by public officials when citizens try to “access basic goods or services in places like hospitals, schools, police departments and other agencies” (Transparency International, 2009).
Grand corruption	“Collusion among the highest levels of government that involves major public sector projects, procurement, and large financial benefits among high-level public and private elites” (Bauhr and Charron, 2018).
State capture	When “private interest significantly influences a state’s decision-making process through illicit and nonobvious channels” (Søreide, 2014, 2).
Collusion	“An arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party” (World Bank, 2016, 3).
Obstruction	Impeding a corruption investigation, such as by destroying evidence, giving false statements, coercing a witness not to cooperate, etc. (World Bank, 2016, 3).
Patronage	“Civil servants and politicians who, when exercising their authority, favor ethnic groups, relatives, or citizens from the same area of the country, instead of acting neutrally, as formal rules prescribe” (Søreide, 2014, 2).

We define integrity systems to encompass state-level institutions, rules, and arrangements that aim to prevent or mitigate corruption. In terms of state-level institutions, most states, including Armenia, have some form of a dedicated anti-corruption office and a supreme audit institution to supplement the judiciary.<sup>6</sup> These institutions of horizontal accountability can be effective at rooting out corruption when they rely on measures such as those in Table 2. Armenia benefits from a number of these measures, but the country’s anti-corruption office is not politically independent, and state capture of the bureaucracy is a problem that Armenia is having difficulty overcoming (Paturyan and Stefes, 2017).

**TABLE 2: SELECTED ANTI-CORRUPTION MEASURES**

<b>Measure</b>	<b>Description</b>
<b>Financial Management</b>	
Internal audit	Audits conducted within an organization, usually by dedicated staff.
External audit	Audits conducted by an independent third-party, such as a specialized audit firm.
Technical audit	Audits conducted, often on infrastructure projects, to determine the extent to which a contractor follows procurement tender specifications (see Olken, 2007).
<b>Procurement</b>	
Red flags	Indicators to detect potential collusion, bid-rigging, illegal subcontracting arrangements, beneficial ownership violations, etc.

<sup>6</sup> The ensemble of these institutions constitutes the core of what scholars refer to as horizontal accountability, which refers to the ability of a state’s bureaucracy to keep checks on itself (O’Donnell, 1998).

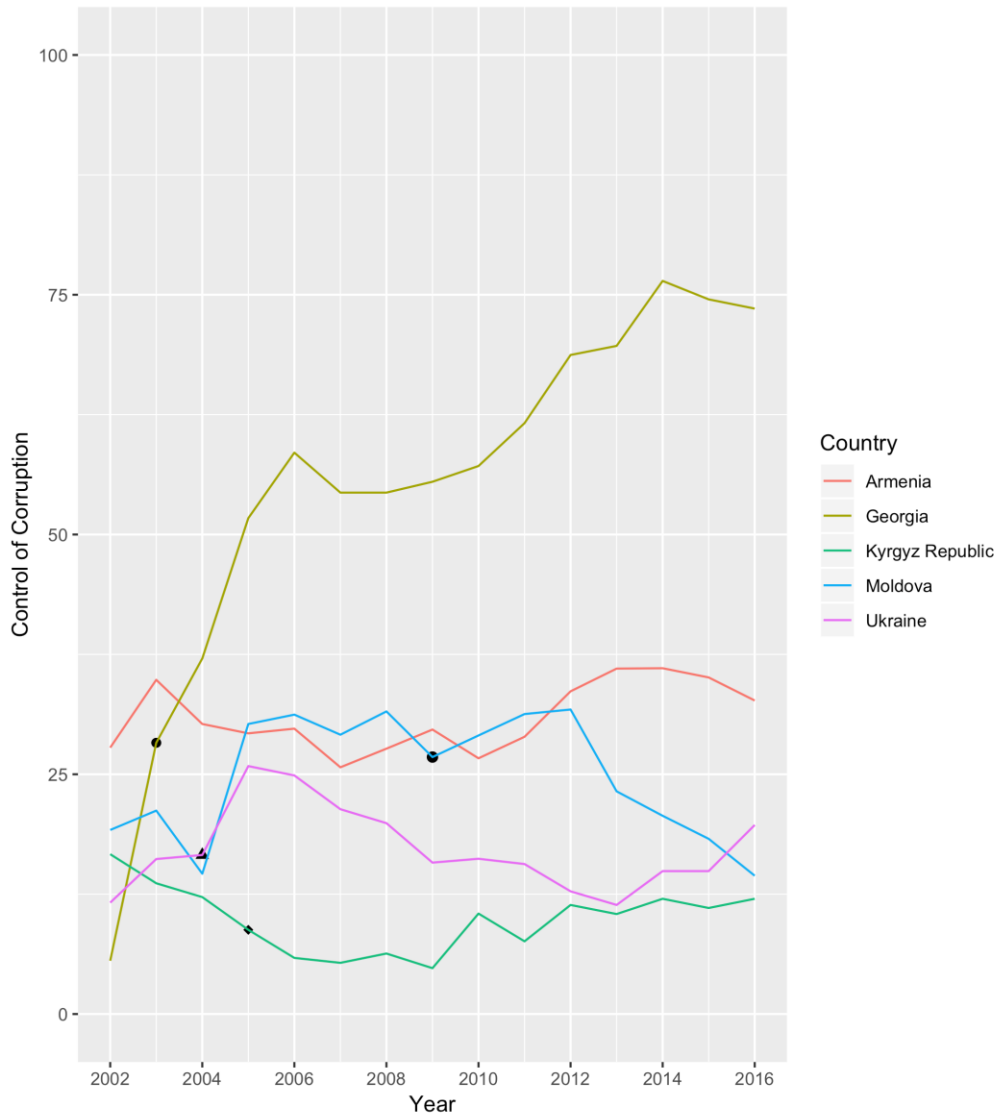
<b>Measure</b>	<b>Description</b>
Integrity due diligence	Analysis of bidders and implementing environments before contract awards. Robust integrity due diligence includes some form of political economy analysis, to identify key players and obstacles to reform, as well as how to address potential challenges.
Integrity pacts and pledges	One- or two-way disclosures by bureaucrats and/or bidders not to engage in corruption; disclosure of all payments made in connection with the relevant procurement; and sanctions in case which leave both subject to legal penalties in case of violation (Transparency International, 2013).
<b>Ethics and Transparency</b>	
Conflict of interest provisions	Rules or legislation to prevent undue influence in procurement as well as in hiring (e.g. nepotism, cronyism).
Codes of ethics	Agreements, often included in employment contracts, to ensure that corrupt violations have a legal basis for dismissal, reprisal, or sanction.
Asset disclosure	Provisions to track the extent to which bureaucrats and politicians financially benefit from their positions of power.
Access to information laws	Laws to ensure that when citizens request information from the government, and the requested information falls within certain pre-approved classes of information, the government must in turn freely provide that information to citizens within a fair timeframe.
Public lobby registers	Rules or legislation to ensure that watchdog organizations, non-governmental organizations, and the media can track who is influencing policy and to what extent.
Anti-corruption training	Training of government employees on codes of ethics, anti-corruption legislation, and relevant internal rules for each agency. Training is generally more effective when given according to specific time frames.
<b>Legislation Related to...</b>	
Whistleblowers	Rules to ensure that those who disclose corrupt acts do not suffer any adverse consequences.
Money laundering	Legislation to deter illicit financial flows and enrichment, including via shell companies (Findley, Nielson and Sharman, 2014).
Taxation	Legislation to strengthen taxation capacity, as well as related bureaucratic structures to ensure optimal performance of tax collectors (Khan, Khwaja and Olken, 2016, 2019).

To provide some context on corruption dynamics in Armenia and the region, we turn to a few graphical representations. Figure 1 uses the Worldwide Governance Indicators, to compare Armenia with other countries in the post-Soviet space that experienced similar large-scale social movement activity directed at government reform by tracking their scores on control of corruption over time, from 1990-2017. The indicator measures “[r]eflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as capture of the state by elites and private interests” (Kaufmann, Kraay and Mastruzzi, 2015). Years are on the x-axis and control of corruption scores are on the y-axis. Here, higher values indicate greater control of corruption. As is evident, and consistent with other measures reported below, Georgia has been very successful in increasing its control of corruption. Armenia, while not at the bottom, has demonstrated gradual improvement over time, but has significant room for improvement.



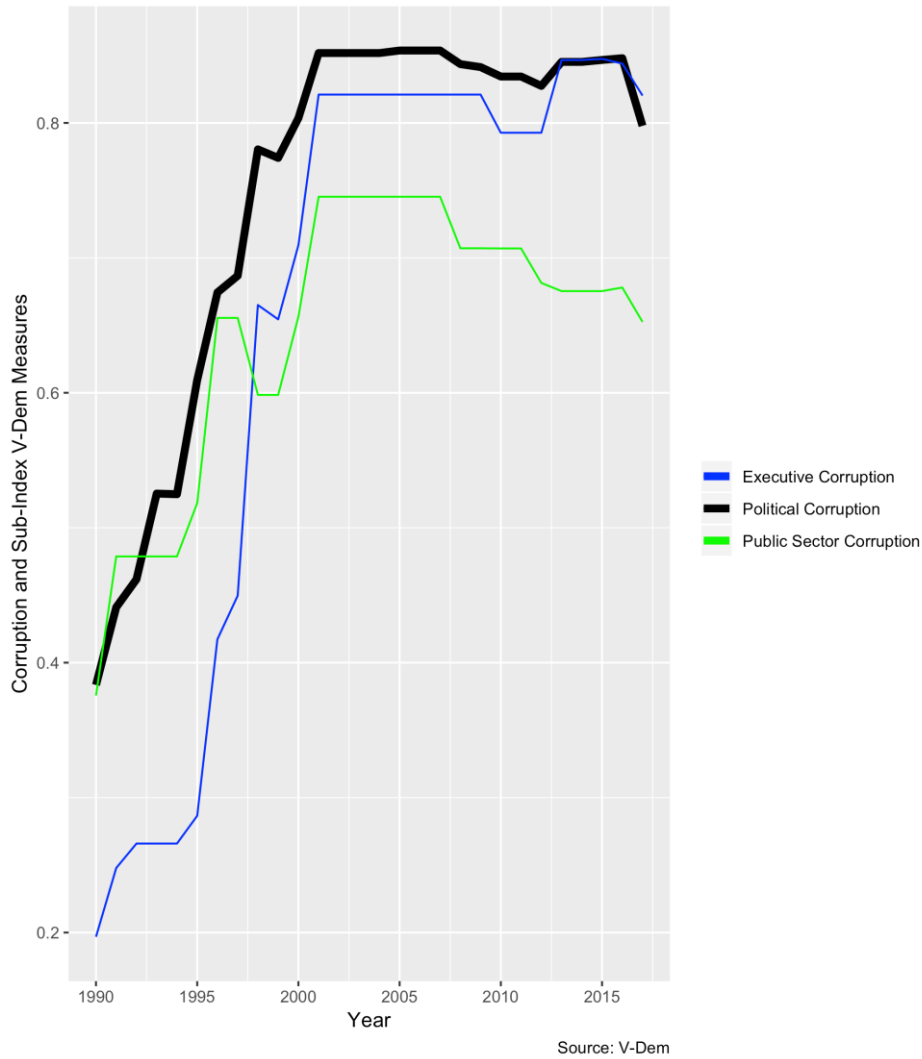
Whereas Figure 1 measures the *control of* corruption, in Figure 2 below we see estimates of corruption in Armenia, 1990-2017. Here, higher values indicate higher levels of different types of corruption. We report the overall Political Corruption measure as well as sub measures for Executive Corruption and Public-Sector Corruption. The overall measure includes executive (with specific attention to both bribery and embezzlement), legislative, and judicial corruption. It intends to cover both petty (low-level) corruption and grand (large-scale) corruption, bribery and theft, and corruption intending to influence law making and corruption intending to influence law implementation. To remind the reader, these scores are based on input from country experts and thus draw on more than observable events in the news, for example, making them particularly valuable.

**Figure 1: Plotting Regional Corruption Scores for Armenia from the Worldwide Governance Indicators**



Source: WGI

**Figure 2: Plotting Corruption Scores for Armenia from V-Dem**

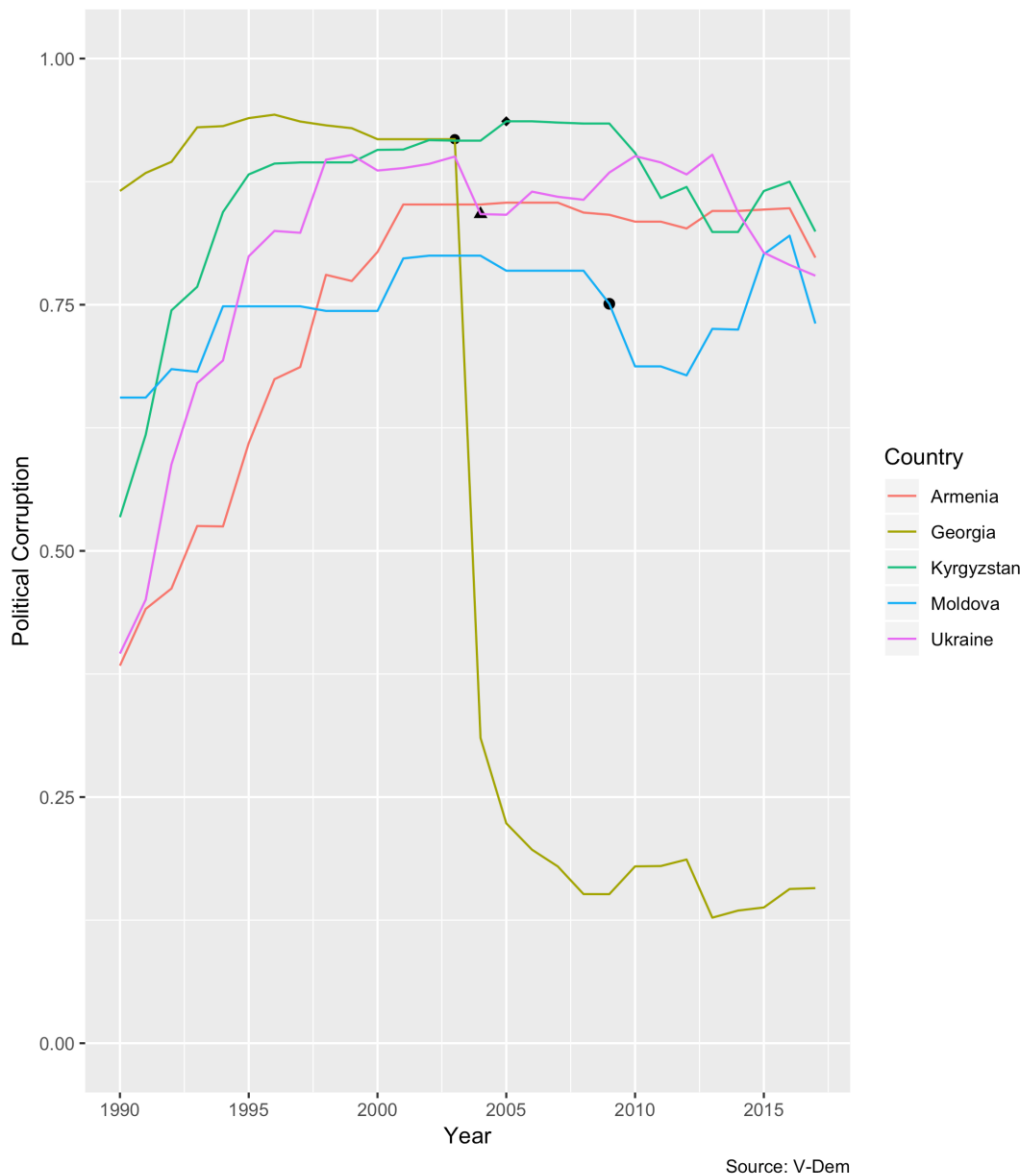


In general, Political Corruption in Armenia (Figure 2) grew sharply from independence until just after 2000, and then leveled off at high rates. V-Dem experts’ perceptions of Political Corruption did meaningfully decline from 2016-2017. The trend in Executive Corruption parallels the overall trend, including the decline from 2016-2017. While in the years immediately after independence, Public Sector Corruption was higher than Executive Corruption, since around 2000 Public Sector Corruption has been meaningfully lower. It has also been declining in the period from around 2007 to 2017 and not just in the 2016-2017 year. As a point of comparison, corruption levels today on all indicators are at or above where they were around 2000.

Figure 3 also compares Armenia with the same set of other countries in the post-Soviet space by tracking their scores on Political Corruption over time, from 1990-2017. Figure 3 is in some ways the opposite of Figure 1, but note that the two graphs are based on different data sources (Figure 1 from the Worldwide Governance Indicators and Figure 3 from V-Dem). Years are on the x-axis and Political Corruption scores are on the y-axis. Political Corruption captures both “petty” and “grand” corruption,

including both bribery and theft, that influences law making and implementation (see again Figure 2). The black shapes on the graph indicate the year in which the significant social movement activity directed at government reform took place. The year in which the social movement activity took place in Kyrgyzstan and Ukraine does not precede a notable improvement in the overall trend in either country. Political Corruption meaningfully declined following events in Moldova in 2009, although it is now back at its previous level. Most notably, Political Corruption declined dramatically following the Georgian transition. Corruption in Georgia in recent years has hovered around the level it dropped to following the transition, but that drop was so meaningfully large as to put it on a totally different trajectory than the other countries experiencing wide-scale social movement activity directed at government reform in the figure. The Georgian case gives a proof-of-concept that significant anti-corruption gains are possible

**Figure 3: Plotting Regional Corruption Scores for Armenia from V-Dem**



in the immediate aftermath of such broad social pressure, and those gains need not erode over time. Armenia's Political Corruption trend is included for context; it is among the lowest until the mid-2000s, and by 2017 its corruption level is clustered with the four countries other than Georgia.

Two key lessons stand out in these graphs. First, Armenia has substantial challenges with respect to corruption. On different measures of corruption (Figure 2), Armenia is high in all respects. As such addressing corruption will be a key challenge in upcoming years. Second, while most comparison countries also experience a great deal of corruption, Georgia has been able to address corruption concerns and exercise more control, at least since about 2003 or 2004. Georgia in some respects may provide a model for how Armenia can address corruption challenges especially if Armenia can follow Georgia's approach to addressing petty corruption. (See USAID 2018 for more details on this comparison.)

## **2.2. THE RULE OF LAW AND ARMENIA: AN OVERVIEW**

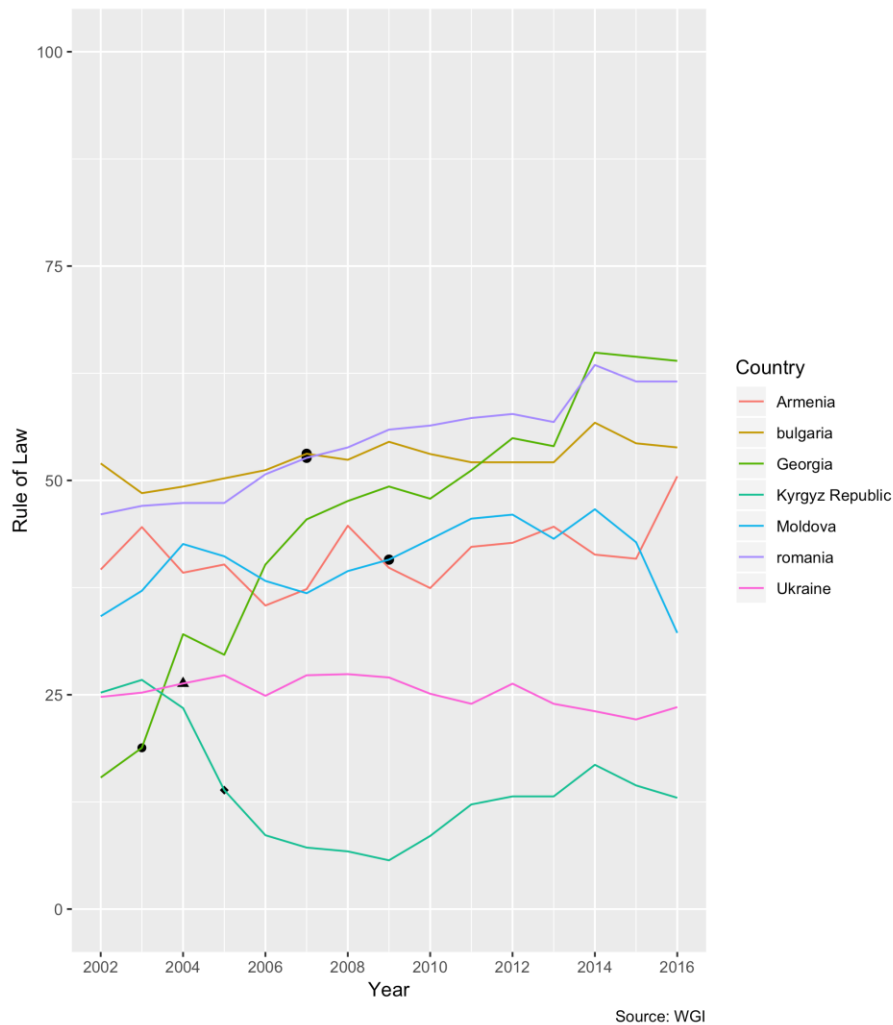
Rule of law is a concept central to governance, but one that is often poorly defined (Shklar, 1987). Under a minimalist definition, rule of law means that there are written, appropriate, and publicly promulgated regulations of civil and criminal activities in a state, and that the judiciary and any other state institutions impartially apply them (North, Wallis and Weingast, 2009; O'Donnell, 2004, 33). In its ideal form, the rule of law curtails the arbitrary use of power and institutionalized tampering (Krygier, 2016). Stein (2009, 302) expands on this, adding under rule of law, stable, codified law is “superior to all members of society”; “is just and protects human rights and dignity”; and that the law is created and refined in the context of democratic practices. Once concepts from democracy, political equality, and human rights are included in the definition of rule of law, it is clear that the rule of law contains a social dimension (Fukuyama, 2010). Thus, expanded definitions of rule of law can face political pushback from domestic populations, especially if and when the boundaries of rule of law are influenced by external actors (Belton, 2005; Shklar, 1987). In many countries in Latin America, for example, citizens fear how state authorities will use the law to pursue improper ends (Scartascini et al., 2010).

Conflict over the definition of rule of law has had real effects as international and domestic actors have engaged in reform in recent years. Problems with rule-of-law reform strategies often result from “pitfalls inherent in a definition based on institutional attributes” (Belton, 2005, 3). During the beginning of post-Soviet transition in the 1990s, countries throughout the region contended with outside actors pushing them to adopt a certain set of institutions, with the expectation that adopting the right institutions meant achieving rule of law (Roland 2007, *Transition and Economics*). In the 2000s, the European Union sent post-communist countries looking to join “many mixed signals” regarding rule of law (Mineshima, 2002, 86). Current best practices acknowledge that there are many possible institutional arrangements that can achieve good political and development outcomes (Rodrik, 2007). Accordingly, most contemporary attempts to measure rule of law are based on perceptions, or the ends to be accomplished, rather than the institutional means to get there. For its part, the European Union has moved to more ends-based definitions of rule of law as well; the European Union has instructed countries looking to join to develop “their own ‘brand’ of rule of law and democracy that reflects their individual situations, histories, and cultures” (Mineshima, 2002, 86-87). Like post-communist countries that have acceded to the European Union, Armenia too has had to develop its own ‘brand’ of rule of

law. Now, in the context of the popular protest and government change around the social movement inspired government reforms, it is clear that its ‘brand’ has been insufficient.

Figures 4 and 5 illustrate trends in rule of law based on data collected by the World Bank for Armenia and other countries in the region that have experienced notable popular protest leading to concentrated government reform efforts (albeit with varying success). They also include Romania and Bulgaria, which we see as relevant comparisons for Armenia for the purposes of considering rule of law developments. As we discuss further below, Romania and Bulgaria were notably lacking in rule of law at the time of their accession to the European Union in 2007 and continue to undertake specific rule-of-law reforms. European Union and other external support have thus played an important role in these countries with a specific focus on developing the rule of law, making their experiences relevant for Armenia today.

**Figure 4: Plotting Regional Rule of Law Scores for Armenia from the Worldwide Governance Indicators**



**Figure 5: Plotting Judicial Independence Survey Scores for Armenia and Region from the WEF Global Competitiveness Index**

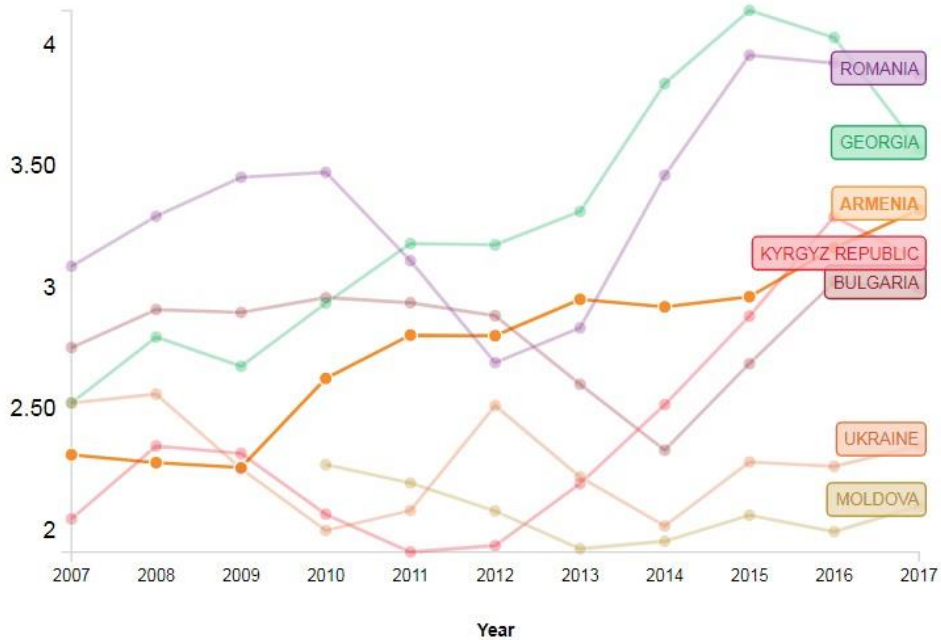


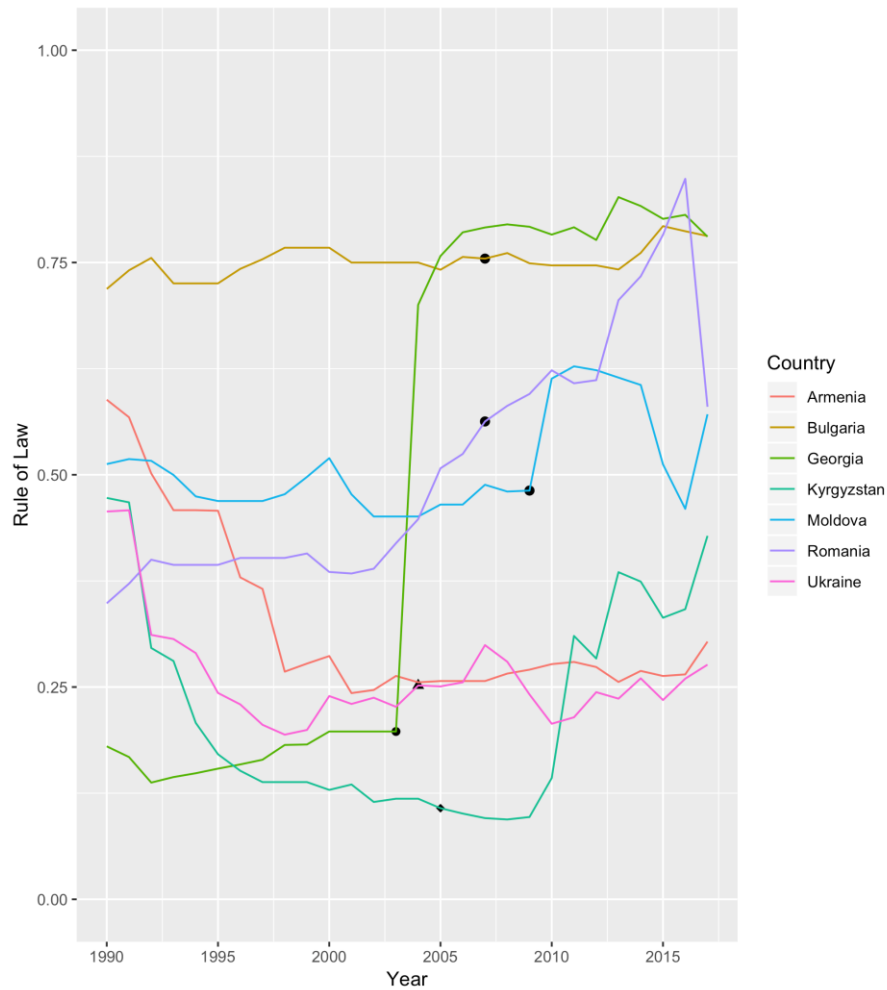
Figure 4 reports values on the World Bank’s Worldwide Governance Indicators rule of law measure from 2002-2016. The black dots in Figure 4 mark the year in which the country in question experienced significant popular protest that had a notable impact on electoral outcomes, where applicable. The reported indicator is an outcome-based indicator of rule of law that measures “perceptions of the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.” Armenia did not experience very notable improvement in the indicator over the period, although it made considerable gains in 2015-2016. These recent gains moved it ahead of Moldova, the country which it most closely tracked over the period. Ukraine has been relatively stable throughout the period. Kyrgyzstan’s rule of law fell precipitously in the 2000s and then improved in the 2010s, but it remains at the lowest level of the countries considered. It is Georgia that has notably improved its rating consistently over time; we discuss their experience more below (see also USAID 2018). Georgia started at the lowest level of this set of countries in 2002 but since 2014 has reached levels better than Romania and Bulgaria, both member states of the European Union. Romania has made steady improvement over the period although has somewhat leveled out in terms of progress since around 2004. Bulgaria has made less regular improvement in the period, and as of 2016, was at a level closer to that of Armenia than that of Georgia and Romania.

Figure 5 reports values on the World Bank’s Judicial Independence measure from 2007- 2017. This is an index (1-7) that measures how independent the judicial system is from “influences of the government, individuals, or companies” (from survey data, compiled by the World Economic Forum Global Information Technology Report). With respect to this measure, Armenia has improved steadily over the period, moving from among the lowest of this group of countries to among the highest, behind only Romania and Georgia, and higher than Bulgaria. Kyrgyzstan has also made considerable gains, moving to around the level of Armenia as of 2017 (discussed further below). Ukraine and Moldova remain quite low and are increasingly separated from the rest of this group of countries. Note that with respect to

the question of judicial independence in particular, Armenia has been doing considerably better than Moldova, as opposed to the general rule of law as measured in Figure 4 on which the two countries track more closely. We attribute this difference to active policies that Armenia has been undertaking in recent years with regard to judicial institutions, as we detail below, in contrast to Moldova that has not implemented significant policy changes in that area or with regard to rule of law more generally.

Figure 6 plots the rule of law scores from V-Dem. This indicator has yet another definition somewhat different from the concepts measured in Figures 4 and 5. Specifically, this measure answers the question: “To what extent are laws transparently, independently, predictably, impartially, and equally enforced, and to what extent do the actions of government officials comply with the law?” It is composed of an index of different V-Dem variables that speak to this question. It also extends back to 1990 whereas the previous Figures begin in the 2000s. Armenia experienced declining rule of law throughout the 1990s

**Figure 6: Plotting Rule of Law Scores for Armenia and Region from V-Dem**



and then leveled off without very significant change since around 2002. This figure puts it on the level of Ukraine in 2016, the two lowest ranking countries in this group. Both Georgia and to a lesser extent

Kyrgyzstan showed significant improvements in the period (discussed further below). Per this measure, Bulgaria has had a relatively high and steady rule of law, whereas Romania's has grown over time, albeit with a loss from 2015-2016. Still, the set of Georgia, Bulgaria, and Romania are at a meaningfully higher level of rule of law than Armenia. Also of note is that, according to V-Dem and in contrast to the World Bank's WGI measure in Figure 4, rule of law in Moldova and Armenia diverged already in the mid 1990s, with Moldova qualitatively higher throughout the period since then. Regardless, Moldova's rating remains relatively stable, consistent with the fact that it has not undergone significant rule of law reform programs like Georgia and Kyrgyzstan did.

The key takeaways from these three different indicators are that rule of law outcomes in Armenia declined in the 1990s but have been relatively stable in the 2000s, with some particular improvement in recent years with regard to judicial independence. That improvement correlates in time with the formation of the Chamber of Advocates and the Public Defender's Office in Armenia, which were seen as positive developments by independent observers that aided "the protection of human rights and individual freedoms in the country."<sup>7</sup> Of note, in its 2012 report on political rights and civil liberties in Armenia, Freedom House focused on rule of law concerns in terms of the unequal application of the law, and they particularly pointed out problems in criminal law. Specifically, they noted that lawyers had little power to intervene especially in investigative and pre-trial phases of criminal procedures, and that "the role of lawyers is limited...throughout the whole process of investigation and trial" (Freedom House, 2012, 6). We suspect that improvements in access to legal representation and in the professionalization of lawyers made an important impact on perceptions of the equal application of the law that showed up in the judicial independence ratings in recent years. We expand on these intuitions below.

In an interview at the Davos World Economic Forum in January 2019, Prime Minister Pashinyan discussed transforming Armenia's transition from a political change to an economic one. He outlined priorities including regulatory simplification, reform of the tax code and tax relief, and welfare-to-work programs. In this context, he also discussed that Armenia seeks institutional support to "reform social and political life," including renewed support from the European Union.<sup>87</sup> We mention his interview here to point out that rule of law reforms in terms of improving contract enforcement, regulation, and equal application of commercial law would correspond with the priorities currently being laid out by the Armenian administration.

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<sup>7</sup> For more information: <https://www.pf-armenia.org/event/human-rights-and-rule-law-armenia-police-brutality-political-prisoners-and-potential>

<sup>8</sup> [https://www.youtube.com/watch?time\\_continue=236&v\\$=\\$2YHS9pknuVw](https://www.youtube.com/watch?time_continue=236&v$=$2YHS9pknuVw)



## 3. INTEGRITY SYSTEMS

### 3.1. TOP-DOWN VS. BOTTOM-UP VS. WHOLE-OF-SYSTEM APPROACHES TO ANTI-CORRUPTION

There is not one unique approach to anti-corruption. The extent to which any anti-corruption intervention has a positive or negative impact depends upon context. On that note, mere replication of Western institutions and practices without due attention to context leads to sub-optimal results (Andrews, Pritchett and Woolcock, 2017).

Generally, whole-of-system, “big bang” approaches to anti-corruption are more effective than ones that are mostly top-down and bottom-up for a number of reasons (Rothstein, 2011a; Persson, Rothstein and Teorell, 2013; Fisman and Golden, 2017). First, the extent to which any governance reform—top-down or bottom-up—is effective is a function not only of the success of the particular intervention but also the state’s institutions of horizontal accountability (Fox, 2015).<sup>9</sup> Without enforcement, no initiative can be successful. Second, in societies with norms of corruption, additional top-down monitoring by itself is almost always not enough to change the norms. Monitoring relies on the existence of principled supervisors to stop corruption among subordinates—a largely quixotic proposition in many corrupt settings. To make matters more complicated, monitoring-related gains tend to be short-term in nature (Di Tella and Schargrodsky, 2003). These are two reasons why corruption is mostly not a monitoring problem but a collective action problem (Persson, Rothstein and Teorell, 2013).

A collective action problem “arise[s] when the individual pursuit of self-interest generates socially undesirable outcomes” (Ferguson, 2013, 4). More generally, corruption is mostly a collective action problem because most people in corrupt societies would benefit from having less corruption. By the same token, reducing corruption is not in most people’s individual self-interest. That is not just the case for those people who financially benefit from corruption but also those who are the victims of corruption and must pay lots of bribes, etc.

Two reasons underpin why taking action against corruption is generally not in all citizens’ individual self-interests. First, as Table 3 underscores, most countries developed the control of corruption over many—often hundreds of—years. Therefore, most anti-corruption reforms and efforts fail or are at least not do not produce tangible and visible changes in outcomes so as to inspire more reform in the short-term.<sup>10</sup> Second, taking action against corruption can carry costs such as intimidation, violence, inability to obtain government services, and being put on a blacklist.<sup>11</sup> In short, from a cost-benefit perspective, taking action against corruption is generally not in individuals’ self-interest.

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<sup>9</sup> For more on horizontal accountability, see O’Donnell (1998) and Section 3.2.2. of this paper (below).

<sup>10</sup> In more technical terms, anti-corruption reforms and efforts provide very noisy information environments.

<sup>11</sup> With respect to the blacklist, former Venezuelan President Hugo Chavez placed all citizens who signed a 2007 public petition against him on a blacklist. For about 12 years, the blacklist has not only prevented citizens who signed the petition from obtaining government jobs but also from obtaining jobs from private entities that rely on government contracts or have ties to the government (Stokes et al., 2013).

**TABLE 3: COUNTRIES THAT HAVE AT LEAST MOSTLY OVERCOME CORRUPTION<sup>12</sup>**

Country	Critical Periods	How the Country Overcame Corruption	Maintained?
Denmark	1658-1665, 1814, 1849	Loss in a war against Sweden; top-down reform initiated by kings; drafting of a new constitution following demonstrations	Yes
Sweden	1810-1850	Losing the 1808-1809 war against Russia, followed by a series of reforms	Yes
Great Britain	1780-1883	Civil service reform; legislation; a secret ballot; suffrage reform, resulting in the decline of clientelism and more funds for public services	Yes
France	1791-1975	The French Revolution; gradual decline of patronage appointments; construction of impartial institutions	Yes
Italy	1992-1996	The Clean Hands scandal, prompted by the arrest of one well-connected individual, who provided information that led to the arrest of hundreds and changed the party system	Maybe. Corrupt leaders remain electorally relevant
Estonia	1990-1995	Tax reform; e-governance; procurement reform; privatization	Yes
Georgia	2004-2008	The Georgian Transition, followed by a “big bang” approach from President Mikhail Saakashvili (i.e., large-scale dismissal of civil servants, televised arrests, and e-governance)	Yes, though with creeping authoritarianism and human rights issues
Tunisia	2011-2014	Citizen demonstrations over autocratic rule fueled the Arab Spring and subsequent democratization	Mostly, though some patronage remains a challenge
Botswana	1966-present	Excellent natural resource management; protection of property rights; transparent policy-making; management of potential ethnic tensions	Regular scandals imperil progress
United States	1870-1920	The regulation of patronage appointments through the Pendleton Act; the press; the Progressivist movement; successful prosecutions.	Yes, though the role of money in politics is significant
Hong Kong	1974-1977	Egregious malfeasance by the head of police, which prompted the creation of an independent anti-corruption agency and many subsequent arrests	Yes
Taiwan	1992-	Civil service reform; high-level corruption initiatives; legislation; party system change	Yes
Singapore	1959-1990	Authoritarian leader Lee KwanYew pushed through a series of reforms	Yes
South Korea	1961-2003	Education; import-substitution industrialization that fueled economic growth; market reforms; legislation; protests	Yes

<sup>12</sup> Sources: Theriault (2003), Lizzeri and Persico (2004), Glaeser and Goldin (2007), Rothstein (2011b), Acemoglu and Robinson (2012), Grindle (2012), Weyland (2012), Camp, Dixit and Stokes (2014), Mungiu-Pippidi (2015, 2016), Rothstein and Teorell (2015), Teorell and Rothstein (2015), Fisman and Golden (2017), Fukuyama (2018), Masoud (2018).

<i>Country</i>	<i>Critical Periods</i>	<i>How the Country Overcame Corruption</i>	<i>Maintained?</i>
Japan	1945-1952	Loss of World War 2; MacArthur Plan	Yes
Chile	1984-1990	Economic liberalization; privatization; loss of natural resource rents; democratic and authoritarian legacies from previous periods	Yes
Uruguay	1984	Fiscal/tax system consolidation; privatization; a democratic history; an educated and active citizenry; loss of patronage funds.	Yes

The relevance of the collective action paradigm to explain the persistence of corruption also helps us understand why, at its very core, corruption is a bottom-up problem (Mungiu-Pippidi, 2018). Nevertheless, bottom-up solutions alone will generally not suffice. Whereas top-down, monitoring-based approaches are reliant on individuals in leadership positions overcoming sticky behavioral and cultural norms, bottom-up approaches are prone to citizens free-riding on the actions of others.

To increase the probability of success against corruption, countries should combine top-down and bottom-up approaches to anti-corruption (Serra, 2012). As we highlight in the next section, the most successful anti-corruption efforts, particularly in a setting of state capture, generally combine some form of monitoring with either overlapping institutions of horizontal accountability (not a current reality for Armenia); or measures to ensure that the monitoring can feasibly spur collective action (feasible for Armenia).

### **3.2. OVERCOMING STATE CAPTURE**

As shown in Table 1, state capture refers to a situation in which private firms and interests monopolize the state-level decision making (Hellman, Jones and Kaufmann, 2003; Søreide, 2014). State capture does not only elicit pernicious effects in terms of corruption and the rule of law, but it also tends to demobilize citizens. When citizens perceive that the government is conferring special advantages to some firms or oligarchs, citizens are generally less willing to engage in collective action against corruption (Bauhr, 2017). That appears to be what happened to Armenia as well (Wickberg and Hochtanyan, 2013). State capture is thus a form of corruption that is especially difficult to eradicate, and Georgia and Estonia constitute the only states that mostly overcame state capture in the post-Soviet space. To do so, each country combated corruption on multiple fronts through both top-down and bottom-up approaches, which we detail in Table 3 as well as the Governance Evidence Review also under this tasking (USAID, 2018).

#### **ANTI-CORRUPTION AGENCIES AND COMMISSIONS**

Many states attempt to remedy state capture through a dedicated anti-corruption agency or commission. Unfortunately, there is very little literature that puts forth credible causal evidence on their effectiveness (Gans-Morse et al., 2018). That does not mean that dedicated anti-corruption institutions cannot be effective. Hong Kong’s and Singapore’s anti-corruption agencies, for example, provide a clear

success stories, as does the United Nations' International Commission against Impunity in Guatemala (CICIG) (Fisman and Golden, 2017, 226-228).

As a survey of 50 dedicated anti-corruption agencies by Recanatini (2011) showcases, these agencies tend to be very hard to compare. Often, they have significantly different functions, mandates, financial resources, and independence from the political process. Recanatini (2011) also finds that dedicated anti-corruption agencies generally lack performance indicators. Paradoxically, at least in the successful cases of Hong Kong and Singapore, what seemed to inspire strong performance from dedicated anti-corruption agencies were crises (Dixit, 2018; Quah, 2010). The crises paved the way for the anti-corruption agencies to occupy a more prominent, important, and independent role. The parallel to Armenia given the social movement activity and protest of 2018 is ostensible.

One reason for pause concerns the fact that Armenia's Anti-Corruption Commission is not politically independent; in fact, the Prime Minister chairs the commission. To be clear, anti-corruption agencies or councils can be effective even if they are political nature. When these agencies are political, though, their effectiveness—and existence—is susceptible to the whims of the particular leaders in power.

Take, for example, the case of Guatemala. Current President Jimmy Morales came into office praising the United Nations' International Commission Against Impunity in Guatemala (CICIG). Yet, when the CICIG started to investigate Morales' family, Morales quickly changed his position and attempted to kick the CICIG out of the country (The Economist, 2018, 2019). At least for the meanwhile, Guatemala's Supreme Court appears to have stopped the move (Perez, 2019). If such a situation were to happen in Armenia, though, it is not clear that the judiciary is strong enough to be able to do the same. In short, as Hidalgo, Canello and Lima-de Oliveira (2016) show through their study of Brazilian State Audit Courts, politicians are generally very bad at policing themselves, especially when they have higher stations.

### AUDIT INSTITUTIONS, RANDOMIZED AUDIT SCHEMES, AND HORIZONTAL ACCOUNTABILITY

There is robust causal evidence to support the effectiveness of audit institutions, notably in Brazil. Since 2003, the country's General Comptroller's Office<sup>13</sup> randomly selects 26-60 municipalities with populations over 500,000 inhabitants for public expenditure audit through a lottery (Ferraz and Finan, 2018).<sup>14</sup> When administering the lottery, the General Comptroller's Office invites members of the press, political parties, and civil society to ensure transparency (Ferraz and Finan, 2008, 707).

In contrast to the Brazilian audit lottery program, most countries' audit institutions select entities and individuals for audit through legislatively-imposed mandates or performance- and risk-based systems. With respect to the latter, although it may make logical sense to target high-risk individuals and entities based on poor compliance history or high corruption risks, it is not always easy to do so in practice. Evidence suggests that audit agencies around the world have very different levels of independence and professionalism (Gustavson and Sundström, 2018). Accordingly, employees of audit institutions may not always use risk-based audit systems in a manner that is fair, appropriate, or free from outside influences. To be sure, auditor discretion is useful under some circumstances, including in developing countries

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<sup>13</sup> Controladoria Geral de Uniao (CGE) in Portuguese.

<sup>14</sup> In total, Brazil has 5,570 municipalities.

such as India (Duflo, Greenstone, Pande, and Ryan, 2018), but situations of state capture such as that of Armenia generally call for randomized schemes.<sup>15</sup>

The random selection of municipalities for audits ensures that politics does not confound the impact of audits to uncover, expose, and mitigate corruption. Additionally, the random selection and timing of audits ensures that politicians cannot plan out corruption in advance, a concern that Bobonis, Fuertes and Schwabe (2016) document for Puerto Rico. Based on our review, Brazil appears to be the only country with systematic, randomized sub-national audits. Countries such as Indonesia (Olken, 2007) and Mexico (De La O and García, 2014), however, have implemented randomized audit schemes for certain programs.

Randomized audit schemes are not just promising in terms of their benefits for unbiased evaluation but also regarding the collective action against corruption that they have delivered. On that score, when the Brazilian General Comptroller's Office audits municipalities at least two years before an election and ensures that local radio reports the results, relatively corrupt mayors are much less successful at gaining reelection (Ferraz and Finan, 2008). Randomized audits have also allowed researchers to uncover that having the prospect of reelection—as opposed to when reelection is not feasible by law—yields mayors to be less corrupt (Ferraz and Finan, 2011).<sup>16</sup> Furthermore, Avis, Ferraz and Finan (2018) find that being audited in the past reduces future corruption in subsequent audits, and Zamboni and Litschig (2018) document that increasing audit risk deters corruption in procurement contracts.

One of the reasons why these randomized audit schemes are so successful in Brazil relates to their overlapping institutions of horizontal accountability. As above, Brazil has randomized audits through the Comptroller General and certain state audit courts (Boas, Hidalgo and Melo, 2019). What makes those audits so powerful is the additional and effective support from the Federal Audit Court, Federal Public Ministry, Revenue Service Inspectors, the Federal Police, and the judiciary (Ferraz and Finan, 2018). That accounts for why successful corruption prosecutions have increased in recent years (Avis, Ferraz and Finan, 2018), at least for lower-ranking individuals (Hidalgo, Canello and Lima-de Oliveira, 2016).

Armenia does not have such an effective ensemble of horizontal accountability institutions with randomized schemes to ensure fairness. With respect to the judiciary, it is weak, poorly conceived by citizens, and has difficulty regulating entrenched elites and insiders, who exercise monopoly power and make it difficult for foreign competition in business (Lewis, 2017; Paturyan and Stefes, 2017). Armenia's legislation also confers immunity to prosecution for certain "legal persons" such as judges, something that deters progress on state capture (OECD, 2018). By contrast, the Armenian Audit Chamber is member of relevant international auditing standards organizations (INTOSAI, EUROSAL, and ASOSAI) and is attempting to overcome some of negative pressures with cooperation from USAID.<sup>17</sup> Since 2018, the Audit Chamber has benefitted from a new law that attempts to instill further independence in the audit process as well as a new, more autonomous chamber of auditors and accountants.<sup>18</sup> While this progress is notable, it remains to be seen whether these efforts can help overcome state capture.

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<sup>15</sup> The only available cross-national data on audit institution independence and professionalism from Dahlström et al. (2015) rank Armenia toward the middle of distribution (38/114 on professionalism; 68/114 on independence).

<sup>16</sup> By law, Brazil only allows mayors to be reelected one time.

<sup>17</sup> <http://old.armradio.am/en/2018/05/30/usaids-and-audit-chamber-of-armenia-to-cooperate/>

<sup>18</sup> <https://www.tert.am/en/news/2017/02/14/davit-ananyan/2278542>

## MITIGATING THE INFLUENCE OF OLIGARCHS IN A SETTING OF STATE CAPTURE

When oligarchs perpetrate state capture, it is especially necessary to mitigate their influence with a number of both top-down and bottom-up measures. In line with Johnston (2014, 48-49), overcoming oligarch-perpetrated state capture requires two outcomes. First and foremost, it is necessary to open up “safe political and economic space” so that citizens and non-oligarchic businesses can operate without fear and trust each other. Opening up safe political and economic space, according to Johnston (2014, 49-51), entails: “a reduction of violence; credible law enforcement, courts, contract enforcement, property rights, and civil liberties; elections with real choices, in which votes are cast and counted honestly; and a free or freer press.” Second, overcoming oligarch-perpetrated state capture requires some form of “reform activism: enabling and encouraging people sharing grievances to act on these concerns, voice opinions and demands, safely and with some chance of having real effects” (Johnston, 2014, 48). Achieving some form of safe economic and political space as well as spurring reform activism is not easy, but some tools are particularly useful—particularly in a context such as Armenia with a weak judiciary.

**AUDITS, CODES OF ETHICS, AND DISCLOSURE REQUIREMENTS.** Most governmental agencies have some form of an internal auditing department, led by in-house staff. In situations of oligarchic state capture, in particular, it is necessary to complement internal audits with external audits: that is, audits carried out by a third-party, usually a specialized audit firm. Since situations of state capture extend to the private sector as well, it is often necessary to audit the auditors, too.<sup>19</sup>

To ensure government staff cannot avoid all audits, it is helpful to stipulate audit provisions in staff employment contracts and require staff to sign codes of ethics as a condition of employment. These codes of ethics should stipulate anti-nepotism and meritocratic recruitment provisions regarding hiring as well as a broad suite of measures against conflicts of interest (World Bank, 2000). Such provisions and measures, in turn, help shield bureaucrats’ careers from outside attempts to capture government procurement contracts (Charron et al., 2017).

Procurement is one of oligarchs’ primary vehicles for perpetuating state capture, and procurement does not just pose a problem for staff who sit on bid evaluation committees. In situations of state capture, oligarchs pressure or bribe staff of government agencies, who often serve as intermediaries for inside information to help secure government contracts.<sup>20</sup> That is why disclosure requirements should pertain to all bidders and government agency staff, not just procurement and financial management staff. Ideally, disclosure requirements should not just take the form of conflicts of interest declaration, required public lobby registers, integrity pacts or pledges, and management but also financial asset disclosure (see Table 2).<sup>21</sup> As we detail in the Governance Evidence Review also under this tasking (USAID, 2018), financial asset disclosure is even more effective when paired with transparency of tax records.

**COMBATING COLLUSION, MONOPOLIES, CLIENTELISM, AND DARK MONEY.** Collusive arrangements are one of the hallmarks of state capture perpetrated by oligarchs. In procurement, prototypical collusive arrangements that strengthen oligarchs’ monopoly positions in both politics and

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<sup>19</sup> For example, the World Bank’s Integrity Vice-Presidency investigators have found collusive arrangements between supervising engineers and contractors in various international development projects (World Bank, 2011).

<sup>20</sup> Intermediaries are also called “middle men” or “agents”. For more on the role of intermediaries, refer to Drugov, Hamman and Serra (2014), Fredriksson (2014), Bayar (2005), Hasker and Okten (2008), and Hummel (2018).

<sup>21</sup> For more on asset disclosure, see Fisman, Schulz and Vig (2014) and World Bank and United Nations Office on Drugs and Crime (2015).

markets include bid-rigging;<sup>22</sup> downstream sub-contracting;<sup>23</sup> fraudulent bid securities and performance guarantees;<sup>24</sup> and bribery, kickback, and coercion schemes. Some of the most common forms of the latter are “*plata o plomo*” (silver or lead) schemes, diffused most notably by Colombian drug lord Pablo Escobar (Dal Bó, Dal Bó and Di Tella, 2006).

On the subject of dark money, it is one of the primary drivers of state capture. To mitigate its influence on politics, preventive measures include those regarding campaign financing (Hummel, Gerring and Burt, 2018), election monitoring (Hyde, 2011), lobbying (de Figueiredo and Richter, 2014), and pre-election clientelistic practices (Stokes et al., 2013). With regard to campaign financing, under extreme circumstances of state capture, it may be necessary to ban private financing of electoral campaigns and make the campaign financing system entirely public (World Bank, 2000). Election monitoring, including in Armenia (Hyde, 2007), deters electoral fraud, something that undermines the legitimacy of democracy as a system of governance.<sup>25</sup> Lobbying is generally very challenging to regulate appropriately, because the legality and acceptance of certain practices are context-specific, and not all lobbying is zero-sum, pernicious behavior.

Dark and misappropriated money also fuels clientelism: that is, “the exchange of selective benefits for political allegiance” (Lawson and Greene, 2014, 61). It takes the forms of vote-buying,<sup>26</sup> turnout buying,<sup>27</sup> abstention-buying,<sup>28</sup> double persuasion,<sup>29</sup> legitimacy-buying,<sup>30</sup> request-fulfilling,<sup>31</sup> and patronage.<sup>32</sup> A combination of legislation and a desire on the part of elites to finance public services helped end the patronage spoils system and vote-buying in the United Kingdom (Lizzeri and Persico, 2004; Camp, Dixit and Stokes, 2014). Mexico has attenuated clientelism by closing secret loopholes in the budget and exerting greater surveillance of funds generated by its state-owned enterprises (Greene, 2007). Assuming there are available funds for misappropriation, though, politicians will not stop with clientelistic practices if their competition is doing them as well, even if clientelism is not that effective (Geddes, 1994; Muños, 2014).<sup>33</sup> Similarly, many citizens in poorer countries are economically dependent on clientelistic benefits and patronage jobs to the extent that citizens will engage in request-fulfilling and

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<sup>22</sup> Typical displays of bid-rigging include monopolistic, economic cartel behavior, such as selective and coordinated bidding on procurement contracts to divide-and-capture markets.

<sup>23</sup> Often, firms that do not meet tender requirements collude with firms that meet tender requirements, and then winning firms sub-contract parts of the contract to the ineligible firm.

<sup>24</sup> Oligarchs and monopolistic firms will often buy off or fabricate performance guarantees and bid securities in order to qualify for procurement contracts for which they are not eligible. In settings of state capture, there is a particular risk of collusion between those offering the performance guarantees or bid securities and those receiving them (World Bank, 2011, 2010).

<sup>25</sup> For more on election monitoring and campaign financing, we refer readers to the Governance Evidence Review also under this tasking (USAID, 2018).

<sup>26</sup> Vote-buying entails the selective exchange of material benefits (e.g., cash, food) or non-material benefits (e.g., services) for political support (e.g., Auyero, 1999; Stokes, 2005; Finan and Schechter, 2012; Hidalgo and Nichter, 2016).

<sup>27</sup> Turnout-buying entails parties distributing benefits to loyalists (e.g., Nichter, 2008; Larreguy, Marshall and Querubin, 2016).

<sup>28</sup> Abstention-buying entails parties distributing benefits to voters to not show-up to the polls (e.g., Gans-Morse, Mazzuca and Nichter, 2014).

<sup>29</sup> Double persuasion entails paying potential voter to both vote and vote for a particular party (e.g., Gans-Morse, Mazzuca and Nichter, 2014).

<sup>30</sup> Legitimacy-buying entails paying voters to turn out to the polls in a contested election that may be subject to boycott, such as the one after the promissory coup in Honduras in 2009 (e.g., Gonzalez-Ocantos, Kiewiet de Jonge and Nickerson, 2015; Bermeo, 2016).

<sup>31</sup> Request-fulfilling entails citizens asking politicians and their brokers for clientelistic benefits, as opposed to politicians targeting voters (Nichter and Peress, 2017).

<sup>32</sup> Patronage entails the selective exchange of public sector jobs for political support. Although patronage and clientelism are often used interchangeably, the phenomena are distinct (Fukuyama, 2014).

<sup>33</sup> As Muños (2014) details, clientelism continues in Peru, even though politicians know it is not effective, because the ability to promise clientelistic benefits is a signal of party strength to voters.

thus resist the eradication of clientelism (Kitschelt and Wilkinson, 2007; Nichter and Peress, 2017). In Armenia, there are reports of clientelism (Paturyan and Stefes, 2017; Lewis, 2017), but it does not appear to be as significant—or at least is part of—the overall phenomenon of state capture in general.

In terms of the economic costs of dark money, they include money laundering and the proliferation of shell companies to hide and expropriate state and individual funds and assets. In general, the principle concerns underlying the use of shell companies for money laundering include terrorism financing, corruption, clientelism, tax evasion, and narco-trafficking, among others (Findley, Nielson and Sharman, 2014). According to relevant risk assessments conducted by the U.S. State Department, the Financial Action Task Force (FATF), and others, the risks associated with money laundering are not high in Armenia. Armenia is not on the FATF “Anti-Money Laundering Deficient” list, for example. More broadly, there are few concerns about money laundering for the purposes of terrorism financing. With that said, some moderate concerns exist regarding the use of money laundering for tax evasion (likely tied to corruption), corruption more broadly, theft, and narco-trafficking (Know Your Country, 2019; Financial Action Task Force, 2019; US Department of State, 2019). In recent years, Armenia has devoted substantial attention to this sector, making a number of changes to the public sector that aim to address political officials, the civil service, those in procurement, and include measures to prevent corruption, establish better ethics, reporting and so forth (OECD, 2018). In general, then, Armenia does need to continue to focus some attention on its anti-money laundering laws and enforcement, but the risks should not be overstated in this case.

Strategies for addressing illicit financial activity are numerous, and face a fundamental problem that illicit financial behavior is inherently transnational whereas any given country can primarily make national-level policy adjustments. Thus, before turning to specific domestic policy possibilities, we first note here that Armenia would need to identify means to better coordinate with international bodies such as the Financial Action Task Force as well as with other countries not only regionally, but globally. Domestically, the three most prominent policy approaches include (1) empowering law enforcement agencies with substantial investigative authority, (2) establishing a national public registry of company beneficial ownership, and (3) requiring corporate service providers including law firms to collect and hold identity information for all companies (Findley, Nielson, & Sharman 2014).

Empowering law enforcement agencies can be a useful step to the extent that the companies and bank accounts used for illicit purposes are located in Armenia and therefore in the jurisdiction of Armenian law enforcement. Even with strong law enforcement, however, if companies and/or bank accounts are set up anonymously (no beneficial ownership information provided) then law enforcement investigations are unlikely to arrive at anything but a dead end. Accordingly, it may be necessary for a registry of companies, which includes beneficial ownership data, to be established and actively used. If all companies that are formed register beneficial ownership information, then law enforcement is much less likely to reach dead ends in their investigation of suspected criminals engaged in illicit financial activity. Unfortunately, company registries have done little more than serve archival functions for general company information, and have not required the inclusion of beneficial ownership data, and would need to be used much more actively and comprehensively to achieve any significant effect. The third, and arguably best, way to address illicit financial behavior involves legislating and enforcing that corporate service providers, including law firms, collect and store beneficial ownership information. International standards already require this, and domestically Armenia will have greater success to the extent that it adheres to and enforces these standards. Even in the absence of a broad public registry, if corporate



service providers collect and store the beneficial ownership information, then law enforcement investigations will be able to identify and use meaningful information. Moreover, domestically legislating and enforcing these standards may deter some potential criminals from using companies and accounts for illicit financial behavior in the first place, though as noted above, it could shift domestic activity to transnational locations. Each of these approaches thus holds promise, though none of them is a cure-all.

Recently, Armenia has started to require that firms bidding on procurement contracts register their beneficial ownership information (OECD, 2018). This is a great first step, but it remains to be seen whether Armenia will use some of the above strategies to ensure that beneficial ownership information is not only collected but used. One way to do may be through collaboration with large firms that collect firm-level beneficial ownership information on an international level such as Orbis (Bureau van Dijk) and World Compliance.<sup>34</sup> Perhaps there is scope for public-private partnerships that would allow for seamless two-way exchange of beneficial ownership data that could be beneficial for Armenia, private investors, large organizations, and the compliance data organizations.

### **INVOLVING NON-GOVERNMENTAL ORGANIZATIONS AND CIVIL SOCIETY**

The only way that the press, non-governmental organizations (NGOs), individuals, and watchdog agencies will consistently act against state capture is if there is a safe environment to do so. A first step to make an environment safer is to adopt legislation for whistleblower protection (Basu, Basu and Cordella, 2016). To enforce whistleblowing is very challenging, though, as evidence from the United States suggests (Dyck, Morse and Zingales, 2010). Accordingly, even though Armenia recently adopted whistleblower legislation (OECD, 2018), it will likely take time for the legislation to become effective.

To ensure that intrepid members of the press and watchdog agencies can hold the government and business to account, freedom of information laws are essential (Escaleras, Lin and Register, 2010; Islam, 2006). Ideally, freedom of information laws need a trackable e-governance platform to accompany them. Otherwise, bureaucrats may not provide civil society with the information it needs to slowly erode the grip of state capture. Armenia has recently made progress in this area, but the OECD (2018) reports that there remains significant steps that the country can take.

Under some circumstances, it may also be possible to involve civil society in the fight against corruption through community-based/third-party monitoring, social audits, and hotlines. For further details, we refer readers to the Governance Evidence Review also under this tasking (USAID, 2018).

## **3.3. PROMISING APPROACHES FOR ARMENIA**

### **ENGAGEMENT WITH SMALL- AND MEDIUM-SIZED ENTERPRISES (SME) ASSOCIATIONS**

Engaging with SME associations constitutes a particularly promising path to gradually erode state capture in Armenia. As Yadav and Mukherjee (2016, 17-18) recount, SMEs do not only comprise a large portion of economies, but they are also a sector with financial incentives—and some resources—to undermine monopolies. Like any association, SME associations are useful for mobilizing collective action, including against corruption, through rewards and punishments (e.g., fines).<sup>35</sup> Generally, SME associations are not

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<sup>34</sup> These are among the firms that keep track of Anti-Money Laundering/Countering the Financing of Terrorism (AML-CFT) and sanctions lists, and sell these data to big banks' and organizations' compliance/due diligence departments.

<sup>35</sup> In academic parlance, we are referring to selective incentives and sanctioning (see Olson, 1965; Ferguson, 2013; Sandler,

too large such that they would fall victim to excessive member free-riding, a problem for generating collective action in large groups. Given that Yadav and Mukherjee (2016) find that engagement with SME associations is more effective in areas with high concentrations of such associations, any such approach in Armenia should start with SME associations in Yerevan.

### **RANDOMIZED AND FREQUENT AUDITS**

Instituting a lottery system to start with randomized audits similar to those of Brazil (Ferraz and Finan, 2018) would likely be beneficial for Armenia. By randomizing the audit schedule but keeping it frequent,<sup>36</sup> it would hinder politicians and bureaucrats from anticipating investigations and thereby changing their behavior selectively. Additionally, randomizing audits would mitigate political influence in audit selection and help with evaluating whether audits truly work. When audits are not randomly assigned, it presents a myriad of evaluation challenges since corruption is one of the most endogenous phenomena to measure in all of social science. That is one principal reason why Gans-Morse et al. (2018) find—in a review of the corruption literature originally commissioned by USAID—that there is very little causal evidence on what works in terms of anti-corruption efforts.

### **ADDRESSING PETTY CORRUPTION**

As we highlight in the Governance Evidence Review also under this tasking (USAID, 2018), addressing petty corruption is a less risky way to start an anti-corruption effort. Low-level bureaucrats who request bribes in exchange for services generally do not enjoy the same immunity from the judicial system as oligarchs and high-ranking public officials. Therefore, it is best to start any anti-corruption initiatives at the lower level, with the objective of gradually shifting norms, thereby making it easier to tackle grand corruption over the longer term. What's more, it is possible to tackle petty corruption inexpensively, such as by sending plain-clothes police officers to government agencies.

### **INSTITUTING REQUIRED CODES OF ETHICS AND DISCLOSURE PROVISIONS**

Armenia should ensure that all government employment contracts require signing of codes of ethics and compliance with disclosure requirements regarding assets, tax records, and conflicts of interest. This process has begun (OECD, 2018), but could be developed further to include more than special categories of staff and entrench the norms of ethical behavior. Even if internal audits are not effective at stemming corruption, the signing of the code of ethics should leave corrupt government employees vulnerable to prosecution through external audits.

## **3.4. SEQUENCING OF ANTI-CORRUPTION REFORMS OR ACTIONS**

There is a robust debate in the academic literature about sequencing, with famous scholars eschewing sequencing formulas (e.g., Carothers, 2002, 2007; Diamond et al., 2014). Nevertheless, these critiques relate more to the supposed existence of unique sequencing formula than about proposing specific reforms in sequence for any country. Although there are some roadmaps for addressing corruption (e.g., Mungiu-Pippidi, 2018), the advice of Johnston (2014) seems most relevant to the situation of state capture in Armenia. As we highlight in Section 3.2, Armenia needs to open safe political and economic space as a first priority, while encouraging reform activism as a second priority.

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2015).

<sup>36</sup> As Di Tella and Schargrodsky (2003) show in their audit study of hospitals in Argentina, the threat of an audit can deter corrupt behavior. However, audits only work for a short time if authorities do not continue them.

Perhaps the most promising measure of those that we highlight in Section 3.3 is that concerning engagement with SME associations that can foster collective action against corruption. Armenia has recently made some progress on the World Bank Doing Business index (2019) that measures regulatory challenges to business operation, but it is unclear that foreign direct investment substitutes for the role of domestic SMEs. For example, even powerful outside firms such as the French supermarket giant Carrefour have experienced great difficulties attempting to operate in Armenia (Paturyan and Stefes, 2017). Accordingly, and given that corruption is at its very nature a behavioral norm (Fisman and Golden, 2017), the challenge to oligarchs must come from within. At least at first, actors with collective action potential and financial resources such as SME associations will be critical in leading the way.

In terms of other priorities, we would recommend that Armenia next institute the randomized and frequent audits as well as the campaign on petty corruption, led by plain clothes police officers. With respect to petty corruption, especially since the success of Armenia's recent police reform is mixed (Shahnazarian and Light, 2018), it will be necessary to ensure that the police will not use their positions to extract bribes themselves (see Khan et al., 2016). With regard to audits, news reports suggest that USAID has a fruitful relationship with the Armenian Audit Chamber, and that the Audit Chamber is open to instituting reforms.<sup>37</sup> Therefore, we see randomized audits as a feasible priority.

After undertaking or at least starting the above reforms, then we would advocate focusing on transparency-related measures. We suggest undertaking transparency-related reforms last because in situations of state capture, knowing more about corruption can lead to demobilization of the masses (Bauhr and Grimes, 2014) as well as the elites (Croke et al., 2016). Of these transparency-related measures, the first set of priority measures are those regarding codes of ethics and disclosures relating to assets, conflicts of interest, and, lastly, tax policy transparency. As a final step, we would suggest that Armenia bolster its efforts to design a robust law and transparency portal for freedom of information requests.

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<sup>37</sup> See: <http://old.armradio.am/en/2018/05/30/usa-id-and-audit-chamber-of-armenia-to-cooperate/>

## 4. RULE OF LAW

### 4.1. WHAT DOES THE BROADER LITERATURE ON TRANSITIONS (GLOBALLY) SAY ABOUT RISKS AND OPPORTUNITIES WITH RULE OF LAW REFORMS?

Decades of experience with political transition around the world have come to undermine the notion that there might be any sort of “one-size-fits-all” universalism available to build robust political institutions and democratic practices (Rodrik, 2007). Failures and setbacks in rule of law reform processes are regularly traced back to badly designed strategies, coupled with insufficient and ineffective implementation that cut programs off at the knees (Channell, 2006; Carothers, 2007; Stiglitz, 1998, 2002). Poor outcomes have been associated with a means- rather than ends-approach to rule of law (Kleinfeld, 2012; Jensen and Heller, 2003), when actors build their strategy around setting up particular formal institutions rather than accomplishing particular goals (Mendelski, 2018). The general consensus is that a one-size-fit-all approach should be replaced with the notion that there are a variety of models available and experimentation with institutional configurations is important (Bugarič, 2015a; Orenstein, 2013; Sherman, 2009). The influence of history, culture, and previous institutions on rule of law reform trajectories can be harnessed in the service of reform rather than being detrimental, especially if reform efforts rely in large part on domestic political and civil society actors (Mendelski, 2018; Prado and Trebilcock, 2009).

Donor heterogeneity can prove a challenge in rule of law reform processes as well. For example, in recent years the European Union and World Bank have prioritized judicial capacity building (Anderson, Bernstein and Gray, 2005), which is generally defined as improving the ability of judges and those in the legal system to do their jobs competently, whether through improving knowledge, skills, resources, or easing constraints that hamper them. The European Court of Human Rights has emphasized fair trials; the Council of Europe has stressed improved judicial review (Mendelski, 2015), impartiality, and training; and the Organization for Security and Co-operation in Europe has focused on law and order and minority rights (Mendelski, 2018). While all laudable goals, incoherence across missions of different institutions can undermine progress on any given goal, making rule of law reforms “complex, expensive, and challenging” (Mendelski, 2018). This point is aptly captured by one commentary that notes actors in the rule-of-law-promotion field include “an army of multilateral and international agencies, lawyers, private foundations, legal and development consulting firms, human rights and civil society activists, governments, armed forces, and aid providers” (Mooney et al., 2010).

In general, organizing free and democratic elections is easier than creating constitutional democracy based on the rule of law (Bugarič, 2015b). Citizens in new democracies may turn out to the polls but may be less supportive of broader, necessarily more amorphous rule of law reforms (Bugarič, 2015a). Yet we know that institutions, norms, and practices can be more effective than law on the books (Pistor, Raiser and Gelfer, 2000; La Porta, Rafael et al., 1999). So, buy-in from citizens is crucial to moving from de jure to de facto rule of law reforms.

## **4.2. WHAT DOES THE REGIONAL (POST-SOVIET, EASTERN EUROPE) LITERATURE SAY? WHAT CAN WE LEARN FROM SUCCESSFUL EFFORTS TO STRENGTHEN JUDICIAL INDEPENDENCE IN SIMILAR CONTEXTS?**

In the post-communist countries of Central and Eastern Europe and the former Soviet Union, rule of law institutions began on a particularly shaky footing. Concepts including courts, media, human rights organizations, and even the idea of an ombudsman did not have established transitions in those systems (Bugarič, 2015a). The notable lack of institutional history among new countries in the region—whether since the inter-war period, before World War I, or ever—is what sets their experiences apart from other transition settings in Latin America and elsewhere in the world (Bugarič, 2015a). Thus, a focus in on the experiences and successes in the region can best help us understand the potential for rule of law reform in Armenia today.

Since the 1990s, successful efforts to reform political institutions in the region generally bifurcated between Central and Eastern Europe and the countries of the former Soviet Union. Central and Eastern European countries most proximate to Western Europe benefited from buy-in from the European Union and targeted, special support in accession processes (Roland, 2000). The Baltics stood out among countries born of the former Soviet Union as particularly successful in reforming their political institutions, not to mention their economic success. They, too, benefited from early buy-in from the European Union, which specifically supported those countries it could most reasonably see, from an early stage, as likely to accede to the European Union. A wide literature has analyzed the success of the Czech Republic, Poland, Hungary, Estonia, and other countries in the first wave of European Union enlargement (Ekiert and Hanson, 2003; Vachudova, 2005; Grabbe, 2006; Noutcheva and Bechev, 2008; Levitz and Pop-Eleches, 2010; Noutcheva and Bechev, 2008; Levitz and Pop-Eleches, 2010), but we emphasize their proximity to the European Union and their ability to accede as an uncontroversial point that makes them less relevant to Armenia’s experience.

In contrast, countries of the former Soviet Union have been considerably less successful with rule of law reforms. Also part of this less successful group are the countries of the former Yugoslavia in the west Balkans. Mendelski (2018) summarizes the literature on rule of law in transition and lists a set of variables he sees as common to these less successful cases: politicized judicial systems; “defective” constitutional review; weak separation of powers; weak or ineffective horizontal accountability of institutions; insufficient judicial capacity; judicial corruption; and low-quality legislation (Mendelski, 2015; Pridham, 2005; Magen and Morlino, 2008; Mendelski, 2009).

We narrow our focus to a few countries that we see as most relevant to Armenia’s potential for rule of law reforms. First, we see the experiences of the countries in the second post-communist enlargement of the European Union—Romania and Bulgaria—as providing important points of comparison. This is because their delay was specifically about problems with rule of law, which made the European Union worried about its ability to maintain high democratic, rule-of-law standards within the boundaries of the European Union (see discussion below). Second, we see the rule of law reform process in Georgia as the most notable success that provides the most parallels to Armenia’s experience. Third, and in contrast, we see setbacks in Ukraine as providing an important cautionary tale relevant to Armenia. We review these countries’ experiences in the next sections.

## ROMANIA AND BULGARIA

The entry of Romania and Bulgaria into the European Union was delayed; they constituted the next wave of expansion in 2007. Poverty in Romania and Bulgaria was one sticking point for the European Union, as was the depth of corruption in their political systems (Noutcheva and Bechev, 2008). The lack of independence of the judiciary and overall weakness of rule of law were popularly understood as key priorities that needed to be addressed for accession to take place. In general, as tension between judicial and political elites increased, the European Union took on more authority in implementing judicial independence monitoring in Romania and Bulgaria (Coman, 2014). In particular, the European Union changed its strategy and implemented a new policy in December 2006, called the Mechanism for Cooperation and Verification (MCV). This allowed the European Union a means to accept the accession of Romania and Bulgaria, in January 2007, without denying their continued problems with the judiciary and corruption (Coman, 2014; *Country Report: Bulgaria*, 2011). Romania was given specific benchmarks regarding the fight against corruption as well as judicial reform. Bulgaria was given benchmarks regarding corruption, judicial reform, and organized crime. Those benchmarks are detailed in Table 5. Romania and Bulgaria were to report on progress on these benchmarks in reports every six months after accession.

The European Union retained the right to suspend membership privileges for Romania or Bulgaria if they were not assessed to have made sufficient progress on these benchmarks, although the European Union has never done so (Trauner, 2009). Issues of corruption and weak rule of law continue to be of concern in Romania and Bulgaria and to drive political dynamics within the European Union. In the context of this report, however, we highlight these benchmarks to illustrate the kinds of demands that the European Union made. In particular, these benchmarks include few specific institutional recommendations. That is, they are focused more on rule of law as an outcome rather than proscribing certain institutions as the means to achieve that outcome. They also provide a mix of focus on bigger, harder to quantify goals, such as fighting corruption in local government, and specific, easier to measure goals, like publishing the results of reform processes. We know that the success of rule of law reforms, like any reform program, is tied to context, and that structural factors can generate divergence between the experiences even of neighbors implementing otherwise similar strategies (Mendelski, 2015; Bugarič, 2015b). The European Union attempted to strike a balance between providing flexibility in achieving good rule of law outcomes, allowing for context to drive specific institutional forms, and providing key guidance on measurable goals as well as monitoring (Spendzharova and Vachudova, 2012).

**TABLE 5: BENCHMARKS<sup>38</sup>**

Romania	<p>Ensure a more transparent, and efficient judicial process, notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.</p> <p>Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.</p> <p>Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.</p> <p>Take further measures to prevent and fight against corruption, in particular within the local government.</p>
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<sup>38</sup> Sources: European Commission (2007a and 2007b).

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Bulgaria	<p>Adopt constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system.</p> <p>Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on the impact of these new laws and of the penal and administrative procedure codes, notably on the pre-trial phase.</p> <p>Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually.</p> <p>Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high-level officials.</p> <p>Take further measures to prevent and fight corruption, in particular at the borders and within local government.</p> <p>Implement a strategy to fight organized crime, focusing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas.</p>
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We also note the implication of these benchmarks in terms of the sequencing of reforms. Surely, the European Union was constrained politically in terms of allowing Romania and Bulgaria to accede when they did in 2007, as further delay carried threats for the European project (Vachudova, 2009). Nonetheless, the European Union had prioritized using its leverage over these countries to push for investigations into high-level corruption before accession, as well as professionalization specifically in terms of non-partisan investigations, requiring continued effort on those fronts in the benchmarks. It had not prioritized issues of transparency, reforms to civil procedure, and efficiency, as evidenced by the more extensive demands the European Union made on these fronts in the benchmarks (without noting that reforms would be “building on progress”). However, we advise caution in extrapolating whether such an ordering would be useful for Armenia. One can understand, politically, why the European Union would want prominent corruption cases to be rooted out prior to accession, as allowing that into the European Union could undermine the legitimacy of the pre-existing European project. But Armenia faces the need to build legitimacy itself, which might exactly suggest delaying politically fraught trials of high-level corruption in exchange for more mundane, but easier-to-accomplish, procedural reforms. As reflected in the rest of this report, and our Governance Evidence Review (USAID, 2018), building on success can be a useful general guide to sequencing.

## GEORGIA

Observers agree that Georgia has made a stark turn-around in its rule of law and has corruption under control; as of 2018, is near the level of democracy of post-communist countries that joined the European Union (Aslund, 2018). Chapter 5 of Georgia’s 1995 constitution outlines judicial power. One innovation in the constitution is that the establishment of ad hoc courts is prohibited, because there was a fear that ad hoc courts could be abused especially with regard to human rights (Gogiberidze et al., 2015). In 1999, Georgia adopted new legislation governing civil, administrative, company, and criminal law. Once implemented this freed the judiciary “from control, dependence, and subordination to the executive branch of government” (Gogiberidze et al., 2015). Georgia also created appeals courts and changed its Supreme Court into a court of cassation, that reviews only the legalities of appeals decisions and not the merits. Taken together, the reforms addressed “peculiarities of the Soviet court system” that still exist in countries through the post-Soviet space. In particular, as discussed in Gogiberidze et al. (2015): (1) Prosecutors no longer have oversight over the courts. (2) The Chairman of the Supreme

Court no longer has supervisory review over lower court decisions, which means that the Chairman can no longer of her/his own will choose to overturn long-since decided cases. This creates legal certainty and ends the problem of “never finished” disputes. (3) An administrative law chamber hears citizen appeals over the actions of state bodies. (4) The Supreme Court can no longer issue plenum resolutions, or normative resolutions that are binding on lower courts. (5) The court process is transparent, with a Media Group at the Supreme Court that is staffed by mass media and civil society representatives. As these improvements became institutionalized, perceptions of rule of law improved markedly in Georgia over the 2000s.

Rule of law practices further improved in 2013, after parliamentary elections brought the Georgian Dream-led government into power. In particular parliament reformed the High Council of Justice (HCoJ), which has the authority to appoint or dismiss judges and initiate disciplinary proceedings against judges. There are 15 members of the HCoJ, which is led by the Chairman of the Supreme Court. Previously, the Chairman controlled candidate nominations. Now, six members are elected by secret ballot in parliament, from candidates nominated by legal NGOs, law schools, and the Georgian Bar Association. The remaining eight members are judges elected by secret ballot in the judiciary’s self-governing body, the Conference of Judges. Also in 2013, judges changed from holding ten-year terms to lifetime appointments following a probationary three-year period and evaluation by one judge and one non-judge member of the HCoJ. This change was more controversial, receiving some pushback from international observers. Additionally, note that Georgia is in the process of moving from a presidential to a parliamentary system. In 2020, elections will be based on proportional representation with a 3 percent threshold, increasing to a 5 percent threshold in 2024.

In terms of takeaways from Georgia’s experiences, Georgia’s decisions have moved very closely together with suggestions made by the Council of Europe’s Venice Commission, formally the European Commission for Democracy through Law. The Venice Commission was established in 1990 and has made a considerable effort to promote rule of law reforms throughout its member states that include most of the countries of Central and Eastern Europe and many countries of the former Soviet Union. The Venice Commission primarily provides states with legal advice via legal opinions on draft legislation or existing legislation, both of its own volition and in response to requests from member states (Venice Commission, 2014). The Venice Commission issues overall opinions as well, such as its “Rule of Law Checklist,” which prioritizes: de jure institutions; de facto legal certainty; preventing abuse of executive powers; equality before the law and non-discrimination; access to justice; fair trials; preventing corruption; and collecting data (Rule of Law Checklist, 2016). Georgia has repeatedly worked with the Venice Commission over the years and has taken the Venice Commission’s advice very seriously (Hoffmann-Riem, 2014), although the Venice Commission did note that the probationary period for judges before lifetime appointments is “problematic” (Gogiberidze et al., 2015). In our view, the coordination between Georgia and the Venice Commission is worthy of emulation as Armenia undergoes reforms.

For further discussion of the experience of Georgia, we refer the reader to the Governance Evidence Review also under this tasking (USAID, 2018) and the sections of this evidence review focused on Integrity Systems.



## UKRAINE

Aslund, a prominent scholar of post-communist political and economic transition, sees “a battle of two systems” in Ukraine: “democracy with rule of law or authoritarianism with pervasive corruption” (Aslund, 2018). He and others have documented how democracy rule of law has been losing the battle in Ukraine even in the immediate wake of its 2006 popular push for government reform. Observers see that domestic “veto players” have been the problem. Veto players are actors in the political arena that are able to deny, or veto, a change and therefore continue the status quo (Tsebelis, 2002). Another way to characterize the problem is one of state capture, in which individuals, groups, or firms in the private or public sectors can influence the formulation and implementation of law “to their own advantage as a result of the illicit and non-transparent provision of private benefits to public officials” (World Bank, 2000, xv). We describe the situation in Ukraine here as a cautionary tale for Armenia. Note that a similar story holds in Moldova since its population organized in pursuit of government reform: “Moldova’s pro-democracy and pro-European ruling coalition has been unable to implement effectively much-needed reforms” due to state capture (Tudoroiu, 2015, 655).

Petrov and Serdiuk (2008) focus on the domestic veto players that were able to stop change in Ukraine, who they identify as “bureaucrats, extremist political parties, and the political elite supported by strong industrial and financial capital” (222). The problem after Ukraine’s social movement activity in 2006 was that these kinds of actors were present in the coalition that emerged, and they were resistant to democratization and rule of law reforms for fear of losing their privileged economic and political positions. The result, in a nutshell, was that “rule adoption proved to be very difficult for Ukraine” (221). Veto players specifically focused on maintaining their control over the judiciary and the police in the post-transition period. Policy reforms in those areas was mostly limited to some action regarding administrative capacity to combat corruption and reform the police (Petrov and Serdiuk, 2008).

(Kuzio, 2016, 703-704) specifically blamed several phenomena for the lack of progress in rule of law reform after the 2006 social movement inspired changes. First, prosecutors and other high-ranking legal officials were kept in place as “guarantors of immunity” for politicians and oligarchs that were tied to the ousted regime. Without personnel turnover, reformers found little support within the judiciary. Second, the popular push for government reform continued to use “opaque backroom deals,” a longstanding feature of “Ukraine’s political and judicial life,” which undermined broader calls for transparency and formalization. Third, Kuzio claims a “contemptuous attitude to citizens” among “Ukraine’s not-so-post-Soviet ‘elites’...[who] are narcissistic, unwilling to listen, and arrogant.” Relatedly, Burlyuk (2015) reports “a low demand for (the rule of) law among Ukrainian political and business elites, legal professionals and the wider population” which exposes “obstacles to meaningful legal change at the level of power structures, professional and popular social norms” (Burlyuk, 2015, 1). Suffice it to say that reforms appear to have been stymied by a disconnect between the popular forces that pushed the transition and the tactics and priorities of the actors who held political power and were capable of pushing reform. And, the Ukrainian citizenry as a whole did not put the same emphasis on rule of law as the specific popular forces behind the transition, which eroded the ability of popular pressure to change elite behavior.

Nonetheless, we note that external pressure helped Ukraine to enact some “slow and difficult” rule adoption. In particular, new European anti-corruption standards helped generate momentum for implementing some anti-corruption legislation in Ukraine. Moreover, the Council of Europe and European Union conditionality on aid contributed to adoption of new rules on civil freedoms and human

rights, including abolition of the death penalty (Petrov and Serdiuk, 2008, 221-222). There is precedent that pressure from international actors can help overcome roadblocks put up by veto players.

### **4.3. BEYOND JUDICIAL INDEPENDENCE, WHICH INSTITUTIONS AND PRACTICES ARE KEY TO THE ADVANCEMENT OF RULE OF LAW IN RELEVANT CONTEXTS? INCLUDING:**

#### **COURT EFFICIENCY/ADMINISTRATION**

In several countries, the process of building up efficient, well-administered courts has been associated with the development of specific formal institutions. For example, Hungary and Poland each created a National Judicial Council (NJC) to ensure the independence of the judiciary, while at the same time creating a new, formal hierarchy to help with the efficiency of court organization and administration by moving oversight from the Ministry of Justice to the NJCs (Coman, 2014; Bobek, 2007; Fleck, 2012). Some see it as a mistake that the Czech Republic did not make the same kind of institutional change (Coman, 2014; Bobek, 2007).

Kyrgyzstan provides an example of a coordinated, holistic effort by actors throughout society coming together to improve judicial administration as part of the bigger push for reforming rule of law. While there was not much progress on rule of law reforms in the wake of the 2005 social movement inspired government reforms, substantial rule of law reform attempts have taken place in recent years. In 2012, by presidential decree, a “Council on Judicial Reform” was organized that included leaders of all parliamentary factions; representatives of the judicial and executive branch; legal experts; academics; and civil society representatives. The Council was tasked with drafting proposals on priority areas of judicial reform, including the organization and internal procedures of courts as well as law enforcement agency activity. The Council developed task forces to create new versions of the criminal code; the criminal procedural code; the civil procedural code; the penal code; and the civil code on misdemeanors. They also drafted a law “On enforcement procedures and the status of enforcement agents,” “On legal aid guaranteed by the state,” and laws on the responsibility of judges. This considerable amount of work was done over several years.

In 2015, draft bills were brought to parliament. International agencies, including the UN Development Program, supported this work throughout the process (UNDP, 2015). Our interpretation is that the coordinated efforts and buy-in from across the political spectrum contributed to the speed and effectiveness of this Council. It also appears that the concepts of efficiency and administration were nested within the greater reform effort, and that actors in Kyrgyzstan at least did not see them as reasonably hived off into a separate set of goals divorced from updating the content of the law.

In the post-Soviet Baltic countries, fraught relations with the Russian ethnic minorities have led reformers to in many ways exclude ethnic Russians from political and judicial systems (Mendelski, 2016; Kalnins, 2014; Council of Europe: European Commission Against Racism and Intolerance, 2008; Steen, 2010). This allowed reformers to maximize efficiency by avoiding detrimental political competition and the fragmentation of institutions, but at the expense of inclusion. Of course, Armenia’s society is marked by its homogeneity, although the Russian language remains important as the most common second language and often the one spoken by elites. In general, we emphasize that any exclusionary policies would trade off efficiency against broader democratic principles.

## BAR ASSOCIATION DEVELOPMENT

In Armenia, the 2004 Law on Advocacy first established admission to the bar as a prerequisite for practicing law (Urumova, 2008). It merged three preexisting bar associations into a single, unified bar, the Chamber of Advocates. In general, the notion of creating a unified professional society, especially in the legal field, has widespread and longstanding support in the literature (Merton, 1958; Smokler, 1983; Sullivan, 2015).

Per the 2004 Law, the Chamber of Advocates has objectives including: raising the reputation of the profession among the public; monitoring and ensuring compliance with the Chamber's Code of Conduct; coordinating legal education; and providing pro-bono aid. Its 12-member board is elected for 2-year terms. Observers note that distrust of the judicial system is a pervasive problem in post-communist countries (Kühn, 2016). Building a strong reputation for the legal profession has been a priority in other countries too, for example, Brazil (Cunha et al., 2018). Some go so far as to see the unification of the profession, and increasing respect for it, as a goal of a "social movement" that should be prioritized by professional associations (Sullivan, 2015). Raising the stature of legal professionals can improve judicial relations with society as well as foster the next generation of legal professionals (Sullivan, 2015).

One important area in which professional legal associations can contribute is in fulfilling the goal of providing pro-bono legal support. The Armenian constitution guarantees legal assistance to everyone and commits that it will be at the state's expense if so prescribed by law; the criminal and civil code spell out the procedures. The Law on Advocacy created the basis for a national Public Defender's Office, which is part of the Chamber of Advocates but funded by the state, with attorneys receiving monthly salaries "equal to that of a prosecutor of Yerevan City Community" (Article 45). The Head of the Office is elected by secret ballot in the Chamber of Advocates and must have at least 10 years of experience. To date, the Chamber of Advocates relies heavily on donor funds to undertake its mission by, for example, using funds from the American Bar Association and the Council of Europe to facilitate training courses in Yerevan and the regions. According to the USAID/Armenia Mid-Term Evaluation of the Chamber of Advocates 2007-2011 Strategic Plan Implementation, attorneys have increasing reputations in Armenia, and more people are choosing to use licensed attorneys because of increasing professionalism (Urumova, 2008).

What are the best practices for international actors to promote development of bar associations abroad? The actions of the Law Society of England and Wales provide some examples: they have done letter writing campaigns, awareness-raising activities, institutional partnerships with local bar associations, and rule-of-law development projects that especially network with local NGOs (Waters and Barnes, 2010). In Central and Eastern Europe in particular, the European Union and Council of Europe have promoted legal communities to provide judges and prosecutors opportunities to socialize, exchange views, and share information. Piana (2009) notes that including lawyers and private attorneys in these communities would be even more effective in building community to achieve European rule-of-law goals. We also note that international actors might be able to counter possible local political or other resistance to their activities by leaning on the United Nations Basic Principles on the Role of Lawyers (OSCE, 1990). Among other priorities, this document includes emphasis on professional associations providing ongoing training, including ethical training; and a focus on providing legal services to all members of society, including rural residents who might otherwise not have access to the professionalism present in major metropolitan centers.

## LEGAL EDUCATION

Legal education in Armenia has been improving particularly since 2005, when Armenia joined the Bologna Declaration on the European Space for Higher Education and launched reforms improving accreditation processes and alignment with European standards (Urumova, 2008). However, as of the most recent report we could find in 2008, law schools have little autonomy over setting their curriculum and instead must follow the model approved by the Ministry of Education and Science. The curriculum “remains largely theoretical, with little or no multidisciplinary or practical courses” (Urumova, 2008, 5). But, already in 2008 there were content improvements, including that legal writing and analysis is part of the Master’s program at the Yerevan State University Law School with plans to expand teaching of it to the Bachelor’s program. Additionally, clinical legal education is expanding beyond Yerevan to the regions. Legal resources are available through published legislation as well as the IRTEK database that already in 2008 was becoming “increasingly affordable.”

To sit for the bar examination in Armenia, a person must have a law degree and two years “employment experience in a legal position” (Law on Advocacy Articles 28 and 29). This employment requirement is often met through internships with law firms or solo practitioners. The bar exam includes a written and oral portion and is administered by the Chamber of Advocates. The Chamber of Advocates has invited international NGO monitors to observe the bar examination; as reported by the Chamber of Advocates, after its 2007 examination the monitors commended the Chamber “for its effective planning and transparent implementation of the examination” (Urumova, 2008, 6). An attorney’s license is suspended if the attorney holds elected office or if the attorney is part of the military.

In terms of best practices on legal education and its promotion, it is first important to note that many observers highlight the importance of bottom-up, general legal education not just for legal professionals but also in terms of civic education. Bugarič (2015b) and others argue that “a bureaucratic and elite-driven approach to rule-of-law building” contributed to “shallow institutionalization” of rule-of-law norms and practices even in the most successful transition countries of Central and Eastern Europe (Bugarič, 2015b; Elbasani and Šabić, 2018; Guasti, Dobovsek and Azman, 2012). Piana (2009), a regular commentator on judicial development in Central and Eastern Europe, argues that judges in the region have become “trans-/supra-nationalized, i.e., domestic judges have become accountable to external actors.” This notion contributes to views in the region that include distrust of judges among the general public and superior attitudes of domestic politicians toward judges (Kühn, 2016).

Specific to legal education for those practicing law, Bugarič (2015a) argues that the combination of liberal education and training and strict selection criteria is necessary to guarantee both quality and independence in the judiciary and civil service more generally. Others caution, however, that education in a Western-oriented, liberal tradition must be couched within attention to local cultural norms (Kraychinskaya, 2016; Magen, 2009; Mooney et al., 2010). Observers note that US-led reforms to legal education have been successful when they have changed the “process rather than the content” of legal education, highlighting and importing the “pragmatic US education style” (Nicola, 2018). For example, in Bulgaria, success has been achieved with process reforms that address “inherited practices characterized by patrimonialism and political clientelism” and emphasize professional standards instead (Delpuech and Vassileva, 2016). Smith (2008), a US judge, argues that US judges have been particular good conduits of such messages as they have conducted rule-of-law education through lectures abroad (Smith, 2008).

## THINK TANK AND CIVIL SOCIETY ENGAGEMENT AND SUPPORT

The importance of engagement with civil society is a common thread in the literature on rule of law reform processes (Elbasani and Šabić, 2018; Schedler, Diamond and Plattner, 1999; Wunsch, 2016; Grigorescu, 2006; Mungiu-Pippidi, 2010; Joireman, 2016). Observers argue that in the process of enlarging the European Union, the speed and conditionality of reforms including rule of law reforms left little room for the involvement of civil society groups, to the detriment of the process (Bugarič, 2015a). However, civil society in Croatia broke this mold during its accession procedure: the civil society there was already quite active and was seen to have capitalized on the European Union's focus on rule of law reforms both during and after accession negotiations (Elbasani and Šabić, 2018; Kuris, 2013; Wunsch, 2016). In contrast, through its ongoing and as-yet-unsuccessful accession negotiations with the European Union, Albanian civil society has not found synergies with the European Union. Albanian civil society, which receives a considerable amount of foreign funding, has “remained in a vicious cycle of political services and conflict of interest” and thus has not augmented efforts by the European Union to push judicial reform (Elbasani and Šabić, 2018; Sampson, 1996; BTI, N.d.).

In general, donors have moved away from defining civil society as NGOs in particular toward an inclusive understanding, including trade unions; faith-based groups; and community groups. However, donors differ in whether they include think tanks, academics, or not-for-profit consulting groups as part of the broader conceptualization of civil society. According to the UN Development Program, Norway, Sweden, and Australia define civil society as “an arena of social interaction,” separate from the state and the market, which tends to exclude more research-based organizations. In contrast, the World Bank, the European Commission, the UK, and Ireland see civil society “as the sum of nongovernmental and not-for-profit organizations” (UNDP, 2012, 6). Best practices with regard to engaging think tanks alongside NGOs in civil society thus diverge based on different donor conceptualizations.

In its 2012 report on Donors' Civil Society strategies, the UN Development Program highlights the strategy by which Dutch donors engaged in Armenia. In 2006, the World Bank and the Netherlands together supported the Civil Society Program implemented by the Open Society Institute Assistance Foundation Armenia (OSIAFA). OSIAFA in turn funded three partnership member organizations to monitor public procurement processes in Armenia and fight discrimination against marginalized groups. Interestingly, the Dutch/World Bank funding to OSIAFA broadly focused on goals related to the Millennium Challenge Account (MCA) compact in Armenia, which is the bilateral United States development assistance program started under the Bush Administration in 2002 (UNDP, 2012). In short, the Dutch strategy built directly on American programs, working in concert with the World Bank, through a local civil society organization, and further through three “subcontracted” civil society organizations. Per the UNDP review of donor strategies, such complex engagement with a variety of civil society actors on a given project is not uncommon (UNDP, 2012).

#### **4.4. HOW CAN GOVERNMENT AND NON-GOVERNMENT INSTITUTIONS WORK TOGETHER MOST EFFECTIVELY TO PROMOTE THE ROL IN POST-TRANSITION SETTINGS? WHAT APPROACHES MAY WORK BEST IN ARMENIA?**

To understand what kinds of collaborations may work best in Armenia, we focus here in some depth on the relationship between European institutions and post-communist countries in the region when it comes to rule of law promotion.

Observers credit the Council of Europe (CoE) and the Organization for Security and Co-operation in Europe (OSCE) with success in playing “crucial roles in ensuring democratic and transparent elections” in post-communist countries (Hamilton and Meister, 2017, 159-160). With regard to improving rule of law, the CoE and OSCE are credited with “fighting against violations of rights and freedoms of citizens” by emphasizing the development of grassroots Armenian civil society organizations (Hamilton et al, 2017, 159-160). This accords with our general assessment that strong civil society forces in Armenia are a powerful conduit through which international actors can effect change. It appears that the CoE and OSCE’s focus on deploying resources in their expertise of election monitoring, combined with supporting civil society in accomplishing its goals, have made positive impacts.

Total European Union assistance to Armenia exceeded USD1 billion by 2017 (Hamilton and Meister, 2017). The European Union has developed its European Neighborhood Policy (ENP) program to guide its interactions with its near neighbors that are not and will not become part of the European Union. Among post-communist countries, this includes Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. The ENP’s main priorities are “good governance, democracy, rule of law, and human rights,” with three additional priorities: “economic development for stabilization; the security dimension; and migration and mobility” (EC, 2016). The ENP highlights that its methods on promoting civil society actors in the process of reform and democratization, and particularly local civil society organizations that can engage with local, public authorities (EC, 2016). The overall ENP began in 2003 and was reviewed in 2011 after the ‘Arab Spring,’ since the other core set of ENP countries are in North Africa and the Middle East. Since around 2015, the revised ENP has focused on a more country-specific, differentiated approach, as well as increasing the “ownership” that partner country governments (and actual European Union member states) have in the actual functioning of the program (EC, 2016). By its own evaluation, the European Union sees the best approach to a country like Armenia as one that includes national Armenian government actors in its outreach activities even as it focuses on funding and supporting civil society in its relations with local officials.

Since 2009, the European Union has had an element of ENP called the Eastern Partnership (EaP), which organizes relationships with Armenia, Azerbaijan, Georgia, Ukraine, and Moldova. In 2014 to 2017, EUR 2.8 billion European Union funds were distributed to these countries under this program. Since 2015, EaP goals are focused on cooperation in four areas: stronger governance, described as “strengthening of institutions and good governance”; stronger economy; better connectivity; and stronger society (EU, 2016). The EaP developed a list of “20 deliverables for 2020.” With regard to governance, these were (1) to strengthen rule of law and anti-corruption mechanisms, and (2) support the implementation of key judicial reforms, in addition to (3) support the implementation of public administration reform, and (12) stronger security cooperation. The European Union has dealt with fallout from European Union citizens and people in these countries that are concerned about the motives and structure of the EaP program. For example, in a Factsheet on “Myths about the Eastern Partnership,” the European Union

addresses “MYTH 5: EU money is being lost due to corruption.” The text describes that European Union funds are subject to strict monitoring and reporting procedures and it further emphasizes that “the fight against corruption: reform of the judiciary; constitutional and electoral reforms; the overall improvement of the business climate; and reform of public administration” is “one of the top priorities supported by the EU in partner countries” (EU, 2017). In broad strokes, the European Union’s priorities align with many of the priorities being espoused by the post-transition leadership in Armenia. And, the European Union has a deep set of institutions organizing relations between it and Armenia while also emphasizing support of civil society in its interactions with local public officials.

Recent commentary on the success of the European Union in the Eastern Partnership countries is mixed. Some critics point out that there is not a correlation between improvement in rule of law overall and the ENP and EaP (Mendelski, 2016; Pridham, 2005; Dimitrov, 2014; Elbasani, 2013; Magen and Morlino, 2008; Börzel and Pamuk, 2012; Kalnins, 2014; Mendelski, 2012, 2013; Parau, 2015; Fagan, 2005; Noutcheva and Bechev, 2008; Piana, 2009; Mungiu-Pippidi, 2014; Sadurski, 2004). One particular concern is that the European Union’s empowerment of certain domestic elites in the course of its ENP and EaP programs have resulted in competition between domestic actors and fragmentation in domestic institutions (Way, 2015; Higley and Burton, 2006; Higley and Bayulgen, 2003); similar concerns have resulted from Russia’s relationships in the region as well (Mendelski, 2016).<sup>39</sup>

Commentators do see the European Union has achieved success in improving judicial capacity in EaP countries and promoting updates to the written law (Anderson, Bernstein and Gray, 2005). In doing so, conditions written into European Union programs have been effective when they take into account specific domestic conditions, particularly historical legacies and political stability, while also making sure that the recipient government has the institutional capacity, administrative capacity, and informal institutions/norms in place that make success possible (Mendelski, 2018, 2009, 2015; Kühn, 2011; Beers, 2010; Mendelski and Libman, 2014). Further, the consistency of external donor conditionality (Dallara, 2014; Sadurski, Czarnota and Krygier, 2006), for example the consistency of the message that the European Union prioritizes rule of law reform in EaP countries, is seen as important (Mendelski, 2018, 2015, 2016; Kochenov, 2008; Dimitrov, 2014; Toneva-Metodieva, 2014). However, improvements to judicial capacity and written law have moved alongside what some observers see as declining judicial impartiality, accountability and integrity (Magen and Morlino, 2008; Hipper, 2015; Mendelski, 2012, 2013; Schönfelder, 2005; Bobek and Kosar, 2013), although understanding causality and generalizability is difficult (Mendelski, 2015). Nonetheless, one understanding is that a key problem is that change agents or veto players have captured reformed judicial structures has created politicization during and after the reform process and undermined judicial independence (Mendelski, 2018; Pridham, 2005; Magen and Morlino, 2008; Mendelski, 2015; Dallara, 2014; Bozhilova, 2007; Socjologiczne, 2011).

Additionally, a creative and holistic approach to measurement of progress may be important to success in programming in Armenia. Mendelski (2018) sees improvements in rule of law in the EaP countries in terms of the “inner quality of law, such as stability, coherence, generality and enforcement characteristics of laws” (Mendelski, 2018). However, these outcomes are not part of common evaluation metrics and are not emphasized in the indicators captured by the World Bank and Freedom House on which progress is often gauged. The idea of creating a coherent and stable body of law is

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<sup>39</sup> Note: Russia has generally empowered different domestic actors than the European Union countries.

particularly important in post-communist settings like Armenia that, again, have only been operating under the priorities associated with the concept of rule of law since the 1990s.

#### **4.5. IS THERE A PREFERRED SEQUENCING OF RULE OF LAW REFORMS AND STAKEHOLDER ACTIONS IN POLITICAL TRANSITION SETTINGS SIMILAR TO ARMENIA?**

Writing on the specific topic of legal reform assistance in post-communist countries, Alkon (2002) specifically decried what she calls “Cookie Cutter Syndrome.” She notes that “there is no magic pill or quick road to legal and judicial reforms” (Alkon, 2002). Since 2002, this position has come to occupy the mainstream of scholarly and practitioner thought: most analysts express reluctance to make specific sequencing advice, even seeing it as counterproductive.

Instead, the literature emphasizes tradeoffs that reformers need to keep in mind during reform processes rather than specific sequencing advice. In particular, reformers are advised to balance independence and accountability, because successful reform processes must still be developed within the context of the political system and democratic practices (Coman, 2014). Analysts of European Union enlargement claim that the European Union did successfully empower reformers, but those reformers were too unaccountable; as a result, they accumulated power and went on to abuse it (Mendelski, 2015; Coman, 2014; Kipred, 2011; OSCE, 2009; Sigma Montenegro, 2012; Seibert-Fohr, 2012; OSCE, 2012).

However, Alkon (2002) makes an important argument that we see as particularly relevant to the context of Armenia today. She emphasizes that Alternative Dispute Resolution (ADR) is a crucial component of any legal reform process in the post-communist world. ADR is dispute resolution outside the context of litigation. In a developed democracy with strong rule of law, ADR would entail parties making the choice to employ a mediator, arbitration, or another kind of negotiated process to adjudicate a dispute rather than using the court system. However, when the court system itself is underdeveloped, Alkon (2002) sees it as important to develop these kinds of ADR alternatives. They can be cheaper, more straightforward, and more in line with other kinds of dispute resolution that already exist in the cultural or institutional context of the country. Indeed, Alkon (2002) emphasizes that a legal system need not be built around dispute resolution through formal litigation in an adversarial setting. Even if a country is committed to building rule of law based on a robust, adversarial-based legal system, maintaining and growing ADR options can help fill the gap while formal institutions are being reformed. Thus, Alkon (2002) makes a strong argument that ADR can reinforce rule of law reforms rather than undermine them. Putting resources into ADR throughout the reform process, and especially early in the reform process, is therefore important.



## 5. CONCLUSION

There are many lessons to be learned from the literature on integrity systems and the rule of law. Each sub sector is, of course, difficult to address in its own right. And yet, numerous countries, including those in the region of Armenia, have at least experimented with a variety of reforms. As we discussed in this report, we expect that the following reforms would be very useful to consider:

- Integrity Systems:
  - Engagement with Small- and Medium-Sized Enterprises (SME) Associations. Engaging with SME associations constitutes a particularly promising path to gradually erode state capture in Armenia.
  - Instituting a lottery system to start with randomized audits would likely be beneficial for Armenia. By randomizing the audit schedule and keeping it frequent, the threat of an audit could deter corrupt behavior and make audits less susceptible to political forces.
  - As we highlight in the Governance Evidence Review also under this tasking (USAID, 2018), addressing petty corruption is a less risky way to start an anti-corruption effort. It may be best to start any anti-corruption initiatives at the lower level, with the objective of gradually shifting norms, thereby making it easier to tackle grand corruption over the longer term.
  - Armenia should ensure that all government employment contracts require signing of codes of ethics and compliance with disclosure requirements regarding assets, conflicts of interest, and tax records, which can be used in conjunction with external audits making those ethics commitments enforceable and actionable.
  - Addressing transparency too early in the process could be risky because it alerts people to problems and deters citizen from taking public action in a situation of state capture. They may want to institute transparency reform later in the process.
- Rule of Law
  - Reform of the courts to go beyond judicial independence and instead to greater court efficiency and administration would likely be important. Numerous positive and negative examples, from Kyrgyzstan to the Baltics, illustrate the importance of taking a holistic view, and eschewing a pure focus on judicial independence.
  - Much attention could be given to the development of Bar Associations that could improve the overall quality and commitment of judges to the rule of law in Armenia.
  - While legal education has generally improved over the years, greater independence from national government standards and directives would be helpful for establishing greater rule of law.

- The Armenian government may want to consider expanded engagement with a variety of civil society actors including think tanks and other forward-thinking non-governmental actors. Taken together, the collective set of non-governmental actors may encourage greater progress towards better governance and democratization.

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