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An Assessment of Proposed Constitutional Changes in Nagorno-Karabakh

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The current constitution of the Nagorno-Karabakh Republic (NKR) was adopted in a national referendum held on 10 December 2006, with over 90,000 citizens participating, of which 77,279 votes or 98.58 percent of the total voted to adopt the new constitution. In recent years, however, the issue of constitutional reforms has become increasingly common, and a frequently discussed topic among politicians and political experts in Karabakh.

Following Armenia

In its initial form, the concept of amending the constitutional would have effectively transformed Nagorno-Karabakh from a semi-presidential system into a parliamentary form of government. Most notably, the issue of such a constitutional change gained greater momentum and a much higher degree of governmental attention in Karabakh, especially after Armenia's successful adoption of its own set of constitutional amendments in December 2015.



Among the proponents for changing the current constitution, much of the discussion focuses on the issue of constitutional reform as a means to

“improve the mechanisms of implementing the principles of law and democracy, perfecting the balance between the branches of government, and improving the efficiency of public administration.”

A Constitutional Commission

Moreover, the pro-reform camp has also been bolstered by the suggestions of political parties represented in the Karabakh parliament which, together with several political groups and parties outside of the parliament, joined a presidentially appointed commission on constitutional reforms that was formed by a presidential decree on 21 March 2016.

That presidential commission, headed by Parliamentary Chairman Ashot Ghoulyan, has been tasked to develop and submit its own specific recommendations to Karabakh President Bako Sahakyan by 1 May 2016. Those recommendations, according to the terms of the decree, were then to have been voted on by the parliament by a deadline of 10 September 2016.

Several days after issuing the decree to form the new constitutional reform commission, President Sahakyan convened a working session and instructed the participants to follow a specific set of directives and objectives, explaining that “while making any change, we should proceed from the imperative of strengthening the country's security, democracy and social cohesion, which he added, “urges placing public and state interest above everything else.”

April 2016: The Turning Point

But the entire process of constitutional consideration reached a turning point in April 2016, due to the military offensive by Azerbaijan. In response, the constitutional commission formally requested that the president postpone the deadline by a period of two months, asking for and receiving approval for a new deadline of 30 July to submit their package of recommendations to the president.

At the same time, the commission was also facing an unexpected challenge from the degree of varied and disparate opinions of commission members over the core principles of the proposed constitutional reforms.

The most significant change, however, was a new sense of urgency, in two ways. First, unlike the recent process of constitutional change in Armenia, there were new demands for dropping the earlier focus on amending the constitution to forge the transformation of the government into a parliamentary system.

Instead, the second element of this sense of urgency was the recognition of a serious crisis in the aftermath of the Azerbaijani military attacks in April. This second factor fostered a crisis, where the security needs necessitated the exact opposite change: from a semi-presidential system to a government led by a strongly empowered and greatly bolstered president.

Strengthening the Semi-Presidential System

Following the approval of the extended deadline, the commission formally presented its set of recommended constitutional reforms to the president on 30 July. The package of recommendations envisioned a proposed new constitution consisting of a preamble and five chapters, related to fundamental human rights, civil liberties and individual freedom; encompassing the official system of parliamentary governance; elaborating the power and authority of the judiciary; and the scale of local self-government. A fifth, separate chapter was devoted to the specific mechanism of the constitutional referendum and related issues.

At the same time, the commission also embarked on a series of public events and discussions aimed at introducing the proposed constitutional changes to the public at large. This series of discussions features public presentations and discussions targeting four different groups:

- parliamentary and extra-parliamentary political forces;
- representatives of local self government bodies;
- representatives and officials from the judiciary, and the faculties of law, political science and history of public universities throughout Karabakh;
- civil society representatives and NGOs, youth organizations, and media representatives.

During these open discussions, many questions were raised concerning various issues, but also centering on the most important and controversial issue concerning the proposed transformation of the model of governance from a presidential to a parliamentary system.

Assessing the views and arguments of various politicians, experts and other participants, it was clear that the general debate features two diverging options, with many in favor of retaining the existing presidential system and a decreasingly relevant group still endorsing the Armenian model of a proposed change to a parliamentary model. For his part, Commission Chairman Ashot Ghoullyan defended the proposed transformation to a full and powerful presidential system, stressing that during the 25 years of independence, there were already several examples of changes in governance for the Nagorno Karabakh Republic.

Ghoullyan further argued that the system of government is a dynamic concept that requires continuous improvement dependent on changing needs and challenges, adding that it was more important to concentrate the discussion not only on the model of governing system, but to the questions of the relative effectiveness and flexibility of the system itself. Similarly, the spokesman for the “Azat Hayrenik” party, Vahram Pogosyan, argued that there was a “real need” for constitutional reform, but noting that his party’s precise position would be developed in the course of “upcoming discussions.” Despite that initial hesitation, the party, led by Karabakh Prime Minister Arayik Harutyunyan, is widely expected to fully back the constitutional changes in their entirety, just as the Karabakh government itself is seen as solidly behind the changes proposed by the commission.

Further support was echoed by the “Democratic Party of Artsakh” (DPA) which is led by the parliamentary chairman and Constitutional Commission head Ashot Ghoullyan, and according

to party member Vardges Baghryan, the appeal of a switch to a parliamentary system has been largely refuted, mainly due to the “war unleashed by Azerbaijan,” which “changed the normal life and the political thinking” in Karabakh. Given that new political context, the DPA now strongly advocates a transformation to a strong, “superpower presidential” form of government.

Some Opposition to the Proposed Changes

But despite the popular support for such a move to strengthen the presidential system, there is still some opposition. For example, as a senior leader of the “Armenian Revolutionary Federation-Dashnaktsutiun” (ARF-D) party, Alyosha Gabrielyan, explained, “it is impossible to have different models of governance in two Armenian republics, which have the same laws and principles and are in the same political field and reality.”

Although the ARF-D has long advocated a parliamentary system of governance, Gabrielyan added, there are additional “concrete steps” needed, such as the strengthening of “laws and rights” as an important prerequisite for the adequate “establishment of democracy in Artsakh.”

Additional concerns have also been raised, challenging the need and urgency of enacting such sweeping constitutional reforms. For example, a related concern holds that “ten years is not an appropriate term which dictate the need for changes for constitutions,” according to parliamentarian Gagik Baghunc. This view is also shared by the representative of the National Renaissance Party, Hayk Khanumyan, who thinks that it is possible to have an effective political system without changing the current constitution and argues that the effectiveness of the system of governance does not depend on the model of governance.

These concerns have also tended to fuel fears that like Armenia, the constitutional changes are merely a sophisticated mechanism to ensure the continued dominance of the ruling political elite. And with the relative advantage of the incumbent authorities, such fears are not without merit, even despite the fairly impressive electoral credentials of Karabakh, which has successfully held many more free and fair elections than its neighbors, including Armenia.

Presidential Endorsement

In a meeting on 1 August, Karabakh President Bako Sahakyan strongly endorsed the commission’s set of proposals, which most notably replace the ten-year old existing constitution with a number of changes

that would grant the president with vastly more powers while abolishing the position of prime minister. The move would effectively be the polar opposite of Armenia’s decision in December 2015 to replace the semi-presidential system with a parliamentary form of government.



Defending the decision, President Sahakyan argued that the reform enjoys broad support across the political spectrum and is necessitated by “challenges that require a strong and consolidated government capable of mobilizing the country’s entire resources both in peacetime and in wartime and efficiently reacting to the requirements of a particular situation.”

In practical terms, the proposed constitutional amendments, if adopted, would raise some technical questions that remain unclear, however. The most pressing of these involve the requirement that the Karabakh presidential and parliamentary elections in Karabakh would be held simultaneously and that, only after the elections, the newly elected president will form a new government.

The question is over the transition period, as the current constitution prevents Sahakyan from seeking a third term once his second five-year term as president ends in 2017, and with the next parliamentary elections in Karabakh set for 2020, there is no clarification of who will govern Karabakh during that transition.

To resolve this dilemma, there must be a clear decision to either extend the presidential term in order to wait until the 2020 parliamentary election or, as an alternative, to move the election of the new parliament ahead, to coincide with the expiration of Sahakyan’s term in 2017.

Conclusion

Constitutional reforms are usually conducted for increasing the effectiveness of governance. The situation over Nagorno Karabakh, however, is slightly different. The current security challenges that the unrecognized state has faced in recent years suggest that fundamental changes are preferable. But the real issue is neither about the constitutional reforms nor the change of the model of governance.

Rather, the more pressing and more necessary reforms that Karabakh must implement concern the imperative for urgent reform, most notably in the areas of defense, economic policy and agriculture.

Moreover, the debate and discussion of the constitutional reforms were seriously deficient and inadequate to fairly address the deep significance and wide repercussions from such fundamental changes. Many crucial and critical questions were missed, including such basic issues as the future of which precise territories will be included within the Karabakh state, the legal name of the state and its foundation for statehood, and other pressing matters.

Therefore, as it is well known, the standard of the development of each society lies in the realization of the needs, rights and freedoms, and the quality of life of its individual citizens. And the community essentially depends on the proper and effective governance of the social system, which in the case of Karabakh, has been problematic and threatened by the incomplete implementation of reforms in many spheres.

And given the current threat environment, it would be far better to direct the inherently limited state resources to strengthen the army, develop the economy, bolster the rule of law and enact much more tangible reforms first.

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