

Due Process as a Factor of Country Competitiveness

E-Governance Solutions
for the Rule of Law

Determinants of Economic Growth

- GDP
- Education Level
- Fertility Rate
- Government Consumption
- Rule of Law
- Democracy
- Inflation (Macro Economic Indicators)

Rule of Law as a Key Factor

- The primary factor that consistently correlates with economic development is the rule of law.
- “An expansion of the rule of law would raise economic growth and lead over time to a higher standard of living and, hence, to more democracy.” *Prof. Robert Barro - The Determinants of Economic Growth: A Cross-Country Empirical Study (1997), p. 73.*

What is the Rule of Law?

- Predictability, consistency and fairness
- Quality of bureaucracy, lack of corruption, risk of government interference in economic relations
- Attractiveness of a country's investment climate
 - legal efficiency
- Core of “rule of law” is due process

What is Due Process?

- Substantive rights vs. process
- Due process requires balance that any state action (law, regulation or decision) that affects people's rights meets the criteria of legal efficiency
- Equal protection, consistency

European/International Standard

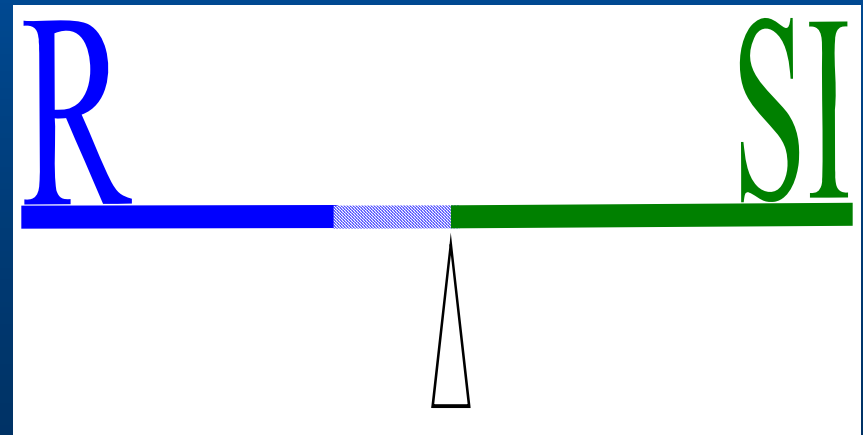
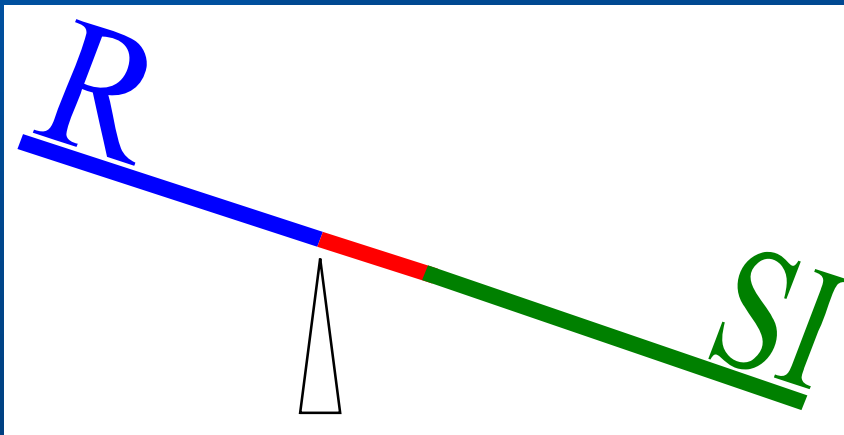
- International standard of “legal efficiency” - state action promotes a legitimate state interest in the most efficient way possible and with the least burden on the rights of the citizens
- Least burdensome means to secure a legitimate state end

Constitutional & Int'l Standard (1)

- International Covenant on Economic, Social and Cultural Rights, Art. 4 “the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.”

Constitutional & Int'l Standard (2)

- RA Constitution, Art. 44 - “fundamental rights may only be restricted by law to the extent necessary for the protection of state and public security . . .”



Public Information & Fora

- To use existing information more efficiently
- More readily up-dated, accessible on internet
- Much already begun
- Internet is the new town square, which is not limited by time or distance

Four Elements of Due Process

- Notice/Petition
- Opportunity to be heard
- Standard of Decision
- Review/Reconsideration

Notice/Petition

- Affected parties need to know planned changes in laws/regulations
- People need a way to provide feedback
- Publication in print and/or internet

Opportunity to be heard

- Public discussion
- Affected parties need opportunity to explain why good or bad
- Essential for quality assurance
- No one can possibly foresee all possible implications
- Public hearing, internet bulletin board

Standards

- Reasoned decision-making takes facts, policy and law into account
- Balance interests
- Discipline to prevent “legal inefficiency”

Review/Reconsideration

- Circumstances change
- No one is perfect
- Need a means to correct
- Goal: a self-correcting system

E-Governance Solutions

- Judicial Opinions Web-Site
- Draft Laws and Regulations Web-Site
- Laws & Regulations Web-Site in Armenian, Russian & English
- On-Line Government Directory
- FAQ

Current Status

- Judicial Opinions
- Draft Laws and Regulations
- Laws
- Government Directory
- FAQ
- All exist in part, but it is time to coordinate and assure timely and efficient completion

Judicial Opinions Web-Site (1)

- Well-reasoned, objective, consistent decision-making
- While system not based on precedent, similar cases should be decided in a similar way
- Starting with new Economic Court, Cassation Court, and Appeals Court, all decisions should be posted to the internet

Judicial Opinions Web-Site (2)

- Benefits

- provide guidance for investors
- show that Armenia's court system does work
- promote respect for judiciary
- promote judicial independence
- assist law-makers to improve laws

- Required by European Convention on Human Rights - all decisions public

Draft Laws & Regulation Web-Site (1)

- Goals
 - predictability
 - reduced legal risk
 - improved quality
- Precedent: SEC, IADA database on www.gov.am - with feedback
- Neutral site with accessibility

Draft Laws & Regulation Web-Site (2)

- Create a public forum for deliberation and a record for reconsideration and review
- Give people directly affected a meaningful opportunity to shape the most efficient environment in which to live, work and invest
- Legislative enactment necessary - “Access Act of 2002”

Proposal - Access Act of 2002

- Notice
- Right of review

Laws & Regulations Web-Site (1)

- Currently access in Armenia is very restricted, “for pay” databases not accessible to foreign investors, esp. in Armenian
- Legal information barrier to foreign investment
 - serious investors reluctant to put money into a country whose laws they cannot research or access in reliable and readable English translations

Laws & Regulations Web-Site (2)

- Need to create indigenous capacity for high-quality translation of legal text from Armenian into English
- Should not overlook Russian, since Russia and CIS are important trading partners
- Essential step toward European integration

On-Line Government Directory (1)

- Already exists in part
 - President's Office
 - Government
 - National Assembly
 - MFA
 - ADA
- Need to complete and “de-mystify” the gov't. bureaucracy for investors and citizens

On-Line Government Directory (2)

- Organization chart subdivisions
- Staffs
- Names and titles
- Addresses
- Phone, fax and e-mail
- Citations to statutory basis
- Procedures
- Name of information bureaus or office that handles citizen inquiries, complaints

FAQ

- Step-by-step guide to procedures for common situations involving government bodies
- 100 or so common situations
- Protects and guides both citizens and public officials
- Move from static rights to dynamic processes
- Foster citizen engagement

FAQ Situations

- Some examples of approximately 100 situations
 - renting and selling real property
 - utility disruptions
 - obtaining licenses
 - dealing with inspections, fines, penalties
 - clearing items through customs
 - applying for welfare benefits
 - registering a company

Why E-Governance?

- Much more accessible than other fora and means of communication
 - 100-500 times as accessible as hearings or paper filings
- Less intrusive
- Low cost
- Symbolic of Armenia's IT advantage

Benefits of E-Governance (1)

- Easy to search, up-date, accessible everywhere, including abroad
- Improve efficiency of traditional mass media
 - TV
 - Press
 - Other information channels - NGOs, consulting firms, lobbying groups

Benefits of E-Governance (2)

- Close generational divide, encourage inclusion and engagement of younger generation in decision-making
- Accelerate Armenia's adaptive capacity for demands of dynamic global economy
- Anti-corruption, transparency, cost-efficient

What about E-Readiness (1)

- Armenia most e-ready country of CIS, despite high costs and restricted service caused by monopoly
- Connectivity - libraries, schools, local government offices
- Internet cafes, offices, educational institutions

What about E-Readiness (2)

Ararat

- Masis, Vedi, Artashat, Shahumyan

Armavir

- Echmiadzin, Metsamor, Armavir

Aragatsotn

- Ashtarak, Talin, Tsakhkahovit

Kotayk

- Nor Hajen, Abovyan, Yeghvard, Dzorakhpur

Geghakunik

- Gavar, Martuni

Syunik

- Sissian, Goris, Kajaran, Meghri

Vayots Dzor

- Vayk, Jermuk, Aghavnadzor

Tavush

- Ijevan, Koghb

Lori

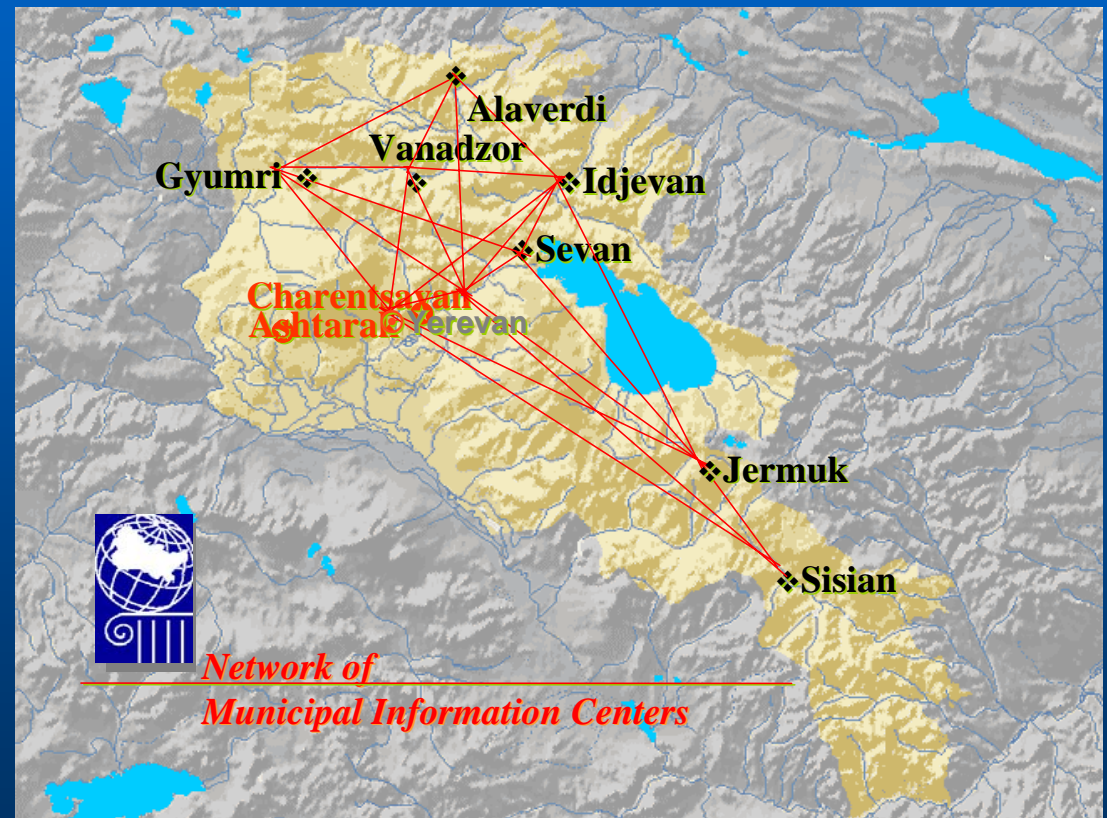
- Vanadzor, Stepanavan, Toumanyanyan

Shirak

- Gedq, Maralik, Akhuryan

What about E-Readiness (3)

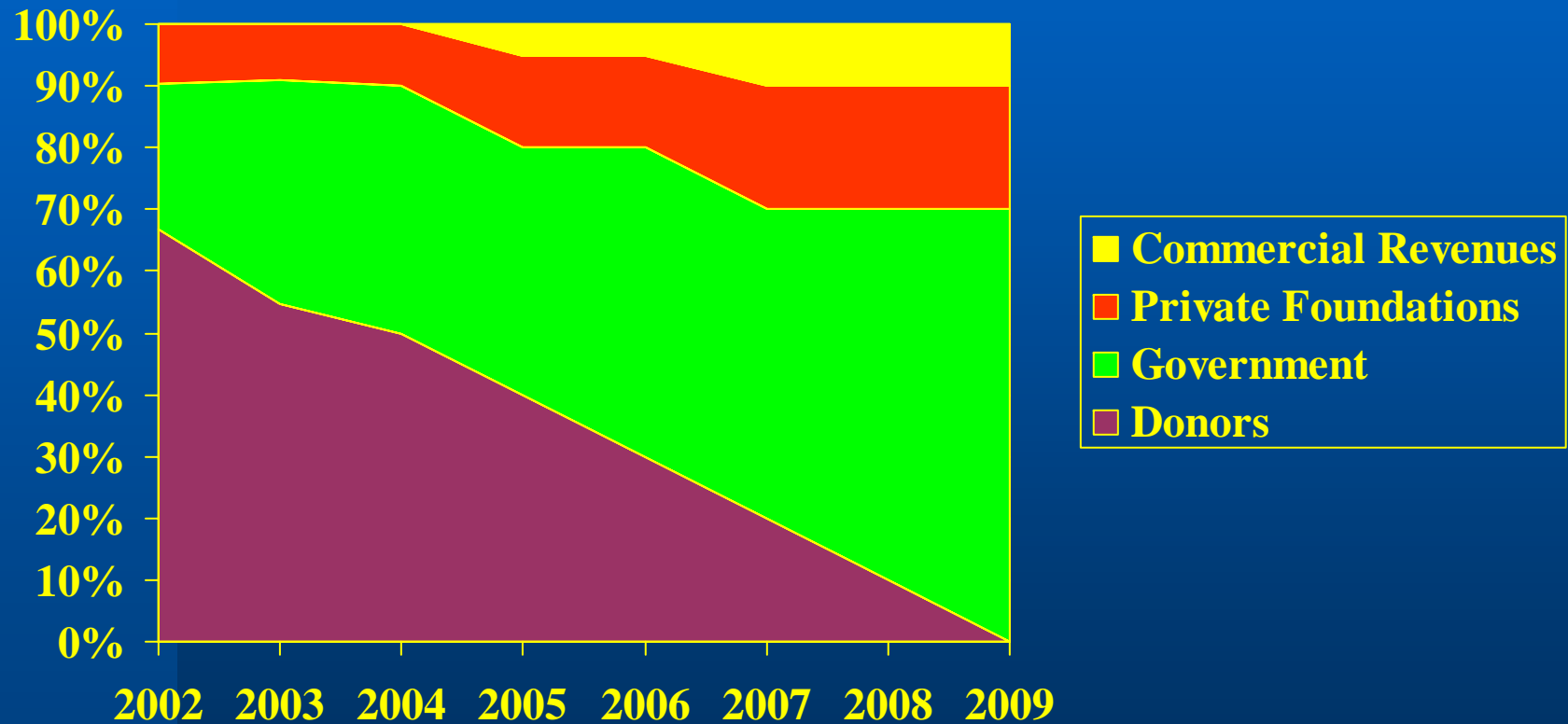
- E-divide significantly less than current access-divide



Sustainability

- Public information needs to be freely available
- Initial international donor funding, gradually replaced by:
 - public funding
 - private foundation funding
 - fee for value-added services

Funding



Competitive Legal Framework

- Competitive functionality achieved by:
 - Test Performance in Context
 - Abuse-Proofing
 - Written Demonstration

Competitive Functionality

- All common and essential transactions easily performed
- At least as efficient and enforceable under Armenian law as under international best practice

Test Performance in Context

- Test laws in context
 - Other laws and local practices and institutions
 - Avoid patchwork of inconsistent codes designed for other systems

Abuse-proof

- Debug the law, protect from hackers
- Examine how a less than honest and diligent person might abuse the law
 - for bribes, cause delay or undermine fair and predictable outcome

Require Written Demonstration

- Laws, regulations and decisions need to be reasoned
- Demonstration that they meet criteria of “legal efficiency” before enactment
- After enactment, need easy way to correct and improve, based on actual performance

Next Steps

- Commitment from Stakeholders - Government, National Assembly, Judiciary, Public, Media, NGOs
- Site-Content Providers
- Site-Design, Maintenance, Hosts
- Site-Connectivity Providers
- Public Awareness, Engagement, Empowerment
- Funding - Donor, State, Private, Commercial