

Good Governance: Rule of Law

Anti-corruption Strategy

2002

Legal & Regulatory

- Legal and Regulatory Assessment
- Streamlining
- Civil Society Participation
- E-Governance/Access to Information

Approach

- Goal – Self-Correcting, self-improving system of globally competitive, corruption free governance
- Means - Stakeholder participation necessary for policies and laws that
 - meet Armenia’s current and future needs
 - stakeholders “own” and will voluntarily comply with

Action Plan

- Action - Provide framework for a process that will produce desired result
 - Enable stakeholders to engage in evaluation of current situation
 - Clarify policy objectives
 - Understand constraints
 - Generate options and solutions
 - Build consensus for solutions best suited to Armenia's needs

Not Give, but Find Solutions

- Won't give solutions, work together to find solutions
- In order to avoid
 - Imposed solutions
 - Solutions that have not been tested in similar situations
 - Solutions at odds with values, attitudes and practice
 - Solutions that are too complex, costly, or difficult to understand or implement
 - Solutions that have not been debugged, quality tested, abused-proofed

Hypotheses

- Hypotheses
 - Discussion
 - Testing
 - Refinement
 - Rejection
- Aim to produce new better hypotheses and policies

Hypothesis 1

- For Armenia to prosper, it must be home to globally competitive companies and workers

Hypothesis 2

- For Armenia to be home to globally competitive companies and workers, it must have a globally competitive environment.

Hypothesis 3

- Creating a globally competitive environment requires public-private partnership, but the public sector must take the lead.

Hypothesis 4

- To be globally competitive, the environment must be corruption-free, or corruption must be reduced to a level that makes Armenia at least as attractive on the whole as its competitors

Hypothesis 5

- To be globally competitive, it must be at least as easy, predictable and cost efficient to live, work and produce in Armenia as in other countries.

Hypothesis 6

- The “rule of law” and legal and regulatory framework are decisive factors for Armenia’s global competitiveness and ultimate prosperity (Barro thesis).

Hypothesis 7

- The global standard for rule of law is “due process” which has two aspects – substantive and procedural.

Substantive Due Process

- Substantive Due Process
 - Legal efficiency
 - Legitimate state end – Policy Clarification
 - Least restrictive means

Procedural Due Process

- Procedural Due Process
 - Notice/petition
 - Opportunity to be heard
 - Reasoned decision-making
 - Review/Reconsideration/Appeal

Hypothesis 8

- To the extent corruption in Armenia is “victim-of-circumstances” corruption, it can be corrected or ameliorated by institutional or legal reforms.

Hypothesis 9

- To the extent that Armenia's corruption is the result of a "culture of corruption," it will require changes in values, mentalities and attitudes.
 - Might makes right
 - Money talks
 - My friend right or wrong

Hypothesis 10

- When the formal rules of a system do not produce good results, from the point of view of stakeholders, they will circumvent the rules and will create an informal system of rules.

Hypothesis 10a

- When people view the overall system as reasonable, fair and equitably applied, they are likely to exercise self-restraint and voluntarily comply with the laws.

Hypothesis 11

- The propensity to circumvent the law depends upon a number of factors:
 - Quality of laws
 - Correspondence to stakeholders' interests
 - History, culture, tradition
 - Values – relationship vs. rights
 - Degree to which people embrace the law as a good that serves their needs and the common good.
 - Awareness
 - Ease of compliance . . .

Hypothesis 12

- In Armenia, there is a an observable gap between the formal (written/enacted) laws and the informal rules. Nevertheless, there is, as in any society, widespread, if often unsuccessful attempts, at voluntary compliance.

Hypothesis 13

- The gaps between written and unwritten rules can be viewed from a number of perspectives:
 - Substance
 - Procedure
 - Implementation
 - Results from the state's perspective
 - Results from the private perspective

Substance

- Good policy
 - Legitimate state purpose that enjoys a broad consensus
 - Fair and equitable
 - Good results

Procedure

- Due process
- Fair and equitable, open, transparent
- Not burdensome to implement or comply with
- Least restrictive means to a legitimate state end
- User-friendly, consumer-oriented

Implementation

- Implementation follows written rules
- Rules as applied = rules as designed

Results – State Viewpoint

- The rules regularly achieve the legitimate state interest
- Policy is effectively carried out

Results Private Viewpoint

- Good result for the private stakeholder, taking only personal interest into account

Sample Diagnostic Chart

| Substance | Procedure | Implementa tion | State result | Private result | diagnosis |
|-----------|-----------|--------------------|--------------|-------------------|-------------------------|
| Good | Good | Good | Good | Good | Good Law |
| Good | Good | Good | Bad | Good | Corruption |
| Good | Good | Bad | Bad | Bad | Imp. Bad |
| Bad | Bad | Good | Bad | Good | Corrupt |
| Bad | Bad | Good | Good | Good | Sympathetic Official |

Hypothesis 14

- Drastic or inflexible penalties more often result in circumvention than deterrence.

Hypothesis 15

- Abuse of discretion and circumvention can result from both under- and over-specificity.

Hypothesis 16

- Much corruption arises from the effort to circumvent a formal system which the stakeholders have determined does not correspond to their actual interests, practices, values and behaviors:
 - Willing giver, willing taker
 - Resigned giver, entitled taker
 - Unwilling giver, coercive taker
 - Unwilling giver, coerced taker

Hypothesis 17

- Circumvention is a way of avoiding risk.
 - Risk of law-abiding behavior that others will not play by the rules (prisoners' dilemma)
 - Risk of complex, unpredictable rules
 - No one wants to be a chump

Hypothesis 18

- Laws and regulations will be better designed, if they must be accompanied by a “legal efficiency report” that
 - Clearly states the purpose of the law
 - Demonstrates that the law is the least restrictive means to a legitimate state end
 - Demonstrates that the law permits all common transactions in a globally competitive way
 - Quality control – debugged, abuse-proofed

Hypothesis 19

- Mandatory notice and a meaningful opportunity to be heard will improve the quality of laws and regulations.

Hypothesis 20

- Reasoned decision- and rule-making will improve the quality of laws and create the basis for a self-correcting system of rule-making.

Hypothesis 21

- Publishing of judicial opinions on the internet is a non-intrusive, cost-effective way improve court transparency

Hypothesis 22

- Review and Reconsideration will improve the quality of laws by providing for correction as a natural and foreseeable part of the rule-making process.

Hypothesis 22

- Anti-corruption is one societal goal among many, and it should be implemented in such a way as to achieve the greatest long-term benefit with the least short- and long-term negative side effects.

Hypothesis 23

- Policy clarification requires a clarification of the role and goals of government in a free market democracy.

Hypothesis 24

- In order for citizens to willing pay for services and comply with rules, government must perform in a fair and competent way certain minimum functions and provide certain public goods and services.

Hypothesis 25

- Satisfaction with public services depends upon a realistic assessment of the budgetary and other constraints on the public sector.

Hypothesis 26

- Within existing constraints, Government should only do what it can do well. First do no harm.

Hypothesis 27

- While a living wage is not sufficient to eliminate the incentive for corruption, it is necessary.
- $\text{salary} = \text{officially make} + \text{unofficially take}$

Hypothesis 28

- The more government officials there are and the more interactions that are required between officials and private sector, the more the risk of corruption.
- Reducing the size and scope of government can reduce corruption.

Hypothesis 29

- Rules should be no more complex
 - than necessary to achieve a legitimate state end
 - than the ability of the people and system to understand and administer it
 - than the ability of the people and system to pay for them

Hypothesis 30

- Corruption cannot be eliminated without reducing the size of government to the level that society can afford so that its efficiency and salaries are improved.

Hypothesis 31

- Paying civil servants is not sufficient. Honesty and competence, including civil society evaluation of service, need to be criteria for hiring, promoting, firing, and retraining of civil servants.

Hypothesis 32

- Separating (1) policy-making from (2) oversight and (3) implementation functions could reduce corruption.

Hypothesis 33

- Introducing the concept of respondeat superior, currently applicable in the private sector, could reduce corruption, that is, superiors are liable for the wrongful actions of subordinates.
- Remove “just taking orders” as a mitigating factor

Hypothesis 34

- Corruption can be reduced by converting informal cash flows into formal systems will by public services into a fee-for-services system – e.g., education, health.

Hypothesis 35

- Corruption can be reduced by subsidizing individuals to purchase necessary services rather than subsidizing institutions to provide free services.