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հալապոռուժիոն կենտրոն  
TRANSPARENCY INTERNATIONAL  
anti-corruption center



# ENFORCEMENT OF ANTI-CORRUPTION LAWS: ARMENIA UNCAC CIVIL SOCIETY REVIEW 2013

# Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally-binding anti-corruption agreement applicable on a global basis. To date, 168 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group, which met for the first time in June-July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption" and to strengthen that participation by measures such as "enhancing the transparency of and promoting the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption". Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10); Article 63 (4) (c) requires the CoSP to agree on procedures and methods of work, including cooperation with relevant non-governmental organisations.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the CoSP secretariat on their compliance with the UNCAC, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review, and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, using the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations (CSOs) around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption, funded by the UN Democracy Fund (UNDEF), Transparency International (TI) has offered small grants for CSOs engaged in monitoring and advocating around the UNCAC review process. This aims to support the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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# Introduction

Armenia signed the United Nations Convention against Corruption (UNCAC) on 19 May 2005 and ratified it on 8 March 2007.

This report reviews Armenia's implementation and enforcement of selected articles in chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering those two chapters. Armenia was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the third year of the process. A draft of this report was provided to the government of Armenia.

**Scope.** The UNCAC articles that receive particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), trading in influence (Article 18), illicit enrichment (Article 20), money laundering (Article 23), liability of legal persons (Article 26), protection of witnesses, experts and victims (Article 32), protection of reporting persons (Article 33), compensation for damage (Article 35) and mutual legal assistance (Article 46).

**Structure.** Section I of the report is an executive summary, with the condensed findings, conclusions and recommendations about the review process and the availability of information, as well as about implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in Armenia as well as access to information issues. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments and section V elaborates on recommended priority actions.

**Methodology.** This report was prepared by the Armenian NGO, Transparency International Anti-corruption Center (TI Armenia) with funding from Governance and Transparency Fund of DFID. The group made efforts to obtain information for the reports from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was made available to them. On 7 May 2013, TI Armenia was invited by the Ministry of Justice to meet with peer reviewers under the UNCAC review process. The meeting was successfully conducted at the office of Ministry of Justice of Armenia. During the meeting a draft version of this report was also provided to the peer reviewers. However, at the time of publication, official feedback has not been received.

The report was prepared using guidelines and a report template designed by Transparency International for the use of CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared with the detailed official checklist self-assessments. The report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas.

In preparing this report, the authors took into account Armenia's participation in the review processes of the Group of States against Corruption (GRECO) and the Organisation for Economic Co-operation and Development (OECD). The authors also took into account the findings of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of the Terrorism (MONEYVAL). GRECO published its Compliance Report in December 2012,<sup>1</sup> (from here cited as GRECO Compliance Report) and Evaluation Report in December 2010<sup>2</sup> (from here, GRECO Evaluation Report) and OECD published its Monitoring Report in October 2011<sup>3</sup> (from here, OECD Monitoring Report). MONEYVAL's Mutual Evaluation Report on Armenia was adopted on 22 September 2009<sup>4</sup> (from here, MONEYVAL Mutual Evaluation Report) and its Progress Report and Written Analyses by the Secretariat of Core Recommendations on 28 September 2010<sup>5</sup> (from here, MONEYVAL Progress Report).

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<sup>1</sup> GRECO. Third Evaluation Round. Compliance Report on Armenia. "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of Party Funding". GRECO RC-III (2012) 21 E. Published on 17 December, 2012. Available at:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)21\\_Armenia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)21_Armenia_EN.pdf)

<sup>2</sup> GRECO. Third Evaluation Round. Evaluation Report on Armenia on "Incriminations (ETS 173 and 191, GPC 2)" (Theme I). Greco Eval III Rep (2010) 4E. 3 December 2010. Available at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)4\\_Armenia\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)4_Armenia_One_EN.pdf)

<sup>3</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia. Second Round of Monitoring. Armenia. Monitoring Report. Available at: <http://www.oecd.org/corruption/acn/48964985.pdf>

<sup>4</sup> MONEYVAL. Mutual Evaluation Report. 22 Sep. 2009. MONEYVAL (2009)/25. Available at:

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)25Rep-ARM3\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)25Rep-ARM3_en.pdf)

<sup>5</sup> MONEYVAL. Progress Report and Written Analyses by the Secretariat of Core Recommendations. 28 Sep. 2010. MONEYVAL (2010)/15. Available at: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL\(2010\)15-ProgRep\\_ARM\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/progress%20reports/MONEYVAL(2010)15-ProgRep_ARM_en.pdf)

# I. Executive summary

At first glance, the implementation of the UNCAC by Armenia has been relatively successful, which is evidenced by the steps taken to harmonise domestic legislation with the UNCAC. However, there are deficiencies in the legal framework which need to be properly addressed. In addition, the enforcement of these laws is far from being considered satisfactory.

## Assessment of the review process

### Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of Armenia.

Table 1: Transparency and CSO participation in the review process

Did the government make public the contact details of the country focal point?	No
Was civil society consulted in the preparation of the self-assessment?	No
Was the self-assessment published online or provided to CSOs?	Yes
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	Yes
Was civil society invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	N/A

### Availability of information

The Prosecutor General's Office of the Republic of Armenia, on its official website, provides annual and semi-annual statistics on corruption-related crimes.<sup>6</sup> These are quite comprehensive; however, they could be more efficient and cohesive if each item also contained a description of the actual conviction(s) (with the case number of the criminal procedure) and an explanatory note of 5-10 pages. Say, for example, that for a crime stipulated under article x in 2014, 60 persons will be convicted for 60 different, unrelated episodes. A 5-10 page explanatory note for each of those 60 cases would be an effective and productive way to show the trends for that type of crime. The present lack of verifiable data on convictions, due to the peculiarities of Armenia's case-law search engine, [www.datalex.am](http://www.datalex.am), is a barrier to accessing information for each case.

This research is based on the accessible data and information from the abovementioned resources, and information accessed on various websites on the most serious corruption-related cases of the preceding years.

## Implementation and enforcement of UNCAC

Armenia has largely implemented the mandatory provisions of the UNCAC covered by this report. Nevertheless, the legal framework has some discrepancies around the definition of foreign officials and does not provide sufficiently strong grounds for the liability for legal persons, or for trading in influence. With regard to non-mandatory provisions, the legislation does not provide a cohesive framework for the protection of reporting persons and does not criminalise illicit enrichment.

The enforcement of the provisions covered here appears to be unsatisfactory, especially in cases which allegedly (based on the reports of investigative journalists) involved high-ranking public officials and politicians. The high number of amnesties granted following convictions for corruption offences is also remarkable.

<sup>6</sup> Please see at: <http://www.genproc.am/am/197/>

## **Recommendations for priority actions**

This report provides several recommendations for action:

1. Actively prosecute each incident of corruption to raise public trust in the efficiency of anti-corruption enforcement.
2. Enhance protection of reporting persons through respective legal reforms and introduction of functioning and practical mechanisms.
3. Consider the introduction of illicit enrichment into domestic criminal legislation.
4. Initiate active discussion with domestic legal scholars and international experts to identify best practices in criminal liability of legal persons as a possible basis for its introduction into domestic criminal legislation.
5. Collect and publish statistics for corruption-related cases for each quarter.
6. Supplement the statistics on corruption crimes posted on the Office of the Prosecutor General's website with detailed information on the individual cases.



## II. Assessment of the review process for Armenia

### A. Report on the review process

The review of the implementation and enforcement of the UNCAC in Armenia is being conducted under the review mechanism established by the UNCAC Conference of States Parties (CoSP). Armenia was required to undertake a self-assessment of its implementation efforts and report its findings to a team of peer reviewers. The country focal point is one of the Deputy Ministers of Justice.<sup>7</sup> The completed self-assessment questionnaire is available on the website of the Ministry of Justice in the “News” section within the announcement (containing a link to the self-assessment<sup>8</sup>) of the invitation to NGOs to participate in the finalisation of the already prepared self-assessment questionnaire (posted on 5/12/12). The self-assessment can be accessed by clicking on the words “UNCAC” (ՄԱԿ-ի Կոռուպցիայի դեմ պայքարի կոնվենցիա).<sup>9</sup> The Ministry was inviting the written submission of suggestions from NGOs by 10/12/12 and the Ministry was to the written submission of suggestions.<sup>10</sup> In May 2013 peer reviewers visited Armenia, and were met by members of TI Armenia at the office of the Ministry of Justice.

### B. Availability of information

The legislation is accessible via a free public legal database, [www.arlis.am](http://www.arlis.am). Statistics on corruption-related offences are being compiled and posted for free public access by the Prosecutor General’s Office, at its official website, [www.genrpoc.am](http://www.genrpoc.am). Statistics on the abovementioned offences are annual and semi-annual, highly comprehensive and of good quality. However, the failure to prepare and publish reviews of landmark corruption cases is an important shortcoming in this field and could be remedied by law reviews edited and published by academic institutions, private companies or judges. Moreover, due to the peculiarities of the free and public search engine of Armenian case law, [www.datalex.am](http://www.datalex.am), gaining access to concrete cases is very challenging, as case numbers or names of the defendants are needed to conduct effective research into case law. It must be also mentioned that one of the main shortcomings of the statistics is that they do not provide data on money laundering in general but only in terms of abuse of official position.

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<sup>7</sup> It should be, however, mentioned that Armenia’s focal point for UNCAC review was not explicitly appointed by the government but rather the 14 April 2012 Decision N339-A of the prime minister of Armenia (not officially published) appointed a working group on the preparation of Armenia Report on UNCAC implementation and, related to that, the completion of UNCAC’s self-assessment questionnaire was established. One of the Deputy Ministers of Justice was appointed head of the group and by default is performing the functions of the focal point.

<sup>8</sup> The link to the invitation is: <http://moj.am/article/614> (last accessed 1/2/13)

<sup>9</sup> The self-assessment is available at: <http://moj.am/storage/uploads/Corruption.pdf> (last accessed 1/2/13)

<sup>10</sup> See <http://moj.am/article/614>

### III. Implementation and enforcement of the convention

#### A. Key issues related to the legal framework and enforcement of laws

##### 1. Areas showing good practice

**UNCAC Article 15: Bribery of domestic public officials.** Armenia is in compliance with the provision of UNCAC Article 15. The active and passive bribery of national public officials is criminalised under Articles 312, 312<sup>1</sup>, 311 and 311<sup>1</sup> of Armenian Criminal Code. Active bribery of national public officials is criminalised in two different articles: 312 (Giving a bribe) and 312<sup>1</sup> (Giving unlawful remuneration to a public servant who is not an official)<sup>11</sup>. Passive bribery of national public officials, again is criminalised under two different articles: 311 (Receiving a bribe) and 311<sup>1</sup> (Receiving unlawful remuneration by a public servant not considered as an official). The offences cover “cash, property, property rights, securities or any other advantage”. The advantage can be promised/offered/granted personally or through an intermediary. The definitions are broad. The main deficiency, concerning bribery of national public officials, which is still in place, is the defence of “effective regret”. OECD, in its Monitoring Report, concluded that articles on active bribery (312 and 312<sup>1</sup>) are in line with Article 15 (a) of UNCAC and Article 2 of Council of Europe’s Criminal Law Convention.<sup>12</sup> However, according to GRECO, even after the introduction of time limits for the defence of bribe-giving (no more than three days), the defence is still mandatory and applies automatically, as indicated by the expression “shall be released from criminal liability”.<sup>13</sup>

**UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official.** Armenia has implemented this article, as reflected in Article 179 (Squandering or embezzlement) and Article 308 (Abuse of official powers) of the Criminal Code. According to this, “Squandering or embezzlement is theft of somebody’s property entrusted to the person in significant amount”. In accordance with Article 179, paragraph 2, for this crime an aggravating circumstance is “the same actions committed by using official position”. Article 179 lacks one of the key elements of Article 17 of the UNCAC: the offence should cover acts which are also for the benefit for another person or entity. Nevertheless, the latter element is covered by Article 308. The definition of property is broad, which makes it possible to capture a full range of assets. According to OECD’s Monitoring Report, monitoring experts believe that these articles sufficiently reflect the requirements of Article 17 of the UNCAC.<sup>14</sup>

**UNCAC Article 32: Protection of witnesses, experts and victims.** Armenia is in compliance with this provision. Chapter 12 of the Criminal Procedure Code addresses this issue.<sup>15</sup> Protection can be provided to witnesses, experts and victims (“persons participating in a criminal trial”) and also to their relatives. The term “relative” has a broad definition under Article 98 (paragraph 1). Protection can be provided both by investigation, prosecution and the court, due to the term used in Article 98 (paragraph 1), which is “the body conducting criminal proceedings”, the definition of which is repeated in Article 6 (point 30). Protection covers change of place of work, service and study as well as protection of the place of residence (Article 98<sup>1</sup>, point 10).

**UNCAC Article 35: Compensation for damage.** Armenia is in compliance with this provision. In addition to the rights and possibilities granted to the victim of a crime, there is also such participant of a proceeding as “Civil Claimant” (Քաղաքացիական հայցվոր). According to 60 (1) of the Criminal Procedure Code, “A physical or legal entity, which prosecutes a claim during the proceedings of the criminal case, with respect to which sufficient bases are available to assume, that a material damage, subject to compensation in the manner of criminal proceedings, was caused to the latter upon a deed forbidden by Criminal Code, is recognised as civil claimant”. A civil suit may be commenced at any time from the opening of a criminal file until withdrawal of the court from the courtroom (Article 158 (1) of Criminal Procedure Code).

**UNCAC Article 46 paragraph 9 (b) and (c): Mutual legal assistance in the absence of dual criminality.** Armenia mostly complies with this provision. The Criminal Procedure Code makes a distinction between legal assistance based on international treaties (chapter 54) and in the absence of international treaties

<sup>11</sup> Part 5 of Article 311.1 provides the definition of public servants, for the purposes of Chapter 29 of Criminal Code. According to this, as public servants are considered those who occupy a position from the list of public service offices or who are included in the reserve (by the manner and cases stipulated by law) in accordance with the Law on Public Service. An example would be a specialist in a municipality (see LՂ/0230/01/12).

<sup>12</sup> See OECD, page 26.

<sup>13</sup> Compliance report, points 30, 31.

<sup>14</sup> OECD, page 27.

<sup>15</sup> Particularly, Article 98 regulates the procedure of provision of protection, and 981 types of protections.



(chapter 54.1). In the former case, the dual criminality rule is not applicable, based on Article 6 of the Constitution which stipulates that ratified international treaties prevail over other legal acts. However, at the same time, treaties which contradict the Constitution cannot be ratified (Article 6, Constitution). Both chapters (54 and 54.1) provide structured procedures for provision of legal assistance by responsible bodies, which are mentioned therein.

**UNCAC Article 23: Laundering of proceeds of crime.** Armenia is mostly in compliance with this provision. Article 190 (5) provides a list of predicate offences, which is reasonably thorough and also includes corruption crimes. In this regard, it is worth noting the findings of MONEYVAL's Mutual Evaluation Report on Armenia, which states: "All FATF designated categories of predicate offences are covered..."<sup>16</sup> One of the frequent misunderstandings (regarding Article 190) was the question of whether conviction is necessary for the predicate offence to prove that the proceeds stem from the crime. MONEYVAL, in its Progress Report (2010), says that regardless of indications of the official authorities, the issue remains to be confirmed by the court's practice.<sup>17</sup> However, with regard to the purely legislative part of the issue, MONEYVAL's Mutual Evaluation Report (2009) mentions that "Article 190 CC does not require that a person be convicted of a predicate offense to prove the illicit origin of proceeds."<sup>18</sup> Nevertheless, it must be noted that the legal language of Article 190 (1) is not clear enough. Particularly, Article 190 contains a condition "where it is known that... (էթէ հայտնի է...)" for the establishment of the offence of money laundering.<sup>19</sup> From the text it is unclear by whom it must be known: whether it is known by the suspect, or known in general. According to RA Law on Legal Acts, Article 86 (1), the legal acts must be interpreted literally. If it means known by the suspect, then opening a criminal file just for money laundering without initiating a criminal case for a predicate offence is possible. Otherwise, based on the principle of legal certainty and the principle of construing legal acts literally, it may raise issues of constitutionality, based on Article 83.5 (point 6), which stipulates that cases, procedure and terms for criminal liability should be set forth exclusively by the laws of Armenia. It must be mentioned that the Cassation Court, which under Article 92 of the Constitution shall ensure uniformity in the implementation of law, in one of its Decisions (A. Sargsyan vs. Armenia, case no. EKD/0090/01/09)<sup>20</sup> construed the disposition of Article 190 in a way which specifically requires the suspect to have knowledge about the illegal nature of the proceeds of the crime.<sup>21</sup> Hence, it is suggested that appropriate legal amendments are made to clarify the issue and to bring it in line with the text of the convention.<sup>22</sup>

As detailed under the comments on Article 26 of UNCAC, Armenia's legislation does not foresee criminal responsibility for legal persons. The only situation in which a legal person can become liable for a corruption-related crime is their involvement in money laundering, which is still not a criminal liability but an administrative one.

Extraterritoriality is thoroughly regulated under Article 15 of the Criminal Code. It must be mentioned that according to Article 15 (2), money laundering is considered one of the crimes for which **citizens of Armenia, as well as stateless persons permanently residing in Armenia**, are subject to criminal liability regardless of whether or not the act is considered a crime in the state in which it was committed.

For other crimes not covered under Article 15 (2), **citizens of Armenia and stateless persons permanently residing in Armenia** are subject to criminal liability under the Criminal Code of Armenia, if the committed act is recognised as a crime in the legislation of the state where it was committed and if they were not convicted in another state.

For crimes committed outside of Armenia by **foreign citizens and stateless persons not permanently residing in Armenia**, criminal responsibility under the Criminal Code of Armenia applies if the committed acts are either such crimes which are provided in an international treaty of Armenia or are particularly serious

<sup>16</sup> Mutual Evaluation Report. page 39.

<sup>17</sup> MONEYVAL Progress Report, page 6.

<sup>18</sup> Mutual Evaluation Report page 39 (130).

<sup>19</sup> RA Criminal Code. Article 190 (1).

1. Converting or transferring property derived from a crime (where it is known that the property has been derived from a criminal activity) which had the aim of concealing or disguising the criminal origin of the property or to assist any person to evade liability for a criminal offence committed by him or her or to conceal or disguise the true nature, origin, whereabouts, manner of disposition, movement, rights or ownership of property (where it is known that the property has been derived from a criminal activity), or acquiring or possessing or using or disposing of property (where it was known, at the time of receiving the property, that it has been derived from criminal activity) – shall be punished by imprisonment for a term of two to five years, with confiscation of property provided for in Article 55 (4) of this Code.

<sup>20</sup> A.Sargsyan vs. Armenia, case no.EKD/0090/01/09. Armenian version is available at: <http://www.arlis.am/DocumentView.aspx?DocID=68936> (last accessed 1/2/13).

<sup>21</sup> Ibid., point 14, para 1.

<sup>22</sup> In the Armenian version of the convention, the verb 'knowing' is translated with the word 'գիտակցել' which can be construed exclusively as personal knowledge of the person about concrete matters.

crimes which are directed against the interests of Armenia or the rights and freedoms of Armenian citizens. Nevertheless, the latter rules are only applicable if the foreign citizens and stateless persons not permanently residing in Armenia have not been convicted for that crime in another state and are subjected to criminal liability in the territory of Armenia. Intent is a required element for one of the three parts of the definition of money laundering (conversion or transfer of property obtained in criminal way, if it is known that such property was obtained as a result of criminal activities, which had the purpose of concealing or disguising the criminal origin of such property, or of assisting any person to avoid liability for a crime committed by such persons...). With regard to the *mens rea* element, this can be conducted only by express malice, which is also confirmed by the abovementioned Cassation Court's decision.<sup>23</sup> The statutory sanctions, according to MONEYVAL's Mutual Evaluation Report, seem to be proportionate and would be dissuasive.<sup>24</sup>

## 2. Areas suggested for improvement

**UNCAC Articles 16: Bribery of foreign public officials and officials of public international organizations.** Armenia is mostly in compliance with this provision; however there are some deficiencies. Article 308 (paragraph 4) of the Criminal Code foresees that articles on passive and active bribery for national public officials are also applicable to foreign public officials and officials of public international organisations. The mentioned provision (Article 308, paragraph 4) enumerates those persons to whom articles on bribery apply. However, the definition of "foreign public official" and "officials of public international organisations" differs from the UNCAC Article 2 (b) and (c). Although the definition of "officials of public international organisations" is basically in line with the UNCAC Article 2 (c), the same is not true for the definition of "foreign public official". Particularly, the wording in question is the following: "persons performing functions of public official of a foreign state in accordance with the internal law of the state concerned, as well as members of legislative or other representative body of a foreign state exercising administrative authorities".

**UNCAC Article 18: Trading in influence.** The active side of trading in influence is criminalised under Article 312.2 of the Criminal Code, and the passive side of the same offence is criminalised under Article 311<sup>2</sup> of the Criminal Code. The active side is in line with the requirements of Article 18 (a) of the UNCAC, while the passive side is mostly in line with Article 18 (b) of the UNCAC. The missing element of the passive side of trading in influence is that Article 311<sup>2</sup> does not refer to third party beneficiaries, as required by Article 18 (b) of the UNCAC.

**UNCAC Article 20: Illicit enrichment.** Armenia is not in compliance with this provision. However, this provision is optional. The OECD monitoring group reports that, "The authorities of Armenia have informed the team of experts that they considered the introduction of such an offence, but have come to the conclusion that illicit enrichment should not be criminalized."<sup>25</sup> On 26 June 2012, a round-table discussion was organised to discuss the topic of "Implementation of UNCAC and Council of Europe Conventions on Corruption in the Republic of Armenia", in which the head of the Department of Corruption and Organised Crime of Prosecutor General's Office participated. However, despite such discussions taking place there is still no active drafting of respective amendments for criminalisation of illicit enrichment.

**UNCAC Article 26: Liability of legal persons.** Armenia is partially compliant with this provision. Armenia's legislation does not foresee criminal responsibility for legal persons. The only situation in which a legal person can become liable for a corruption-related crime is involvement in money laundering, but this is still an administrative rather than a criminal liability.<sup>26</sup> More specifically, Article 28 of the Law on Combating Money Laundering and Terrorism Financing provides that: "a) those legal persons, which are not considered as reporting entities under the law, if had been involved in money laundering, then this involvement shall give rise to imposition of 1) penalty at the value of the received assets of crime as specified in Part 4, Article 55 of the Criminal Code of the Republic of Armenia, but not less than 2000-fold amount of the minimal salary, as well as 2) action may be filed to the court requesting liquidation of the legal person in the manner established by law (Article 28, part 1); b) Those legal persons, which are considered as reporting entities under the law, if had been involved in money laundering, then it shall give rise to imposition of a) penalty at the value of the received assets of crime as specified in Part 4, Article 55 of Criminal Code of the Republic of Armenia, but not less than 5000-fold amount of the minimal salary, as well as b) the license of such person may be

<sup>23</sup> A.Sargsyan vs. Armenia, case no. EKD/0090/01/09. Point 16. The Armenian version is available at: <http://www.arlis.am/DocumentView.aspx?DocID=68936>

<sup>24</sup> MONEYVAL Mutual Evaluation Report, page 43.

<sup>25</sup> OECD, page 28

<sup>26</sup> OECD page 30

revoked or suspended or terminated or otherwise the activity of the reporting entity may be banned in the manner established by law.”

Hence, liability of these entities stands alone. The sanctions seem quite reasonable, because the law stipulates the minimum level of the sanctions and provides opportunity to raise them in accordance with the committed activity. In addition, it must be noted that the OECD in its Monitoring Report, after discussing the issue in detail, concluded that Armenia is partially compliant with its previous recommendation 11. Particularly, it stated: “Legal provisions establishing liability of legal persons for corruption should ensure that a legal person can be subjected to an investigation regarding taking and giving bribes, trading of influence when these offences are committed by the employees of the legal person in the name of it, or using its funds, the position or the activity of the legal person. Consider adopting legal provisions which permit a legal person to be subjected to an investigation regarding embezzlement, commercial bribe or abuse of official powers, when the offences were committed in the name of the legal person, using its funds, or taking advantage of its legal or commercial position.”<sup>27</sup>

Also, in 2008, GRECO’s Compliance Report on Armenia clearly recommended the establishment of liability of legal persons for offences of bribery and money laundering (recommendation XXII).<sup>28</sup> However, there is still no established liability of legal persons for the offence of bribery.

**UNCAC Articles 33: Protection of reporting persons.** The protection of reporting persons in Armenia is divided into two legal regimes: one regulating reporting persons who are public servants, and another which regulates ordinary reporters. Article 22 of RA Law on Public Service stipulates that public servants in the course of conducting their own duties must inform respective public officials of violations and any other illegal activities, including activities which relate to corruption, pertaining to public service, committed by other servants (part 1). Part 3 of the same article stipulates that competent bodies must guarantee security of those public servants who conscientiously informed about the activities stipulated under Part 1 of the same article. In addition, the government’s decision no. N 1816-N (23/12/11) regulates the order of guaranteeing security for those public servants who report to public officials and competent bodies regarding violations and other actions (including those which relate to corruption) of other servants. According to this decision, measures to guarantee security include secrecy of data; condemnation of persecutions or retributions and of irrelevant and unlawful interference into the activities of the reporting public servants by other servants; where necessary, relocating the reporting person to another workplace; creating conditions for fulfilment of duties without intervention by the reporting public servant; not overburdening the reporting servant with artificial orders; and undertaking any other necessary measures. If the reported act is of criminal nature then the public servant falls under the regime of general protection, as a member of the public.<sup>29</sup>

The reporting person can receive any protection if he/she has a status of a *participant in proceedings* as defined by the Criminal Procedure Code. The general protection is provided in the Criminal Procedure Code. According to Article 98, protection measures are being granted to the participants of criminal proceedings (քրեական դատավարությանը մասնակցող անձինք) and their relatives. The definition of participants of criminal proceedings is provided in the same code (Point 32 of Article 6), according to which participants of criminal proceedings are: participants in proceedings (դատավարության մասնակիցներ), witnesses to a search, trial clerks, interpreters, specialists, experts and witnesses. Point 31 of the same article defines the scope of those who are considered as participants in proceedings. According to it, participants in proceedings are: the prosecutor (prosecuting attorney), the investigator, the agency for inquest, as well as the injured party, the civil claimant, the legal representatives thereof; the suspect, the accused, the legitimate representatives thereof, the defence attorney, the civil defendant and his/her representative. Under the regulations provided by the Criminal Procedure Code in force, the respective law enforcement bodies are not obliged to grant a status (for example, status of witness) to a reporting person immediately.

However, if the reporting person is granted one of the statuses as described above, then the measures of protection are, as stipulated under article 98<sup>1</sup>: 1) formal warning of the person who is expected to be threatening violence or other crime against the person being protected, 2) protection of the personal information of the person being protected, 3) provision of personal security, protection of house and other property of the person being protected, 4) providing personal protection of the person being protected and warning him about the danger, 5) Using technical resources and wiretapping telephone and other conversations 6) Ensuring the safety of the person being protected arrival to the body conducting criminal proceedings, 7) Choosing such preventive measures for the suspect that will exclude the possibility of violence or other crime against the person, being protected, 8) Transfer the person being protected to other

<sup>27</sup> OECD, page 30.

<sup>28</sup> See [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2\(2008\)3\\_Armenia\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)3_Armenia_EN.pdf), page 18.

<sup>29</sup> See points 9, 6, 3 (3) of the government Decision N 1816-N.

residence, 9) Replacing the identification documents or changing the appearance of the person being protected, 10) Changing the place of work, service and study of the person being protected, 11) Withdrawal of specific individuals from the courtroom or holding closed-door court session, 12) Questioning the person being protected in the courtroom without publishing the identity information.

Hence, based on the above mentioned it seems that Armenia can be viewed as more in compliance with this article, rather to claim the opposite.

## **B. Key issues related to the enforcement system**

### **1. Statistics and cases**

Several high-profile corruption cases have been prosecuted recently.

#### **Case of Margar Ohanyan<sup>30</sup>**

In May 2012, the first instance court of general jurisdiction for Kentron and Nork-Marash administrative districts of Yerevan, sentenced ex-traffic police chief Margar Ohanyan to six years' imprisonment for large-scale embezzlement (theft of more than 150 tonnes of fuel that was allotted to police patrol cars).<sup>31</sup> During the process, Ohanyan and his family and friends raised over US \$100,000 to compensate the state for the alleged fuel loss, which was described by his attorney as a matter of honour and dignity for Mr. Ohanyan.<sup>32</sup>

#### **Case of Hovhannes Tamamyan<sup>33</sup>**

In March 2012, the former head of the RA Police General Department of Criminal Investigative Service, Mr. Hovhannes Tamamyan was sentenced to four years' imprisonment for abuse of official powers by the first instance court of general jurisdiction for Kentron and Nork-Marash administrative districts of Yerevan. He and two other former employees of the police were charged with abuse of official powers that entailed grave consequences; in particular, they concealed the circumstances of an attempted murder, knowing the identities of those who committed the crime and hiding them from justice. All pleaded guilty and asked for speedy trial.<sup>34</sup>

#### **Case of Vardan Oskanyan**

The case of the former minister of foreign affairs of Armenia, Vardan Oskanyan, was of broad public concern and was followed by the international community. Mr Oskanyan was at the time an MP and member of the Prosperous Armenia political party. He was accused of squandering money of significant amount and legitimising illegally obtained incomes of the same, significant amount, according to Point 1 of Part 3 of Article 179 and Point 1 of Part 3 of Article 190 of the Criminal Code. In October 2012, Prosecutor General Hovsepyan appealed to Parliament for permission to involve Vardan Oskanyan as an accused party in the money laundering case against the Civilitas Foundation. The appeal implies waiving of deputy immunity, but not arrest. Permission was granted by the National Assembly. Prosperous Armenia called the case politically motivated because the authorities exerted pressure on the party on the threshold of the 2013 presidential election. The criminal case against the Civilitas Foundation concerned a US\$ two million transaction for the sale of Huntsman Building Products, an Armenia-based company owned by US-based Polymer Materials and Huntsman International.<sup>35</sup> However, in July 2013, the Investigative Service of the National Security Service issued a press release and terminated the prosecution against Mr Oskanyan. According to the press release, Mr Oskanyan agreed to pay the tax liability incurred, as calculated by the tax service. He admitted that he had used the money for personal purposes and solicited for termination of prosecution. He admitted that there might have been financial and administrative shortcomings but claimed there was no intent to embezzle the sum and legalise it. The National Security Service has decided to requalify the act as tax avoidance and to terminate the prosecution.<sup>36</sup>

#### **Case of T. Grigoryan and A. Petrosyan<sup>37</sup>**

In this notable bribery case, the former head and deputy head of the National Environmental Inspectorate together received a bribe of five million AMD (US\$ 12,318). In August 2010, the court of general jurisdiction

<sup>30</sup> ԵՊ/0247/01/11

<sup>31</sup> Radio Liberty, 30/05/12. *Ex Traffic Police Chief Gets Six Years in Corruption Case*; <http://www.azatutyun.am/content/article/24598449.html>

<sup>32</sup> Ibid.

<sup>33</sup> ԵՊ/03/01/12

<sup>34</sup> Armenianow.com, 24/03/12. *Armenian Police general gets jail sentence for murder cover-up*.

[http://www.armenianow.com/news/36740/armenia\\_majorgeneral\\_hovhannes\\_tamamyan\\_court\\_sentence](http://www.armenianow.com/news/36740/armenia_majorgeneral_hovhannes_tamamyan_court_sentence)

<sup>35</sup> Commonsplace.eu, 08/10/12. *Vardan Oskanyan official accused of money laundering*; <http://www.commonspace.eu/eng/armenia/6/id2290>

<sup>36</sup> <http://www.lragir.am/index/eng/0/right/66192/30532>.

<sup>37</sup> ԵՊ/0024/01/10.

of first instance for Kentron and Nork-Marash administrative districts of Yerevan sentenced the former head of the inspectorate to seven years' imprisonment with confiscation of personal property to the value of 3.790.000 AMD (US\$ 10,000), and the deputy head to ten years' imprisonment with confiscation of personal property to the value of 1.210.000 AMD (US\$ 3,202).<sup>38</sup>

**Table 2: Statistics on cases<sup>39</sup> for the period of 2010-2012**

The table below illustrates the general situation of corruption-related offences in the country. In a nutshell, during the period of time considered, 58 persons were convicted for passive bribery while eight persons were convicted for active bribery.

	<b>Trials</b>	<b>Convictions</b>	<b>Settlements</b>	<b>Acquittals</b>	<b>Amnesty<sup>40</sup></b>
Bribery of national public officials (active) (UNCAC Article 15 (a))	<i>Article 312</i> 5 cases involving 8 persons.  <i>Article 312.1</i> 1 case involving 1 person.	<i>Article 312</i> 8 convictions (6 imprisonments and 2 fines).  <i>Article 312.1</i> 1 conviction (imprisonment).	<i>Article 312</i> 6 settlements.  <i>Article 312.1</i> 0 settlements.	<i>Article 312</i> 0 acquittals.  <i>Article 312.1</i> 0 acquittals.	<i>Article 312</i> Benefited from an amnesty for 4 persons in the form of exemption from criminal punishment.  <i>Article 312.1</i> 0 persons.
Bribery of national public officials (passive) (UNCAC Article 15 (b))	<i>Article 311</i> 38 cases involving 51 persons.  <i>Article 311.1</i> 18 cases involving 23 persons.	<i>Article 311</i> 46 persons (36 imprisonments, 6 fines and 4 conditional punishments).  <i>Article 311.1</i> 18 persons (9 imprisonments, 7 fines, 2 conditional punishments).	<i>Article 311</i> 17 settlements.  <i>Article 311.1</i> 8 settlements.	<i>Article 311</i> 1 acquittal and 1 termination of criminal proceedings.  <i>Article 311.1</i> 0 acquittals. Termination of criminal proceedings over 2 cases toward 5 persons.	<i>Article 311</i> Benefited from an amnesty for 6 persons in the form of exemption from criminal punishment.  <i>Article 311.1</i> Benefited from an amnesty for 2 persons in the form of exemption from criminal punishment.
Bribery of foreign public officials (UNCAC Article 16)	1 registered case involving a foreigner who gave a bribe in 2011. No information is provided in statistics regarding bribes given to foreign officials.				

<sup>38</sup> Panarmenian.net. 10.08.2010. Տիգրան Գրիգորյանն ու Արսեն Պետրոսյանը դատապարտվել են համապատասխանաբար 7 և 10 տարվա ազատազրկման. <http://www.panarmenian.net/arm/society/news/52056/>.

<sup>39</sup> Databases are publicly accessible on the official website of the Prosecutor General's office of RA: <http://www.genproc.am/am/197/>

<sup>40</sup> Amnesty is being granted by the National Assembly (Parliament) based on the proposal of the president of Armenia (Article 81, RA Constitution). Usually, the president exercises this power when the country celebrates anniversaries (e.g. 1700<sup>th</sup> anniversary of declaring Christianity as a state religion or 20<sup>th</sup> Anniversary of Declaration of Independence of Armenia). Article 82 of the Criminal Code defines the notion of "Amnesty" and doesn't provide any restrictions for any type of crime which can fall under amnesty.

Embezzlement, misappropriation or other diversion of property by a public official (UNCAC Article 17)	Article 179 (2) (1) 76 cases involving 109 persons.	103 persons (31 imprisonments, 52 fines, 2 conditional punishments).	74 settlements.	1 acquittal. Termination of criminal proceedings toward 5 persons.	Benefited from an amnesty for 50 persons in the form of exemption from criminal punishment, and one person in the form of shortened punishment.
Illicit enrichment (UNCAC Article 20)	N/A  Not criminalised.	N/A	N/A	N/A	N/A
Money laundering linked to corruption (UNCAC Article 23)	In the statistics it is provided only for Article 190 (3) (3), which is money laundering committed by abusing official position. For this (Article 190 (3) (3)) the number of registered cases is 0.				

To show the dynamics, in 2012 only two convictions were made for active bribery (Article 312), and for passive bribery there were 14 convictions involving 14 persons (Articles 311, 311<sup>1</sup>).<sup>41</sup> For passive bribery cases, convictions include six imprisonments, six fines and two conditional punishments. For embezzlement (Article 179 (2) (1) and 179 (3)) there were 30 trials involving 62 persons. Of these, 61 were convicted (29 imprisonments, 26 fines and six conditional punishments). As for money laundering, while statistics from the Prosecutor General's office only provide data about Article 190 (3) (3) of the Criminal Code, the 2012 annual report for the Financial Monitoring Centre of the Central Bank of Armenia states that for the period 2010-2012 a total of 32 criminal files were opened, and verdicts given on just over ten cases during the same period.<sup>42</sup>

## 2. Significant inadequacies in the enforcement system

Armenia's enforcement of the UNCAC has several shortcomings that require serious attention, in particular:

### ***Lack of independence of public prosecutors and other enforcement agencies, and of the judiciary:***

Though the legal framework provides sufficient guarantees for the independence of the abovementioned entities, in practice they remain subject to the influence of the executive branch of the government. Freedom House, in its 2012 *Nations in Transit* report says of Armenia: "Attempts at judicial reform since 2007 have not succeeded in lessening the dependence of the prosecutor's office and court system on the executive branch."<sup>43</sup> Bertelsmann Stiftung, in its report on Armenia for 2012 (Transformation Index), states: "Officially, an independent judiciary branch does exist in Armenia, but it is still largely subordinate to the executive branch, and its effectiveness is undermined by widespread corruption and general incompetence. Abuse of power among Armenian officials remains rampant and unchecked. Reflected in the authorities' rather crude "arrogance of power," such abuse manifests partly as entrenched corruption within state institutions. Over the past two years, however, there were several cases in which policemen and other mid- to low-level state

<sup>41</sup> Here and after please see at [http://genproc.am/upload/File/Korupcion%20hanc\\_datakan%20qnnutyan%20ardyunqner%202012%20tarekan%20vichtvvalner.pdf](http://genproc.am/upload/File/Korupcion%20hanc_datakan%20qnnutyan%20ardyunqner%202012%20tarekan%20vichtvvalner.pdf)

<sup>42</sup> Financial Monitoring Center, Central Bank of the Republic of Armenia. Annual Report 2012, page 6. Available at: [https://www.cba.am/Storage/AM/downloads/FDK/Annual%20Reports/fmc\\_annual\\_report\\_2012\\_arm.pdf](https://www.cba.am/Storage/AM/downloads/FDK/Annual%20Reports/fmc_annual_report_2012_arm.pdf)

<sup>43</sup> See: <http://www.freedomhouse.org/report/nations-transit/2012/armenia>



officials were dismissed or arrested for corruption, suggesting at least an attempt to reign in the more flagrant abuses of office.”<sup>44</sup>

**Priority not always given to corruption cases:** Though the recent prosecutions of high-level officials (Mr. Ohanyan, Mr. Tamamyan and others) suggest that corruption cases are given priority, on some occasions the inaction concerning scandalous events invites a different conclusion. A notable example prompting this recommendation is the Skype interview of Pavel Anderson (see below) and the judgement of the US Southern District Court of New York to seize around US \$38 million from the former Minister of Environment of Armenia and current MP, Vardan Ayvazyan.

In 2012, Pavel Anderson, during a Skype interview with investigative journalists from 'Hetq' Investigative Journalists NGO publicly revealed how many bribes he paid, and on which occasions, while conducting business in Armenia. His list of people to whom he allegedly paid bribes contains high-level public officials and judges. However, no criminal file was opened based on the interview.<sup>45</sup> In the case of the former Minister of Environment, again no criminal file has been opened.<sup>46</sup>

**Lack of a well-functioning protection system for reporting persons:** The legislative framework possesses deficiencies as described above. There is a need to eliminate these deficiencies from the Criminal Procedure Code.

## IV. Recent developments

There are few recent developments relating to the implementation and enforcement of the UNCAC provisions discussed above. The only notable development is that the draft of a new Criminal Procedure Code has been posted for public comment on the official website of the Ministry of Justice.<sup>47</sup> The draft of the Criminal Procedure Code which is fully incorporated into the agenda of National Assembly is essentially a new legal framework; however it has still not been adopted (as of 18 October 2013).

On 24 September 2013, the president adopted Directive NK-159-A on Establishing Legal Securing Commission for Formation of Integrated Investigative Body. The head of the commission is former prosecutor general Mr. A. Hovsepyan, who left office in September 2013. The mandate of the commission is to draft and present those legal acts which will ensure the formation and functioning of the new investigative body.

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<sup>44</sup> See: <http://www.bti-project.org/countryreports/pse/arm/>

<sup>45</sup> For more see at: <http://hetq.am/eng/news/21946/opinion-on-manifestations-of-corruption-during-construction-of-yerevan-city-center.html> (English text) <http://hetq.am/arm/news/16450/amerikahay-pavel-andersony--asum-e-or--kasharel-e--qaxaqapetarani--u-dataranneri-nerkayacucichnerin-video.html> (Armenian text)

<sup>46</sup> For more see at: [http://hetq.am/eng/news/18561/ny-district-court-orders-\\$375-million-seized-from-former-environment-minister-ayvazyan.html](http://hetq.am/eng/news/18561/ny-district-court-orders-$375-million-seized-from-former-environment-minister-ayvazyan.html) (English text) <http://www.azatutyun.am/content/article/24711408.html> (English text)

<sup>47</sup> See <http://moj.am/legal/view/article/418/>



## **V. Recommendations for priority actions**

This section makes recommendations regarding Armenia's implementation and enforcement of the UNCAC provisions discussed above.

First, the criminal liability of legal persons requires public discussion with the participation of law-makers, private sector and civil society. The international trend is moving toward criminal responsibility together with administrative and civil liability of legal persons; however, it remains a controversial issue due to the fact that personal moral guilt is deeply ingrained in criminal law. For further enhancement of the legislative framework there should be active dialogue with domestic legal scholars and international experts to identify best practice, with a view to introducing this into domestic legislation.

Second, the current legal framework for the protection of reporting persons is not sufficiently comprehensive and needs further simplification and enhancement, which can be achieved by making appropriate alterations and amendments to the Criminal Procedure Code. After this stage, country-wide public awareness-raising campaigns will be crucial in incentivising the public to become actively involved in the fight against corruption and to actively report corruption when it occurs.

Third, the enforcement of the provisions of the UNCAC requires sufficient will to prosecute each incident of corruption, including cases involving high-level politicians, decision-makers and businesspeople. Incidents such as those detailed above obviously do not raise public trust in anti-corruption enforcement, nor do they give members of the public an incentive to actively report on corruption.

Fourth, consider the introduction of illicit enrichment into domestic criminal legislation.

Fifth, collect and publish statistics of corruption-related cases for each quarter, which will make society more aware of anti-corruption enforcement by the country's criminal justice system and will enhance intolerance of corruption.

Sixth, supplement these statistics with detailed information on particular cases.

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