



CSO  
Anti-Corruption  
Coalition  
of Armenia

CIVIL  
**UNCA** Coalition  
SOCIETY

### *Article 13. Participation of society*

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

## **CIVIL SOCIETY REPORT**

on the Implementation of  
Chapter II (Prevention) & Chapter V (Asset Recovery) of the

## **UNITED NATIONS CONVENTION AGAINST CORRUPTION**

## **IN ARMENIA**

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by the Armenian Lawyers' Association and the CSO Anti-Corruption Coalition of Armenia

*With the aim of contributing to the national review of the implementation of the UN Convention against Corruption (UNCAC) in Armenia in its second cycle, this parallel report was written by the Armenian Lawyers' Association and the CSO Anti-Corruption Coalition of Armenia, using the guidance materials and report template designed by the UNCAC Coalition and Transparency International. The production of this report was supported by the UNCAC Coalition, made possible with funding provided by the Norwegian Agency for Development Cooperation (Norad) and the Ministry of Foreign Affairs of Denmark (Danida). The findings in this report are those of the Armenian Lawyers' Association but do not necessarily reflect the views of the UNCAC Coalition and the donors who have made this report possible.*

## **ACKNOWLEDGEMENTS**

This project required a substantial amount of work, research and dedication. The implementation has been possible since we had the support of many individuals and organizations. Therefore, we would like to extend our sincere gratitude to all of them.

First of all, we are thankful to the UNCAC Coalition for their financial and logistical support and for providing necessary guidance concerning project implementation.

We are also grateful to the RA Ministry of Justice, RA Central Bank, RA General Prosecutor's Office, RA Judicial Department and RA Civil Service Office, as well as to members of the CSO's Anti-Corruption Coalition of Armenia for providing their expertise, and technical support in the implementation.

We would like to acknowledge that your support has been essential in the successful development of the report.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of December 2, 2020.

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*The Armenian Lawyers' Association, founded in 1995, is a non-governmental organization with the aim to create a powerful civil society and to establish Armenia as a sovereign, democratic, legal and social state. The organization has provided input in the Armenian policy development in anti-corruption and stolen asset recovery, human rights and gender equality, good governance and rule of law.*

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## **ABBREVIATIONS**

ALA	“Armenian Lawyers’ Association” NGO
AML	Anti-Money Laundering
CFT	Countering the financing of terrorism
CEC	Central Electoral Commission
CIS	Commonwealth of Independent States
CoE	Council of Europe
CoSP	Conference of the States Parties
CPC	Corruption Prevention Commission
CSO	Civil Society Organization
FATF	Financial Action Task Force
FMC	Financial Monitoring Center
EITI	Extractive Industries Transparency Initiative
EU	European Union
GRECO	Council of Europe’s Group of States Against Corruption
IO	Integrity Affairs Officer
IRM	Implementation Review Mechanism of the UNCAC
MoJ	Ministry of Justice
NGO	Non-Governmental Organization
OECD	Organisation for Economic Cooperation and Development
OGP	Open Government Partnership
PEP	Politically exposed persons
RA	Republic of Armenia
SJC	Supreme Judicial Council
StAR Initiative	Stolen Asset Recovery Initiative (UNODC/World Bank)
SRC	State Revenue Committee
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

## 1. 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 of the articles of Chapter II (preventive measures) and Chapter V (asset recovery) of the UNCAC. The report is intended as a contribution to the UNCAC implementation review process currently underway covering these chapters. Armenia was selected by the UNCAC Implementation Review Group by a drawing of lots for review in the third year (2018) of the second cycle. A draft of this parallel report was provided to the government of Armenia.

**Scope.** The UNCAC articles and topics that receive particular attention in this report are those covering preventive anti-corruption policies and practices (Article 5), preventive anti-corruption bodies (Article 6), public sector employment (Article 7.1), codes of conduct, conflicts of interest and asset declarations (Articles 7, 8 and 12), reporting mechanisms and whistleblower protection (Articles 8.4 and 13.2), political financing (Article 7.3), public procurement (Article 9.1), the management of public finances (Article 9), judiciary and prosecution service (Article 11), private sector transparency (Article 12), access to information and the participation of society (Articles 10 and 13.1), measures to prevent money laundering (Art. 14), anti-money laundering (Articles 52 and 58), measures for direct recovery of property (Articles 53 and 56), confiscation tools (Article 54), international cooperation for the purpose of confiscation (Articles 51, 54, 55, 56 and 59) and the return and disposal of confiscated property (Article 57).

**Structure.** The report begins with an executive summary, including the condensed findings, conclusions and recommendations about the review process, the availability of information, as well as the implementation and enforcement of selected UNCAC articles. The following part covers the findings of the review process in Armenia as well as access to information issues in more detail. Subsequently, the implementation of the Convention is reviewed, and examples of good practices and shortcomings are provided. Lastly, recommendations for priority actions to improve the implementation of the UNCAC are given.

**Methodology.** The report was prepared by Armenian Lawyers' Association and CSO Anti-Corruption Coalition of Armenia with technical and financial support from the UNCAC Coalition. 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 the Ministry of Justice of the Republic of Armenia, whose feedback was taken into consideration. The report was prepared through combining the following methods: data collection including a desk review, a survey, key informant interviews and analysis.

The report was prepared using guidelines and a report template designed by the UNCAC Coalition and Transparency International for use by CSOs. These tools reflected but simplified the United Nations Office on Drugs and Crime (UNODC) checklist and called for relatively short assessments as compared to the detailed official self-assessment checklist. The report template included a set of questions about the review process and, in the section on implementation, asked for examples of good practice and areas in need of improvement in articles of UNCAC Chapter II on prevention and Chapter V on asset recovery.

In preparing this report, the authors took into account the recent self-assessment of Armenia prepared in 2018, which has been published by the Ministry of Justice.<sup>1</sup>

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<sup>1</sup> Self-Assessment checklist for the Second UNCAC IRM, 2<sup>nd</sup> Cycle is available at [https://www.moj.am/storage/uploads/00.UNCAC\\_IRM\\_2nd\\_circle.pdf](https://www.moj.am/storage/uploads/00.UNCAC_IRM_2nd_circle.pdf) (accessed on 25 December, 2020).

## 2. EXECUTIVE SUMMARY

The second cycle of the UNCAC Review was launched in 2015, Armenia's review under the second cycle started in 2018. Armenia has mostly complied with its obligations under the UNCAC review processes, documented by the publication of the self-assessment checklist in 2018, followed by the country visit with the official reviewers in 2019, as well as its commitment to publishing the full country report. In regards to CSO participation in the review process, the process was less participative in the self-assessment stage but more inclusive while providing input to the official reviewers during the country visit. The main findings of this report are summarized in the executive summary.

The central anti-corruption policy in Armenia is the fourth Anti-Corruption strategy and Implementation Action Plan for 2019-2022. This strategy is distinguished by the fact that the government considered the advice of specialized CSOs and for the first time designed a strategy based on the three pillars: prevention of corruption; disclosure of corruption-related crimes; anti-corruption education and awareness-raising. The development of the fourth anti-corruption strategy in Armenia can be described as inclusive because, unlike the previous anti-corruption policies, CSOs were directly involved in the process. Nevertheless, the progress reports on the latest anti-corruption strategy for 2019 and the first half of 2020 reflect more of a quantitative picture than analytical data.

The Law on the Corruption Prevention Commission (CPC) was adopted in 2017, and the members of the CPC were elected in 2019. The CPC is an autonomous, collegial body, has five members and is responsible for the prevention of corruption and the implementation of anti-corruption education functions. In 2019, amendments were made to the Law on the CPC, as a result of which the procedure for appointing the members of the CPC by the Independent Competition Board was removed. According to these amendments, the CPC was formed by the direct nomination of members by the RA government, three factions of the Parliament and Supreme Judicial Council (SJC). Therefore, the CPC has been formed solely as a result of a political arrangement without securing its institutional independence, whereas the CPC is a specialized structure, and its appointments should be exclusively in the professional domain, and not the political. Specialized CSOs have repeatedly stated that the formation of the first composition of the CPC through non-competitive, political agreements is highly vulnerable. The same concerns were also reflected by the GRECO in its 4th Assessment Report on Armenia.

Other key issues in corruption prevention are the maintaining and strengthening systems of civil service and political parties. Nonetheless, the hiring process of civil servants as well as of the decision making of their appointments is not transparent; no representatives from civil society are members of the competition commission or observers. The supervision of the activities of political parties and their funding is weak, as is the practice of imposing sanctions on political parties for violations. There is no independent body that supervises the activities of political parties and ensures their transparency and accountability.

The integrity of public officials is regulated by the RA "Law on Public Service" which encompasses the codes of conduct that addresses incompatibility requirements, other restrictions, conflicts of interest and gifts. The codes of conduct for civil servants are binding, and violation may entail disciplinary action, initiated by ethics commissions and the CPC. However, the existing codes of conducts are not being adhered to quite frequently since the ethics commissions do not have the necessary capacities to enforce them in practice. The development of a model code of conduct for public servants, as well as codes of conduct for civil servants, members of parliament and investigators, is in the the plan of the current government. Additionally, the Law on Civil Service envisages Ethics Commissions of Civil Servants and Integrity Affairs Organiser within relevant bodies. There are 43 appointed Integrity Affairs Officers (IOs) in the state and local self-governance bodies as of 1 October 2020. However, there is no centralized or decentralized supervisory body that coordinates and controls the work and performance of the IOs, and, in the sense of the Law, the IOs are "organizers" rather than decision-makers.

The CPC maintains the public register of assets, income and interest declarations, conducts verification of the credibility of the submitted data and imposes administrative sanctions for the failure to declare property. Recently, the powers of the CPC to review declarations have been expanded for proper verification of the declarations up to receiving information constituting banking secrecy. A number of non-high-ranking officials do not have the declaration obligation while providing services in several risk-prone sectors from a corruption perspective: they engage with citizens in sectors such as the police, health-care, custom services, etc. The scope of family members that are covered by the disclosure is limited, resulting in widespread malpractice to register assets owned by public officials on behalf of non-declarant family members.

In 2020, the Parliament adopted laws aimed at providing the legal basis for assessing the integrity of judges, evaluating their assets; professionalism and respect for human rights, impartiality and initiated disciplinary proceedings against a member of the SJC. The amendments envisaged a new procedure for forming the Ethics and Disciplinary Commission of judges and other commissions. Two non-judge members from the CSO sector were involved in each Commission. Nevertheless, there is an absolute majority of judge-members and a minority of non-judge members in the Ethics and Disciplinary Commission, which may contribute to the inefficient work of the non-judicial members in the commission and makes their participation a formality. Another shortcoming is that the advisory conclusions of the CPC on the integrity check concerning high-ranking officials (e.g., judges, prosecutors) are not subject to publication.

The procedures for whistleblowing (internal and external), the rights of a whistleblower, the obligations of state and local self-government bodies, state institutions and organisations, as well as public organisations in respect to whistleblowing, as well as to the protection of a whistleblower and persons affiliated thereto are regulated by the RA Law on “Whistleblowing”. The RA legislation does not foresee the “*qui tam*” concept of a reward for whistleblowing and does not address whistleblowing on violations committed in the private sector. Several electronic whistleblowing platforms are in place (the state-led unified platform “*Azdararir*”; CSO-led platform designed for the private sector “*Bizprotect*”, operated by the ALA and CSO’s Anti-Corruption Coalition of Armenia, and *EmployeeProtect*, a newly created platform for reporting on violations of labour rights). Despite some important contributions to uncovering corruption and implementing reforms, numbers show that the general populations’ eagerness to blow the whistle remains limited.

Although the new law on “Public Procurement” makes the public procurement system more transparent by expanding the amount of data to be published in the official bulletin of procurement on the Government website [www.procurement.am](http://www.procurement.am), the latter is not using the open contracting data standard. Another major deficiency is that no specific monitoring procedure is in place for assessing the credibility of declarations on conflict of interest and beneficial ownership. This highlights the necessity to develop publicly-accessible analytical tools based on open data and to establish mechanisms to collect feedback to improve the procurement system's integrity and efficiency. The electronic procurement system (Armeps) is not used by all the procuring entities. In practice, these rules have been generally followed, with deviations in cases of emergency procurement of medical supplies after the outbreak of COVID-19. Despite the fact that the conditions of the right to participate in procurement and the qualification criteria, as well as conditions of evaluating those conditions and criteria, are provided by RA legislation, the technical specifications in the invitations for tender procedures in practice are often tailored to specific companies in order to ensure their victory. There has also been an increase in the use of non-competitive procedures. The independence and effectiveness of the appeals system applicable to public procurement have been regularly called into question by international donor organizations and CSOs. Additionally, there is no central beneficial ownership registry in Armenia where all types of companies are required to report their ultimate owners. The electronic register of the Unified State Register of Legal Entities Agency, which includes some general information on companies, is not fully freely and easily accessible to the public.

The procedures for the adoption of the national budget, mainly the development of the draft Medium Term Expenditure Framework (the basis of the draft law on state budget) and the draft state budget itself, as well as its discussion and adoption by the National Assembly, are set by the RA Law “On Budgetary System”. The processes of budget adoption and the budget itself are transparent. A simplified citizen’s budget and online interactive budget have been introduced, presenting the main information reflected in the state budget in an accessible way to the public. A recent decree of the RA Prime Minister imposes an obligation on the regional/local government bodies to discuss budget proposals with the interested civil society organizations during the development of the draft state budget. The Parliamentary Budget Office was established in the RA as a parliamentary oversight body to provide references on public finances, in particular, the state budget. The effectiveness of the mentioned office has been questioned since it does not have the necessary staff, independent funding from the state budget and no separate charter regulating its functions.

The issue of asset recovery was brought to the political agenda after the Velvet Revolution in Armenia back in 2018. Nevertheless, the process of asset recovery-related reforms is slow since the competent authority, the Department for the Confiscation of Property of Illegal Origin under the RA Prosecutor General's Office has only recently been established. The RA “Law on Forfeiture of Illegal Assets” has been adopted and is dedicated to civil forfeiture of illicit assets. One of the main legal grounds for initiating an examination is the information gathered by intelligence on unexplained wealth. The first challenge in this regard is the lack of a unified state concept on asset recovery on a policy level, which will touch all the stages and types of asset recovery, including criminal confiscation, civil forfeiture and direct asset recovery. As a result, the legal framework of asset recovery, despite recent legislative reforms, continues to be complex and incomplete. There are a number of procedural actions necessary for asset recovery, such as asset retribution and return, which are not regulated by the RA legislation, including the various bilateral and multilateral agreements on international cooperation. The newly adopted law is dedicated to only one aspect of asset recovery: civil forfeiture. The RA draft law on “Legal Assistance in Criminal Cases”, developed back in 2019 and dedicated to the comprehensive regulation of international cooperation in criminal matters between states, including the return of the assets to the country of origin, has not been adopted by the Parliament. Armenian legislation does not grant standing to civil society organisations to initiate a legal case for asset recovery. Although it has been stated that Armenia is considering to improve relevant legislation and practices in relation to the majority of mentioned spheres, no efforts in this regard are apparent.

There are also concerns about the competent authority in asset recovery, including the non-convincing arguments on the policy of selecting the RA Prosecutor General's Office as the competent authority based on its exclusive nature, as well as the low level of transparency of its formation despite the implementation of the replenishment of the lists of candidates of prosecutors through open competitions held by the Qualification Commission adjunct to the RA Prosecutor General. This highlights the necessity of establishment of an “Asset Recovery Office” on the basis of the mentioned commission, equipped with adequate staff and other resources to fulfil its mandate effectively.

Furthermore, there is a low level of transparency of the implementation and enforcement of the existing asset recovery provisions. The official statistics, even after the recent order of the RA Prosecutor General to publish statistics on asset recovery, are very limited and do not provide detailed information on seized, confiscated and returned assets. As a result, articles on asset recovery have been assessed as partially implemented with poor implementation level in practice.



## Description of Process

The second cycle of the UNCAC Review was launched in 2015. The Republic of Serbia and the Dominican Republic were selected as the countries that would assess Armenia in the third year of the review cycle. The government's self-assessment report was published on the official website RA Ministry of Justice (MoJ) on 16 July, 2018; followed by the country visit of the official reviewers in July, 2019. The RA government has committed to publishing the full country report as soon as it is ready for publication. While civil society has not been consulted sufficiently during the self-assessment stage, the latter has been invited to participate in the country visit and to submit alternative assessments.

This report was developed through desk review, inquiries to state institutions and key informant interviews, including RA MoJ, Central Bank, General Prosecutor's Office, Judicial Department and Civil Service Office, as well as members of the CSO's Anti-Corruption Coalition of Armenia and independent experts.

## Availability of Information

A number of legislative and policy initiatives have been introduced during recent years to boost the transparency and the accountability of state bodies. Thereby the necessary information was mostly published. The key documents available online include RA legislation, draft laws, annual reports of the activities of state bodies, ongoing results of the implementation of the current anti-corruption strategy, data on declarations of assets, income and interests of public officials, data on public procurement, including beneficial ownership details, etc. Nevertheless, despite recent reforms, there are areas which lack transparency, including the recent minutes of the Anti-Corruption Policy Council, the number of the initiated disciplinary proceedings against judges and prosecutors, information on compliance with codes of conduct for public officials, etc. In addition, the outbreak of the Coronavirus has also negatively affected the availability of public information, which is most vivid in the emergency procurement cases. Another issue is that certain information is available upon payment of fees. One of the main obstacles that the author encountered in obtaining the necessary information relate to the absence of the coordinated approach for providing statistics both on asset recovery and corruption prevention. Other remaining challenges include the openness of data since in most of the cases the latter does not correspond to open data standards and is not machine-readable, making it impossible for users to analyse the data. As a result, there was a need to make several formal access to information requests based on access to information legislation to develop this report.

## Implementation into Law and Enforcement

**Table 1: Implementation and enforcement summary**

UNCAC articles	Status of implementation into law	Status of implementation and enforcement in practice
Art. 5.1 (Preventive anti-corruption policies)	Fully Implemented	Good
Art. 5.2 (Preventive anti-corruption practices)	Partially Implemented	Moderate
Art. 5.3 (Preventive anti-corruption policies and practices evaluation)	Largely Implemented	Moderate
Art. 5.4 (Collaboration on national, international and regional level)	Fully Implemented	Good
Art. 6.1 (Creation of preventive anti-corruption body/bodies)	Largely Implemented	Moderate
Art. 6.2 (Independence and functioning of preventive anti-corruption body/bodies)	Partially Implemented	Moderate

Art. 7.1 and 7.2 (Public service merits system)	Largely Implemented	Good
Art. 7.3 (Political funding)	Largely Implemented	Moderate
Art. 7.4 (Conflicts of interest)	Partially Implemented	Moderate
Art. 8.2 (Codes of conduct)	Partially Implemented	Poor
Art. 8.4 and 13.2 (Reporting mechanism and whistle-blower protection)	Largely Implemented	Moderate
Art. 8.5 (Asset declarations)	Largely Implemented	Moderate
Art. 9.1 (Public procurement)	Largely Implemented	Moderate
Art. 9.2 (Management of public finances)	Largely Implemented	Moderate
Art. 10 and 13.1 (Access to information and the participation of society)	Largely Implemented	Moderate
Art. 11 (Judiciary, Prosecution)	Partially Implemented	Moderate
Art. 12 (Private Sector)	Largely Implemented	Moderate
Art. 14, 52 and 58 (Anti-money laundering)	Largely Implemented	Moderate
Art. 53 and 56 (Measures for direct recovery of property)	Largely Implemented	Poor
Art. 54 (Confiscation tools)	Partially Implemented	Poor
Art. 51, 54, 55, 56 and 59 (International cooperation for the purpose of confiscation)	Partially Implemented	Poor
Art. 57 (The return and disposal of confiscated property)	Partially Implemented	Poor

**TABLE 2: Performance of selected key institutions<sup>2</sup>**

<b>Name of institution</b>	<b>Performance in relation to responsibilities covered by the report</b>	<b>Key words explaining performance (e.g., resources, organisation, independence, technical skills)</b>
Department of Anti-Corruption Policy Development and Monitoring, Ministry of Justice	Good	Resources, organisation, independence, technical skills
Corruption Prevention Commission	Moderate	Organisation, independence, technical skills
Anti-Corruption Policy Council	Moderate	Organisation
Financial Monitoring Center	Moderate	Organisation, independence, technical skills
Audit Chamber	Moderate	Organisation, independence, technical skills
Prosecution	Moderate	Resources, independence, technical

<sup>2</sup> The performance is assessed in relation to responsibilities covered by the report.

		skills
Public Councils under the Ministries	Poor	Organization, independence
Audit and Oversight Service, Central Electoral Commission	Poor	Independence (in term of political parties funding)
Parliamentary Budget Office	Poor	Organisation, resources, independence, technical skills
Procurement Appeal System	Poor	Organisation, resources, independence, technical skills

### Key Recommendations for Priority Actions

1. Empower the Integrity Affairs Officers (IO): envisage the Corruption Prevention Commission (CPC) as a centralized body which will coordinate and supervise the activities of the IOs, including the organisation of trainings; review the selection criteria of the IOs to include anti-corruption experience.
2. Increase the integrity of public officials: publish the results of the integrity checks conducted by the CPC while adhering to the personal data protection rules; adopt the model code of conduct for public officials and the codes of conduct for civil servants, members of parliament and investigators.
3. Reform political financing: adopt the draft amendments to the RA Code of Administrative Offence on the financing of political campaigns, envisage proportionate sanctions for violations of reporting requirements, donation regulations and other offences under Articles 189.13 to 189.16 of the Code.
4. Raise the integrity in the judiciary: ensure a balanced and reasonable representation of judges and non-judges in the Ethics & Disciplinary and Educational Affairs Commissions; reserve the right to nominate a non-judge member in Educational Affairs and Evaluation Commissions only to civil society and set criteria for membership in the commissions to regulate conflicts of interest.
5. Expand whistleblowing legislation: cover violations committed in the private sector, foresee the "*qui tam*" concept for a whistleblower reward, and grant legal status to the alternative whistleblowing website "Bizprotect", operated by the civil society.
6. Review the work plans and legal regulations of the Public Councils under the Ministries to make them more transparent and inclusive in terms of developing agendas and making decisions.
7. Further improve the assets and income declaration system: introduce the declaration of expenditures and of property actually possessed by the declarant; introduce ad-hoc (situation-dependent) income declarations within two years after the termination of official duties; further expand the scope of the public officials subject to the declaration requirement and the scope of the family members that are included; grant authority to the CPC to conduct lifestyle checks of public officials to verify their declarations.
8. Implement reforms in public procurement: introduce a new electronic government procurement system based on the open contracting data standard and used by all contracting authorities in the country; develop publicly-accessible analytical tools based on contracting data from the electronic government procurement system; establish mechanisms to collect feedback to improve the procurement sphere's integrity and efficiency; train major stakeholders to utilize contracting data and feedback mechanisms for impact; improve the public procurement appeals system; adopt stricter rules on single-sourced procurement application, especially in regards to the justification of ground of urgency; provide for a specific review procedure for assessing the credibility of declarations on conflict of interest and beneficial ownership; set minimum standards for the technical specifications and estimated prices of a certain group of procurement items.

9. Build the technical capacity of the Parliamentary Budget Office: grant the necessary staff and independent funding from the state budget, define its functions in a separate charter, enlarge its mandate to assess fiscal forecasts and ex-ante compliance to fiscal rules.
10. Make the Public Sector Accounting Standard compliant to international best practice standards.
11. Boost transparency in the private sector: ensure general free access to the information on legal entities provided by the RA Unified State Register of Legal Entities free of charge and create a freely accessible beneficial ownership registry.
12. Increase efforts in Anti-Money Laundering (AML): create a centralized register of bank accounts, introduce criminal liability of legal persons, intensify the practices of parallel financial investigations initiated by law enforcement authorities, expand the scope of the politically exposed persons and their family members, and amend the definition of the real beneficiary;
13. Review the national legislative framework on asset recovery: eliminate the contradictions and fill in the gaps to fully comply with UNCAC provisions; grant standing to CSOs or civil society in general to initiate a legal case for asset recovery; diminish the value of assets subject to civil forfeiture; encompass legal rules on the redistribution of recovered assets to the society; adopt the draft law on "Legal Assistance in Criminal Cases" to have national legislative grounds for asset return to other states; review existing treaties on mutual legal assistance and sign new ones, especially in terms of regulating the stage of the return and distribution of assets.
14. Establish an Asset Recovery Office as the central authority for all the stages of asset recovery equipped with adequate staff and resources to fulfil its mandate effectively on the basis of the "Department for the confiscation of property of illegal origin" under the RA Prosecutor General's Office.
15. Increase the transparency in the enforcement and implementation of the asset recovery provisions; establish an asset database aimed at the provision of information about the recovered assets, managed by the Asset Recovery Office; improve mechanisms of publication of statistics on asset recovery.

### 3. ASSESSMENT OF REVIEW PROCESS FOR ARMENIA

The Second Cycle of the UNCAC Review was launched in 2015, and, through a drawing of lots, the Republic of Serbia and the Dominican Republic were selected as the countries that would assess Armenia.

**TABLE 3: Transparency of the government and CSO participation in the UNCAC review process**

Did the government disclose information about the country focal point?	No	Although the Republic of Armenia (RA) focal point responsible for the implementation of the UNCAC in Armenia is Mariam Galstyan, Head of the Department of Anti-Corruption Policy Development and Monitoring in the RA Ministry of Justice <sup>3</sup> , this information is not officially published. Meanwhile, the information on the previous focal point, RA Deputy Minister of Justice, Suren Krmoyan, was publicly available.
Was the review schedule published somewhere/publicly known?	No	No specific information about the review process has been disseminated to the public. Thereby, we can assume that the review process has not been conducted on time. <sup>4</sup>
Was civil society consulted in the preparation of the self-assessment?	Yes	According to the RA MoJ, the latter has officially applied to several NGOs to provide input to the process and to submit their consultative assessments. <sup>5</sup> Mainly, the following groups have been consulted: Anti-corruption and access to information CSOs, CSOs working on other issues, Academia. However, the process cannot be described as providing a high measure of participation in the self-assessment stage since a public announcement for consultations has not been published and not all NGOs have been made cognizant of the processes.
Was the self-assessment checklist published online or provided to civil society?	Yes	The RA Ministry of Justice has voluntarily published the self-assessment, dated July 16 2018, on its website <sup>6</sup> – the document, however, and has not been published through Armenia’s country profile page on the UNODC website.
Did the government agree to a country visit?	Yes	The RA government committed to publishing the full country report as soon as it is ready for publication.
Was a country visit undertaken?	Yes	The country visit by the reviewers Serbia and the Dominican Republic took place from July 16 to 18, 2019.
Was civil society invited to provide input to the official reviewers?	Yes	The civil society, including the CSO’s Anti-Corruption Coalition of Armenia, was invited to provide input to the official reviewers during the country visit by the representatives of the UNODC Secretariat and assessment experts from the Republic of Serbia and the Dominican Republic. <sup>7</sup> The CSOs have both raised their concerns during the meetings

<sup>3</sup> Interview with Mariam Galstyan, held on 16 November, 2020.

<sup>4</sup> The review is expected to be done within six months, however, this timeline is often exceeded.

<sup>5</sup> The official response of the RA Ministry of Justice, provided on 2 December, 2020.

<sup>6</sup> Self-Assessment checklist for the Second UNCAC IRM, 2nd Cycle.

<sup>7</sup> “Representatives of UN Assessment Group meet with representatives of state bodies and NGOs”, <<https://www.moj.am/en/article/2448>> (accessed on 25 December, 2020).

		and have provided observations in a written form. <sup>8</sup>
Was the private sector invited to provide input to the official reviewers?	Yes	The private sector was invited and was mostly presented during processes through business membership associations.
Has the government committed to publishing the full country report?	Yes	The RA government committed to publishing the full country report as soon as it is ready for publication. However, at the time this report was finalised, the country report had not been published since the draft of the report has not been provided to the government. It is worth mentioning that the sole document that was developed and presented to the RA Ministry of Justice is the draft executive summary. <sup>9</sup>

### Access to information

To prepare this report, information was obtained through desk review, inquiries to state institutions and key informant interviews. Since the RA government bodies dealing with anti-corruption policy are the Anti-Corruption Policy Development and Monitoring Department of the RA MoJ and the RA Corruption Prevention Commission, the latter served as a main source of information. Additionally, key data was obtained from the RA Central Bank, General Prosecutor's Office, Judicial Department and Civil Service Office, members of the CSO's Anti-Corruption Coalition of Armenia and independent experts, as well as pieces of media materials and other civil society reports. A number of legislative and policy initiatives have been introduced during recent years to boost the transparency and the accountability of state bodies. Thereby the necessary information was mostly published. The key documents available online include RA legislation, draft laws, annual reports of the activities of state bodies, ongoing results of the implementation of the current anti-corruption strategy, data on declarations of assets, income and interests of public officials, data on public procurement, including beneficial ownership details, etc. Nevertheless, despite recent reforms, there are areas which lack transparency, including the recent minutes of the Anti-Corruption Policy Council, the number of the initiated disciplinary proceedings against judges and prosecutors, information on compliance with codes of conduct for public officials, etc. In addition, the outbreak of the Coronavirus has also negatively affected the availability of public information, which is most vivid in the emergency procurement cases. Another issue is that certain information is available upon payment of fees. One of the main obstacles that the author encountered in obtaining the necessary information relate to the absence of the coordinated approach for providing statistics both on asset recovery and corruption prevention. Other remaining challenges include the openness of data since in most of the cases the latter does not correspond to open data standards and is not machine-readable, making it impossible for users to analyze the data. As a result, there was a need to make several formal access to information requests based on access to information legislation to develop this report.

<sup>8</sup> "Positions and Concerns on Anti-Corruption Processes in Armenia were presented to the Expert Group on Assessment of Armenia", <<https://armla.am/en/4651.html>> (accessed on 25 December, 2020).

<sup>9</sup> Interview with Mariam Galstyan, held on 16 November, 2020.

## 4. CHAPTER II. PREVENTIVE MEASURES

### UNCAC Article 5. Preventive anti-corruption policies and practices

#### **Article 5, Paragraph 1**

*On developing and implementing or maintaining effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.*

**This paragraph is considered fully implemented, and the level of implementation in practice is good.**

#### **A. The Anti-Corruption Policy**

The first Anti-Corruption strategy and its Implementation Action Plan were adopted by government decree N 1522-N of 6 November 2003.<sup>10</sup> They entered into force on 20 December 2003. The term of the strategy was 2003-2006, but some actions were implemented in 2007 as well.

The second Anti-Corruption strategy and its Implementation Action Plan were adopted by government decree N 1272-N of 8 October 2009, which entered into force on 3 December 2009.<sup>11</sup> The term of the strategy was 2009-2012.

The RA government adopted the “Concept on Fighting Corruption in Public Administration System” by protocol decree N 14 of 10 April 2014,<sup>12</sup> which was followed by the adoption of the third strategy. Accordingly, the third anti-corruption strategy was adopted by government decree N 1141-N of 25 September 2015, which entered into force on 24 October 2015.<sup>13</sup> The term of the strategy was 2015-2018.

The fourth and last Anti-Corruption strategy and its Implementation Action Plan (hereinafter referred to as the Anti-Corruption strategy) were adopted by government decree N 1332-N of 3 October 2019.<sup>14</sup> The term of the strategy is 2019-2022.

The draft strategy and the proposals submitted on it, as well as the adopted strategy, have been published and made available to the public during the whole development process.<sup>15</sup> The results on transparency and public participation of this process are presented below in the “Public Participation” section.

#### **B. Anti-corruption policy coordination mechanism**

The functions of monitoring and assessing the course of the strategy and the Action Plan are performed by the RA Ministry of Justice (MoJ). The MoJ shall, at the beginning of each year, but not later than the first ten days of February of the given year, present the results of the monitoring and evaluation for consideration by the Anti-Corruption Policy Council, established by decree N 808-N of the RA Prime

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<sup>10</sup> Government decree available at <<https://www.arlis.am/DocumentView.aspx?docID=31881>> (Armenian).

<sup>11</sup> Government decree available at <<https://www.arlis.am/DocumentView.aspx?docID=68627>> (Armenian).

<sup>12</sup> It is worth mentioning that this Concept was adopted in a non-transparent manner and without public participation and only after the adoption during the government session, society was informed about it. In this regard, CSOs have disseminated a condemning statement, which is available at: <<https://iravaban.net/en/55205.html>> (accessed on 25 December, 2020) (Armenian Young Lawyers’ Association was the former name of the ALA). The Concept is available at [https://www.gov.am/u\\_files/file/xorhurdner/korupcia/%D5%B0%D5%A1%D5%B5%D5%A5%D6%81%D5%A1%D5%AF%D5%A1%D6%80%D5%A3.pdf](https://www.gov.am/u_files/file/xorhurdner/korupcia/%D5%B0%D5%A1%D5%B5%D5%A5%D6%81%D5%A1%D5%AF%D5%A1%D6%80%D5%A3.pdf) (accessed on 25 December, 2020).

<sup>13</sup> Government decree available at <<https://www.arlis.am/DocumentView.aspx?DocID=100900>> (Armenian).

<sup>14</sup> Government decree available at <<https://www.arlis.am/DocumentView.aspx?DocID=134876>> (Armenian).

<sup>15</sup> The first and second drafts of the strategy as well as the proposals on the drafts are available at <<https://www.e-draft.am/projects/1439>> <<https://www.e-draft.am/projects/1733>> (accessed on 25 December, 2020); the adopted strategy see reference 16.

Minister of 24 June 2019. The Council may make relevant amendments based on the results and recommendations of the monitoring at the end of each year. The activities regarding amendments are coordinated by the MoJ.

Getting acquainted with the report for 2019 and the report for the first half of 2020<sup>16</sup> published by the MoJ on its website, it may be concluded that they primarily reflect the quantitative picture of the implementation of the Anti-Corruption strategy and its action plan for 2019-2022. Related to any in-depth analysis, including the identification of corruption risks, these reports do not contain analytical data. Moreover, based on the results of the risk assessments of the first half of 2020, planned actions regarding the elaboration and implementation of anti-corruption programs in state bodies, including on the development and implementation of internal integrity measures, were partially implemented, according to the RA MoJ. The reports are not posted on the website of the Anti-Corruption Policy Council.

### **Progress report of the Anti-Corruption policy**

As mentioned above, the report for 2019 and the report for the first half of 2020<sup>17</sup> reflect more of a quantitative picture rather than analytical data. For the purpose of having a more comprehensive and thorough assessment, CSOs may carry out, on a semi-annual basis, monitoring and assessment and submit the results thereof to the RA MoJ. In this regard, in January-February 2020, the Armenian Lawyers' Association (ALA) and the CSO Anti-Corruption Coalition of Armenia carried out quantitative monitoring of the implementation of the fourth anti-corruption strategy in 2019 and submitted their assessment to the respective state bodies.<sup>18</sup>

### **C. The effectiveness of anti-corruption policy**

It should be noted that despite the fact that the RA has had three anti-corruption strategies with appropriate action plans, the adverse effects of corruption in all their manifestations still continue to occupy an unwavering place in various spheres of public life. This is evidenced by the current public perception and mood on the current level of corruption, as well as various assessments, reports and indicators of reputable international organizations. Over the years, the decline in the fight against corruption was due to two factors: lack of sufficient political will and weaknesses of institutional systems. The current, fourth strategy is distinguished by the fact that the government considered the advice of specialized CSOs and developed a strategy based on real needs, developing anti-corruption institutional systems and structures envisaging them within the framework of the fourth strategy.<sup>19</sup>

Thus, the fourth strategy was for the first time designed based on the three pillars of the fight against corruption:

- Prevention of corruption;
- Disclosure of corruption-related crimes;
- Anti-corruption education and awareness-raising.

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<sup>16</sup> See the Reports on the Ongoing Results of the Implementation of the Activities of the Anti-corruption strategy and its Action plans at <[http://moj.am/storage/files/legal\\_acts/legal\\_acts\\_8055541506041\\_2020hashvetvutyun.pdf](http://moj.am/storage/files/legal_acts/legal_acts_8055541506041_2020hashvetvutyun.pdf)>, <[http://moj.am/storage/files/legal\\_acts/legal\\_acts\\_9436321736461\\_hashvetvutyun.pdf](http://moj.am/storage/files/legal_acts/legal_acts_9436321736461_hashvetvutyun.pdf)> (Armenian), (accessed on 25 December, 2020).

<sup>17</sup> Ibid.

<sup>18</sup> The results of the monitoring were presented and discussed during a public event attended by Executors and Co-Executors of the strategy, CSOs and other stakeholders. Details are available at <<https://armla.am/en/5697.html>> (accessed on 25 December, 2020).

<sup>19</sup> During the whole period of the strategy drafting, 133 recommendations were submitted by the CSO Anti-Corruption Coalition and the ALA, out of which 101 were accepted fully, partially, or taken into consideration and only 32 were rejected. This confirms that this is a successful example of a CSO-Government constructive dialogue.



From this point of view, it is significant that the strategy will provide the basis of a systematic, targeted effort, and, *inter alia*, will be aimed at creating and improving effective and workable structures of integrity, transparency, and participation in the public administration system, provide for common rules for combating corruption in the state system, as well as the introduction of an institutional model for combating corruption.

#### **Good practice**

The fourth anti-corruption strategy was developed on the three key pillars – prevention, disclosure of corruption-related crimes, and anti-corruption education and awareness-raising – and it included institutional reforms and reforms of anti-corruption legislation.

#### **D. Public participation**

The process of developing the fourth anti-corruption strategy in Armenia can be described as inclusive, because, unlike the previous three strategies and the processes of adoption of the “Concept on Fighting Corruption in Public Administration System”, civil society was directly involved in the process of adoption of the fourth anti-corruption strategy. It can be conventionally divided into two stages. In the first stage, back in 2018, the RA government, on behalf of the MoJ, offered in writing to the specialized CSOs to submit preliminary ideas and proposals on the content of the future anti-corruption strategy, and, already in the second stage ensured the inclusive professional and public discussions of the draft anti-corruption strategy developed by the MoJ on the basis of these proposals, their coverage through the media, as well as receiving proposals on the draft strategy through the unified website for publication of legal acts’ drafts [www.e-draft.am](http://www.e-draft.am).

The key pillars of an inclusive anti-corruption strategy development process were:<sup>20</sup>

- *Collection of preliminary ideas and suggestions for a future Anti-Corruption strategy from specialized CSOs.*
- *Discussion of anti-corruption strategy and collection of proposals through [www.e-draft.am](http://www.e-draft.am) website.*
- *Professional discussions on Anti-Corruption strategy.*
- *Public discussions on Anti-Corruption strategy.*<sup>21</sup>
- *Coverage of public discussions by the media.*

#### **Good practice**

The fourth anti-corruption strategy is inclusive and was developed with the participation of the key anti-corruption actors, and most of their recommendations were included in the strategy.

#### **E. Membership of the relevant international and regional organizations, initiatives and networks that address anti-corruption**

Since 2003, Armenia is involved in the Istanbul Anti-Corruption Action Plan of the Anti-Corruption Network for Eastern Europe and Central Asia of the Organisation for Economic Cooperation and Development

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<sup>20</sup> Interview with Ms. Arpine Hakobyan, Chairwoman of the Governing Board of the CSOs Anti-Corruption Coalition of Armenia, President of the NGO Center, held on 10 September, 2020.

<sup>21</sup> The CSO Anti-Corruption Coalition of Armenia and the ALA together with the MoJ of the RA have organized a number of public discussions on the Draft strategy in Yerevan and in the regions of Armenia. Details at <https://armla.am/en/5206.html> (accessed on 25 December, 2020).

(OECD). The Fourth Round Monitoring of the OECD was launched in October 2014 and was completed with the publication of the Report on outcomes of the Fourth Round on 26 October 2018.<sup>22</sup>

In January 2004, Armenia became a member of the Council of Europe's (CoE) Group of States Against Corruption (GRECO). Effective governance and fight against corruption are the main areas of cooperation under the 2019-2022 Action Plan of Armenia-CoE.<sup>23</sup>

In 2005, the RA signed the UNCAC, which was ratified by the RA National Assembly in 2006, and the provisions of the Convention entered into force for the RA on 7 April 2007.<sup>24</sup>

In 2006, the EU and the RA ratified, within the framework of the European Neighbourhood Policy, an Action Plan wherein the fight against corruption is included as a priority field.

Overall, the Fourth Anti-Corruption strategy largely reflected the existing international commitments and was compiled considering the latter.

#### **Article 5, Paragraph 2**

*On establishing and promoting effective practices aimed at the prevention of corruption.*

**This paragraph is considered partially implemented, and the level of implementation in practice is moderate.**

The RA government's answer included within the self-assessment checklist for the UNCAC IRM, 2nd cycle dated 16 July 2018<sup>25</sup> (hereinafter in the text: government's checklist), is not complete.<sup>26</sup> In particular, the Anti-Corruption Policy Council is mentioned as a guarantee for the implementation of the policy. Firstly, it should be noted that the Council is an advisory body, and its decisions are not binding. The main objective of the Council is to discuss the priorities and proposed solutions for the fight against corruption, to curbing and overcoming corruption in the RA, as well as expressing a position on anti-corruption policies, programs and draft legal acts.

Secondly, it is noteworthy that during 2020, the Council convened only one session on 3 July, the minutes of which have not been posted as of 15 November 2020.<sup>27</sup> And last year, the last session took place on 30 August 2019. Meanwhile, according to the points 9 and 10 of the RA Prime Minister's decree N 808 of 24.06.2019 regulating the activities of the Council: Meetings of the Council are convened on the initiative of the Chairman of the Council, as necessary, but not less than once a month. It turns out that the Anti-Corruption Policy Council, as such, did not actively and effectively participate in the implementation of anti-corruption reforms during 2019-2020.

#### **Article 5, Paragraph 3**

*On endeavouring to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.*

**This paragraph is considered largely implemented, and the level of implementation in practice is moderate.**

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<sup>22</sup> More information about evaluation and recommendations for the commitments undertaken by the Armenia, see the "RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022", section 1.2.

<sup>23</sup> <[https://search.coe.int/cm/pages/result\\_details.aspx?objectid=090000168090762f](https://search.coe.int/cm/pages/result_details.aspx?objectid=090000168090762f)> (accessed on 25 December, 2020).

<sup>24</sup> United Nations Convention against Corruption, adopted by United Nations on 31.10.2003 and entered into force on 07.04.2007, available at <[https://www.unodc.org/documents/brussels/UN\\_Convention\\_Against\\_Corruption.pdf](https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf)> (accessed on 25 December, 2020).

<sup>25</sup> Self-Assessment checklist for the Second UNCAC IRM, 2<sup>nd</sup> Cycle.

<sup>26</sup> Ibid.

<sup>27</sup> Minutes of Council, available at <<https://anti-corruption.gov.am/am/boardinfo>> (accessed on 15 November, 2020).

The answer provided in the government's checklist is not complete. First of all, it should be noted that the Anti-corruption Projects Monitoring and Evaluation Department of the First Deputy Prime Minister's Office no longer functions and its functions are performed by the Anti-Corruption Policy Development and Monitoring Department of RA MoJ. Furthermore, it should be noted that the anti-corruption monitoring platform, which was referred to in the government checklist, is not updated. For example, the last protocol of the Anti-Corruption Policy Council is from 30 August 2019.

In the case of the previous three anti-corruption strategies, no evidence-based monitoring and evaluation reports were provided, which would have included qualitative and in-depth data on the work done, the reasons and justifications for the actions not performed, and would also have provided an opportunity to measure the impact of these policies in the fight against corruption. The published reports contain general information on the actions taken.<sup>28</sup>

At the same time, it should be noted that the fourth strategy envisages: coordination, monitoring, control and public communication with regard to the implementation of the RA Anti-corruption strategy and its Implementation Action Plan for 2019-2022, which, *inter alia*, envisages the involvement of CSOs in the process of monitoring and evaluation as an alternative tool.<sup>29</sup>

#### **Article 5, Paragraph 4**

*On collaborating with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article.*

**This paragraph is considered fully implemented, and the level of implementation in practice is good.**

The answer provided in the government's checklist, in general, is complete. However, it should be noted that the assessments by international organizations should be highlighted and efforts should be made to make those assessments more invulnerable.

As was mentioned above, in general, the government considers the recommendations of the international and regional organizations. However, there are vivid examples where the government recorded regress in implementing these recommendations, rather than progress. For example, in an October 2018 OECD Report on 4th round of monitoring of the Istanbul Anti-Corruption Action Plan regarding the Anti-corruption reforms in Armenia, the OECD welcomed the organization of the election of members of the Anti-Corruption Commission (CPC) by an Independent Competition Committee and called for a more transparent process.<sup>30</sup> In contrary, the RA National Assembly initiated amendments to the RA Law on the Corruption Prevention Commission (CPC), and by virtue of these amendments, the Competition board was completely removed. As a result, GRECO within its second compliance report about Armenia (Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors) urged Armenian authorities to ensure the independence of the CPC, in particular through a balanced and sustainable composition and transparent procedures. Additionally, GRECO noted that the new law removed the competition board from the process of appointment of members of the CPC and introduced a system of direct nominations. The main concern with such a model is a significant risk of

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<sup>28</sup> Annual brief report on the course of implementation of actions for 2018 envisaged by 2015-2018 Action Plan for implementation of Anti-corruption strategy of the RA at <[https://anti-corruption.gov.am/\\_vfs/reports/Ardir-Razmavarutyun-2018\\_ENG.pdf](https://anti-corruption.gov.am/_vfs/reports/Ardir-Razmavarutyun-2018_ENG.pdf)> (accessed on 15 November, 2020).

<sup>29</sup> See reference 16.

<sup>30</sup> "Anti-corruption reforms in Armenia: 4th round of monitoring of the Istanbul Anti-Corruption Action Plan", OECD, Anti-Corruption Network for Eastern Europe and Central Asia, Recommendation 3. Anti-corruption policy co-ordination and prevention institutions, available at <<https://www.oecd.org/corruption/acn/OECD-ACN-Armenia-4th-Round-Monitoring-Report-July-2018-ENG.pdf>> (accessed on 25 December, 2020).

politicization.<sup>31</sup> Furthermore, following GREGO's report, the National Assembly amended the Law and restored the competition board for organizing the election of the CPC's members.

### Deficiency

The government regressed in implementing the recommendations of international organizations. In some cases, good practices were replaced with vulnerable ones.

## **UNCAC Article 6. Preventive anti-corruption body or bodies**

### **Article 6, Paragraph 1**

*On ensuring the existence of a body or bodies, as appropriate that prevent corruption by such means as (a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies; (b) Increasing and disseminating knowledge about the prevention of corruption.*

**This paragraph is considered largely implemented, and the level of implementation in practice is moderate.**

The answer provided in the government's checklist is not complete. There is a decentralized anti-corruption system in Armenia, which means that the fight against corruption, corruption prevention, education, as well as anti-corruption policies are implemented by different bodies. Accordingly, the prevention of corruption and anti-corruption education is carried out by the **CPC**; the anti-corruption policy is implemented by the **RA MoJ**; the Anti-Corruption Policy Advisory Body is **the Anti-Corruption Policy Council headed by the Prime Minister of the RA**.

**A. The Law on CPC** was adopted in 2017, and the members of the CPC were elected in 2019. The CPC is an autonomous, collegial body, has five members<sup>32</sup> and is responsible for the prevention of corruption and the implementation of anti-corruption education functions.<sup>33</sup>

In 2019, amendments were made to the RA Law on the CPC, as a result of which the procedure for appointing the members of the CPC by the Independent Competition Board was removed.<sup>34</sup> By virtue of these amendments, the CPC was formed by direct nomination of members by the following entities: the RA government nominated the candidacy of one member of the CPC. The three factions of the National Assembly ("My Step", "Prosperous Armenia" and Bright Armenia") nominated one candidate each; and the Supreme Judicial Council (SJC) nominated the last candidate. How a nominating body selects a nominee was not regulated (i.e., no public call for candidates was issued, and no competition was held). The National

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<sup>31</sup> See Fourth Evaluation Round: Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors, Second Compliance Report-Armenia, GRECO, Recommendation 86 at <[https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680993e83?fbclid=IwAR120tFe5fYP8f0BhACdJnzROVKKDDGaxrzyQSZ\\_UMGjIHk4O9Ndf3DMxm0](https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680993e83?fbclid=IwAR120tFe5fYP8f0BhACdJnzROVKKDDGaxrzyQSZ_UMGjIHk4O9Ndf3DMxm0)> (accessed on 25 December, 2020).

<sup>32</sup> Currently, the CPC has 4 members, as the candidate from the "My Step" faction resigned the day after being elected. More information at <<https://iravaban.net/en/246933.html>> (accessed on 25 December, 2020)

<sup>33</sup> The government's checklist also lists the Commission of Ethics for High-Ranking Officials (CEHRO). Notably, after the formation of the CPC, the activity of CEHRO was terminated.

<sup>34</sup> According to the previous regulations, the Competition Board was independent and consisted of one representative of each of the following five structures: based on consensus from the National Assembly opposition factions; Constitutional Court; Staff of the Human Rights Defender; RA Chamber of Advocates; and Public Council (The Public Council is a constitutional body composed of CSOs operating in the RA). In fact, it should be noted that the Chamber of Advocates and the Public Council ensured the participation of CSOs in this process.

Assembly elected the above-mentioned five members for terms of three, four, and six years,<sup>35</sup> and formed the CPC. The CPC has been formed solely as a result of a political arrangement without securing its institutional independence, whereas the CPC is a specialized structure, and its appointments should be exclusively in the professional domain, and not the political. In this regard, specialized CSOs have repeatedly stated that the formation of the first composition of the CPC through non-competitive, political agreements is highly vulnerable.<sup>36</sup>

It should be noted that the legal regulation of having an Independent Competition Board was highly praised by the OECD in the October 2018 Report on 4th round of monitoring of the Istanbul Anti-Corruption Action Plan regarding the Anti-corruption reforms in Armenia.<sup>37</sup>

In addition, in the 4th Assessment Report on Armenia adopted on 6 December 2019, *inter alia*, (including the judicial and prosecutorial system) GRECO addressed the independence of the CPC. Parliament has adopted a new law on the CPC. This law removes the competition board from the process of appointment of members of the CPC and introduces a system of direct nominations. The main concern with such a model is a significant risk of polarization.<sup>38</sup> This is a vital point for the anti-corruption bodies as their insulation from political interference and influence stands as the main principle for ensuring their effectiveness. CSOs are currently not represented in the nomination or selection process. The government and the ruling parliamentary faction could control the majority in the CPC. GRECO urges the authorities to ensure the independence of the CPC, in particular through a balanced and sustainable composition and transparent procedures.<sup>39</sup>

After GRECO's assessment, the RA National Assembly made an amendment to the law, and according to the current legal regulations, the second composition of the Committee will be elected through a competition. In particular, the Speaker of the National Assembly forms a competition board<sup>40</sup> for the election of candidates for the position of a member of the CPC.

Referring to the powers of the CPC, it should be noted that they have significantly increased. In particular, the CPC is authorized to investigate and resolve applications related to incompatibility requirements of persons holding public office, violations of the Code of Conduct, ad-hoc (situation-dependent) conflict of interest and ad-hoc declarations of assets and income, investigate and resolve cases related to violations of the rules for submitting declaration (for example, if declarations do not comply with the requirements for completion, or they have not been submitted in time), provide advisory clarifications on rules of conduct, develop corruption prevention programs and submit them to the government, etc.

The Law on Making Amendments and Addenda to the Law on the CPC adopted by the National Assembly of the RA on 25 March 2020, revised the powers of the CPC to verify declarations on assets, income and interests.<sup>41</sup> Analysis of declarations can be carried out on the basis of media publications and

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<sup>35</sup> In the case of the first composition of the CPC, the terms of office are depending on the nominated authority. As refer to the second composition, the terms of office for all the members is envisaged six years.

<sup>36</sup> Statement of the CSO Anti-Corruption Coalition of Armenia on the amendments to the "RA Law on the CPC" is available at <<https://armla.am/en/4411.html>>.

<sup>37</sup> See "Anti-corruption reforms in Armenia: 4th round of monitoring of the Istanbul Anti-Corruption Action Plan", OECD, New Recommendation 3. Anti-corruption policy co-ordination and prevention institutions.

<sup>38</sup> See Jakarta Statement on Principles for Anti-Corruption Agencies.

<sup>39</sup> See Fourth Evaluation Round: Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors, Second Compliance Report-Armenia, GRECO, Recommendation 86.

<sup>40</sup> The Competition Board will consist of members appointed by the Government, the National Assembly, the Supreme Judicial Council, the Human Rights Defender and the Chamber of Advocates (One member from each entity). The member of the Board appointed by the National Assembly is elected on the consensus of the factions.

<sup>41</sup> The respective amendments to the Article 26.1 of the "RA Law on CPC" was adopted on 25.03.2020 and entered into force on 02.05.2020 is available at <<https://www.arlis.am/DocumentView.aspx?DocID=141497>> (Armenian), (accessed on 25 December, 2020).

written requests from individuals. The CPC may apply to state and local self-government bodies, the RA Central Bank and other structures in order to obtain relevant information for proper verification of declarations. The information related to the persons obliged to submit a declaration also includes information constituting banking secrecy, official information on securities transactions made by the Central Depository defined by the Law of the RA “On Securities Market”; Official information on securities transactions by the Central Depository; information constituting insurance secrecy; as well as credit information or credit history from the credit bureau. After receiving information constituting banking secrecy, the CPC has the right to request the declarant to submit additional materials, and if there are relevant grounds, to send the materials to the Prosecutor General's Office.

### **Deficiency**

With the legislative amendments adopted by the government, the independence of the Corruption Prevention Commission was endangered.

**B. The Department of Anti-Corruption Policy Development and Monitoring of the RA MoJ implements the anti-corruption policy and carries out its monitoring and evaluation.<sup>42</sup>**

### **C. Anti-Corruption Policy Council**

The Anti-Corruption Council has been operating in Armenia since 2004. In 2019, the mentioned Council ceased its activity; instead, on 24 June 2019, the Anti-Corruption Policy Council was established by the RA Prime Minister's decree N 808-N. It is noteworthy that the new Council was not significantly different from the previous Council. The name was changed, some powers were added, but the main change was that the CSO Anti-Corruption Coalition of Armenia was removed from the Council.<sup>43</sup> As a result, seven competitive places were provided only to NGOs, and not to NGO coalitions/networks.<sup>44</sup>

The Anti-Corruption Coalition of CSOs has repeatedly voiced its concerns about the mentioned regulation, noting that the exclusion of NGOs from the Anti-Corruption Policy Council is illegal and deprives the public, in the form of CSOs, of participating in the fight against corruption. As a result, after long discussions and persuasions, the MoJ has developed a draft amendment to the Prime Minister's decree N 808-N of 24 June 2019, according to which CSO coalitions/networks can join the Anti-Corruption Policy Council on a competitive basis.<sup>45</sup> However, to date, the staff of the RA government has failed to submit the draft decree for adoption. The CSO Anti-Corruption Coalition has expressed its concerns that this inaction may be

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<sup>42</sup> The government's checklist mentions the former structure, “The Anti-corruption projects monitoring and evaluation department of the First Deputy Prime Minister's Office”. As a result of its reorganization, the Anti-Corruption Programs and Monitoring Department at the RA Prime Minister's Office was later established. However, at present, this department is not functioning, and the functions of anti-corruption programs and monitoring are carried out by the Department of Anti-Corruption Policy Development and Monitoring of the RA Ministry of Justice.

<sup>43</sup> 71 CSOs are members of the CSO Anti-Corruption Coalition of Armenia, which initiated and participated in implementation of a number of anti-corruption reforms in Armenia, including: criminalization of illicit enrichment, creation of a legislative framework on the whistleblowing system, and the anti-corruption institutional system, including the creation of a legislative framework on the CPC, the introduction of the institute of beneficial owners in the public procurement process, implementation of a number of anti-corruption reforms in business and other spheres, etc. More information is available at <<http://aac.am/en>> (accessed on 25 December, 2020).

<sup>44</sup> For the purpose of involving NGOs in the Anti-Corruption Policy Council of the RA, the MoJ, according to Prime Minister's decree, announced a call with a deadline set on 11 July, 2020. The involvement of non-governmental organizations in the Anti-Corruption Policy Council was organized with the procedural violations. More information is available at <<https://iravaban.net/en/232524.html>> (accessed on 25 December, 2020).

<sup>45</sup> The draft decree is available at <<https://www.e-draft.am/projects/2720/about>> (Armenian), (accessed on 25 December, 2020).



intentional. It believes there may be some resistance by certain individuals and factions within the current government who would prefer the Coalition not to join the Council.<sup>46</sup>

### **Deficiency**

In the past two years, the activity of the Anti-Corruption Policy Council has been ineffective and politicised. Several independent specialized anti-corruption CSOs are not represented.

### **Article 6, Paragraph 2**

*On the necessary independence, material resources, specialized staff and training of such staff for bodies under paragraph 1 of this article to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.*

**This paragraph is considered partially implemented, and the level of implementation in practice is moderate.**

The information provided in the government's checklist is incomplete. The CPC is an autonomous body and was established on the basis of the law of the same name. The CPC is not an independent constitutional body, and it is not endowed with constitutional guarantees (such as the Human Rights Defender).<sup>47</sup> Moreover, the law on the CPC does not stipulate that the CPC is an independent body. According to the same law, only the members of the CPC are considered independent, and the election of the first composition of the CPC, as already mentioned in part 1 of Article 6, was at the level of political agreements. At the same time, the law provides for the financial independence of the CPC but does not provide for regulations on material resources and work areas.

## **UNCAC Article 7. Public sector**

### **Article 7, Paragraph 1**

*On adopting, maintaining and strengthening systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials.*

**This paragraph is considered largely implemented, and the level of implementation in practice is good.**

The answer included in the government's checklist is not complete.

Firstly, according to the RA Law on Civil Service (adopted on 23.03.2018, entered into force on 01.07.2018)<sup>48</sup>, civil service positions shall be held for an indefinite term by the results of the competition or from rating lists or by the results of transfer or reorganisation and/or structural change or from the personnel reserve until reaching the age prescribed by this Law, and for a fixed term — by the fixed-term employment contract or as a result of a transfer or in case of secondment. Furthermore, a competitive process for filling vacant civil service positions (hereinafter referred to as “the competition”) shall be based

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<sup>46</sup> Interview with Mr. Karen Zadoyan, Coordinator of the Secretariat of the CSOs Anti-Corruption Coalition of Armenia, President of the Armenian Lawyers' Association, held on 4 November, 2020.

<sup>47</sup> Notably, Karen Zadoyan, the President of the ALA, who was included in the Specialized Commission on Constitutional Reforms on a competitive basis by the RA Prime Minister's decree, raised the issue of providing independent constitutional status to anti-corruption bodies in Armenia and included the discussion of this issue in the Commission's agenda. The ALA has conducted a study on the issue and developed a concept, the Armenian versions of which are available online. The study is available at <<https://armla.am/en/6313.html>> (Armenian), (accessed on 25 December, 2020); the Concept is available at <<https://armla.am/en/6324.html>> (Armenian).

<sup>48</sup> The law is available at <[http://translation-centre.am/pdf/Translat/HH\\_orenk/Civil\\_Service/Law\\_Civil\\_Service\\_2018\\_en.pdf](http://translation-centre.am/pdf/Translat/HH_orenk/Civil_Service/Law_Civil_Service_2018_en.pdf)> (English), <<https://www.arlis.am/DocumentView.aspx?DocID=138910>> (Armenian).

on equal opportunities and merits. According to the Law on Civil Servants, the competition shall be called within three months after the civil service position becomes vacant. However, this legal regulation is not always upheld in practice since regulatory legal acts envisage shorter terms for the announcement, and therefore, for the appointment in the positions. In these cases, competition is announced shortly before the appointment. For example, when the relevant body announces a temporary civil servant position, the appointment is made (an agreement is concluded) within three working days, following a seven-day period to apply after the publication of the announcement.<sup>49</sup> In the event when the relevant body announces the position of expert, the appointment is made (an agreement is concluded) on the seventh day after the announcement.<sup>50</sup> However, in most cases, the announcements are published on the state bodies' websites with certain criteria for the candidates.

In order to organize a competition, the commission is composed of at least five members. Afterwards, only one participant passes the interview stage. As a result of the interview, the commission submits an opinion on the participants of the interview to the official having the competence to appoint to a position mentioning the sole participant having passed the interview stage. Nevertheless, the process of the competition as well as of the decision making is non-transparent, no representatives from civil society are members of the commission or observers. There is no publicly available documentation to follow such competitions. According to the official information provided to ALA, the impact of these changes has not yet been assessed, as the system is in the initial stage.<sup>51</sup>

Secondly, on 9 January 2019, the First Deputy Prime Minister adopted the Decree #2 on the procedure for the training of civil servants; the main criteria presented to the training organizations; the main principles of credits, the needs assessment, the development of an individual program, as well as the training program of the relevant body; the types and principles of international recognition of certificates.<sup>52</sup> Additionally, the RA MoJ, jointly with other state bodies, has studied the main directions of improving the remuneration system of persons holding public service positions. The recommendations developed as a result of the study have been included in the Draft on Public Administration Reform strategy, which is still under discussion.<sup>53</sup>

Thirdly, according to the RA Law on CPC<sup>54</sup>, some of the powers of the CPC are the followings:

1. to adopt the rules of conduct (code of conduct) of persons holding state positions (except for members of parliament, judges, members of the SJC, prosecutors, investigators), heads and deputy heads of municipalities with a population of 15 000 and more, heads and deputy heads of administrative districts of the municipality of Yerevan;
2. to adopt the model code of conduct of a public servant;
3. to elaborate the guideline on the development and implementation of the draft sectorial code of conduct of public servants.

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<sup>49</sup> Government decree on establishing the procedure for signing a temporary employment agreement is available at <<https://www.arlis.am/DocumentView.aspx?DocID=145908>> (Armenian), (accessed on 25 December, 2020).

<sup>50</sup> Government decree on engaging the expert for rendering certain services is available at <<https://www.arlis.am/DocumentView.aspx?DocID=143797>> (Armenian), (accessed on 25 December, 2020).

<sup>51</sup> Information provided by the Civil Service Office of the RA Prime Minister on 29 September, 2020.

<sup>52</sup> The decree is available at <[https://www.e-gov.am/u\\_files/file/decrees/poxvarchpet/2019/2v\\_voroshum.pdf](https://www.e-gov.am/u_files/file/decrees/poxvarchpet/2019/2v_voroshum.pdf)> (Armenian), (accessed on 25 December, 2020).

<sup>53</sup> Report on the Ongoing Results of the Implementation of the Activities of the Anti-corruption strategy and its Action plan for the 1st half of 2020, point 12, available at <[http://moj.am/storage/files/legal\\_acts/legal\\_acts\\_9436321736461\\_hashvetvutyun.pdf](http://moj.am/storage/files/legal_acts/legal_acts_9436321736461_hashvetvutyun.pdf)> (Armenian), (accessed on 25 December, 2020).

<sup>54</sup> "RA Law on Corruption Prevention Commission", adopted in 09.06.2017 and entered into force in 20.11.2019, available at <<https://www.arlis.am/DocumentView.aspx?DocID=146462>>.



In pursuance of these powers, CPC has started to study international and national legislation in order to develop the abovementioned codes and guidelines.<sup>55</sup> Additionally, CPC has drafted rules of conduct (code of conduct) of persons holding state positions and the model code of conduct of a public servant, which currently is being discussed with international partners.<sup>56</sup>

### **Deficiencies**

The process of the competition of civil servants as well as of the decision making of their appointments is non-transparent, no representatives from civil society are members of the competition commission or observers. The development of the code of conduct of persons holding state positions and the model code of conduct of a public servant is still under discussion and not implemented fully on time.

### **Article 7, Paragraph 2**

*On considering adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.*

**This paragraph is considered largely implemented, and the level of implementation in practice is good.**

The answer included in the government's checklist is not complete. In addition, it is worth mentioning that there are other legal acts that contain requirements and criteria for public service candidates. In particular, Article 7 of the RA Law on Civil Service stipulates the standards of job descriptions for the civil service position for education and work record; Article 15 of the RA Law on Public Service<sup>57</sup> regulates the maximum number of staff positions, the list of names of public service positions, job description, staff list, etc.

### **Article 7, Paragraph 3**

*On considering taking appropriate legislative and administrative measures to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.*

**This paragraph is considered partially implemented, and the level of implementation in practice is poor.**

The answer included in the government's checklist is not complete. In particular, according to Article 27 of the RA Constitutional Law on Political Parties<sup>58</sup>, political parties submit financial and accounting statements to state bodies. Every year, no later than March 25 following the reporting year, the political party is obliged to publish through mass media a statement on the sources of funds and the expenditures, as well as on the property of the political party during the reporting year and, in cases provided for by law, an audit opinion thereof, as well as to post it on the official web-site of public notifications of the RA. Additionally, the source of donations received by a political party shall, regardless of the value, be indicated in the statement of the political party. Accounting of expenses made by a political party for the preparation and conduct of an election campaign shall be maintained separately.

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<sup>55</sup> Report on the Ongoing Results of the Implementation of the Anti-corruption strategy for the 1st half of 2020, point 13.

<sup>56</sup> Interview with Mariam Galstyan, held on 30 October, 2019.

<sup>57</sup> "RA Law on Public Service", adopted in 23.03.2018 and entered into force in 09.04.2018, available at <[http://www.translation-centre.am/pdf/Translat/HH\\_orenk/Public\\_Service/Public\\_Service\\_en.pdf](http://www.translation-centre.am/pdf/Translat/HH_orenk/Public_Service/Public_Service_en.pdf)> (English), <<https://www.arlis.am/DocumentView.aspx?DocID=141524>> (Armenian), (accessed on 25 December, 2020).

<sup>58</sup> Law is available at <[http://www.translation-centre.am/pdf/Translat/HH\\_orenk/Political\\_Parties/CL\\_Political\\_Parties\\_en.pdf](http://www.translation-centre.am/pdf/Translat/HH_orenk/Political_Parties/CL_Political_Parties_en.pdf)> (English), <<https://www.arlis.am/DocumentView.aspx?DocID=143938>> (Armenian), (accessed on 25 December, 2020).

The sanctions are foreseen under the articles 189.13-189.16 of the RA Code on Administrative Offences.<sup>59</sup> Noteworthy that the sanctions are not proportionate. For example, if during the reporting year a statement on the funds received and spent by the party within the time period established by law and by the competent authority is not presented, the responsible body will impose a sanction of 40,000-50,000 AMD (approximately 80-100 USD). If the same offence is committed again within one month of the imposition of administrative sanctions, a fine of 400,000-500,000 AMD (approximately 800-1000 USD) will be imposed. The latter is applied to the same case if the same report is still not being published after a fine is imposed.

Another example: if the political parties do not transfer to the state budget or the donor the excessive or unauthorized donations within the timeframe established by law, the sanction imposed is 100,000-150,000 AMD (approximately 200-300 USD). If the same offence is committed again within one month of the imposition of administrative sanctions, a fine of 200,000-250,000 AMD (approximately 400-500 USD) will be imposed. Many of these sanctions, in essence, may not have the expected preventive result, and in specific situations, the political parties will prefer to bear administrative liability simply to avoid presenting statements on the sources of funds and the expenditures.<sup>60</sup>

A desk review of the publicly available sources has displayed that these sanctions have not been imposed on any party in recent years. It is worth mentioning that monetary funds of a political party generate from (1) one-time fees (entrance fees), membership fees if such are provided for by the statute of the political party; (2) donations; (3) budget financing, which includes state funding; (4) civil-law transactions and other proceeds not prohibited by legislation.

Political parties have the right to receive donations — in the form of property and monetary funds — from natural persons and legal entities. Meanwhile, donations shall not be allowed from (1) charitable and religious organisations, as well as organisations founded by them; (2) state and local self-government bodies, except for the financing provided by such bodies pursuant to Article 26 of the RA Constitutional Law on Political Parties; (3) state and non-commercial community organisations, as well as profit organisations with the participation of state and local self-government bodies; (4) foreign states, foreign nationals and legal persons, as well as legal persons with foreign participation, if the shares, stocks, participatory interest of the foreign participant in the share (stock, participatory) capital of that legal person is more than 30 %; (5) international organisations; (6) stateless persons; (7) anonymous persons.<sup>61</sup>

The state body authorized to control the financing of parties in the RA is the Audit and Oversight Service. It is not an independent body and operates under the RA Central Electoral Commission (CEC).<sup>62</sup> According to the RA Constitution (Art. 194), the CEC is an independent state body. Pursuant to the RA Constitutional Law on Electoral Code (Art. 29), the position of the head of the Audit and Oversight Service is an autonomous one, and the latter enjoys respective guarantees under the RA legislation. The head is appointed by the CEC's Chair. Obviously, the legal guarantees provided only for the head of the Service, and the Audit and Oversight Service is not an independent unique body as such, hence is not provided with legal guarantees. Additionally, the Service's activities are not regulated by a law adopted specifically for the operation of the Service, but by the simple procedure adopted by the CEC and registered by the MoJ in 2016.<sup>63</sup>

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<sup>59</sup> Law is available at <<https://www.arlis.am/DocumentView.aspx?DocID=146718>> (Armenian).

<sup>60</sup> Interview with Mr. Marat Atovmyan, Independent Anti-Corruption Expert, held on 15 October, 2020.

<sup>61</sup> See "RA Constitutional Law on Political Parties".

<sup>62</sup> See <<https://www.elections.am/audit/>> (accessed on 25 December, 2020).

<sup>63</sup> Procedure of the Audit and Oversight Service is available at <[http://res.elections.am/images/dec/16.39\\_N.pdf](http://res.elections.am/images/dec/16.39_N.pdf)> (Armenian), (accessed on 25 December, 2020).

## Deficiencies

There is very little supervision of the activities of the political parties and their funding, as well as of the practice to impose liability on political parties. There is no independent body that supervises the activities of political parties and ensures their transparency and accountability.

### Article 7, Paragraph 4

*On endeavouring to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.*

**This paragraph is considered partially implemented, and the level of implementation in practice is moderate.**

The answer included in the government's checklist is complete; however, it is noteworthy that chapter 5 of the RA Law on Public Service<sup>64</sup> about Integrity System stipulates the elements of the integrity system, principles and rules of conduct, prohibition on accepting gifts in connection with the performance of one's official duties, incompatibility requirements, other restrictions, and conflict of interest. Additionally, the RA Law on Civil Service envisages the institutes of the Ethics Commission of Civil Servants and Integrity Affairs Organiser within the staff management subdivision of relevant bodies. According to the official information that the ALA obtained, there are 43 appointed Integrity Affairs Organisers in the state and local self-governance bodies as of 1 October 2020.

Under this commitment undertaken by the RA, it is pivotal to note the existing challenges related to the institute of Integrity Affairs Officers (IO).

First, no centralized or decentralized body coordinates and controls the work of the IO. Each body carries out this function within the framework of its knowledge and professionalism, appointing to that position a person holding another post in a specific body (whose former position was related neither to integrity nor anti-corruption). The Civil Service Office of the Office of the Prime Minister is in charge of coordinating and ensuring the unity of civil service in the RA.<sup>65</sup> Meanwhile, the IO, as such, is quite new for the Armenian state and local government system and many of the IOs are not familiar with all the nuances of this institute.

Second, in the sense of the RA Law on Public Services, the IO is more of an "organizer" than a decision-maker. Consequently, the IO, without having a professional supervisory body, can hardly perform these important functions on their own.

Third, there are concerns about the professionalism of the IOs. First of all, according to the RA Law on Public Services, the IOs must undergo training in order to be able to exercise their powers. According to the MoJ, in 2019 Civil Service Office of the Prime Minister's staff organized training for all IOs of state bodies. Notwithstanding, the point is that these pieces of training are organized purely formal rather than efficiently. And the IOs are still not ready to undergo these pieces of training. Hence, the respective environment is not ensured. In turn, this causes another series of problems. For example, one of the functions of the IOs is to develop training plans on integrity issues. Consequently, if the IOs do not have enough competencies, it is unclear how they will be able to train their colleagues.

Fourth, if the IOs are not able to carry out their consultative function to the fullest, then the institute of Ethics Commission on public servants is also unable to function effectively. For example, if the Ethics Commissions do not receive qualified professional consultation from the IOs on matters such as

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<sup>64</sup> See "RA Law on Public Service".

<sup>65</sup> The RA Prime Minister's decree on approving the statutes of the Civil Service Office of the RA Prime Minister is available at <<http://www.irtek.am/views/act.aspx?aid=95904>> (Armenian), (accessed on 25 December, 2020).

inadequate behaviour of public officials, conflicts of interest, breaches of codes of conduct, among other restrictions, their productivity is questionable.<sup>66</sup>

### Deficiencies

There is no centralized or decentralized body coordinates and controls the work of the IO. In the sense of the RA Law on Public Services, the IO is more of an "organizer" than a decision-maker. Consequently, the IO, without having a professional supervisory body, can hardly perform their functions on their own. Therefore, if the IOs are not able to carry out their function to the fullest, then the institute of Ethics Commission on public servants is also unable to function effectively.

### UNCAC Article 8. Codes of conduct for public officials

#### Article 8, Paragraph 1

*On promoting, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.*

**This paragraph is considered partially implemented, and the level of implementation in practice is poor.**

Chapter V of the RA "Law on Public Service" is dedicated to the integrity of public officials. The latter encompasses the principles of conduct of public officials and codes of conduct deriving therefrom (including the prohibition of accepting gifts in connection with the performance of official duties), incompatibility requirements, other restrictions and conflicts of interest. The codes of conduct are binding,<sup>67</sup> and the violation of the codes of conduct may entail disciplinary action,<sup>68</sup> initiated by ethics (disciplinary) commissions and the CPC<sup>69</sup>. The letter is described in detail in the answers to paragraphs 1 and 2 of the present article in the government's checklist.<sup>70</sup> In regards to practice, the existing codes of conducts are not being adhered to quite frequently since the ethics commissions do not have the necessary capacities to enforce them in practice.<sup>71</sup> For instance, violations of ethics had been identified during the sessions of the Yerevan City Council in 2019.<sup>72</sup> Within the period of 2014-2017, alleged conflict of interest situation has been detected in relation to 99 out of 709 procurement contracts (14%), where commercial organizations with the participation of high-ranking officials and their related persons were recognized as the winners of the procurement competition.<sup>73</sup> There are several updates on cases on prima facie violations of codes of conduct of high ranking public officials in the "Official News" and "Decisions" sections of the website about the detection of violations of the RA "Law on Public Service"<sup>74</sup> or their absence.<sup>75</sup> However,

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<sup>66</sup> Interview with Mr. Edgar Shatiryan, Independent Anti-Corruption Expert, Former Member of the Corruption Prevention Commission, held on 17 September, 2020.

<sup>67</sup> See "RA Law on Public Service", article 28(3).

<sup>68</sup> Ibid, article 28(9).

<sup>69</sup> Ibid, article 45.

<sup>70</sup> The recent development on CPC's authority to conduct integrity checks and provide advisory opinions in the judiciary will be discussed under Article 11, Paragraph 1.

<sup>71</sup> Interview with Ms. Mariam Zadoyan, Anti-Corruption expert of the CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.

<sup>72</sup> Announcement, CPC, 31.01.2020, available at: <<http://cpcarmenia.am/hy/news/item/2020/01/31/220000/>>, (Armenian), (accessed on 25 December, 2020).

<sup>73</sup> "The Conflict of Interest in the Procurement Procedure with the Involvement of High-Ranking Officials", available at: <<http://cpcarmenia.am/en/news/item/2018/06/05/news109/>> (accessed on 25 December, 2020).

<sup>74</sup> See e.g. Decision N 28-A of the RA Commission of Ethics of High-Ranking Officials, adopted in 18.03.2019, available at: <<http://cpcarmenia.am/files/legislation/326.pdf>> (Relating to the former Head of the RA State Supervision Service); Decision 03/2020 of the RA CPC, adopted in 26.10.2020 (Relating to the MP, the Head of the "Prosperous

the information on cases of ethics violation indicated in the annual reports of the RA CPC and its predecessor, RA Commission of Ethics of High-Ranking Officials, is scarce. The only publicly available recent annual reports cover the activities of the CPC in 2016 and 2018. More particularly, the 2016 report states: *“The commission has received 11 applications from physical and legal persons (two from citizens, three from journalist and six from NGOs). Five applications concerned ethics commissions and four of them concerned alleged conflict of interest situations. Two of the have been readdressed to respective state bodies, and the findings of the discussions regarding the remaining ones have been communicated in a due manner to the authors of the applications.”*<sup>76</sup> The information indicated in the 2018 report is even less: *“The commission has discussed 7 applications concerning ethics commissions and alleged conflict of interest situations in 2018.”*<sup>77</sup>

The information regarding sanctions applied in relation to declarations are discussed in the respective paragraph (Article 8, Paragraph 5).

#### **Article 8, Paragraph 2**

*On endeavouring to apply codes or standards of conduct for the correct, honourable and proper performance of public functions.*

**This paragraph is considered partially implemented, and the level of implementation in practice is poor.**

The latter is described in detail in the answers to paragraphs 1 and 2 of the present article in the government’s checklist. We would like to add that the development of a model code of conduct for public servants, as well as codes of conduct for civil servants, members of parliament and investigators, have been foreseen as an action in the Action Plan of the RA Anti-Corruption strategy for 2019-2022.<sup>78</sup> In compliance with the mentioned activities, the CPC, in November-December 2019, applied for and received information on the current codes of conduct of 30 state agencies. At the same time, a study of international experience was carried out to improve the existing codes of conduct, to bring them in line with international standards and to introduce institutional mechanisms for their practical application. It was planned to hold a series of public discussions on the developed drafts of codes of conduct, and then approve it, but due to the spread of the Coronavirus, that work was suspended. Work is being carried out with the assistance of Council of Europe experts to further develop a number of aspects of the code of conduct, in particular measures of accountability and their proportionality. At the same time, the RA Ministry of Defence has initiated measures to reform the standard rules of honour of respective officers. Within the framework of the Ministry of Foreign Affairs, internal disciplinary rules have also been established governing the discipline of the Ministry of Foreign Affairs, regulating the peculiarities of working conditions, regulating service relations between employees of the Ministry, and rules of conduct (ethics), and rules of conduct (ethics) for diplomats have been established, the violation of which will result in disciplinary sanctions. Studies of

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Armenia” Fraction at the RA National Assembly), available at <<http://cpcarmenia.am/files/legislation/350.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>75</sup> See e.g. Decision 06/2019 of the RA CPC, adopted in 06.03.2020 (Relating to the Mayor of Yerevan), available at: <<http://cpcarmenia.am/files/legislation/342.pdf>>; Decision 04/2020 of the RA CPC, adopted in 30.11.2020 (Relating to the Minister of Health), available at: <<http://cpcarmenia.am/files/legislation/355.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>76</sup> Annual Report of the Activities of the RA Commission of Ethics of High-Ranking officials in 2016, RA Commission of Ethics of High-Ranking Officials, 2017, page 16, available at: <<http://cpcarmenia.am/files/legislation/291.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>77</sup> Annual Report of the Activities of the RA Commission of Ethics of High-Ranking Officials in 2018, RA Commission of Ethics of High-Ranking Officials, 2019, available at: <<http://cpcarmenia.am/files/legislation/325.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>78</sup> See “RA Anti-Corruption Strategy and its Implementation Action Plan for 2019-2022”, actions 13, 14.

international experience on the codes of conduct of members of parliament and investigators have been carried out, and the package of relevant proposals is being developed.<sup>79</sup>

#### **Article 8, Paragraph 4**

*On considering establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.*

**This paragraph is considered partially implemented, and the level of implementation in practice is moderate.**

The relations pertaining to whistle-blowing, the procedure for whistle-blowing (internal and external), the rights of a whistle-blower, the obligations of state and local self-government bodies, state institutions and organisations, as well as public organisations in respect to whistleblowing, as well as to the protection of a whistle-blower and persons affiliated thereto are regulated by the “RA Law on Whistle-Blowing”,<sup>80</sup> which is described in details in the government’s checklist. Continuous improvement of the whistleblowing system is envisaged as an action in the Action Plan of the RA Anti-Corruption strategy for 2019-2022.<sup>81</sup> In compliance with this action, the RA Prosecutor General's Office has conducted studies on the activities of the internal and external whistleblowing systems, the results of which will be summarized by the end of 2020.<sup>82</sup>

It is worth mentioning that RA legislation in this regard does not foresee a reward for whistleblowing. The concept of “*qui tam*” is envisaged in domestic legal systems in order to promote the building of a democratic society, the complete elimination of corruption, and the involvement of various segments of society in the common fight against corruption. According to this concept, the person who supports the defence of the accusation, in case of winning the case, has the right to receive a certain part of the confiscated money. Such regulations apply in the United States, South Korea and other countries, as a result of which more whistleblowers decide to come forward, thus advancing the detection of corruption crimes. Furthermore, the RA’s legal framework does not address whistleblowing on violations committed in the private sector, except for organizations of public importance. For example, a whistleblower has information about a commercial bribe involving a private sector entity. In the private sector, internal and external reporting is envisaged as a component of the anti-corruption compliance program. The unified electronic platform “Azdararir”,<sup>83</sup> launched on May 21, 2019, functions as a state-lead whistleblowing platform. Additionally, the “Bizprotect”<sup>84</sup> whistleblowing platform has been specifically designed for the private sector. It is operated by the ALA, the Coordinator of the Secretariat of the CSO’s Anti-Corruption Coalition. The latter, however, does not have the status of a whistleblowing website by law.<sup>85</sup>

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<sup>79</sup> The official response from the RA Ministry of Justice, provided at 14.10.2020.

<sup>80</sup> See “RA Law on Whistle-Blowing”, adopted in 09.06.2017 and entered into force on 01.01.2018, article 1, 4, available at <<https://www.arlis.am/DocumentView.aspx?DocID=123969>> (Armenian), (accessed on 25 December, 2020).

<sup>81</sup> See “RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022”, action 31.

<sup>82</sup> Report on the implementation process of actions to be implemented in the first half of 2020 of the “Anti-Corruption strategy and its Implementation Action Plan for 2019-2022”, action 31, available at <[http://moj.am/storage/files/legal\\_acts/legal\\_acts\\_9436321736461\\_hashvetvutyun.pdf](http://moj.am/storage/files/legal_acts/legal_acts_9436321736461_hashvetvutyun.pdf)> (Armenian), (accessed on 25 December, 2020).

<sup>83</sup> “Azdararir.am”, unified electronic whistle-blowing platform, available at <<https://azdararir.am/am/>> (accessed on 25 December, 2020).

<sup>84</sup> “Bizprotect” whistleblowing platform is available at <<https://bizprotect.am/en>> (accessed on 25 December, 2020).

<sup>85</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.



In regards to statistics, the state website “Azdararir” has received reports of 280 corruption-related crimes since the launching day, 21 May 2019, 38.02% of which were checked by operational-investigative actions. For 31.15% of these reports, criminal cases have been initiated.<sup>86</sup> However, there is currently no information about crimes solved through the platform. The CSO-lead website “Bizprotect” received 119 reports between 2017 and April 2020. Seventeen cases have resulted in systemic reforms, 13 cases settled individually in favour of whistle-blowers, 18 cases are still pending, and legal advice and clarification have been provided for 32 cases.<sup>87</sup> Thus, *Bizprotect* has made some important contributions to uncovering corruption in the business sector and implementing institutional reforms.<sup>88</sup> Nevertheless, the numbers show that the general populations’ eagerness to blow the whistle remains limited.

One of the cases uncovered with the support of *Bizprotect* that contributed to implementing a systemic reform is a case linked to the public procurement sector. Several whistleblowers have been raising the issue of public bids being designed in such a way that only specific participants are able to win the tender. As a result, the RA government admitted to the inefficiency of the applicable norms and adopted a new decree setting a participatory procedure for the expertise requirements for a procurement bid and the qualification requirements for the participants.<sup>89</sup> One example of a successful follow-up to a report received over the whistleblowing was a fine of AMD 1,250,000 (approx. USD 2,500) imposed on a retail company which operates one of the biggest malls in Armenia for five unregistered employees.<sup>90</sup>

In addition, employees can also file anonymous complaints about their violated rights through the newly created *EmployeeProtect.am* system for registration, acceptance and examination of anonymous applications by employees. This platform has been created based on a unique experience of the *Bizprotect.am* electronic platform.<sup>91</sup>

#### **Article 8, Paragraph 5<sup>92</sup>**

*On establishing measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.*  
**This paragraph is considered partially implemented, and the level of implementation in practice is moderate.**

In Armenia, an asset, income and interest declaration system is in place, regulated by RA “Law on Public Service”.<sup>93</sup> The responsible state authority is the CPC, which maintains the public register of declarations, conducts verification of the credibility and completeness of the submitted data, analyses declarations, and imposes administrative sanctions, as set by the legislation, for the failure to declare property. Declarant officials shall submit declarations upon assumption and termination of their official duties, as well as annual

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<sup>86</sup> See the official response of the RA Ministry of Justice, provided at 2.12.2020.

<sup>87</sup> More information on statistics can be found at <<https://bizprotect.am/en/statistic>> (accessed on 25 December, 2020).

<sup>88</sup> More information on success stories is available at <<https://bizprotect.am/en/success-stories>> (accessed on 25 December, 2020).

<sup>89</sup> Bizprotect, “Another Anti-Corruption System Reform in the Field of Public Procurement through BizProtect”, available at: <<https://bizprotect.am/en/success-stories/show/18>> (accessed on 25 December, 2020).

<sup>90</sup> Bizprotect, “BizProtect’s Alert - A Basis for Penalty for Unregistered Employees of “Alex Textile” LLC”, available at: <<https://bizprotect.am/en/success-stories/show/15>> (accessed on 25 December, 2020).

<sup>91</sup> Iravaban (2020) “Employees can now apply anonymously for their violated rights”, available at: <<https://iravaban.net/en/310598.html>> (accessed on 25 December, 2020).

<sup>92</sup> The information provided is also applicable to the Paragraphs 5 and 6 of Article 52.

<sup>93</sup> See “RA Law on Public Service”, chapter 6.

declarations.<sup>94</sup> The declarations are accessible to the public<sup>95</sup>, while sensitive personal data is withheld.<sup>96</sup> Currently, the number of officials obliged to file declarations is around 5,500.<sup>97</sup> There is no information on the overview of the compliance of filling the annual declarations of 2019 yet. RA CPC initiated 55 proceedings on administrative offences for the violations of obligations on submission of declarations of assumption of office and resignation during the period of July-December 2019 in the manner prescribed by law. Fifty-three decisions on imposing administrative penalties in forms of warnings were made.<sup>98</sup> In 2018-2019, the number of declarant public officials was approximately 3,200. RA Commission of Ethics of High-Ranking officials initiated 294 proceedings on administrative offences for the violations of obligations on provision of annual declarations in 2019 in the manner prescribed by law. 139 decisions on imposing administrative penalties were made, of which 124 were warnings and 15 were fines<sup>99</sup>. RA Commission of Ethics of High-Ranking officials initiated 419 proceedings on administrative offences for the violations of obligations on provision of annual declarations in 2018 in the manner prescribed by law. 287 decisions on imposing administrative penalties were made, of which 219 were warnings and 68 were fines. 2 cases have been sent to the RA Prosecutor's Office.<sup>100</sup>

In addition, recent developments are the following: The improvement of the asset, income and interest declaration system and the introduction of the expenditure declaration has been foreseen by the Action Plan of the RA Anti-Corruption strategy for 2019-2022.<sup>101</sup> The current system was revised by the RA law "On Making Amendments and Addenda to the Law on Public Service", adopted by the RA National Assembly on March 25, 2020. The powers of the CPC to review declarations have been reviewed. The analysis of declarations can also be the result of media publications and written applications of individuals. The CPC may apply to the RA state and local self-government bodies, Central Bank and other structures for proper verification of the declarations with the request to receive relevant information. Information related to the persons required to file a declaration includes confidential bank information, official information on securities transactions made by the Central Depository under the RA "Law on the Securities Market", confidential insurance information, such as credit information or credit history from the credit bureaus: After receiving information constituting banking secrecy, the CPC has the right to request the declarant to submit additional materials, and if there are relevant grounds, to send the materials to the Prosecutor General's Office. The mechanism of ad-hoc declarations has been introduced. In cases defined by the RA "Law on the CPC", persons submit a situation-dependent declaration of property and income to the CPC within one month. The content of the information subject to declaration has been clarified.<sup>102</sup>

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<sup>94</sup> Ibid, article 34(1).

<sup>95</sup> The register can be accessed at <<http://cpcarmenia.am/en/declarations-registry/>> (accessed on 25 December, 2020).

<sup>96</sup> More information on the information on the types of assets, income and interests subject to declaration, as well as the list of public officials under this obligation is provided by the government's checklist.

<sup>97</sup> "RA draft law on On Making Amendments and Addenda to the Law on "Civil Service" and to the Law on Corruption Prevention Commission", Justification, available at <<https://www.e-draft.am/projects/2953/about>> (Armenian), (accessed on 25 December, 2020).

<sup>98</sup> "Administrative Proceedings have been Initiated", available at <<http://cpcarmenia.am/hy/news/item/2020/03/13/1231231313/>> (Armenian), (accessed on 25 December, 2020).

<sup>99</sup> Information on administrative proceedings initiated in 2019, available at: <<http://cpcarmenia.am/hy/news/item/2019/11/05/news135/>> (Armenian), (accessed on 25 December, 2020).

<sup>100</sup> Annual Report of the Activities of the RA Commission of Ethics of High-Ranking Officials in 2018,

<sup>101</sup> See "RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022", action 17.

<sup>102</sup> "RA Law On Making Amendments and Addenda to the Law on Public Service", adopted on 25.03.2020 and entered into force on 02.05.2020, available at <<https://www.arlis.am/DocumentView.aspx?docid=141488>>, (Armenian), (accessed on 25 December, 2020).



It should be noted that a different draft legislative package “On Making Amendments and Addenda to the Law on Public Service” was adopted in the first reading of the parliament on 18 September 2020, which envisages the following:

- In order to get a complete picture of the financial flow of the declarant, it is proposed to introduce a new institution of expenditure declaration. The following approach has been adopted by the draft law: in case of certain expenses, which are exhaustively listed in the draft, the person is obliged to declare them if the one-time cost of such expenses exceeds 2,000,000 AMD (approx. 4,000 USD) or its equivalent in foreign currency or the sum of the same type of expenses in the reporting period exceeds 2,000,000 AMD (approx. 4,000 USD) or the equivalent in foreign currency. These expenses include, for example, travel expenses, living expenses, rent for movable or immovable property, tuition or other expenses, expenses related to agricultural activities, etc. At the same time, the draft stipulates that any other expenses are also subject to a declaration if its one-time value exceeds 3,000,000 AMD (approx. 6,000 USD) or its equivalent.
- In addition to current legislative obligations on declaring assets, the draft proposes to define the property to be declared as the property actually possessed by the declarant. The property actually possessed is the property not owned by the declarant, but actually controlled or used (regardless of the state registration of the mentioned rights) for more than 90 days during the reporting period, which includes real estate, means of transport (except as a result of employment) and expensive property. The property is considered to be controlled by the declarant, if it was acquired for the benefit or at the expense of the declarant or the declarant receives actual benefit from the property or actually manages it.
- The third major amendment proposed is aimed at controlling corruption risks following the termination of the official duties of a declaring official. In particular, it is proposed to introduce a mechanism according to which in case of suspicion of a significant change of property (an increase of property, decrease or liability and expenditure) within two years after the termination of the official duties of the declaring official, the CPC will require the former officer to submit an ad-hoc (situation-dependent) income declaration.
- It is proposed to reduce the monetary threshold of expensive property defined by the Law to 4 million AMD (approx. 8,000 USD) or equivalent currency, instead of 8 million (approx. 16,000 USD).
- It is proposed to expand the circle of declarants by establishing a declaration obligation for community staff secretaries and community council members of municipalities with a population of more than 15,000.<sup>103</sup>

## Deficiencies

- A number of non-high-ranking officials do not have the declaration obligation while providing services in several risk-prone sectors from a corruption perspective, such as police, health-care, etc. Those sectors are considered risky since they assume citizen-public serving relations.
- Family members of a declarant official mean his or her spouse, minor children (including adopted children), persons under the declarant official’s guardianship or curatorship and any adult person jointly residing with the declarant official. Since other persons closely related to the official, such as the spouse's resident parent, child, brother or sister, as well as persons in a godparent-godchild

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<sup>103</sup> “RA draft law On Making Amendments and Addenda to the Law on Public Service”, adopted in the first reading of the parliament in 18.09.2020, available at <[http://parliament.am/draft\\_history.php?id=11922](http://parliament.am/draft_history.php?id=11922)>, (accessed on 25 December, 2020).

relationship do not have an obligation to declare property, there is widespread malpractice to register the assets owned by public officials on behalf of them.<sup>104</sup>

- There is a need to grant authority to the CPC to implement lifestyle checks of the declarant public officials as a means of verification of the data included in the declarations.
- The sanctions provided by law that can be imposed on public officials by the CPC, deriving from their activities to analyse the declarations, do not appear to be effective, proportionate and dissuasive. The sanctions should be revised accordingly, and be applied in a consistent and transparent manner to increase compliance.<sup>105</sup>

### **UNCAC Article 9. Public procurement and management of public finances**

**This article is considered largely implemented, and the level of implementation in practice is moderate.**

#### **Article 9, Paragraph 1**

*On taking the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:*

*(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;*

The answer to this point is generally complete in the government's checklist, even though it is scattered throughout the text. It should be added that the RA "Law on Procurement" does not pose an obligation for the publication of the text of the contract, but the decision to sign the contract and the signed contract notice. The decision to sign the contract summarizes information about the bid assessment and reasons for the choice of the selected participant and the announcement on the period of inactivity.<sup>106</sup> The signed contract notice contains the following information: 1) a brief description of the purchase subject, 2) customer name and address, 3) date of signing the contract, 4) name of the selected participant (participants) and place of residence and location, 5) price proposals submitted by the participants and the contract price, 6) information on publications made pursuant to the Law for the involvement of participants (if applicable), 7) the applied procurement procedure and the justification of its choice.<sup>107</sup> The exemplary form of the document has been approved by the RA Ministry of Finance.<sup>108</sup>

In practice, these rules have been generally followed to the stage that a number of contracts have even been placed on the e-procurement platform ARMEPS. However, the picture has been changed after the outbreak of COVID 19 since Armenian government, like many around the world, in an effort to save

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<sup>104</sup> See e.g. "Hrayr Tovmasyan "hidden" property", 13.10.2020, <<https://www.1in.am/2640629.html>>, "What property do Seyran Ohanyan and his wife own?", 16.12.2020, <https://www.1in.am/2673657.html> (accessed on 25 December, 2020).

<sup>105</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.

<sup>106</sup> "RA Law on Public Procurement", adopted in 16.12.2016 and entered into force in 25.04.2017, article 10(2), available at <<https://www.arlis.am/DocumentView.aspx?DocID=121796>> (Armenian), (accessed on 25 December, 2020).

<sup>107</sup> Ibid, article 11.

<sup>108</sup> Annex 5, Order N 265-A of the RA Minister of Finance "On Approval of the Exemplary Form of the Announcement on the decree to Sign Contract", adopted on 30.05.2017, available at: <<https://www.procurement.am/website/images/original/22c799d7.docx>> (Armenian), (accessed on 25 December, 2020).

lives and livelihoods, has also acted to rapidly procure necessary medical supplies. This has negatively affected the transparency of public procurement data because the information has not been published in a number of cases.<sup>109</sup>

## Deficiencies

Although the new law makes the public procurement system more transparent by expanding the amount of data that must be published on the official procurement website, and the improvement of the public procurement system has been envisaged in the Action Plan in the RA Anti-Corruption strategy<sup>110</sup>, there are still a number of issues related to data openness. In particular, electronic procedures are an option, not an obligation. As a result, the paper-based procurement outnumbers e-procurement significantly. The information related to public procurement, which is available at the state-run websites [www.gnumner.am](http://www.gnumner.am) and [www.armeps.am](http://www.armeps.am), is quite scattered, and it is therefore difficult to find through a search engine. In addition, the published data in the [www.gnumner.am](http://www.gnumner.am) is not user-friendly and does not meet open data standards, i.e., is not machine-readable. This means that it becomes almost impossible for investigative journalists or other stakeholders to analyse data, as much of it is only available in pdf format. Official information on the public procurement system, such as statistics, reports, graphs and tables, is also difficult to access. The latter is also evidenced by the Transparent Public Procurement Rating Index: In 2016, Armenia had 58,96% compliance with the standard, leaving major areas such as transparency (31.1%), efficiency (43.3%) and accountability (40.4%) vulnerable. Despite the improvement, according to the Index in 2019 (66.26%), the level of transparency still remains low (38.1%).<sup>111</sup>

*(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;*

The answer on this point is generally complete in the government's checklist, even though it is scattered throughout the text. However, recent developments have highlighted that a major problem is that the technical specifications and other criteria in the invitations for tender procedures in the field of public procurement are tailored to specific organizations in order to ensure their victory. As a result, contracts are always signed with the same companies.<sup>112</sup> After receiving several reports in this regard, *BizProtect* alerted the relevant authorities about this issue, which has resulted in the adoption of the RA government Decrees N 1454-N<sup>113</sup> and N 1422-N.<sup>114</sup> The latter introduces a new, participatory procedure for

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<sup>109</sup> "Why is the Ministry of Health's 7.4 billion AMD expenditure on coronavirus not transparent?", available at <<https://factor.am/267865.html>> (Armenian), (accessed on 25 December, 2020).

<sup>110</sup> See "RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022", action 23.

<sup>111</sup> Transparent Public Procurement Rating Index, Institute for Development of Freedom of Information available at: <<https://www.tpp-rating.org/page/eng/rating/2016>>, <<https://www.tpp-rating.org/page/eng/rating/2019>>, (accessed on 25 December, 2020).

<sup>112</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 02 November, 2020.

<sup>113</sup> "RA government decree N 1454-N On approving the procedure for assessing the qualification requirements for purchasing items and participants submitting qualification items approved by optional selection of customers", adopted on 16.11.2017, entered into force on 01.01.2018 and abolished on 02.11.2019, available at <<https://www.arlis.am/DocumentView.aspx?DocID=117475>> (Armenian), (accessed on 25 December, 2020). According to it, the RA Ministry of Finance was authorized to conduct an expert examination of the characteristics of the approved purchase items of the customers and the qualification requirements for the participants from the point of view of maintaining the demand for competition. However, subsequent practice has proved the inefficiency of this, resulting in abolition.

<sup>114</sup> "RA government decree N 1422-N On making amendments to the RA government Decree N 526-N of May 4, 2017 and on abolishing the RA government Decree N 1454-N of November 16, 2017", adopted in 10.10.2019 and entered into force in 2.11.2019, available at <<https://www.arlis.am/DocumentView.aspx?docid=135267>> (Armenian), (accessed on 25 December, 2020).

the examination of technical characteristics. In particular, before the deadline for amendments to the invitation expires, anyone may provide the procuring entity with a justification for the requirements of the subject of the procurement defined by the invitation, to ensure competition and non-discrimination provided by law. The procuring entity is obliged to publish the summary of the discussions of the justifications received or indicate about their absence as a mandatory clause of the minutes of the application opening session in the official procurement bulletin. In practice, the minutes of the application opening session, as well as other procurement documents are being published in the bulletin in the PDF format. Since the documents do not correspond to the open data standards, it is impossible to search for the documents where justifications have actually been received. No statistics or media reports are available in this regard as well, which can also be explained by the fact that these regulations are relatively new.

In addition, an action has been envisaged by the “Action Plan of the State Financial Management System Reform strategy for 2019-2023” on the improvement of the procurement planning system, ensuring that the identical needs of the bodies are met related to the same procurement items with the same specifications and at the same estimated prices.<sup>115</sup>

*(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;*

The conditions of the right to participate in procurement and the qualification criteria are set up by RA “Law on Public Procurement”<sup>116</sup>, and the conditions of evaluating those conditions and criteria are set by the government’s N 526-N decree<sup>117</sup>, which is described in the government’s checklist. However, the results of recent research<sup>118</sup> show that the practice of the application of non-competitive procedures, in particular, single sourcing procurement has increased, especially on the grounds of “urgency” while, in fact, there are no urgent matters that would justify an emergency procedure.<sup>119</sup> This malpractice often occurs in the field of culture, when it is stated that there is not enough time to organize the event, while the tender announcement is made too late.<sup>120</sup>

*(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;*

RA “Law on Public Procurement” sets an appeals system in public procurement,<sup>121</sup> which is described in the government’s checklist. Currently, the appeals filed against the actions (inaction) and the decisions of the contracting authority and the evaluation commission are examined by the person

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<sup>115</sup> RA State Financial Management System Reform strategy and its Implementation Action Plan for 2019-2023, adopted by the RA government decree N 1716-L on 28.10.2019 and entered into force on 22.12.2019, action 16, available at <https://www.arlis.am/DocumentView.aspx?DocID=137596> (Armenian), (accessed on 25 December, 2020).

<sup>116</sup> See “RA Law on Public Procurement”, article 6.

<sup>117</sup> “RA government decree N 526-N on Approving the Procedure for Organisation of the Procurement Process and Repealing Decree N 168-N of the RA Government of 10 February, 2011”, adopted in 04.05.2017 and entered into force in 01.06.2017, section 8, available at <https://www.arlis.am/DocumentView.aspx?docID=144977> (Armenian), (accessed on 25 December, 2020).

<sup>118</sup> “Single source procurement continues to dominate the public procurement system”, Freedom on Information Center, available at <http://www.foi.am/hy/news/item/1862/> (Armenian), (accessed on 25 December, 2020).

<sup>119</sup> The official response of the RA Ministry of Justice, provided at 2.12.2020. “Single sourcing procurements are conducted considering the bases and requirements established by law and this report does not contain any proved evidence justifying the opposite.”

<sup>120</sup> “The rationale for using a non-competitive procurement tool in many cases raises doubts”, available at <https://infocom.am/Article/31286> (Armenian), (accessed on 25 December, 2020).

<sup>121</sup> See “RA Law on Public Procurement”, Section 6.

examining procurement-related appeals.<sup>122</sup> This regulation has replaced the previous appeals system, which was carried out by a collegial board. There are two experts who receive and review the appeals. In the period from 09.04.2019-30.12.2019, L. Ohanyan, received 120 appeals and initiated proceedings for 104 appeals, 47 of which were resolved and 52 of which were rejected<sup>123</sup> and G. Nersisyan received 130 appeals and initiated proceeding for 106 appeals, 29 of which were fully resolved, 16 of which were partially resolved and 45 of which were rejected.<sup>124</sup>

## Deficiencies

Nevertheless, the independence and effectiveness of the appeals system applicable to public procurement have been regularly called into question by international donor organizations and CSOs.<sup>125</sup> For this reason, the RA government has submitted draft legislative changes<sup>126</sup> for public discussion on the transition from extrajudicial model to the solely judicial model of appeal system, implemented through special proceedings.<sup>127</sup> The justification of the legal act provided by the RA Ministry of Finance states as follows: *“The analysis shows that the current appeals system is not effective in the sense that the decisions made are problematic from the point of view of the RA procurement legislation and are contradicting one another. As a result, either those decisions are appealed in the courts, or the procurement procedures are annulled, which in terms of their organization and implementation leads to project failures, dissatisfaction and financial losses. According to the statistics [examined by RA Ministry of Finance], the number of cases of appeals against extrajudicial appeals by the participants is increasing year by year, in the case when the current regulations do not provide for procedures for examination by special proceedings. At the same time, the large number of people who have the opportunity to appeal is also problematic. Anyone who has no substantive interest in the procurement procedure in terms of content has the opportunity to appeal the procurement procedure and to prolong the processes conditioned by it, including deliberately.”*<sup>128</sup> A similar practice exists in various states, including the hearing of complaints by administrative courts.

(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as a declaration of interest in particular public procurements, screening procedures and training requirements.

The information in the government's response to this part is very limited. The RA “Law on Public Procurement” contains some provisions on the declaration of interests, according to which: *“The member or secretary of the evaluation commission may not participate in the work of the evaluation commission if at the bid opening session it is found out that the organization founded by them or the organization where*

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<sup>122</sup> Ibid, article 47.

<sup>123</sup> The annual report of the activities of the person examining procurement-related appeals, Levon Ohanyan, 2019, available at <<https://gnumner.am/website/images/original/Hashvetvutyun%202019%20Ohanyan.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>124</sup> The annual report of the activities of the person examining procurement-related appeals, Grigor Nersisyan, 2019, available at <<https://gnumner.am/website/images/original/e13b8815.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>125</sup> “Anti-corruption reforms in Armenia: 4th round of monitoring of the Istanbul Anti-Corruption Action Plan”, OECD, pages 105-106; “Recommendations on Improvement of the RA regulations on Public Procurement”, Constructive Dialogue Network of Armenian CSOs, February 2020, available at: <<https://ccd.armla.am/15988.html>> (Armenian), (accessed on 25 December, 2020).

<sup>126</sup> See RA draft Law on making amendments to the “RA Law on Public Procurement” and other legal acts, publicly discussed from 20.02.2020 till 06.03.2020, available at <<https://www.e-draft.am/projects/2300>> (Armenian), (accessed on 25 December, 2020).

<sup>127</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.

<sup>128</sup> See the official response from the RA Ministry of Justice, provided at 14.10.2020. See also RA draft Law on making amendments to the “RA Law on Public Procurement” and other legal acts, Justification.

*they have a share or a person related to them by kinship or guardianship (parent, spouse, child, brother, sister, as the spouse, parent, child, brother or sister) or an organization founded by that person or the organization where that person holds a share has applied to participate in the procedure. In that case, in accordance with part 7 of the same article, immediately after the bid opening session, the member or secretary of the evaluation commission who has a conflict of interest in connection with the given procedure withdraws from the given procedure. The members of the commission and the secretary sign a statement on the absence of conflict of interest, which is published in the bulletin on the first working day following the end of the bid opening session.”<sup>129</sup>*

The declarations on conflict of interest are published on the state website of public procurement,<sup>130</sup> although in formats that do not correspond with open data standards. At the same time, it should be noted that procurement legislation does not provide for a specific review procedure to determine whether members or secretaries of the evaluation commissions do not conceal potential conflicts of interest.<sup>131</sup> The expert team of *BizProtect* has repeatedly submitted letters on cases of a possible conflict of interest situations to the RA State Control Service, the state authorized body for exercising control in the field of public procurement. The latter has conducted monitoring for studying possible corruption risks and discovering possible connections of public officials of respective state customers and the winning companies. In cases where such connections have been observed, the findings of the monitoring were presented to respective state bodies.<sup>132</sup>

## **Article 9, Paragraph 2**

*On taking appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:*

*(a) Procedures for the adoption of the national budget;*

The procedures for the adoption of the national budget, mainly the development of the draft Medium Term Expenditure Framework (the basis of the draft law on state budget) and the draft state budget itself, as well as its discussion and adoption by the National Assembly are set by the RA Law “On Budgetary System of the Republic of Armenia”.<sup>133</sup> The latter is described in more detail in the government’s checklist.

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<sup>129</sup> See “RA Law on Public Procurement”, article 33(6).

<sup>130</sup> See <[https://gnumner.am/hy/page/shaheri\\_bakhman\\_bacakayutyun/](https://gnumner.am/hy/page/shaheri_bakhman_bacakayutyun/)> (Armenian), (accessed on 25 December, 2020).

<sup>131</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 02 November, 2020.

<sup>132</sup> See “Another Anti-Corruption System Reform in the Field of Public Procurement through BizProtect”, available at: <<https://bizprotect.am/en/success-stories/show/18>> (accessed on 25 December, 2020). However, there is no publicly available evidence on whether this has resulted in further actions.

<sup>133</sup> “RA Law On Budgetary System of the Republic of Armenia”, adopted in 24.06.1997 and entered into force in 21.08.1997, articles 15<sup>1</sup>, 16, 21 and 22, available at <<https://www.arlis.am/DocumentView.aspx?DocID=140926>> (Armenian), (accessed on 25 December, 2020).



## Good Practice

In addition, due to ALA's efforts, RA Prime Minister has signed a decree on imposing an obligation on the chief budget officers of respective national and regional/local government bodies to discuss budget proposals with the interested civil society organizations in their areas of competence during the development of the draft state budget, and approve the results (including a summary of the acceptance or rejection of the submitted comments and suggestions) of the discussions.<sup>134</sup> RA Prime Minister's order to hold mandatory public discussions of the RA States Budget has been followed in practice.<sup>135</sup>

### *(b) Timely reporting on revenue and expenditure;*

## Good Practice

Both the processes of its adoption and the budget itself are transparent.<sup>136</sup> It is noteworthy that a simplified citizen's budget has been introduced since 2018, presenting the main information reflected in the state budget in an accessible way to the public.<sup>137</sup> Besides, RA citizens have an opportunity to get information on the RA state budget structure per functional classification (planned and actual expenditures) with the help of online electronic interactive budget placed on the websites of the RA government and the RA Ministry of Finance. The e-system provides access to information on the RA state budget and ensures transparency of information on actual RA state budget expenditures.<sup>138</sup> The latter is described in more details in the government's checklist.

### *(c) A system of accounting and auditing standards and related oversight;*

The external audit in the Republic of Armenia is regulated by the RA "Law on the Audit Chamber".<sup>139</sup> The Audit Chamber provides timely, professional and impartial information to the parliament and to the public on the legality of the use of state and municipal budgets, received loans, state and community property, which results in the development of annual budget execution report. The Audit Chamber also issues annual reports. The analysis of the report for 2019 shows that in accordance with the risk-based methodology, the Audit Chamber has implemented 25 audits from the planned 32 and has presented the findings to the RA National Assembly, government and other stakeholders.<sup>140</sup> The latter are published on the Chamber's official website.<sup>141</sup>

## Deficiencies

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<sup>134</sup> Decree N 5-A "On Starting the Budget Process for 2021", adopted by the RA Prime Minister in 09.01.2020, available at <<http://www.irtek.am/views/act.aspx?aid=152335>> (Armenian), (accessed on 25 December, 2020). See also "According to the Prime Minister's Decision, Discussion with Interested Civil Society Organizations will also be held during the Development of the State Budget for 2021", <<https://armla.am/en/5462.html>> (accessed on 25 December, 2020).

<sup>135</sup> Interview with Mr. Karen Zadoyan, held on 4 November, 2020.

<sup>136</sup> See "RA Law On Budgetary System of the Republic of Armenia", article 26.

<sup>137</sup> Citizen's budget, 2018, available at <[http://www.minfin.am/hy/page/petakan\\_byuj/](http://www.minfin.am/hy/page/petakan_byuj/)>, Citizen's budget, 2019, available at <[http://www.minfin.am/hy/page/petakan\\_byuje\\_2019\\_t](http://www.minfin.am/hy/page/petakan_byuje_2019_t)> (Armenian), (accessed on 15 November, 2020).

<sup>138</sup> Interactive budget, available at <<https://www.e-gov.am/interactive-budget/>> (accessed on 25 December, 2020).

<sup>139</sup> "RA Law on the Audit Chamber", adopted in 16.01.2018 and entered into force in 09.04.2018, available at <<https://www.arlis.am/DocumentView.aspx?docid=119273>> (Armenian), (accessed on 25 December, 2020).

<sup>140</sup> Annual report of activities of the RA Audit Chamber, 2019, adopted in 26.04.2020, available at <<http://armsai.am/files/annual2019.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>141</sup> Auditing Conclusions, available at <<http://armsai.am/hy/current-conclusions>> (Armenian), (accessed on 25 December, 2020).

The Parliamentary Budget Office was established in the RA as a parliamentary oversight body on the basis of the RA Law on "Rules of Procedure of the National Assembly".<sup>142</sup> The main function of the office is to provide references on public finances, in particular, the state budget. The effectiveness of the mentioned office has been questioned since it does not have the necessary staff, independent funding from the state budget, separate charter regulating its functions,<sup>143</sup> as well as the function to conduct independent evaluations on compliance of government fiscal forecasts and fiscal policy objectives.<sup>144</sup>

*(d) Effective and efficient systems of risk management and internal control;*

The systems of risk management and internal control and audit are regulated by the RA "Law on Internal Audit"<sup>145</sup> and legal acts deriving therefrom.<sup>146</sup> Internal audit units have been established in all institutions of public administration and local self-governing bodies, who submit a report on the revealed discrepancies to the head of the public sector organization and the internal audit committee, as well as suggestions to correct these discrepancies. This is described in more details in the government's checklist's paragraph (c), according to which 18,012 and 13,859 cases have been disclosed on inconsistencies in 2016 and 2017 respectively, resulting in 12,460 and 9,151 correction activities.

*(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.*

The government's checklist does not cover these issues. The RA legislation stipulates that for the violation of the requirements of the given law by the public officials of the state and local self-government bodies, sanctions apply prescribed by law.<sup>147</sup> Neither the Code of Administrative Offences nor the Code of Criminal Procedure foresees specific sanctions in this regard. However, they contain articles that could be used to prosecute officials suspected of having committed public financial offences in general. To date, there is no public evidence on violations in connection with the state budget adoption procedures.

### **Article 9, Paragraph 3**

*On taking such civil and administrative measures as may be necessary to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.*

The answer given in the government's checklist is comprehensive in terms of supervision of the accounting and auditing standards. In particular, the accounting of the public sector organizations in Armenia is

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<sup>142</sup> "RA Law on Rules of Procedure of the National Assembly", adopted in 16.12.2016 and entered into force in 18.05.2017, article 163, available at <<https://www.arlis.am/DocumentView.aspx?docid=110824>>. The functions of the latter are regulated by the National Assembly Decree N 267-N on

"Approving the Work Procedure of the National Assembly of the Republic of Armenia", adopted in 16.12.2016, available at: <https://www.arlis.am/DocumentView.aspx?DocID=121700> (Armenian), (accessed on 25 December, 2020).

<sup>143</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.

<sup>144</sup> Fiscal Transparency Evaluation, Republic of Armenia, International Monetary Fund, 2019, p. 9, available at <<https://www.imf.org/external/pubs/ft/scr/2019/cr19134.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>145</sup> "RA Law on Internal Audit", adopted in 22.12.2010 and entered into force in 05.02.2011, available at <<https://www.arlis.am/DocumentView.aspx?DocID=138980>> (accessed on 25 December, 2020).

<sup>146</sup> "RA government decree N 1233-N on Internal Audit Schedule of the organizations", adopted in 11.08.2011 and entered into force in 08.09.2011, available at <<https://www.arlis.am/DocumentView.aspx?docid=111129>>; Order N 1096-N of the RA Minister of Finance on "Model of the Statute of Internal Audit and the Peculiarities of the Procedure for the Formation thereof" adopted in 12.12.2012 and entered into force in 25.02.2013, available at <<https://www.arlis.am/DocumentView.aspx?docid=97290>> (Armenian), (accessed on 25 December, 2020).

<sup>147</sup> RA Law "On Budgetary System of the Republic of Armenia", article 42.



regulated by the RA Law “On accounting of public sector organizations”,<sup>148</sup> as well as the Public Sector Accounting Standard. Although the government’s checklist mentions the standard to be elaborated on the basis of International Public Sector Accounting Standards, this has been assessed as partially compliant to international standards.<sup>149</sup> The standard is also not endorsed by law, but, instead, by the respective order of the RA Minister of Finance.<sup>150</sup>

Besides, RA legislation does not clearly envisage the responsibility of the RA Ministry of Finance to conduct monitoring of accounting implemented by public sector organizations and provide methodological instructions, if necessary. For this reason, the RA Ministry of Finance has elaborated draft legislative changes to the mentioned law which have not yet been adopted.<sup>151</sup>

At the same time, while discussing measures to protect the inviolability of accounting and financial documents, only Article 169.11 of the Code of Administrative Offences is mentioned (failure to keep accounting records and other information) in the government’s checklist. However, several other articles all applicable in this regard including Article 169.11 (violation of accounting, when it may cause (has caused) a reduction of tax or compulsory social security payment, or failure to submit the declaration or calculation within the prescribed period), Article 169.9 (failure to keep accounting), Article 169.10 (failure to establish an accounting policy), Article 169.12 (failure to submit or disclose financial statements to government agencies) and 169.13 (signing of financial statements by the non-licensed accountant or submitting unsigned financial statements).<sup>152</sup> The answer given in the government’s checklist does not contain information on the applicable statistics.

#### **UNCAC Article 10. Public reporting**

**This article is considered largely implemented, and the level of implementation in practice is moderate.**

*On taking such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:*

*a) adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;*

The answer in the government’s checklist is almost complete. It is necessary to add the following:

- On 2 April 2020, the RA government approved and submitted to the National Assembly the Draft RA Law “On Making Amendments to the RA Law on Freedom of Information.”<sup>153</sup> The draft proposes

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<sup>148</sup> “RA Law On accounting of public sector organizations”, adopted in 21.06.2014 and entered into force in 01.01.2015, articles 11, 12, available at <<https://www.arlis.am/documentview.aspx?docID=91454>> (Armenian), (accessed on 25 December, 2020).

<sup>149</sup> “Public Governance Principles”, Armenia, SIGMA, 2019, p. 232, <<http://www.sigmaweb.org/publications/Baseline-Measurement-Armenia-2019-ARM.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>150</sup> Order N 725-N of the RA Minister of Finance on “Armenia’s Public Sector Accounting Standard”, adopted in 24.10.2014 and entered into force in 11.12.2014, available at <<https://www.arlis.am/DocumentView.aspx?DocID=102700>> (Armenian), (accessed on 25 December, 2020).

<sup>151</sup> RA Draft Law on making amendments to the RA Law “On accounting of public sector organizations”, publicly discussed from 10.12.2019 to 25.12.2019, available at <<https://www.e-draft.am/projects/2171>> (Armenian), (accessed on 25 December, 2020).

<sup>152</sup> See “RA Code on Administrative Offences”.

<sup>153</sup> The Government Decree is available at <<https://www.arlis.am/DocumentView.aspx?DocID=140983>> (Armenian) (accessed on 25 December, 2020).

to supplement Article 8 of the RA Law on Freedom of Information, which deals with restrictions on freedom of information, with Part 4, with the following content: "Providing information on the environment may be denied if it may adversely affect the environment, breeding sites of rare species." In this regard, Armenian CSOs have systematically opposed this government initiative<sup>154</sup>, and as a result, the government withdrew the initiative.

- In accordance with Article 7 of RA Law on the Protection of Personal Data<sup>155</sup>, defining the principle of minimum involvement of the personal data subjects, Article 11 of the law defining publicly available personal data was amended on 7 July 2020. [2] By virtue of the mentioned article, the patronymic was added to the list of public data.<sup>156</sup>

According to the RA Law on "Freedom of Information",<sup>157</sup> information holders at least once a year publicize statistical and complete data on inquiries received, including grounds for a refusal to provide information (Art. 7, p.11). However, the surveys conducted by the Freedom of Information Center concluded that there is no single common standard for recording, classifying, or storing data on requests for information from state bodies. Each of the departments implements this requirement at their own discretion. Some government agencies do not maintain separate statistics on requests for information. The agencies have not developed the necessary tools to submit the statistics required by law.<sup>158</sup> In 2019, the "NGO Center" Civil Society Development NGO conducted monitoring of the transparency and accountability of grants, subsidies, donations and delegated services to non-governmental, non-profit organizations by the ministries in 2017. According to the monitoring report,<sup>159</sup> the ministries provided the mentioned financial allocations, mostly without a competitive procedure. This adverse practice was continued after the "Velvet Revolution" as well.

*b) simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and*

*c) publishing information, which may include periodic reports on the risks of corruption in its public administration.*

The answers to these points in the government's checklist are generally not targeted and relevant. The following should be noted in connection with point (b):

- As a result of amendments and supplements to the RA Law on State Duty<sup>160</sup> and a number of other laws, the media were exempted from paying the state fee for providing information from the Unified State Register of Legal Entities of the RA.

In connection with point (c), the following should be mentioned:

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<sup>154</sup> See one of the examples: The statement of the Anti-Corruption Coalition of Armenian CSOs on this issue: <<https://armla.am/en/5719.html>> (accessed on 25 December, 2020).

<sup>155</sup> The "RA Law on Protection of Personal Data" was adopted on 13.06.2015 and entered into force on 01.07.2015 is available at <<https://www.arlis.am/DocumentView.aspx?DocID=132745>> (Armenian), (accessed on 25 December, 2020).

<sup>156</sup> The respective amendments to the "The RA Law on Protection of Personal Data" was adopted on 09.07.2019 and entered into force on 04.08.2019 is available at <<https://www.arlis.am/DocumentView.aspx?docid=132703>> (Armenian), (accessed on 25 December, 2020).

<sup>157</sup> The "RA Law on Freedom of Information" is available at <<https://www.arlis.am/DocumentView.aspx?DocID=1372>> (Armenian), (accessed on 25 December, 2020).

<sup>158</sup> Survey on freedom of information during 2019 available at <<http://www.foi.am/hy/research/item/1863/>> (Armenian), (accessed on 25 December, 2020).

<sup>159</sup> Monitoring Report on State Funding Sources for CSOs is available at <<https://ccd.armla.am/en/5698.html>> (Armenian), (accessed on 25 December, 2020).

<sup>160</sup> The respective amendments to the "RA Law on State Duty" was adopted on 06.03.2020 and entered into force on 11.04.2020 is available at <<https://www.arlis.am/DocumentView.aspx?DocID=140639>> (Armenian), (accessed on 25 December, 2020).

- Clauses 4 and 5 of Article 5 of the RA Law on Prosecutor's Office<sup>161</sup> define the duty of the RA Prosecutor General's Office as publishing information, statistics, comparative analyses and conclusions on the results of the investigation of corruption-related crimes on the website of the Prosecutor General's Office each year, by 1 April; and the investigative bodies, according to their subordination, are obliged to submit information and statistical data on the results of the investigation of crimes committed during the previous year to the RA General Prosecutor's Office every year by 1 February. The Prosecutor General approves the methodological guideline for the submission of information on the results of corruption investigations and statistical data. The Methodological Guidelines<sup>162</sup> was approved by the Prosecutor General in 2018, which, however, have not been revised in connection with the amendments and additions made to the RA Criminal Code on 25 March 2020, which, as Annex 6 of the Code, defined the list of Corruption Crimes.<sup>163</sup> It entered into force on 2 May 2020.
- According to Clause 133 of the RA Anti-Corruption strategy,<sup>164</sup> the functions of monitoring and evaluating the process of the strategy and Action Plan are carried out by the RA MoJ. The responsible bodies shall, for the purpose of ensuring the implementation of the strategy and the Action Plan, submit reports to the RA MoJ within five working days after the end of each semester. The MoJ shall post the package of reports on the websites of the MoJ and of the Anti-Corruption Policy Council within two working days. The MoJ shall, at the beginning of each year, but not later than the first ten days of February of the given year, submit the results of the monitoring and assessment for consideration by the Anti-Corruption Policy Council established by the RA Prime Minister's Decree N 808-N of 24 June 2019. Getting acquainted with the report for 2019 and the report for the first half of 2020<sup>165</sup> published by the MoJ, it may be concluded that they more reflect the quantitative picture of the implementation of the Anti-Corruption strategy and its action plan for 2019-2022 rather than analytical data.
- In addition to the above, there are no publicly available legal criteria for conducting monitoring and evaluation to identify corruption risks in the public administration system. However, according to the MoJ, CPC has developed a unified methodology for identifying corruption risks in all state bodies.

### **UNCAC Article 11. Measures relating to the judiciary and prosecution services**

**This article is considered partially implemented, and the level of implementation in practice is moderate.**

#### **Article 11, Paragraph 1**

*On taking measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.*

The answers provided in the government's checklist are complete, but it is necessary to add the latest legislative changes.

<sup>161</sup> "RA Law on Prosecutor's Office" was adopted on 17.11.2017 and entered into force 09.04.2018 is available at <<https://www.arlis.am/DocumentView.aspx?docid=142365>> (Armenian), (accessed on 25 December, 2020).

<sup>162</sup> See the Methodological guideline at <<http://www.prosecutor.am/myfiles/files/pdf/metodakan%20uxecuy%20verjnakan.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>163</sup> See "RA Law on Making Amendments to the RA Criminal Code on the definition of the list of corruption crimes", adopted on 25 March, 2020 at <<https://www.arlis.am/DocumentView.aspx?docid=141491>> (Armenian), (accessed on 25 December, 2020)

<sup>164</sup> See the "RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022".

<sup>165</sup> See the Reports on the Ongoing Results of the Implementation of the Anti-corruption strategy.

In particular, on 25 March 2020, the RA Parliament adopted the RA Laws “On Making Amendments to the RA Constitutional Law on Judicial Code”<sup>166</sup>, “On Making Amendments to the RA Constitutional Law on the Constitutional Court” and other related legislative acts. These laws are aimed at providing a legal basis for assessing the integrity of judges in the following directions: property status (verification of the legality of property); professionalism and respect for human rights, impartiality (decision-making without certain connections, influences); procedure for forming the Ethics and Disciplinary Commission of judges and other commissions; initiating disciplinary proceedings against a member of the SJC.

Hence, the General Assembly of the Judges establishes the Ethics and Disciplinary Commission, the Commission for Performance Evaluation of Judges and the Training Commission. An important novelty of this reform is the composition of the Commissions, which envisages the involvement of two non-judge members from the CSO sector for each of these Commissions.

The composition of the Commissions are as follows:

4. The Ethics and Disciplinary Commission is composed of 8 members, 6 of which are judges, and 2 are non-judge members from the CSO sector.
5. The Training Commission is composed of 7 members, 5 of which are judges, and 2 are non-judge members from the CSO sector.
6. The Commission for Performance Evaluation of Judges is composed of 5 members, 3 of which are judges, and 2 are non-judge members from the CSO sector.

Despite this reform, which *prima facie* is functional, there is a reason for concern regarding its implementation in practice. In particular, the involvement of non-judge members in the Ethics and Disciplinary, and Performance Evaluation Commissions of the General Assembly of Judges is low, and the balance between the judge and non-judge members is not ensured. This disproportionate approach and the absolute majority of the judge-members can contribute to the inefficient work of the non-judicial members in the commissions and make their participation only formal.

On 31 July, 020, the General Assembly of Judges elected the members of the three mentioned Commissions. Unfortunately, it is noteworthy that despite these regulations, only the Ethics and Disciplinary Commission was replenished with real representatives of the CSO sector. The three "CSO sector representatives" elected in the other two Commissions are in fact directly linked to the judiciary system.<sup>167</sup>

Concerning the activities of the Ethics and Disciplinary Commission (former name: Disciplinary Commission), it is noteworthy that over the past year and a half, the Commission received 441 reports of instituting disciplinary proceedings against judges, of which 43 disciplinary proceedings have been instituted against 38 judges. As a result of examining the instituted 43 cases, the Commission filed the motions with the SJC regarding the imposition of disciplinary actions for only 8 cases. Another 15 motions were filed by the Minister of Justice to the SJC (the Ministry of Justice is also entitled to institute disciplinary proceedings against the judge). As a result of the examination of 23 motions, 13 judges were subjected to disciplinary liability, of which only one was dismissed from its position on the ground of a grave disciplinary violation. Other types of imposed liability were warnings, reprimands, and severe reprimands.<sup>168</sup>

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<sup>166</sup> <<https://www.arlis.am/DocumentView.aspx?docid=141490>> (accessed on 25 December, 2020).

<sup>167</sup> See the investigative articles <<https://iravaban.net/en/284391.html>> <<https://iravaban.net/en/284079.html>> <<https://iravaban.net/en/289348.html>> (accessed on 25 December, 2020).

<sup>168</sup> The statistics of the on the activities of Judiciary are available at <<http://court.am/hy/statistic>> (Armenian), (accessed on 25 December, 2020). The decisions on the disciplinary proceedings of the Supreme Judicial Council are available at <<http://court.am/hy/disciplinary/1>> (Armenian), (accessed on 25 December, 2020).

A separate procedure for conducting integrity checks has been established by Article 26.1<sup>169</sup> of the Law on CPC. The CPC has the authority to conduct a study of integrity of officials prescribed by law, which implies: verification of the data presented in the questionnaire<sup>170</sup> on integrity, analysis of media reports about a person as well as information published on social networks, analysis of the possibility of the person's adhering to a criminal subculture, assessment of property status, etc.

The CPC has already conducted an integrity check of the candidates for the members of the SJC and RA Constitutional Court. According to media publications,<sup>171</sup> the CPC had provided a negative advisory opinion concerning one of the candidates (the candidate was the Chairman of the RA Court of Cassation of that time). The negative opinion was circulated to the deputies of the National Assembly, who should have to elect a member of the Constitutional Court. Despite this principal fact, the National Assembly did not take into account the results of the CPC's integrity check and elected the official as a member (judge) of the Constitutional Court. The advisory conclusions of the CPC on the integrity check are not subject to publication, it is therefore impossible to assess the effectiveness of this function and analyse how many of the conclusions provided (whether positive or negative) were taken into account in the decision-making process.

Arrests have taken place in the judiciary in recent months. In particular, two judges of the bankruptcy court were arrested, who were accused of abusing their functions. These cases are still being investigated, and no conclusive judicial acts have been made until now.<sup>172</sup>

### **Good practice**

The involvement of two non-judge members from the CSO sector for each Commission of the RA General Assembly of Judges.

### **Deficiencies**

- The advisory conclusions of the CPC on the integrity check are not subject to publication.
- The absolute majority of the judge-members in ratio to non-judge members can contribute to the inefficient work of the non-judicial members in the commissions and make their participation only formal. The criteria for non-judge members are general, and the persons affiliated with the judiciary can be elected as non-judge members of the Commissions.

### **Article 11, Paragraph 2**

*Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.*

The answers provided in the government's checklist are complete, but it is necessary to add the latest legislative changes.

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<sup>169</sup> Article 26.1 of the "RA Law on CPC" was amended on 25.03.2020 and entered into force on 02.05.2020.

<sup>170</sup> The CPC has developed a questionnaire on integrity: <<http://cpcarmenia.am/hy/news/item/2020/05/26/154789/>> (accessed on 25 December, 2020).

<sup>171</sup> Some media publications are available at <<https://bit.ly/32TJF7r>>, <<https://bit.ly/2IMpp0q>> (accessed on 25 December, 2020).

<sup>172</sup> More information can be found at <<http://court.am/hy/news/316>> <<https://iravaban.net/283649.html>> (Armenian), (accessed on 25 December, 2020).

First of all, it should be noted that the changes presented in the first part of this article, which refer to the declaration of property and income of the officials, the study of the integrity check of officials and the integrity questionnaire, are equally relevant to the prosecutor's office system.

Hence, on May 23, 2020, the "Law on Forfeiture of Illegal Assets", entered into force.<sup>173</sup> On the same date, the law on making amendments and supplements to the "Law on the Prosecutor's Office"<sup>174</sup> connected with the abovementioned law also entered into force. The implementation of this law can be seen in an open competition that was held in order to replenish the lists of candidates for prosecutors carrying out functions aimed at the confiscation of property of illegal origin. Another open competition was held to elect and appoint the Deputy Prosecutor General, who coordinates the affairs of the confiscation of property of illegal origin. Competitions were held by the Qualification Commission adjunct to the RA Prosecutor General, in which two were appointed by the RA Prosecutor General on a voluntary basis.<sup>175</sup> One of the experts was Mr. Arkadi Sahakyan, the former Chairman of the Governing Board of the CSO Anti-corruption Coalition of Armenia.

Concerning the disciplinary penalties of the prosecutors, it should be noted that from 2019 to 2020 (the 1<sup>st</sup> half of 2020), 77 reports were received with the request to institute disciplinary proceedings against prosecutors. As a result of examining the reports, 12 disciplinary proceedings have been instituted against 14 prosecutors. Seven prosecutors were subjected to disciplinary liability, of which one was the termination of powers, one resulted in the demotion of the class rank by one degree. Other types of imposed penalties are reprimand and severe reprimand.<sup>176</sup>

#### **UNCAC Article 12. Private Sector**

**This article is considered largely implemented, and the level of implementation in practice is moderate.**

##### **Article 12, Paragraphs 1 and 2**

*On preventing corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.*

The information provided in the government's checklists on Article 12 (1) is incomplete. First of all, it should be noted that legislative changes have taken place, due to which the provisions mentioned in the checklist, which are derived from the RA Law "On Audit Activity" and the RA Law "On Accounting" are not relevant, as new laws were adopted and the versions of laws cited in the government's checklist were declared invalid.

On 4 December 2019, a new law "On Audit Activities" was adopted, which is in force since 1 January 2020.<sup>177</sup> On 4 December 2019, the RA Laws "On Accounting"<sup>178</sup> and "On Regulation and Public

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<sup>173</sup> "RA Law on Forfeiture of Illegal Assets" was adopted on 16.04.2020, entered into force on 23.05.2020 and is available at <<https://www.arlis.am/DocumentView.aspx?DocID=142347>> (Armenian), (accessed on 25 December, 2020).

<sup>174</sup> The respective amendments to the "RA Law on Prosecutor's Office" were adopted on 16.04.2020 and entered into force on 23.05.2020 is available at <<https://www.arlis.am/DocumentView.aspx?DocID=142346>> (Armenian), (accessed on 25 December, 2020).

<sup>175</sup> More information is available at <<http://www.prosecutor.am/en/mn/7814/>> (accessed on 25 December, 2020)

<sup>176</sup> See the information provided by the RA General Prosecutor Office on 01 October, 2020.

<sup>177</sup> "RA Law on Audit Activities" was adopted on 04.12.2019 and entered into force on 01.01.2020 is available at <<https://www.arlis.am/DocumentView.aspx?DocID=137752>> (Armenian), (accessed on 25 December, 2020).

<sup>178</sup> "RA Law on Accounting" was adopted on 04.12.2019 and entered into force on 01.01.2020 is available at <<https://www.arlis.am/DocumentView.aspx?DocID=137754>> (Armenian), (accessed on 25 December, 2020).



Control of Financial Accounting and Auditor Activities” were adopted, which are in force since 1 January 2020.<sup>179</sup>

Then, assessing the efforts of the private sector for transparency and the existing mechanisms, it is necessary to discuss several tools, the introduction of which is on the anti-corruption agenda of Armenia.

The first is the promotion of the adoption of anti-corruption compliance requirements in the business (private) sector. The latter is envisaged in the scope of the RA Anti-corruption strategy. Aimed at the fulfilment of this event the RA Ministry of Economy together with international organizations and NGOs developed and submitted to the RA government the draft Corporate Governance Code,<sup>180</sup> which, among other principles, enshrines the principles that promote ethical and anti-corruption compliance in the private sector. The draft code stipulates that organizations should establish an internal control and risk management system, one of the important components of which is the compliance function. According to the draft Code, the person performing this function has the responsibility to facilitate the implementation of the anti-corruption compliance program and to monitor it.

The second is the concept of beneficial ownership transparency, which in the RA is included in the following spheres:

a) Banking legislation

Banking legislation uses the term "real beneficiary". It includes the term "beneficial owner" which is broader. Thus, the RA Law on AML/CFT, which was developed in compliance with the FATF requirements, envisages a requirement to identify the real beneficiary of the legal entity and also to identify the real beneficiary of the *transaction or business relationship*. The law provides for the following requirements to identify real beneficiaries:

- *Individuals who, through virtue of their participation in the capital of a legal entity, exercise final control over that person (if available), as due to the diversity of shared ownership, it is possible that such natural persons (individually or jointly) will eventually not exist;*
- *Natural persons exercising control over a legal entity by other means (if any), if there are doubts as to whether the natural person (persons) owning the controlling stake in the capital of the legal entity mentioned in point 1 is the beneficial owner(s) or if an individual does not exercise control over a legal entity by virtue of his share;*
- *A natural person holding the position of senior manager of a legal entity, if it is not possible to find out any of the natural persons mentioned in points 1 and 2.*

In case the last of the successive actions also fails, the financial and non-financial institutions are obliged to reject or terminate the transaction or business relationship in accordance with the law, as well as to consider the question of qualifying it as suspicious.

b) Procurement legislation

The institute of beneficial owners was introduced for the first time by the RA Law on Procurement, which came into force on 25 April 2017. It stipulates that the bidder submits information on the beneficial owners of the bid, and the information on the beneficial owners of the winning bidder is published on the official procurement website.<sup>181</sup> Moreover, according to the above-mentioned law, the beneficial owner is the natural person (persons) who:

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<sup>179</sup> "RA Law on Regulation and Public Control of Financial Accounting and Auditor Activities" was adopted on 04.12.2019 and entered into force on 01.01.2020 is available at

<<https://www.arlis.am/DocumentView.aspx?DocID=137755>> (Armenian), (accessed on 25 December, 2020).

<sup>180</sup> The draft is available at <<https://www.e-draft.am/projects/2015/about>> (in Armenian), (accessed on 25 December, 2020). The draft was published in October 2019; however, there is still no progress on adoption process.

<sup>181</sup> See RA official procurement website at <<https://gnumner.am/en/>> (accessed on 25 December, 2020).



- *Directly or indirectly owns more than 10% of the voting shares in the authorized capital of the legal entity participating in the procurement process, including the shares according to the representative, or*
- *Is the person (persons) who has the right to appoint or dismiss the members of the executive body of the participating legal entity, or*
- *Receives more than 15% of the profit received as a result of business or other activities carried out by that legal entity, and*
- *In the absence of the latter, the data of the head and members of the executive body are presented.*

The latter is implemented in practice.

#### c) Metal mining legislation

Armenia has created a register of beneficial owners in the field of metal mining within the framework of the EITI. To this end, on 23 April 2019, amendments were made to the RA Subsoil Code and the RA Law on State Registration of Legal Entities, Separated Subdivisions of Legal Entities, Enterprises and Individual Entrepreneurs. In particular, they provide for the following definition of the term "*beneficial owner*" - "*a natural person*" who:

- *Controls or owns at least 10% participation of the statutory (shareholding) capital of a legal entity separately or jointly with an affiliated person, including shares, stocks, pieces or voting rights or at least 10% of the total participation in the authorized (shareholding) capital of the given legal entity or shareholder legal entities;*
- *Supervises the legal entity by virtue of the fact of participation in the authorized (share) capital, through preferred shares or voting shares or other securities with more than one vote.*
- *Receives at least 15% of the legal entity's annual income.*
- *Is authorized to appoint or dismiss persons involved in the governing bodies of a legal entity.*
- *Without participating in the governing bodies of a legal entity, has the opportunity to influence the management of the legal entity, control the management or activities of the legal entity, or has the right to predetermine the decisions of the legal entity in other ways, including by trust management agreement, joint venture agreement, option agreement and other means.*

In case of possession, control or receiving an income from a legal entity on the grounds defined by this paragraph, a person with political influence is considered a beneficial owner, regardless of the amount of control, participation and income. In 2020, the RA MoJ developed a declaration form of the beneficial owners and the procedure for completing and submitting the latter.<sup>182</sup> And the RA government developed the procedure for publishing the declarations. For now, all legislative changes apply only to metal mining companies, that is, only they have an obligation to provide information about their beneficial owners.

#### d) Other commitments

Commitments related to the Institute of Beneficial Owners are envisaged by the RA Anti-Corruption strategy 2019-2022, the 4th OGP National Action Plan and the 4th Monitoring Report of OECD Anti-Corruption Network. They provide that the definition of beneficial owners of legal entities will be established and that the companies, step by step, will be legally obliged to reveal their beneficial owners.

There is no central beneficial ownership registry in Armenia where companies and all other types of legal entities (such as foundations, domestic trusts, and foreign trusts operating in the country) are

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<sup>182</sup> The N 36-N Decree adopted on 05.02.2020 by the RA Minister of Justice on the Declaration form of the beneficial owners and the procedure for completing and submitting the latter is available at <http://moj.am/legal/view/article/1283/> (Armenian), (accessed on 25 December, 2020).

required to report their ultimate owners. However, it is worth mentioning that according to the point 24 of the Report on the Ongoing Results of the Anti-corruption strategy for the 1st half of 2020, the software of the beneficial ownership registry within the framework of the State Register of the Legal Entities of the MoJ of the RA has been developed.

Additionally, the legal mechanisms to find out whether information that was provided about beneficial ownership is accurate, are not effective ones in the scope of Armenian legislation. Therefore, we do believe that beneficial ownership regulation is not effective enough to ensure an adequate level of transparency in the private sector. In this context, it should also be noted that the RA MoJ operates the electronic register of the State Register of Legal Entities Agency,<sup>183</sup> which includes information on legal entities operating in the RA (such as trusts, foundations, associations, commercial organizations, etc.). However, this information does not imply information about the beneficial owners of companies and other legal entities – it is the so-called “public information” provided by the organization, except for closed joint-stock companies. This information is not freely and easily accessible to the public (the only information available are the name of the organization and whether the organization has been liquidated or not). An interested party has to pay a state fee to obtain information about an entity (for example the date of establishment, company ID, address of registration, historical data of previous owners and directors, etc.) – in the past, most of this information was available to the public at no extra charge. Nonetheless, in light of the recent legislative amendments, only journalists have access to the above-mentioned information on companies free of charge.<sup>184</sup>

At the same time, it should be noted that the Draft Law on making amendments to the “RA Law on the State Registration of Legal Entities, Separate Divisions of Legal Entities, Institutions, and Individual Entrepreneurs”, has been developed by the RA MoJ and published on e-draft.am. According to the draft, the concept of “real owner” has been replaced by the concept of “real beneficiary”, as the term “real beneficiary” is used as a common concept in terms of international experience. Besides, the draft envisages that starting from 2021, the requirement to identify the real beneficiaries will be applied to legal entities operating in the sector of regulating public services and providing audio-visual media services. Starting from 1 January 2022, the mentioned requirements will be applied to all types of legal entities registered running in the RA. Some basic information of the registry will be accessible freely, while other details can be obtained after paying a fee.<sup>185</sup>

### **Good practice**

Journalists have free access to the information on legal entities registered in the electronic register of the Unified State Register of Legal Entities Agency.

### **Deficiencies**

There is no central beneficial ownership registry in Armenia where companies and all other types of legal entities are required to report their ultimate owners. The electronic register of the Unified State Register of Legal Entities Agency, which includes information on legal entities, is not fully freely and easily accessible to the public.

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<sup>183</sup> See the RA MoJ, which operates the electronic register of the State Register of Legal Entities Agency at <<https://www.e-register.am/en/>> (accessed on 25 December, 2020).

<sup>184</sup> See the respective amendments to the “RA Law on State Duty”.

<sup>185</sup> The respective Draft Law on making amendments to the “RA Law on the State Registration of Legal Entities, Separate Divisions of Legal Entities, Institutions, Individual Entrepreneurs” is available at <<https://www.e-draft.am/projects/2818/about>> (accessed on 25 December, 2020).

### **Article 12, Paragraph 3**

*On taking such measures as may be necessary to prohibit the acts carried out for the purpose of committing any of the offences established in accordance with this Convention.*

In addition to the measures of responsibility mentioned in the government's checklist, other regulations of administrative and criminal legal relations should be listed here. In particular, administrative offences envisaged in the RA Code on Administrative Offences:

Failure to keep accounts (Article 169.9); failure to establish an accounting policy (Article 169.10); failure to keep accounting records and other information (Article 169.11); failure to submit financial statements to state bodies or non-publication (Article 169.12); signing of published financial statements by a non-certified accountant, or submitting unsigned (Article 169.13); non-publication or incomplete publication of the report by the foundations (Article 169.18); non-publication of the report by the non-governmental organization (Article 169.26), failure to pay taxes, duties and other mandatory payments provided by law (Article 170.3); failure to register with the tax authorities within the established period (Article 170.4).

Crimes envisaged in the RA Criminal Code: Illegal entrepreneurial activity (Article 189); commercial bribe (Article 200); manufacture and sale of forged payment documents (Article 203); evasion from taxes, duties or other mandatory payments (Article 205); abuse of authority by the employees of commercial or other organizations (Article 214).

The references indicated in the government's checklist, which relate to accounting and auditing activities, are discussed in this parallel report under article 12, paragraph 1.

### **UNCAC Article 13. Participation of society**

**This article is considered largely implemented, and the level of implementation in practice is moderate.**

### **Article 13, Paragraph 1**

*On taking appropriate measures to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.*

The answer provided in the government's checklist is almost complete. It is necessary to add the following:

- Termination of the CSOs Anti-Corruption Coalition's membership from the Anti-Corruption Policy Council by setting unjustified requirements; organization of the competition in order to involve NGOs in the Anti-Corruption Policy Council was combined with the procedural violations of the requirements of the relevant regulatory act. As a result, three NGOs were included in the Council in violation of the requirements of the regulatory legal act. Information on this is provided under Article 6 discussed in this parallel report.
- As a result of amendments and additions to the RA Law on State Duty<sup>186</sup> and a number of other relevant laws, the media and journalists were exempted from paying the state fee for obtaining information from the Unified State Register of Legal Entities of the RA, which enables the media to operate more effectively and provide additional information to the public. However, this information is not freely accessible to the public at large.

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<sup>186</sup> See the respective amendments to the "RA Law on State Duty".

- Getting acquainted with the Reports on the implementation of the Anti-Corruption strategy and its Implementation Action Plan for 2019 and for the first half of 2020,<sup>187</sup> it may be concluded that:
  - Action 5: Building capacities of the bodies and NGOs responsible for drafting of Anti-Corruption Policy, has been implemented partially, as only an initial needs assessment was carried out without a clear methodology.
  - Action 26: Introduction of a unified platform for the hotline of applications, complaints, requests from citizens, has been implemented partly, as the technical feasibility is studied, the conceptual provisions for the creation of a common platform are currently under discussion according to the MoJ.
  - Action 28: Introduction of a toolkit for receiving accessible information on the services being provided by state and local self-government bodies to citizens, including the elaboration of sample forms of filling in applications, has been implemented partially, as the technical task for the electronic platform was developed and the methodology to optimize the services provided by state and local self-government bodies to citizens was drafted.
  - Action 30: Establishment of a unified platform of proactive publication of information required within the scope of the RA Law “On Freedom of Information”, has been implemented partially, as only the concept of the platform to be created was discussed.
  - Action 42: Elaboration, approval and implementation of a programme of an annual public awareness campaign, was carried out partially, but we believe the list of actions is almost completely irrelevant. Moreover, in our estimation, no systematic work has been done in this regard; no results have been registered.
  - Action 43: Inclusion of the subject “Fundamentals of the anti-corruption policy” in the instruction modules of all higher education and secondary vocational training institutions, has been implemented partially, as it has not been completely implemented in the case of universities, and in the case of secondary vocational education institutions, it is only planned that it will be implemented in the 2020-2021 academic year.
  - Action 44: Providing anti-corruption education in high school, has been implemented partially, as only activities to review the criteria of the courses in the schools was carried out.
  - Action 45: Public awareness-raising on the reforms being implemented in the system of civil service, conducting trainings, including the topics of prevention of corruption, integrity, and human rights, has been performed partially, but the implementation has been suspended. In our estimation, this action was not carried out in terms of corruption prevention and integrity training.
  - Action 48: Conducting regular surveys, among the general public, on corruption, public confidence and the impact of anti-corruption measures, publishing the results of surveys, been implemented partially as in September–October 2019 International Republican Institute (IRI) conducted Public Opinion Survey on corruption perception.<sup>188</sup> No other initiations, such as development of the qualitative and/or quantitative survey with the participation of all anti-corruption actors has not implemented.

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<sup>187</sup> See the Reports on the Ongoing Results of the Implementation of the Anti-corruption strategy.

<sup>188</sup> The Public Opinion Survey is available at <<https://www.iri.org/resource/new-poll-armenians-support-anti-corruption-measures-want-action-socioeconomic-concerns>>, <[https://www.iri.org/sites/default/files/wysiwyg/iri\\_poll\\_armenia\\_september-october\\_2019.pdf](https://www.iri.org/sites/default/files/wysiwyg/iri_poll_armenia_september-october_2019.pdf)> (accessed on 25 December, 2020).

- Anti-corruption programs<sup>189</sup> aimed at educating citizens, including youth, have been implemented by some specialized CSOs over the past few years.

While discussing public participation, it is crucial to consider the role of the public councils under the Ministries and Prime-Minister. These councils are advisory bodies and aimed at providing support to Ministries and Prime Minister regarding the general policy, reforms as well as establish meaningful dialogues between CSOs and state bodies. Nonetheless, these public councils are operated purely formal rather than efficient. The meetings/sessions are not conducted periodically. The agendas are not discussed with CSOs beforehand and are being provided to CSOs two-three days before the sessions. CSOs do not even have an opportunity to participate in the drafting of the agenda, provide suggestions thereof. The same is true in the case of the Anti-Corruption Policy Council headed by the Prime Minister, where several independent specialized anti-corruption CSOs are not represented.<sup>190</sup>

Another issue that is relevant to this article is the transparency of the decision-making processes in the government and other state bodies. As was mentioned in this parallel report, the MoJ operates [www.e-draft.am](http://www.e-draft.am) website. The state agencies are obliged to publish and organize public discussions of the laws. The public discussion of the regulatory (secondary) acts are not mandatory, and the state agencies have the discretion to decide which regulatory act is worth to present for public discussion. Thus, many decrees are not disclosed to society until their adoption. One of those acts was the Order of the State Revenue Committee (SRC)'s Head, which implied an unlawful and unjustified burden to CSOs concerning the annual reports. However, due to the efforts of CSOs, constructive dialogue was established between the SRC and CSOs, and the specific provisions of that legal act were declared invalid.<sup>191</sup>

Another final, yet important deficiency is the lack of public monitoring mechanisms applied by the state bodies. The disturbing factor here is that the competent authorities do not provide feedback to the public. For example, they can publish a draft law and demonstrate this publication as a performance indicator of the specific commitment. However, the state bodies make no efforts to find out whether the last beneficiary of society is familiar with the draft act or not.<sup>192</sup>

## Deficiencies

- The public councils under the RA Prime Minister and Ministries are operated purely formal rather than efficiently: The meetings/sessions are not conducted periodically, agendas are not discussed with CSOs beforehand and are being provided to CSOs two to three days before the sessions. CSOs do not even have an opportunity to participate in the drafting of the agenda or to suggest agenda items .
- In the past two years, the activity of the Anti-Corruption Policy Council has been ineffective and politicised. Several independent specialized anti-corruption CSOs are not represented.
- The state agencies are obliged to publish and organize public discussions of the laws. The public discussion of the regulatory (secondary) acts are not mandatory, and the state agencies have the

<sup>189</sup> See, for example, the anti-corruption online training platform launched by the ALA at <https://elearning.armla.am/> (accessed on 25 December, 2020).

<sup>190</sup> Interview with Mr. Karen Zadoyan, held on 04 November, 2020.

<sup>191</sup> See more about the process and the results at <https://armla.am/en/5209.html>. According to the RA Law on NGOs (Art. 24), the NGOs should submit detailed reports on used public funds. However, the decree of the SRC's Head envisaged an additional burden for NGOs and was binding NGOs to submit the report on the use of non-state funding. This order contradicted the law (accessed on 25 December, 2020).

<sup>192</sup> Interview with Mr. Arzuman Harutyunyan, Governing Board Member of the CSOs Anti-Corruption Coalition of Armenia, President of the Association of Audio-Visual Reporters' Public Organization, held on 28 October, 2020.

discretion to decide which regulatory act is worth to present for public discussion. Thus, many decisions are not disclosed to civil society until their adoption.

- There is a lack of public monitoring mechanisms applied by the state bodies. The competent authorities do not provide feedback to the public and make no efforts to find out whether the last beneficiary of society is familiar with the draft act or not.

#### **Article 13, Paragraph 2**

*On taking appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.*

The answer to this part in the government's checklist is almost complete. It is necessary to add the following:

- For anonymous reporting of corruption cases, there is a unified electronic state whistleblowing platform (<https://www.azdararir.am/en/>) operating in the RA, through which, according to the "RA Law on Whistleblowing System", the whistle-blower can provide information about a corruption case anonymously. Through the unified electronic platform, the MoJ guarantees the protection of the whistleblower by ensuring their anonymity. If there are grounds for verifying the report, the RA General Prosecutor's Office send the report in a documented version to the body carrying out operative-investigative activities. The report is subject to inspection in accordance with the "RA Law on Operative-Investigative Activities", in cases where the information provided in the report is sufficiently justified, relates to a specific official or body and contains data that can be verified. For example, in 2020, 136 reports were submitted through the platform, of which 37.65% were checked by operational-investigative actions, and 29.69% criminal cases were commenced.
- An electronic business sector reporting platform also operates in the RA, through which individuals can report anonymously on corruption issues and cases in the business sector. This electronic reporting/whistleblowing platform guarantees the protection of the whistleblower by ensuring their anonymity. The electronic platform is operated by the ALA and was launched earlier than the unified electronic state whistleblowing platform.<sup>193</sup>

#### **UNCAC Article 14. Measures to prevent money-laundering**

**This article is considered largely implemented and the level of implementation in practice is moderate.**

#### **Article 14, Subparagraph 1 (a)**

*On instituting a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;*

The answer provided in the government's checklist is complete. However, it should be added that on 25 March 2020, an amendment was made to the RA Law on AML/CFT, as a result of which entities engaged in

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<sup>193</sup> See more about the whistleblowing platforms in the discussion under Article 8, paragraph 4.

foreign currency broker-dealer trade transactions were removed from the scope of reporting entities of Article 3, Part 1, Clause 4, Sub-Clause “c” of the Law.<sup>194</sup>

It is also important to note the gaps in the anti-money laundering legislation. In particular, in order to fully implement the recommendations of the FATF, the scope of the politically exposed persons too is narrow.

Another issue that still is pending and unregulated is that the legal arrangements are not recognised under Armenian law. In particular, foreign legal arrangements are covered under the definition of a legal person in Article 3(16) of the AML/CFT Law, which includes a legal formation without legal personality under foreign law. Therefore, the identification and verification requirements under the AML/CFT Law which apply to a (domestic or foreign) legal person also apply to a foreign legal arrangement. There is no separate definition of the beneficial owner of legal arrangements in the AML/CFT Law. The Armenian law is not familiar with the terms used for defining beneficial owners of legal arrangements (settlor, trustee or protector) as legal arrangements are not recognised under Armenian law.<sup>195</sup>

The last issue that is worth mentioning is the criminal liability of legal persons for corruption offences. It is the first time in Armenia when the government is ready to consider the criminal liability of legal entities and included a respective provision within the Anti-Corruption strategy. According to point 40 of the Report on the Ongoing Results of the Implementation of the Anti-Corruption Strategy for the 1st half of 2020 and to the additional information provided by the MoJ, the international experience was studied, and the Criminal Code was drafted. The draft was approved by the government and presented to RA National Assembly.

It is worth mentioning that on 13 October 2020, the Draft Law on making amendments and supplements to the RA Law on AML/CFT was published,<sup>196</sup> which is envisaged to regulate the above-mentioned issues. However, the draft law is still in the process of revision, and, as of November 2020, the discussion of the draft law has not been included in the upcoming session of the National Assembly.

## Deficiency

The scope of the politically exposed persons is too narrow.

### Article 14, Subparagraph 1 (b)

*On ensuring that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and on considering the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.*

The answer provided in the government’s checklist is complete, but it should be added that on 29 October 2019, the Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 14 (“Postponement of suspicious domestic transactions”) of the CoE Convention on Laundering, Search,

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<sup>194</sup> The respective amendments to the “RA Law on Combating Money Laundering and Terrorism Financing” was adopted on 25.03.2020 and enter into force on 15.04.2020 is available at <<https://www.arlis.am/DocumentView.aspx?DocID=141093>> (Armenian), (accessed on 25 December, 2020).

<sup>195</sup> Anti-money laundering and counter-terrorist financing measures – Armenia. Fifth Round Mutual Evaluation Report, December 2015 is available at <[http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MONEYVAL\(2015\)34\\_5thR\\_MER\\_Armenia.pdf](http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MONEYVAL(2015)34_5thR_MER_Armenia.pdf)>, 121 Criterion 10.11, at 130 (accessed on 25 December, 2020).

<sup>196</sup> The Draft Law on making amendments and supplements to the RA Law on AML/CFT is available at <<https://www.e-draft.am/projects/2798/about>> (Armenian), (accessed on 25 December, 2020).



Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198)<sup>197</sup> was published. According to the Thematic Monitoring Review, Armenian authorities are competent to suspend suspicious domestic transactions for up to five days (for the FIU/National Bank) or three days (for the FIU). These measures are not necessarily based on suspicious transaction reports (STRs). The measures have been applied in practice. However, there is no publicly available data on the number of STRs filed by the FIU. One of the recent cases on money laundering is that of a former high-ranking official and his wife. The criminal case was initiated in the RA Special Investigation Service under Article 190 (part 3, point 1) of the RA Criminal Code for the alleged legalization of illegally received property in especially large amount (money laundering).<sup>198</sup>

In 2018, 7 criminal cases were initiated for money laundering; in 2017, no criminal case had been filed related to that criminal offence. After the criminalization of illicit enrichment in the past year, criminal prosecution has been instigated against five persons on the basis of that crime.<sup>199</sup>

It should be noted that law enforcement authorities do not routinely conduct proactive parallel financial investigations. At least in relation to major proceeds-generating crimes, the potential for identifying money laundering cases is limited.<sup>200</sup> Meanwhile, the number of requests made by law enforcement authorities to the Financial Monitoring Center (FMC), the financial intelligence unit working under the Central Bank of Armenia, in the course of 2018 and 2019 has dramatically increased compared to the 2015-2017 period; 84 and 202 requests were made in 2018 and 2019, respectively, compared to 36, 36 and 58 requests recorded in the 2015-2017 period.<sup>201</sup>

#### **Article 14, Paragraph 2**

*On considering implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital.*

The answer provided in the government's checklist is almost complete. It should be added that smuggling of cash and (or) payment instruments is a criminal offence in Armenia (RA Criminal Code, Article 215.1).

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<sup>197</sup> See the Thematic Monitoring Review of the Conference of the Parties to CETS No.198 on Article 14 ("Postponement of domestic suspicious transactions") at <<https://rm.coe.int/conference-of-the-parties-council-of-europe-convention-on-laundering-s/168098e89f>> (accessed on 25 December, 2020).

<sup>198</sup> See <<http://www.ccc.am/en/1428493746/3/5962>> (accessed on 25 December, 2020).

<sup>199</sup> The official data provided by the RA General Prosecutor during the International Anti-Corruption Expert Conference organized by the ALA, in Yerevan, in April 2019 is available at <<https://www.prosecutor.am/en/mo/7423/>> <[https://www.youtube.com/watch?v=o\\_F5iDkykQQ](https://www.youtube.com/watch?v=o_F5iDkykQQ)> (accessed on 25 December, 2020).

<sup>200</sup> Anti-money laundering and counter-terrorist financing measures – Armenia. Fifth Round Mutual Evaluation Report, December 2015, page 7, para 14.

<sup>201</sup> Annual Report "On activities of the Financial Monitoring Center in 2019", Financial Monitoring Center, Central Bank of Armenia, Yerevan, 2020, page 11, available at <[https://www.cba.am/Storage/EN/FDK/Annual%20Reports/2019%20FMC%20Report%20\(Eng\)%20-%20Final.pdf](https://www.cba.am/Storage/EN/FDK/Annual%20Reports/2019%20FMC%20Report%20(Eng)%20-%20Final.pdf)> (accessed on 24 November, 2020).

## 5. CHAPTER V. ASSET RECOVERY

### UNCAC Article 51. General provision

**This article is considered partially implemented, and the level of implementation in practice is poor.**

*The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.*

Although noteworthy steps have been implemented in this regard recently, the RA jurisdiction cannot be regarded as affording other States Parties the widest measure of cooperation and assistance in asset recovery.

### **Deficiencies**

The first challenge is the lack of a unified state concept on asset recovery on a policy level, which encompasses all stages and types of asset recovery, including criminal confiscation, civil forfeiture and direct asset recovery. As a result, the legal framework of asset recovery, despite recent legislative reforms, continues to be complex and incomplete.<sup>202</sup> As discussed later in this chapter, there are a number of procedural actions necessary for asset recovery, such as asset retribution and return, which are not regulated by the RA legislation, including international treaties. More particularly, the newly adopted RA “Law on Forfeiture of Illegal Assets” is dedicated to only one aspect of asset recovery, civil forfeiture. At the same time, the RA draft law “On Legal Assistance in Criminal Cases”, developed back in 2019 and dedicated to the comprehensive regulation of international cooperation in criminal matters between states, including the return of the assets to the country of origin, has not been adopted by the Parliament.

The second problem relates to the competent authority in asset recovery. The Action Plan of the RA Anti-Corruption strategy for 2019-2022 foresees an action on the “Establishment of structures on forfeiture of illicit assets”.<sup>203</sup> To implement this action point, the above-mentioned RA “Law on Forfeiture of Illegal Assets” was adopted. It stipulates that the state body mandated to coordinate international asset recovery cases in RA is the General Prosecutor’s Office.<sup>204</sup> For this reason, the “Department for the confiscation of property of illegal origin” has been established by the order N 50 of the RA Prosecutor General of June 3 2020,<sup>205</sup> under the RA Prosecutor General's Office and started its operations by September 2020.<sup>206</sup> However, there is no justification as to why the RA Prosecutor’s Office has been appointed as the competent authority. The policy behind granting such authority to the RA Prosecutor's Office has been justified by the RA Constitution, according to which the competence of the Prosecutor's Office to initiate a lawsuit to protect the state interest can be exercised in a very limited way and only in exceptional cases as defined by law.<sup>207</sup> The exceptional grounds for initiating a lawsuit were directly and exhaustively listed in the RA “Law on the Prosecutor’s Office”<sup>208</sup> whose analysis directly showed that they were truly unique.

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<sup>202</sup> Interview with Mr. Narek Yenokyan, Independent Anti-Corruption expert, held on 4 November, 2020.

<sup>203</sup> See “RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022”, action 39.

<sup>204</sup> See “RA Law on Forfeiture of Illegal Assets”, article 3(1)(15).

<sup>205</sup> Order N 50 of the RA Prosecutor General on Making Amendments in the RA Prosecutor General’s Order N 41 of 21 September, 2019, adopted on 3.06.2020, available at: <https://www.prosecutor.am/myfiles/files/%D5%80%D6%80%D5%A1%D5%B4%D5%A1%D5%B6%D5%B6%D5%A5%D6%80%202020/50%20-%2003.06.20.PDF> (Armenian), (accessed on 25 December, 2020).

<sup>206</sup> See the official response from the RA Ministry of Justice, provided at 14.10.2020.

<sup>207</sup> The “RA Constitution” was adopted on 06.12.2015 and entered into force on 22.12.2015, article 176(3), available at <https://www.arlis.am/DocumentView.aspx?DocID=102510> (Armenian), (accessed on 25 December, 2020).

<sup>208</sup> See “RA Law on Prosecutor's Office”, article 29(2). The grounds included the following: “within a reasonable period of time after receiving a proposal to file a lawsuit, the competent body did not file a lawsuit”, “a violation of state

Meanwhile, a lawsuit for the confiscation of property of illegal origin could have been objectively filed by many state bodies operating in the Republic of Armenia, since there was no feature of exclusivity.<sup>209</sup> Another concern relates to the formation processes of the respective department under the RA Prosecutor General's Office. Although the replenishment of the lists of candidates of prosecutors carrying out functions aimed at the confiscation of property of illegal origin has been carried out through open competitions held by the Qualification Commission adjunct to the Prosecutor General of the Republic of Armenia, some experts raise the issue of transparency, mainly the non-publication of the integrity check documents, as well as the fact that the prosecutors were elected from the prosecutor's office can have a negative impact on their impartiality in cases the assets will belong to the representatives of the incumbent government.<sup>210</sup> On the other hand, CSO members of the mentioned commission are assuring that the hard work carried out by the commission has resulted in the election of candidates with high moral and professional qualities, including knowledge of different spheres of RA legislation, international law and foreign languages.<sup>211</sup> It is also worth mentioning, that according to the RA Criminal Procedure Code, it is the communication on the matter of legal assistance on criminal cases (which also includes aspects on asset recovery) by RA international agreements that is carried out: 1) in connection with executing interrogations concerning executing legal proceeding operations by the cases being in a pre-trial investigation - through RA Prosecutor General Office 2) in connection with executing interrogations concerning executing legal proceeding operations by the cases being in court proceedings - through the RA Ministry of Justice<sup>212</sup>. Hence, there is no single body mandated for the coordination of all the asset recovery efforts in the country. This has a negative impact on offering the widest measure of cooperation. For this reason, the CSO's Anti-Corruption Coalition of Armenia is lobbying for the establishment of a new body, the "Asset Recovery Office", which is equipped with adequate staff and other resources to fulfil its mandate effectively.

The third problem relates to the low level of transparency of implementation and enforcement of the asset recovery provisions. Both the statistics provided by the RA General Prosecutor's Office and the RA judicial department are very limited since the legislation does not impose an obligation to provide statistics on seized, confiscated and returned assets on the basis of the mutual legal assistance requests, as well as on directly recovered assets. Although the Action Plan of the RA Anti-Corruption strategy for 2019-2022 foresees an action dedicated to the improvement of the statistics on corruption-related offences,<sup>213</sup> and the statistical information on corruption offences was supplemented with data on the property confiscated as a result of their investigation by the recent order of the RA Prosecutor General in performance of the mentioned activities,<sup>214</sup> the latter is still insufficient for complying with the UNCAC standards.<sup>215</sup>

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*interests has taken place in matters on which filing a claim is not reserved by law to any state or local self-government body". However, after the adoption of the RA "Law on Forfeiture of Illegal Assets", the grounds have been completed with the grounds to initiate a lawsuit on the basis of the law.*

<sup>209</sup> Interview with Mr. Karen Zadoyan, held on 4 November, 2020.

<sup>210</sup> Interviews with Mr. Narek Yenokyan, Independent Anti-Corruption expert and Mr. Artashes Khalatyan, Attorney at law, held on 4 November, 2020.

<sup>211</sup> Interview with Mr. Arkadi Sahakyan, Lawyer, Member of the CSOs Anti-Corruption Coalition of Armenia, former Chairman of the Governing board of the Coalition, Member of the Qualification Commission adjunct to the Prosecutor General of the Republic of Armenia, held on 6 November, 2020.

<sup>212</sup> "RA Criminal Procedure Code" was adopted on 1.07.1998 and entered into force on 12.01.1999, article 475, available at <<https://www.arlis.am/DocumentView.aspx?DocID=148700>> (Armenian), (accessed on 25 December, 2020).

<sup>213</sup> See "RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022", action 35.

<sup>214</sup> Order N 60 of the RA Prosecutor General on Making Amendments in the RA Prosecutor General's Order N 77 of 27 December, 2019, adopted in 02.07.2020, available at <<https://www.prosecutor.am/myfiles/hraman2060.PDF>> (Armenian), (accessed on 25 December, 2020).

The fourth problem is the slow process of asset recovery-related reforms. The issue of recovery of assets was brought to the political agenda after the Velvet Revolution in Armenia back in 2018. Nevertheless, the competent authority has only recently been established and operated. The latter could have allowed the flows of assets from Armenia for two more years.<sup>216</sup>

The fifth problem is that Armenian legislation does not grant standing to CSOs or civil society, in general, to initiate a legal case for asset recovery, unlike, for instance, France. Granting CSOs the *locus standi* is extremely important, especially in the cases when the government of the state from where the assets are stolen is reluctant to request mutual assistance since the latter itself is engaged in those illicit activities. In this case, the people of the victim state can ask the CSOs of the state, where the assets have been transferred, to initiate the asset recovery.<sup>217</sup> The latter is another step towards affording the widest measure of cooperation.

A number of other problems are discussed in the framework of the above-mentioned articles.

#### **UNCAC Article 52. Prevention and detection of transfers of proceeds of crime**

**This article is considered largely implemented and the level of implementation in practice is moderate.**

##### **Article 52, Paragraph 1**

*On taking such measures as may be necessary to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.*

Relations on customer due diligence, beneficial owner identification and Politically Exposed Persons (PEPs) are regulated by the RA “Law on Combatting Money Laundering and Terrorism Financing”,<sup>218</sup> which are described in detail in the government checklist.

The Action Plan of the RA Anti-Corruption Strategy for 2019-2022 foresees the establishment of the central register of bank accounts.<sup>219</sup> The latter will ensure access to criminal prosecution bodies by guaranteeing data protection. The expected outcome for 2019 is: “*International experience has been studied. As a result of the research, a package of proposals was developed and submitted to the RA Prime Minister's Office*” and for 2020 the expected outcome is “*The central register of bank accounts has been established*”. Unfortunately, even the outcome of 2019 has not been met yet.<sup>220</sup>

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<sup>215</sup> In this regard, it should be fairly noted that since both the issue of asset recovery has only recently brought to the political agenda and the legislation is incomplete, especially with regards to the assets’ return phase, Armenia has almost no experience in returning assets.

<sup>216</sup> Interview with Mr. Artashes Khalatyan, Attorney at law, held on 4 November, 2020.

<sup>217</sup> Interview with Ms. Mariam Zadoyan, Anti-Corruption expert of the CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.

<sup>218</sup> See “RA Law on Combatting Money Laundering and Terrorism Financing”, articles 3, 9, 16,

<sup>219</sup> See “RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022”, action 37.

<sup>220</sup> See the report on the implementation process of actions to be implemented in the first half of 2020 of the “Anti-Corruption strategy and its Implementation Action Plan for 2019-2022”, action 37. The official response of the RA Ministry of Justice, provided at 2.12.2020: “*The practice was studied and relevant legislative amendments have been developed and discussed with stakeholders*”.

The National Assembly adopted the amendments to the RA Criminal Procedure Code and “Law on Bank Secrecy”,<sup>221</sup> which envisage disclosure of banking information. In particular, if in the past banking secrecy could have been revealed only about a suspect or accused, now the prosecuting authorities are allowed to obtain the bank details of not only the person directly involved in the case, but also their family members and related persons. At the same time, the amendments provide specific mechanisms for guarantees and restrictions. However, the President of the Republic did not sign these laws and, with relevant legal grounds and arguments, requested the Constitutional Court to determine the issue of their compliance with the Constitution. The Court ruled that the amendments do not comply with the Constitution.<sup>222</sup>

#### **Article 52, Subparagraph 2 (a)**

*On issuing advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts.*

The Central Bank of Armenia (namely, FMC together with the Financial Supervision Department) provides guidance and training to the private sector and other authorities on a regular basis<sup>223</sup>, including through their e-learning platform<sup>224</sup>, which is described in detail in the government’s checklist.

#### **Article 52, Subparagraph 2 (b)**

*On, where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.*

The FMC is entitled to give corresponding assignments deriving from the RA “Law on Combatting Money Laundering and Terrorism Financing”<sup>225</sup>, which is described in detail in the government’s checklist.

#### **Article 52, Paragraph 3**

*On implementing measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.*

The recording requirements are set by the RA “Law on Combatting Money Laundering and Terrorism Financing”<sup>226</sup>, which is described in detail in the government’s checklist.

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<sup>221</sup> “RA Law on making amendments to the RA Criminal Procedure Code” and “RA Law on Bank Secrecy”, adopted on 22 January, 2020, available at <[http://www.parliament.am/draft\\_history.php?id=10975](http://www.parliament.am/draft_history.php?id=10975)> (Armenian), (accessed on 25 December, 2020).

<sup>222</sup> The Decision of the Constitutional Court N SDV-1546, adopted 18 June 2020, available at <<http://www.concourt.am/armenian/decisions/common/2020/pdf/sdv-1546.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>223</sup> Annual Report “On activities of the Financial Monitoring Center in 2019”, Financial Monitoring Center, Central Bank of Armenia, Yerevan, 2020, Annex 2, page 16.

<sup>224</sup> See the e-learning platform at: [www.lms.fmc.am](http://www.lms.fmc.am) (accessed on 25 December, 2020).

<sup>225</sup> See “RA Law on Combating Money Laundering and Terrorism Financing”, article 10.

#### **Article 52, Paragraph 4**

*On implementing appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.*

Running a shell bank and establishment of relations with the latter are prohibited in Armenia by the RA “Law on Combatting Money Laundering and Terrorism Financing”,<sup>227</sup> which is described in detail in the government’s checklist.

#### **UNCAC Article 53. Measures for direct recovery of property**

**This article is considered largely implemented, and the level of implementation in practice is poor.**

#### **Article 53, Subparagraph (a)**

*On taking such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention.*

The *locus standi* of foreign states in RA civil proceedings is foreseen by the RA Civil Procedure Code<sup>228</sup> with no additional requirements of recognition, which is described in detail in the government’s checklist. However, we are not familiar with any evidence of cases where Armenia shared information on direct asset recovery cases with other countries since no statistics or information on direct asset recovery cases is published online by the relevant authorities.

#### **Article 53, Subparagraph (b)**

*On taking such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences.*

According to the RA legislation, filing a civil suit is envisaged in criminal proceedings. Thus, a civil plaintiff is a natural or legal person who has filed a lawsuit during a criminal case, towards whom there are sufficient grounds to believe that property damage was caused to the latter subject to compensation in criminal proceedings by an act not permitted by the Criminal Code. At the same time, if a person does not file a civil lawsuit in accordance with the criminal procedure, they have the right to file a civil lawsuit through the civil procedure. In criminal proceedings, a civil suit is settled by a judgment. When making a verdict, the court resolves the following questions: whether the property damage caused is subject to compensation,

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<sup>226</sup> Ibid, article 22.

<sup>227</sup> Ibid, articles 15, 19.

<sup>228</sup> “RA Civil Procedure Code”, adopted on 09.02.2018 and entered into force on 09.04.2018, available at <<https://www.arlis.am/DocumentView.aspx?DocID=146495>>, article 432; “RA Law on Compulsory Enforcement of Juridical Acts”, adopted on 05.05.1998 and entered into force on 01.01.1999, available at <<https://www.arlis.am/DocumentView.aspx?DocID=146447>>, articles 4 and 7 (Armenian), (accessed on 25 December, 2020).

whether the civil lawsuit is subject to satisfaction, to whom and to what extent.<sup>229</sup> More information on compensation is described in detail in the government checklist.

#### **Article 53, Subparagraph (c)**

*On taking such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.*

The RA legislation (mainly RA Criminal Procedure Code) does not provide any restrictions regarding foreign states who become the victims of offences<sup>230</sup>. Hence, if a foreign state is recognized as a victim in the scope of the criminal case, it shall enjoy equal rights with other victims, including the right to receive compensation from confiscated assets. The latter is described in more details in the government's checklist. However, there is no publicly available evidence of cases where Armenia shared information on direct asset recovery cases during a criminal investigation with other countries including the issue of confiscation since no statistics or information on direct asset recovery cases is published online by the relevant authorities.

#### **UNCAC Article 54. Mechanisms for recovery of property through international cooperation in confiscation**

**This article is considered partially implemented, and the level of implementation in practice is poor.**

#### **Article 54, Subparagraph 1 (a)**

*On taking such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party.*

The provision of mutual legal assistance in criminal matters is regulated by the RA Criminal Procedure Code. As we can see, Armenia has adopted the model of direct enforcement, which means that the RA competent authorities recognize and enforce the foreign confiscation order.<sup>231</sup> The latter is described in detail in the government's checklist in an answer related to this question and to paragraph 1 of Article 55. In international practice, a model of indirect enforcement also applies. For instance, there are situations in which the institution of new proceedings may be necessary to accommodate the request to the domestic law of the requested State Party. A common situation arises when a State Party requests the enforcement of an order of confiscation against a legal person in a State Party where the criminal liability of legal persons is not recognized. A new proceeding for determining against which individuals to enforce the order will be required.<sup>232</sup> The current RA legislation does not envisage the criminal liability of legal persons; thus, it is unclear how the enforcement will be carried out in the mentioned cases. Concerning the implementation and enforcement, the government's checklist mentions that although the number of petitions on legal assistance for the return of the illicit property is quite small, the procedures provided for by the RA legislation and international treaties are effectively implemented by the RA General Prosecutor's Office. However, no specific statistics are provided on the confiscation of assets on the basis of mutual legal assistance. The only available statistics are restricted to the information on a number of corruption-related

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<sup>229</sup> Interview with Ms. Arpine Yeghikyan, Attorney at Law, held on 4 November, 2020.

<sup>230</sup> See "RA Criminal Procedure Code", article 58.

<sup>231</sup> Ibid, articles 499.8 and 499.9.

<sup>232</sup> Technical Guide to the United Nations Convention against corruption, UNODC, UN, New York, 2009, p.207, available at <[https://www.unodc.org/documents/corruption/Technical\\_Guide\\_UNCAC.pdf](https://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf)> (accessed on 25 December, 2020).



cases which is the following. The RA Prosecutor's Office has received only eight and sent only 35 applications on the provision of mutual legal assistance from and to Commonwealth of Independent States (CIS) countries related to corruption offences in 2019.<sup>233</sup> The numbers for 2018 are 55 and 6 respectively, which also includes other countries than CIS.<sup>234</sup>

The provision of mutual legal assistance in civil matters, set by the subparagraph (c) of the current article, is performed on the basis of the RA "Law on Forfeiture of Illegal Assets". The law foresees the provision of mutual legal assistance through direct enforcement. The law stipulates that the request received from the competent authorities of foreign states relating to the execution of a court judgment or court order of a foreign court within the RA territory should also attach the certified copy of the judicial act, and in cases provided for by international treaties, other materials as well. Acts of a foreign court on forfeiture of illegal assets shall be recognized based on reciprocity, which shall be deemed to be existing unless proved otherwise. Upon receipt of a request on forfeiture of assets from a competent authority of a foreign state, including information and documents necessary for the recognition and execution of such foreign judicial act, the RA Prosecutor General's Office files an application on recognition of the requested judicial act and authorisation of execution thereof in the procedure prescribed by Chapter 52 of the RA Civil Procedure Code. The RA Prosecutor General's Office immediately informs on the decision rendered to the relevant authority of the foreign state.<sup>235</sup>

#### **Article 54, Subparagraph 1 (b)**

*On taking such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law.*

The ability to confiscate the proceeds of foreign predicate offences through legal proceedings involving money laundering is ensured by the RA criminal legislative framework<sup>236</sup> since the law does not provide any exceptions from confiscations for the assets received as a result of money laundering offence. The latter is described in detail in the government checklist. Meanwhile, the low numbers of the initiated cases in practice on money-laundering and similar offences under this article, in general, remains concerning. For instance, the only available statistics show that only 6 cases on money laundering and zero cases on illicit enrichment were initiated in 2019.<sup>237</sup>

#### **Article 54, Subparagraph 1 (c)**

*On considering taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.*

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<sup>233</sup> "Report on the activities of the Prosecutor's Office of the Republic of Armenia in 2019", Yerevan, 2020, p. 176, paras 3-4, available at: <<http://www.prosecutor.am/myfiles/files/reports/haxordum-AJ-2019.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>234</sup> "Report on the activities of the Prosecutor's Office of the Republic of Armenia in 2018", Yerevan, 2019, p. 105, paras 4-5, available at: <<http://www.prosecutor.am/myfiles/files/pdf/report-2018.pdf>> (Armenian), (accessed on 25 December, 2020).

<sup>235</sup> "RA Law on Forfeiture of Illegal Assets", article 29.

<sup>236</sup> "RA Criminal Code", adopted on 18.04.2003 and entered into force on 01.08.2003, articles 103.1 and 190, available at <<https://www.arlis.am/DocumentView.aspx?DocID=147120>> (Armenian), (accessed on 25 December, 2020).

<sup>237</sup> See "Report on the activities of the Prosecutor's Office of the Republic of Armenia in 2019", Yerevan, 2020, pages 72, 78.

As mentioned above, the RA “Law on Forfeiture of Illegal Assets” was adopted in its second reading by the National Assembly of Armenia on 16 April 2020 and came into force on 11 May 2020, which has defined the “Department for the confiscation of property of illegal origin” under General Prosecutor’s Office as a state authority in the mentioned cases. This was a step forward towards strengthening the national framework for asset recovery since, among other issues, it allows confiscation of property without a criminal conviction. This law regulates relations pertaining to proceedings for civil forfeiture of illegal assets, defines grounds for launching an investigation and carrying out an examination, the scope of authorities competent for initiating forfeiture proceedings for illegal assets and carrying out an examination, rules of international co-operation with regard to civil forfeiture of illegal assets, as well as other relations pertaining to the civil forfeiture of illegal assets.<sup>238</sup> Proceedings for civil forfeiture of illegal assets is a procedure initiated by the competent authority for the purpose of forfeiture of illegal assets, which starts by rendering a decision on launching an investigation of the grounds for bringing an action, includes bringing an action for civil forfeiture of assets (*in rem*) and is completed by a final judicial act, entered into legal force, on the action brought for forfeiture of illegal assets or upon other grounds provided for by the law.<sup>239</sup>

Because the law was adopted and entered into force in 2020, and the respective authority was formed only in late 2020, the most recent information is that the latter is in the stage of investigating several cases that have been transferred to the department, in order to build up the necessary evidence base.<sup>240</sup> Thus, the only applicable information on the implementation and enforcement of the newly adopted law is that examination has been launched in regards to property belonging to 206 people.<sup>241</sup>

### Good Practice

The RA “Law on Forfeiture of Illegal Assets” has adopted the model of issuing unexplained wealth orders. This model is applied in various forms in a number of countries, including Italy, Ireland, Australia, Bulgaria, Slovenia and the United Kingdom. Unexplained wealth orders assume that assets have been obtained illegally as long as the person to whom the illegal assets belong to has not proven the lawfulness of acquisition of the assets.<sup>242</sup>

The necessary legal grounds for initiating an examination are the following:

- there is a judicial act of conviction having entered into legal force by which the commission of one of the crimes provided for by the Law is established, and there are sufficient grounds with regard to materials available in the given criminal case to suspect that there are illegal assets belonging to the convicted person or the person affiliated with him or her which have not been confiscated by a judgment;
- the person is accused in an initiated criminal case for committing one of the crimes provided for by the law and there are sufficient grounds to suspect that there are illegal assets;
- there are sufficient grounds to suspect that there are illegal assets, but criminal prosecution or initiating a criminal case is impossible (law on amnesty has been adopted, the statutes of

<sup>238</sup> See “RA Law on Forfeiture of Illegal Assets”, article 1.

<sup>239</sup> Ibid, article 3(12).

<sup>240</sup> “Launch of the institution of confiscation of ill-earned assets discussed in government”, RA government press release, available at <<https://www.primeminister.am/en/press-release/item/2020/11/14/Nikol-Pashinyan-meeting/>> (accessed on 25 December, 2020).

<sup>241</sup> “Within the framework of the process of confiscation of property of illegal origin, an investigation was launched in relation to property belonging to 206 persons”, Official Website of the RA General Prosecutor’s Office, available at <<https://www.prosecutor.am/en/mn/8028/>> (accessed on 25 December, 2020).

<sup>242</sup> Justification of the RA “Law on Forfeiture of Illegal Assets” and related legislative acts, paras 56, 60, available at <[http://www.parliament.am/draft\\_docs7/K-438-438-14\\_Himnavorum.pdf](http://www.parliament.am/draft_docs7/K-438-438-14_Himnavorum.pdf)> (Armenian), (accessed on 25 December, 2020).

limitations have expired, the person has died, at the moment of committing the act the person has not attained the age of criminal liability as provided for by law);

- there are sufficient grounds to suspect that there are illegal assets, but the criminal case initiated with regard to committing one of the crimes provided for by the law has been suspended in accordance with law; or
- based on the information revealed as a result of intelligence measures, there are sufficient grounds to suspect that illegal assets belong to the official or a person affiliated with him or her.<sup>243</sup>

The list of selected articles includes the crimes for which the main motive is the acquisition of property through criminal sources or for which the financing or use of a certain property is essential. The list includes mainly corruption crimes, as well as crimes related to trafficking, terrorism and drugs.<sup>244</sup>

Based on the preliminary results of an examination, the competent authority in the Prosecutor General's office shall draw up a summary on examination results, deciding either to terminate the proceedings for civil forfeiture of illegal assets or undertake measures for bringing an action for civil forfeiture of illegal assets.<sup>245</sup>

The asset forfeiture law has a retroactive application. Thus it applies to criminal proceeds that were acquired also before the enactment of the law, but, in any case, after 21 September 1991 (RA Independence Day).<sup>246</sup> The latter has been described as a progressive and efficient rule in the frameworks of asset recovery.<sup>247</sup> The civil forfeiture proceedings can be carried out concurrent to criminal proceedings. The main condition is that statements made and testimony given within the framework of proceedings for civil forfeiture of illegal assets, according to the rules of the criminal procedure, may not be used, as a rule, against the person having made or given them or his/her close relatives within the framework of a criminal case.<sup>248</sup> The scope of powers of the RA Prosecutor General's Office is aimed at revealing the existence of grounds for initiating a claim for forfeiture and gathering evidence. The law prescribes the ability to obtain evidence *ex parte*, that is without notice to the asset holder, including confidential financial or other evidence.<sup>249</sup>

#### **Article 54, Subparagraph 2 (a)**

*On taking such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article.*

This subparagraph refers to the domestic enforcement of foreign seizure orders. In regards to the provision of mutual legal assistance in criminal matters, the RA Criminal Procedure Code stipulates different regulations depending on the absence or presence of international treaties. Thus, procedural actions in the framework of the provision of mutual legal assistance (including on seizure), in case of applicable RA

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<sup>243</sup> See "RA Law on Forfeiture of Illegal Assets", article 5.

<sup>244</sup> Ibid, article 3(4).

<sup>245</sup> Ibid, article 13.

<sup>246</sup> Ibid, article 8.

<sup>247</sup> Interview with Mr. Arkadi Sahakyan, Lawyer, Member of the CSOs Anti-Corruption Coalition of Armenia, former Chairman of the Governing board of the Coalition, Member of the Qualification Commission adjunct to the Prosecutor General of the Republic of Armenia, held on 06 November, 2020.

<sup>248</sup> See "RA Law on Forfeiture of Illegal Assets", article 10.

<sup>249</sup> Ibid, article 9.

international treaties, are carried out in accordance with those treaties and the RA Criminal Procedure Code.<sup>250</sup> This is described in detail in the government's checklist. In regards to the provision of mutual legal assistance in case of the absence of international treaties, the latter can be carried out only on an exclusive basis in the event of agreements on mutual legal assistance reached through diplomatic channels which must be agreed upon in advance with the RA General Prosecutor's Office in the phase of pre-trial proceedings and the RA Ministry of Justice in the phase of a court hearing, including administration of judgments<sup>251</sup>. The UNCAC is considered as a necessary and sufficient treaty basis in case of absence of other bilateral or multilateral treaties on the provision of mutual legal advice,<sup>252</sup> which means that almost in all the cases the legal rules regulating the procedures in case of presence of treaties will apply. The seizure of property is foreseen by RA criminal legislation as a remedy to secure property in civil claims and to prevent possible seizure and for coverage of court expenses.<sup>253</sup> The RA reporting regulations do not encompass any information on freezing and seizure of assets on the basis of requests of mutual legal assistance.<sup>254</sup> The government's checklist states: *"These legal regulations were applied in the framework of one request for legal assistance. Particularly: In the case of inquiry from "A" state, a request was received to seize property according to the decision of the competent authority of the requesting State."* No further information on this or other cases appears to be publicly available.

In regards to the provision of mutual legal assistance in civil matters, the RA "Law on Forfeiture of Illegal Assets" stipulates that the request received from the competent authorities of foreign states relating to the request on the execution of securing measures against the assets of a foreign court within the RA territory should also attach the certified copy of the corresponding judicial act and in cases provided for by international treaties, other materials as well. Acts of a foreign court on securing measures against the assets shall be recognized based on reciprocity, which shall be deemed to be existing unless proved otherwise. The RA Prosecutor General's Office, upon receipt from a competent authority of a foreign state a request on securing measures against the assets, as well as information and documents necessary for recognition and execution of such foreign judicial act, files an application on recognition of the requested judicial act and authorisation of execution thereof in the procedure prescribed by Chapter 52 of the RA Civil Procedure Code. The RA Prosecutor General's Office immediately informs on the decision rendered to the relevant authority of the foreign state.<sup>255</sup> The only applicable information on the implementation and enforcement of the newly adopted law, as discussed above, is that examination has been launched in regards to property belonging to 206 people.<sup>256</sup>

#### **Article 54, Subparagraph 2 (b)**

*On taking such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article.*

This subparagraph refers to the power to freeze or seize property upon the request of another foreign competent authority that provides a reasonable basis that there are sufficient grounds for taking such

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<sup>250</sup> See "RA Criminal Procedure Code", Chapter 54.

<sup>251</sup> See "RA Criminal Procedure Code", Chapter 54<sup>1</sup>.

<sup>252</sup> See United Nations Convention Against Corruption, article 55(6).

<sup>253</sup> See "RA Criminal Procedure Code", article 232.

<sup>254</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.

<sup>255</sup> See "RA Law on Forfeiture of Illegal Assets", article 29.

<sup>256</sup> See Official Website of the RA General Prosecutor's Office.

actions and that the property would eventually be subject to an order of confiscation. The difference from the above-mentioned paragraph is that in this case the foreign seizure order is absent.

The RA government's checklist mentions that RA is only partially compliant with this provision. Neither our criminal nor civil legislation, including mutual assistance treaties, specifically foresee the possibility of seizure of stolen assets without a foreign seizure order. Although there is no specific legislative ban on implementing the seizure without a foreign seizure order, it can be assumed that the latter is not applied in practice since there is no information available on its application neither in the published reports of the activities of the RA Prosecutor's Office, nor in the RA government's checklist.<sup>257</sup>

#### **Article 54, Subparagraph 2 (c)**

*On considering taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.*

This subparagraph refers to provisional measures such as injunctions, monitoring of enterprises or accounts, sequestering, restriction orders, available at an early stage, such as upon receiving information of an arrest or charge related to those assets. While the introduction of such measures is not a positive obligation under the UNCAC, States Parties nevertheless have to consider the adoption of additional provisional measures to be able to secure the assets.

The RA criminal legislative framework does not foresee any other provisional measures apart from the seizure.<sup>258</sup> In regards to the civil legislation, the newly adopted RA "Law on Forfeiture of Illegal Assets" states that the court, upon motion of a party and guided by the peculiarities provided for by this Law, shall apply one of the securing measures provided for by the RA Civil Procedure Code.<sup>259</sup> Besides seizure, this measure includes the prohibition of performance of certain actions and imposing an obligation of performance of certain actions<sup>260</sup>. The RA "Law on Forfeiture of Illegal Assets" lays down rules for the management of property by the state, taking into account that in exceptional cases, it may be necessary to transfer possession of property to the state as a means of security. In exceptional cases and based on the peculiarities of examination of a case, the court can rule upon transfer of assets into possession of the State as a securing measure. In that case, the management and custody of the given assets shall be conducted by the State. The assets may, as a securing measure, be transferred to the State where:

- (1) it is probable that the value of assets may significantly reduce otherwise,
- (2) it is probable that the assets may be used for committing a crime,
- (3) given the peculiarities of the assets or the use thereof, it is probable that leaving the assets with the respondent may make impossible or significantly complicate the further forfeiture of assets.

The assets may be transferred by the competent authority to the State and local self-government bodies that have the equipment, premises and specially qualified staff required for the maintenance of the assets, as well as to state organisations (organisations with state share). The State may transfer the given assets to a trust management where specialised management of assets is necessary for securing the value of the assets. The procedure for holding a tender for trust management of assets as well as the template of

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<sup>257</sup> Interview with Ms. Mariam Zadoyan, CSOs Anti-Corruption Coalition of Armenia, held on 02 November, 2020.

<sup>258</sup> Apart from the article 232 of the RA Criminal Procedure Code, which uses the "arrest of property" wording for seizure, the "seizure" term is also foreseen by the article 226 of the present code, which is an investigative action, which is applied when it's necessary to take articles and documents significant for the case, provided that their location is known for sure.

<sup>259</sup> See "RA Law on Forfeiture of Illegal Assets", article 25.

<sup>260</sup> See "RA Civil Procedure Code", article 129.

the trust management contract shall be approved by the government of the Republic of Armenia. The necessary expenses relating to the custody and management of assets shall be financed from the State Budget.<sup>261</sup> The introduction of rules on transferring the assets to trust management is a very effective mechanism, especially in cases of managing big size assets, such as factories.<sup>262</sup>

#### **UNCAC Article 55. International cooperation for purposes of confiscation**

**This article is considered partially implemented, and the level of implementation in practice is poor.**

##### **Article 55, Paragraph 2**

*Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.*

As already mentioned, the RA criminal legislation foresees the provision of mutual legal advice on procedural actions, including the identification, tracing, freezing, seizure and confiscation. For more details on freezing and seizure regulations, please refer to the answer related to paragraph 2 of Article 54.

In regards to the civil legislation, the newly adopted RA “Law on Forfeiture of Illegal Assets” stipulates that the RA Prosecutor General’s Office may, upon receiving from a relevant authority of a foreign state the request on the discovery of assets and communication of information, undertake measures provided for by Articles 11 and 12 of the Law, with the view to receiving and communicating the requested information.<sup>263</sup>

##### **Article 55, Paragraph 3**

*In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:*

*(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;*

*(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;*

*(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.*

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<sup>261</sup> See “RA Law on Forfeiture of Illegal Assets”, article 25

<sup>262</sup> Interview with Mr. Karen Kocharyan, Attorney at Law, held on 04 November, 2020.

<sup>263</sup> See “RA Law on Forfeiture of Illegal Assets”, article 29.

The requirements imposed to the request, are either regulated by treaties or, in case of their absence, by RA legislation. The procedural regulations in criminal matters are regulated by the RA Criminal Procedure Code,<sup>264</sup> which is described in detail in the government's checklist.

In regards to the civil forfeiture of assets, the latter is regulated by the newly adopted RA “Law on Forfeiture of Illegal Assets”. It is enshrined in the document that unless otherwise provided for by an international treaty in force between the requesting state and the RA, a request shall contain:

- (1) name of the applicant authority,
- (2) title of the request,
- (3) sufficient information on persons and assets relating to the object of the request,
- (4) the essence of the request and the legal grounds substantiating the competence of the applying authority to submit the given request.

Where the request relates to the execution of a court judgment, a court order or a decision on the securing measure of a foreign court within the territory of the RA and the certified copy of a judicial act of a state having submitted it shall be attached to the request, and in cases provided for by international treaties, other materials as well.<sup>265</sup>

#### **Article 55, Paragraph 5**

*On furnishing copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.*

The government's checklist states that the RA is partially compliant with this clause. However, it does not provide a reference to the date when the documents have been transmitted. In addition, it promises to send the laws to the secretariat as an answer to the request of providing a description of any documents not yet transmitted. Hence, the actual compliance with this paragraph remains unclear.

#### **Article 55, Paragraph 6**

*If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.*

The government's checklist states that the RA is partially compliant with this clause. On the other hand, it provides that the RA Prosecutor General's Office may apply the Convention as a basis for requests for legal assistance. Thus, it is unclear why the compliance is considered only as “partial”.

#### **Article 55, Paragraph 7**

*Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.*

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<sup>264</sup> See “RA Criminal Procedure Code”, Chapter 54, Chapter 54<sup>1</sup>.

<sup>265</sup> See “RA Law on Forfeiture of Illegal Assets”, article 28.



An interpretative note reflects the understanding that the requested State Party will consult with the requesting State Party on whether the property is of *de minimis* value or on ways and means of respecting any deadline for the provision of additional evidence<sup>266</sup>.

The RA criminal legislation foresees general grounds of refusal to execute enquiries arising from international treaties which is described in the government's checklist. Mainly, the RA Criminal Procedure Code<sup>267</sup> makes a reference to the grounds of refusal enshrined in particular treaties. Hence, the mentioned grounds for refusal can be indirectly applied.

In regards to civil regulations, the newly adopted RA “Law on Forfeiture of Illegal Assets” foresees that the illegal assets shall be subject to forfeiture where, based on evaluation of the submitted evidence, the court comes to the conclusion that the market value of such assets exceeds AMD 50,000,000 (approx. USD 100,000) at the moment of filing the claim.<sup>268</sup> In experts’ assessment, this amount can result in the non-forfeiture of assets which short fall under the threshold but still are of a high value.<sup>269</sup> Besides, according to the law, where the execution of the request received from a competent authority of a foreign state in compliance with international treaties or RA legislation contradicts the RA public order or is otherwise impossible, the relevant authority of a foreign state shall be notified on the impossibility of executing the request and on the reasons thereof.<sup>270</sup>

#### **Article 55, Paragraph 8**

*Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.*

The government's checklist states that the RA is partially compliant with this clause. In this regard, it is stated that Armenia is considering to improve relevant legislation and practice. Nevertheless, we are not cognizant of any reforms. Furthermore, even the newly adopted RA “Law on Forfeiture of Illegal Assets” does not encompass a clause on the mentioned relations.

#### **Article 55, Paragraph 9**

*The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.*

The RA Criminal Code<sup>271</sup> refers to the rights of *bona fide* third parties which is described in the government's checklist. The concept of the *bona fide* third parties is also touched upon by the RA “Law on Forfeiture of Illegal Assets”. According to it, the assets belonging to a person which are of illegal origin and are acquired by a third party, shall not be subject to forfeiture from the *bona fide* acquirer. The person is not considered as a *bona fide* acquirer if the competent authority proves that the latter knew or reasonably could have known about the illegal origin of the assets at the moment of acquisition of the assets. Notwithstanding the mentioned provision, the person is considered as a *bona fide* acquirer, if proven, that the assets were transferred thereto as compensation for damages caused to the life and health or alimony.

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<sup>266</sup> Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions, UN General Assembly, A/58/422/Add.1, para. 65, available at [https://www.unodc.org/pdf/crime/convention\\_corruption/session\\_7/422add1.pdf](https://www.unodc.org/pdf/crime/convention_corruption/session_7/422add1.pdf) (accessed on 25 December, 2020).

<sup>267</sup> See “RA Criminal Procedure Code”, article 477.

<sup>268</sup> See “RA Law on Forfeiture of Illegal Assets”, article 24(1).

<sup>269</sup> Interview with Mr. Narek Yenokyan, Independent Anti-Corruption expert, held on 4 November, 2020.

<sup>270</sup> Ibid, article 29(5).

<sup>271</sup> See “RA Criminal Code”, article 103.1.

The property rights to the assets belonging to the person, of a person not affiliated thereto, except for the right of ownership, shall be observed, where the competent authority fails to prove that, at the moment those rights arose, the person knew or reasonably could have known of the illegal origin of the assets. Where the assets are encumbered with property rights of affiliated legal persons or close relatives, or where the person is the actual beneficiary of the given property rights, those rights shall terminate in forfeiture of the assets.<sup>272</sup>

### **Deficiency**

It should be mentioned that the first draft version of the law regulating the civil forfeiture of illicit assets foresaw a lighter test for the burden of proof, the “balance of probabilities” in case of third persons, except affiliated persons, such as family members, who have acquired the assets. After the pressure from the opposition, the latter has been changed with the “beyond reasonable doubt” standard, applied during the presumption of innocence. This can result in difficulties for recovering assets, since the owners of illicit assets can make fake transactions transferring the ownership of assets to their friends or other people, other than affiliated persons, who can have a de jure “bona fide” status and take advantage of respective guarantees while in fact not being “bona fide” acquirers. Furthermore, in the mentioned situations, disproportionate burden can be imposed state since in the case of forfeiture of assets from affiliated persons, compensation should be paid to the “bona fide” acquirers.<sup>273</sup>

### **UNCAC Article 56. Special cooperation**

*On endeavouring to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.*

**This article is considered partially implemented, and the level of implementation in practice is poor.**

In particular, this may include information on suspicious transactions, activities of PEPs or where a public official has a power of attorney, authorised signature, or any other authority to represent the State over its financial interests in another State Party and unusual payments by legal entities. It may also include the State Party joining an information-sharing international forum (such as Egmont Group, etc.). The government's checklist also indicates that the RA is partially compliant with this clause. The only provided information is that the RA Prosecutor General's Office provides the competent authority of the State with the information provided for in Article 21 of the European Convention on Mutual Assistance in Criminal Matters regarding UNCAC Article 56. The Financial Monitoring Center of the RA Central Bank is a member of the Egmont Group. The government's checklist also states that Armenia is considering to improve relevant legislation and practice. Nevertheless, no publicly available evidence of any reforms was found.

### **UNCAC Article 57. Return and disposal of assets**

*Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law; and on adopting such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be*

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<sup>272</sup> See “RA Law on Forfeiture of Illegal Assets”, article 23.

<sup>273</sup> Interview with Mr. Artashes Khalatyan, Attorney at law, held on 4 November, 2020.

*necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.*

**This article is considered partially implemented, and the level of implementation in practice is poor.**

The government's checklist states that the RA is partially compliant with this clause and refers to Article 103.1 of the Criminal Code, which is discussed in more detail in the answers provided to Article 55, paragraph 9. The international treaties on mutual legal assistance ratified by the Republic of Armenia do not regulate the stage of the return and distribution of assets. The RA "Law on Forfeiture of Illegal Assets" only stipulates that the matters relating to the return of forfeited assets to the applicant state and the distribution of assets shall be regulated by the international treaties ratified by the RA and separate agreements concluded with the interested states or through mutual agreement acquired by the competent authority through diplomacy.<sup>274</sup>

### **Deficiency**

RA legislation does not provide for legal provisions on the use and redistribution of recovered assets in Armenia to the society.<sup>275</sup>

Although the government's checklist states that Armenia is considering to improve relevant legislation and practice, no visible efforts are put in place. The *"Strengthening international cooperation in investigating and disclosing corruption-related crimes"* has been envisaged in the Action Plan of the RA Anti-Corruption strategy for 2019-2022. The expected outcome for 2020 is *"The mechanisms for international cooperation in corruption cases and the obstacles existing therein have been studied"*. The expected outcome for 2022 is *"Recommendations on overcoming the obstacles to international cooperation in corruption cases have been proposed to the RA Prime Minister's Office"*.<sup>276</sup> In performance to the mentioned act, the RA Ministry of Justice has developed and circulated the RA draft law "On Legal Assistance in Criminal Cases", which proposes to comprehensively regulate international cooperation in criminal matters between states. Within the framework of this cooperation, a norm has been established, according to which the RA central authority which has received a legal assistance request in accordance with the procedure established by the international treaty ratified by the RA, on the basis of a motion of the foreign competent authority having sent the request and without obstructing or damaging the investigation of the criminal case under the jurisdiction of the RA competent body, hands over to the competent body the objects used in committing the crime, including instruments of crime, items that have been obtained through criminal means or the person who has allegedly committed a crime has received compensation in exchange for items obtained through criminal means.<sup>277</sup> However, the draft has not been adopted.<sup>278</sup>

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<sup>274</sup> See "RA Law on Forfeiture of Illegal Assets", article 30.

<sup>275</sup> Interview with Ms. Mariam Zadoyan, Anti-Corruption expert of the CSOs Anti-Corruption Coalition of Armenia, held on 2 November, 2020.

<sup>276</sup> See "RA Anti-Corruption strategy and its Implementation Action Plan for 2019-2022", action 38.

<sup>277</sup> The "RA draft law On Legal Assistance in Criminal Cases" was developed by the Ministry of Justice and circulated during 12.12.2019-27.12.2019, Article 15(1), available at <<https://www.e-draft.am/projects/2182>> (Armenian), (accessed on 25 December, 2020).

<sup>278</sup> See the official response of the RA Ministry of Justice, provided on 2.12.2020. *"The draft was submitted to the CoE for legal expertise and the final opinion is not submitted yet."*

#### **UNCAC Article 58. Financial intelligence unit**

*On cooperating with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.*

**This article is considered largely implemented, and the level of implementation in practice is moderate.**

The financial intelligence unit in Armenia, as discussed above, is the FMC. Various Memorandums of Understanding have been signed both between the FMC and national state bodies, including General Prosecutor's Office, National Security Service, Police, State Revenue Committee, Investigative Committee, Special Investigative Service, Ministries of Economy and Finance, as well as between the FMC and foreign financial intelligence units.<sup>279</sup> In regards to the implementation of the FMC, the competent authority in detecting and monitoring the illicit financial flows, including across the border, some experts raise concerns regarding its ineffectiveness taking into account the flows of assets from Armenia which amounts to approx. USD 6.2 billion.<sup>280</sup>

#### **UNCAC Article 59. Bilateral and multilateral agreements and arrangements**

*On considering concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.*

**This article is considered partially implemented, and the level of implementation in practice is moderate.**

The Republic of Armenia is a member of various bilateral and multilateral agreements on international cooperation. The regional multilateral agreements include the following ones (in chronological order):

- Council of Europe "Convention on Mutual Assistance in Criminal Matters", 1959;
- Commonwealth of Independent States "Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters" (Minsk Convention), 1992;
- Black Sea Economic Cooperation Organization "Agreement among the governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in particular in its Organized Forms", 1998;
- Council of Europe "Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism", 2005;
- Eurasian Economic Union (former Customs Union), "Agreement on Legal Assistance and Cooperation among Customs Union Member States in Investigating Criminal and Administrative Offences", 2010.

The bilateral agreements on international cooperation include the following ones (in chronological order):

- The Agreement on Mutual Legal Assistance in Civil Matters between the Republic of Bulgaria and the Republic of Armenia, 1995;

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<sup>279</sup> The list of the Memorandums of Understanding signed can be found in the Annual Report "On activities of the Financial Monitoring Center in 2019", Financial Monitoring Center, Central Bank of Armenia, Yerevan, 2020, Annex 3.

<sup>280</sup> Interview with Mr. Movses Aristakesyan, President of the "Center of Economic Rights" NGO, Member of the Governing Board of the CSOs Anti-Corruption Coalition of Armenia, held on 28 October, 2020. Referring to the "Illicit Financial Flows from Developing Countries: 2002-2011", Global Financial Integrity, Dev Kar and Brian LeBlanc, December, 2013, p. 24, available at <[https://www.gfintegrity.org/wp-content/Illicit\\_Financial\\_Flows\\_from\\_Developing\\_Countries.pdf](https://www.gfintegrity.org/wp-content/Illicit_Financial_Flows_from_Developing_Countries.pdf)> (accessed on 25 December, 2020).

- The Agreement on Mutual Legal Assistance in Criminal Matters between the Republic of Bulgaria and the Republic of Armenia, 1995;
- The Agreement on Mutual Legal Assistance in Civil Matters between the Georgia and the Republic of Armenia, 1996;
- The Agreement on Mutual Legal Assistance in Civil and Criminal Matters between the Romania and the Republic of Armenia, 1996;
- The Agreement on Mutual Legal Assistance in Criminal Matters between the Georgia and the Republic of Armenia, 1997;
- The Agreement on Mutual Legal Assistance in Civil, Family and Criminal Matters between the Republic of Greece and the Republic of Armenia, 2002;
- The Agreement on Mutual Legal Assistance and Legal Relations in Civil, Family and Criminal Matters between the Republic of Lithuania and the Republic of Armenia, 2005,
- The Agreement on the service of juridical and extra-judicial related documents, taking of evidence and the recognition and enforcement of judgments in civil and commercial matters between the Republic of Armenia and the United Arab Emirates, 2005;
- The Agreement on Mutual Legal Assistance in Criminal Matters between the Arab Republic of Egypt and the Republic of Armenia, 2007;
- The Agreement on Mutual Legal Assistance in Civil and Criminal Matters between the Islamic Republic of Iran and the Republic of Armenia, 2009;
- The Agreement on Mutual Legal Assistance in Civil Matters between the Syrian Arab Republic and the Republic of Armenia, 2010;
- The Agreement on Mutual Legal Assistance in Criminal Matters between the Syrian Arab Republic and the Republic of Armenia, 2010;
- The Agreement on Mutual Legal Assistance in Criminal Matters between the Syrian Arab Republic and the Republic of Armenia, 2010;
- The Agreement on Mutual Legal Assistance in Criminal Matters between the People's Republic of China and the Republic of Armenia, 2015;
- The Agreement on Mutual Legal Assistance in Criminal Matters between the Republic of Armenia and the State of Kuwait, 2016.<sup>281</sup>

Nevertheless, the mentioned documents do not regulate all the stages of international asset recovery, but mainly the stage of return and distribution of assets to other countries. Although both the government's checklist has stated that Armenia is considering to improve relevant legislation and practice, as well as respective discussions have been brought to the political agenda during the development of the RA "Law on Forfeiture of Illegal Assets", no efforts in this regard are apparent.<sup>282</sup>

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<sup>281</sup> RA Parliament's Library, available at <<http://www.parliament.am/library.php?page=documents&lang=arm>>.

<sup>282</sup> Interview with Mr. Artashes Khalatyan, Attorney at law, held on 4 November, 2020.

## 6. RECOMMENDATIONS FOR PRIORITY ACTIONS

Based on the results of the report, the following key recommendations are made:

1. Adopt the draft amendments to the RA Law on the Corruption Prevention Commission and other relevant laws, and envisage CPC as a centralized body which will coordinate and supervise the activities of the Integrity Affairs Officers (IOs), including the organisation of trainings for IOs.
2. Review the selection criteria of the IOs and envisage requirements concerning their experience in the sectors of anti-corruption and integrity.
3. Adopt the draft amendments to the RA Law on CPC and other relevant laws to make publicly available the results of public officials' integrity check conducted by the CPC, simultaneously protect personal data as prescribed by the RA Law on the Protection of Personal Data.
4. Adopt the draft amendments to the RA Code of Administrative Offence related to the financing of political campaigns and envisage proportionate sanctions for the violation of reporting requirements, donation regulations, and other offences under article 189.13-189.16 of the Code.
5. Adopt the draft amendments to the RA Constitutional Law on the "Judicial Code" and review the number of judges and non-judges (representatives of civil society, including legal scholars) in the Ethics and Disciplinary, and Educational Affairs Commissions, ensuring a balanced and reasonable representation between the parties. In particular, the number of members in the Ethics and Disciplinary Commission should be ten, according to the new Draft Law on Judicial Code. Hence, it is recommended to allocate five seats to judges and the other five to non-judge members. Concerning Educational Affairs Commission, select seven members and allocate four seats to judges and three to non-judge members.
6. Adopt the draft amendments and supplements to the RA Constitutional Law on the "Judicial Code" and reserve the right to nominate a non-judge member in both Educational Affairs and Evaluation Commissions only to NGOs.
7. Adopt the draft amendments to the RA Constitutional Law on "Judicial Code" and envisage restrictions for the representatives of CSOs, including legal scholars, so that the latter cannot be nominated as a candidate for the non-judge members of the Ethics and Disciplinary, Educational Affairs and Evaluation Commissions if they hold a position that is directly related to the judiciary.
8. Adopt the model code of conduct for public servants and the codes of conduct for civil servants, members of parliament and investigators.
9. Foresee "*qui tam*" concept for whistleblower reward.
10. Expand whistleblowing legislation to cover violations committed in the private sector.
11. Grant a legal status to the alternative whistleblowing "Bizprotect" website, operated by civil society.
12. Adopt the draft legislative package on "Making Amendments and Addenda to the Law on Public Service", which introduces the declaration of expenditure, the declaration of property actually controlled by the declarant (regardless of the ultimate ownership), ad-hoc (situation-dependent) declarations submitted by public officials within two years after the termination of the official duties in case of suspicion of a significant change of property (an increase of property, decrease or liability and expenditure), as well as a reduction of the monetary threshold of expensive property.
13. Continue efforts to expand the scope of the public officials who are required to file declarations.
14. Expand the scope of the term "family" of public officials by envisaging persons closely related to the official, such as the spouse's resident parent, child, brother or sister, as well as persons in a godparent-godfather relationship.
15. Grant authority to the CPC to implement lifestyle checks of the declarant public officials to verify data included in the declarations.

16. Strictly follow in practice the rules on publishing information about healthcare spending, in particular emergency procurement of health supplies.
17. Introduce a new electronic government procurement system based on the open government principles and open contracting data standard, to be used by all contracting authorities in the country.
18. Develop publicly accessible analytical tools based on contracting data from the electronic government procurement system.
19. Establish mechanisms to collect feedback from citizens, civil society organizations, business and contracting authorities to improve the procurement sphere's integrity and efficiency.
20. Train major stakeholders (policymakers, civil society organizations, academia, media, contracting authorities, businesses) to utilize contracting data and feedback mechanisms for impact.
21. Adopt stricter rules on single-sourced procurement application, especially in regards to the justification of ground of urgency.
22. Improve the public procurement appeal system either through transition to the collegial extrajudicial model and provision of the necessary staff to the latter or transition to the judicial model.
23. Provide for a specific review procedure for assessing the credibility of declarations on conflict of interest and beneficial ownership in public procurement.
24. Set minimum standards (guidelines) for the technical specifications and estimated prices of a certain group of procurement items.
25. Build technical capacity of the Parliamentary Budget Office by granting the necessary staff and independent funding from state budget, setting its functions in a separate charter and enlarging its mandate in assessing fiscal forecasts, and the ex-ante compliance to fiscal rules.
26. Adopt the draft legislative changes to the RA Law on "Accounting of public sector organizations" and make the Public Sector Accounting Standard compliant to international best standards.
27. Adopt the draft amendments to the RA Law on "State Duty" to ensure general free access to the information on legal entities provided by the RA Unified State Register of Legal Entities free of charge.
28. Adopt the draft amendments to the RA Law on "State registration of legal entities, separate divisions of legal entities, and individual entrepreneurs" and create a freely accessible beneficial ownership public registry for the legal entities of all the sectors.
29. Review the working plans and legal regulations of the Public Councils under the Ministries and make it more transparent and inclusive in terms of developing agendas and making decisions.
30. Adopt the draft amendments to the RA Law on AML/CFT and to expand the scope of the politically exposed persons, including PEPs and their family members.
31. Adopt the draft amendments to the RA Law on AML/CFT and to amend the definition of the real beneficiary, as well as to envisage that a real beneficiary is a natural person on whose behalf or for whom the customer actually acts, and (or) who actually (de facto) controls the customer or the person on whose behalf or for whom the transaction is made, or the business relationship is established.
32. Introduce criminal liability of legal persons.
33. Increase the practices of parallel financial investigations, initiated by law enforcement authorities.
34. Establish a centralized register of bank accounts.
35. Review the national legislative framework on asset recovery, eliminate the contradictions and fill in the gaps for both criminal confiscation and civil forfeiture to fully comply with UNCAC provisions.
36. Establish an Asset Recovery Office equipped with adequate staff and other resources to fulfil its mandate effectively on the basis of the "Department for confiscation of property of illegal origin" under the RA Prosecutor General's Office, which will be the central authority for all the stages of asset recovery.
37. Speed up the process of asset recovery efforts in practice.



38. Increase transparency in the enforcement and implementation of the asset recovery provisions and improve the newly-introduced mechanisms for the publication of statistics to include information on seized, confiscated and returned assets on the basis of the mutual legal assistance requests, as well as on directly recovered assets.
39. Establish an asset database, which will be managed by the Asset Recovery Office and provide information about the recovered assets.
40. Review existing treaties on mutual legal assistance and sign new ones, especially in terms of regulating the stage of the return and distribution of assets.
41. Grant standing to CSOs or civil society in general initiate a legal case for asset recovery.
42. Diminish the value of assets subject to civil forfeiture.
43. Encompass legal rules on the redistribution (either directly, or indirectly) of recovered assets to the society.
44. Adopt the draft law on "Legal Assistance in Criminal Cases" to have national legislative grounds for asset return to other states.

## **7. ANNEX 1. LIST OF PERSONS CONSULTED (WITH AFFILIATION)**

In chronological order:

1. Mr. Aristakesyan Movses, Governing Board Member of the CSOs Anti-Corruption Coalition of Armenia, President of the “Centre of Economic Rights” NGO
2. Mr. Atovmyan Marat, Independent Anti-Corruption expert
3. Ms. Galstyan Mariam, Head of the Department of Anti-Corruption Policy Development and Monitoring of the RA Ministry of Justice
4. Ms. Hakobyan Arpine, Chairwomen of the Governing Board of the CSOs Anti-Corruption Coalition of Armenia, President of the NGO Center
5. Mr. Harutyunyan Arzuman, Governing Board Member of the CSOs Anti-Corruption Coalition of Armenia, President of the Association of Audio-Visual Reporters’ Public Organization
6. Mr. Khalatyan Artashes, Attorney at law
7. Mr. Kocharyan Karen, Attorney at law
8. Mr. Sahakyan Arkadi, Member of the CSOs Anti-Corruption Coalition of Armenia, former Chairman of the Governing Board of the Coalition, Lawyer
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