02 August 2019

RECOMMENDATIONS
On the Republic of Armenia Anti-Corruption Strategy and Its 2019-2022 Implementation Action Plan

This paper contains the comments and recommendations of the Transparency International Anticorruption Center, the Helsinki Citizens' Assembly Vanadzor Office, Open Society Foundations - Armenia, the Law Development and Protection Foundation, and the Gyumri Journalists' Club "Asparez" regarding the Draft of the Republic of Armenia 4th Anti-Corruption Strategy (hereinafter "the Draft Strategy") and its 2019-2022 implementation action plan.

Draft Anti-Corruption Strategy of the Republic of Armenia

1. Aim

The Draft Strategy provides a broad overview of the corruption-related issues in Armenia. However, among the multitude of issues raised and actions proposed, the primary aim and the expected outcome of the Strategy are not clear, which makes it infeasible to assess the overall impact of the Strategy implementation at yearend 2022. Clarifying the aim and expected outcome is necessary for the Draft to maintain a robust, coherent, and targeted set of actions.

Corruption, having flourished in Armenia for decades, has manifested its most sophisticated and dangerous form in Armenia—known in the international literature as "state capture."[1] Accordingly, **the primary aim of post-revolutionary Armenia's Anti-Corruption Strategy should be to eliminate the schemes for state capture and install safeguards for the integrity of the public administration in order to prevent this phenomenon from reemerging.**

From the very outset of the Republic of Armenia's independence, certain political forces and figures have gradually and persistently carried out a process of essentially capturing the state institutions and resources in virtually every sector of the economy. Elections were regularly and tenaciously rigged through the abuse of state power. The political network that had usurped that power by illegal means continued to expand its possessions and resources, while persecuting political and social opponents. As a consequence, the legislative and executive branches of government were captured, together with the law-enforcement, judicial and prosecutorial authorities, other natural and publicly-owned resources, the financial system, the

[1] World Bank (2000). *Anticorruption in Transition: Contribution to the Policy Debate*. World Bank Publications; and Crabtree, John; Durand, Francisco (2017). *Peru: Elite Power and Political Capture*. London, United Kingdom: Zed Books Ltd. p. 1.

economy, and the public mass media. All of Armenia's public policies and laws were put to the service of a narrow group of individuals and clans.

State capture led to the deterioration of public trust in state bodies and public officials, the distortion of ideas about statehood, skepticism regarding the election system and procedures, and a lack of faith in one's ability to help build up the state. The state-building ideology was excluded from the national development agenda, and the "conceptual" programs adopted on a current basis were merely imitational and did not lead to any significant social, economic, or political progress. All state and municipal authorities had general and specific corruption schemes that reinforced stealing and embezzlement and obstructed the reform initiatives for which millions of dollars were being received from international organizations. There was absolutely no political will whatsoever to curb corruption because the political and executive elite itself was the main engine of corruption.

The impunity of the corruption perpetrators and the perceived inability to resolve the situation developed a level of public tolerance of unlawful practices of public officials and forced a large number of citizens to adapt or engage in various ways in the corruption web by avoiding taxes, receiving facilitated services, gaining privileges, and so on. On the other hand, this situation led to general apathy, disappointment, and cynicism with regard to the concept of democracy, independence, integrity, and self-dignity.

In 2018, the people's velvet revolution awakened public hope that the government elected by the people would focus efforts on restoring citizens' undermined trust in the state and state authorities and on redefining perceptions of statehood. Nevertheless, the desire of the majority of citizens to live in a country free from corruption, as well as the institutional and other reforms proposed in the Draft Strategy are necessary but not sufficient to prevent the future repetition of the faulty practices of the past. The first step toward preventing the reoccurrence of a crime is its recognition and appropriate response.

Recommendation

- It is important that the 2019-2022 Anti-Corruption Strategy and Its Implementation Action Plan recognize the state capture that lasted until 2018 as the key manifestation of the endemic corruption in Armenia and the main bottleneck to the state's political, economic, and social progress.
- To this end, the Draft Strategy should prescribe its primary goal to be the dismantling of the institutions that enabled state capture and putting in place and reinforcing a strong foundation for lawfulness and integrity, including through a robust institutional anti-corruption system.
- Furthermore, it is necessary for the National Assembly to recognize the state capture practices that evolved since Armenia gained independence and their legal and political consequences, and to make an appropriate political assessment thereof in the context of a transitional justice policy, whereby the post-revolutionary period's legislature will reject corruption and will safeguard the irreversibility of good governance and democratic consolidation.

2. Coordinating the Anti-Corruption Efforts and Safeguarding the Implementation of the Strategy

The effective implementation of the Anti-Corruption Strategy and the actions proposed in relation thereto will hinge upon the proper coordination of the functions and actions of all entities responsible for implementing the anti-corruption actions, as well as monitoring of progress and results, and impact assessment. In this regard, the Draft Strategy is incomplete because it fails to properly and clearly assign the responsibility for the aforementioned tasks.

According to Decree 808-N of the Prime Minister of the Republic of Armenia dated 24 June 2019, the Anti-Corruption Policy Council shall discuss the anti-corruption strategies and related legal acts, sectoral anti-corruption programs, the implementation process of actions arising out of anti-corruption strategies and international commitments, the execution and monitoring results of anti-corruption strategies and plans, the results of cooperation with stakeholder entities in the fight against corruption, and the progress of cooperation with international organizations. These are broad elements of coordination but, legally, neither the said decision nor the Draft Strategy prescribes the responsibility for coordinating the anti-corruption functions. On the other hand, however, the Republic of Armenia Ministry of Justice coordinates the implementation of international anti-corruption commitments and recommendations.

Chapter 4 of the Draft Strategy ("Monitoring and Evaluation") highlights the importance of implementing a monitoring and evaluation system, building a system with the relevant methods and indicators, and continuous capacity building. At present, proposed amendments to the Republic of Armenia Law on the Corruption Prevention Commission are being discussed in the National Assembly. According to the proposal, the Corruption Prevention Commission will be responsible for monitoring the implementation of anti-corruption plans and actions. Moreover, a Department for Anti-Corruption Programs and Monitoring operates within the Staff of the Prime Minister. Therefore, it is unclear how the monitoring functions will be distributed and which agency will ultimately bear responsibility for them.

Moreover, the Draft fails to address the obligation of public accountability for the implementation of the planned actions, which is an essential prerequisite for safeguarding the implementation of the anti-corruption policy and building public trust.

Recommendation

- The Draft Strategy should clearly prescribe the entity responsible for the Strategy's implementation and, more broadly, the coordination of the various anti-corruption actions.
- The entity responsible for the monitoring and evaluation of the implementation of the Strategy should be clearly designated.

- The obligation to present an annual public report on the implementation of the Strategy and the actions should be prescribed.
- In the event of inadequate implementation or non-execution, the entity responsible for an action should be obliged to provide an explanation to the Anti-Corruption Policy Commission.

3. Corruption Prevention Commission

On 9 June 2017, the Law on the Corruption Prevention Commission was adopted; it was scheduled to enter into effect on 10 April 2018. The Law stipulated the formation of the Corruption Prevention Commission (hereinafter, "the CPC") as an autonomous body. Its members would be selected through a competition handled by a Competition Board that would comprise the Constitutional Court President, the Human Rights Defender, and one representative nominated by each of the National Assembly opposition factions, the Public Council, and the Chamber of Advocates. The eligibility criteria for the Commission members include a university degree, at least 10 years' professional work experience, and "standing." The Competition Board would make the selection based on a test and an interview, after which the composition of the Corruption Prevention Commission would be confirmed by the National Assembly Speaker.

The CPC formation procedure is problematic in a number of ways:

- The CPC Competition Board was prescribed at a time when a de-facto authoritarian regime that had stable majority power in the National Assembly intended to imitate independence and a participatory process. This conclusion is supported by the fact that the Public Council and the Chamber of Advocates were given the power to nominate one member each to the Competition Board, even though these two entities have throughout their existence never been outspoken in discussions of corruption.
- Testing is more suitable for career- and knowledge-based public service. As a rule, test competitions in related entities are organized directly by the staff of such organizations, who have professional knowledge, clear ideas, and skills in the field and are capable of evaluating the knowledge of nominees. The CPC members are not subject to career service and knowledge-based selection criteria, because they are not public servants. The Competition Board may actually lack sufficient professional knowledge and understanding for setting tests or for evaluating a nominee's knowledge through an interview.
- The Competition Board will be formed for one particular purpose and will have no other task or function to perform. Therefore, if the CPC subsequently fails or some of its members lack integrity in their conduct, nobody will bear any political responsibility.
- Some of the eligibility criteria for CPC members are controversial: there is no clarity as to the field in which a nominee is required to have 10 years' professional work experience, or how or where a membership nominee's "standing" is to be checked.

Presently, the National Assembly is discussing and has adopted the first reading of a draft Law Amending and Supplementing the Law on the Corruption Prevention Commission, which will eliminate the problematic and imitational procedure and the other problems described above. This initiative is commendable.

Nonetheless, the current draft still contains risks that can undermine the CPC's independence and political neutrality. For example, it is stipulated that, out of the five members of the Corruption Prevention Commission, the chairperson shall be nominated by the Prime Minister, two members by the ruling political force, one member by an opposition party, and one member by the Supreme Judicial Council. Taking into consideration that the Republic of Armenia Constitution and Electoral Code require a "stable majority" in the National Assembly, there are concerns that a commission elected by the National Assembly may be inclined to serve the interests of the political majority.

This risk could be mitigated by allowing a larger number of entities to nominate candidates for membership in the Commission, prescribing more rigorous selection criteria, and reinforcing independence safeguards and public oversight.

Recommendation

- It is absolutely necessary to eliminate the mechanism in the current Law on the Corruption Prevention Commission for the formation of the CPC, which is seemingly independent, but in reality imitates participation and implies no political responsibility.
- To ensure the independence and political impartiality of the CPC, it is possible:
    - To allow a larger number of entities to nominate candidates for membership in the CPC, for example by replacing the National Assembly majority's candidates with candidates nominated by the Republic of Armenia President and Human Rights Defender;
    - To prescribe more rigorous selection criteria for the CPC's members, for example by disallowing members who are party members or requiring members to have demonstrated integrity in public offices previously held by them;
    - To reinforce the independence safeguards, for example by streamlining the grounds for terminating office and stipulating an avenue for appeals;
    - To prescribe that the CPC chairperson shall be nominated by the CPC's members and confirmed by the Prime Minister;
    - To curb the CPC chairperson's advantages relative to the other CPC members. For example by requiring that the CPC's decisions and opinions be signed by all of its members and by allowing the members to issue special opinions; and
    - To introduce tools for public oversight (for example, the formation of a public/expert oversight council), and so on.
- For the Corruption Prevention Commission members' selection process and for transparency, some of the requirements and proposed process for the top officials of the Anti-Corruption Committee[2] could be followed. Information on incompatibility circumstances received from various sources could be coordinated and analyzed at the

[2] See the section on "The Investigation of Corruption Offences"

State and Legal Affairs Standing Committee of the National Assembly. The sessions of the State and Legal Affairs Standing Committee are open to the public and also broadcast live.

4. The Investigation of Corruption Offences

Chapter 3 of the Draft Strategy provides for the formation of a specialized entity to investigate corruption crimes in the Republic of Armenia—namely an "Anti-Corruption Committee" that will also contain criminal intelligence operations units. The latter will be formed by transferring the criminal intelligence operations staff positions and tools currently available in the Republic of Armenia Police and State Revenue Committee for solving corruption crimes. The current Investigative Committee's Department for Investigation of Corruption Crimes, Crimes against Ownership, and Cybercrime (including its investigator staff positions and tools) will also be transferred to the Anti-Corruption Committee. The document does not elaborate on the fate of the Special Investigative Service ("SIS"), although representatives of the Ministry of Justice have orally stated that the SIS will be liquidated. The plan is for crimes perpetrated or co-perpetrated by officials of the Anti-Corruption Committee in relation to their official position to be investigated by the National Security Service ("NSS"); the staff positions and tools of the Economic Security and Corruption Response Department within the NSS will not be transferred to the Anti-Corruption Committee.

The proposed regulations, as described above, pose a number of problems.

Firstly, in the absence of a comprehensive vision for justice sector reform, one cannot assess either the effectiveness of the proposed formation method of the Anti-Corruption Committee or the consistency or gaps of the overall system. On the other hand, the autonomy and independence safeguards of the Anti-Corruption Committee are neither presented for the Committee in isolation nor in the context of the larger system.

Secondly, the mechanical transfer of staff positions and tools between systems is prone to a number of risks: the transfer of criminal intelligence officers from the Police to the Anti-Corruption Committee will not preclude their continued clandestine cooperation with their former "institutions in charge," which may often be the targets of investigations by the Anti-Corruption Committee, undermining their independence and autonomy. On the other hand, it is unclear how the other units of the Police will operate effectively after losing the criminal intelligence operations tools, or how they will be able to collect and process the information to be referred to the Investigative Committee.

The Investigative Committee's Department for Investigation of Corruption Crimes, Crimes against Ownership, and Cybercrime has only staff positions, but no tools. It is unclear how the Investigative Committee will operate without specialized cybercrime investigators, which are necessary for the investigation of other types of crime. On the other hand, cybercrime concerns the extraction of information using computer hardware and software, and not all cybercrime is necessarily connected with corruption offences.

Although corruption practices in the Anti-Corruption Committee *per se* are national security threats (similar to many other problems in various other spheres), it is not sufficient justification for preserving a whole department with its complete toolkit in the National Security Service. If the NSS has the power to investigate alleged crimes by officials of the Anti-Corruption Committee, officials of the Anti-Corruption Committee may become reluctant to target NSS officials under suspicion for corruption offences, especially given the historically-evolved special status of the National Security Service within the law-enforcement system. If the law-enforcement system as a whole was optimally structured, questions will arise over all the functions of the NSS, with the exception of its intelligence (espionage) and counter-intelligence (counter-espionage) powers.

Recommendation

- Parallel to the proposal to set up an Anti-Corruption Committee, a reform of the whole law-enforcement system should be designed and planned in such a way as to optimize the system, to review the underlying structural, institutional, and functional principles, and to achieve utmost proportionality, while also reviewing the system for appointment, dismissal, and accountability of the heads of law-enforcement agencies. If necessary, the reform may include appropriate amendments in the Constitution of the Republic of Armenia.
- The remit of the Anti-Corruption Committee should be outlined after or at least parallel to defining the scope of corruption offences, whilst appropriately amending the Criminal and Criminal Procedure Codes of the Republic of Armenia.
- While some transfers of human resources are possible, the Anti-Corruption Committee should be predominantly staffed with its own hires of new cadres. Its criminal intelligence capacity, including relevant tools, should be created and developed independently of the other agencies. Steps should be taken for the investigators of the Anti-Corruption Committee to have access to the financial, including banking, data of officials.
- Only the staff positions of investigators specialized in investigating corruption crimes should be transferred from the Investigative Committee to the Anti-Corruption Committee. The staff positions of specialized cybercrime investigators should remain within the Investigative Committee.
- Corruption crimes perpetrated or co-perpetrated by officials of the Anti-Corruption Committee in relation to their official position should be investigated by a collegial body, rather than any one particular agency. The “collegial body” could be, for instance, an investigative task force comprised of representatives of the different investigative agencies, created for each criminal case specifically by instruction of the Deputy Prosecutor General in charge of coordinating anti-corruption efforts. Criminal intelligence operations in such cases could be carried out by a criminal intelligence task force set up in the same manner, so as to have checks and balances between the competing institutional interests, to improve the effectiveness of the investigation, and to serve a preventive function.
- For corruption cases involving officials of the Anti-Corruption Committee, the Deputy Prosecutor General in charge of coordinating anti-corruption efforts should be required

to make regular, at least biweekly, submissions to an in-camera session of the Defense and Security Affairs Standing Committee of the National Assembly. Upon the conclusion of pre-trial investigations, a submission to a public session of the National Assembly should also be required.

- In the context of optimizing the law-enforcement system as a whole, it is important for the NSS to have only intelligence (espionage) and counter-intelligence (counter-espionage) powers and related tools, which will go a long way in restoring public trust in this agency. The intention to transfer the power to investigate torture cases to the Investigative Committee should be reconsidered in light of international commitments and principles.

Selection of the Leadership and Accountability

Paragraph 70 of the Draft Strategy provides for competitive selection of the leadership of the Anti-Corruption Committee through a Competition Board. According to the Draft, a candidate endorsed by the Competition Board shall be appointed as Committee Head by the Prime Minister of the Republic of Armenia. Although this mechanism is rather democratic for the Anti-Corruption Committee, the appointment procedure for the head of the Anti-Corruption Committee should be seen in the general context of independence and accountability of law-enforcement agencies. Taking into consideration the vulnerabilities of a "super-prime-ministerial" system, the head of the Anti-Corruption Committee should be appointed by the National Assembly to secure greater transparency of and public participation in the process. This approach would also eliminate the need to create a Competition Board, as the relevant committee of the National Assembly would review and confirm the eligibility of the candidates under requirements prescribed by law.

The Draft Strategy fails to outline the criteria that the leadership of the Anti-Corruption Committee must meet. Furthermore, the Draft Strategy contains no mention of the legal principles and mechanisms for the selection of the Anti-Corruption Committee's investigators and other employees. It would be essential to prescribe them in the Strategy in order to ensure that safeguards of the genuine independence of the Anti-Corruption Committee are enshrined in the relevant legislation.

Recommendation

The leadership of the Anti-Corruption Committee should be appointed through the following procedure:

- The Head of the Anti-Corruption Committee could be nominated by the Prime Minister, the President of the Republic of Armenia, and the parliamentary factions. The Head of the Anti-Corruption Committee would be elected to a six-year term by the National Assembly, by secret ballot, by a two-thirds majority of the total number of members of the National Assembly. The election of the Committee Head in the National Assembly would be broadcast live. One of the deputies of the Head of the Anti-Corruption Committee would be appointed by the Prime Minister, and the other one by the President of the Republic of Armenia, each for a six-year term.

- The eligibility criteria for nominees to the positions of Head and Deputy Head of the Anti-Corruption Committee should contain the following: at least 30 years of age, not be a citizen of any other country other than Armenia for the last 10 years, permanent residence exclusively in Armenia for the last 10 years, five years of professional work experience, an opinion of the Corruption Prevention Commission confirming that the nominee has complied with the ethics rules during their career and confirming the change in the nominee's assets during their tenure, and the absence of any conviction for any crime.
- The conformity of nominees for the position of Committee Head with the requirements of the law should be reviewed at the State and Legal Affairs Standing Committee of the National Assembly, which will vote in order to issue a positive or negative opinion. A representative of the entity nominating the respective candidate or a representative of the respective parliamentary faction should participate in the work of the Standing Committee, but without the power to vote. The session of the Standing Committee should be broadcast live.
- The Head and Deputy Head of the Anti-Corruption Committee may be dismissed by the entities that elected or appointed them, based on a proposal by the President or Prime Minister or one third of the National Assembly members, for failure to perform official duties, for exceeding authority, or for committing an act containing elements of crime, or by two-thirds majority vote of the National Assembly members if the semi-annual and annual report is not approved by the National Assembly.
- Taking into account the vital need for public trust in the Anti-Corruption Committee, the CVs of its Head and Deputy Heads should be published on the official website of the electing or appointing entity as well as the Anti-Corruption Committee and disseminated in the mass media at least 14 days prior to the election or appointment. Information received from various sources on circumstances hindering election/appointment should be coordinated and analyzed by the Corruption Prevention Commission.
- The Head of the Anti-Corruption Committee should present quarterly interim reports to the Prime Minister and Anti-Corruption Policy Council of the Republic of Armenia, and semi-annual and annual reports to the National Assembly of the Republic of Armenia. The reports should be published on the official website and in the mass media.

The following legal framework should be prescribed for selecting the investigators of the Anti-Corruption Committee:

- To select the investigative cadre, a competition/testing commission comprising specialists and scholars should be created. The transfer of criminal intelligence officers from other law-enforcement agencies to the Anti-Corruption Committee should be possible only through the competition/testing commission, subject to the investigators' appointment procedure.
- The representatives of civil society organizations that participate in the Anti-Corruption Policy Council of the Republic of Armenia or meet the eligibility criteria for such participation may take part in the work of the competition/testing commission as observers.

- The competition participants should be subject to integrity checking principles and mechanisms (such as asset/income/interest declarations or involvement in scandalous situations).
- One month prior to the exam, the list and CVs of applicants to become investigators in the Anti-Corruption Committee will be published on the Committee's official website and in the mass media. Information on incompatibility circumstances received from various sources could be coordinated and analyzed at the Corruption Prevention Commission.
- The confidential staff positions will be filled in accordance with internal regulations.

5. Prosecutorial Oversight of the Investigation of Corruption Cases

Under Paragraph 73 of the Draft Strategy, prosecutorial oversight of pre-trial investigations carried out by officials of the Anti-Corruption Committee will be performed by the specialized prosecutors of the respective department in the General Prosecutor's Office. Such a mechanism already operates within the General Prosecutor's Office through the department that oversees the investigation of economic and corruption offences: in addition to corruption cases, this department oversees the economic crimes pre-trial investigation by the Investigative Department of the State Revenue Committee. The creation of the Anti-Corruption Committee requires the functions of that Department to focus and specialize exclusively on the investigation of corruption crimes, thereby improving the effectiveness of prosecutorial oversight.

In addition, the Draft Strategy does not designate a special official who will coordinate the activities of the anti-corruption oversight within the General Prosecutor's Office. It must be an official who can serve as an effective counterbalance to the politically-elected leadership of the Anti-Corruption Committee. This goal can be achieved through structural reform within the General Prosecutor's Office, allowing the internal election within the department of a Deputy General Prosecutor who will coordinate anti-corruption efforts. This position would distance prosecutorial oversight of the investigation of corruption offenses from political appointees.

Recommendation

- The Law on the General Prosecutor's Office should be amended to add the position of a Deputy General Prosecutor who will coordinate anti-corruption efforts.
- The Deputy General Prosecutor for anti-corruption cases, who should coordinate the investigations of corruption crimes, will be elected by closed confidential ballot by the officials of the prosecution office.[3] The Law on the General Prosecutor's Office should be amended to specify that the Deputy General Prosecutor for anti-corruption cases is subordinate to the General Prosecutor only for administrative matters. As a safeguard of accountability and transparency, there should be a legal mechanism of semi-annual

[3] Under Paragraph 5 of Article 176 of the Constitution of the Republic of Armenia, the procedure of formation and operation of the prosecution office shall be defined by law. Therefore, this proposal will not necessitate constitutional amendments.

and annual reporting to the National Assembly, and dismissal from office in the event such reports are not endorsed.

- The office of the Deputy General Prosecutor for anti-corruption cases should be subject to the criteria prescribed for the Head of the Anti-Corruption Committee: at least 30 years of age, holding exclusively Armenian citizenship for the last 10 years, permanent residence exclusively in Armenia for the last 10 years, five years of professional work experience, an opinion of the Corruption Prevention Commission confirming that the candidate has complied with the ethics rules during their career and confirming the change in the candidate's assets during their tenure, and the absence of any conviction for any crime.
- The Republic of Armenia Law on Prosecution should be amended to provide for the election of the Deputy General Prosecutor for anti-corruption cases by the prosecutors serving in the General Prosecutor's Office. Any interference by the General Prosecutor in this process should be excluded and voting must be done by secret ballot. The process must be open to third-party oversight and appropriately publicized.

6. Specialized Courts

Under Paragraph 74 of the Draft Strategy, the creation of specialized anti-corruption courts will be important from the standpoint of creating and continuously strengthening the institutional setup to combat corruption. The initial Draft Strategy provided for "considering" this action after a review, but in the revised Draft, it is now proposed as a mandatory action. We believe that the creation of a specialized court (a new structural unit/units) is not justified in terms of either legal or public expectations or economic considerations.

Before addressing specialized anti-corruption courts specifically, regardless of a court's area of expertise, we consider it of utmost importance to change the approach used in the appointment of judges. In order to restore the public's faith in the judicial system and the respectability of the position of judge, tools and procedures must be in place to isolate the profession from political and business interests.

Firstly, from a legal standpoint, the need to create a specialized court can be generally due to such court examining a different category of cases to which different laws are applicable. In other words, the law that should be applied by the specialized court, namely the substantive and/or procedural law, must be considerably different from the core legislation currently applied by the other courts functioning within the judiciary. In contrast to this, the Anti-Corruption Court will try cases under the same procedure (i.e. the procedure stipulated by the Criminal Procedure Code of the Republic of Armenia) and the same substantive law (the Criminal Code of the Republic of Armenia) as other criminal cases.

Secondly, specialized courts are not guaranteed to succeed. The Republic of Armenia already has some experience with specialized courts—namely the criminal, civil, economic, administrative, and bankruptcy courts. The experience with the criminal, civil, and economic courts was an obvious failure, resulting in their elimination only one year after their creation.

In contrast, the creation of the administrative court has been successful in institutional terms. As for the bankruptcy court, it is still premature to conclude whether its creation has been a success or a failure. Though, conceptually, its creation may be justified because bankruptcy proceedings are significantly different from the general institutions of civil proceedings.

While the creation of an Anti-Corruption Court may serve a useful purpose as a new and healthy institution, including changing the public's perception of the judiciary, it is worth noting that, in practice, such a court is not immune against smaller or greater failures, or the threat of some judges not being sufficiently professional, or some judges becoming corrupt.[4] In case of even such isolated instances of failure on the backdrop of the institution as a whole being sound, the realization that it does not meet the public expectation is very likely to fuel a new wave of disappointment among the public, undermining the reputation of the new court and hampering the perceived effectiveness of the entire anti-corruption process, which is highly undesirable. There are, hence, some risks of the anti-corruption courts eventually enjoying the same level of public trust as the current courts of general jurisdiction. The experience of the administrative court is rather valuable here, which can be considered a combination of successes and failures, which are due primarily to the different personalities of the judges on this court and the differences in their professionalism and integrity levels.

Thirdly, as far as economic expediency is concerned, it is worth noting that the creation of a new court and a higher-instance court to review the lawfulness of the first instance court's decisions will pose a large additional burden on the state budget and will require heavy allocations for building and operating new buildings and putting in place and financing a separate staff.

In view of the aforementioned considerations, we believe that it would be more appropriate to focus on having a pool of judges specialized in corruption cases, rather than anti-corruption courts, by means of strengthening the expertise of such judges and offering greater safeguards of independence relative to those available to other judges.

Moreover, in the context of broader justice sector reform, it is necessary to continue taking steps aimed at rehabilitating the current judiciary, including an increase in the number of judges. In a judiciary that is generally corrupt and problematic, what matters the most is to restore public trust in the judicial power as a whole, rather than having a "clean isle" in the form of a credible anti-corruption court or the perception thereof.

Recommendation

- The Constitutional Law on the Judicial Code and other laws and regulations should be amended to prescribe that anti-corruption cases (with reference to the specific articles of the Criminal Code) are tried by specially-tested, trained, and specialized judges, and

[4] A comparative mapping of specialized anti-corruption courts published by the Anti-Corruption Resource Center in 2016 concluded that the creation of specialized anti-corruption courts *per se* cannot safeguard such courts against becoming corrupt in the future. Even in Indonesia, where anti-corruption courts played an obvious role as a safeguard for fighting corruption, several judges were convicted for corruption. In the Philippines, one judge was terminated due to allegations of extensive corrupt ties. (Specialised anti-corruption courts. A comparative mapping Matthew C. Stephenson Professor of Law, Harvard Sofie A. Schütte Senior advisor, U4/CMI AntiCorruption Resource Centre, December 2016 No 7)

other provisions of the legislation (for instance, the case assignment procedure and others) should be aligned with this requirement. Moreover, it is possible to have specialized judges in the marzes (regions outside Yerevan), as well.

- A process of utmost transparency, subject to civil society oversight, should be put in place for the appointment of specialized anti-corruption judges, who should be selected on the basis of a combination of professional knowledge checking and integrity checking mechanisms.
- Similar to the recruitment of staff for the Anti-Corruption Committee, the CVs of nominees for the position of a specialized judge should be posted on the official website of the judiciary one month prior to the competition, inviting stakeholders to send concerns related to the integrity of a nominee to the entity administering the competition up to a week prior to the date of the competition. Information on incompatibility circumstances received from various sources could be coordinated and analyzed at the Corruption Prevention Commission.

7. Uncovering Illicit Enrichment

The Draft Strategy refers to the work implemented by the previous government of Armenia for improving the asset and income declarations system. Paragraphs 87 and 88 emphasize that, for purposes of corruption prevention, it is extremely important to have adequate mechanisms of transparency and accountability for genuine public oversight of the activities and possessions of public servants and their family members, to require a larger number of public servants to file declarations, to increase the scope of information that must be declared, to review the content of the declaration, and to create and operate an integrated system for declaring assets, income, and interests.

Despite numerous changes in recent years, the legislation on declarations is extremely flawed and fails to guarantee the full declaration of assets and income of public officials and public servants or their oversight and the uncovering of illicit enrichment cases. More specifically:

- Declaration of high-value assets is required only for property exceeding eight million drams, which is higher than the five million dram threshold stipulated by the Criminal Code article on illicit enrichment as being “significantly higher than the declarant official’s lawful income and property increase and/or obligations decrease” (the threshold itself is too high and problematic, to begin with);
- Declarant public officials and their family members are not required to declare obligations undertaken by them (loans or other property);
- Donations in the form of work and services are not declared;
- The declared data on cash and property does not include the donated property name and type, nor the donor’s name and family relationship;
- It is impossible to discover cases of public officials and public servants breaching the incompatibility requirement on engaging in business activities, and there are no legal regulations on trust management; and

- The process of accepting gifts is not adequately regulated: for instance, it is not clear what a public official should do when receiving permitted gifts that are connected with official/service duties but have a value of less than 75,000 drams, or how to deal with disallowed gifts that are received not in connection with the performance of official duties.

Recommendations

- The Law on Public Service and the related regulations should be revised in order to safeguard the absolute effectiveness and transparency of asset, income, and interest declarations.
- An open-source and open-data system of asset, income, and interest declarations should be created, which will make the data accessible for the public and ensure effective public oversight of the public officials.The list of people subject to asset, income, and interest declaration should be expanded to include civil servants covered under Article 5 of the Law on Public Service, namely contractors hired for the implementation of specific tasks and projectes in the field of public administration and local self-government.
- Appropriate mechanisms should be developed and implemented for the declaration of assets, income, and interest of senior management of private organizations of public importance (as defined by the Law on Freedom of Information) and those using public natural resources.
- Evaluate the feasibility of adding risk factor identification and sampling mechanisms to the general declaration framework.

8. The Recovery of Illegally-Acquired Assets

Under Paragraph 101, one of the priorities of the Draft Strategy will be to devise and implement effective procedures for the return of illegally-acquired property and assets unlawfully taken out of Armenia and for the management of the recovered assets in line with the applicable international standards. The asset recovery will be carried out in accordance with the *in rem* principle, which is commendable, because this approach will restore justice by returning the illegally-acquired assets to their lawful owner (or, if the lawful owner is absent, to the state).

Asset recovery without court conviction will ensure a more swift response, as the efforts of the state will focus on searching for the property, rather than criminally prosecuting the person and collecting evidence. The policy of recovering illegally-acquired assets is, nevertheless, rather sensitive and requires the adoption of a number of key decisions, which require public understanding.

Recommendation

- The asset recovery process must be completely transparent and fully understandable by the public. To this end, it is important to make discussions of the relevant legislation as participatory as possible.
- It is important to define the asset recovery timeframe, which should date back to the year 1991 in order to avoid various political speculations.
- It is necessary to determine the asset recovery scope, for instance, by setting a monetary threshold (such as 50 million Armenian drams) for the possessions of senior public officials in the legislative, executive, and judicial branches, as well as senior officials of law-enforcement agencies, senior officials of other state bodies created on the basis of law, senior public officials that deal with the state budget funds, persons that entered into legal contracts with the state and their related parties, as well as individuals residing in Armenia who have high-value cash, property, and property rights (for instance, above 100 million Armenian drams).
- The legislation should prescribe the obligation of these groups to declare their and their related parties' cash, property, and property rights, and, when necessary, to present evidence of their lawfulness. It is necessary to introduce into the Criminal Code a new crime of "failing to submit a declaration on prescribed transactions."
- A new article on "confiscation of property for the benefit of the state" should be added to the Civil Code of the Republic of Armenia in order to enable confiscation in cases in which the person cannot prove the lawfulness of cash, property, and property rights exceeding the established threshold.
- It is necessary to create/designate the law-enforcement agency that should engage in searching for stolen assets within the country as well as abroad, up to such time when a criminal case is initiated.
- Amendments should be made in the Republic of Armenia Civil Procedure Code and the Law on Compulsory Execution of Judicial Acts in order to prescribe the "confiscation of property for the benefit of the state" as a special type of procedure.
- It is necessary to create/designate a special agency that will, pending the completion of the "confiscation of property for the benefit of the state" procedure, manage the arrested property by using the property efficiently and generating revenue.
- It is necessary to establish the threshold that the state plans to leave to the enriched person after enforcement of the asset recovery (for instance, 5 percent of the value of the discovered assets).
- A certain percentage (for instance, 95 percent) of the value of assets recovered through court proceedings should be sent to the state treasury, and the rest should go to the budget of the entity that administered the proceedings. The Government of the Republic of Armenia should create a special earmarked budget in which the recovered amounts will be collected and from which they will be spent for certain specified purposes.
- It is necessary to make active use of the instruments available under Armenia's bilateral and multilateral treaties in order to achieve greater efficiency in the recovery of assets from abroad.

- The Government of Armenia and the related law-enforcement agencies should ensure transparency of the asset recovery process and the use of the recovered assets by publishing detailed information online, updated at least twice a month.[5]

9. Identifying the Beneficial Owners

Paragraph 93 in the "Anti-Corruption Regulatory Impact Assessment and Enhancing Transparency in the Public Sector" section of the Draft Strategy highlights the importance of identifying the beneficial owners of legal entities that are registered by the Armenian state and introducing a universal and publicly-accessible platform of information on such beneficial owners, where information on beneficial owners will be made public. Although the Draft does not touch upon any limitations or privileges with respect to publicity, they are stipulated by the Program endorsed by Government Decree 65-A dated 8 February 2019. According to this Program, "the plan is to revise the mechanisms for making publicly accessible the information that exists in the unified state register of state-registered legal entities, to eliminate the binding legal requirement to pay a stamp duty for mass media registered under the special procedure provided by law, and to ensure the freedom of credible and complete information on matters related to public interests."

It is worth noting that, even if the beneficial ownership platform and the mechanisms for verifying the presented information are successfully implemented, it is not feasible to check the information fully and comprehensively, as confirmed by the experience of countries that are leaders in identifying beneficial owners. What matters the most is to ensure the public's access to information on companies, including on their beneficial owners, so as to enable public oversight and international cooperation.

Recommendation

- Information that is available in the state register of legal entities, including information on beneficial owners should be accessible at no cost to not only registered mass media, but also society as a whole, which will enhance the effectiveness of public oversight of the truthfulness of the information and prevent the submission of untruthful data.

10. Rewards System for Public Servants

The Draft Strategy is silent with respect to problems related to the remuneration system for public officials and public servants. However, the Action Plan proposes a number of actions that will improve the remuneration and consequently enable the recruitment of higher-quality human resources.

[5] See also Transparency International Anti-Corruption Center, *Asset recovery policies in post-revolution Armenia*, https://transparency.am/files/publications/1558462258-0-990243.pdf

Presently, nominal wages of public officials employed in state and municipal institutions are rather low, and this gap is compensated through bonuses, which is a process that is extremely non-transparent, full of corruption risks, not subject to effective controls, and depends completely on the arbitrary wishes of the heads of public agencies.

A public servant should receive contractual wages for the proper fulfillment of his or her contractual duties. A bonus can be paid only as a reward for extraordinary performance and contingencies.

Recommendation

- The whole philosophy of bonuses in the public sector should be revised, and bonuses should be payable only for exceptional and outstanding performance of certain public servants. Parallel to this, wages should be increased, so that dignified remuneration is offered for the expected performance/outputs.
- Bonuses should be paid to public servants only in exceptional cases, when the value created by the public servant significantly and/or unexpectedly exceeds the amount or quality of the performance required under contract.
- The quality of performance of public servants should be regularly evaluated on the basis of evaluation criteria that must be clear and measurable for all public service positions so that performance relative to the contractual obligations can be evaluated as a basis for decisions to grant bonuses, to promote, or to apply other incentives.
- In addition to the evaluation by their immediate supervisors, the performance of public servants should be evaluated by means of soliciting feedback from the beneficiaries of their work, so as to provide a more impartial picture of the quality of performance and to reduce the likelihood of arbitrary decision-making.

11. Regulatory Impact Assessment of Legal Acts

Paragraphs 91 and 92 in the “Anti-Corruption Institutional System” section of the Draft Strategy provide that the current system for regulatory impact assessment does not reveal the corruption risks associated with a legal act, and it is proposed that, in addition to the other functions provided by law, the Corruption Prevention Commission should carry out anti-corruption regulatory impact assessment. For this purpose, the Draft Strategy plans to develop the capacity and ensure the specialization of the relevant staff of the Corruption Prevention Commission.

It is necessary to require anti-corruption regulatory impact assessment for all normative legal acts, because any legal act may be unclear or contain unjustified discretionary powers or lack oversight. In view of the likely prospect of such a workload, it is necessary to assess the procedural limitations and technical capacity of the CPC’s assessment from the viewpoint of paperwork or deadlines. Considering that all legal acts undergo expert assessment in the Ministry of Justice, and that a RIA methodology support department has been created in the

Staff of the Government, it may be technically more appropriate to place these functions with those existing institutions.

Recommendation

- Regulatory impact assessment should be required for all normative legal acts. For specific legal acts that apply to specific individuals, RIA should be carried out on a sample basis.
- It is necessary to properly estimate the potential obstacles to regulatory impact assessment by the CPC and to develop actions to overcome them.
- It is necessary to develop a methodology to evaluate the regulatory impact, from a corruption risk perspective, of legal acts, to be used both by those authoring the acts and those responsible for regulatory impact assessment.

12. Public Participation in the Decision-Making Processes

Paragraph 104 in the "Anti-Corruption Education and Awareness" section of the Draft Strategy provides that Armenia shall ensure public participation in the drafting of legal acts, referring mostly to the e-draft.am unified electronic platform for draft legal acts. Nevertheless, it is worth noting that public participation in the drafting process of legal acts is rather limited.

The drafting process of legal acts is comprised of the law conception phase and the law making phase. The law conception phase is the phase in which the idea for the legal act is conceived: the selection of legal regulation methods and means for a specific field of social relations in a democratic state needs to identify the public demands, perspectives, and issues. The law making phase is the actual drafting work of legal acts, which should take into consideration the opinions and recommendations presented by stakeholders.

The Armenian legislation somewhat regulates the law making phase, but virtually neglects the preceding phase of law conception. There are no legislative and institutional mechanisms for ensuring more effective public participation from an earlier stage. As a consequence, normative legal acts that are adopted are often not properly implemented due to the absence of a need for their adoption in the first place, the lack of public awareness thereof, or inconsistent public perceptions thereof. Besides, they may give rise to disagreements and conflicts, as happened recently in connection with the protests of certain taxpayer groups regarding the proposed amendments to the Tax Code, or other laws adopted by the National Assembly.

The legislation should define the law conception phase as the phase in which the legal rules are conceived, which will promote the effective engagement of interested citizens and experts in public administration matters. Such a mechanism will ensure higher quality legal acts and guarantee their proper implementation at later stages. At the National Assembly level, it will help to activate the representatives of the political system and to maintain their ties with the voters.

On the other hand, it should be noted that public participation is neither sufficient nor effective at the law making phase, either. Sub-paragraph 1(10) of Article 2 of the Republic of Armenia Law on Normative Legal Acts defines "public discussions" as a process of informing the public about drafts of normative legal acts, exploring public opinion, and soliciting and consolidating comments and proposals on such drafts for the purpose of ensuring public participation in the law making process and safeguarding the transparency and accountability of the process. Here, the term "public discussions" includes, generalizes, and confuses a number of disproportionate actions, which may in fact result in undermining the basic requirement of ensuring publicity of the legal acts.

Recommendation

- The legislation should define law conception as a phase in the formation of normative legal acts and prescribe a participatory procedure.
- The entity presenting a draft (in case of National Assembly members—the faction, in case of the Government—the governmental agency that took the initiative to present a draft) should be obliged, prior to drafting the legal act, to consult/discuss the contemplated legal regulations with legal entities and natural persons (including experts) and to publish a statement/report of such consultations on its official website.
- The Republic of Armenia Law on Normative Legal Acts and the Republic of Armenia Government Decree (number 1146-N dated 10 October 2018) on Approving the Procedure of Organizing and Conducting Public Discussions and on Repealing Government Decree (number 296-N dated 25 March 2010), should be amended such that the term "public discussions" is properly and clearly defined;
- All types of normative legal acts, without exception, should be published on the e-draft.am website.
- Public discussions should be mandatory at the law conception phase, with some reasonably justified exceptions.
- A minimum one-month period should be prescribed for the public discussion of draft legislation.

13. Whistleblower Protection

On 9 June 2017, the Republic of Armenia Law on the Whistleblowing System was adopted. However, it is inadequate due to a number of reasons.

Firstly, the Republic of Armenia Law on the Whistleblowing System, in its current form, fails to regulate whistleblowing in the private sector; therefore, private sector whistleblowers are not receiving the same legal guarantees and opportunities as public sector whistleblowers. This gap not only limits the possibility of uncovering private sector corruption, but also weakens the anti-corruption efforts as a whole, because corrupt practices often cross the line between the public and private sectors and affect stakeholders in both.

Secondly, the current legislation does not grant to whistleblowers' related parties the same guarantees as to the whistleblowers. While related parties clearly have a different role in whistleblowing, and they should indeed be subject to different regulations, the rules should minimize the risk of harmful action vis-a-vis related parties. Under the current legal framework, the only remedy available to a related party who is subject to discriminatory treatment is going to court; if there is a risk of such treatment, the affected person should turn to the head of the competent authority, which clearly cannot safeguard effective protection.

Recommendations

- The provisions available under the Republic of Armenia Law on the Whistleblowing System should become available to private sector whistleblowers, as well.
- Whistleblowers' related parties should benefit from effective and efficient procedures for protection against harmful action connected to the whistleblower.
- Measures should be taken to uphold the image of whistleblowers and to promote whistleblowing, for instance by covering and disseminating the success stories of whistleblowers.

14. Party Financing

The Draft Strategy has neglected political corruption and the party financing problems that often comprise the foundation of such corruption. It is crucial to examine party and campaign revenues and spending in the wider context of anti-corruption efforts. This approach is essential because funders—be they the public or wealthy oligarchs—eventually impose politics upon the politicians.

After the 2018 April revolution, the opportunities for parties to come to power lawfully and, hence, the challenges facing parties have changed drastically in Armenia. Previously, the private sector and citizens would be reluctant to finance opposition parties due to fears of administrative pressure by the tax agencies and other authorities. Currently, this problem no longer exists.

The challenges of today are fundamentally different from the challenges of the past. It is now necessary to create opportunities for parties and to safeguard their access to resources, whilst preventing the impact of unlawful finance and large capital on the political landscape. To this end, it is essential and timely to revise the Republic of Armenia Law on Political Parties and to implement systemic and comprehensive changes in this field by creating a new, independent, and resourced supervisory agency that will properly oversee party finance.

Recommendations

- The party financing formula should be revised to reduce the threshold of eligibility for state funding and to put in place other methods of accessing state support, especially for smaller and newly-created parties.

- It is necessary to limit the parties' ability to receive funding from suspicious sources, for instance by prohibiting ongoing financing by legal entities or transfers from foreign banks.
- Legal liability for omissions and failures related to party financing should be enhanced.
- The role of the oversight-audit service/agency should be strengthened, its functions and toolkit should be augmented, and the possibility of incorporating it into the Corruption Prevention Commission should be considered.
- Mechanisms should be prescribed to ensure the transparency and accountability of party financing, especially by introducing a system of mandatory declarations of property and income for large donations (for instance, any donation in excess of 500,000 Armenian drams), as well as requiring that all transactions be in non-cash form, and so on.
- Accountability should be required of the political parties' related structures and third parties operating for the benefit of political parties.
- Minimum standards should be prescribed for developing internal democracy in parties, for instance by requiring transparent preparation of party election lists, the confidentiality of the internal elections, and the monitoring of such elections by mass media and civil society.

15. Elections

While the amendment process of the Electoral Code is being postponed without justification, elections continue to take place in Armenia – at the local level – in which the abuse of administrative resources continues and inadequate campaign expense disclosures continue to provide room for corrupt activities.

It is necessary to immediately restart the amendment process the Electoral Code and related legislation in order to secure the upsurge in accountability of political actors, widen the transparency of campaign funding, minimize the abuse of administrative resources and enforce sanctions for violations.

Recommendations

- At the national level, it is necessary to eliminate the system of territorial lists of political parties (and of alliances of political parties), to increase the transparent of campaign finance, minimize the incentive to abuse administrative resources, and also minimize the influence of business and criminal elements on electoral processes.
- At the local level, it is necessary to consider conducting municipal elections by proportional lists (in communities of sufficient size), allowing party structures to play a role in ensuring accountability for affairs at the municipal level.
- It is necessary to cleary define the term "campaign" and the campaign period, as well as other terms including "administrative resources" and "abuse of administrative resources". Clear definitions will strengthen the legislative regulations aimed at limiting the use of administrative resources and the ability to prosecute violations.

- Measures must be taken in order to secure a complete declaration of the sources of income and expenditure details of political parties and alliances of political parties during, and before, the campaign period.
- Measures must be taken in order to secure the oversight of third parties, including mass media entities, during the campaign period, especially in relation to the declaration of expenditures associated with the election.

16. Civil Society Engagement in the Fight against Corruption

Paragraph 9 in the "Preface' to the Draft Strategy emphasizes the need for active civil society engagement in and public oversight of the anti-corruption policy implementation process. Paragraph 111 in the "Monitoring and Evaluation" Chapter provides that transparency and accountability in the public administration system can be increased if civil society actors consistently demand a public administration that is free from corruption and equipped with knowledge and skills.

To this end, it is worth noting that civil society organizations have limited ability to demand integrity and to exercise public oversight. For a non-governmental organization to defend public interests and to advocate for its and its beneficiaries' rights and legitimate interests, it is often necessary, if not essential, to act as a plaintiff in court for matters related to public interests or general corruption, for which there may be no specific beneficiaries. Such matters might include the corruption risks posed by legal acts or the inaction of contentious decisions of the competent authorities with respect to conflicts of interest. Under the Republic of Armenia Law on Non-Governmental Organizations, non-governmental organizations engaged in the protection of the environment are the only NGOs that may have standing to represent the legitimate interests of their beneficiaries in court. For other topics, non-governmental organizations may be found to have no legal standing and no right to act as a plaintiff, which hinders the ability of non-governmental organizations to carry out public interest litigation in corruption-related matters.

For combatting corruption, raising the level of public accountability and transparency, and promoting and protecting human rights and freedoms, it is crucial for non-governmental organizations registered in Armenia to have standing in court to challenge legal acts and to represent the legitimate interests of their beneficiaries within the framework of their statutory objectives. It should be noted that this action is more needed than Action 5 on continuous anti-corruption training courses for civil society organizations. Non-governmental organizations are capable of organizing such courses themselves.

Recommendations

- The Republic of Armenia Law on Non-Governmental Organizations should be amended to grant standing to non-governmental organizations to represent public interests in courts and other bodies within the framework of their statutory objectives.

17. Freedom of Information and Public Oversight

During this time of political transition, public oversight of the activities of state agencies by civil society is one of the most important guarantees for ensuring the effectiveness, transparency, and accountability of anti-corruption measures. Currently, relating to efforts to entrench democratic values in Armenia, statements on the importance of public oversight have been made and are welcome, but the time has arrived to transform these words into effective and lasting mechanisms.

It is apparent that the public's assessment of the activities of state authorities is largely shaped by their degree of transparency and the availability of information. In this regard, the foundations for the transparency of information as stipulated by the legislation in the Republic of Armenia are insufficient for securing transparent and accountable governance.

In particular, according to the Law on Freedom of Information, open data regimes do not encompass the exploitation of natural resources, which is of major interest to the public. Private companies are not legally considered organizations of public importance despite their far-reaching societal impact.

Law enforcement activities are completely opaque. They often use the term "pre-investigation secret" to withhold information but, as a result, serious suspicions are being raised about their proper and lawful operation. The processes aimed at recovering the damage suffered by the state before 2018 by different individuals is questionable, casting doubt on the integrity and legality of the work of law enforcement bodies and raising concerns in regards to possible corrupt agreements and confidential transactions.

Quite often, requests for information are rejected under the pretense of state and service secrets without presenting any grounds for considering the information as a "state" or "service" secret.

Within the context of 21st century technological development, public accessibility of state databases which are related to public interest is quite important. Data accessibility through open data and open source regimes will make it possible for representatives of civil society to conduct analysis and support state oversight bodies in performing their functions.

Generally speaking, artificial limitations on freedom of information must be removed from legal regulations so that exceptions are only considered when they have true legal standing.

Recommendations

- It is necessary to broaden the scope of the RA Law on Freedom of Information in order to cover private companies which are involved in mining natural resources or which process those resources.

- It is necessary to outline in the RA Law on Freedom of Information and RA Criminal Procedure Code a list of items which cannot be considered as a “preliminary investigative secret”.
- Zvane’s criteria for classifying data as state or service secrets should be used instead of the current approach.
- Legal and technical structures should be developed to secure public accessibility of at least the following databases (free of charge through open data):
    - Database on the System of Declarations of Assets, Income and Interests;
    - Database on the Organization of Public Procurement;
    - Database of State Registry of Legal Entities, including data on beneficial owners;
    - Database on the Cadastre of Immovable Property and Land Use;
    - RA Water and other Natural Resource databases.

It is important to add that, one year after 2018’s change in government, the public anticipates fundamental and essential changes in the fight against corruption, which will entrench and solidify the victory of the revolution over the ways of the past. In this regard, the most important component in the fight against corruption is expediency in implementating these measures, which of course must be done with an appropriate level of publicity.

2019-2022 Implementation Action Plan of the Anti-Corruption Strategy of the Republic of Armenia

The following recommendations are hereby presented on the 2019-2020 Implementation Action Plan.

General Recommendations. The "control indicator" column should be renamed to "action control indicator" in order to clarify its purpose and substance. In addition to the actions and the progress evaluation control indicators, impact assessment indicators should be prescribed for assessing the overall impact of implementing the anti-corruption strategy.

Action 2. The action "formation of an anti-corruption law-enforcement entity enjoying sufficient safeguards of independence and functions of investigating and uncovering corruption crimes" should be restated as "formation and ensuring the normal functioning of an anti-corruption law-enforcement entity enjoying sufficient safeguards of independence for investigating and uncovering corruption crimes."

Action 3. For the action "creation of specialized anti-corruption courts," the language used in the earlier version of the draft should be reinstated. Before a final decision is taken on the creation of such courts, the international experience and expediency of creating such courts should be studied through a cost-benefit analysis (see also the comments on this matter in the Draft Strategy).

Action 4. Clarify the need for the action "clarifying the status of the Anti-Corruption Council" in the Draft Strategy. It is unclear whether this concerns the Council that is no longer active or the newly-created Anti-Corruption Policy Council, with respect to which the Draft Strategy has not identified any issues.

Action 5. In the action "capacity development for entities responsible for drafting anti-corruption policies and for non-governmental organizations," it is not appropriate for the government to undertake the obligation to develop the capacity of non-governmental organizations.

Action 11. The action "designating and implementing ethics commissions and integrity officers in accordance with the Law on Public Service" is not covered by the Draft Strategy, and it is not clear exactly what problem it addresses. Besides, this is a requirement of the law, which must be complied with in any event.

Action 12. The activities under the action "improving the remuneration system for public officials and public servants" should be supplemented with the "revision of the system of bonuses and supplements" (see also the comments on this matter in the Draft Strategy).

Action 15. The action "continuous improvement of the whistleblowing system" should be supplemented with "identification and improvement of legislative gaps with respect to whistleblower protection," and "covering and disseminating the success stories of whistleblowers" (see also the comments on this matter in the Draft Strategy).

Action 17. In the 2020 activities under the action "enhancing the effectiveness of the anti-corruption regulatory impact assessment system," add "development of the RIA methodology," and restate the 2021 activities to provide for current, rather than periodic RIA for all normative legal acts, as well as periodic RIA for non-normative acts.

Action 18. For the action "improvement of the assets, income, and interests declaration system," the 2019 activity of studying the international experience is not clear because such studies were most certainly carried out during the operation of the Ethics Commission for High-Ranking Public Officials. The problems are well-known, including from international reports. Instead, it would be preferable for the Strategy to pinpoint the issues that exist (see also the comments on this matter in the Draft Strategy).

Action 20. The action "determining whether lobbying requires legislative regulation" is not justified as a tool to combat corruption. Such a problem currently does not exist in Armenia. Designating "lobbying" as a new type of business activity is problematic as it may create excessive opportunities for "dirty" money and introducing intermediaries between politicians and society.

Action 23. For the action "improving public procurements," the underlying problems are not presented in the Draft Strategy. The activities proposed over a four-year period are extremely protracted. It is proposed that drafting the legislative packages be completed in 2019 and 2020, the new electronic procurement system be launched at latest by 1 January 2021, and complete legislation and a transparent system of electronic procurements be in place in 2021-2022.

Action 24. The activities under the action "introducing the institution of beneficial owners of legal entities" are rather protracted, especially as much work has already been completed, and the electronic registration system will soon be ready. It is necessary to prescribe identification of beneficial owners for the mine operators in 2020, for newly-registered companies, mass media and large corporations (including all joint-stock companies) in 2021, and for medium-sized companies in 2022 (see also the comments on this matter in the Draft Strategy).

Action 25-26 and 30-31. It is not clear which problem related to corruption would be addressed by the multitude of diverse electronic platforms proposed here and how justified it is to claim that such erratic implementation of modern information technologies in everyday work is indeed an anti-corruption activity. At best, they can be confined to one activity, potentially labeled as "implementation of e-governance tools." It is necessary to prescribe that, depending on the demands of the stakeholder community and the justifications, electronic platforms should be created via open data in order to enable public oversight. Their design, too, should be an inclusive and participatory process.

Action 27. The 2019 activity for the action "improving the effectiveness of ensuring public engagement in the drafting process of legal acts" should contain a revision of the Law on Normative Legal Acts and, if necessary, also the related procedures, which should create legislative and institutional mechanisms for engaging the public more effectively and from an

earlier stage. The 2021 activity of engaging the public at large in the law making process is extremely ambitious. It would be better to aim for possibilities for effective participation, rather than achieving actual engagement. The control indicator for this action ("increasing the number and types of drafts") does not reflect greater effectiveness (see also the comments on this matter in the Draft Strategy).

Action 29. The action "identify and streamline the discretionary powers in state bodies and local self-government bodies" should be incorporated in actions 6 and 7, because discretionary powers should be identified as part of the corruption risk assessment.

Action 32. The action "clarifying the scope of corruption crimes in the Criminal Code of the Republic of Armenia" is unnecessarily protracted. It should actually precede the "creation of the Anti-Corruption Committee," the activities of which should target the very scope of corruption crimes; therefore, it should be finalized by yearend 2019. Relevant amendments should be made in the Criminal Code and Criminal Procedure Code of the Republic of Armenia.

Action 33. The action "reviewing whether the corruption crimes definitions in the Criminal Code of the Republic of Armenia are consistent with the international standards, and if necessary, presenting recommendations on aligning the corruption crimes definitions with the international standards" should be merged with Action 32. The package of legal acts planned for 2021 should be drafted and adopted no later than in the course of 2019.

Action 39. The implementation of the action "strengthening international cooperation for investigating and solving corruption crimes" is unnecessarily protracted. We propose implementing these activities during 2019-2021, and having the necessary international treaties already signed in 2020.

Action 40. The implementation of the action "creating institutions for the confiscation of illegally-acquired assets" is unnecessarily protracted. We propose drafting and adopting the package of legal acts planned for 2021-2022 no later than during the first half of 2020.

Action 41. The implementation of the action "considering the appropriateness of improving the legislation on selection of the General Prosecutor candidate, organizing the competition for recruiting prosecutors, appealing instructions of the General Prosecutor, and transferring cases from one body of pre-trial investigation to another" is unnecessarily protracted. The anti-corruption prosecutor should be institutionalized and active at the same time as the Anti-Corruption Committee, i.e. from 2020.

Action 42. The 2019-2020 activities under the action "introducing the criminal liability of legal entities for corruption crimes" have already been implemented, as reflected in the new draft of the Criminal Code. This action should be completed by 2020, with the drafting of a Law Amending and Supplementing the Criminal Code and a Law Amending and Supplementing the Criminal Procedure Code.

Action 43. The action “creating prerequisites for harmonizing the legal practice with Article 30 of the Law on Criminal Intelligence Operations” is not clear. One cannot tell what problem it intends to address.

Action 49. The implementation of the action “online broadcasting of the testing phase of competitions to fill vacant positions” is unnecessarily protracted. We propose implementing these activities in 2019-2020.

Action 51. The control indicator for the action “implementing training courses on the ethics rules for public servants” includes the development of training programs. Therefore, they should be incorporated in the wording of this action.

Action 52. The wording of the action “conducting regular public opinion polls on corruption, public trust, and the impact of anti-corruption activities and publishing the findings of such polls” should be supplemented with a reference to “result-based changes in the field of anti-corruption policies,” as is stated in the control indicator.

Transparency International Anticorruption Center
Helsinki Citizens’ Assembly Vanadzor Office
Open Society Foundations - Armenia
Law Development and Protection Foundation
Journalists’ Club “Asparez”