



## COMMENTS

### on the RA Anti-Corruption Strategy Program and Its Implementation Action Plan

#### **FORWORD**

The adoption of a national anti-corruption strategy program is generally welcomed both in Armenia and in any other country where corruption level is high. According to the rating of Transparency International Corruption Perception Index, Armenia has the index of 3 on the 0-10 rating scale (see [www.transparency.org](http://www.transparency.org)).

During recent years the Government of RA has undertaken a number of initiatives within the framework of public sector reform program which contain certain anti-corruption elements. However, only after the adoption of the Anti-corruption Strategy and its Implementation Action Plan /hereinafter referred as Program/ the fight against corruption by the Government of RA received the status of a national objective. The Program has a number of positive aspects, for instance, the attempt to apply a systemic approach, proposal of concrete measures for certain fields, reference to civil society participation, etc.

In regard to public participation, it should be mentioned that, despite the positive experience of the PRSP participatory drafting process, neither the RA Government nor the interested international organizations, did not ensure wide public discussion of the Anti-Corruption Program in the drafting phase, thus diverting the society from the initial stage of the process. This kind of approach cannot be explained, taking into consideration that transparency and participation are stated in the Program as the main principles and the representatives of the coalition government have repeatedly declared that the society should be actively involved in discussions of the Program's drafting process.

NGO representatives had an opportunity to participate in the workshop organized in July 2002 and express their opinion on the first draft of the Program. Afterwards, the versions being developed within the one and a half years were not published and discussed. The content of the Program was introduced to the public only after its adoption in December 2003. Being interested in the Program status and emphasizing the importance of the civil society participation, on July 16, 2003 our organization sent a letter to Andranik Margaryan, Prime Minister of RA, and offered its support in organizing public hearings and discussions. No respond was received on this matter.



The position of our organization on the issue was introduced during the discussion that followed the Program presentation organized by the Government of RA on January 16, 2004; the meeting on the GRECO membership on January 19-20; as well as on the public discussion of the Program organized by our organization on February 27. We have repeatedly expressed our concerns to the representatives of the mass media and international organizations that such attitude does not conceive the authorities are really ready to cooperate with civil society.

Today an opinion is being expressed, that the participation of NGOs would not be helpful at all. Of course the participation would not guarantee the creation of a perfect document, but it would ensure a step forward towards the participatory process as an expression of a will for cooperation. There is another opinion that the adopted Program will hardly be reviewed and there is no meaning to suggest changes and amendments to it. In our opinion it is more reasonable to eliminate the evitable weaknesses of the Program on the first stage of its implementation.

In this regard, it must be noted that the Government of RA did not officially announce about the possible revision of the Program. However, on February 26, 2004 Mr. Bagrat Yesayan, Advisor to the President of RA invited NGO representatives, including our organization, with a suggestion to submit their opinion and comments on the Program.

## ***ANALYSIS***

The international experience shows that, even a perfect Program can be left on paper if there is no true political will to fight corruption, readiness of the state officials, relevant financial and other types of assistance, and, what is more important, public participation.

Political will does not presume only adoption of an anti-corruption program or becoming a member of a number of international organizations, but also denunciation of corruption and intolerance towards everybody despite of its position, status and income. In January – February 2004 our organization, in cooperation with other NGOs, conducted a public opinion phone survey, with the participation of 680 residents from Vanadzor, Ararat, Goris and Yerevan. The study was aimed at observing citizens' attitude towards the anti-corruption initiatives of the authorities and their understanding of what an expression of a real political will on fight against corruption is.

Only 22% of the respondents considered that the adoption of the Program means that the Armenian authorities are really willing to fight corruption. To the question "Which activities of the authorities will convince you that the fight against corruption has started in our country" numerous



answers have been provided, some of which are presented below (<http://www.transparency.am/Website/Activities/phonesurvey-Eng.pdf>).

- Hold fair elections;
- Expose and punish high-ranking officials involved in corrupt practices;
- Increase the living standards, create workplaces, eliminate monopoly in business sector;
- Reduce bureaucracy, give up privileges;
- Cease parliamentary immunity;
- Declare the assets of the officials, give up luxurious cars and houses, return the stolen property
- Have a transparent governance system, hire trustworthy, clever and skillful people;
- Prove by their actions, through their own example, keep their promises, make tangible changes, review the political system;
- Ensure transparency of the decision-making processes, provide the public with impartial information, take the public opinion into consideration when drafting a program.

In February 2004, our organization completed another study aimed at examining the national integrity system (NIS) in Armenia and suggesting recommendations on improving the NIS. The study was based on the indicators developed by the experts from Great Britain, and was funded by the British Government. It revealed that in general the national integrity system is not effective because of both various systemic and institution specific factors. The systemic functions include: absence of political will; lack of independence of institutions; imperfect legislation; insufficient law enforcement; lack of administrative, human and other resources; and historical and cultural peculiarities.

The effectiveness of the public sector reforms in Armenia was also examined. It was recorded that the Armenian authorities have adopted rather progressive laws (*civil service law, law on procurement, etc.*) through harmonizing the legislation with the international standards. However, the authorities' actions are limited only by adopting laws because they are not able to ensure the sub legislative changes necessary for the enforcement of the law, the administrative and human resources, as well as effective control, punishment and motivation mechanisms. The new requirements are not only inconsistent with the institutional capacities, but also confront with the old mentality and conduct of the state officials. The state apparatus is not ready for implementing serious reforms both for objective and subjective reasons.

It is necessary to mention that one of the reasons of the failures in the field of public sector reforms is the investment of the international experience, when the local peculiarities are not taken into consideration and often wrong approaches are chosen. The lack of coordination of the public



sector reforms, internal and external vague control over the credit and grant programs and imperfect evaluation had their negative impact on this process as well. Finally, the lack of public participation, citizens' mistrust towards the authorities, as well as the general passive approach to and tolerance of corruption have created a situation which hinders the political and economic development of the country.

The financial, technical, consultancy and other types of assistance by the international community is largely dependent on the expression of real political will. As for the participation, until now the Armenian authorities have ensured the simplest way of it (not even in an appropriate manner), that is the one-way communication - providing information without expecting any feedback. The two-way process of cooperation, where the citizens have the opportunity to express their opinion and demand that the opinions are taken into consideration, does not exist in Armenia.

Though not all the necessary pre-conditions for ensuring effective public participation in the anti-corruption programs or other processes exist in our country, some of them are present. We do not live in a totalitarian regime, where the authorities "kill" any public initiative. Despite the absence of the mutual trust, on one hand there are individuals in the public sector who want to change the situation, on the other hand there are NGOs that are capable of participating in the reform processes. Finally, though the legislation does not ensure participatory mechanisms, it does not prohibit it either.

Any cooperation must be mutually beneficial. The authorities may benefit by involving the public in the policy development, implementation and control processes. This "benefit" may be expressed through accepting collective responsibility, finding new resources, getting new ideas, showing advanced approaches, getting the approval of the international community, ensuring the legitimacy of the reforms, etc.

## **OPINION**

The RA Anti-Corruption Strategy Program and its Implementation Plan leave an impression of 2 separate documents, not related to each other. For example, in the Program there is no reference to the field of environment, but in the Implementation Plan several activities in this field are indicated (see 4.28-4.30). The same concerns to the issue of credits and grants that are mentioned in point 4.39 of the implementation plan, but are not referred to in the Program.

In the Program, that has a declarative character, only some problems and manifestations of corruption are identified, but there is no mentioning of, for example, armed forces, disaster zone,



vote-buying, violations of urban and environmental norms, and other problematic fields, services or types of activities. The dangerous consequences of corruption in terms of the political, economic and social development of the country are not assessed in the Program.

The following are mentioned as the main components in fight against corruption: increase of public consciousness on the level of harmful consequences of corruption, prevention of corruption and the prevalence of the rule of law aimed at the protection of human rights (*see pg. 284*)<sup>1</sup>. This is generally complimentary with the three main component of anti-corruption policy (*education, prevention and disclosure*), however, the implementation plan does not follow this logic.

For example, the list does not include concrete activities aimed at exposing and punishing corrupt practices in various fields and does not indicate measures for their publicity, though such activities are emphasized in the second section of the first part of the Program (*see pg. 282*). As for exposing and publicizing the corrupt practices through the internal control, probably it is assumed to be carried out, for example, in the field of taxation within the activities mentioned in point 4.11. However, it is not clear why such activities are not planned to be realized in the customs or other fields. The need for an independent control and review body for the effective struggle against corruption is not stressed in the Program.

The section on political corruption is very weak. In that section, issues related to parties, observers and voting-lists are highlighted, but there is no indication of using administrative resources in the advantage of some candidates or parties during the elections. It is not clear why in this section the issue related to the local self-governance is raised, while a separate section had to be devoted to the problems in this section. It must be mentioned that the activities in the field of local self-governance mentioned in the implementation plan are limited to the points 4.40 and 6.3, which are related to the establishment of both community and municipal services for budget monitoring.

As for the problems in the economic field, only the fields of taxation, customs, education, health, state finances, property and privatization are included in this part of the Program. The measures for fight against shadow economy do not reflect the issues, such as the wide-spread protectionism, privileges given to certain businesses, conflict of interest, the capital and income of state officials generated in the result of an abuse of position, and other illegalities.

Part 5 of the Program dedicated to the law-enforcement bodies as well as the corresponding activities in the implementation plan foresee improvement of technical capacity, solving the issues of the employees' salaries and social welfare, professional development of the staff, development of code of conduct. However, there is no reference to the control mechanisms of the activities of



those bodies. The same approach is used in relation to the judicial system. Though the Program notes, that “the independent judiciary is one of the main tools in fight against corruption” (see *pg.* 296), the Implementation Plan lacks the activities aimed at ensuring the independence of the system.

The Program does not indicate who must coordinate its realization and how. Neither the Anti-Corruption Commission under the Prime Minister of RA, formed in the beginning of 2001 for the coordination of the Program, is mentioned, nor a new coordinating and control body is suggested to be established. The implementation plan lists only the responsible institutions/bodies, who are mostly the Government or its several ministries and services.

From more than 90 activities only 5 are foreseen to be regularly implemented (see 1.2, 2.2, 2.3, 4.11 and 8.4). The rest of the activities are planned to be completed in 2007. However, it is not clear if after 2007 a new program or implementation plan will be developed or not.

In general, the planned activities mostly include development and adoption of legislative and sub-legislative acts, strategy programs and concept papers, and only the activities listed in point 21 are of different nature. Taking into consideration the ineffective implementation of the existing laws, it can be assumed that the new laws and procedures will have the same outcome. In point 3.3 of Part 3 of the Program the importance of the law enforcement is emphasized, and as necessary preconditions for this the public awareness on the law through mass media, as well as the control over the implementation of the legislative acts are mentioned (see *pg.* 287). It is interesting that in the implementation plan such control activities are limited.

It must be noted that the participation of other interested parties/institutions in the development of the legislative and sub-legislative acts is neglected, though it is mentioned in the Program that “... the participation of the NGOs in the development stage of the legal acts is especially essential” (see *pg.* 283). Though the fight against corruption assumes transparency and participation, NGOs are indicated as responsible implementing institutions only in 6 cases (see 1.2, 1.3, 5.4 – 5.7), and those activities are mostly related to awareness raising, education and monitoring activities.

Concrete mechanisms aimed at ensuring the “state-public” relation are very limited. For example, the Program mentions the importance of the public complaint mechanisms (see *pg.* 295), but in the implementation plan the complaint process is noted only in terms of the protection of tax-payers (see 4.10). Or, it is not clear how the Public Relations Departments of the Ministries will ensure the control over the public services (see *point* 6.10). Parliamentary hearings are also mentioned in the



Program as an effective way of public participation. However, currently such a mechanism cannot be considered as the best.

Taking into consideration the abovementioned, our organization suggests the following.

1. Establish a working group involving all the interested groups (*authorities of executive, legislative and judicial branches, parties, businessmen, NGOs, mass media, international organizations and others*) to review and make the Program and its Implementation Plan compatible, as one integrated document.
2. Justify why the Program and the Implementation Plan refer to only 2003-2007.
3. Assess the harmful consequences of corruption on the political, economic and social developments of the country.
4. Recommend measures in the fields of armed forces, earthquake zone, urban development, vote-buying, use of administrative resources, party financing, and others.
5. Extend the list of activities in the fields of environment, transportation, energy, providing and use of credits and grants, and others.
6. Separate the problems related to local self-governance in the Program and develop corresponding activities in a community level.
7. Expand on the issues on illegally providing advantages to some businesses, concentration of political and economic benefits in the hands of a group of political leaders, as well as the generation of capital and income through the abuse of position.
8. Apply the main components in fight against corruption (education, prevention and disclosure) to the activities in all fields.
9. Extend the list of the institutions responsible for the implementation of the Program, do not limit it by including only the executive bodies.
10. Develop activities ensuring political and administrative independence of the law-enforcement, control and review bodies (*for example, separate the Chamber of Control from the National Assembly, or give the power of selecting the members of the Council of Justice to the judges and prosecutors*).
11. Increase the number of activities aimed at internal and external control.
12. Separate the state and public monitoring with their responsible institutions and indicators.
13. As a requirement, ensure politically and financially independence of the organizations of public control.
14. Strengthen the control over the law-enforcement and ensure the timely adoption and harmonization of the sub-legislative acts to the existing legislation.
15. Increase the risk of corrupt practices by strengthening the punishment mechanisms and including publicly reproaching measures.



16. Specify the list of corruption-related crimes in the Criminal Code and Criminal Procedural Code of RA.
17. Consider the following as a criminal offense: avoiding to submit declaration on income and assets, providing wrong information on them, hiding possible situation of the conflict of interest, use of administrative resources for the private or party benefit, etc.
18. Establish a special body by involving all interested parties aimed at the development of an anti-corruption policy as well as coordination and control of its implementation, and ensure the transparency and accountability of that body.
19. Ensure the coordination between the anti-corruption and other national programs, namely the Poverty Reduction Strategic Program.
20. Add activities aimed at publicizing the Program and its implementation through mass media.
21. Ensure the active participation of the public in the implementation and monitoring process of the Program and suggest concrete mechanisms for the “state-public” permanent relationship (*for example, publicize the public complaints and the results of their processing, publicize the drafts of the legislative and sub-legislative acts before their adoption by the Government of RA, and organize public hearings and professional consultations on certain issues*).

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<sup>i</sup> Anti-Corruption Strategy Program of RA and its Implementation Plan, Official Bulletin # 60 (295), December 10, 2003.