



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of Armenia**

Review by Lithuania and the Kyrgyz Republic  
of the implementation by Armenia  
of Articles 15 – 42 of Chapter III “Criminalization and law  
enforcement” and Articles 44 – 50 of Chapter IV  
“International cooperation”  
of the United Nations Convention against Corruption for the  
review cycle 2010 – 2015

## **I. Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption ('UNCAC' or 'the Convention') was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by Armenia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Armenia, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Armenia, Lithuania and the Kyrgyz Republic by means of telephone conferences and e-mail exchanges involving the following participants.

### Armenia:

- Mr. Arman Tatoyan, Deputy Minister, Ministry of Justice
- Mr. Yeghische Kirakosyan, Ex-Deputy Minister, Ministry of Justice
- Ms. Armenuhi Harutyunyan, Head of the Section of Extradition and Judicial Cooperation of the Department of International Legal Assistance and Foreign Relations, Ministry of Justice

### Lithuania:

- Ms. Eglė Kavoliūnaitė Ragauskien, Head of Legal System Research Department, Law Institute of Lithuania
- Mr. Mr. Egidijus Radzevičius, Deputy Head of the Administration Department Special Investigation Service of the Republic of Lithuania

### The Kyrgyz Republic:

- Mr. Talant Mamyrov, Senior Prosecutor of the Department of International Legal Cooperation, Prosecutor General's Office

The staff members from the Secretariat were Mr. Vladimir Kozin and Mr. Oliver Landwehr.

6. A country visit, agreed to by Armenia, was conducted in Yerevan from 6 May 2013 to 10 May 2013. During the on-site visit, meetings were held with the Ministry of Justice of Armenia, the Prosecutor-General's Office, the Police and the Financial Monitoring Center of the Central Bank of Armenia. The experts also met with representatives of the private sector and civil society and academia.

### **III. Executive summary**

#### ***1. Introduction***

##### ***1.1 Overview of the legal and institutional framework of Armenia in the context of implementation of the United Nations Convention against Corruption***

7. *Article 6 of the Constitution of Armenia states that generally accepted rules of international law and international conventions, once they have been ratified and have come into effect, shall form an integral part of Armenia's domestic law and shall override any other contrary provision of domestic law. Accordingly, the United Nations Convention against Corruption has become an integral part of Armenia's domestic law following ratification of the Convention by Parliament on 8 March 2007, and entry into force on 7 April 2007 in accordance with article 68 of the Convention.*
8. *The Convention ranks high among statutory instruments, just below the Constitution but above other laws. Accordingly, the provisions of the Convention override any other contrary provision in domestic law.*
9. *The legal system of Armenia belongs to the civil law system. Armenia is a presidential republic, where the President is elected by popular vote for a five-year term. The executive power is exercised by the Government. The Prime Minister is appointed by the President; the Council of Ministers is appointed by the Prime Minister. Armenia has a unicameral parliament, the National Assembly, elected for a four-year term.*
10. *Armenia is a part of the Istanbul Anti-Corruption Action Plan of the OECD Anti-Corruption Network for Eastern Europe and Central Asia. Armenia is a member of MONEYVAL and joined GRECO in 2004.*

#### ***2. Chapter III: Criminalization and law enforcement***

##### ***2.1. Observations on the implementation of the articles under review***

###### ***Bribery and trading in influence (arts. 15, 16, 18 and 21)***

11. *The provisions of article 15(a) of the Convention against Corruption are reflected in Articles 312 and 312.1 of the Criminal Code of the Republic of Armenia ("CC"). Article 15(b) of the Convention against Corruption has been implemented through Articles 311 and 311.1 CC. The definition of an "official" is provided by Article 308(3) CC, which largely corresponds to article 2 of the Convention against Corruption. However, the element "or entity" (as third party beneficiary, cf. art. 15, Convention against Corruption) is missing from Articles 311, 311.1, 312 and 312.1 CC. Although the term "person" as used in the CC is not limited to natural persons, if the beneficiary is an entity such as a political party, the bribing thereof is not*

covered. Moreover, it was acknowledged by Armenian officials that the number of convictions for bribery offences is very low.

12. Foreign public officials are equated with domestic officials in Article 308(4)(1) and (2) CC, which provide that, for the purpose of Articles 311, 311.2, 312, 312.2 and 313 CC, an official is also a public official of a foreign State or of an international or supranational organization. However, the definition of foreign officials in Article 308(4)(1) CC is not as comprehensive as that in article 2(b) of the Convention against Corruption.
13. Trading in influence is criminalized in Articles 311.2 and 312.2 CC.
14. Article 21 of the Convention against Corruption is implemented through Article 200 CC, as amended in 2012. Moreover, in accordance with Article 201 CC, bribing the participants and organizers of professional and commercial sports competitions or shows is criminalized.

#### **Money-laundering, concealment (arts. 23 and 24)**

15. Armenia has criminalized money-laundering and concealment through Article 190 CC. Part 5 of that article provides an exhaustive list of predicate offences. A judgment of the Court of Cassation of Armenia dated 24 February 2011 narrows the scope of Article 190 CC in cases where possession or use of the proceeds of crime is promised in advance, but the “special purpose of concealment and involvement into legal turnover of proceeds of crime” is not established. Still, acquisition of the proceeds of crime without prior promise is criminalized under Article 216 CC. Acquisition, possession or use of the proceeds of crime promised in advance but in the absence of the special purpose will constitute abetting in accordance with Article 38(5) CC. However, the sanctions for offences under Article 190 CC and Article 216 CC differ. Article 33 CC provides that sanctions for a criminal offence are not only applied to completed crimes but also to attempted crimes or anybody who prepares a crime. Mere conspiracy to commit a crime is not criminalized. The preparation of a crime is criminalized only in cases of grave and particularly grave crimes. Money-laundering offences are punishable irrespective of the place where the predicate offence was committed, although foreign predicate offences are not specifically covered. Self-laundering is criminalized.
16. Only concealment of grave and particularly grave crimes, which had not been previously promised, is criminalized.

#### **Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)**

17. Article 179 CC criminalizes large-scale embezzlement. Small-scale embezzlement is an offence under Article 53 of the Code of Administrative Offences. However, the element “or entity” for purposes of third party beneficiaries is missing from Article 179 CC. Moreover, unlike that provision, article 17 of the Convention against Corruption is not limited to property of a “significant scale” but covers “any other thing of value”.
18. The provision of article 19 of the Convention against Corruption is implemented in Article 308 CC.

19. *Armenia has considered criminalizing illicit enrichment but decided not to establish the offence due to constitutional obstacles.*
20. *Embezzlement of property in the private sector is criminalized in Article 179 CC, Article 53 of the Code of Administrative Offences and — if committed by means of a computer — Article 181 CC.*

***Obstruction of justice (art. 25)***

21. *A number of provisions, notably Article 332 CC, deal with the obstruction of justice (Arts. 332, 337, 340, 341, 347, 350 CC). They cover interference with witnesses as well as law enforcement officers.*

***Liability of legal persons (art. 26)***

22. *Except for money-laundering, Armenian legislation does not provide for criminal or administrative liability of legal persons. The civil liability of legal persons is enshrined in Article 60 of the Civil Code. Legal persons involved in money-laundering are subject to administrative sanctions pursuant to Article 28 of the Law on Combating Money-laundering and Terrorism Financing.*

***Participation and attempt (art. 27)***

23. *Article 27(1) of the Convention against Corruption is implemented in Articles 37 (complicity), 38 and 39 (types of accomplices) CC. Article 34 CC provides for the criminalization of attempts.*

***Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)***

24. *Sanctions for corruption crimes take into account the gravity of the offence.*
25. *The President, Members of Parliament and the Human Rights Defender enjoy immunities for actions arising from their status. A Member of Parliament may not be arrested without the consent of the National Assembly except when caught in the act. These immunities can be lifted for prosecution and Armenia has provided examples of this.*
26. *Article 37 Criminal Procedure Code (“CPC”) defines circumstances when criminal prosecution may not be conducted and criminal proceedings and criminal prosecution may be terminated. This concerns the case of active repentance (Art. 72 CC), reconciliation with the victim (Art. 73 CC) and change of situation (Art. 74 CC). Articles 134-136 CPC concern bail and address the need to ensure the presence of the defendant at subsequent criminal proceedings. The gravity of the offence is taken into account when considering the eventuality of early release or parole.*
27. *The provision of article 30(6) of the Convention against Corruption is implemented through Article 152 CPC. In accordance with Article 52 CC, persons can be prohibited from holding certain positions in state and local self-government bodies as a result of corruption offences.*

28. *There is no explicit legislation on the question whether Armenia can apply disciplinary and criminal sanctions simultaneously.*
29. *Armenian legislation promotes the reintegration into society of persons convicted of offences. In particular, Article 121 of the Penitentiary Code defines the responsibilities of the institution executing a penal sentence with respect to assisting a convict released from a sentence.*
30. *The Criminal Code contains norms to encourage cooperation between law enforcement bodies and citizens, which also apply to cooperating perpetrators or participants in crime. However, currently there is a three-day deadline after giving the bribe (cf. Arts. 200(5), 312(4) and 312.1(4) CC) for providing information to the authorities in order to qualify for (automatic or discretionary) exemption from criminal liability.*

***Protection of witnesses and reporting persons (arts. 32 and 33)***

31. *Chapter 12 CPC is dedicated to the protection of persons participating in criminal proceedings. In particular, Articles 98 and 98.1 CPC define the protected persons and provide for protection measures. While the legal regime in place seems very comprehensive, there is very little practice and there are no corruption-related cases. The lack of financial means is a problem for the witness protection programme.*
32. *The protection of reporting persons has been implemented with regard to criminal procedure. However, according to Article 177(1) CPC, anonymous whistle-blower reports cannot be the basis for opening a criminal investigation. Protection outside criminal law is ensured by keeping the whistle-blower's identity secret. The police operate a hotline for whistle-blowers. Moreover, there is a financial incentive paid by the State for whistle-blowers and for providing information.*

***Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)***

33. *Article 55(4) CC foresees compulsory confiscation of the proceeds of crime and instruments used or intended for use in the commission of money-laundering and predicate offences. However, according to the case law, Article 55(4) CC can only be applied if there is a conviction for money-laundering. In the absence of such a conviction, only Article 55(3) CC is applicable, which is narrower since it only covers grave and very grave crimes. Moreover, under Article 55(3) CC, no value confiscation exists. The new institute of forfeiture stipulated by a draft law would be applicable to all crimes which may result in the acquisition of proceeds of crime.*
34. *Armenia has not implemented article 31(1)(b) of the Convention against Corruption outside money-laundering. Tracing, freezing and seizing measures can be taken according to the CPC. Armenia has not established an asset management agency to specifically dispose of frozen, seized or confiscated property. Confiscated property is transferred to the State Budget. The seized property is preserved in accordance with Article 236 CPC.*

35. *Article 55(1) and (2) CC provide for confiscation of property or a part thereof; the size of property confiscation is to be determined by court. Article 233 CPC will apply prior to a conviction.*
36. *The issue of bank secrecy is regulated by the Law on Bank Secrecy (LBS), the Law on Combating Money-Laundering and Terrorism Financing, the CPC, and the Law on Operative and Search Activities 2007 (LOSA). Prior to the instigation of a criminal case, law enforcement bodies can obtain information covered by financial secrecy, including bank secrecy, pursuant to Article 29 LOSA. After the instigation of a criminal case, law enforcement bodies can obtain such information on the basis of Article 10 LBS and Article 172 CPC. However, due to an apparent conflict of the provisions of the LOSA and CPC with the LBS, the courts in practice make it impossible for law enforcement agencies to directly obtain information covered by bank secrecy from financial institutions prior to the initiation of a criminal case or during the investigation stage, when a “suspect” or “accused” has not yet been identified. Also, the information provided to the authorities based on Article 13.1. LBS or Article 13 of the Law on Combating Money-Laundering and Terrorism Financing does not seem to constitute formal evidence and therefore may not be used in court.*
37. *The reversal of the burden of proof for purposes of confiscation has not been implemented due to the presumption of innocence under the Constitution.*
38. *The rights of bona fide third parties in confiscation matters are protected under Article 55 CC.*

***Statute of limitations; criminal record (arts. 29 and 41)***

39. *The statutory limitation period for corruption offences has recently been increased. According to Article 75 CC, it is dependent on the gravity of the offence, ranging from 2 to 15 years from the date the offence is completed.*
40. *In cases where a person is convicted of a criminal offence committed outside the territory of Armenia and has repeatedly committed a crime within the territory of Armenia, the previous conviction may be taken into account (Art. 17 CC).*

***Jurisdiction (art. 42)***

41. *Armenia has implemented the territorial principle and the active and passive personality principle for establishing jurisdiction in Article 14 CC. Jurisdiction in respect of persons having committed a criminal offence outside the territory of Armenia is governed by Article 15 CC. Armenian citizens having committed a criminal offence in the territory of another State shall not be extradited to another State. However, in case of refusal to extradite a person, criminal prosecution for crimes committed in the territory of a foreign State shall be carried out in Armenia (Art. 16(5) CC).*

***Consequences of acts of corruption; compensation for damage (arts. 34 and 35)***

42. *Corruption can be a factor in changing or rescinding a contract, although the Civil Code does not expressly provide for this. According to Article 55 CC, property can be confiscated on the grounds of corruption.*

43. According to Article 59 CPC, the victim has a right to receive compensation for damage caused by actions prohibited by the CC. Moreover, according to Article 168 CPC, the Court costs a defendant must pay include the amounts of money paid to the victim as a compensation for damages caused by the offence.

### **Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)**

44. There is not one specialized agency in Armenia but a number of institutions or units that specialize in the fight against corruption. The Police of Armenia is one of these. In fighting corruption the police have developed active cooperation with other law enforcement agencies, particularly the Prosecutor-General's Office, the National Security Service, the customs and tax authorities and a number of civil society organizations. A specialized Directorate-General within the police, the Directorate-General for Combating Organized Crime, has been created.

45. Apart from law enforcement, the institutional framework also includes two non-permanent bodies: the Anti-Corruption Council and the Anti-Corruption Strategy Implementation Monitoring Commission. The Anti-Corruption Council is chaired by the Prime Minister and is tasked to coordinate the implementation of the anti-corruption strategy. The Monitoring Commission is headed by a Presidential Assistant and monitors the implementation of the Anti-Corruption Strategy and internal anti-corruption programs. According to the "Concept for the Fight against Corruption in the Public Administration System" adopted by decision of the outgoing Cabinet of Ministers on 10 April 2014, the institutional mechanism for the implementation of the future Anti-Corruption Strategy will be slightly changed.

46. There are memorandums of understanding between the police, the National Security Service and the prosecution service on the one hand, and the Financial Intelligence Unit on the other hand.

47. Training has been organized to encourage citizens to give information; there are awareness-raising programmes on TV; the website of the prosecutor's office publishes information about corruption cases; the authorities encourage whistle-blowing and have created a hotline for the public to give information on bribery.

### **2.2 Successes and good practices**

48. Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The reviewing experts consider the new Article 312.2 CC to be very advanced. However, in the absence of case law, it is difficult to judge the effectiveness of this provision in practice.

### **2.3 Challenges in implementation**

49. The following steps could further strengthen existing anti-corruption measures:

- *Article 15(a) of the Convention against Corruption requires that all legal entities are also covered as third party beneficiaries. Even though the term “another person” can be interpreted as covering the person he/she represents, including legal entities, Articles 312 and 312.1 CC could be amended for the sake of clarity and to cover, for example, political parties;*
- *Article 15(b) of the Convention against Corruption requires that all legal entities are also covered as third party beneficiaries. Even though the term “another person” can be interpreted as covering the person he/she represents, including legal entities, Articles 311 and 311.1 CC could be amended for the sake of clarity and to cover, for example, political parties;*
- *The definition of foreign officials in Article 308(4)(1) CC should be brought in line with article 2(b) of the Convention against Corruption (art. 16 of the Convention against Corruption);*
- *Armenia should furnish copies of its money-laundering laws to the Secretary-General of the United Nations (art. 23(2)(d) of the Convention against Corruption);*
- *Armenia is encouraged to consider penalizing minor offences of concealment (art. 24 of the Convention against Corruption);*
- *Armenia should amend its laws in order to fully implement article 31(1)(b) of the Convention against Corruption;*
- *Armenia should fully ensure that its courts or other competent authorities can order that bank, financial or commercial records be made available or seized; that obstacles that may arise out of the application of bank secrecy laws can be overcome effectively (arts. 31(7) and 40 of the Convention against Corruption);*
- *Armenia is encouraged to apply in practice the witness protection programme and to provide adequate financial support for it (art. 32(1) of the Convention against Corruption);*
- *Armenia is encouraged to enhance cooperation between law enforcement authorities and citizens (art. 37 of the Convention against Corruption).*

#### **2.4 Technical assistance needs identified to improve implementation of the Convention**

50. *Armenia would be interested in receiving advice on good practices to criminalize illicit enrichment for consideration in future amendments of the CC;*
- *Armenia would be interested in receiving assistance in investigating crimes committed by means of computers;*
  - *Armenia would appreciate receiving advice on good practices concerning the protection of whistle-blowers outside criminal law;*

- Armenia has indicated that the law enforcement agencies need assistance in the field of collecting evidence to combat the crimes related to corruption. Particularly, the assistance could consist of legal advice, training for law enforcement officers, etc.;
- Capacity-building programmes for authorities responsible for the establishment and management of reporting programmes and mechanisms.

### **3. Chapter IV: International cooperation**

#### **3.1 Overview Observations on the implementation of the articles under review**

##### ***Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)***

51. Extradition based on the Convention against Corruption is regulated directly by the Convention per Article 6 of the Constitution of Armenia. The questions not specifically addressed in the Convention are regulated by domestic legislation (Art. 16 CC and Chapter 54 CPC (Arts. 478-480)). However, notably, the relevant domestic legislation provisions do not expressly address all the details of the extradition process based on the Convention against Corruption.
52. The principle of dual criminality is applied to Convention-based extradition requests via the direct application of the Convention against Corruption, per Article 6 of the Constitution of Armenia. Other relevant domestic legislation provisions of Armenia (Art. 16 CC, Chapter 54 of CPC) do not contain any dual criminality requirements applicable to such requests.
53. Armenia does not make extradition conditional on the existence of a treaty and considers the Convention against Corruption as a legal basis for extradition in respect to corruption offences. Convention against Corruption offences are recognized as extraditable per the direct application of the Convention.
54. Articles 478.1, 478.2 and 478.3 CPC contain provisions streamlining the arrest and detention for extradition of persons who commit crimes outside of Armenia.
55. The extradition of nationals is prohibited, except when permitted by ratified international agreements (Art. 30.1 of the Constitution); however, Article 16 of CC does not contain that exception.
56. According to Article 479 (9) CPC, Armenia will prosecute any person, including its nationals, in case of refusal of extradition if there are sufficient grounds under the CPC to instigate the prosecution. Such conditions would also include a dual criminality requirement. Additionally, according to Article 479(9) CPC, in cases provided by corresponding international treaties (such as the Convention against Corruption) the Prosecutor General of the Republic of Armenia shall take over the relevant case regarding criminal prosecution from the court proceedings of the relevant State.
57. Based on the direct application of the Convention against Corruption (para. 13 of art. 44) and Article 499 CPC, Armenia, upon application of the requesting State party, will

*consider the enforcement of the sentence imposed under the domestic law of the requesting State party or the remainder thereof.*

58. *The guarantees of the fair treatment of persons whose extradition is sought are provided for by Article 478.4 CPC.*
59. *Extradition requests received by Armenia based on the Convention against Corruption cannot be refused on the sole ground that the offence is also considered to involve fiscal matters per the direct application of the Convention.*
60. *Armenia will, before refusing extradition and where appropriate, consult with the requesting State party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation per the direct application of the Convention.*
61. *Armenia has entered into a number of bilateral and multilateral agreements to enhance the effectiveness of extradition, including the European Convention on Extradition (1957), the Commonwealth of Independent States (CIS) Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (1993) and the CIS Convention on Legal Assistance in Legal Affairs on Civil, Family and Criminal Cases (2002).*
62. *Armenia is also a party to bilateral and multilateral international agreements governing the transfer of prisoners, including the Convention on the Transfer of Sentenced Persons of the Council of Europe (1983) and the CIS Convention on the Transfer of Convicted Persons (1998).*
63. *Armenia would consider the possibility of transferring criminal proceedings and may perform such transfers. The country also ratified a number of multilateral conventions on the transfer of proceedings, including the European Convention on the Transfer of Proceedings in Criminal Matters (1972) and the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (1993). However, no example of the transfer of proceedings relevant to corruption offences has been observed to date.*

***Mutual legal assistance (art. 46)***

64. *Similarly to extradition, the provision of mutual legal assistance based on the Convention against Corruption is regulated directly by the Convention per Article 6 of the Constitution of Armenia. The questions not specifically addressed in the Convention shall be regulated by domestic legislation (Chapter 54 of CPC). However, no actual examples of the provision of such assistance exist to date. The authorities also indicated that there was no case management system in place that would allow for a proper recording of incoming mutual legal assistance requests.*
65. *Armenian authorities confirmed that they would be willing to provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the Convention against Corruption offences. Chapter 54 of CPC does not contain a dual criminality requirement applicable to the mutual legal assistance process based on an international treaty such as the Convention against Corruption. Armenia will be able to provide mutual legal assistance to the fullest extent possible in relation to offences for which a legal person may be held liable to other States parties based on the self-execution of paragraph 2 of article 46 of the Convention against Corruption.*

66. *Without prejudice to domestic law and inquiries and criminal proceedings in Armenia, the competent authorities of Armenia may, without prior request, transmit information relating to criminal matters to a competent authority in another State party per the direct application of the Convention.*
67. *Armenia will not decline mutual legal assistance requests on the ground of bank secrecy per the direct application of the Convention.*
68. *The procedural requirements of mutual legal assistance included in paragraphs 10, 12, 15, 16, 18, 19, 20 and 21 of article 46 of the Convention against Corruption are self-executing and can be applied directly as per Article 6 of the Constitution.*
69. *Armenia designated the Prosecutor General's Office as the central authority for requests relevant to legal assistance in pretrial period and the Ministry of Justice as the central authority for requests relevant to legal assistance during a trial period and with regard to the execution of court judgments. Armenia will accept the requests in Armenian, Russian and English.*
70. *Article 477 CPC stipulates that the requests may be refused based on the grounds provided by international treaties of Armenia. A request may be also refused when its execution may harm the constitutional order, sovereignty, national security of Armenia, and if the possibility of refusing execution of the request on these grounds is envisaged by at least one international treaty in force between Armenia and the requesting State. Article 477 does not contain the consideration of the offence to involve fiscal matters as a ground of refusal of the request.*
71. *According to Article 475(5) CPC, Armenian authorities shall notify the corresponding authorities of the foreign State if the execution of a legal assistance request is impossible, and the reasons therefor.*
72. *Armenia indicated that it would take as full account as possible of any deadlines suggested by the requested State party in accordance with the Convention against Corruption. Mutual legal assistance may be postponed on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding. Before refusing or postponing a request, Armenia will consult with the requesting State party per the direct application of the Convention.*
73. *Provisions of paragraph 27 of article 36 of the Convention regarding the safe conduct for witness, expert or other protection are self-executing and can be applied directly as per Article 6 of the Constitution.*
74. *Armenia has signed a number of international agreements on legal assistance in criminal matters, including the European Convention on Mutual Assistance in Criminal Matters (1959), the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (1993) and the CIS Convention on Legal Assistance in Legal Affairs on Civil, Family and Criminal Cases (2002). There are also cooperation memorandums and agreements signed between the Prosecutor General's Office and the Ministry of Justice of Armenia with their counterparts in other countries.*

**Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)**

75. Armenia has concluded a number of bilateral and multilateral agreements on the fight against crime and corruption which also relate to the exchange of operational information in the investigation of corruption cases. Armenia has a legislative basis to exchange, where appropriate, information with other States parties concerning specific means and methods used to commit offences covered by the Convention against Corruption, including the use of false identities, forged, altered or false documents and other means of concealing activities. Armenia has a mechanism for the exchange of information regarding early identification of the Convention against Corruption offences. However, no actual examples of such exchanges were provided.
76. Armenia considers the Convention against Corruption to be the basis for mutual law enforcement cooperation in respect of the offences covered by it.
77. Armenia would be willing to establish joint investigative bodies with other States parties, but no such arrangements have been established to date. Armenia also additionally clarified that the conduct of joint investigations would require special agreements or arrangements with relevant authorities of other States parties. If necessary, article 49 of the Convention against Corruption can be a legal basis for the establishment of joint investigation teams with other States parties as well.
78. According to LOSA, competent authorities may conduct controlled deliveries and use other special investigative techniques, such as electronic or other forms of surveillance and undercover operations. Evidence derived from such activities is admissible in court.

**3.2. Successes and good practices**

79. Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of the Convention against Corruption:
- The provisions of Paragraph 2 of Article 478.2 CPC allowing for the expedited delivery of the motion of the competent body of the foreign State for provisional arrest, or the decision or criminal judgement thereof on selecting detention as a measure of restraint of the person whose extradition is sought; this applies, particularly, via INTERPOL or any other international organization conducting the prosecution of the person which Armenia is a member of, and is regarded as conducive to efficient international cooperation for the purposes of extradition;
  - The provisions of Article 476 (1(2)) stipulating a detailed procedure for the execution of an incoming mutual legal assistance request, where it is based on more than one international treaty, are regarded as conducive to the efficient execution of mutual legal assistance requests.

**3.3 Challenges in implementation**

80. The following points could serve as a framework to strengthen and consolidate the actions taken by Armenia to combat corruption:

- *Adopt a guideline applicable to the extradition and mutual legal assistance procedures based on the Convention against Corruption to ensure that such procedures may be conducted in the most efficient way;*
- *Streamline efforts to put in place a case management system allowing the classification and use of statistics for both extradition and mutual legal assistance, including on issues of using the Convention against Corruption as a legal basis;*
- *Consider further expediting extradition procedures and simplifying evidentiary requirements relating thereto in respect of any offence to which the Convention against Corruption applies; which could be also addressed in a detailed guideline for processing extradition requests under the Convention against Corruption for relevant Armenian authorities in charge of extradition;*
- *Continue to ensure that any crime established in accordance with the Convention against Corruption is not considered or identified as a political offence in any extradition treaty to be concluded between Armenia and other States parties to the Convention against Corruption;*
- *Harmonize the provisions of Article 16 of CC with Article 30.1 of the Constitution;*
- *Explore the possibility of continuing the practice of concluding bilateral extradition treaties to enhance the effectiveness of extradition;*
- *Explore the possibility of concluding bilateral or multilateral agreements or arrangements that would specifically serve the purposes of and give practical effect to or enhance the provisions of article 46 of the Convention against Corruption, with a particular focus on corruption offences;*
- *Explore the possibility of continuing the practice of establishing more channels of communication with the competent authorities of other States parties to the Convention against Corruption;*
- *Explore the possibility of taking further steps to enhance law enforcement cooperation in conducting inquiries with respect to Convention against Corruption offences;*
- *Explore the possibility of considering taking further steps to enhance the implementation of subparagraph 1(c) of article 46 of the Convention against Corruption;*
- *Explore the possibility of considering taking further steps to enhance the implementation of subparagraph 1 (e) of article 46 of the Convention against Corruption;*
- *Explore the possibility of continuing the practice of conclusion of appropriate bilateral or multilateral agreements or arrangements for using special investigative techniques in the context of cooperation at the international level.*

### **3.4 Technical assistance needs identified to improve implementation of the Convention**

- *Technical assistance in setting up of the case management system allowing the classification and use of statistics for both extradition and mutual legal assistance;*
- *Technical assistance in the preparation of the guideline applicable to the extradition and mutual legal assistance procedures based on the Convention against Corruption;*
- *Regarding article 48 of the Convention against Corruption, a summary of good practices/lessons learned, technical assistance (e.g. set-up and management of databases/information-sharing systems), on-site assistance by a relevant expert and, specifically, technical assistance to enhance cooperation tools in response to corruption offences committed through the use of modern technology (para. 3 of art. 48).*

## **1. Implementation of the Convention**

### **A. Ratification of the Convention**

81. Armenia signed the Convention on 19 May 2005 and ratified it in October 2006. The Convention entered into force on 7 April 2007.
82. The implementing legislation — in other words, the Decree N-303 on „Ratifying the Convention Against Corruption” — was adopted by the Armenian National Assembly on 23 October 2006, entered into force on 25 November 2006 and was published on 15 November 2006 (OPRA 2006.11.15/58(513) Article 1171).

### **B. Legal system of Armenia**

83. Article 6 of the Constitution of Armenia states that generally accepted rules of international law and international conventions when they have been ratified by an act and have come into effect shall form an integral part of Armenia’s domestic law and shall override any other contrary provision of domestic law.
84. Accordingly, the UN Convention against Corruption has become an integral part of Armenia’s domestic law following ratification of the Convention by the Parliament on 8 Mar 2007, and entry into force on 7 April 2007 in accordance with Article 68 of the Convention.
85. The Convention ranks high among statutory instruments, just below the Constitution but above other laws. Accordingly, the provisions of the Convention override any other contrary provision in domestic law.
86. The legal system of Armenia belongs to the civil law system. According to the Constitution, the Republic of Armenia is a sovereign, democratic, social state governed by the rule of law.
87. Armenia is a presidential republic, where the President, being the head of the state and of a multi-party system, is elected by a popular vote for a 5-years period term. The last

presidential elections took place on 18 February 2013. The executive power is exercised by the Government. The Prime Minister is appointed by the President; the Council of Ministers is appointed by the Prime Minister. Since 2008 country's government is headed by a three parties' coalition led by Prime Minister.

88. Armenia has a unicameral parliament, National Assembly, elected for a 4-years term, with 131 seats. Last parliamentary elections were held on 6 May 2012, where the Republican Party received the 44.02% of the votes, the other parties received up to 7.78% of the votes.
89. The effectiveness of anti-corruption measures taken by Armenia have been previously assessed within the framework of the following mechanisms.
90. Armenia is a part of the OECD Anti-Corruption Network for Eastern Europe and Central Asia's Istanbul Anti-Corruption Action Plan. The Second Round Monitoring Report of Armenia was adopted at the Istanbul Anti-Corruption Action Plan plenary meeting on 29 September 2011 at the OECD Headquarters in Paris.
91. This report analyses progress made in Armenia in developing anti-corruption reforms and implementing recommendations received under the Istanbul Anti-Corruption Action Plan since the first monitoring round in 2006. The report also analyses recent developments and provides new recommendations in three areas: anti-corruption policies; criminalisation of corruption; and prevention of corruption  
<http://www.oecd.org/corruption/acn/anti-corruptionnetworkcountrymonitoringreports.htm>
92. Armenia is a member of MONEYVAL. Armenia Progress report and written analysis by the Secretariat of Core Recommendations was adopted at MONEYVAL's 33<sup>rd</sup> Plenary meeting (Strasbourg, 27 September – 1 October 2010). For further information on the examination and adoption of this report, please refer to the Meeting Report (ref. MONEYVAL(2010)32) at <http://www.coe.int/moneyval> or [http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Armenia\\_en.asp](http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Armenia_en.asp)
93. Armenia joined GRECO in 2004. GRECO adopted the Joint First and Second Round Evaluation Report (Greco Eval I-II Rep (2005) 2E) in respect of Armenia at its 27-th Plenary Meeting (6-10 March 2006). The Third Evaluation Round on Armenia, as well as its corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco> ). It was adopted by GRECO at its 58-th Plenary Meeting (Strasbourg, 3-7 December 2012). The Compliance Report assesses the measures taken by the authorities of Armenia to implement the 19 recommendations issued in the Third Round Evaluation Report on Armenia.
94. The Republic of Armenia Anti-corruption strategy and its implementation action plan for 2009-2012 has been adopted by the Government decision N 1272-N on 8 October 2009 and implemented. Although the report regarding the implementation of the Strategy has not yet been published in English.
95. Armenia has also executed its 2003-2007 Anti-corruption strategy which can be found at: <http://www.gov.am/files/docs/74.pdf>. The Implementation action plan of the 2003-2007 anti-corruption strategy of the Republic of Armenia can be found at: <http://www.gov.am/files/docs/75.pdf> .

96. The report regarding the implementation of 2009-2011 anti-corruption strategy for 1st half of 2011 can be accessed at: <http://www.gov.am/files/docs/915.pdf> and the report of the results in 2010 at <http://www.gov.am/files/docs/914.pdf>.

## **C. Implementation of selected articles**

### **Chapter III. Criminalization and law enforcement**

#### **Article 15 Bribery of national public officials**

##### **Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

##### **(a) Summary of information relevant to reviewing the implementation of the provision**

97. The provisions of Article 15(a) UNCAC are reflected in the Criminal Code ('CC') of the Republic of Armenia.
98. In accordance with Article 15(a), active bribery of national public officials is criminalized in two different articles: Article 312 CC (giving a bribe) and Article 312.1 CC (giving unlawful remuneration to a public servant who is not an official).
99. In particular, Article 312 CC provides for the liability for giving a bribe. The crime is defined as follows:

##### ***Article 312 CC***

(1) Giving a bribe to an official, i.e. promising or offering or granting money, property, property rights, securities or any other advantage, personally or through an intermediary, for the official or another person, for the purpose of performing or not performing an action by the official within the scope of his authorities, in favour of the person giving the bribe or the person represented by him, or favouring the performance or non-performance of such action by the official by use of his official position, or for the purpose of patronage or connivance in relation to service, shall be punished by a fine in the amount of the 100-fold to the 200-fold of the minimum wage or by detention for a term of one to three months or by imprisonment for a maximum term of three years.

(4) The person, giving a bribe, shall be exempt from criminal liability in case the bribe has been extorted or in case the person has voluntarily informed law enforcement bodies on giving bribe not late after three days.

100. This provision of the CC, in essence, expresses the main form of active bribery.

**Article 312.1 CC**

(1) Giving unlawful remuneration to a public servant, who is not an official, i.e. promising or offering or granting money, property, property rights, securities or any other advantage to a public servant, personally or through an intermediary, for himself or another person, for the purpose of performing or not performing an action by the public servant within the scope of his authorities, in favour of the person giving the remuneration or the person represented by him, or favouring the performance or non-performance of such action by the public servant, who is not an official, by use of his official position, or for the purpose of patronage or connivance in relation to service, shall be punished by a fine in the amount of 200-fold to 400-fold of the minimum wage or by imprisonment for a maximum term of three years with deprivation of the right to engage in certain activities.

(4) The person, giving unlawful remuneration, shall be exempt from criminal liability in case the unlawful remuneration has been extorted or in case the person has voluntarily informed law enforcement bodies on giving unlawful remuneration not late after three days.

101. Both articles foresee aggravated sanctions if the offence was committed on a “large scale” or “particularly large scale” (which relates to the value of the bribe involved) or by an organized group. As regards the reference the minimum wage in the various provisions of the CC, it is understood to amount to 1,000 Armenian Drams (ADM), which is approximately €2.

102. As indicated above, the provisions on bribery of national public officials differentiate between officials (Article 312) and other persons employed in public service – referred to as “public servants” (Article 312.1) – and provide two different definitions for these categories of persons. The definition of an official is provided by Article 308(3) CC, which deals with the offence of “abuse of official authority”.

**Article 308(3) CC**

1. Persons performing functions of representative of the authorities on a permanent, temporary basis or by special authorization;

2. Persons performing organizational-managerial, economic-administrative functions on a permanent, temporary basis or by special authorization in state bodies, local self-government bodies, organizations thereof, as well as in the armed forces of the Republic of Armenia, other troops and military units of the Republic of Armenia; Therefore, as noted in article 5, paragraph 1 subparagraph 4 of “Law on Public Service” Public Servant is a person occupying a position envisaged by the Roster of State and Community Service Position or in the manner prescribed by law a person in the Personnel Reserve of Public Service”.

103. Regarding examples of implementation, Armenia provided the following cases:

- During the period of 2010, one Armenian citizen was punished by a fine under Article 312 CC;
- During 2011, five Armenian citizens were sentenced under Article 312 CC and were punished by imprisonment;
- During 2012 (till September), one Armenian citizen was punished by imprisonment under Article 312.1 CC.

**(b) Observations on the implementation of the article**

104. The reviewing experts observed that the element “or entity” (as third party beneficiary) in Article 15(a) UNCAC is missing from Article 312 and 312.1 CC. Moreover, they remark that there are very few convictions.

105. During the country visit, it was confirmed that there is a gap in the law. If the beneficiary is an entity like a political party, the bribing is not covered. However, it was also explained that the term “another person” is not restricted to natural persons; in articles 311, 311.1, 312 and 312.1 CC it can be interpreted as covering the person he/she represents, including legal entities.

106. It was also acknowledged that the number of convictions is indeed very low. According to the Armenian government, society does not cooperate sufficiently. Moreover, there are problems both with the law and with law enforcement.

107. In conclusion, the reviewing experts observe that Armenia is largely in compliance with Article 15 (a) UNCAC but recommend that entities as third party beneficiaries should also be covered by the offences in the CC.

**(c) Challenges in implementation**

108. Article 15(a) UNCAC requires that legal entities are also covered as third party beneficiaries. Even though the term “another person” can be interpreted as covering the person he/she represents, including legal entities, Articles 312 and 312.1 CC could be amended for the sake of clarity and to cover e.g. political parties.

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

109. The National Assembly of the Republic of Armenia adopted the Law Amending and Supplementing the Criminal Code (Law number HO-18-N) on 9 February 2012. As a result of amending and supplementing, the Criminal Code of Armenia criminalizes the “request for or promise to accept or acceptance of any offer of cash, property, property rights, securities, or any other advantage”.

110. On 11 April 2011, the Council of Europe’s Group of States against Corruption (GRECO) published its Third Round Evaluation Report on Armenia in which it finds that further amendments to the Criminal Code are necessary to comply with Council of Europe standards. Regarding the criminalization of corruption, GRECO welcomed the 2008 amendments to the Criminal Code, but found that in order to fully comply with the standards of the Council of Europe’s Criminal Law Convention on Corruption, the legal provisions needed to be further amended to ensure that the mere request for a bribe can be

prosecuted, that all persons who work in the private sector are covered and that Armenia can prosecute all corruption offences committed by its citizens abroad.

111. As with active bribery, passive bribery of national public officials is criminalized by two separate articles: Article 311 CC deals with passive bribery of officials and Article 311.1 CC deals with passive bribery of employees in the public service who do not have the status of officials (so-called “public servants”). Both articles foresee two sets of aggravating circumstances giving rise to higher sanctions. The Armenian CC expands the scopes and criminalizes not only “acceptance of an undue advantage”, but also the “request for or promise to accept or acceptance of any offer of money, property, property rights, securities, or any other advantage”.

***Article 311 CC***

1. Taking bribes by an official, i.e. request for or promise to accept or acceptance of any offer of cash, property, property rights, securities, or any other advantage by an official, personally or through an intermediary, for himself or another person, for the purpose of performing or not performing an action by the official within the scope of his authorities, in favour of the person giving the bribe or the person represented by him, or favouring the performance or non-performance of such action by use of his official position, or for the purpose of patronage or connivance shall be punished by a fine in the amount of 300-fold to 500-fold of the minimum wage or by imprisonment for a maximum term of five years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.

2. Taking bribes by an official for his obvious illegal action or inaction, in favour of the person giving the bribe or the person represented by him, shall be punished by imprisonment for a term of three to seven years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.

3. The same act committed:

- (1) by extortion;
- (2) by a group of persons with a prior agreement;
- (3) on a large scale;

shall be punished by imprisonment for a term of four to ten years with or without confiscation of property.

4. The acts provided for in part 1 or 2 or 3 of this Article, committed:

- (1) by an organized group;
- (2) on an especially large scale;
- (3) by a judge;

shall be punished by imprisonment for a term of seven to twelve years with or without confiscation of property.

5. In this Chapter the amount (cost) not exceeding 200-fold to 1000-fold of the minimum wage set at the moment of the crime shall be deemed as large-scale. The amount (cost) exceeding 1000-fold of the minimum wage set at the moment of the crime shall be deemed as especially large-scale.

112. In line with the provisions of Article 2 of the Convention and Article 5 of the Law on Public Service of the Republic of Armenia, Article 311.1 CC deals with passive bribery of employees in the public service who do not have the status of officials (so-called “public servants”).

***Article 311.1 CC***

1. Accepting unlawful remuneration by a public servant, who is not an official, i.e. accepting or request for or promise to accept or acceptance of any offer of money, property, property rights, securities, or any other advantage by a public servant, who is not an official, personally or through an intermediary, for himself or another person, for the purpose of performing or not performing an action by the public servant within the scope of his authorities, in favour of the person giving the

remuneration or the person represented by him, or favouring the performance or non-performance of such action by use of his official position, or for the purpose of patronage or connivance shall be punished by a fine of 200-fold to 400-fold of the minimum wage or by imprisonment for a maximum term of three years with deprivation of the right to engage in certain activities for a maximum term of three years.

2. Accepting unlawful remuneration by a public servant who is not an official for his obvious illegal action or inaction, in favour of the person giving the remuneration or the person represented by him, shall be punished by imprisonment for a term of three to five years with deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years.

3. The same act committed:

- (1) by extortion;
- (2) on a large scale;
- (3) by a group of persons with a prior agreement,

shall be punished by imprisonment for a term of four to seven years.

4. The acts provided for in part 1 or 2 or 3 of this Article, committed:

- (1) by an organized group;
- (2) on an especially large scale;

shall be punished by imprisonment for a term of five to ten years with or without confiscation of property.

In Article 311 and 311.1 CC the extortion is the aggravating circumstance for taking bribe.

5. Persons performing public service shall be considered as public servants in this Chapter, in accordance with the Law of the Republic of Armenia on Public Service.

In this case, the mandatory requirement for extortion is that the official compels the perpetrator to give bribe using his official powers.

113. Regarding statistical data, Armenia has cited the following information: During 2010-2012, 42 persons were sentenced under Articles 311 CC, in particular:

- 2010 - 21 Armenian citizens were sentenced under Article 311 Criminal Code, including 3 women. 17 persons of them were punished by imprisonment, 4 persons were punished by a fine. Besides, 2 punished persons were officials.
- 2011 - 14 Armenian citizens were sentenced under Article 311 CC, including 3 women. 12 persons of them were punished by imprisonment, 2 persons were punished by a fine. Besides, 4 punished persons were officials, 9 persons had other occupation.
- 2012 (till September) - 7 Armenian citizens were sentenced under Article 311 CC, including 2 women. 4 persons of them were punished by imprisonment, 3 persons were punished by a fine. Besides, 2 punished persons were officials and 5 persons had other occupation.

114. According information provided by the Police of Armenia and the Judicial Department of Armenia, during 2010-2011, 7 persons were sentenced under Article 311.1 CC:

- In 2010, an Inspector (man) from the Social Service Agency of Echmiadzin city was punished by a fine under Article 311.1 CC; a Chief-specialist (men) of the Social Service Agency of Gyumri city was punished by imprisonment under Article 311.1(3)(1) CC; an Inspector (woman) of the Social Service Agency of Hrazdan city was punished by a fine under Article 311.1(1) CC;
- In 2011, in the course of the same criminal case, two persons were convicted. The first one of them, a Chief-specialist (man) of the Public Order Service of Yerevan Municipality, was punished by imprisonment under Article 311.1(2) CC; an Inspector (man) of the Social Service Agency of Yeghvard city was punished by a fine under Article 311.1(1) CC; an Inspector (woman) of the Social Service Agency of Charentsavan city was punished by a fine under Article 34/311.1; the Head of the

Architecture and Urban Development Department was punished by imprisonment under Article 311.1(3)(2);

- In 2012, there are not sentenced persons under Article 311.1.

**(b) Observations on the implementation of the article**

115. The reviewing experts observed again that the element “or entity” is missing from Article 312 CC. By contrast, they highlighted the addition requirement of obviousness in Article 311(2) CC. Moreover, they remark that there are few convictions.

116. During the country visit, it was confirmed that if the beneficiary is an entity like a political party, there is a gap in the law.

117. On the other hand, it was pointed out that the requirement of obviousness in Article 311(2) CC only represents a qualified (aggravated) form of bribe taking.

118. In conclusion, the reviewing experts observe that Armenia is largely in compliance with Article 15 (b) UNCAC but recommend that entities as third party beneficiaries should also be covered by the offences in the CC.

**(c) Challenges in implementation**

119. Article 15(b) UNCAC requires that legal entities are also covered as third party beneficiaries. Even though the term “another person” can be interpreted as covering the person he/she represents, including legal entities, Articles 311 and 311.1 CC could be amended accordingly.

**Article 16 Bribery of foreign public officials and officials of public international organizations**

**Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

**(a) Summary of information relevant to reviewing the implementation of the article**

120. Foreign public officials are equated with domestic officials in **Article 308(4)(1) CC**, which provides that for the purpose of Articles 311, 311.2, 312, 312.2 and 313 CC an official is also “a public official of a foreign state in accordance with the national law of the state concerned, as well as members of legislative bodies or of other representative bodies of a foreign state exercising administrative authorities”.

121. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign public officials. Officials

of public international organizations are equated with domestic officials in Article 308, paragraph 4, sub 2 CC, which provides that for the purpose of Articles 311, 311.2, 312, 312.2 and 313 CC an official is also “officials of international or supranational public organizations or bodies or in cases provided for in statutes of those organizations or bodies, contractual employees or other persons, performing functions equal to those performed by similar officials or employees”. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of officials of public international organizations .

122. More detailed, pursuant to Article 308 CC, paragraph 4, with regard to committal of acts provided for in Articles 311, 311.2, 312, 312.2 and 313 of Criminal Code the following persons shall be deemed as officials as well:

1. persons performing functions of public official of a foreign state in accordance with the internal law of the state concerned, as well as members of legislative or other representative body of a foreign state exercising administrative authorities;
2. officials of international or transnational public organizations or bodies or in cases provided for in statutes of those organizations or bodies, contractual employees or other persons, performing functions equal to those performed by similar officials or employees;
3. members of parliamentary assemblies of international or supranational organizations or other bodies performing similar functions;
4. members of or officials performing judicial functions in international courts, jurisdiction of which has been recognized by the Republic of Armenia;
5. jurors of courts of foreign states.

123. Regarding examples of implementation, Armenia indicated that there was no case law available on bribery of foreign public officials or officials of international or supranational organizations.

**(b) Observations on the implementation of the article**

124. The reviewing experts observed again that the element “or entity” is missing from Articles 311 and 312 CC. Moreover, the definition of foreign officials in Article 308(4)(1) CC does not seem to be as comprehensive as that in Article 2(b) UNCAC.

125. During the country visit, it was confirmed that if the beneficiary is an entity like a political party, there is a gap in the law.

126. In conclusion, the reviewing experts observe that Armenia’s legislation is largely in compliance with Article 16(1) UNCAC but note some deficiencies.

**(c) Challenges in implementation**

127. The reviewing experts recommend that entities as third party beneficiaries should also explicitly be covered. Moreover, the definition of foreign officials in Article 308(4)(1) CC should be brought in line with Article 2(b) UNCAC.

**Paragraph 2**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or*

*acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

128. Foreign public officials and officials of public international organizations are equated with domestic officials in Article 308, paragraph 4, sub 1 and 2 CC, which provides that for the purpose of Articles 311, 311.2, 312, 312.2 and 313 CC an official is also “a public official of a foreign state in accordance with the national law of the state concerned, as well as members of legislative or other representative bodies of a foreign state exercising administrative authorities and officials of international or transnational public organizations or bodies or in cases provided for in statutes of those organizations or bodies, contractual employees or other persons, performing functions equal to those performed by similar officials or employees”. The elements of the offence and the applicable sanctions detailed under bribery of domestic public officials apply accordingly to bribery of foreign public officials and officials of public international organizations.

129. There was no case law available on bribery of foreign public officials or officials of international or supranational organization.

**(b) Observations on the implementation of the article**

130. The reviewing experts repeated their remarks concerning the missing element “or entity”.

**Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

131. According to the Monitoring report adopted at the Istanbul Anti-Corruption Action Plan plenary meeting at the OECD Headquarters in Paris on 29 September 2011, Article 179 CC criminalizes embezzlement; the monitoring experts believed that these provisions sufficiently reflect the requirements of Article 17 UNCAC.

**Article 179 CC**

1. Squandering or embezzlement is theft of somebody’s property entrusted to the person on a significant-scale shall be punished by a fine in the amount of three-hundred-fold to five-hundred-fold of the minimum salary, or by detention for a maximum term of two months, or by imprisonment for a maximum term of two years.

2. The same acts:

- 1) with abuse of official position,
- 2) committed by a group with prior agreement;

3) in large amount,  
are punished with a fine in the amount of 500 to 1000 minimum salaries, or imprisonment for 2-5 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years.

3. Acts envisaged in part 1 or 2 of this Article, committed:

1) in particularly large amount;

2) by an organized group,

are punished with imprisonment for the term of 4 to 8 years, with or without property confiscation.

### ***Code of Administrative Offences***

#### ***Article 53 Theft of small amounts or intentional destruction or damage of property***

1. Theft of small amounts – through robbery, fraud, embezzlement, squandering, use of computers leads to a fine in the amount of fifty to one hundred fold of the minimum salary.

2. Intentional destruction or damage of another person's property, which caused minor damage leads to a fine in the amount of thirty to fifty fold of the minimum salary

3. A small amount in the current article means:

1) an amount not exceeding the five-fold of the minimum salary at the time theft has been committed.

2) An amount not exceeding the thirty-fold of the minimum salary at the time of committing the fraud, embezzlement, squandering, theft by computer means, as well as destruction or damage of another person's property.

132. In accordance with Article 179 (2) CC, an aggravating circumstance is the “use of official position” in the commission of the offence.

133. Pursuant to Article 17 UNCAC, the perpetrator of an offence can only be an official. In accordance with Article 308 (3) CC, the following persons shall be deemed as officials:

1. persons performing functions of representative of the authorities on a permanent, temporary basis or by special authorization;

2. persons performing organizational-managerial, economic-administrative functions on a permanent, temporary basis or by special authorization in state bodies, local self-government bodies, organizations thereof, as well as in the armed forces of the Republic of Armenia, other troops and military units of the Republic of Armenia”.

134. Regarding statistical data, Armenia has cited the following information:

- 2010: 27 officials- Armenian citizens were punished under Article 179 CC.
- 2011: 8 officials- Armenian citizens were punished under Article 179 CC.
- 2012 (until September ): 6 officials - Armenian citizens were punished under Article 179 CC.

### **(b) Observations on the implementation of the article**

135. The reviewing experts observe that the element “or entity” is missing from Article 179 CC. Moreover, Article 17 UNCAC does not refer to a “significant scale” but covers “any other thing of value”.

136. During the country visit, the Armenian authorities explained that minor offences of embezzlement are covered by Article 53 Code of Administrative Offences.

137. The reviewing experts conclude that Armenia is largely in compliance with the provision under review. However, small-scale embezzlement is not established as a criminal offence as required by Article 17 UNCAC.

## **Article 18 Trading in influence**

### **Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

138. The National Assembly adopted the Law Amending and Supplementing the Criminal Code (Law number HO-18-N) on 9 February 2012. As a result, the CC was amended by the new Article 312.2 (Giving unlawful remuneration for using real or supposed influence). As shown in Article 18 (a) UNCAC, in this case the subject of trading in influence is not only property rights, but also promising or offering or granting any other advantage.

#### **Article 312.2 CC**

(1) Giving a person unlawful remuneration for using real or supposed influence, i.e. accepting money, property, property rights, securities or any other advantage, personally or through an intermediary, for favouring the performance or non-performance of an action by an official or a public servant, who is not an official, within the scope of his authorities in favour of legal entities or natural persons, or for the purpose of patronage or connivance.

139. The subject of using influence can also be an advantage which does not have property value. For example, encouragement, providing services, etc. The CC also contains aggravating circumstances of this crime, as well as the basis of exemption from criminal liability.

140. In accordance with Article 312.2 (5), “The person, giving unlawful remuneration, shall be exempt from criminal liability in case the unlawful remuneration has been extorted or in case the person has voluntarily informed law enforcement bodies on giving unlawful remuneration not later than after 3 days”.

#### **(b) Observations on the implementation of the article**

141. The reviewing experts conclude that Armenia’s legislation is in compliance with the provision under review.

#### **(c) Successes and good practices**

142. The reviewing experts consider the new Article 312.2 CC to be very advanced. However, in the absence of case law, it is difficult to judge the effectiveness of this provision in practice.

### **Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

143. Article 311.2 CC was amended by the Law on Amending and Supplementing the Criminal Code (Law number HO-18-N) on 9 February 2012.

144. The provisions of Article 18(b) UNCAC were implemented by Article 311.2 CC as amended by Law number HO-18-N) on 9 February 2012. In particular, Article 311.2 criminalizes- in line with EU recommendations – also the “request for or promise to accept or acceptance of any offer of cash, property, property rights, securities, or any other advantage”. The Article reads as follows:

#### **Article 311.2 CC**

(1) Use of real or supposed influence for mercenary purposes, i.e. accepting money, property, property rights, securities or any other advantage, personally or through an intermediary, for favouring the performance or non-performance of an action by an official or a public servant, who is not an official, within the scope of his authorities in favour of legal entities or natural persons, or for the purpose of patronage or connivance shall be punished

145. The CC criminalized not only “acceptance of an undue advantage”, but also “the request for or promise to accept or acceptance of any offer of cash, property, property rights, securities, or any other advantage”.

146. Regarding statistical data, Armenia has provided the following information (Police and Judiciary Department of Armenia):

- There were no cases so far under Articles 311.2 CC.

#### **(b) Observations on the implementation of the article**

147. The reviewing experts conclude that Armenia’s legislation is in compliance with the provision under review.

### **Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions*

*or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

**(a) Summary of information relevant to reviewing the implementation of the article**

148. The provision of Article 19 UNCAC is implemented in Article 308 CC “Abuse of official authority”. This article reads as follows:

**Article 308 CC**

1. Use of official position against the interests of service or failure to fulfil official duties by an official for mercenary, other personal or collective interests, which has caused essential damage to the rights and lawful interests of persons, organizations, and to the lawful interests of the public or the State (in case of property damage — the amount or the value thereof exceeding the five-hundred-fold of the minimum salary defined at the time of crime) — shall be punished by a fine in the amount of the two-hundred-fold to three-hundred-fold of the minimum salary or by deprivation of the right to hold certain positions or to engage in certain activities for a term of maximum five years or by detention for a term of two to three months or by imprisonment for a term of maximum four years.

149. According to the Convention, as well as to Article 308 CC, the offence can be committed by the performance of or failure to perform an act. In case of performance of an act an official active uses his duties, but in case of failure to perform an act an official refrain from acting in the exercise of his/her official duties.

150. Regarding statistical data, Armenia cited the following information:

- 2010: 18 Armenian citizens were sentenced under Article 308 CC. 12 of them were punished by imprisonment and after they were granted amnesty. 5 persons were punished by a fine. Besides, 5 persons were Officials, 1 person was a serviceman and 7 persons had other occupation.
- 2011: 15 Armenian citizens were sentenced under Article 308 CC. 9 of them were punished by imprisonment, 6 persons were punished by a fine. Besides, 14 persons were Officials, one person had other occupation.
- 2012 (until September): 16 Armenian citizens were sentenced under Article 308 CC. 10 of them were officials. 6 persons were punished by imprisonment. 10 persons were punished by a fine.

**(b) Observations on the implementation of the article**

151. The reviewing experts observed that the element “or entity” is missing from Article 308 CC. However, during the country visit, Armenia clarified that the element of “entity” would be covered by “other personal or collective interests”.

152. Therefore, the reviewing experts conclude that Armenia is in compliance with Article 19 UNCAC.

**Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

**(a) Summary of information relevant to reviewing the implementation of the article**

153. Article 20 UNCAC provides that countries should consider establishing as criminal offence intentional and significant increase in assets of public official that she or he cannot explain in relation to his or her lawful income.

154. Armenia indicated that it has not implemented the provision under review. At the same time, during implementation and ratification of the Convention, Armenia has not made a reservation to this Article. However, the use of the term “may” in Article 20 implies that States Parties can refrain from adopting measures to criminalize the aforementioned article; this provision is optional. The General Prosecutor’s office of the Republic of Armenia has recommended to include the legislative regulation of illicit enrichment in the draft of the 2014-2015 list of events ensuring the execution of the Republic of Armenia-European Union action plan.

**(b) Observations on the implementation of the article**

155. During the country visit, Armenia explained further that under Armenian law, it is not possible to impose absolute liability just for illicit enrichment, i.e. a significant increase in the assets of a public official. The fact of enrichment is not enough to criminalise the act. The Republic of Armenia views unjustified enrichment as an institute of civil law. For the purposes CC the important fact is the manner of enrichment for the public official. Particularly, Article 311 CC defines liability for receiving bribes by a state official. However, Armenia would be interested in hearing about good practices in this field, especially CIS countries.

156. The reviewing experts conclude that Armenia is in compliance with its obligation to consider criminalisation.

**(c) Technical assistance needs**

157. Armenia would be interested in receiving advice on good practices to criminalise illicit enrichment for consideration in future amendments of the CC.

**Article 21 Bribery in the private sector**

**Subparagraph (a)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

**(a) Summary of information relevant to reviewing the implementation of the article**

158. Article 21 UNCAC was implemented through Article 200(1) CC “Commercial bribe”. The Article reads as follows:

***Article 200. Commercial bribe.***

1. Giving a bribe, that is, illegal offer or giving cash, property, rights to property, securities or any other advantage either personally or through intermediary to an employee of a commercial or other organization, arbitrator, including an arbitrator, auditor or advocate fulfilling functions provided by a foreign country Legislation on Arbitration, for fulfilling actions or inactivity for the benefit of the briber or anyone they are representing  
is punished with a fine in the amount of two hundred-fold to four hundred-fold of minimal salary, or with deprivation of the right to hold certain posts or practice certain activities for up to three years, or imprisonment for up to three years.
2. The same actions committed by a group with prior agreement or by an organized group are punished with a fine in the amount of three hundred-fold to five hundred-fold of minimal salary, or up to 4 years of imprisonment.
3. Receiving a bribe, that is, receiving, demanding or accepting the promise or offer of receiving cash, property, rights to property, securities or any other advantage by an employee of a commercial or other organization, arbitrator, including an arbitrator, auditor or advocate fulfilling functions provided by a foreign country Legislation on Arbitration personally or through intermediary either for themselves or for another person for acting or enacting for the benefit of the briber or the person they are representing  
is punished with a fine in the amount of two hundred-fold to four hundred-fold of minimal salary, or with deprivation of the right to hold certain posts or practice certain activities for up to three years, or with up to three years of imprisonment.
4. The action envisaged in part 3 of this Article, committed by extortion  
is punished with a fine in the amount of three hundred-fold to five hundred-fold of minimal salary, or with deprivation of the right to hold certain posts or practice certain activities for up to five years, or with up to five years of imprisonment.
5. The employee of a commercial or other organization, according to this Article, is a person who permanently, temporarily or with special authorization, performs managerial functions or is employed in any other position at the commercial organization, regardless of form of ownership, as well as, in non-commercial organizations which are non-state or local self-government bodies, state or local self-government institutions.  
Persons giving commercial bribes are exempted from punishment, if there was an extortion of the bribe, or if they voluntarily informed the law enforcement bodies about the bribe no later than three days after giving the bribe.

159. Article 201 CC can also be considered of relevance to Article 21 UNCAC. In accordance with Article 201 CC (“Bribing the participants and organizers of professional and commercial sports competitions or shows”):

***Article 201 CC***

- (1) Giving a bribe to sportspersons, referees, coaches, team captains or other participants or organizers of professional sporting events, as well as organizers of commercial competition shows and members of award commission, i.e. illegally promising or offering or giving money, property, right over a property, securities or other advantage to those persons in person or represented for

them or other person for the purpose of affecting on the results of those sporting events or competitions”.

160. This offense, of course, is one of the specific types of bribery. Both articles have the same subject of offence, i.e. money, property, right over a property and securities.

**(b) Observations on the implementation of the article**

161. The reviewing experts thought the following element was missing from the offence: a bribe is given to any person who “works, in any capacity, for a private sector entity“. Moreover, from the cited statistics it was impossible to draw inferences on the practical implementation of this provision in cases criminalised in the UNCAC and not directly covered by the CC.

162. Armenia explained that concerning the missing element, the Law Amending and Supplementing the Criminal Code (Law number HO-18-N) of 9 February 2012 has now covered the full range of persons who direct or work for, in any capacity, private sector entities as potential perpetrators in Article 200 CC. In particular, the amended Paragraphs 1, 3, and 5(1) of Article 200 CC now provide that persons, who perform directing or other management functions or hold any other position in commercial or other organizations permanently, temporarily, or on a special powers basis, shall be subject to the criminal liability for committing the crime in question.

163. Accordingly, the term ‘works, in any capacity, for a private sector entity’, has been implemented in the fifth part of Article 200 CC: Occupies any other position in the commercial organizations regardless of the form of the ownership, as well as in state and local government agencies, state and local government agencies other than non-profit organizations.

164. The reviewing experts conclude that Armenia is in compliance with this non-mandatory provision.

**Subparagraph (b)**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

165. The National Assembly of the Republic of Armenia adopted the Law Amending and Supplementing the Criminal Code (Law number HO-18-N) of 9 February 2012. As a result of supplementing Paragraph 3 of Article 200, the “request for or promise to accept or acceptance of any offer of money, property, right over a property, securities or any

other advantage” have been criminalized, as well. Article 200, paragraph 3, reads as follows:

Receiving a bribe, that is, receiving, demanding or accepting the promise or offer of receiving cash, property, rights to property, securities or any other advantage by an employee of a commercial or other organization, arbitrator, including an arbitrator, auditor or advocate fulfilling functions provided by a foreign country Legislation on Arbitration personally or through intermediary either for themselves or for another person for acting or enacting for the benefit of the briber or the person they are representing is punished with a fine in the amount of two hundred-fold to four hundred-fold of minimal salary, or with deprivation of the right to hold certain posts or practice certain activities for up to three years, or with up to three years of imprisonment.

166. In this sense, in comparison with the passive forms of bribery in Article 21 UNCAC, the Armenian CC expands the scope of the offence. As a result of recent amendments (Law number HO-18-N, of 9 February 2012), the full range of persons who direct or work for, in any capacity, private sector entities, were covered as potential crime perpetrators in Article 200 CC. In particular, the amended paragraphs 1, 3, and 5(1) of Article 200 of the Code now provide that persons, who perform directing or other management functions or hold any other position in commercial or other organizations permanently, temporarily, or on a special powers basis, shall be subject to criminal liability for committing the crime in question.
167. The amendments to the Armenian CC have raised the sanctions under paragraph 1 of Article 200, and paragraphs 1 and 3 of Article 201 CC. In particular, under Article 200 CC (“Commercial Bribe”), giving a commercial bribe shall be punished with a penalty in the amount of 200 to 400 minimum salaries or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or imprisonment for a maximum term of three years. Under the amendment to paragraph 1 of Article 201 CC (“Bribing Participants and Organizers of Professional Sports Competitions and Commercial Entertainment Contests”), the sanction for bribery in sports has been raised: giving a bribe under Article 201 CC, including in sports, is punished with a penalty in the amount of 300 to 500 minimum salaries or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or detention for a term of two to three months or imprisonment for a maximum term of three years.
168. In addition to raising the sanctions for committing the relevant acts proscribed by Article 200 (“Commercial Bribe”) and Article 201 (“Bribing Participants and Organizers of Professional Sports Competitions and Commercial Entertainment Contests”), the statutory limitation period for these offences has been increased, too: the statutory limitation period for Article 200, and Article 201 CC, which was previously two years, has been increased to five years.
169. Regarding statistical data, Armenia has cited the following information:  
In the period of:
- 2010: 3 Armenian citizens were punished under the Article 200 CC, 1 person was an official and punished by imprisonment. 2 persons had other occupation and were punished by a fine.

- 2011: 3 Armenian citizens were punished under the Article 200 CC, 2 persons were officials and punished by imprisonment. 1 person had other occupation and was punished by a fine.
- 2012: 2 persons were punished under the Article 200 CC, they were punished by a fine. no one of them were officials.
- There were no cases under the Article 201 during the period of 2010-2012 (until September).

**(b) Observations on the implementation of the article**

170. The reviewing experts conclude that Armenia is in compliance with this non-mandatory provision.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

171. The criminalization of Article 22 UNCAC deserves special attention, because the Armenian CC adopted different forms of embezzlement. In this case, Article 22 UNCAC refers to Article 179 CC. Pursuant to Article 179 (1) CC, “Squandering or embezzlement is theft of somebody’s property entrusted to the person in significant amount”.

172. As noted in Article 179 CC, the perpetrator of crime shall only be a person, who takes another person’s property entrusted to him/her by virtue of his/her position. Squandering or embezzlement must be differentiated from theft and swindling. In contrast to squandering or embezzlement, in the case of theft the perpetrator is not in possession of any property: the property can be given to him only for technical or industrial purposes. For example, stealing of cargo by porter. Both in case of squander in and swindling the property owner voluntarily hands the property to the perpetrator. On the other hand, in case of swindling the property owner is misled by perpetrator. Besides, in case of swindling the perpetrator has an intended goal to take the property from the very beginning.

173. In this context, Article 181 CC (“Embezzlement, committed by means of a computer”) could also be considered:

**Article 181 CC**

1. Embezzlement of somebody’s property in significant amount committed with the use of a computer, is punished with a fine in the amount 100 to 300 minimum salaries, or with arrest for up to 2 months, or with imprisonment for up to 2 years and with or without a fine in the amount of up to 50 minimum salaries.

2. Same act committed:

1) by a group with prior agreement,

2) in large amount, is punished with a fine in the amount of 300 to 500 minimum salaries, or with imprisonment for the term of 2-5 years and with or without a fine for the amount of up to 50 minimum salaries.

3. The act envisaged in part 1 or 2 of this Article, committed:

1) in particularly large amount;

2) by an organized group, is punished with imprisonment for the term of 4 to 8 years, with or without confiscation of property

174. This Article could also reflect Article 22 UNCAC. Although the perpetrator of this offence is not especially mentioned in Article 181, it could be committed by any person.

175. Armenia also cited Article 53 of the Code of Administrative Offences.

***Article 53. Minor larceny or destruction or damage of property by intent***

1. Minor larceny by the way of stealing, or cheating, or misappropriation, or embezzlement by using means of computer shall entail imposition of a fine in the amount of fifty-fold to hundred-fold of the established minimum wage.

2. Destruction or damage of other`s property by intent, which inflicted small amount of damage shall entail imposition of a fine in the amount of thirty-fold to fifty-fold of the established minimum wage.

3. Larceny envisaged in this Article shall be regarded as minor:

1) at the time of committing a larceny by the way of stealing, the sum (the cost) of the stolen property does not exceed five times the minimum wage established by the laws of the Republic of Armenia,

2) at the time of committing a larceny by the way of cheating, or misappropriation, or embezzlement or by using means of computer, as well as at the time of destruction or damage of other`s property by intent, the sum (the cost) of stolen property does not exceed thirty times the minimum wage established by the laws of the Republic of Armenia,

176. Regarding statistical data, Armenia cited the following information:

In period of :

- 2010: 87 Armenian Citizens were sentenced under Article 179 CC. 45 of them were punished by imprisonment, 42 persons were punished by a fine. Besides, 27 punished people were officials, 21 persons were servicemen and 9 persons had other occupation.
- 2011: 73 Armenian Citizens and one foreigner were sentenced under Article 179 CC. 47 of them were punished by imprisonment, 27 persons were punished by a fine and for 21 persons the designated punishment had not been applied. Besides, 8 punished people were officials, 10 persons were servicemen and 24 persons had other occupation. One Armenian Citizen was punished by imprisonment under Article 181 who was also official.
- 2012 (until September): 27 Armenian Citizens were sentenced under Article 179 CC. 11 of them were punished by imprisonment, 16 persons were punished by a fine. Besides, 6 punished people were officials, 11 persons were servicemen and the other persons had other occupation.

**(b) Observations on the implementation of the article**

177. The reviewing experts observed that Article 179 CC in combination with Article 175(4(2)) CC criminalises embezzlement only in cases the embezzled value exceeds five-fold of the minimum salary (significant scale), whereas Article 22 UNCAC does not set the lower limit for the embezzled value.

178. Armenia explained that small-scale embezzlement is covered by the Code of Administrative Offences (Article 53). It is the policy of Armenia not to punish the minor offences by the Criminal Code.

179. The reviewing experts observe that, given that this is a non-mandatory offence, Armenia is free to consider small-scale embezzlement as an administrative offence. They conclude that Armenia is in compliance with this provision.

**(c) Technical assistance needs**

180. Armenia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review: Assistance in investigating crimes committed by means of computers; this is often associated with an obstacle as the information and knowledge in this area requires further development and in some extent is an innovation. Therefore, it would be useful to get special advice from expert as well as trainings for staff dealing with such offences.

**Article 23 Laundering of proceeds of crime**

**Subparagraph 1 (a) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

**(a) Summary of information relevant to reviewing the implementation of the article**

181. Armenia has criminalized money laundering through Article 190 CC. The offence was first introduced in 2003 and the definition of money laundering amended in 2006.

***Article 190 CC***

1. Conversion or transfer of property obtained in criminal way, if it is known that such property was obtained as a result of criminal activities, which had the purpose of concealing or disguising the criminal origin of such property, or of assisting any person to avoid liability for a crime committed by such persons, or the concealment or disguising of the true nature, source, location, disposition method, movement or rights with respect to, or ownership of such property, knowing that such property was obtained as a result of criminal activity, or the acquisition, possession, use or disposition of property, knowing, at the time of receipt, that such property had been obtained as a result of criminal activity.

182. Armenia further explained that the Cassation Court of Armenia in its decision dated 24 February 2011 held that Article 190 CC directly specifies the illicit origin of the proceeds, that is, proceeds should be derived from an action prosecuted under the criminal law. Part 5 of that Article provides an exhaustive list of offences which can result in proceeds and property rights to be considered objects of money laundering (predicate offences). Therefore, an action can be classified as legalization of illicit proceeds only in

case of one of the offences specified under Part 5, Article 190 CC. At that, legalization of illicit proceeds should come after (in terms of timing) this offence, and the illicit proceeds should be the object of the predicate offence.

183. The Court of Cassation highlights the point that, in such cases, it should not be necessary to have a court verdict with a conviction for the predicate offence, and, equally, it should not be necessary for the person accused of legalizing illicit proceeds to have any relation to the predicate offence. In subjecting a person to criminal liability for legalizing proceeds, it should be proved that the proceeds are illicitly acquired and that the person has acknowledged and foreseen the illicit nature of the proceeds.

184. Concerning statistics on criminal investigations and convictions on money laundering, the aforementioned information is reflected in the 2012 Annual report on activities in the field of combating money laundering and terrorism financing that is available at:

[https://www.cba.am/Storage/EN/FDK/Annual%20Reports/fmc\\_annual\\_report\\_2012\\_eng.pdf](https://www.cba.am/Storage/EN/FDK/Annual%20Reports/fmc_annual_report_2012_eng.pdf)

**(b) Observations on the implementation of the article**

185. In the light of the information provided before and during the country visit, the reviewing experts conclude that Article 190(1) CC covers all the elements of Article 23(1)(a)(i) UNCAC.

**Subparagraph 1 (a) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

186. The type of money laundering in question is criminalized through Article 190 CC.

***Article 190 CC***

1. ...or the concealment or disguising the true nature, source, location, disposition method, movement, or rights with respect to, or ownership of such property, knowing that such property was obtained as a result of criminal activity or...

**(b) Observations on the implementation of the article**

187. In the light of the information provided before and during the country visit, the reviewing experts conclude that Article 190(1) CC covers all the elements of Article 23(1)(a)(ii) UNCAC.

**Subparagraph 1 (b) (i)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

188. According to Article 190 (1) CC, the acquisition, possession, or use of property, knowing at the time of receipt, that such property is the proceeds of crime, constitutes the offence money laundering.

189. However, the Court of Cassation of Armenia in a decision dated 24 February 2011 held that “16. ... the respective article CC does not clearly envisage the main, essential peculiarity of the subjective element of this offence, in purpose of concealment or disguise of the real source of the relevant assets stemmed from deeds foreseen by Article 190 CC. Therefore, the practical implementation of Article 190 should be based on the conclusion, that the compulsory peculiarity of the subjective element of this offence includes special purpose, the concealment and involvement into the legal turnover of such proceeds of crime. The absence of this purpose rules out the presence of this offence.”

190. Nevertheless, if the acquisition of the proceeds of crime was promised in advance, it will constitute abetting, and if the acquisition or alienation was not promised in advance, it will constitute the offence of acquisition or alienation of property obviously acquired by way of criminal activity (Article 216 CC).

***Article 190 CC***

1. ....or the acquisition, possession, use or disposition of property, knowing, at the time of receipt, that such property had been obtained as a result of criminal activity.

**(b) Observations on the implementation of the article**

191. The reviewing experts observed that the judgment of the Court of Cassation narrows the scope of Article 190 CC in cases where possession or use of the proceeds of crime is promised in advance, but the “special purpose of concealment and involvement into legal turnover of proceeds of crime” is not established. Still, acquisition of the proceeds of crime without prior promise is criminalised under Article 216 CC (Acquisition or sales of property obviously derived from a crime). Acquisition, possession or use of the proceeds of crime promised in advance but in the absence of the special purpose will constitute abetting in accordance with Article 38(5) CC. However, the sanctions for offences under Article 190 CC and Article 216 CC differ greatly: Article 190(1) provides for imprisonment for a term of two to five years, with confiscation of property, whereas for the offence provided for in Article 216 CC without qualifying circumstances the sanction prescribed is a fine of the amount of two-hundred-fold to four-hundred-fold of the minimum salary, or by detention for a term of maximum three months.

192. The reviewing experts conclude that Armenia is in compliance with this non-mandatory provision.

### **Subparagraph 1 (b) (ii)**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) Subject to the basic concepts of its legal system:*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

193. Article 33 CC provides that sanctions for a criminal offence are not only being applied to completed crimes but also to attempted crimes or anybody who prepares a crime. Pursuant to the Article 34 CC a crime is considered attempted if a wilful act or inaction immediately aimed at committing a crime has been taken and the crime was not completed for reasons beyond person's control. Article 35 CC furthermore provides that a crime has been prepared if means or tools for the commission of a crime requiring direct wilfulness have been provided or adapted or other conditions for the commission of a crime have been wilfully created and the crime was not completed for the reasons beyond the person's control. Persons voluntarily refusing to complete the crime and preventing the completion of the crime by the perpetrator are not subject to criminal liability.
194. Article 38 CC defines a number of types of accomplices, including organizers (persons who arranges or directs the commission of the crime or a group for the purposes of committing a crime); abettors (persons who assists the main perpetrator of the crime through persuasion, financial incentives, threats or means) and helpers (person who assists the main perpetrator of the crime, through pieces of advice, instructions or information, who provides means or tools or eliminates obstacles to the commission of the crime, who has promised to harbour the criminal, or to hide means and tools of a crime, traces of the crime, or items acquired through a crime, or the person who has promised to acquire or sell such items).
195. Article 39 CC further stipulates that the maximum sanction for all types of accomplices is the same as for the main perpetrator, whereby the nature and degree of participation of each of them in committing the crime has to be taken into account to the court. As to criminal associations, Article 223 CC criminalizes the "creation of a criminal association" as "a stable group of individuals who previously united to commit one or more crimes."
196. The Criminal Code of Armenia foresees sanctions also for the commission of crime by a group with or without a prior agreement. In particular, Article 41 stipulates that a crime is considered committed by a group of individuals without a prior agreement, if the co-perpetrators who participated in the crime didn't previously agree to commit the crime jointly. A crime is considered committed by a group of individuals with prior agreement, if the co-perpetrators who participated in the crime, prior to the commencement of the crime, agreed to commit the crime jointly.

### ***Article 33. Completed and unfinished crime***

1. A crime is considered committed if the action incorporates all the elements of crime envisaged in this Code.
2. Attempts to commit a crime and the preparation for grave and particularly grave crimes are considered an unfinished crime.
3. The liability for attempts to commit a crime and the preparation for crime is under the same article of the Special Part of this Code as for complete crimes, referring to Articles 34 or 35 of this Code.

***Article 34. Attempt to commit a crime***

Attempt at a crime is the action (inaction) committed through direct wilfulness immediately aimed at the committal of crime, if the crime was not finished for reasons beyond the person's control.

***Article 35. Preparation of crime***

Preparation of a crime is the procurement of means or tools or their adaptation for committal of a direct wilful crime, as well as wilful creation of other conditions for committal of crime, if the crime was not finished for reasons beyond the person's control.

***Article 38. Types of accomplices***

1. The organizer, the abettor and the helper are considered the accomplices to the perpetrator.
2. The perpetrator is the person who immediately committed the crime or immediately participated in its committal with other persons (accomplices), as well as the one who committed the crime through the use of persons not subject to negligence.
3. The organizer is the person who arranged or directed the committal of the crime, as well as, the one who created, organized or directed a group or a criminal association for committal of the crime.
4. The abettor is the person who abetted another person for the committal of a crime through persuasion, financial incentive, threat or other means.
5. The helper is the person who assisted to the crime through pieces of advice, instructions, information or provided means, tools, or eliminated obstacles, as well as, the person who had previously promised to harbour the criminal, to hide the means and tools of a crime, the traces of the crime or the items acquired through crime, as well as, also, the person who had previously promised to acquire or sell such items.

***Article 39. The liability of accomplices***

1. The co-perpetrators are subject to liability for the crime under the same article of the Special Part of this Code.
2. The organizer, the abettor and the perpetrator are subject to liability under the article which envisages the committed crime, referring to Article 38 of this Code, except for those cases when they were at the same time the co-perpetrators of the crime.
3. The person who is not a special subject of the crime in the article of the Special Part of this Code, who participated in the committal of the crime envisaged in this Article, can be liable for this crime only as an organizer, an abettor or helper.
4. In the case when the crime was not completed for reasons beyond control of the perpetrator, the other accomplices are liable for the preparation of the crime or for complicity in the attempt at the crime.
5. If the organizer, the abettor or the helper fail in their actions for reasons beyond their control, then these persons are liable for the preparation of the respective crime.
6. The accomplices are subject to liability only for those aggravating circumstances of the crime of which they were aware.
7. When subjecting the accomplices to liability, the nature and the degree of participation of each of them in the crime are taken into account.

***Article 41. Committal of crime by a group of individuals, by an organized group or by an organized crime***

1. A crime is considered committed by a group of individuals without prior agreement, if the co-perpetrators who participated in the crime did not previously agree to commit the crime jointly.
2. A crime is considered committed by a group of individuals with prior agreement, if the co-perpetrators who participated in the crime, prior to the commencement of the crime, agreed to commit the crime jointly.
3. A crime is considered committed by an organized group, if it was committed by a stable group of persons who previously united to commit one or more crimes.
4. A crime is considered committed by an organized crime, if it was committed by an organized and consolidated group created to commit grave or particularly grave crimes, or by uniting to an organized group for the same purposes, as well as if it was committed by a member (members) of the organized crime to achieve its criminal purposes, as well as, committal of a crime by a person instructed by and not considered a member of the organized crime,
5. The person who created or directed an organized group, an organized crime, is subject to liability in cases envisaged in the appropriate articles of this Code: for the creation or direction of an organized group or an organized crime, as well as, for all crimes committed by them, if they were involved by his wilfulness. Other persons involved in the organized crime are subject to liability for participation in this organization and for those crimes which they committed or prepared.
6. The persons mentioned in this Article incur liability without referral to Article 38 of the Special Part of this Code.

***Article 223. Creation of criminal associations or participation in criminal association***

1. Creation of criminal associations or leading a criminal association, is punished with imprisonment for 8-12 years, with or without property confiscation.
2. Participation in a criminal association, is punished with imprisonment for 6-10 years, with or without property confiscation.
3. The acts envisaged in part 1 or 2 of this Article with abuse of official position, are punished with imprisonment for 10-15 years, or deprivation of the right to hold certain posts or practice certain activities for up to 3 years, with or without property confiscation.
4. The person who informed the state bodies about the creation of a criminal association by oneself, or about the participation in the criminal association, and who contributed to the prevention of its activity, is exempted from criminal liability, if there are no other criminal elements in his actions.

**(b) Observations on the implementation of the article**

197. The reviewing experts observe that the mere conspiracy to commit a crime is not criminalised. The preparation of a crime is criminalised only in cases of grave and particular grave crimes. A grave crime is a crime with a sanction prescribed of not less than 5 years of imprisonment (Article 19(3)(4) CC). Therefore, there are a number of cases where offences laid down in UNCAC Article 23 (at least without qualifying circumstances) are not considered as grave or particular grave. E.g. offences under Articles 216(2)(2) CC and 216(3)(2) are not regarded as grave or particularly grave and thus are not criminalised.
198. Nevertheless, given the non-mandatory nature of this provision, Armenia is in adequate compliance with the Convention. Moreover, the new draft of the Criminal Code foresees criminal responsibility for the preparation of all types of crimes.

**Subparagraph 2 (a) and (b)**

- 2. For purposes of implementing or applying paragraph 1 of this article:*

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

**(a) Summary of information relevant to reviewing the implementation of the article**

199. All FATF designated categories of predicate offenses are covered, as outlined below. In addition, tax evasion is criminalized through Article 205 CC and constitutes a predicate offense for money laundering under Armenian law.

- Participation in an organized criminal group and racketeering: Articles 222, 223 & 224 CC;
- Terrorism, including terrorism financing: Articles 217, 388, 389 CC;
- Trafficking in human beings and migrant smuggling: Articles 132, 132.1, & 168 CC;
- Sexual exploitation, including sexual exploitation of children: Articles 132, 132.1, 166, 261 & 262 CC;
- Illicit trafficking in narcotic drugs and psychotropic substances: Articles 215, 266 CC;
- Illicit arms trafficking: Article 215, 235 CC;
- Illicit trafficking in stolen and other goods: Article 216 CC;
- Corruption and bribery: Articles 200, 201, 311, 312 & 313 CC;
- Fraud: Article 178, 184, 194, & 212 CC;
- Counterfeiting Currency: Articles 202 & 203 CC;
- Counterfeiting and piracy of products: Articles 197, 207 CC;
- Environmental crime: Articles 281, 284, 286, 287, 288, 289, 291, 292, 295, 297 & 298 CC;
- Murder, grievous bodily injury: Articles 104, 112, 113, 117 CC;
- Murder, grievous bodily injury: Articles 104, 112, 113, 117 CC;
- Kidnapping, illegal restraining and hostage taking: Articles 131, 132, 133, 134, & 218 CC;
- Robbery or theft: Articles 175-181, 234, 235, 238, 269, 383 CC;
- Smuggling: Article 215 CC;
- Extortion: Article 182 CC;
- Forgery: Article 269 CC;
- Piracy: Articles 220, 221 CC;
- Insider trading and market manipulation: Articles 195, 199 & 214 CC.

***Article 190. Legalization of illicit proceeds (money laundering)***

5. For the purpose of this article “illicit property” shall mean any type of property, including assets, securities and property rights, and, in cases stipulated by international treaties of the Republic of Armenia, other objects of civil rights derived or obtained, directly or indirectly, through commission of offences defined by articles 104, 112-113, 117, 122, 131-134, 166, 168, 175-224, 233-235, 238, 261-262, 266-270, 281, 284, 286-289, 291-292, 295, 297-298, 308-313, 329, 352, 375, 383, 388 and 389 of this Code.

**(b) Observations on the implementation of the article**

200. The reviewing experts observe that Article 190(5) CC provides a list of predicate offences. All FATF-designated categories of predicate offences are covered by Armenia's list. The reviewing experts conclude that Armenia's legislation is in compliance with the provision.

### **Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

201. Money laundering offences are punishable under Armenian law irrespective of the place where the predicate offence was committed. The Criminal Code of Armenia does not require that the latter be committed domestically, provided it would constitute a criminal offence/crime punishable under the Criminal Code of Armenia had it occurred domestically.

#### **Article 190**

1. Conversion or transfer of property obtained in a criminal way, if it is known that such property was obtained as a result of criminal activities, which had the purpose of concealing or disguising the criminal origin of such property, or of assisting any person to avoid liability for a crime committed by such persons, or the concealment or disguising of the true nature, source, location, disposition method, movement, or rights with respect to, or ownership of such property, knowing that such property was obtained as a result of criminal activity, or the acquisition, possession, use or disposition of property, knowing, at the time of receipt, that such property had been obtained as a result of criminal activity...

#### **(b) Observations on the implementation of the article**

202. The reviewing experts conclude that Armenia's legislation is in compliance with the provision under review, although no case law has been provided.

### **Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

203. Armenia has not furnished copies of its laws to the Secretary-General of the United Nations as prescribed above.

**(b) Observations on the implementation of the article**

204. Armenia is requested to furnish copies of its laws to the Secretary-General of the United Nations as required by the Convention.

**Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

205. Article 190 CC criminalizes money laundering regardless of whether the predicate offence has been committed by the money launderer or a third party. Self-laundering is therefore criminalized for all acts constituting money laundering.

206. Armenia cited the case *Armenia vs. Grigoryan* (1/11-2006) as an example where the court convicted the defendants for both the predicate and the money laundering offence.

**(b) Observations on the implementation of the article**

207. The reviewing experts note with approval that Armenia is not invoking this exemption from the criminalisation of money laundering.

**Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

208. Armenia has cited the following implementation measures:

***Article 334 CC (“Concealment of crime”)***

Concealment of a grave or a particularly grave crime, as well as tools and means of the crime, crime traces or criminally acquired items, which had not been previously promised, if elements of crime defined by Article 334.1 are default.”.

209. Article 24 UNCAC stresses the fact that “the person involved knows that such property is the result of any of the offences”, while the Armenian CC stresses that the concealment “had not been previously promised”.

210. Obviously, in both cases the person who conceals the crime, committed it intentionally. At the same time, as noted in Article 334 CC, in case that crime had not been previously promised the acts and intention of perpetrator are directed to conceal a crime. There are no causal links between concealment and crime. In contrast with Article 24 UNCAC, the Armenian CC envisages liability only for grave and particularly grave crimes, which had not been previously promised. In accordance with Article 334 (2) CC, the spouse of the person who committed a crime and one's close relatives are not subject to criminal liability for concealment of the crime which had not been previously promised.

**(b) Observations on the implementation of the article**

211. The reviewing experts observe that only concealment of grave and particularly grave crimes, which had not been previously promised, is covered.

212. Armenian criminal legislation does not provide for the punishment of minor offences of concealment.

213. Nevertheless, given the non-mandatory nature of the provision, the reviewing experts conclude that Armenia's legislation is in compliance with Article 24 UNCAC.

**Article 25 Obstruction of Justice**

**Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

214. A number of provisions of the criminal law are relevant for the obstruction of justice including corruption, and in the investigation of the criminal case.

**Article 332 CC**

1. Any interference into the activities of the court for the purpose of obstruction of administration of justice is punishable with a fine equal to two hundred-fold to four hundred-fold of the minimum wage, or arrest from one to three months, or imprisonment for 2 years maximum.

2. Any interference into the activities of a prosecutor, investigator or a person conducting inquest for the purpose of obstruction of comprehensive, complete and impartial examination of the case is punishable with a fine equal to hundred-fold to three hundred-fold of the minimum wage, or with arrest from one to three months.

3. The same acts committed by the person using his official position are punishable with the fine equal to three hundred-fold to five hundred-fold of the minimum wage, or imprisonment for 4 years maximum.

**Article 337 CC**

Hindrance to attendance of a witness or victim to court, pre-trial investigation bodies or to giving testimony thereby, committed by use of violence or threat thereof or by other unlawful actions is punishable with a fine equal to three hundred-fold to five hundred fold of the minimum wage, or with arrest for 3 months maximum, or imprisonment for 2 years maximum.

**Article 340 CC**

(1) Bribing a victim or witness to give false testimony, or the expert to give wrong conclusion, or bribe the interpreter to make mistranslation is punishable with a fine equal to three hundred-fold to four hundred-fold of the minimum wage, or arrest for 2 months maximum.

(2) Compulsion of a victim or witness to give false testimony, or expert to give wrong conclusion, or obliged the interpreter to mistranslate, or to oblige to refuse from giving testimony, accompanied by blackmail of relatives, or threatening to kill, to injury health, destruction of property is punishable with a fine equal to three hundred-fold to five hundred-fold of the minimum wage or arrest for 1 -3 months, or imprisonment for three years maximum.

(3) The same acts accompanied with infliction of not dangerous harm to life and health is punishable by imprisonment for 5 years maximum.

(4) The same acts which are mentioned in the parts 1 and 2 which were: 1) committed by an organized group, 2) accompanied with infliction of dangerous harm to life and health, are punishable by imprisonment from three to eight years.

**Article 341. Forcing testimony by the judge, by the prosecutor, by the investigator or by the person in charge of inquiry**

1. Forcing the suspect, the accused, the defendant, the aggrieved, the witness or the expert, or the translator, by the judge, the prosecutor, the investigator or person in charge of inquiry, by using extortion or any other illegal action, to make a false testimony, conclusion or translation, is punished with deprivation of the right to hold certain posts or practice certain activities for up to 5 years, or with arrest for the term of up to 3 months, or with imprisonment for the term of up to 2 years.

2. The same action committed by the persons mentioned in part 1 by using torture, insult or other violence, are punished with imprisonment for the term of 3 to 8 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years.

3. The actions envisaged in parts 1 or 2 of this Article, which caused grave consequences, are punished with imprisonment for the term of 6 to 12 years, with deprivation of the right to hold certain posts or practice certain activities for up to 3 years.

**Article 347. Threat or violence in relation to preliminary investigation or administration of justice**

1. Threat to murder a judge or his close relatives, to inflict damage to health, destroy or damage property, concerned with the trial of the case or material in court, is punished with a fine in the amount of 300 to 500 minimum salaries, or with imprisonment for the term of up to 3 years.

2. The same action committed against a prosecutor, an investigator, person in charge of inquiry, defence lawyer, expert, court martial or their relatives, concerning the preliminary investigation, the trial of the case or material in court, the sentence, verdict or other act, is punished with a fine in the amount of 200 to 400 minimum salaries, or with arrest for the term of 3 to 6 months, or with imprisonment for the term of up to 2 years.

3. The action envisaged in parts 1 or 2 of this Article, committed with violence not dangerous for life or health, is punished with imprisonment for the term of up to 5 years.

4. The action envisaged in parts 1, 2 or 3 of this Article, committed with violence dangerous for life or health, is punished with imprisonment for the term of 5 to 10 years.

**Article 350. Entrapment for bribe or commercial bribe**

Entrapment for bribe or commercial bribe, i.e. to create artificial evidence or to blackmail an official or an executive or a manager of a commercial or other organization, an attempt to impose on them money, securities, other property or property services, is punished with a fine in the

amount of 300-500 minimum salaries, or imprisonment for up to 5 years, with or without deprivation of the right to hold certain posts or practice certain activities for up to 3 years.

**(b) Observations on the implementation of the article**

215. The reviewing experts conclude that Armenia's legislation is in compliance with Article 25(a) UNCAC.

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

216. As seen above, a number of provisions, notably Article 332 CC, deal with obstruction of justice including corruption, and in the investigation of the criminal case.

**(b) Observations on the implementation of the article**

217. The reviewing experts conclude that Armenia's legislation is in compliance with Article 25(b) UNCAC.

**Article 26 Liability of legal persons**

**Paragraph 1 and 2**

*1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*

*2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*

**(a) Summary of information relevant to reviewing the implementation of the article**

218. Armenian legislation does not provide for criminal liability of legal persons.

219. The civil liability of legal persons is enshrined in the Art. 60 of the Civil Code. The text is as follows:

***Liability of a Legal Person***

1. A legal person shall be liable for its obligations with all property belonging to it, with the exception of cases provided by the current Code

2. The founder of (or a participant in) a legal person shall not be liable for the obligations of the legal person, and the legal person shall not be liable for the obligations of the founder (or

participant), with the exception of cases provided by the present Code or by the charter of the legal person.

220. The current Code of Administrative Offences does not include the liability of legal persons, however the Republic of Armenia is currently working on a new Draft Code of Administrative Offences, which contains provisions that provide for the liability of legal persons.
221. However, legal persons involved in money laundering are subject to administrative sanctions pursuant to Article 28 of the Law on Combating Money laundering and Terrorism Financing. Sanctions may include fines, revocation, suspension or termination of the legal person's license and filing of a request with the courts to liquidate the legal person.
222. The minimum salary is defined as 1000 AMD when taken as basis for calculating fines. It means that the minimum threshold of fine applicable to regular legal persons is 2,000,000 AMD (5,000 USD) and 5,000,000 AMD (12,500 USD) for reporting entity legal persons.

#### ***Law on combating money laundering and terrorism financing***

##### ***Article 28. Sanctions applied to legal persons for involvement in money laundering and terrorism financing***

1. Involvement of a legal person (except for reporting entities) in money laundering shall give rise to imposition of penalty at the value of the received assets of crime as specified in Part 4, Article 55 CC, but not less than 2000-fold amount of the minimum salary, as well as an action may be filed to the court requesting liquidation of the legal person in the manner established by law.
  2. Involvement of a legal person, which is a reporting entity, in money laundering shall give rise to imposition of penalty at the value of the received assets of crime as specified in Part 4, Article 55 CC, but not less than 5000-fold amount of the minimum salary, as well as the license of such person may be revoked or suspended or terminated, or otherwise the activity of the reporting entity may be banned in the manner established by law.
  3. Involvement of a legal persons (except for reporting entities) in terrorism financing shall give rise to imposition of penalty at the value of the assets used for financing terrorism as specified in Part 5, Article 55 CC, but not less than 10000-fold amount of the minimum salary, as well as an action shall be filed to the court requesting liquidation of the legal person in the manner established by law.
  4. Involvement of a legal person, which is a reporting entity, in terrorism financing shall give rise to imposition of penalty at the value of the assets used for financing terrorism as specified in Part 5, Article 55 CC, but not less than 20000-fold amount of the minimum salary, as well as the license of such person shall be revoked, or otherwise the activity of the reporting entity shall be banned in the manner established by law.
  5. The sanctions stipulated by this Article shall be imposed on financial institutions by the Authorized Body in the manner established by the legislation regulating the activities of financial institutions.
  6. The sanctions stipulated by this Article for non-financial institutions or individuals and for legal persons shall be imposed by the respective supervisory body and, in the absence of such body, by the Authorized Body in the manner established by the Code of Administrative Violations, as long as it does not contradict the requirements of this Law.
223. Regarding statistical data, Armenia has cited that no legal person was held liable for being involved in money laundering.

**(b) Observations on the implementation of the article**

224. The reviewing experts note that except for money laundering, criminal liability of legal persons has not been implemented.

225. During the country visit, Armenia cited Articles 168 and 189 of the Code of Administrative Offences as possible legal bases for imposing sanctions on legal persons. However, these articles do not seem to be applied in practice. Armenia commented that Presidential decree NK-96-A on “Approving the 2012-2016 judicial reforms strategic plan and the list of events resultant to the strategic plan” dated 30 June 2012 anticipates the development of a new Code of Administrative offences. The General Prosecutor’s Office recommends that it should include norms establishing responsibility for legal persons for corruption offences (according to the Administrative offences code those will be considered misdemeanours). While administrative responsibility does not exclude the establishment of criminal responsibility, administrative responsibility can exclude the need for criminal responsibility in this case.

**Paragraph 3**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

226. No legal provision exists in the legislation, exempting natural persons from criminal responsibility for the offences of money laundering. As mentioned above, no legal person was held liable for money laundering.

**(b) Observations on the implementation of the article**

227. The reviewing experts conclude that to the extent that there is liability for legal persons (money laundering), Armenia is in compliance with the provision.

**Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

228. Sanctions applicable to legal persons seem to be effective, proportionate and dissuasive, taking into account the punitive policy in Armenia. It is not possible to compare the sanctions applicable in money laundering cases with those applicable in other economic crimes, as Armenian legislation does not envisage corporate criminal liability.

**(b) Observations on the implementation of the article**

229. The reviewing experts conclude that to the extent that there is liability for legal persons (money laundering), Armenia is in compliance with the provision.

## **Article 27 Participation and attempt**

### **Paragraph 1**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

230. The provision of Article 27(1) UNCAC is implemented in Articles 37 CC (complicity) and 38 CC (types of accomplices).

##### ***Article 37 CC***

Complicity shall be deemed to be an intentional joint participation of two or more persons in the committal of an intentional crime.

##### ***Article 38 CC***

1. Organiser, inciter and abettor together with the perpetrator shall be deemed to be accomplices.
2. A perpetrator shall be deemed to be the person who has directly committed a criminal offence or has immediately participated in the committal thereof jointly with other persons (joint perpetrators), as well as has committed the criminal offence through the use of other persons who by virtue of law shall not be subject to criminal liability or have committed the criminal offence negligently.
3. An organiser shall be deemed to be the person who has organised or directed the committal of criminal offence, as well as has established an organised group or a criminal organisation or has directed them.
4. An inciter shall be deemed to be the person who has incited another person to commit a criminal offence through persuasion, financial incentive, threat or other means.
5. An abettor shall be deemed to be the person who has assisted in the committal of a crime through provision of advice, instructions, information or means, tools or elimination of obstacles, as well as the person who has initially promised to conceal the criminal, means or instruments of crime, traces of crime or items obtained from a crime, as well as the person who has initially promised to acquire or realise such items.

231. In contrast to the definition of “accomplice” in Article 27(1) UNCAC, the Armenian CC criminalises all four types of accomplices. Of course, the central role of the crime is occupied by the perpetrator. Pursuant to Article 38 CC, paragraph 2, the perpetrator is the person who immediately committed the crime or immediately participated in its committal with other persons (accomplices), as well as the one who committed the crime through the use of persons not subject to legal criminal liability or the persons who committed a crime by negligence.

##### ***Article 39 CC***

1. The co-perpetrators are subject to liability for the crime under the same article of this Code.
2. The organizer, the abettor and the perpetrator are subject to liability under the article which envisages the committed crime, referring to Article 38 of this Code, except those cases when they were at the same time the co-perpetrators of the crime.

3. The person who is not a special subject of the crime in the article of the Special Part of this Code, who participated in the committal of the crime envisaged in this Article, can be liable for this crime only as an organizer, an abettor or helper.
4. In the case when the crime was not completed for reasons beyond control of the perpetrator, the other accomplices are liable for the preparation of the crime or for complicity in the attempt at the crime.
5. If the organizer, the abettor or the helper fail in their actions for reasons beyond their control, then these persons are liable for the preparation of the respective crime.
6. The accomplices are subject to liability only for those aggravating circumstances of the crime of which they were aware.
7. When subjecting the accomplices to liability, the nature and degree of the participation of each of them in the crime are taken into account.

232. Regarding statistical data, Armenia has cited the following information:

- During 2010 - 9 persons were punished for participation of the crime envisaged by the Article 179 CC (“Squandering or embezzlement “).
- During 2011 - 1 person was punished for participation of the crime envisaged by the Article 308 CC (“Abuse of official authority “) and 1 person -for participation of the crime envisaged by the Article 311 (“Taking bribes “)

**(b) Observations on the implementation of the article**

233. The reviewing experts conclude that Armenia’s legislation is in compliance with the provision, although no case law was provided.

**Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

234. Article 27(2) UNCAC provides for the criminalisation of “any attempt to commit an offence”. Article 34 CC provides that an attempt at a crime shall be committed only through direct wilfulness. Pursuant to Article 33 paragraph 2 and 3 the attempt to commit a crime is considered an unfinished crime and the liability for attempts to commit a crime is under the same article of the Special Part CC as for complete crimes, referring to Article 34 CC.

**Article 33 CC**

1. A completed crime shall be deemed to be an act which contains all the elements of *corpus delicti* provided for in this Code.
2. An inchoate crime shall be deemed to be an attempted crime and a preparation for grave or particularly grave crimes.
3. Liability for the preparation of a crime and the attempted crime shall be ensued under the same Article of the Special Part of this Code, as for a completed crime referring to Articles 34 or 35 of this Code.

**Article 34 CC**

An attempted crime shall be deemed to be an action (inaction) committed with direct intention which is directly aimed at committing a criminal offence where the crime has not been completed for circumstances beyond the person's control.

235. Regarding statistical data, Armenia has cited the following information:

- During 2010 -2 persons were punished for attempt to commit the crime envisaged by the Article 311 CC ("Taking bribes").
- During 2011 -4 persons were punished for attempt to commit the crime envisaged by the Article 179 CC ("Squandering or embezzlement")

**(b) Observations on the implementation of the article**

236. The reviewing experts consider Armenia to be in compliance with Article 27(2) UNCAC.

**Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

237. Article 35 CC establishes the notion of "Preparation of crime"

**Article 35 CC**

Preparation of crime shall be deemed to be an acquisition or adaptation of means or tools for committing a criminal offence with direct intention, as well as intentional creation of other conditions where the crime has not been completed for circumstances beyond the person's control.

238. In comparison with the Convention, the CC stresses two important elements of preparation of crime. These are: 1. Preparation is to commit a directly wilful crime; 2. the crime was not finished for reasons beyond the person's control.

239. The formulation of Article 35 CC shows that preparation of crime is manifested in performing any of the following actions: 1. the procurement of means or tools; 2. their adaptation for committal of a direct wilful crime; 3. wilful creation of other conditions for committal of crime.

240. Pursuant to Article 33 paragraph 2 and 3 the preparation for grave and particularly grave crimes are considered an unfinished crime and the liability for the preparation for crime is under the same article of the Special Part of the CC as for complete crimes, referring to Article 35 CC.

**(b) Observations on the implementation of the article**

241. The reviewing experts observe that liability applies only in cases of grave and particularly grave crimes. Therefore, preparation to commit a crime is not criminalised in a number of corruption related crimes, including money laundering without qualifying circumstances (Article 190(1) CC), most cases of embezzlement (Article 179(1) and (2)

CC), giving a bribe, even by a group of persons acting in conspiracy or by an organised group (Article 200 (1) and (2) CC).

242. However, taking into account the non-mandatory nature of the provision, Armenia can be considered to be in compliance with Article 27(3) UNCAC.

## **Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

243. Armenia has cited the following implementation measures:

#### ***Article 75 CC. Exemption from criminal liability as a result of the expiration of the statute of limitation***

1. A person shall be released from criminal liability where the following terms have elapsed from the day when the criminal offense is regarded as completed:

- (1) two years from the day when a criminal offense of minor gravity is regarded as completed;
- (2) five years from the day when a criminal offense of medium gravity is regarded as completed;
- (3) ten years from the day when a grave criminal offense is regarded as completed;
- (4) fifteen years from the day when a particularly grave criminal offense is regarded as completed.

244. The main demand of the Convention is to establish a long statute of limitation in domestic law. The amendments of the CC, which were adopted on 9 February 2012, have raised the sanctions under paragraph 1 of Article 312.1 CC, Article 200 CC, and Paragraphs 1 and 3 of Article 201 CC.

245. In particular, it is now provided, under paragraph 1 of Article 312.1 CC (“Giving unlawful Remuneration to a Public Servant Who is not an Official”), that giving unlawful remuneration to a public servant who is not an official shall be punished with a penalty in the amount of 200 to 400 minimum salaries or imprisonment for a maximum term of three years, with deprivation of the right to engage in certain activities for a maximum term of three years. Under Article 200 CC (“Commercial Bribe”), giving a commercial bribe shall be punished with a penalty in the amount of 200 to 400 minimum salaries or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or imprisonment for a maximum term of three years. Under the amendment to Paragraph 1 of Article 201 CC (“Bribing Participants and Organizers of Professional Sports Competitions and Commercial Entertainment Contests”), the sanction for bribery in sports has been raised: giving a bribe under Article 201, including in sports, is punished with a penalty in the amount of 300 to 500 minimum salaries or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or detention for a term of two to three months or imprisonment for a maximum term of three years.

246. Under this Article, in addition to raising the sanctions for committing the relevant acts proscribed by the CC (Article 312.1 “Unlawful Remuneration to a Public Servant who is not an Official,” Article 200 “Commercial Bribe,” and Article 201 “Bribing Participants and Organizers of Professional Sports Competitions and Commercial Entertainment Contests”), the statutory limitation period for these offences has been increased, too: the statutory limitation period under Articles 312.1, Article 200, and Article 201 CC, which was previously two years, has been increased to five years.

**(b) Observations on the implementation of the article**

247. The reviewing experts conclude that Armenia’s legislation is in compliance with the provision.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 1**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

248. In order to make the fight against corruption more effective, by order 82 of the Prosecutor General of 19 November 2008, the following offences are considered as corruption crimes:

- 1) Article 179, paragraph 2, subparagraph 1 (Squandering or embezzlement);
- 2) Article 179, paragraph 3 (Squandering or embezzlement with abuse of official position);
- 3) Article 184, paragraph 2, subparagraph 3 (Infliction of damage to property by deception or abuse of confidence);
- 4) Article 187 (Hindrances to legal entrepreneurial and other economic activity);
- 5) Article 190 paragraph 3, subparagraph 3 (Legitimizing (legalizing) illegally obtained income);
- 6) Article 195 paragraph 2, subparagraph 3 (Illegal anti-competition activity);
- 7) Article 200 (Commercial bribe);
- 8) Article 201 (Bribing the participants and organizers of professional and commercial sports competitions or shows);
- 9) Article 205 (Evasion from taxes, duties or other mandatory payments);
- 10) Article 214 (Abuse of authority by the employees of commercial or other organizations);
- 11) Article 215 paragraph 3, subparagraph 1 (Contraband);
- 12) Article 308 (Abuse of official authority);
- 13) Article 309 (Exceeding official authorities);
- 14) Article 310 (Illegal participation in entrepreneurial activity);
- 15) Article 311 (Taking bribes);
- 16) Article 311.1 (Taking bribes by a Public Servant who is not an Official);
- 17) Article 311.2 (Use of real or supposed influence for mercenary purposes);
- 18) Article 312 (Giving bribe);

- 19) Article 312.1 (Giving unlawful Remuneration to a Public Servant who is not an Official);
- 20) Article 313 (Bribery mediation);
- 21) Article 314 (Official forgery);
- 22) Article 315.2 (Unauthorized seizure of state or community owned lands, as well as failure in duties described by law to prevent and suspend unauthorized building of constructions and structures);
- 23) Article 332 paragraph 3 (Hindrane to administration of justice and conducting investigation);
- 24) Article 336 (Subjecting an obviously innocent person to criminal liability);
- 25) Article 341 (Forcing testimony by the judge, by the prosecutor, by the investigator or by the person in charge of inquiry);
- 26) Article 348 (Obviously illegal detention or arrest);
- 27) Article 349 paragraphs 2 and 3 (Forgery of evidence);
- 28) Article 351 (Illegal exemption from criminal liability);
- 29) Article 352 (Adoption of an obviously unjust court sentence, verdict or other court act);
- 30) Article 353 (Failure to carry out a court act);
- 31) Article 375 (Abuse of power, transgression of authority or administrative dereliction);

249. Pursuant to Article 48 CC, the notion of punishment and its purposes are defined:

**Article 48 CC**

1. Punishment is a means of state enforcement assigned by court sentence on behalf of the state to the person who has been found guilty of the crime, and is expressed in deprivation or restriction of one's rights and freedoms, as envisaged by law.
2. The purpose of punishment is applied to restore social justice, to correct the punished person, and to prevent crimes".

250. In accordance with Article 49 CC, the types of punishment are:

**Article 49 CC**

Types of punishment shall be as follows:

- (1) fine.
- (2) deprivation of the right to hold certain positions or to engage in certain activities.
- (3) public works.
- (4) deprivation of special or military rank, category, degree or qualification class.
- (5) property confiscation.
- (6) (sub-point 6 repealed by HO-119-N of 1 June 2006)
- (7) detention.
- (8) confinement in a disciplinary battalion.
- (9) fixed-term imprisonment.
- (10) life imprisonment.

251. The definition of types of punishment enables the court to take into consideration the gravity of the offense and the offender. The types of punishment are listed in sequence from less severe to more severe punishment.

**Article 50 CC**

1. Fine, public works, arrest, service in disciplinary battalion, imprisonment for a certain term and life sentence are used only as basic punishments.

2. The prohibition to hold certain posts or practice certain professions are imposed both as basic and supplementary punishments.
3. Deprivation of special titles or military ranks, categories, degrees or qualification class, as well as confiscation of property are applied only as supplementary punishments.
4. Only one basic punishment can be assigned for one crime. One or more supplementary punishment can be added to the basic punishment in cases envisaged in this Code.
5. Confiscation of property and the prohibition to hold certain posts or practice certain professions, as supplementary punishment, can be assigned only in cases envisaged in the Special Part of this Code.

252. At the same time, basic or basic and supplementary punishment can be assigned for corruption crimes listed by order 82 of the Prosecutor General. Particularly, only basic punishment can be assigned for Article 184, paragraph 2, subparagraph 3; Articles 187, 200, 201, 214, 310, 312, 313 and 375. Basic or basic and supplementary punishment can be assigned for Article 179, paragraph 2, subparagraph 1, Article 179, paragraph 3, Article 190 paragraph 3, sub paragraph 3, Article 195 paragraph 2, sub paragraph 3, Articles 205, 215, 308, 309, 311, 3111, 3112, 3121, 314, 3152, Article 332 paragraph 3, Articles 336, 341, 348, Article 349 paragraphs 2 and 3, and Articles 351, 352, 353.

253. Thus, the provisions of the CC are fully in line with Article 30(1) UNCAC.

**(b) Observations on the implementation of the article**

254. The reviewing experts observe that most UNCAC crimes with a *corpus delicti* without qualifying circumstances fall under the category of medium gravity (with a sanction of less than five years of imprisonment) (e.g. receiving and giving a bribe, commercial bribe, abuse of official powers, excess of official powers, embezzlement, even money laundering, etc.), and a number of UNCAC crimes with a *corpus delicti* with qualifying circumstances fall under the categories of grave and particularly grave crimes.

255. They consider that Armenia's legislation is in compliance with Article 30(1) UNCAC.

**Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

256. The Constitution of the Republic of Armenia provides:

***Article 56.1***

The President of the Republic shall be immune.

The President of the Republic may not be prosecuted or held liable for actions arising from his/her status during and after his/her term of office. The President of the Republic may be prosecuted for the actions not connected with his or her status after the expiration of his/her term of office.

**Article 57**

The President may be impeached for state treason or other heavy crimes.

In order to obtain a conclusion on the motion of impeaching the President of the Republic from office, the National Assembly shall appeal to the Constitutional Court by a resolution adopted by the majority of the deputies.

The resolution to remove the President of the Republic from office shall be passed by the National Assembly by a two-thirds majority vote of the total number of deputies, based on the conclusion of the Constitutional Court.

In the event that the Constitutional Court concludes that there are no grounds for impeaching the President of the Republic the motion shall be removed from the agenda of the National Assembly.

**Article 66**

A Deputy shall not be bound by an imperative mandate and shall be guided by his or her conscience and convictions.

A Deputy, during and after the term of his/her parliamentary powers, may not be prosecuted and held liable for actions arising from his/her status, including the opinions expressed by him/her in the National Assembly, provided these are not insulting or defamatory.

A Deputy may not be involved as an accused, detained or subjected to administrative liability through a judicial procedure without the consent of the National Assembly.

A Deputy may not be arrested without the consent of the National Assembly except for cases when he/she is arrested when caught in the act. In such a case the Chairman of the National Assembly shall be immediately notified.

**Article 83.1**

(6) The Human Rights Defender shall be endowed with the immunity envisaged for deputies.

257. Article 66 of the Constitution and Article 9 of the law on Rules of Procedure of the National Assembly define the immunity of the deputies. In particular, when exercising his/her powers and afterwards the Deputy may not be prosecuted or held liable for any action arising from his/her status of a Deputy, including any opinion expressed in the National Assembly, unless it is defamatory or insulting. A Deputy may not be involved as accused or remanded in custody, nor may a question on subjecting him/her to administrative liability through judicial procedure may be initiated without the consent of the National Assembly granted in the manner prescribed by Article 98 of this Law. The Deputy may not be arrested without the consent of the National Assembly granted in the manner prescribed by Article 98 of this Law, except for cases when caught in the act of committing a crime. In this case the Chairperson of the National Assembly is immediately notified.

258. At the same time, the legislation does not limit the mechanisms of punishment and ensures equal and reasonable terms for the criminal procedure. In particular, **Article 23**, paragraph 2 (Adversarial System of Criminal Proceedings) of the Criminal Procedure Code (**CPC**) defines: "Criminal prosecution, defence, and final resolution of a case shall be separated from each other and shall be conducted by different bodies and persons". Therefore, separated the functions of criminal prosecution, defence and final resolution the legislator creates the proper balance for effective investigation, prosecution of criminal offences and for final resolution of a case.

259. Armenia cited the following provisions on diplomatic immunities from the CPC:

**Article 5. Limitations to the application of Criminal Procedure Code**

1. The provisions of the current Code as well as other Codes including provisions of criminal procedure does not apply to persons entitled to diplomatic immunity and privileges according to RA international treaties, as well as to other persons exempted from criminal jurisdiction according to article 445 of the current Code, with the exceptions of cases provided by RA international treaties.
2. The particularities of the application of the current Code as well as other Codes including provisions of criminal procedure in regards of persons mentioned in the first part 1 of the current article are provided by the provisions in the Chapter 51 of the current code and by other Codes.

***Article 444. Persons with diplomatic immunity under the jurisdiction of the Republic of Armenia***

Persons with diplomatic immunity can be under the jurisdiction of the Republic of Armenia in those cases when the foreign country in question or the international organization will give a special consent on that occasion.

260. Regarding examples of implementation, Armenia has cited the following cases:

- On 02.10.2012 at the special session of the National Assembly of the Republic of Armenia the Parliament decided to give consent to the motion of the General Prosecutor to indict X and to the imposition of a precautionary measure in the form of arrest against him (NA decision 025-N).
- X was accused of committing offences determined by Articles 179 and 180 CC. For legitimizing (legalizing) illegally obtained income in particularly large amounts with characteristics of an action dangerous to the public: During the investigation of the criminal case brought by the Investigation Department of the National Security Service Adjunct to the Government on 25 May 2012 sufficient proof was obtained to state, that the founder and president of the board of trustees of the “XY” foundation has embezzled great amounts of monetary resources trusted to him for providing to the foundation for charitable purposes and later committed different actions towards the legitimization of the illegally obtained monetary resources, thus committing serious offences determined by point 1 of part 3 Article 179 and point 1 of part 3 Article 190 CC.
- Relevant official inquiries or reports cannot be cited or attached, because the investigation of the case is not completed yet, and publishing of any information or data may hinder an impartial criminal investigations and protection of human rights.

**(b) Observations on the implementation of the article**

261. The reviewing experts conclude that Armenia is in compliance with this provision.

**Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

262. The grounds for criminal prosecution are set forth in the CPC. Chapter 4 CPC establishes criminal prosecution in cases of public and private charges, grounds for criminal prosecution, circumstances excluding prosecution, etc.

**Article 33 CPC**

Depending on the severity and nature of the committed crime, the criminal prosecution in the criminal proceedings is implemented by public and private procedure. The crimes envisaged in article 183 of this Code are considered private prosecution cases. All other cases are considered public prosecution cases. Criminal prosecution can be implemented only in an instituted criminal case.

263. Article 34 CPC defines grounds for Criminal Prosecution, particularly:

**Article 34 CPC**

The person suspected in the commission of crime can be arrested, officially accused, interrogated and involved as the accused and charged, by the investigator, the agency for inquest and the court, based on this Code. The prosecutor is obligated to support the prosecution in court as long as no circumstances have been revealed to rule out the criminal prosecution or the criminal case.

**Article 35 CPC**

1. Criminal case may not be instituted and criminal prosecution may not be conducted, and the proceeding on an instituted criminal case shall be subject to termination:

- (1) in the absence of an incident of crime;
- (2) in the absence of *corpus delicti* in the act;
- (3) where the act causing the harm is deemed to be lawful under criminal statute;
- (4) in the absence of applicant's appeal in cases provided for by this Code;
- (5) where a victim has reconciled with a suspect or an accused in cases provided for by this Code;
- (6) where limitation period has expired;
- (7) where against the person there is a judgement or other court decision — entered into legal force — on the same charge, which confirms the impossibility of criminal prosecution;
- (8) where against the person there is a decision of an inquest body, an investigator and a prosecutor on refusing to conduct criminal prosecution on the same charge, and this decision is not abolished;
- (9) where at the moment of committing the act the person has not attained the age of criminal liability as provided for by law;
- (10) where the person has died, except for the cases when the proceeding of the case is necessary for reinstatement of the rights of the deceased person or for resumption of the case in connection with new circumstances with regard to other persons;
- (11) where the person has voluntarily refused to complete the crime, unless the act, he or she has in fact committed, contains other *corpus delicti*;
- (12) where the person is subject to release from criminal liability by virtue of the provisions of the general part of the Criminal Code of the Republic of Armenia;
- (13) an act of amnesty has been issued.

2. Criminal prosecution and criminal proceeding shall be subject to termination as a result of the lack of any evidence approving the involvement of the suspect or the accused in the committed crime, where all the possibilities to obtain new evidences are exhausted.

3. Upon revealing circumstances excluding the criminal proceeding, the prosecutor and the investigator, at each stage of pre-trial criminal proceeding, shall take a decision on terminating the criminal proceeding or the criminal prosecution. The prosecutor shall be entitled to take a decision on terminating the criminal proceeding or the criminal prosecution also after referring the case to the court, but before the trial of the case begins.

4. Upon revealing in court circumstances excluding the criminal prosecution, the prosecutor attorney shall be obliged to announce refusal from conducting criminal prosecution against the defendant. The announcement of the prosecutor attorney about the refusal to conduct criminal prosecution against the defendant shall be a ground for the court to terminate the criminal proceeding and the criminal prosecution.

5. Upon revealing circumstances excluding the criminal prosecution, the court shall dispose of the issue on terminating the criminal prosecution against the defendant.

6. Upon the grounds referred to in points 6 and 13 of part 1 of this Article, termination of proceeding of a case and criminal prosecution shall not be authorised, where an accused objects thereto. In this case the proceeding of the case shall continue by common procedure.

#### **Article 36 CPC**

Criminal proceedings in cases mentioned in part 2 of article 33 of this Code are ceased and a statement of refusal from criminal prosecution shall be made in case of reconciliation between the injured and the suspect or accused.

264. Article 37 CPC defines “Circumstances permitting not to conduct criminal prosecution, terminate criminal proceeding and criminal prosecution”.

#### **Article 37 CPC**

1. A court, a prosecutor, as well as an investigator—upon a prosecutor’s consent—may terminate the proceeding of an instituted criminal case and the criminal prosecution, in cases provided for by Articles 72, 73 and 74 of the Criminal Code of the Republic of Armenia.

2. In cases provided for by part 1 of this Article a prosecutor, as well as an investigator—upon a prosecutor’s consent—need not institute a criminal case and conduct criminal prosecution.

3. In cases provided for by Articles 72 and 74 of the Criminal Code of the Republic of Armenia, termination of proceeding of a case and criminal prosecution shall not be authorised, where the person against whom the criminal prosecution is conducted objects thereto.

### **(b) Observations on the implementation of the article**

265. The reviewing experts conclude that Armenia’s legislation is in compliance with the provision.

### **Paragraph 4**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

266. Under Article 30 (4) UNCAC, States parties must take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings. This provision is a mandatory requirement for national drafters.

267. Consequently, in national legislation appropriate prevention measures must be established in case the suspect can post bail and avoid detention before the trial or appeal. **Article 134 CPC** defines the notion and types of preventive measures. In line with Article 134 (1) CPC, preventive measures are measures of coercion taken towards the suspect or the accused to prevent their inappropriate behaviour during the criminal proceeding and to ensure the execution of the sentence.

**Article 135 CPC**

1. Preventive measure shall be executed by the court, prosecutor, investigator and inquiry body only when the material obtained for the criminal case provides sufficient reason to assume that the suspect or the accused may:

- 1) hide from the body which carries out the criminal proceeding;
- 2) inhibit the pre-trial process of investigation or court proceeding in any way, particularly by means of illegal influence of the persons involved in the proceeding, concealment and falsification of the materials relevant to the case, negligence of the subpoena without any reasonable explanation;
- 3) commit an action forbidden by Criminal law;
- 4) avoid the responsibility and the imposed punishment;
- 5) oppose the execution of the verdict”.

2. Arrest and the alternative preventive measure shall be executed in respect to the accused only for his commitment of a crime for which he may be imprisoned for more than a year; or there are sufficient grounds to suppose that the suspect or the accused can commit actions mentioned in the first part of the present Article.

3. While considering the issue of necessity and kind of the preventive measure the following shall be taken into account:

- 1) the nature and the degree of danger of the incriminated action;
- 2) the personality of the suspect or the accused;
- 3) the age and the health condition of the suspect or the accused;
- 4) sex;
- 5) the occupation of the suspect or the accused;
- 6) their marital status and availability of dependents;
- 7) their property situation;
- 8) availability of a permanent residence;
- 9) other relevant circumstances.

268. Article 136 CPC defines the “Procedure of the Execution of the Preventive Measure”, which reads as follows:

**Article 136 CPC**

1. The preventive measure shall be executed upon the order of the prosecutor, investigator, inquiry body or the court. The decision of the body which carries out the criminal proceeding shall be substantiated; it shall indicate the crime in which the suspect or the accused is suspected and prove the necessity of execution of one of the preventive measures.

2. Arrest or bail may be executed only upon decision of the court by appeal of the investigator or the prosecutor or on its own initiative while considering the criminal case. Bail may be executed by the court instead of the arrest upon petition being presented by the defence team.

When sufficient grounds for arrest as a preventive measure are available in respect of persons who have immunity from criminal liability the prosecutor presented a petition of consent to the appropriate authorities.

3. The body which carries out the criminal proceeding shall announce its decision about the execution of the preventive measure to the suspect or the accused and hand him over the copy of the decision immediately upon announcing the decision.

**(b) Observations on the implementation of the article**

269. The reviewing experts conclude that Armenia's legislation is in compliance with the provision.

## **Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

270. Article 30(5) UNCAC concerns early release or parole of persons convicted of such offences.

#### ***Article 19 CC***

1. Crimes are categorized, by nature and degree of social danger, as not very grave, medium gravity, grave and particularly grave.
2. The wilful acts, for the committal of which this Code envisages maximal imprisonment of two years, or for which a punishment not related to imprisonment is envisaged, as well as acts committed through negligence, for which this Code envisages a punishment not exceeding three years of imprisonment, are considered not very grave crimes.
3. Medium-gravity crimes are those wilful acts for which this Code envisages a maximal punishment not exceeding five years of imprisonment, and the acts committed through negligence, for which this Code envisages a maximal punishment not exceeding ten years of imprisonment.
4. Grave crimes are those wilful acts for which this Code envisages a maximal punishment not exceeding ten years of imprisonment.
5. Particularly grave crimes are those wilful acts for which this Code envisages a maximal imprisonment for more than ten years or for life.

271. Corruption crimes included in CC may contain elements of medium gravity, grave or particularly grave crimes.

#### ***Article 76 CC***

1. The person sentenced to imprisonment or disciplinary battalion can be released on parole with his consent, if the court finds that for his correction there is no need to serve the remaining part of the punishment. Also, the person can be completely or partially exempted from supplementary punishment. When exempting from punishment on parole, the court also takes into account the fact of mitigation of damage to the aggrieved by the convict.
2. When applying exemption from punishment on parole, the court can impose on the person the obligations envisaged in part 5 of Article 70 of this Code, which the person will carry out during the remaining period of the punishment.
3. Exemption from punishment on parole can be applied only if the convict has actually served:
  - 1) no less than one third of the punishment for not grave or medium-gravity crime;
  - 2) no less than half of the punishment for a grave crime;
  - 3) no less than two thirds of the punishment for a particularly grave crime, also, of the punishment assigned to the person previously released on parole (if the parole was cancelled on the grounds envisaged in part 6 of this Article).

272. The CC foresees a special order for release on parole in case of life sentence. In accordance with Article 76, paragraph 5, CC a person serving for life can be released on parole, if the court finds that the person does not need to serve the punishment any longer and has in fact served no less than 20 years of imprisonment. Pursuant to Article 76,

paragraph 7, if such a person deliberately commits a new crime, which is punishable by imprisonment, the period mentioned in part 5 of this Article is suspended until the expiry of the term for the new punishment.

273. Article 434 CPC regulates release on parole and replacement of the sentence with a less strict one. It reads:

**Article 434 CPC**

The court, by petition of the body in charge of execution of punishment, releases on parole and substitutes the remaining period of the sentence with a less strict punishment. In relation to those who serve the sentence in the disciplinary battalion, the court applies these measures by petition of the administration of the disciplinary battalion. In the case when the court rejects the release on parole and substitution of the remaining period of the sentence with a less strict punishment, the repeated discussion of this issue can take place no sooner than in 6 months after the refusal».

274. It is important to mention circumstances mitigating and aggravating the punishment.

**Article 62 CC**

1. Circumstances mitigating liability and punishment are as follows:

- 1) committal of a not grave and medium-gravity crime, for the first time, by coincidental circumstances;
- 2) being under age at the moment of committal of the crime;
- 3) being pregnant when committing the crime or when assigning the punishment;
- 4) caring for a child under 14 years of age at the moment when assigning the punishment;
- 5) committal of crime as a result of hard living conditions or out of compassion;
- 6) committal of crime due to breach of proportionality of necessary defence, capturing a perpetrator, urgent necessity, justified risk or carrying out orders or instructions;
- 7) illegal or immoral behaviour of the aggrieved which determined the crime;
- 8) committal of the crime under threat or enforcement, or under financial, service or other dependence;
- 9) surrender, assistance in solving the crime, exposing other participants of the crime, in searching the illegally acquired property;
- 10) offering medical or other assistance to the aggrieved immediately after the crime, voluntary compensation for the property and moral damage inflicted by the crime, or other actions aimed at the mitigation of the damage inflicted to the aggrieved.

2. When assigning a punishment, other circumstances, not mentioned in part 1 of this Article can be taken into account as mitigating ones.

3. If a circumstance mentioned in part 1 of this Article, is envisaged in the appropriate article of the Special Part of this Code as an element of a crime, then it cannot be repeatedly taken into account as a circumstance mitigating the liability and the punishment”.

**Article 63 CC**

1. Circumstances aggravating the liability and punishment are as follows:

- 1) repeated committal of crime; committing crime as a trade, occupation;
- 2) causing severe consequences by the crime;
- 3) committal of crime in a group of individuals, in an organized group or as a part of criminal association;
- 4) particularly active role in the crime;
- 5) involvement into the committal of the crime of persons who obviously suffer from mental disorder or who are intoxicated, as well as involvement of persons who are still under age for criminal liability;
- 6) committal of crime by ethnic, racial or religious motives, for religious fanaticism, as revenge for other people’s legitimate actions;
- 7) committal of crime to conceal another crime or in order to facilitate this crime;

- 8) committal of crime against an obviously pregnant woman, against children, other insecure and helpless persons, or against persons dependent from the perpetrator;
  - 9) committal of crime against a person or one's spouse, or close relative, which is related to the implementation of service or public duty by this person;
  - 10) committal of crime by a person whereby breaching the military or professional oath;
  - 11) committal of crime with particular cruelty, treating the aggrieved with humiliation or torture;
  - 12) committal of crime in a way that is dangerous for the society;
  - 13) committal of crime under martial law or emergency situation, in conditions of a natural or other civil disaster, as well as during mass disorder and turmoil;
  - 14) committal of crime under the influence of alcohol, narcotic drugs or other intoxicating substances;
2. Based on the nature of the crime, the court may consider the circumstances mentioned in points 10 and 14 of part 1 of this Article not aggravating.
  3. When assigning punishment the court cannot take into account other circumstances not mentioned in part 1 of this Article.
  4. If the circumstance mentioned in part 1 of this Article, is envisaged in the appropriate article of the Special Part of this Code as an element of a crime, then it cannot be repeatedly taken into account as a circumstance aggravating the liability and the punishment”.

**(b) Observations on the implementation of the article**

275. The reviewing experts conclude that Armenia's legislation is in compliance with the provision.

**Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

276. The provision of Article 30(6) UNCAC is implemented through Article 152 CPC.

***Article 152 CPC. Temporary Suspension from Work***

1. The prosecutor as well as the inquiry body and the investigator with the consent of the prosecutor may suspend the accused who is a state employee from his work, if there is enough reason to assume that he may hinder the process of the case investigation, of the compensation of damages caused by the crime or may continue to be involved in criminal activities while holding his post.
2. The order about suspension from work shall be forwarded to the administrator of the office who, within 3 days after receiving the order, shall execute it and inform the person or the body which made the decision about suspension of its execution.
3. Suspension from work shall be cancelled upon the decision of the court, judge or prosecutor as well as of the investigator or inquiry body, when there is no necessity to execute this preventive measure.

**(b) Observations on the implementation of the article**

277. The reviewing experts conclude that Armenia's legislation is in compliance with the provision.

### **Subparagraph 7 (a)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office; and*

### **(a) Summary of information relevant to reviewing the implementation of the article**

278. In accordance with Article 52 CC, deprivation of the right to hold certain posts is a prohibition to hold certain positions in state and local self-government bodies, organizations, and the deprivation of practicing certain professions is a prohibition to hold certain occupations related to the nature of the crime (Article 52, paragraph 1). This type punishment includes two parts: 1. deprivation of the right to hold certain posts is a prohibition to hold certain positions in state and local self-government bodies; 2. deprivation of practicing certain professions is a prohibition to hold certain occupations. Both these measures are connected with each other, because deprivation of the right to hold certain posts implies, also deprivation of practicing certain professions.

#### **Article 52 CC**

1. Prohibition to hold certain posts or practice certain professions, as a basic punishment is established for the term of 2 to 7 years for wilful crimes, and from 1 to 5 years, for crimes through negligence, and as supplementary punishment, from 1 to 3 years.

2. Deprivation of the right to hold certain posts or to practice certain professions can be applied in cases when the court, basing on the nature of the crime committed by the offender during the period of his/her holding the post or practicing certain a profession, does not find it possible for him/her to hold certain posts or to practice certain professions.

4. Prohibition to hold certain posts or practice certain professions connected with service in disciplinary battalion, arrest and imprisonment for a certain term as supplementary punishment the term of punishment is applied to the whole term of basic punishment, viz. the term of supplementary punishment is calculated after serving of basic punishment. In the rest of situations, the term of supplementary punishment is calculated at the time of the sentence comes into legal force.

### **(b) Observations on the implementation of the article**

279. The reviewing experts conclude that Armenia's legislation is in compliance with the provision.

### **Subparagraph 7 (b)**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

**(a) Summary of information relevant to reviewing the implementation of the article**

280. See Subparagraph 7 (a) of article 30.

**(b) Observations on the implementation of the article**

281. The reviewing experts conclude that Armenia's legislation is in compliance with the provision.

**Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

282. Armenian legislation does not limit State agencies to exercise their powers through civil servants only. The Civil Service Council of Republic of Armenia has adopted an Order (number 124) on the procedure for conducting an investigation on 22 November 2012.

**(b) Observations on the implementation of the article**

283. During the country visit it was confirmed that disciplinary powers can be exercised independently of criminal sanctions.

**Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

284. Armenian legislation promotes the reintegration into society of persons convicted of offences. In particular, Article 121 of the Penitentiary Code defines the responsibilities of the institution executing the sentence for issues with respect to assisting the convict released from sentence.

***Article 121 Penitentiary Code***

1. In regard with the issues concerning the social rehabilitation of convicts, the administration of the institution executing the sentence shall cooperate with social and other organizations and bodies. Relevant measures shall be undertaken in advance to prepare the convict for release.

2. No later than three months prior to the release date, the administration of the institution executing the sentence shall notify the local self-government body and State Employment Service in charge for the place chosen by the convict as his or her residence on the upcoming release of the convict, his or her work capacity, education, profession and availability of housing.

3. A convict who has attained pension age, or has been recognized as disabled of the first or second group may, at his or her request and by recommendation of the administration of the

institution executing the sentence, be referred by social security bodies to institutions provided for the disabled or elderly people (nursing home).

**Article 122 Penitentiary Code**

1. The administration of correctional institution shall provide a person released from sentence with a free trip to his place of residence or the amount of money necessary for such a trip at least within the territory of the Republic of Armenia, as well as food necessary for such a trip, and in case of the absence of resources-the required seasonal clothing. Lump sum monetary assistance may also be provided to him or her.

2. When a person released from the sentence needs someone to look after his health, or is pregnant, or has a child under 3 years old, as well as in case of releasing a juvenile, the administration of the institution executing the sentence shall notify his or her relatives and others about the release in advance, and if there is no one to be notified, the necessary assistance shall be provided by the administration of correctional institution.

3. Convicts referred to in the second part of this Article shall be sent to the place of their residence accompanied by their relatives, other persons or an officer of the correctional institution”.

**(b) Observations on the implementation of the article**

285. The reviewing experts consider the provision implemented by virtue of Article 121 of the Penitentiary Code which obliges the administration of an executing institution to cooperate with social and other organizations and to prepare convicts for release.

286. During the country visit it was explained by representatives of penitentiary institutions that these obligations are observed in practice. Due to cooperation with social and other organizations, convicts of open institutions and released convicts have a possibility to get a job, a place to live and other possibilities to participate in social life. It was further explained that there are measures in place before a prisoner is released. Three months before the release preparations for his release are started. Under a model in 3 out of 12 prisons, inmates are taught diverse courses and skills. In closed facilities, there are libraries; in the juvenile institution there is a school; for adults voluntary vocational training exists. Armenia has a 99% literacy rate, so there is little need for basic schooling. As far as work is concerned, convicts have the right to work; it is often difficult to find jobs for them but if they do work they will also earn money. In open institutions no application for work was rejected. There are four types of penitentiary institutions: closed, semi-closed, semi-open, open.

287. The prison service also cooperates with NGOs like Social Justice, Armenian Women, Armenian Bar Association, and the Helsinki Committee.

288. The reviewing experts conclude that Armenia is in compliance with Article 30(10) UNCAC.

**Article 31 Freezing, seizure and confiscation**

**Subparagraph 1 (a)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

**(a) Summary of information relevant to reviewing the implementation of the article**

289. Article 55(4) CC foresees compulsory confiscation of the instruments used or intended for use in the commission of money laundering and predicate offences. It is worth mentioning that 20 out of 29 corruption offences are predicated to money laundering. Consequently, the requirement in question is largely implemented under Armenian legislation.

**Article 55 CC**

3. Property confiscation may be imposed for grave and particularly grave criminal offences committed with mercenary motives in cases envisaged by the Special Part of this Code, except for cases provided for in parts 4 and 5 of this Article.

4. Confiscation is mandatory with regard to illicit property, inter alia the property derived or obtained, directly or indirectly, from legalization of illicit proceeds and commission of offences defined by article 190 of this Code, including income or other benefits from the use of that property, the instruments used or intended for use in the commission of those offences, and, if the illicit property has not been discovered, other property of corresponding value. The property should be confiscated regardless of whether it is owned or held by a defendant or by a third party.

290. Article 55 CC will be amended by the draft law on changes and amendments to the Criminal Code which was presented as part of the legal package on changes and amendments to the Law on Combating Money Laundering and Terrorism Financing and 14 other laws.<sup>1</sup> The draft law in question clarifies issues concerning confiscation and forfeiture, as well as those related to the implementation of Article 31(1) UNCAC. Thus, while Article 55 CC envisages only confiscation as a sanction and is applicable only in case of grave and particularly grave crimes, the new institute of forfeiture stipulated by the draft law is applicable in case of all crimes which may result in the acquisition of proceeds of crime.

291. According to Article 3 of the draft law, the property derived from or obtained, directly or indirectly, through the commission of a crime, the income or other types of benefit gained through the use of such property; the instrumentalities and means used in or intended for use in the commission of crime; the property allocated for use in the financing of terrorism, the income or other types of benefit gained through the use of such property; the objects of smuggling transported through the customs border of the Republic of Armenia stipulated under Article 215 of this Code and, in case of non-disclosure thereof, other property of corresponding value, except for the property of bona fide third parties, shall be subject to forfeiture for the benefit of the state. Forfeiture of such property shall be exercised only after compensation of the damage inflicted by the crime on the aggrieved party and the civil claimant.

292. The draft pieces of legislation referred in the abovementioned paragraph became effective after the country visit and are fully in force since 28 October 2014.

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<sup>1</sup> The legal package on amendments to the Law on Combating Money Laundering and Terrorism Financing and 14 other laws passed the first reading in the National Assembly of Armenia on 21 March 2013.

**(b) Observations on the implementation of the article**

293. The reviewing experts observed that the answer maintains that Article 55(4) CC applies to both money laundering and predicate crimes; however, the MONEYVAL report states that “while the language of Article 55(4) CC would suggest that the provision is applicable not only to money laundering but to all offenses involving illicit proceeds, in discussions with the authorities it was stated repeatedly that the scope of the provision would be limited to money laundering only and that the provision could therefore not be used to confiscate property relating to the predicate offense”.

294. During the country visit it was confirmed that the conclusions of MONEYVAL are still true, and that no changes have been made to the legislation yet. According to the case law, Article 55(4) CC can only be applied if there is a conviction on money laundering or on money laundering and the predicate offence. If there is only a conviction on the predicate offence, then only Article 55(3) CC is applicable which is narrower since it only covers grave and very grave crimes. Moreover, no value confiscation exists.

295. The reviewing experts conclude that Armenia’s legislation at the time of the country visit and as interpreted by the courts was only partially in compliance with Article 31(1)(a) UNCAC. This assessment may change under the new legislation which came into force in October 2014 (and thus after the current review).

**Subparagraph 1 (b)**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

296. Armenia provided the same answer as to the preceding provision.

**(b) Observations on the implementation of the article**

297. The reviewing experts observed that to the extent that Article 55(3) CC applies only to money laundering, the confiscation of property, equipment and other instrumentalities is subject to Article 119 CPC. However, neither Article 119 CPC nor Article 55(3) CC covers property, equipment or other instrumentalities destined for use in offences.

298. The reviewing experts conclude that this provision has not been implemented.

**(c) Challenges in implementation**

299. The reviewing experts recommend that Armenia amend its laws in order to implement Article 31(1)(b) UNCAC.

## Paragraph 2

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

### (a) Summary of information relevant to reviewing the implementation of the article

300. Both the Criminal Procedure Code and the Law on Operative and Search Activities (LOSA) provide for a range of measures to identify and trace property that is or may become subject to confiscation. Further provisions dealing with access to confidential information held at financial institutions are provided for in the Banking Secrecy Law and the AML/CFT Law.

301. The measures provided for in the Law on Operative Search Activities include control over correspondence, mail, telegrams, phone conversations and other communications, internal observations of a person or premises by means of technical devices, controlled delivery and purchase of goods and services, and access to financial data and secret control over the financial transactions from financial institutions. The mentioned measures are available both parallel to investigations and prior to the initiation of a criminal case.

302. The Criminal Procedure Code further provides for the seizure of evidence and documents and the issuance of search warrants by the courts. Investigative measures pursuant to the Criminal Procedure Code are only available after a case has been instigated.

#### *Law on Operative and Search Activities*

##### *Article 14. Types of operational and search activities*

1. During the operational and search activities the following operational and search measures can be performed:

- 1) operational request;
- 2) acquisition of the operational information;
- 3) collection of the comparative examinations' samples;
- 4) control purchase;
- 5) controlled supply and purchase;
- 6) examination of items and documents;
- 7) external observation;
- 8) internal observation;
- 9) identification of the person;
- 10) examination of the buildings, facilities, locations, structures and vehicles;
- 11) control over the correspondence, postal, telegram and other communications;
- 12) control over the telephone conversations;
- 13) operational introduction;
- 14) operational experiments;
- 15) provision of the access to financial data and secret control over the financial transactions;
- 16) imitation of bribe taking and bribe giving.

##### *Article 225 CPC. Grounds for conducting search*

1. The investigator, having sufficient ground to suspect that in some premises or in some other place or in possession of some person, there are instruments of crime, articles and valuables acquired by criminal way, as well as other items or documents, which can be significant for the case, conducts a search in order to find and take the latter.

2. The search can also be conducted to find searched-for persons and corpses.

3. The search is conducted only by a court decision.  
(additions in article 225 dated on 25.05.06 HO-91-N)

**Article 226 CPC. Grounds for seizure**

1. When necessary to take articles and documents significant for the case, and provided it is known for sure where they find themselves and in whose possession, the investigator conducts seizure.
2. The seizure of documents which contain state secrets is conducted only by permission of the prosecutor and in agreement with the administration of the given institution.
3. No enterprise, institution or organization, no official or citizen has the right to refuse to give the investigator the articles, documents or their copies which he would demand.

303. Three phases of examination are envisaged by the Criminal Procedure Code: instituting a claim, investigation and pre investigation. Depending on the proceeding phase, different bodies are authorised to conduct investigative activities. Before a criminal case is instituted only operative intelligence measures envisaged by the LOSA may be taken by the competent authorities. Article 8 of the Law on Operative Intelligence Activities provides:

**Law on Operative and Search Activities**

**Article 8**

Within the authorisations granted by law the following shall be entitled to carry out operative-intelligence activities:

- (1) the Police;
- (2) national security bodies;
- (3) tax authorities;
- (4) customs bodies: for the purpose of preventing and uncovering smuggling and other crimes;
- (5) penitentiary services: only within penitentiary institutions.

**(b) Observations on the implementation of the article**

304. The reviewing experts observe that the measures provided for in the CPC may be initiated only after the instigation of a criminal case. However, prior to that, operational search activities pursuant to the Law on Operational and Search Activities (LOSA) are possible.

305. The reviewing experts conclude that Armenia's legislation is in compliance with the present provision. They note, however, that information obtained under the LOSA may not be accepted as evidence by the courts (cf. comments on Article 31(7) and 40 UNCAC).

**Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

306. Armenia has not established an asset management agency to specifically dispose of frozen, seized or confiscated property. Confiscated property is being transferred to the State Budget and afterwards is used based on necessity. As to frozen/seized property, it is

preserved under the Article 236 CPC. No contract can be concluded on the frozen/seized property.

**Article 55 CC. Confiscation of property**

1. Confiscation of property is the compelled and ultimate deprivation of the property or its part found to be owned by the defendant and its conversion into the state's ownership.

**Article 236 CPC. The preservation of seized property**

1. Except real estate and large-sized items, other seized property as a rule is taken away.
2. Precious metals and stones, diamonds, foreign currency, checks, securities and lottery tickets are handed for safe keeping to the Treasury of the Republic of Armenia, cash is paid to the deposit account of the court which has jurisdiction over this case, other taken items are sealed and kept at the body which made a decision to seize the property or is given for safe keeping to the apartment maintenance office or local self-government representative.
3. The seized property that has not been taken away is sealed and kept with the owner or manager of the property or his full-age members of his family who are advised as to their legal responsibility for spoiling or alienation of this property, for which they undersign.

307. The Joint Order "On approving the procedure for registration, storage, disposition of material evidence, seized values and other goods and documents in criminal cases" of 2 August 2002 regulates issues of living creatures (animals) or other objects that need permanent care, as well as issues related to the devaluation of confiscated property. Particularly, point 43 of the order specifies:

Article 118 CPC regulates the question of living beings (animals) or other objects subject to permanent care in the case when they are materials of evidence. Particularly, according to the same Article, before the end of the criminal proceeding the body which carries out the criminal proceeding shall return the following to the owner or legal possessor:

- 1) Perishable objects;
- 2) Objects needed in everyday life/daily use, on which confiscation is not extended by law;
- 3) Cattle and poultry; automobile or other means of transportation, if they are not subject to arrest on civil process or possible property recovery/confiscation, and court fees.

In cases when the owner or legal possessor of the aforementioned objects is unknown or the return of the objects is impossible due to other reasons, the objects shall be submitted to corresponding organizations for realization, maintenance or care.

**(b) Observations on the implementation of the article**

308. In accordance with Article 55 CC, confiscated property becomes State property. The seized property is preserved in accordance with Article 236 CPC. The Joint Order regulates issues of living creatures (animals) or other objects that need permanent care, as well as issues related to the devaluation of confiscated property.

309. The reviewing experts conclude that Armenia is in compliance with the present provision.

**Paragraph 4**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

310. Article 55(4) CC envisages confiscation of property of corresponding value.

**Article 55 CC**

4. Confiscation is mandatory with regard to illicit property, inter alia the property derived or obtained, directly or indirectly, from legalization of illicit proceeds and commission of offences defined by article 190 of this Code, including income or other benefits from the use of that property, the instruments used or intended for use in the commission of those offences, and, if the illicit property has not been discovered, other property of corresponding value. The property should be confiscated regardless of whether it is owned or held by a defendant or by a third party.

**(b) Observations on the implementation of the article**

311. The reviewing experts observe that the provision is covered by Article 55(4) CC to the extent that this article is applicable. In other cases, Article 55(1) and (2) CC should apply, which provides for confiscation of property or a part thereof; the size of property confiscation is to be determined by court. Article 233 CPC will apply prior to a conviction.

312. The reviewing experts conclude that this provision has been partially implemented (see the comment on para. 1(a) above).

**Paragraph 5**

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

313. Armenia refers to its answer to para. 3 and to Article 233 CPC.

**Article 233 CPC**

1.1 During the investigation of criminal case on the basis of articles 104, 112-113, 117, 122, 131-134, 166, 168, 175-224, 233-235, 238, 261-262, 266-270, 281, 284, 286-289, 291-292, 295, 297-298, 308-313, 329, 352, 375, 383 and 389 CC, the prosecuting body shall impose seizure on the property derived or obtained, directly or indirectly, through commission of those offences, including income or other benefits, instruments used or intended to be used in the commission of those offences, immediately after their disclosure. Seizure on that property will be imposed regardless of whether it is owned or held by a defendant or a third party.

**(b) Observations on the implementation of the article**

314. The reviewing experts observe that Articles 55(4) and 55(2) CC should apply respectively. Moreover, Article 233 CPC will apply prior to conviction.

315. The reviewing experts conclude that this provision has been partially implemented (see the comment on para. 1(a) above).

## Paragraph 6

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

### (a) Summary of information relevant to reviewing the implementation of the article

316. Income or other benefits derived from proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled are subject to confiscation and respective provisional measures under Article 55 CC and Article 233 CPC.

### (b) Observations on the implementation of the article

317. The reviewing experts observe that Articles 55(4) and 55(2) CC should apply respectively. Article 233 CPC will apply prior to a conviction.

318. The reviewing experts conclude that this provision has been partially implemented (see the comment on para. 1(a) above).

## Paragraph 7

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

### (a) Summary of information relevant to reviewing the implementation of the article

319. The issue of bank secrecy is regulated by the Law on Bank Secrecy, the Law on Combating Money Laundering and Terrorism Financing, the Criminal Procedure Code, and the Law on Operative and Search Activities (LOSA). In the preliminary stages of evidence gathering, when there is not an open criminal case, law enforcement bodies can obtain the lifting of financial secrecy, including bank secrecy, on the ground of Article 29 LOSA through the operative search activity of ensuring the access to the financial data and secret control over the financial transactions. According to the mentioned article, this operation allows the receipt of information from banking and other financial organizations about banking and other accounts (deposits), as well as permanent control over the financial transactions without the knowledge of the persons concerned.

320. After the instigation of a criminal case, law enforcement bodies can obtain the lifting of bank secrecy on the basis of Article 10 of the Law on Bank Secrecy and Article 172 CPC. The mentioned articles provide for the access to bank secrets of a suspect or accused.

321. In spite of the fact that legal entities cannot be a suspect or accused, information containing bank secrecy on the mentioned subjects can be obtained through involving somebody controlling the legal entity as a suspect or accused. This way of application is the case in the practice very often. Regardless of the said, where there is a suspect or a

case of money laundering, the law enforcement bodies can have access to bank secrets through the financial intelligence unit (FIU), the Financial Monitoring Center, operating within the Central Bank of Armenia.

322. Pursuant to Article 13.1 of the Law on Bank Secrecy and Article 13 of the Law on Combating Money Laundering and Terrorism Financing, the Financial Monitoring Center is obliged to respond to a request of law enforcement bodies if the request contains sufficient justification of a suspicion on money laundering or if there is a case of money laundering.

***Law on Bank Secrecy***

***Article 10. Provision of information constituting bank secrecy to the Criminal Prosecution Authorities***

1. Banks shall provide criminal prosecution authorities with the information constituting bank secrecy on the suspect or accused in the criminal case based only on the court decision, according to this Law and the Criminal Procedure Code of the Republic of Armenia.
2. Upon receipt of the court decision, the bank shall be obliged to provide, within two banking days, the information and the documents required by the court decision in a closed envelope signed at the closing part by the executing body or the substitute person to the criminal prosecution authority or to its authorized person. The bank shall be prohibited to inform its customers about the fact that it provided information constituting bank secrecy relating to them to the criminal prosecution bodies.
3. The bank manager and the employee shall not be interrogated in respect to the information constituting bank secrecy related to the bank customer, save for the manner prescribed by this Article and Articles 11, 12, and 16 of this Law.

***Article 13.1***

Provision of Information Constituting Bank secrecy in the frameworks of Combating the Legalization of Proceeds from Crime and Financing of Terrorism

The Central Bank shall directly inform criminal investigation authorities if the analysis of information defined by the Armenian law On Anti-Money Laundering and Combating Financing of Terrorism carried out by the Central Bank reveals that there has been a case or an attempt of money laundering or financing of terrorism. In addition to the submitted information or on the basis of a request received from criminal investigation authorities the Central Bank may provide information containing bank secrecy. On the basis of the Armenian law On Anti-Money Laundering and Combating Financing of Terrorism, the Central Bank may provide banking secrecy data to foreign financial intelligence units.

Article 13.1 is amended according to AL-14-N, 14.12.041, AL-84-N, 26.02.08 Republic of Armenia

***Criminal Procedure Code***

***Article 172 CPC***

- 3<sup>2</sup>. Bodies conducting criminal prosecution may receive information constituting a bank secret concerning the persons involved as suspect or accused in criminal case on the basis of court warrant on search or seizure.

***Law on Combating Money Laundering and Terrorism Financing***

***Article 13 (Interrelations Between the Authorized Body And Other Authorities")***

1. For the purpose of effectively combating money laundering and terrorism financing, the Authorized Body shall cooperate with other state bodies in the manner and within the frameworks established by this Law, including cooperation with supervisory and criminal investigation authorities, by means of or without concluding bilateral agreements.

2. The Authorized Body shall cooperate with supervisory bodies in the manner established by Article 26 of this Law, for the purpose of ensuring compliance of reporting entities with the requirements of this Law and the legal acts adopted on basis of this Law.

3. The Authorized Body shall send a statement to criminal investigation authorities, when it has reasonable suspicions of money laundering and terrorism financing based on the analysis of a report filed by a reporting entity in the manner established by this Law, or of other information. Along with the statement or later on, in addition to the statement, other materials evidencing the circumstances laid down in the statement may be presented to criminal investigation authority. The statement or the materials sent in addition to it may contain information constituting secrecy as prescribed by law.

4. Upon the request of criminal investigation authorities, the Authorized Body shall provide the available information, including the information constituting secrecy as prescribed by law, provided that the request contains sufficient justification of a substantiated suspicion or case of money laundering or terrorism financing. Such information shall be provided within a 10-day period, unless a different timeframe is specified in the request or, in the substantiated opinion of the Authorized Body, a longer period is necessary for answering the request.

5. Where the information stipulated by Part 1 (4 and 5) of Article 10 of this Law is requested, reporting entities, state bodies, including supervisory and law enforcement authorities, should provide such information to the Authorized Body within a 10-day period, unless a different timeframe is specified in the request or, in the substantiated opinion of the state body, a longer period is necessary for answering the request.

6. Criminal investigation authorities shall notify the Authorized Body about the decisions taken as a result of considering the statement stipulated by Part 3 of this Article, as well as about the decisions taken as a result of preliminary investigation whenever a criminal case is initiated, within a 10-day period after taking such decisions.

#### ***Law on Operational and Search Activities***

##### ***Article 29***

Ensuring the access to the financial data and secret control over the financial transactions is the receipt of information from banking and other financial organizations about banking and other accounts (deposits), as well as permanent control over the financial transactions without the knowledge of the persons that those transactions are about.

323. Armenia added that Article 10 of the LBS envisages the access of criminal prosecution bodies to bank secrecy, while Article 29 of the LOSA envisages access of bodies performing operative-search activities to financial data including banking secrecy. According to Article 6(22) CPC, criminal prosecution bodies are the prosecutor, investigator and the body of inquest. They are guided by Article 172 CPC and by Article 10 of the LBS which requires that banking secrecy is accessed with regard to suspect or accused, since this category of LEAs conduct their activities in the framework of formal investigation (where criminals should exclusively retain status of being suspected or accused). Moreover, they are able to obtain banking secrecy through the Financial Monitoring Center in accordance with the AML/CFT Law (Article 13) and the LBS (Article 13.1).

324. By contrast, bodies performing operative-search activities under the LOSA are not limited with the precondition of accessing banking secrecy in respect of the suspect or accused given their covert activities are usually performed before the instigation of a

criminal case (investigation) and aim at timely disclosing the details on crime (inclusive of criminals) and, if possible, preventing the criminal activity.

**(b) Observations on the implementation of the article**

325. The reviewing experts observe that according to the information provided by Armenia, prior to the instigation of a criminal case, law enforcement bodies can obtain information covered by financial secrecy, including bank secrecy, pursuant to Article 29 LOSA (Law on Operative and Search Activities). After the instigation of a criminal case, law enforcement bodies can obtain such information on the basis of Article 10 of the Law on Bank Secrecy and Article 172 CPC.

326. However, MONEYVAL in its 2009 evaluation report stated: “While Article 29 of the LOSA seems to provide LEAs (Law Enforcement Agencies) with powers beyond those provided for through Articles 10 of the LBS (Law on Banking Secrecy), namely to access such information already prior to the initiation of a criminal case, and, during the inquest stage, also with respect to persons other than the suspect or accused, the LEAs interviewed by the mission held the view that this was not the case because the court would apply the more restrictive provisions envisaged by the LBS in any case and require a ‘suspect’ or an ‘accused’ to grant the order, even if the request for the court order were to be submitted based on Article 29 of the LOSA. This restrictive interpretation, due to an apparent conflict of the provisions of the LOSA and CPC with the LBS, basically makes it impossible for LEAs: (1) to directly obtain information covered by bank secrecy from financial institutions prior to the initiation of a criminal case; or (2) during the stage of inquest, when a ‘suspect’ or ‘accused’ has not yet been identified”.

327. The MONEYVAL reports continues: “Article 13.1 LBS states that the CBA ‘may’ provide information “containing bank secrecy” either when disseminating the analysed information it receives from the reporting entities (the recipient of these referrals is the NSS (National Security Service)) or ‘on the basis of a request received from criminal investigation authorities’ (these are all LEAs as per Article 189 CPC). Unlike the AML/CFT law, the LBS therefore (1) makes the provision of confidential information optional and not mandatory and (2) does not require the requesting authorities to have a substantiated suspicion or a case of ML or TF. The information provided to the LEAs based on Article 13.1. LBS or Article 13 AML/CFT Law does not, however, constitute formal evidence and may therefore not be used in court”.

328. During the country visit, the Armenian institutions stated that in spite of the fact that a legal entity cannot be a suspect or accused, information containing bank secrets on such subjects can be obtained through involving somebody controlling the legal entity as a suspect or accused. This method was allegedly used very often in practice. In cases of money laundering, the law enforcement bodies can have access to bank secrets through the Armenian financial intelligence unit (FIU), the Financial Monitoring Centre, operating within the Central Bank of Armenia.

329. Under these circumstances, the reviewing experts were not able to come to a final conclusion. The confusion about the applicable law clearly indicates, however, that Armenia has still not fully implemented Article 31(7) UNCAC.

**(c) Challenges in implementation**

330. The reviewing experts recommend that Armenia should fully ensure that its courts or other competent authorities can order that bank, financial or commercial records be made available or seized; that obstacles that may arise out of the application of bank secrecy laws can be overcome effectively.

## **Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

331. The issue of the reversal of the burden of proof has been discussed within the “Interagency Standing Commission on the Fight against Counterfeiting Currency, Plastic Cards, and Other Payment Instruments, against Money Laundering, as well as Financing terrorism in the Republic of Armenia” established by the President of the Republic of Armenia. The Commission stated that a reversal of the burden of proof contradicts the presumption of innocence under the Constitution.

#### ***Constitution***

##### ***Article 21***

Everyone charged with a criminal offence shall be presumed innocent until proved guilty by the court judgment lawfully entered into force as prescribed by law. The defendant shall not be obliged to prove his/her innocence. The remaining suspicions shall be interpreted in favour of the defendant.

### **(b) Observations on the implementation of the article**

332. The reviewing experts observe that this optional provision has not been implemented due to the presumption of innocence under the Constitution. However, given that the issue has been discussed within the “Interagency Standing Commission”, Armenia is in compliance with its obligations under this provision.

## **Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

333. The rights of bona fide third parties are protected under Article 55 CC.

#### ***Article 55 CC***

6. Confiscation shall not apply to the property needed by the defendant or his/her dependants, as defined by law, and also to the property of bona fide third parties as defined by parts 4 and 5 of this article.

334. In spite of the fact that Article 25 (Freezing of funds of persons linked to terrorism) of the AML/CFT Law does not contain any provision on protection of the rights of bona fide third parties, it is important to mention that such provisions are stipulated by the Draft law on amending the Law on combating money laundering and terrorism financing. According to the Draft law, the property of bona fide third parties, that is the persons, who, when passing the property to another person, did not know or could not have known that they would be used or are intended for use for the purposes of terrorism or terrorism financing, as well as the persons, who, when acquiring the property, did not know or could not have known that they proceed from crime, shall not be subject to freezing.

**(b) Observations on the implementation of the article**

335. The reviewing experts observe that after the instigation of a criminal case involving money laundering, the rights of bona fide third parties are protected by Articles 55(6) and 55(7) CC. Pursuant to Article 55(3) CC confiscation from third persons in case of predicate crimes without charges with money laundering is not allowed. However, outside of criminal proceedings, there are no special and appropriate provisions on the protection of bona fide third parties caught in the initial freezing process pursuant to Article 25 AML/CFT Law.

336. The reviewing experts conclude that Armenia is largely in compliance with the provision. They note that there is a draft amendment which would provide for protection of bona fide third parties under the AML/CFT Law.

337. The draft pieces of legislation referred in the abovementioned paragraph became effective after the country visit and are fully in force since 28 October 2014.

**Article 32 Protection of witnesses, experts and victims**

**Paragraph 1**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

**(a) Summary of information relevant to reviewing the implementation of the article**

338. Chapter 12 of the Criminal Procedure Code is dedicated to the protection of persons participating in criminal proceedings. Especially, Article 98 CPC provides that each person involved in a criminal trial, who can report information which may affect the disclosure of crime and for identifying the performer, which may danger his, his relative's, his family's, life, health, property, rights and legitimate interests has the right to protection. The protection of a person involved in a criminal trial, his family member, his relative is made by the body conducting the criminal proceedings. The body conducting criminal proceedings discovering, that the person needs protection, based on written application of the person or on its own initiative, decides to take the measure of protection, which is liable to immediate execution. Protection measures taken on the

application of a person being protected by the body conducting the criminal proceedings is pending immediately, but no later than within 24 hours. The decision shall immediately be reported to the applicant and a copy of the relevant decision should be sent.

339. Article 98.1 CPC defines the protection measures:

***Article 98.1 CPC (“Measures of Protection”)***

- 1) formal warning of the person who is expected to be threatening violence or other crime against the person being protected ,
- 2) protection of the personal information of the person being protected ,
- 3) provision of personal security, protection of house and other property of the person being protected,
- 4) providing personal protection of the person being protected and warning him about the danger,
- 5) Using technical resources and wiretapping telephone and other conversations
- 6) Ensuring the safety of the person being protected arrival to the body conducting criminal proceedings ,
- 7) Choosing such preventive measures for the suspect that will exclude the possibility of violence or other crime against the person, being protected,
- 8) Transfer the person being protected to other residence,
- 9) Replacing the identification documents or changing the appearance of the person being protected,
- 10) Changing the place of work, service and study of the person being protected ,
- 11) Withdrawal of specific individuals from the courtroom or holding closed-door court session,
- 12) Questioning the person being protected in the courtroom without publishing the identity information.

**(b) Observations on the implementation of the article**

340. The reviewing experts observed that while the legal regime in place was very comprehensive, no data was provided on the application of the provisions in practice (duration of application, the number of persons that received protection, the availability of witness protection programmes).
341. During the country visit it was confirmed that there was very little practice. The lack of financial means was a problem for the witness protection programme.
342. As far as examples are concerned, it was explained that in one case a witness was protected from view in a murder case, but that there were no corruption-related cases.
343. It was further explained that the scope of protection includes witnesses, experts, victims and offenders.
344. Armenia has not yet concluded any international agreements, although negotiations are in process.
345. The reviewing experts conclude that Armenia’s legislation is in compliance with this provision but that there is a lack of practical experience.

**Subparagraph 2 (a)**

2. *The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

(a) *Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

346. Article 98 CPC regulates the right to protection. The protection of a person involved in a criminal trial, his family member, his relative is ensured by the body conducting the criminal proceedings.

***Article 98 CPC. Protection of persons participating in criminal proceedings***

1. Each person participating in criminal proceedings, that may communicate information essential for discovering the crime and detecting the person who has committed the crime, by reason of which life, health, property, rights and legitimate interests of the person, a member of his family, a close relative or a kinsman may be threatened, shall have the right to protection.

347. Article 98.1 CPC defines the protection measures (see above).

**(b) Observations on the implementation of the article**

348. The reviewing experts conclude that Armenia's legislation is in compliance with the provision, although no data has been submitted on the application in practice.

**Subparagraph 2 (b)**

2. *The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

(b) *Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

**(a) Summary of information relevant to reviewing the implementation of the article**

349. Chapter 12 of the Criminal Procedure Code is related to the protection of persons participating in criminal proceedings.

350. Thus, according to Article 53(3) CPC the prosecutor, during administration of the procedural management, is also entitled to undertake measures for the protection of the injured, the witness, and other persons participating in the criminal proceedings.

351. Each person participating in a criminal trial, who can report information that will be important for the identification of the crime and for the detection of the perpetrator, and, as a result, may endanger his, his family members, relatives or close relatives lives, health, property, rights and legal interests, has the right of protection (Article 98 CPC).

***Article 98 CPC***

(3) The body conducting the criminal proceedings discovering that the protected person needs protection based on the written request of that person or by its own initiative, takes measures of necessary protective measures which are mandatory to be applied.

(4) The request of the protected person for protective measures is considered immediately by the body conducting the criminal proceedings, but not later than within 24 hours from its receipt. The decision that has been made is immediately advised to the applicant and the copy of the decision is sent to him.

352. Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, without obvious participation in trial proceedings with other participants, can be done through audio-visual and technical equipment (gauze, protective screen membrane) with a limited number of trial participants, alerting the need to maintain secrecy. In exceptional circumstances, the court may release the person under the protection of, the obligation to participate in the proceedings, with the written assurances previously given his testimony.

353. If necessary, the presiding judge at the court can stop the video recording of the trial or examination as provided for by Article 98.13 CPC.

**(b) Observations on the implementation of the article**

354. The reviewing experts conclude that Armenia has implemented the UNCAC provision.

**Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

355. Armenia has not concluded any bilateral agreements or arrangements with other States for the relocation of witnesses, experts and victims.

**(b) Observations on the implementation of the article**

356. The reviewing experts observe that Armenia has not implemented this optional provision. However, official requests have been sent to different countries during 2012 for the purpose of signing agreements and identifying the prospects of establishing agreements for the transfer of protected persons. Detailed answers were received, the practices of the Baltic countries and other countries were studied, especially the trilateral treaty between the Governments of Latvia, Lithuania and Estonia regarding the protection of witnesses and victims. Following these studies, Georgia was identified as a potential treaty partner, considering regional factors of such treaties. Moreover, the Russian Federation, Baltic countries and other European countries have also been identified as potential treaty partners.

**Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

357. Article 98 CPC stipulates that each person involved in a criminal trial, who can report information which may affect the disclosure of crime and for identifying the performer, which may danger his, his relative's, his family's, life, health, property, rights and legitimate interests has the right to protection.

**(b) Observations on the implementation of the article**

358. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

**Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

359. Armenia has referred to Article 98 and 98.1 CPC as cited under subparagraph 2(b) above.

**(b) Observations on the implementation of the article**

360. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

**(c) Challenges, where applicable**

361. As a main challenge to the full implementation of the article in practice, Armenia cited the lack of financial means for comprehensive witness protection programmes.

**Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

362. Like for Article 32 UNCAC, Armenia cited Chapter 12 of the Criminal Procedure Code, in particular Articles 98 and 98.1 CPC.

**(b) Observations on the implementation of the article**

363. The reviewing experts observed that according to the information provided, the UNCAC provision has been implemented with regard to criminal procedure. However, in order to assure that reporting persons are actually covered by the provisions of Articles 98 and 98.1, it should be clarified that reporting persons are “persons participating in a criminal proceeding”. Moreover, according to Article 177(1) CPC, anonymous reports cannot be considered as a ground for opening a criminal file.

364. During the country visit, it was explained that protection outside criminal law was ensured by keeping the whistleblower’s identity secret. The reviewing experts were told that there are many cases involving whistleblowers. In fact, the police operate a hotline for whistleblowers. Moreover, there is a financial incentive paid by the state for whistleblowers and for providing information. The practice of the Baltic countries has been studied and a recommendation has been made to include in the draft of the new Criminal Procedure Code the possibility of not executing criminal proceedings against a person closely cooperating with the examination of corruption cases. It is also noteworthy that the effectiveness of corruption crimes detection has risen, however there is no statistics whether this is due to reporting or to other reasons.

365. The reviewing experts conclude that Article 33 UNCAC has been partially implemented.

**(c) Technical assistance**

366. The reviewing experts were told that Armenia would appreciate receiving advice on good practices concerning the protection of whistleblowers outside criminal law.

**Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

367. A transaction is invalid by virtue of its declaration as such by a court (a voidable transaction) or independent of such declaration (a void transaction). Upon demand of one of the parties a contract may be changed or rescinded by decision of a court only in case of a substantial breach of the contract by the other party or in other cases provided by a statute or contract. A breach of a contract by one party shall be recognized as substantial if it entails for another party such damage that it to a significant degree is deprived of that which it had the right to expect at the conclusion of the contract.

368. As for the recognition of corruption as a factor to changing or rescission, the Civil Code does not establish that fact separately. Although, according to part 4 of the Article 55 CC, the confiscation of the property obtained illicitly, including the legitimization of illegally obtained income and as the result of commitment of offences defined by Article 190 CC the emerged or obtained property, including the income or other benefits resulted

by the usage of that property, the tools used for commitment of the offence or tools provided to be used for commitment of the offence, and in case illicitly obtained property is not found, then the confiscation of another property equivalent of that property is obligatory. That property is subject to confiscation, irrespective of the circumstance of being the property of the sentenced person or a third person or its possession. In this case, though, according to the Constitutional Court Decision CCD-983 of 12.07.11, the part 4 of the Article 55 CC, that determines that “property is subject to confiscation, irrespective of the circumstance of being the property of the sentenced person or a third person or its possession” with its commentary that after the confiscation the protection of the property interests and the right to property of the victim (the legal holder) are not guaranteed, has been recognized invalid and contradicting to the provisions of part 5 Article 20 and part 2 of the Article 31 of the Constitution.

**(b) Observations on the implementation of the article**

369. The reviewing experts conclude that Armenia has implemented Article 34 UNCAC.

**Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

370. According to Article 59 CPC, the victim has a right to receive compensation for damage caused by actions prohibited by the Criminal Code, in a manner established by the law. Therefore, the person who suffered damages as a result of a corruption crime can bring a lawsuit for full compensation of such damages. Moreover, according to Article 168 CPC the Court costs include the amounts of money paid to the victim as a compensation of damages caused by the offence.

**(b) Observations on the implementation of the article**

371. The reviewing experts conclude that Armenia’s legislation is in compliance with this provision, although no examples were provided.

**Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

372. The Government, taking as its point of reference the provisions of international instruments and domestic legislation relating to the problem of corruption, has accorded the fight against corruption high priority among its activities. A national anti-corruption strategy and a program of measures to implement that strategy for the period 2009-2012, establishing the State policy in that area, together with objectives and expected results, have been prepared and adopted.
373. One of the specialized anti-corruption bodies is the Police of the Republic of Armenia. In fighting corruption, the police have developed active cooperation with other law enforcement agencies, particularly the Prosecutor-General's Office, the National Security Service, the customs and tax authorities and a number of civil society organizations.
374. A specialized Directorate General within the police, i.e. the Directorate General for Combating Organized Crime has been created. Special training sessions are periodically organized as part of thematic modules relating to the fight against corruption with the aim of developing skills in the detection of corruption-related offences. In addition, a police department (Department for Combating Corruption and Economic Crime) responsible for carrying out special operations to uncover and prosecute corruption has been established within the DG for Combating Organized Crime. The staff of the Department includes specialized professionals.
375. Armenia is also combating corruption through its membership of international organizations engaged in anti-corruption efforts; through the consequent implementation of the recommendations made and safeguards established by international professional organizations and agencies; and through its ratification of international conventions and fulfilment of the requirements stipulated in those instruments.
376. The national police are engaged in close cooperation with a number of international agencies, including the Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the International Monetary Fund with a view to adopting international best practices.
377. The Anti-corruption Council and the Anti-Corruption Strategy Implementation Monitoring Commission are functioning. Civil society organizations are increasingly active in Armenia. The report reflects numerous anticorruption activities conducted by civil society groups on their own or in co-operation with the Government.
378. The institutional framework of specialized anti-corruption policy and coordination bodies has not changed since 2006. It includes two non-permanent bodies - the Anti-Corruption Council and the Anti-Corruption Strategy Implementation Monitoring Commission. As already mentioned in the 1st round of monitoring report, the Anti-corruption Council was created on 1 June 2004 on the basis of the Presidential Decree N° PD-100-N "On establishment of the Council for combat with corruption" (2004 President Decree). The Anti-Corruption Council is chaired by the Prime Minister and is composed of the Vice President of the National Assembly, President of the Control Chamber, Chief of Government Staff, Minister of Justice, Adviser to the President, Head of the President's Oversight Service, the Prosecutor General, President of the Central Bank and the Chair of the State Committee for Protection of Economic Competition. The main functions of the

Council are to coordinate the implementation of the anti-corruption strategy, organize development of anticorruption action plans in public agencies, take measures to implement the strategy and international obligations and commitments in Armenia, discuss recommendations submitted by the Anti-Corruption Strategy Implementation Monitoring Commission. The Council operates through regular meetings that formally should be held twice every four months.

379. The Anti-Corruption Strategy Implementation Monitoring Commission was also established by the 2004 Presidential Decree. The Monitoring Commission is headed by a Presidential Assistant. The functions of the Commission are to monitor the implementation of the Anti-Corruption Strategy and internal anti-corruption programs, by involving the public, the mass media and civil society representatives; study practice of international organizations, the public bodies of the Republic of Armenia in the area of the fight against corruption and develop recommendations; monitor fulfilment of obligations and commitments stemming from international agreements and the recommendations made by international organizations; conduct expert analysis of normative acts and submit recommendations on their improvement. The 2004 Presidential Decree foresees establishment of permanent and temporary working (expert) groups under the Monitoring Commission. The Monitoring Commission had established twelve working groups of in different strategic areas, for example, education and public health.
380. After the country visit, Armenia explained that the institutional framework will be slightly changed. A draft decision on establishing this institutional framework is in the final phase of its adoption (see para. 410 below).
381. Requirements for a police officer are detailed in the law on Police Service and the requirements in connection with a professional, physical education, health, established by the Government (Government Decision on 23.01.2003 , N-175-N). A large-scale project on police education reform was initiated by the Armenian police in 2010. Creating new educational programs for police trainees gives the best chance for democratic reforms to become entrenched and to have more professional staff for Police. This radical overhaul of the police education system led to the introduction of the new three-tier Educational Complex, where the lowest tier - the Police Training Centre - will provide six-month basic training course; the intermediate tier - the Police College - provides a two-year course for the middle-group police officers; and the top tier - the Police Academy - provides both Bachelors and Masters degrees. A greater focus is now placed on practical work to complement the classroom-based learning. After graduation of the Police College, new police officers must now work for one year after which, depending on performance, they can apply for higher level education at the Police Academy. An innovative admissions procedure for the newly established education system has also been developed where a new testing system was instituted. Education reform is essential in having a professional police service. The new police education system is a challenging and long-term process.
382. According to the law on Police Service (Article 16) police officers have to pass the training courses every 5 years in the Armenian or foreign educational centres. Training procedures and conditions prescribed by the Government decision (23.01.2003 decision number 174-N). At the same time, the National Assembly has adopted the amendments in the law on "Police Service" and clearly listed in Article 42 the grave violations that should be the only reason to dismiss an officer from the police as a disciplinary sanction.

383. Every year, all the prosecutors implementing prosecutorial supervision over the examination of corruption-related cases participate in annual trainings organised in at the Prosecutors' School SNCO. Besides, for the purpose of exchanging data related to corruption-related crimes, upon the invitation of foreign partners, a number of prosecutors of the Prosecutor's office regularly went on training courses to foreign countries and took part in courses and other events.

**(b) Observations on the implementation of the article**

384. The reviewing experts observe that there is not one specialised agency in Armenia but that there are a number of institutions or units that specialize in the fight against corruption. However, law enforcement agencies need assistance in the field of collecting evidence to combat the crimes related to corruption. Particularly, the assistance could consist of legal advice, trainings for law enforcement officers etc.

385. The reviewing experts conclude that Armenia is in compliance with this provision.

**(c) Technical assistance needs**

386. Armenia has indicated that the law enforcement agencies need assistance in the field of collecting evidence to combat the crimes related to corruption. Particularly, the assistance could consist of legal advice, trainings for law enforcement officers, etc.

## **Article 37 Cooperation with law enforcement authorities**

### **Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

387. The Criminal Code provides norms to encourage cooperation between law enforcement bodies and citizens, and also the citizens of other countries who live in Armenia and stateless persons in the fight against corruption.

388. Article 37 CPC provides that the court, the prosecutor, as well as, upon the consent of the prosecutor, the investigator may dismiss the proceeding of an instituted criminal case and terminate the criminal prosecution in cases envisaged by Articles 72, 73 and 74 CC. In accordance with Article 72 CC, the first time a person has committed a misdemeanour, he may be exempted from criminal liability if he pleaded guilty, assisted in solving the crime, or otherwise compensated for the damage caused by the crime. Persons committing other types of crimes may be released from criminal liability only in cases particularly envisaged by the Special Part CC. The Special Part CC comprises several such norms. For example, Article 223(4) CC defines that if the person who has created a criminal association, lead a criminal association or participated or cooperated in a criminal

association, voluntarily reported about that and assisted in solving the crime, this person may be exempted from criminal liability if his actions do not represent any other crime.

389. In the future, it is planned to provide the prosecutor in pre-trial proceedings with the discretion to prosecute or, in the interest of justice, sign a pre-trial and cooperation agreement with the accused. Point 1.18 of the Concept of a new Criminal Procedure Code approved by the Government on 3 October 2010 envisages that the draft shall be characterised with a number of fundamental principal innovations, which should significantly improve the current criminal-trial system and promote the increase of the effectiveness of criminal justice. Particularly, there is an intention to provide for the grounds, conditions and procedure for signing an inter-court agreement on criminal prosecution under the discretion of the prosecutor, as well as on cooperation with the accused for the sake of justice, and for passing a judicial act with that regard in a special manner during the pre-trial proceeding.

**(b) Observations on the implementation of the article**

390. During the country visit, it was acknowledged that in the field of cooperation of offenders with law enforcement authorities, there was a need for new legislation.

391. In addition to the reforms outlined above, the new draft would also prolong the existing three-day deadline (cf. Articles 200(5), 312(4) and 312.1(4) CC) for providing information to the authorities. However, the prosecution service has opposed that proposal.

392. The reviewing experts conclude that Armenia's legislation is largely in compliance with the provision.

**Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

393. Armenia cites Article 72 CC:

***Article 72 CC. Exemption from criminal liability in the event of active repentance***

1. A person having committed a criminal offence of minor or medium gravity for the first time may be released from criminal liability where, following the committal of an offence, he or she has voluntarily surrendered by acknowledging guilt, has assisted in disclosing the crime, has compensated or otherwise settled the damage caused as a result of the crime.

***Article 223 CC***

4. A person who has voluntarily informed state bodies about his or her forming or leading a criminal organisation or his or her participation in a criminal organisation, and has contributed to disrupting its activities, shall be released from criminal liability, unless his or her actions contain another *corpus delicti*.

***Article 62 CC***

1. Circumstances mitigating the liability and punishment shall be as follows:

(9) surrender by acknowledging guilt, assisting in detection of crime, in unmasking of other participants of crime, in searching the property obtained by crime.

**(b) Observations on the implementation of the article**

394. The reviewing experts consider the provision to be implemented.

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

395. In accordance with Article 72 CC, paragraph 1 (Exemption from criminal liability in the event of active repentance), the person who committed for the first time a not grave or medium-gravity crime can be exempted from criminal liability, if he, after the committal of the crime, surrendered, assisted in solving the crime of his own accord, compensated or mitigated the inflicted damage in some other way.

396. According to Article 189(5) CC, a “person who has committed actions provided by Articles 188, 189, 193, 194, 205 of the current Code is exempted from criminal liability if he compensates the damage caused by the crime and the calculated penalties and fines“.

397. According to Article 200(5) CC, “persons giving commercial bribes are exempted from punishment, if there was an extortion of the bribe, or if they voluntarily informed the law enforcement bodies about the bribe no later than three days after giving the bribe”.

398. According to Article 312(4) CC a person who gave a bribe can be exempted from criminal liability if there was an extortion of the bribe or if that person voluntary informed the law enforcement about the bribe no later than three days after giving the bribe.

399. According to Article 312.1(4) CC the person who gave illegal remuneration can be exempted from criminal liability if there has been extortion of illegal remuneration or the person who gave illegal remuneration voluntary informed the law enforcement bodies about the bribe no later than three days after giving the bribe.

**(b) Observations on the implementation of the article**

400. The reviewing experts consider Article 37(3) UNCAC to be implemented.

**Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

401. Article 98 CPC deals with the protection of persons participating in criminal proceedings (see above answers to Article 32 UNCAC). Article 98.1 CPC lists the protection measures.

402. Article 37 CPC deals with circumstances permitting not to conduct criminal prosecution, terminate criminal proceeding and criminal prosecution (see above).

**(b) Observations on the implementation of the article**

403. The reviewing experts consider Article 37(4) UNCAC to be implemented.

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

404. At a criminal trial, persons acting as a witness, victim, civil defendant, civil claimant, their representatives, experts or specialists, who are outside the territory of the Republic of Armenia, can be invited to Armenia in a manner established by international treaty, to perform investigative or judicial actions with their participation along with the court, prosecutor, investigation bodies conducting the criminal proceedings of the corresponding case.

405. During judicial actions with the participation of those persons, the rules of the Criminal Procedure Code apply, with the exceptions established by the corresponding international treaties. As for exempting them from criminal persecution, the same norms can be applied towards them, as for the citizens of the Republic of Armenia.

**(b) Observations on the implementation of the article**

406. The reviewing experts conclude that Armenia is in compliance with this provision, although no agreements have been concluded yet.

**Article 38 Cooperation between national authorities**

**Subparagraph (a)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

407. By presidential decision of 01.06.2004 (number 100-N), the staff of the Anti-corruption Council and the statute of its activities was approved. 10 high ranking officials were included in this Council. The Prime Minister of Armenia is the head of the Council.

408. By government decision of 4 May 2006 (N-645-N) the terms of providing and receiving information by the National Central Bureau of Interpol within the police of Armenia was approved. According to paragraph 2 of the terms, relevant information is exchanged by different national authorities: National Security Service, Ministry of Defence, Justice, Culture, Prosecution Service, State Revenue Committee, Central Bank. All these institutions can share through information related to crime, including corruption offenses.

**(b) Observations on the implementation of the article**

409. In the Republic of Armenia, a decentralized system in the fight against corruption has been established, where the functions of formulation, monitoring and coordination of the anti-corruption strategy is separate from the bodies specialized in the detection of corruption crimes. There are no special official bodies for the fight against corruption, however there is an Anti-corruption strategy, in the framework of which those functions are executed by different law enforcement bodies according to their powers. Different bodies are included in the fight against corruption, especially the Police, National Security Service, Special Investigatory Service. The State Revenue Committee also has its functions.

410. According to the “Concept for the Fight against Corruption in the Public Administration System” adopted by decision of the outgoing Cabinet of Ministers on 10 April 2014, the institutional mechanism for the implementation of the future Anti-Corruption Strategy will be slightly changed. The Anti-Corruption Council will be responsible for coordination of the implementation of the anti-corruption strategy, ensuring the control over the implementation of sector-specific programmes. But it will have a new membership: it will be chaired by the Prime Minister, and will include the Chief of Staff of the Government, Ministers of Finance and of Justice, Prosecutor General, the Chair of the Ethics Commission for High-Ranking Officials, representatives from opposition parties, the Chair of the Public Council, a representative of the Union of Communities and two representatives from civil society. The draft decision on establishing this institutional framework is in the final phase of its adoption. The monitoring will be conducted by a permanent Task Force consisting of independent experts. An anti-corruption programmes monitoring division has been established with the Government Staff by the Decision of the Government No 1363-N of 5 December 2013. This division carries out the functions of the Secretariat.

411. During the country visit, the experts were told that there is a Memorandum of Understanding (MoU) between the police, the National Security Service (NSS) and the prosecution service on the one hand, and the FIU on the other hand.

412. Nevertheless, the reviewing experts note that the extremely low number of convictions for bribery offences might indicate a lack of cooperation between national authorities.

413. On the basis of the available information, the reviewing experts conclude that Armenia is only partially in compliance with the provision.

### **Subparagraph (b)**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(b) Providing, upon request, to the latter authorities all necessary information.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

414. Same comment as for subparagraph (a).

#### **(b) Observations on the implementation of the article**

415. The reviewing experts make the same observations as for subparagraph (a).

## **Article 39 Cooperation between national authorities and the private sector**

### **Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

416. In 2008 a Memorandum of Understanding was signed between the Financial Monitoring Centre of the Central Bank of the Republic of Armenia and the Police.

#### **(b) Observations on the implementation of the article**

417. During the country visit, Armenia provided more information on cooperation with the private sector. The reviewing experts were told that, among other initiatives, trainings have been organised to encourage citizens to give information; there were awareness raising programmes on TV; the website of the prosecutor's office publishes information about corruption cases; the authorities encourage whistleblowing and have created a hotline for the public to give information on bribery.

418. In the light of the additional information provided, the reviewing experts conclude that Armenia is in compliance with the provision under review.

## Paragraph 2

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

419. The Government adopted the “Decision on defining the order of encouragement of supporting individuals, as well as the procedure of awards presentation” (Decision number 43-N) on 16 January 2003. In accordance with paragraph 2 of the Order, the Chief of police, the Prime Minister, as well as the President grant the awards to those persons, who with their exemplary behaviour and devotion or endangering their lives and health have made a certain contribution to protect the life, rights and freedoms or property of others from criminal encroachments. Paragraph 3 of the Order defines: “For supporting the Police Of the Republic of Armenia the citizens of the Republic of Armenia and foreigners, as well as stateless persons can be instituted for encouragement”. In accordance with paragraph 4 of the same order, for supporting of Police activities people can be awarded Certificates of Appreciation, souvenirs or money awards.

420. However, Armenia indicated that civil society, the contribution of which it considers the most important means of ensuring the effectiveness of the activities of State agencies, currently plays no great role in Armenia. A further key to success in combating corruption would be active and effective cooperation between law enforcement agencies and civil society.

### (b) Observations on the implementation of the article

421. The reviewing experts conclude that Armenia is in compliance with the requirement to consider encouraging greater participation and reporting of civil society.

### (c) Technical assistance needs

422. Armenia has identified limited capacity as a challenge in fully implementing the provision under review. Armenia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

*Capacity-building programmes for authorities responsible for the establishment and management of reporting programmes and mechanisms.*

## Article 40 Bank secrecy

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

### (a) Summary of information relevant to reviewing the implementation of the article

423. Armenia provided the same answer as to Article 31 (7) UNCAC.
424. Armenia also indicated that they might be interested in receiving model laws on bank secrecy.

**(b) Observations on the implementation of the article**

425. The reviewing experts recall the comments on Article 31(7) UNCAC.
426. During the country visit, the reviewing experts received conflicting information. While the prosecutor's office and the police thought that the conclusions of MONEYVAL were still true, the FIU thought that the existing legislation provides a sufficient basis for overcoming obstacles posed by bank secrecy, and in particular that evidence obtained on the basis of the LOSA could be introduced in court. However, the reviewing experts were not convinced that the FIU was aware of the problems faced by law enforcement agencies. Indeed, the latter told the experts that while the Central Bank does provide them with the information sought, they cannot use it in court since the courts will apply Article 10 Bank Secrecy Act.
427. Under these circumstances, the reviewing experts were not able to come to a final conclusion. The confusion about the applicable law clearly indicates, however, that Armenia has still not fully implemented Article 40 UNCAC.

**(c) Challenges in implementation**

428. The reviewing experts recommend that Armenia should amend its legislation to clarify and fully ensure that obstacles that may arise out of the application of bank secrecy laws can be overcome effectively.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

429. Article 17 CC prescribes the legal significance of a person's conviction outside the Republic of Armenia.

**Article 17 CC**

1. The criminal judgement of the court of a foreign State may be taken into account when the citizen of the Republic of Armenia, foreign national or stateless person have been convicted for a criminal offence committed outside the territory of the Republic of Armenia and has repeatedly committed a crime in the territory of the Republic of Armenia.
2. In accordance with part 1 of this Article recidivism, unserved punishment or other legal consequences of the criminal judgement of the court of a foreign State shall be taken into account

when qualifying a new criminal offence, imposing a punishment, releasing from criminal liability or punishment.

430. The copies of court verdicts against citizens regarding the offences established by the Convention or any other crimes are transferred to the Ministry of Justice, based on the procedure established by the International Treaties in the sphere of Legal Assistance. The Ministry of Justice reports the data provided in those copies both to the General Prosecutor's Office and to the Department General of Criminal Investigation of the RA Police. The presented information has the aim of support the law enforcement bodies in usage of the information at service related necessity.

**(b) Observations on the implementation of the article**

431. The reviewing experts observe that in cases a person is convicted for a criminal offence committed outside the territory of Armenia and has repeatedly committed a crime within the territory of Armenia the previous conviction may be taken into account, whereas in cases of recidivism the court shall take it into account.

432. Nevertheless, they conclude that Armenia is in compliance with this non-mandatory provision.

**Article 42 Jurisdiction**

**Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

433. Armenia has cited the following implementation measures:

***Article 14 CC. Operation of criminal statute in respect of persons having committed a criminal offence within the territory of the Republic of Armenia***

1. A person having committed a criminal offence within the territory of the Republic of Armenia shall be subject to liability under the Criminal Code of the Republic of Armenia.

2. A criminal offence shall be considered as committed within the territory of the Republic of Armenia when it has been:

(1) commenced, continued or finished within the territory of the Republic of Armenia;

(2) committed in complicity with persons who were engaged in criminal activity within the territory of another State.

**(b) Observations on the implementation of the article**

434. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

### **Subparagraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

435. Armenia has cited the following implementation measures.

##### ***Article 14 CC***

4. A person having committed a criminal offence on board the ship under the flag of the Republic of Armenia or carrying distinguishing emblem of the Republic of Armenia or on board the flying airplane or other air device — irrespective of its location — shall be subject to criminal liability under the Criminal Code of the Republic of Armenia unless otherwise provided for by international treaties of the Republic of Armenia. A person having committed a criminal offence on board the military ship or airplane of the Republic of Armenia — irrespective of its location — shall be also subject to liability under the Criminal Code of the Republic of Armenia.

#### **(b) Observations on the implementation of the article**

436. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

### **Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

437. Armenia has cited the following implementation measures:

##### ***Article 15 CC. Operation of criminal statute in respect of persons having committed a criminal offence outside the territory of the Republic of Armenia***

3. Foreign nationals and stateless persons not permanently residing in the Republic of Armenia, having committed a criminal offence outside the territory of the Republic of Armenia, shall be subject to criminal liability under the Criminal Code of the Republic of Armenia where they have committed:

- (1) crimes which are provided for by international treaties of the Republic of Armenia;
- (2) grave or particularly grave crimes which are against the interests of the Republic of Armenia or rights and freedoms of citizens of the Republic of Armenia.

#### **(b) Observations on the implementation of the article**

438. The reviewing experts conclude that Armenia has implemented this provision in Article 15(3)(1) CC.

## **Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

### **(a) Summary of information relevant to reviewing the implementation of the article**

439. Armenia cited Article 15 CC.

#### ***Article 15 CC. Operation of criminal statute in respect of persons having committed a criminal offence outside the territory of the Republic of Armenia***

1. Citizens of the Republic of Armenia and stateless persons permanently residing in the Republic of Armenia, having committed a criminal offence outside the territory of the Republic of Armenia, shall be subject to criminal liability under the Criminal Code of the Republic of Armenia where the act committed by them is recognised as a crime under the legislation of the State where the crime was committed and where they were not sentenced in another State. When sentencing the aforementioned persons, the punishment may not exceed the upper threshold of punishment provided for by the law of the foreign State in the territory of which the criminal offence was committed.

### **(b) Observations on the implementation of the article**

440. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

## **Article 42 Jurisdiction**

### **Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

### **(a) Summary of information relevant to reviewing the implementation of the article**

441. Citizens of Armenia who committed a crime outside the territory of the Republic of Armenia, as well as stateless persons who live in the Republic of Armenia are subject to criminal liability under Articles 190 CC (Legitimizing (legalizing) illegally obtained income), 200 (Commercial bribe), 201 (Bribing the participants and organizers of professional and commercial sports competitions or shows), 311 (Taking bribes), 312 (Giving a bribe), 313 (Bribery mediation), 315 (Official negligence), 384 (Aggressive war), 386 (Manufacture or proliferation of mass destruction weapons), 387 (Application of prohibited methods of war), 388 (Terrorism against the representative of a foreign country or international organization), 389 (International terrorism), 390 (Serious breach of international humanitarian law during armed conflicts), 391 (Inaction or making an

illegal command during armed conflict), 393 (Genocide), 394 (Ecocide), 395 (Mercenaries), 396 (Assault on persons or organizations under international protection), 397 CC (Illegal use of identification signs protected by international treaties) even if it is not provided by the law of the state where the crime was committed.

**(b) Observations on the implementation of the article**

442. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

**Subparagraph 2 (d)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

443. Armenia has cited the following implementation measures:

***Article 15 CC. Operation of criminal statute in respect of persons having committed a criminal offence outside the territory of the Republic of Armenia***

3. Foreign nationals and stateless persons not permanently residing in the Republic of Armenia, having committed a criminal offence outside the territory of the Republic of Armenia, shall be subject to criminal liability under the Criminal Code of the Republic of Armenia where they have committed:

- (1) crimes which are provided for by international treaties of the Republic of Armenia;
- (2) grave or particularly grave crimes which are against the interests of the Republic of Armenia or rights and freedoms of citizens of the Republic of Armenia.

**(b) Observations on the implementation of the article**

444. The reviewing experts conclude that Armenia has implemented this provision in Article 15(3)(2) CC.

**Paragraph 3**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

**(a) Summary of information relevant to reviewing the implementation of the article**

445. Armenia has cited the following implementation measures:

***Article 16 CC. Extradition of persons having committed a criminal offence***

1. Citizens of the Republic of Armenia having committed a criminal offence in the territory of another State shall not be extradited to another State.

2. According to international treaties of the Republic of Armenia, foreign nationals and stateless persons having committed a criminal offence outside the territory of the Republic of Armenia and being in the Republic of Armenia may be extradited to a foreign State for subjecting to criminal liability or serving the punishment.

3. Persons specified in part 2 of this Article shall not be extradited to a foreign State where there are good reasons to believe that extradition has been requested for inquest or punishment due to their race, religion, nationality, membership to a certain social group or political opinion.

No one shall be extradited to a foreign State where there is a serious risk that he/she may be subjected to tortures or inhuman or degrading treatment or punishment.

4. Where laws of the State requesting the extradition of persons having committed a criminal offence envisage death penalty for the crime concerned, the extradition thereof may be rejected if the requesting party does not provide sufficient guarantees to the requested party that death sentence shall not be applied.

5. In case of refusing to extradite a person having committed a criminal offence, criminal prosecution for crimes committed in the territory of a foreign State shall be carried out in accordance with the legislation of the Republic of Armenia.

***Article 479 CPC. Authorities competent for taking decisions on granting or refusing extradition and procedure for appealing against this decision***

9. When extradition of a person, including nationals of the Republic of Armenia, to a foreign state or an international court is refused, but there are sufficient grounds provided for by this Code to institute a criminal prosecution against him or her with regard to the act for which extradition is requested by the foreign state or international court, the Prosecutor General of the Republic of Armenia shall initiate a criminal prosecution against that person, and in cases provided for by corresponding international treaty of the Republic of Armenia and in the manner prescribed by it shall take over the case from the proceeding of court of the foreign state or international court concerning corresponding criminal prosecution and initiate proceedings in the case instituted against that person by the competent authority of the foreign state by carrying out relevant criminal prosecution in the manner prescribed by this Code.

**(b) Observations on the implementation of the article**

446. The reviewing experts conclude that Armenia has implemented this provision in Article 16(5) CC.

**Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

**(a) Summary of information relevant to reviewing the implementation of the article**

447. Articles 16(5) CC and 479 (9) CPC refer not only to the citizens of the Republic of Armenia, but the persons whose extradition has been denied, the prosecution stated in before-mentioned article is also used in relation to other persons.

**(b) Observations on the implementation of the article**

448. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

#### **Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

449. According to Article 479 CPC, inspection, seizure, search expertise and other procedural actions in the territory of a foreign state are carried out in accordance with international treaties of the Republic of Armenia and the law of the Republic of Armenia. In the case of absence of an international treaty, legal aid is provided according to the Article 54.1 CC or according to agreement on mutual legal assistance between Armenia and the foreign state.

#### **(b) Observations on the implementation of the article**

450. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

#### **Paragraph 6**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

451. Armenia has cited the following implementation measures:

***Article 14. Operation of criminal statute in respect of persons having committed a criminal offence within the territory of the Republic of Armenia***

3. The liability of a person that commits a criminal offence within the territory of the Republic of Armenia and other States shall ensue under the Criminal Code of the Republic of Armenia where he was brought to liability within the territory of the Republic of Armenia and unless otherwise provided for by international treaties of the Republic of Armenia.

#### **(b) Observations on the implementation of the article**

452. The reviewing experts conclude that Armenia's legislation is in compliance with this provision.

## Chapter IV. International cooperation

453. According to Article 6 of the Constitution of Armenia, international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the domestic laws, the norms of the treaty shall prevail. This provision allows for direct self-execution of UNCAC in the areas not covered by domestic legislation.
454. Chapter 54 (Legal Assistance in Criminal Matters in Accordance with International Treaties) of the Criminal Procedure Code (CPC) of Armenia is the main domestic legislation relevant to the implementation of chapter IV of UNCAC. Chapter 54 covers both extradition and mutual legal assistance. Article 16 of the Criminal Code also contains some basic provisions applicable to extradition. However, Chapter 54 of CPC does not comprehensively address all the details that may arise in the process of extradition and mutual legal assistance based on UNCAC; therefore, the review team recommended the Armenian authorities to adopt a guideline applicable to the extradition and mutual legal assistance procedures based on UNCAC to ensure that such procedures may be conducted in the most efficient way.
455. Additionally, the reviewing experts highlighted that the lack of case examples and statistical information did not allow them to make comprehensive observations on how relevant Convention's provisions were implemented in practice. In that regard, the review team recommended the Armenian authorities to streamline their efforts to put in place a case management system allowing the classification and use of statistics for both extradition and mutual legal assistance, including on issues of using the UNCAC as the legal basis, which will provide a better picture of how the relevant legal framework is implemented in practice.
456. The decision on granting or refusing extradition are taken by the Prosecutor General of the Republic of Armenia, where the case is in pre-trial stage and by the Minister of Justice of the Republic of Armenia where the case is in court proceeding, as well as when there is a legally effective judgment with regard to the person concerned. Decisions of the Prosecutor General of the Republic of Armenia on granting or refusing extradition and decisions of the Minister of Justice of the Republic of Armenia on refusing extradition may be appealed to the Court of Appeal within 10 days upon their receipt and the decisions of the Court of Appeal may be appealed to the Court of Cassation within five days after receiving them.
457. Communication concerning provision of legal assistance in criminal matters are carried out through General Prosecutor's Office of the Republic of Armenia regarding execution of enquires to conduct procedural steps related to cases in pre-trial stage; and through Ministry of Justice of the Republic of Armenia regarding execution of requests to conduct procedural steps, including execution of judgments, related to cases in court proceedings.

## Article 44 Extradition

### Paragraph 1

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

458. According to Article 6 of the Constitution of Armenia, the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. Therefore, the provisions of the Convention including the requirement of applicability of dual criminality to the execution of extradition requests, as stipulated in the provision under review, can be applied directly.

459. The specific Armenian legislation applicable to UNCAC based extradition requests includes Article 16 of the Criminal Code (CC) of Armenia and Chapter 54 of the Criminal Procedure Code (CPC).

The Criminal Procedure Code (CPC) of the Republic of Armenia defines two different legal regimes of legal assistance and extradition in criminal cases:

1. Legal assistance in criminal matters in accordance with international treaties (Chapter 54 of the Criminal Procedure Code).
2. Legal assistance in criminal matters in the absence of international treaties (Chapter 54.1 of the Criminal Procedure Code of the Republic of Armenia).

Chapter 54 (more specifically Articles 478-480) will apply to the extradition requests received based on UNCAC, as an international treaty to which Armenia is party

460. Neither of the cited domestic legislative provisions has specific provisions with regard to the applicability of dual criminality requirements to UNCAC based extradition requests.

461. Armenia has cited the following implementation measures:

#### ***Article 6 Constitution***

The Constitution of the Republic shall have supreme legal force and the norms thereof shall apply directly.

The laws shall conform to the Constitution. Other legal acts shall conform to the Constitution and the laws.

The laws shall come into force following the official publication in the Official Bulletin. Other normative legal acts shall come into force following the official publication in the manner prescribed by law.

The international treaties shall come into force only after being ratified or approved. The international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of

the treaty shall prevail. The international treaties not complying with the Constitution cannot be ratified.

The normative legal acts shall be adopted on the basis of the Constitution and laws and for the purpose of the ensuring their implementation.

***Article 16. Criminal Code (CC) Extradition of persons who committed a crime.***

1. The citizens of the Republic of Armenia who committed a crime in another state are not extradited to that state.

2. In accordance with an international treaty of the Republic of Armenia, the foreign citizens and the stateless persons who committed a crime outside the territory of the Republic of Armenia and who find themselves in the Republic of Armenia, can be extradited to a foreign state, for criminal liability or to serve the punishment.

3. The persons specified in part 2 of this Article are not extradited to foreign states if there are serious reasons to believe that they can be subjected to torture there.

4. If the legislation of the country seeking extradition of persons who committed a crime envisages death penalty for the given crime, then the extradition of persons who committed a crime can be turned down, unless the party seeking extradition presents satisfying assurances to this country that the death penalty will not be executed.

5. In case of refusal to extradite the person who committed a crime, the prosecution for the crime committed in the territory of a foreign country is done in accordance with the legislation of the Republic of Armenia.

***Criminal Procedure Code (CPC)***

**CHAPTER 54**

**LEGAL ASSISTANCE IN CRIMINAL MATTERS IN ACCORDANCE WITH INTERNATIONAL TREATIES**

***Article 478. Extradition of criminals to foreign states***

1. Nationals of a foreign state who has committed a crime in the territory of the Republic of Armenia, as well as stateless persons who has a permanent place of residence in the territory of a foreign state, may be extradited to the foreign state concerned in cases provided for by international treaty in force to which that state and the Republic of Armenia are parties, for the purpose of initiating criminal proceeding against them in the corresponding foreign state or continuing the proceeding in the foreign state concerned initiated in the territory of the Republic of Armenia in accordance with this Code.

All documents and other materials concerning the offence committed by the extradited person available in proceeding of courts, prosecutors, investigators, inquest bodies of the Republic of Armenia shall also be transferred to the competent authorities of the foreign state concerned in the manner prescribed by corresponding international treaty.

When the procedure for transfer of documents and other materials is not envisaged or prescribed by international treaty, the transfer thereof may be carried out in accordance with the arrangement reached between the central authorities of the Republic of Armenia and those of the foreign state or between the court, prosecutor, investigator, inquest body responsible for direct communication and the competent authority of the foreign state.

One copy of each document transferred shall be kept with the court, prosecutor, investigator, inquest body of the Republic of Armenia which has prepared or provided the documents.

2. Extradition of persons provided for by part 1 of this Article for the purposes envisaged by that part may take place within the period between committal of the criminal act by those persons in the territory of the Republic of Armenia or initiation of a criminal proceeding in respect of it and delivery of judgement against the person concerned or within another period provided for by corresponding international treaty of the Republic of Armenia.

***Article 478.1 CPC The procedure for arresting persons who have committed crimes outside the territory of the Republic of Armenia***

1. When persons who have committed crimes outside the territory of the Republic of Armenia are arrested in the territory of the Republic of Armenia, bodies responsible for the arrest shall immediately inform those initiating prosecution, demanding the decision or the criminal judgment of the competent authority of the state on selecting detention as a measure of restraint.
2. Communication regarding the arrest of a person, together with necessary documents, shall be immediately sent to the Prosecutor General's Office of the Republic of Armenia.
3. After receiving the protocol of arrest, the Prosecutor General's Office shall immediately inform about the arrest the competent authorities of the state that issued international arrest warrant and/or the Ministry of Foreign Affairs of the Republic of Armenia.
4. The person arrested shall be released immediately, where no decision of the competent court of the Republic of Armenia on provisional arrest of the person is delivered within 72 hours after the arrest.

***Article 478.2 CPC The procedure for provisional arrest of persons who have committed crimes outside the territory of the Republic of Armenia***

1. Persons who have committed crimes outside the territory of the Republic of Armenia and have been arrested within the territory of the Republic of Armenia shall be subject to provisional arrest for up to 40 days or for any other term provided for by an international treaty, for the purpose of receiving a request for extradition and clarifying the circumstances excluding extradition. Where a request for extradition is not received within the maximum term envisaged for provisional arrest, or the court of the Republic of Armenia rejects the motion for detention for extradition, or circumstances excluding extradition are established, the person shall be released. Release of a person from provisional arrest on the ground of failure to file a timely request for extradition shall not impede his or her further detention for extradition.
2. Before receiving a request for extradition of a person, the motion of the competent body of the foreign state for provisional arrest or the decision or criminal judgment thereof on selecting detention as a measure of restraint shall be delivered by mail, including by electronic mail or wire or any other technical means, as well as through Interpol or any other international organisation conducting the prosecution of the person that the Republic of Armenia is a member to.
3. The prosecutor shall file a motion for provisional arrest of a person to the court competent in the territory where the arrest took place. A copy of the protocol of arrest, the motion or decision of the competent authority of the foreign state on provisional arrest of the person or any of the documents provided for by part 2 of this Article, as well as identification documents of the arrested person shall be attached to the motion.
4. When considering the motion, the Court, after listening to the prosecutor, the person arrested and his or her counsel, shall decide on the issues of granting the motion and imposing provisional arrest, or rejecting the motion. The decision of the court on provisional arrest may be appealed under the procedure prescribed by this Code.
5. The prosecutor shall immediately inform the competent authority of the foreign state about the outcomes of deliberations on the motion in accordance with the procedure prescribed by part 2 of this Article.

***Article 478.3 CPC Procedure of detention for extradition***

1. Upon receipt of a request for extradition of a person, the prosecutor — and with regard to criminal cases in court proceedings of another state, or cases relating to the enforcement of a criminal judgment — the Minister of Justice of the Republic of Armenia shall file a motion for detention for extradition of the person before the court competent for the territory where the person has been taken into custody.
2. Copy of the request for extradition of a person and a statement on the nationality of a person shall be attached to the motion for detention for extradition.
3. When considering the motion, the court, after listening to the person filing the motion, the person taken into custody and his or her counsel, considering the motion on the extradition of the person and examining other submitted documents, shall decide on the issues of granting the motion and imposing detention for extradition, or extending the term of detention, or rejecting the motion. The decision of the court may be appealed under the procedure prescribed by this Code.

4. When considering the motion, the court shall not be entitled to investigate issues pertaining to guilt of the person or verifying the lawfulness of the procedural documents issued by the authorities of the foreign states.
5. Detention for extradition shall be imposed for two months. The prosecutor or the Minister of Justice of the Republic of Armenia, 10 days prior to the expiry of the term of detention, shall file a motion before the court on extending the term of detention of the person. The term of detention for extradition may not exceed 8 months.
6. In case of failure to address the issue of extradition of the person or to effectively extradite him/her within the maximum term of detention for extradition, the person shall be released without delay. Release of a person on these grounds shall not impede his or her detention for the purpose of effective extradition.
7. In case of release from detention, other measures of restraint provided for by Article 144-148 of this Code may be imposed on the person for a term of up to 8 months.
8. The provisions of this Article, as well as those of Article 478.2 of this Code shall apply to the citizens of the Republic of Armenia who have committed grave or particularly grave crimes outside the territory of the Republic of Armenia, with a view to transferring criminal proceedings to the Republic of Armenia. Upon accepting the transferred criminal case for proceedings, the issue relating to the selection of a measure of restraint shall be addressed in accordance with the general procedure prescribed by this Code.

***Article 478.4 Rights of persons taken into custody***

1. In cases provided for by Article 478.1, 478.2, 478.3, 491, 492 of this Code, persons taken into custody shall have the right to recusal, to receiving, free of charge, protocols of arrest, as well as copies of decisions on provisional arrest or detention for extradition, or decision on selecting a measure of restraint, right to counsel, to waive the right to counsel and to defend themselves, to meet their counsels in private, in confidence and in an unimpeded manner with no limitation on the number and duration of visits, to withdraw the appeal filed by them or by their counsels, to appeal the decisions and actions of the inquest body, the prosecutor and the court.
2. Persons lacking sufficient command of the language of criminal proceedings shall be provided with the opportunity to exercise their rights with the assistance of interpreters at the expense of the state budget. Persons lacking sufficient command of the language of criminal proceedings shall receive the copies of documents to be delivered, as prescribed by part 1 of this Article, in the language they understand.
3. The inquest body shall explain in writing the rights of persons taken into custody and ensure their exercise under the procedure prescribed by this Code.
4. Visitation of persons temporarily detained or detained for extradition by relatives or other persons shall be handled by the body considering the request for extradition.

***Article 479. Authorities competent for issuing decisions on granting or refusing extradition and the procedure for appealing these decisions***

1. Where international treaties of the Republic of Armenia envisage extradition of persons who have committed crimes to the foreign state party to that treaty, and unless otherwise stipulated by the treaty, with regard to a person in the territory of the Republic of Armenia:
  - (1) the decision on granting or refusing extradition shall be taken by the Prosecutor General of the Republic of Armenia, where the case is in pre-trial stage;
  - (2) the decision on refusing extradition shall be taken by the Minister of Justice of the Republic of Armenia when the case is in court proceeding as well as when there is a legally effective judgment with regard to the person concerned;
  - (3) the decision on granting extradition shall be taken respectively by the court examining the case or the court that has delivered the judgment, upon the motion of the Minister of Justice of the Republic of Armenia when the case is in court proceeding or when there is a legally effective judgment with regard to the person concerned.
2. The competent authority that has taken the decision on granting or refusing extradition shall inform the person concerned about the decision and explain to him or her the procedure for appealing it.

3. Decisions of the Prosecutor General of the Republic of Armenia on granting or refusing extradition and decisions of the Minister of Justice of the Republic of Armenia on refusing extradition may be appealed to the Court of Appeal within 10 days upon their receipt and the decisions of the Court of Appeal may be appealed to the Court of Cassation within five days after receiving them. The Court of Appeal, as well as the Court of Cassation shall examine the case and take a decision upon it within a period of five days after receiving the appeal.

4. In cases provided for by point 3 of part 1 of this Article the court shall examine the case and deliver a decision within a period of 10 days upon receiving the motion of the Minister of Justice of the Republic of Armenia.

Judicial decisions provided for by point 3 of part 1 of this Article may be appealed and considered through appeal and cassational procedure within the time limits provided for by part 3 of this Article.

5. When decisions on granting or refusing extradition are appealed the competent authority responsible for the decision shall forward the documents confirming the lawfulness and reasonableness of the decision to the court.

6. In the courts of first instance and Courts of Appeal the case shall be examined in the presence of the person with regard to whom the decision on granting or refusing extradition has been taken, and/or in the presence of his or her counsel and prosecutor.

In the course of trial the court shall not consider the question of guilt of the appellant verifying only the issue of conformity of the decision on granting or refusing extradition with the laws of the Republic of Armenia and international treaties.

7. Upon verification the court shall take one of the following decisions:

- (1) to dismiss the appeal and leave the decision on granting or refusing extradition unaltered;
- (2) to grant the appeal and reverse the decision on granting or refusing extradition.

8. When extradition under an international treaty of the Republic of Armenia is conditional upon guarantees provided to the Republic of Armenia by a state party to the treaty concerned, the question of adequacy or admissibility of such guarantees for the Republic of Armenia shall be decided by the Prosecutor General of the Republic of Armenia for cases in pre-trial stage, by the Minister of Justice of the Republic of Armenia for cases in court proceedings and cases on execution of judgments.

9. When extradition of persons, including citizens of the Republic of Armenia, to the foreign state or an international court is refused, but there are sufficient grounds provided for by this Code to institute criminal prosecution against them with regard to the act for which extradition has been requested by the foreign state or international court, the Prosecutor General of the Republic of Armenia shall initiate criminal prosecution against those persons, and in cases provided for by corresponding international treaty of the Republic of Armenia and in the manner prescribed in it shall take over the relevant case regarding criminal prosecution from court proceedings of the foreign state or international court and accept the case initiated against those persons by the competent authority of the foreign state for proceedings carrying out criminal prosecution as prescribed by this Code.

**(b) Observations on the implementation of the article**

462. The principle of dual criminality is applied to UNCAC based extradition requests via the direct application of the Convention per Article 6 of the Constitution of the Republic of Armenia. Other relevant domestic legislation provisions of Armenia (e.g., Article 16 of CC and Articles 478-480 of CPC) do not contain any dual criminality requirements applicable to such requests.

**Article 44 Extradition**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

463. Please see the response to paragraph 1 above.

**(b) Observations on the implementation of the article**

464. As noted in the observations under paragraph 1 above, the Armenian domestic legislation does not expressly address all the details of the extradition process based on international treaties such as UNCAC. Armenia is recommended to address possible practical difficulties that may arise in the process of extradition based on UNCAC by producing a detailed guideline for processing extradition requests under UNCAC for its relevant bodies in charge of extradition, which would, inter alia, clarify whether a person may be extradited for an UNCAC offence which is not criminalized in the domestic legislation of Armenia. Such guideline may also cover issues of providing mutual legal assistance based on UNCAC, as addressed by article 46 of the Convention.

## **Article 44 Extradition**

### **Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

465. Please see the response to paragraph 1 above.

**(b) Observations on the implementation of the article**

466. Taking into account the observations under paragraphs 1 and 2 above and based on the information provided by Armenia, the issues addressed in the provision under review are not specifically covered in the applicable domestic legislation. Therefore, the Convention can be applied directly in that regard. Armenia is recommended to address possible practical difficulties that may arise in the process of extradition based on UNCAC by producing a detailed guideline for processing extradition requests under UNCAC for its relevant authorities in charge of extradition.

## **Article 44 Extradition**

### **Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as*

*the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

467. Extradition agreements concluded by Armenia do not have provisions which separately define criminal offences regarding which the extradition could be granted, but they view extradition as applicable to all criminal offences including corruption.

468. As the legislation of the Republic of Armenia does not define the notion of “political offence” or that of “offence connected with a political offence”, the Republic of Armenia, being requested for extradition on such grounds, will grant extradition if the offence mentioned in the request is exists under its ordinary criminal law or under the International Treaties in force in the Republic of Armenia, such as UNCAC.

**(b) Observations on the implementation of the article**

469. The legislation of Armenia does not have a definition of political offence. However, future bilateral treaties or agreements concluded by Armenia may contain provisions that the extradition shall not be executed for political offences. Armenia is recommended to continue to ensure in future that any crime established in accordance with the UNCAC is not considered or identified as a political offence in any extradition treaty to be concluded between Armenia and other States Parties to UNCAC, as that may create obstacles for extradition especially, in cases involving persons “entrusted with prominent public functions”, whereby allegations of the political nature of the offence/political persecution in the requesting State may arise.

## **Article 44 Extradition**

### **Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

470. Armenia does not make extradition conditional on the existence of a treaty and considers the Convention as the legal basis for extradition in respect to corruption offences.

**(b) Observations on the implementation of the article**

471. Armenia does not make extradition conditional on the existence of a treaty and considers UNCAC as a legal basis for extradition in respect to corruption offences.

## **Article 44 Extradition**

### **Subparagraph 6 (a) and (b)**

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

**(a) Summary of information relevant to reviewing the implementation of the article**

472. Please see responses to paragraph 5 above.

**(b) Observations on the implementation of the article**

473. Based on the responses provided above, Armenia does not make extradition conditional on the existence of a treaty.

#### **Article 44 Extradition**

##### **Paragraph 7**

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

**(a) Summary of information relevant to reviewing the implementation of the article**

474. Armenia has referred to its responses under paragraph 1 above.

**(b) Observations on the implementation of the article**

475. The Armenian authorities indicated that the provision under review has been implemented via the direct application of the Convention per Article 6 of the Constitution of the Republic of Armenia.

#### **Article 44 Extradition**

##### **Paragraph 8**

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

**(a) Summary of information relevant to reviewing the implementation of the article**

476. Armenia clarified that when the extradition of an offender is conducted based on UNCAC, procedural requirements stipulated in the Convention can be applied directly as per Article 6 of the Constitution (as cited under paragraph 1 above).

**(b) Observations on the implementation of the article**

477. UNCAC can be applied directly with regard to the procedural rules applicable to extradition cases based on the Convention as indicated by Armenia. As also noted above, Armenia does not contain any conditions in relation to the minimum penalty requirement for extradition which are applicable to UNCAC based extradition requests.

## **Article 44 Extradition**

### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

478. Armenia has cited the following implementation measures.

*The Criminal Procedure Code.*

*Chapter 54*

*Legal Assistance in Criminal Matters in Accordance with International Treaties*

Articles 478-478.4 as cited under paragraph 1 above.

**(b) Observations on the implementation of the article**

479. Articles 478.1, 478.2, 478.3 and 478.4 contain provisions streamlining the arrest and detention for extradition of the persons who committed crimes outside of Armenia.

480. Armenia has partially implemented the provision under review and is recommended to consider further expediting extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which UNCAC applies. That could be also addressed in a detailed guideline for processing extradition requests under UNCAC for relevant Armenian authorities in charge of extradition.

## **Article 44 Extradition**

### **Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

481. Armenia has cited the following implementation measures.

***The Criminal Procedure Code***

Article 478.1, Article 478.2, Article 478.3 as cited under paragraph 1 above.

***Article 144. Recognizance/written undertaking not to leave***

1. Suspect or accused who has signed a recognizance/written undertaking not to leave may not leave for another place or change his place of residence without permission of inquest body, investigator, prosecutor or court. He shall be obliged to appear on call of inquest body, investigator, prosecutor and court and inform them on changing his place of residence.

2. Recognizance not leave from suspect or accused shall be taken by body conducting criminal proceeding.

***Article 145. Personal guaranty***

1. Personal guaranty shall be a written undertaking of trustworthy persons on ensuring by their word and sum of money to be paid the proper behaviour of suspect or accused, his appearance on call of body conducting criminal proceeding and fulfilment of other procedural obligations.

2. An adult natural person may be a guarantor. Moreover the person shall pay a sum of money in the amount of 500-fold of the minimum salary.

3. The number of guarantors may not be less than two. In special cases personal guaranty may apply as a measure of restraint upon availability of one highly trustworthy person.

***Article 146. Guaranty of an entity***

1. Guarantee of an entity shall be a written undertaking of a trustworthy legal entity on ensuring by its reputation and sum of money to be paid the proper behaviour of suspect or accused, his appearance on call of body conducting criminal proceeding and fulfilment of other procedural obligations.

2. When assuming such obligation the legal entity shall pay a sum of money in the amount of 1000-fold of the minimum salary.

***Article 147. Procedure for implementation of guaranty***

1. When finding that the guarantor is trustworthy and personal guaranty or guaranty of an entity may apply to suspect or accused as a measure of restraint, body conducting criminal proceeding shall familiarise the applicant, including the representative of the legal entity with the content of suspicion or charge, shall explain him the rights and obligations of a guarantor and shall warn about the liability of guarantor. Thereafter the applicant shall have the right to affirm or withdraw his request.

2. Performance of procedural steps provided for by part 1 of this Article shall be reflected in protocol. The guarantor shall be mentioned in decision of body conducting criminal proceeding when imposing personal guaranty or guaranty of an entity as a measure of restraint. Copy of the relevant decision shall be promptly transferred to the guarantor.

3. The sum of money posted/paid by the guarantor shall be turned into state revenue by decision of body conducting criminal proceeding when the guarantor:

(1) fails to fulfil his obligation of ensuring the proper conduct of suspect or accused;

(2) voluntarily withdraw the guaranty.

4. Except for cases provided for by part 3 of this Article, in all other cases the sum of money shall be returned to the guarantor.

5. Decision about turning the sum of money posted/paid by the guarantor into state revenue may be appealed through judicial procedure.

***Article 148. Placing under supervision***

1. Placing under supervision shall be to charge the parents of minor suspect or accused, guardians, trustees thereof or administration of closed child care centres where they are kept, with ensuring the proper behaviour of suspect or accused, his appearance on call of body conducting criminal proceeding and fulfilment of other procedural obligations.
2. When placing under supervision as a measure of restraint applies to a minor, the body conducting criminal proceeding shall familiarise his parents with the decision made, guardians, trustees thereof, representative of administration of closed child care centre and shall hand them over the copy of decision, shall familiarise with the content of suspicion or charge, shall explain them their rights, obligations and responsibilities, which shall be reflected in the protocol.
3. Parents, guardians, trustees shall have the right to refuse to perform supervision over minor suspect or accused.
4. For failure to perform their obligations persons who have assumed the obligation of supervision shall bear liability provided for by law.

**(b) Observations on the implementation of the article**

482. Article 478.1 outlines the procedure for arresting persons who have committed crimes outside Armenia
483. Article 478.2 of CPC of Armenia provides for the procedure of provisional arrest of the persons whose extradition is sought for up to 40 days based on the motion of the competent body of the foreign state.
484. Article 478.3 of CPC provides for the procedure of detention of a person whose extradition is sought for a period of up to two months. Paragraph 7 of Article 478.3, additionally, stipulates that other measures of restraint contained in CPC may be applied to a person whose extradition is sought in case of his release from detention for a term of up to 8 months (including Article 144 Recognizance/written undertaking not to leave, Article 145 Personal guaranty and Article 146. Guaranty of an entity).
485. Armenia has legislatively implemented the provision under review.

**(c) Successes and good practices**

486. The provisions of paragraph 2 of Article 478.2 of CPC allowing for the expedited delivery of the motion of the competent body of the foreign state for provisional arrest, or the decision or criminal judgement thereof on selecting detention as a measure of restraint of the person whose extradition is sought, particularly, via Interpol or any other international organisation conducting the prosecution of the person that the Republic of Armenia is a member of can be regarded as a good practice.

**Article 44 Extradition**

**Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The*

*States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

487. Armenia has cited the following implementation measures.

*Article 16. CC Extradition of persons who committed a crime* as cited under paragraph 1 above.

*Article 479 CPC. Authorities competent for issuing decisions on granting or refusing extradition and the procedure for appealing these decisions* as cited under paragraph 1 above.

**(b) Observations on the implementation of the article**

488. According to Article 479 (9) of the CPC, Armenia will prosecute any person, including its national, in case of refusal of extradition, in case there are sufficient grounds under the CPC to instigate the prosecution. Thus, it appears that such kind of prosecution would be instigated as long as the dual criminality test is met under Armenian law. Moreover, Article 479 (9) further provides that in cases provided by corresponding international treaty (*such as UNCAC*) the Prosecutor General of the Republic of Armenia shall take over the relevant case regarding criminal prosecution from the court proceedings of relevant state.

489. Additionally, this provision can be applied directly per Article 6 of the Constitution of Armenia.

490. Armenia has legislatively implemented the provision under review.

**Article 44 Extradition**

**Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

491. According to the Article 30.1 of the Constitution of the Republic of Armenia, the nationals of the republic of Armenia are not subject to extradition to other country, except the cases provided by the international treaties which Armenia has ratified. The Republic of Armenia has not ratified any international treaty which provides for the extradition of its own nationals.

492. Armenia has cited the following implementation measures.

*Article 30.1 Constitution*

A child born of citizens of the Republic of Armenia, shall be a citizen of the Republic of Armenia. Every child whose one parent a citizen of the Republic of Armenia, shall have the right to citizenship of the Republic of Armenia.

The procedure for being granted or terminating the citizenship of the Republic of Armenia shall be defined by the law.

No person may be deprived of citizenship of the Republic of Armenia, or the right to change citizenship.

A citizen of the Republic of Armenia may not be extradited to a foreign state save for cases stipulated in the international treaties ratified by the Republic of Armenia.

The rights and responsibilities of the persons having dual citizenship shall be defined by the law.

**(b) Observations on the implementation of the article**

493. Please see comments to para 11 above. It is also noted that despite the provision of the Constitution (Article 30.1) that allows for the extradition of an Armenian national based on an international treaty, Article 16 of CC does not envisage such a possibility, which may create practical difficulties in the future. In that regard, Armenia is recommended to harmonize the provisions of Article 30.1 of the Constitution with Article 16 of CC.

**Article 44 Extradition**

**Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

**(a) Summary of information relevant to reviewing the implementation of the article**

494. A verdict of a foreign State concerning a citizen of the Republic of Armenia who is not a subject to extradition can be recognized and implemented in the Republic of Armenia according to the Articles of the Chapter 54<sup>3</sup> of CPC.

495. The grounds for recognition of foreign states' courts' sentences in the Republic of Armenia and the types of verdicts (decisions) subject to recognition are established by bilateral treaties signed between Armenia and foreign states or multilateral international treaties to which both the corresponding country and Armenia are parties.

496. Armenia has cited the following implementation measures.

*The Criminal Procedure Code*

**CHAPTER 54<sup>3</sup>**

**RECOGNITION OF CRIMINAL JUDGMENTS OF THE COURTS OF FOREIGN STATES AND THOSE OF INTERNATIONAL COURTS IN THE TERRITORY OF THE REPUBLIC OF ARMENIA AND THE LEGAL CONSEQUENCES THEREOF**

*Article 499<sup>8</sup>. Recognition of criminal judgments of foreign States in the Republic of Armenia*

1. Criminal judgments of the courts of foreign States shall be subject to recognition in the Republic of Armenia in the cases provided for by international treaties of the Republic of Armenia.

2. The grounds for recognition of criminal judgments of the courts of foreign States in the Republic of Armenia, types of criminal judgments (decisions) subject to recognition shall be defined by the international treaty of the Republic of Armenia concluded with the State concerned or applicable upon the participation thereof.

3. The criminal judgment of the court of a foreign State shall be recognised in the Republic of Armenia by:

(1) the Criminal Chamber of the Court of Cassation of the Republic of Armenia, where the criminal judgment subject to recognition has been delivered by the supreme judicial authority of the foreign State;

(2) the Criminal Court of Appeals of the Republic of Armenia, where the criminal judgment subject to recognition has been delivered by the competent court of appeals of the foreign State;

(3) the Court of First Instance of the Republic of Armenia in accordance with jurisdiction defined by this Code, where the criminal judgment subject to recognition has been delivered by a court of first instance of the foreign State.

4. The competent court of the Republic of Armenia shall adopt a decision in respect of the criminal judgment of the court of a foreign State under part 3 of this Article.

The criminal judgment of the court of a foreign State recognised in the Republic of Armenia shall be executed in the Republic of Armenia in accordance with penitentiary legislation of the Republic of Armenia, whereas in respect of compensation of damages and other levies of execution on property — in accordance with legislation on compulsory enforcement of judicial acts of the Republic of Armenia with the exceptions provided for by international treaties.

***Article 499<sup>9</sup>. Conditions for recognition of criminal judgments of the court of a foreign State and grounds for the rejection thereof***

1. When taking a decision on recognition of a criminal judgment of the court of a foreign State the courts of the Republic of Armenia which are competent under part 3 of Article 499<sup>8</sup> of this Code shall find out to what extent the conditions, serving as ground for taking a decision on recognition and provided for by relevant international treaty, are fulfilled.

Fulfilment of these conditions as well as the absence of grounds for rejecting the recognition and execution of the criminal judgment under the international treaty concerned, shall serve as grounds for taking a decision on recognition of the criminal judgment of the court a foreign State and on the submission thereof for execution in the Republic of Armenia.

2. Recognition of a criminal judgment of the court of a foreign State may be rejected on the grounds provided for by international treaties of the Republic of Armenia, taking into account also the statements or reservations — made by the Republic of Armenia in a prescribed manner — concerning the international treaty applied, as well as when:

(1) the act for which the person has been convicted is not considered as criminally punishable pursuant to the law of the Republic of Armenia;

(2) death penalty is imposed as a punishment upon the criminal judgment.

***Article 499<sup>10</sup>. Recognising and rejecting criminal judgments of international courts***

1. Criminal judgments of an international court operating with the membership (participation) of the Republic of Armenia shall be recognised in the territory of the Republic of Armenia where it is provided for by the founding treaty of this court or other international treaty (treaties) defining the jurisdiction thereof.

The Criminal Chamber of the Court of Cassation of the Republic of Armenia shall take a decision on recognising the criminal judgment of an international court in the Republic of Armenia, under the procedure established by the international treaty defining the jurisdiction of the international court.

2. Criminal judgments of an international court shall be recognised in the Republic of Armenia under the procedure provided for by international treaties defining the jurisdiction of this court, and the recognition may be rejected on the grounds provided for by this treaty as well as in the cases provided for by points 1 and 2 of part 2 of Article 499<sup>9</sup> of this Code.

3. An interstate body operating with the membership (participation) of the Republic of Armenia, which is entitled to examine criminal cases and deliver criminal judgments thereon under its founding

treaty or other international treaty (treaties) defining the powers thereof, shall be deemed as an international court.

4. Execution of criminal judgments of international courts in the Republic of Armenia shall be carried out in accordance with penitentiary legislation of the Republic of Armenia, whereas in respect of compensation of damages and other levies of execution on property — in accordance with legislation on compulsory enforcement of judicial acts of the Republic of Armenia with the exceptions provided for by international treaties of the Republic of Armenia.

***Article 499<sup>11</sup>. Legal consequences of recognition of criminal judgments of the courts of foreign States and criminal judgments of international courts***

Recognition of criminal judgments of the courts of foreign States or criminal judgments of international courts in the territory of the Republic of Armenia shall entail the same legal consequences as those deriving from the criminal judgments of the courts of the Republic of Armenia having entered into legal force.

***Article 499<sup>12</sup>. Execution of criminal judgments of international courts without recognition***

1. Where the execution of criminal judgments of an international court without the recognition thereof is provided for by its founding treaty or other international treaty (treaties) defining the jurisdiction thereof, the criminal judgment concerned shall be forwarded to the relevant penitentiary institution for execution immediately after having been received by the Ministry of Justice of the Republic of Armenia under the procedure established by regulations of the international court concerned.

2. Where relevant regulation of the international court concerned does not provide for any obligation of immediate execution or execution in the form of recognition of the criminal judgment thereof, a revision proceedings of the case shall be initiated on the basis of this criminal judgment, in accordance with Articles 408<sup>1</sup> and 410<sup>1</sup> of this Code.

***Article 499<sup>13</sup>. Legal grounds and procedure for the execution of criminal judgments of international courts***

1. Criminal judgments of international courts may be executed in the territory of the Republic of Armenia in case where the Republic of Armenia is a party to international treaties relating the court concerned.

2. Criminal judgments of international courts may be executed in the territory of the Republic of Armenia also in the case where, without assuming such international obligation in the Republic of Armenia, a written agreement has been reached within the scope of competences of the court concerned with the international court in respect of execution of the criminal judgment of this court in the Republic of Armenia.

3. Criminal judgments of international courts shall be submitted for execution in the territory of the Republic of Armenia in accordance with international obligations of the Republic of Armenia and without taking a decision on recognising the criminal judgment by the competent court of the Republic of Armenia, unless otherwise provided for by the mentioned obligations.

4. For the purpose of execution of the criminal judgment of an international court in the territory of the Republic of Armenia, the Minister of Justice of the Republic of Armenia shall, in accordance with international obligations assumed by the Republic of Armenia, determine the penitentiary institution where the convicted person must serve the punishment imposed by the criminal judgment.

5. The regime of penitentiary law of the Republic of Armenia shall apply to the person serving punishment in the Republic of Armenia pursuant to the criminal judgment of an international court, with the exceptions provided for by international treaties.

***Article 499<sup>14</sup>. Legal consequences of execution of criminal judgments of the courts foreign States or criminal judgments of international courts***

1. The regime of penitentiary law of the Republic of Armenia shall extend to the execution of criminal judgments of the courts of foreign States or criminal judgments of international courts.

It shall entail the same legal consequences for the person serving punishment as those which would arise if the person concerned has been convicted in the territory of the Republic of Armenia and upon criminal judgment delivered by its competent court and entered into legal force.

2. The person serving — in the Republic of Armenia — the full punishment or unserved part of punishment imposed by the criminal judgment of the court of a foreign State or criminal judgment of an international court, shall avail of the rights of early release arising from relevant international treaties of the Republic of Armenia, including the rights of pardon and amnesty.

3. After having served the full punishment or unserved part of the punishment or having been early released on the grounds provided for by part 2 of this Article the person may stay in the territory of the Republic of Armenia in accordance with his or her status and legislation of the Republic of Armenia (as a citizen of the Republic of Armenia, citizen of a foreign State, stateless person, etc.).

Meanwhile, where the person having served the punishment or having been early released is not a citizen of the Republic of Armenia and, according to relevant international treaty of the Republic of Armenia, may be transferred to a foreign State which is obliged to accept him or her or to any other State having agreed to accept him or her, this person shall be transferred to the State concerned upon his or her consent.

4. Where the criminal judgment of the court of a foreign State or criminal judgment of an international court undergoes revision — in the course of execution thereof in the territory of the Republic of Armenia — by the court of a foreign State or international court competent for that end, the execution shall be terminated or continued in accordance with the criminal judgment delivered in the result of revision and under the procedure and conditions established by international treaties of the Republic of Armenia.

5. The competent court of the Republic of Armenia may revise the criminal judgment of the court of a foreign State or criminal judgment of an international court solely in the cases provided for by international treaties of the Republic of Armenia.

**(b) Observations on the implementation of the article**

497. As indicated by Armenia, based on the direct application of the Convention per Article 6 of the Constitution of Armenia and Article 499<sup>8</sup> of CPC, Armenia, upon application of the requesting State Party, will consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

**Article 44 Extradition**

**Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

498. Armenia has cited the following implementation measures.

*Article 478.4 CPC Rights of persons taken into custody* as cited under paragraph 1 above.

**(b) Observations on the implementation of the article**

499. Article 478.4 of CPC of Armenia provides for fair treatment of persons whose extradition is sought during extradition proceedings.

**Article 44 Extradition**

## Paragraph 15

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

### (a) Summary of information relevant to reviewing the implementation of the article

500. This provision of UNCAC is implemented via direct application of the Convention per Article 6 of the Constitution of the Republic of Armenia, as explained under paragraph 1 above.

### (b) Observations on the implementation of the article

501. As indicated by the Armenian authorities, the provision under review is directly implemented.

## Article 44 Extradition

### Paragraph 16

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

### (a) Summary of information relevant to reviewing the implementation of the article

502. Armenia has clarified that the offences on fiscal matters are not provided by the legislation of the Republic of Armenia as a basis for refusing to extradite.

503. Moreover, Armenia acceded to *the European Convention on extradition (13.12.1957). Second Additional Protocol to the European Convention on Extradition*. Article 2 of the Protocol stipulates that

Article 5 of the Convention shall be replaced by the following provisions:

"Fiscal offences. For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature. Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party."

### (b) Observations on the implementation of the article

504. Since the provision under review can be applied directly, based on Article 6 of the Constitution of Armenia, extradition requests received by Armenia based on UNCAC cannot be refused on the sole ground that the offence is also considered to involve fiscal matters.

## Article 44 Extradition

## **Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

505. Armenia has referred to the answers given under paragraph 8 above.

### **(b) Observations on the implementation of the article**

506. As explained above (e.g., paragraph 1 and paragraph 8), according to Article 6 of the Constitution, the provision under review can be applied directly and Armenia, will, before refusing extradition and where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

## **Article 44 Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

507. Armenia has cited the following implementation measures.

Armenia acceded to the European Convention on extradition (13.12.1957).

Armenia is a party to the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Minsk, 22.01.1993).

Armenia is a party to the CIS Convention on Legal Assistance in Legal Affairs on Civil, Family and Criminal Cases (Chisinau, 07.10.2002).

The Republic of Armenia has signed an Agreement with the Government of the Republic of Armenia and the Government of the Republic of Bulgaria on Extradition. On 10.04.1995

The Republic of Armenia has signed a bilateral extradition treaty with Syria in 20.04.2002.

The Republic of Armenia has signed a bilateral extradition treaty with Georgia on 05.07.2006.

The Republic of Armenia has signed a bilateral extradition treaty with the Islamic Republic of Iran on 15.04.2007.

The Republic of Armenia has signed a bilateral extradition treaty with Egypt in 23.03.2010.

### **(b) Observations on the implementation of the article**

508. Armenia has entered into a number of bilateral and multilateral agreements to enhance the effectiveness of extradition and is encouraged to continue the practice of concluding bilateral extradition treaties.

## **Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

509. The Republic of Armenia is a party to bilateral and multilateral international agreements governing the transfer of prisoners.

Armenia participates in the following multilateral treaties:

1. European Convention on the Transfer of Sentenced Persons of 21/3/1983.
2. Convention “On Civil, Family and Criminal Law Issues Legal Assistance and Legal Relationships” signed in Minsk on 22/1/1993 within the scope of CIS.
3. Convention on the transfer of convicted persons for further punishment signed in Moscow on 6/3/1998 within the scope of CIS.
4. Convention on Legal Assistance in Legal Affairs on Civil, Family and Criminal Cases signed in Chisinau on 07/10/2002 within the scope of CIS.

Armenia has concluded the following bilateral treaties on the transfer of sentenced persons:

1. Treaty between the Republic of Armenia and Georgia on the transfer of sentenced persons, signed in Tbilisi 06/04/1996.
2. Treaty between the Republic of Armenia and Ukraine on the transfer of sentenced persons, signed in Kiev 1/3/2001.
3. Treaty between the Republic of Armenia and the Islamic Republic of Iran on the transfer of sentenced persons, signed in Tehran 12/11/2012.

### **(b) Observations on the implementation of the article**

510. Armenia has implemented the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

511. The Republic of Armenia acceded to various international agreements on legal assistance in criminal matters, including European Convention on Mutual legal Assistance in criminal matters 20.04.1959, Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (signed 22.01.1993 in Minsk), Convention on Legal

Assistance and Legal Relations in Civil, Family and Criminal Cases” (signed in Kishinev on 07.10.2002).

512. The Criminal Procedure Code of the Republic of Armenia defines two different legal regimes of legal assistance in criminal matters. 1. Legal assistance in criminal matters in accordance with international treaties (Chapter 54 of the Criminal Procedure Code), which is applicable to the provision of mutual legal assistance based on UNCAC; and 2. Legal assistance in criminal matters in the absence of international treaties (Chapter 54.1 of the Criminal Procedure Code of the Republic of Armenia).
513. Additionally, according to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.
514. Therefore, the provisions of the Convention, particularly, its procedural requirements are self-executing and can be applied directly.

Armenia has cited the following implementation measures.

***Criminal Procedure Code***

***CHAPTER 54. LEGAL ASSISTANCE IN CRIMINAL CASES IN ACCORDANCE WITH INTERNATIONAL TREATIES***

***Article 474. Procedure for providing legal assistance in criminal matters in inter-state relations***

1. Interrogation, inspection, seizure, search, expert examination and other procedural steps provided for by this Code conducted in the territory of the foreign state upon assignment or request (hereinafter referred to as “request”) of courts, prosecutors, investigators, inquest bodies of the Republic of Armenia, as well as procedural steps provided for by this Code conducted in the territory of the Republic of Armenia upon request of competent authorities and officials (hereinafter referred to as “competent authorities”) of the foreign state, shall be carried out in accordance with international treaties of the Republic of Armenia, in the manner prescribed by those treaties and this Code.

2. When carrying out procedural steps provided for by this Code in the territory of the Republic of Armenia upon request of competent authorities of the foreign state, courts, prosecutors, investigators, inquest bodies of the Republic of Armenia shall apply the norms prescribed in this Code with exceptions provided for by corresponding international treaties.

When carrying out procedural steps in the territory of the Republic of Armenia, pursuant to requests of competent authorities of the foreign state, courts, prosecutors, investigators, inquest bodies of the Republic of Armenia may apply the norms of criminal procedure legislation of the corresponding foreign state, where it is envisaged by an effective international treaty which the Republic of Armenia and the concerned foreign state are parties to.

Requests of the competent authorities of the foreign states shall be acted upon within the time limits provided for by this Code unless other time limits are stipulated by corresponding international treaty.

***Article 475. Bodies responsible for communication relating to legal assistance issues***

1. Communication concerning provision of legal assistance in criminal matters in accordance with international treaties of the Republic of Armenia shall be carried out:

- 1) through General Prosecutor’s Office of the Republic of Armenia regarding execution of enquires to conduct procedural steps related to cases in pre-trial stage;

2) through Ministry of Justice of the Republic of Armenia regarding execution of requests to conduct procedural steps, including execution of judgments, related to cases in court proceedings; When provided for by international treaties of the Republic of Armenia, communication may be carried out via diplomatic channels through diplomatic representations and consular offices of the Republic of Armenia in foreign states, which, upon receiving corresponding requests, shall forward them without delay to competent authorities specified in this Part to submit for execution.

2. When request to carry out procedural steps is made by courts, prosecutors, investigators, inquest bodies of the Republic of Armenia, they, in accordance with international treaties of the Republic of Armenia, shall submit the drawn up requests to the corresponding competent authority specified in part 1 of this Article for forwarding them to the competent authority of the foreign state for the purpose of execution thereof.

After the competent authorities of the foreign state execute the request of courts, prosecutors, investigators, inquest bodies of the Republic of Armenia and submit the results to the competent authority specified in part 1 of the Article, the latter shall immediately report back on execution to the court, prosecutor, investigator, inquest body of the Republic of Armenia which has drawn up the request.

3. When an request to carry out procedural steps is made by competent authorities of the foreign state, and in accordance with international treaties of the Republic of Armenia it is submitted to the competent authority specified in part 1 of this Article, the latter shall submit the request for execution to the court, prosecutor, investigator, inquest body of the Republic of Armenia which, in accordance with this Code, is responsible for execution of the request in question.

Upon carrying out the assignment the court, prosecutor, investigator, inquest body shall submit it to the corresponding competent authority under part 1 of this Article, which shall immediately report back on execution to the competent authority of the foreign state.

4. In cases provided for by international treaties of the Republic of Armenia requests to conduct procedural steps may be made, delivered and outcomes of their execution may be transferred through direct communication between the corresponding competent authority of the foreign state and the corresponding court, prosecutor, investigator, inquest body of the Republic of Armenia.

Further, when the execution of an request of the competent authority of the foreign state received through direct communication does not fall within jurisdiction of the court, prosecutor, investigator, inquest body of the Republic of Armenia which has received the request, it shall be readdressed to the competent court, prosecutor, investigator, inquest body of the Republic of Armenia and a notification thereon shall be send to the corresponding body of the foreign state that has made the request.

The competent court, prosecutor, investigator, inquest body of the Republic of Armenia that has received the request via readdressing shall execute the request and forward it to the competent authority of the foreign state in the manner provided for by this part and concurrently notify the corresponding body of the Republic of Armenia specified in part 1 of this Article about the request and execution thereof.

In cases provided for by this part the corresponding court, prosecutor, investigator, inquest body of the Republic of Armenia shall notify the corresponding competent authority referred to in part 1 of this Article about any reciprocal request, receipt and execution thereof through direct communication briefly indicating the name of the enquiring body (the name and position of the official), content of the request, the executing body or official, content of execution, time limits for making and executing the request.

5. Where, in accordance with international treaties of the Republic of Armenia, execution of an request received from the competent authority of the foreign state is impossible or is not stipulated by the international treaty concerned, the corresponding body of the foreign state shall be notified about impossibility to execute the request and the reasons thereof as prescribed by this Article.

***Article 476. Execution of requests provided for by more than one international treaty***

1. Where the obligation of the competent authority of the foreign state to execute requests concerning procedural steps arises from more than one international treaty of the Republic of Armenia signed with the state concerned, the following rules shall apply:

(1) where the request includes indication of a particular international treaty, based on which it is drawn up and submitted, the court, prosecutor, investigator, inquest body of the Republic of Armenia executing the request shall be governed by that international treaty;

(2) where the request includes indication of more than one international treaty in force between the foreign state concerned and the Republic of Armenia, the court, prosecutor, investigator, inquest body of the Republic of Armenia executing the request shall be governed by the international treaty indicated in the request, which offers the most comprehensive solution to the issues concerning execution of the request concurrently applying those provisions of the other treaty (treaties), which are not envisaged by the international treaty offering the most comprehensive solution, but provide opportunity to execute the request more completely and promptly;

(3) where there is no indication of any international treaty in force between the state concerned and the Republic of Armenia, the court, prosecutor, investigator, inquest body of the Republic of Armenia executing the request shall be governed by the international treaty, which offers a more comprehensive solution to issues concerning full execution of the request not excluding application of provisions of other treaties in force between the foreign state concerned and the Republic of Armenia, that complement the treaty which the court, prosecutor, investigator, inquest body are governed with.

2. When there is an effective multilateral international treaty to which the Republic of Armenia and the foreign state making the request are parties, which in matters of extradition prevails over other international treaties in force between the parties and regulating extradition matters, the court, prosecutor, investigator, inquest body of the Republic of Armenia shall be governed by that multilateral international treaty.

***Article 477. Refusal to execute requests stipulated by international treaties***

Execution of requests concerning procedural steps submitted by competent authorities of the foreign state pursuant to international treaties of the Republic of Armenia may be refused on the grounds provided for by those treaties.

Further, where the request is submitted by the competent authority of the foreign state, which the Republic of Armenia is bound to by more than one corresponding international treaty, execution of request may be refused only when the circumstance (condition) serving as a ground for refusal is provided for by all international treaties, irrespective of whether the request has been drawn up and submitted in accordance with the international treaty envisaging the circumstance (condition) serving as a ground for refusal or in accordance with another international treaty, or when execution of the request may harm the constitutional order, sovereignty, national security of the Republic of Armenia, and if the possibility of refusing execution of the request on the mentioned grounds is envisaged by at least one international treaty in force which the foreign state concerned and the Republic of Armenia are parties to.

**(b) Observations on the implementation of the article**

515. In the course of the country visit Armenian authorities confirmed that they would be willing to provide the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention. Yet, due to the absence of actual practical examples of such cooperation based on the Convention, it is difficult to assess the level of the practical implementation of the provision under review.

516. Armenia has partially implemented the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

517. Armenia referred to the response given under paragraph 1 above.

**(b) Observations on the implementation of the article**

518. According to Article 474 of CPC of Armenia, legal assistance in criminal matters in inter-state relation shall be carried out in accordance with international treaties of the Republic of Armenia, in the manner prescribed by those treaties and CPC. Additionally, according to Article 6 of the Constitution, the provisions of the Convention are self-executing. Chapter 54 of CPC does not contain a dual criminality requirement applicable to the mutual legal assistance process based on an international treaty such as UNCAC. Therefore, Armenia will be able to provide mutual legal assistance to the fullest possible extent in relation to offences for which a legal person may be held liable to other States Parties based on paragraph 2 of Article 46 of UNCAC. Although there is no criminal liability of legal persons provided in Armenian law, as confirmed by the Armenian authorities during the country visit, dual criminality is not a required condition for the provision of mutual legal assistance and such assistance will be provided. However, no actual examples of the provision of such assistance exist to-date.

519. Armenia is recommended to produce a detailed guideline for processing mutual legal assistance requests under UNCAC for its relevant bodies in charge of mutual legal assistance to ensure that the process is conducted efficiently.

## **Article 46 Mutual legal assistance**

### **Subparagraph 3 (a) to 3 (i)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*
- (j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*
- (k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

520. Armenia has cited the following implementation measures.

*Articles 474, 475 of CPC as cited in paragraph 1 above.*

521. Regarding examples of implementation, Armenia has cited the following cases.

In 2011, one official investigative request was presented to Russia to examine an Armenian citizen suspected of fraud (Article 314 CC) respectively, the required information has been received and used in the subsequent investigation.

In 2011 there was also 2 demands to Russia for interviewing of suspected persons for commission of acts stipulated in Article 179 of the Criminal Code of Armenia (“Squandering and embezzlement”).

In 2012 one demand was presented to Russia for interviewing of suspected person for commission acts described by Article 179 Criminal Code of Armenia (“Squandering and embezzlement”).

**(b) Observations on the implementation of the article**

522. According to Article 474 of CPC of Armenia legal assistance in criminal matters in inter-state relation shall be carried out in accordance with international treaties of the Republic of Armenia, in the manner prescribed by those treaties and CPC. Additionally, according to Article 6 of the Constitution, the provisions of the Convention are self-executing. Therefore, Armenia will be able to provide mutual legal assistance listed in the subparagraphs of Article 46 under review. However, no actual examples of the provision of such assistance based on the Convention exist to date. The authorities also indicated that there was no case management system that would allow for a proper recording of incoming mutual legal assistance requests.

523. Although, as indicated by the Armenian authorities, the provision under review is directly implemented, the lack of case examples and statistical information does not allow for making of comprehensive observations on how the provision under review is implemented in practice. The Armenian authorities are recommended to streamline their efforts to put in place a case management system allowing the classification and use of statistics for both extradition and mutual legal assistance, including on issues of using the UNCAC as the legal basis, which will provide a better picture of how the relevant legal framework is implemented in practice.

**Article 46 Mutual legal assistance**

**Paragraph 4**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

524. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

525. The provisions of the Convention, particularly, its procedural requirements such as paragraph 4 of Article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

526. As indicated by the Armenian authorities, the provision under review is directly implemented. However, no practical examples of the implementation were provided.

**Article 46 Mutual legal assistance**

**Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

527. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 5 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

528. Additionally, according to the Article 172 of the Criminal Procedure Code, measures prescribed by law shall be taken during a criminal proceeding to secure the confidentiality of the information which constitutes an official, commercial or any other secret protected by law. While carrying out court proceedings, no information which constitutes an official, commercial or any other secret protected by law shall be gathered, preserved, used or disseminated without necessity. Upon the order of the court as well as of the inquiry body, investigator, prosecutor, the participants of the investigation and other court proceedings shall not disclose any of the mentioned information, for which they sign a document.

529. According to the Article 474 of CPC (as cited under paragraph 1 of article 44 above), with the inquiry of the foreign State's competent body during interrogation, examination, seizure, search, expertise and other judicial actions the Court, Prosecutor, Investigator, Investigation Body of the Republic of Armenia implement the norms of the Criminal Code, with the exceptions established by the corresponding International Treaties.

530. Armenia has cited the following implementation measure.

***Criminal Procedure Code***

***Article 172. Retrieving and keeping of official and trade secret***

1. In the course of criminal proceedings measures provided for by law shall be undertaken to preserve the information comprising official, trade and other secrets protected by law.

2. Information comprising official, trade and other secrets protected by law shall not be collected, stored, used and disseminated when performing procedural steps unless necessary. Upon demand of court, as well as inquest body, investigator, prosecutor the participants of investigative and judicial operations shall be obliged not to publicize the information referred to, for which they sign a gag order.

3. Persons who are asked by the body conducting criminal proceeding to disclose or submit information comprising secrets protected by law in accordance with the provisions of this Code, may not refuse to fulfil the demand by invoking the necessity of keeping official, trade and other secret protected by law, but shall have the right to receive in advance a clarification, which is subject to reflection in the protocol of relevant investigative operation or procedural step, from court, prosecutor, investigator, inquest body confirming the necessity of receiving the mentioned information.

3<sup>1</sup>. Bodies conducting criminal prosecution may receive information constituting a notarial secret on the basis of court decision.

3<sup>2</sup>. Bodies conducting criminal prosecution may receive information constituting a bank secret concerning the persons involved as suspect or accused in criminal case on the basis of court warrant on search or seizure.

4. A state officer/servant testifying on information entrusted to him, comprising official, trade and other secrets protected by law and, irrespective of the form of ownership, an employee of enterprise, institution, organisation shall inform thereon in writing the relevant head unless it is directly forbidden by the body conducting proceeding.

5. Evidences concerning information comprising official, trade and other secrets protected by law may be examined in a court hearing behind the closed doors upon demand of those persons, who are threatened by disclosure of the mentioned information.

**(b) Observations on the implementation of the article**

531. As indicated by the Armenian authorities, the provision under review is directly implemented. However, no practical examples of implementation were provided.

**Article 46 Mutual legal assistance**

**Paragraph 6**

*6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

532. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. Therefore, the provisions of the Convention, including paragraph 6 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

533. Additionally, Article 476 of CPC, as cited under paragraph 1 above, stipulates a procedure for the execution of incoming mutual legal assistance requests where such requests are based on more than one international treaty in force between the requesting state and Armenia

**(b) Observations on the implementation of the article**

534. Armenian legislation is in line with the provision under review.

**(c) Successes and good practices**

535. The provisions of Article 476 (1(2)) stipulating a detailed procedure of the execution of an incoming mutual legal assistance request, where it is based on more than one international treaty, can be regarded as a good practice conducive to efficient execution of mutual legal assistance requests.

## **Article 46 Mutual legal assistance**

### **Paragraph 7**

*7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply those paragraphs if they facilitate cooperation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

536. The provision under review is self-executing and can be applied directly pursuant to Article 6 of the Constitution of Armenia.

**(b) Observations on the implementation of the article**

537. As indicated by the Armenian authorities, the provision under review is directly implemented.

## **Article 46 Mutual legal assistance**

### **Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

538. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

539. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 8 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

540. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (a)**

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

**(a) Summary of information relevant to reviewing the implementation of the article**

541. The Republic of Armenia does not make the absence of dual criminality a condition for rendering mutual legal assistance in accordance with the international treaty.

542. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

543. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 9(a) of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

544. Please see observations under paragraph 2 above. Armenia indicated that dual criminality is not required for the provision of mutual legal assistance based on UNCAC. However, no practical examples of rendering such assistance exist to date.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (b)**

*9.( b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such*

*assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

545. Armenia has referred to the responses given under subparagraph 9 (a) above.

**(b) Observations on the implementation of the article**

546. Please see comments to subparagraph 9 (a) above.

**Article 46 Mutual legal assistance**

**Subparagraph 9 (c)**

*9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

**(a) Summary of information relevant to reviewing the implementation of the article**

547. Armenia has referred to the responses given under subparagraph 9 (a) above.

**(b) Observations on the implementation of the article**

548. Please see comments to subparagraph 9 (a) above.

**Article 46 Mutual legal assistance**

**Paragraph 10**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

549. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

550. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 10 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

551. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 11**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

552. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

553. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 11 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

554. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

555. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

556. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 12 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

557. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

558. Armenia submitted the necessary notification as required by the provision under review to the U.N. Secretary-General. Armenia designated the Prosecutor General's Office as the central authority for the requests relevant to legal assistance in pretrial period and the Ministry of Justice as the central authority for the requests relevant to legal assistance during trial period and with regard to the execution of court judgments.

**(b) Observations on the implementation of the article**

559. Armenia has implemented the provision under review.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

560. Armenia notified the Secretary-General of the United Nations that it would accept the requests in Armenian, English and Russian languages.

**(b) Observations on the implementation of the article**

561. Armenia has implemented the provision under review.

## **Article 46 Mutual legal assistance**

### **Paragraph 15 and 16**

*15. A request for mutual legal assistance shall contain:*

*(a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

*(e) Where possible, the identity, location and nationality of any person concerned; and*

*(f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

562. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

563. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraphs 15 and 16 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

564. As indicated by the Armenian authorities, the provision under review is directly implemented.

## Article 46 Mutual legal assistance

### Paragraph 17

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

#### (a) Summary of information relevant to reviewing the implementation of the article

565. Armenia has cited the following implementation measure.

*Criminal Procedure Code.*

*Article 474. Procedure of Providing Legal Assistance in Criminal Cases Involving International Relations as cited under paragraph 1 above.*

#### (b) Observations on the implementation of the article

566. Article 474 (2) of CPC stipulates that that while providing legal assistance at the request of the foreign states, relevant authorities of Armenia shall apply the norms of CPC with exceptions provided by corresponding international treaties. The provision under review is also self-executing pursuant to Article 6 of the Constitution of Armenia.

## Article 46 Mutual legal assistance

### Paragraph 18

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### (a) Summary of information relevant to reviewing the implementation of the article

567. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

568. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 18 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

569. Armenia has a practice of organizing similar hearings, also via video conferences in the context of mutual legal assistance.

#### (b) Observations on the implementation of the article

570. As indicated by the Armenian authorities, the provision under review is directly implemented.

## **Article 46 Mutual legal assistance**

### **Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

571. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

572. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 19 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

#### **(b) Observations on the implementation of the article**

573. As indicated by the Armenian authorities, the provision under review is directly implemented.

## **Article 46 Mutual legal assistance**

### **Paragraph 20**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

574. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

575. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 20 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

#### **(b) Observations on the implementation of the article**

576. As indicated by the Armenian authorities, the provision under review is directly implemented.

## **Article 46 Mutual legal assistance**

### **Subparagraph 21**

*21. Mutual legal assistance may be refused:*

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

577. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

578. Therefore, the provisions of the Convention, particularly, its procedural requirements including the requirements of paragraph 21(a) of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

579. Armenia has cited the following implementation measures.

#### ***Criminal Procedure Code***

**Article 477. Refusal to execute requests stipulated by international treaties** as cited under paragraph 1 above.

#### **(b) Observations on the implementation of the article**

580. The provision under review is self-executory pursuant to Article 6 of the Constitution of Armenia. Additionally, Article 477 of CPC stipulates that the requests may be refused based on the grounds provided by international treaties of the Republic of Armenia. Article 477 also stipulates that a request may be refused when execution of the request may harm the constitutional order, sovereignty, national security of the Republic of Armenia, and if the possibility of refusing execution of the request on these grounds is envisaged by at least one international treaty in force between Armenia and the requesting state.

581. Armenia has legislatively implemented the provision under review.

## **Article 46 Mutual legal assistance**

## **Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

582. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

583. Therefore, the provisions of the Convention, including the requirement of paragraph 22 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

584. Additionally, Article 477 of CPC (as cited under paragraph 1 above) that is also applicable in that regard does not contain the consideration of the offence to involve fiscal matters as a ground of refusal of the request.

### **(b) Observations on the implementation of the article**

585. As indicated by the Armenian authorities, the provision under review is directly implemented.

## **Article 46 Mutual legal assistance**

### **Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

586. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

587. Therefore, the provisions of the Convention, including the requirement of paragraph 23 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

588. Additionally, according to Article 475(5) of CPC, as cited under paragraph 1 above, Armenian authorities shall notify the corresponding authorities of the foreign state if the execution of a legal assistance request is impossible and on the reasons thereof.

### **(b) Observations on the implementation of the article**

589. As indicated by the Armenian authorities, the provision under review is directly implemented.

## **Article 46 Mutual legal assistance**

### **Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

590. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

591. Therefore, the provisions of the Convention, including the requirement of paragraph 24 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

592. Armenia additionally clarified that there is no stipulated time-limit for the execution of the requests for mutual legal assistance prescribed by the law. The customary length depends on the concrete judicial activity. In any case, if the criminal case is in the stage of pre-trial proceedings mutual legal assistance may be provided from one month up to one year, in case of trial proceedings mutual legal assistance may be provide approximately from one month up to 6 months.

#### **(b) Observations on the implementation of the article**

593. As indicated by the Armenian authorities, the provision under review is directly implemented. During the country visit Armenia reiterated that it will take as full account as possible of any deadlines suggested by the requested State Party in accordance with the Convention. However, there were not such requests to date.

## **Article 46 Mutual legal assistance**

### **Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

594. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

595. Therefore, the provisions of the Convention, including the requirement of paragraph 25 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

596. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

597. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

598. Therefore, the provisions of the Convention, including the requirements of paragraph 26 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

599. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen*

*consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

600. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), the international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

601. Therefore, the provisions of the Convention, including the requirement of paragraph 27 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

602. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

603. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

604. Therefore, the provisions of the Convention, including the requirement of paragraph 28 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

605. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Subparagraph 29**

29. *The requested State Party:*

(a) *Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

(b) *May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

606. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

607. Therefore, the provisions of the Convention, including the requirement of paragraph 29 of article 46 are self-executing and can be applied directly as per Article 6 of the Constitution.

**(b) Observations on the implementation of the article**

608. As indicated by the Armenian authorities, the provision under review is directly implemented.

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

609. The Republic of Armenia acceded various international agreements on legal assistance in criminal matter, including European Convention on Mutual legal Assistance in criminal matters 20.04.1959, the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Minsk, 22.01.1993), the CIS Convention on Legal Assistance in Legal Affairs on Civil, Family and Criminal Cases (Chisinau, 07.10.2002).

610. The Republic of Armenia concluded the following agreements on legal assistance in criminal matters.

Agreement on legal assistance in criminal matters between the Government of the Republic of Armenia and the Government of the Georgia. 12 May, 1993.

Agreement between the Government of the Republic of Armenia and the Government of the Republic of Bulgaria on Legal Assistance in Criminal Matters. 10 April, 1995.

Agreement on legal assistance in criminal matters between the Republic of Armenia and United Arab Emirates. April 20, 2002.

Agreement on legal assistance in criminal matters between the Government of the Republic of Armenia and the Government of the Republic of Poland. 06 September, 2004.

Agreement between the Republic of Armenia and the Republic of Lithuania on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. 08 July, 2005.  
European Convention on Mutual Assistance in Criminal Matters. 4 March, 2009.

611. The Prosecutor General's Office of the Republic of Armenia has signed cooperation memoranda with the prosecution offices indicated below:

Lithuania, Alma-Ata 08.10.1992.  
China, Beijing 09.09.1999.  
Slovakia. Yerevan, Armenia 10.1999.  
Georgia, Tbilisi 21.07.2005  
Latvia. Yerevan, Armenia 08.08.2005  
Belarus, Minsk 10.2005  
Russia. Yerevan, Armenia 22.09.2006  
Kazakhstan, Astana 06.11.2006  
Hungary. Yerevan, Armenia 06.07.2007  
Ukraine, Kiev. 13.11.2008  
Czech Republic. Yerevan, Armenia 18.05.2009  
Romania, Bucharest 13.09.2010  
Moldova, Kishinev 29.01.2012

612. Additionally, the Ministry of Justice of the Republic of Armenia concluded the agreements of partnership and cooperation with

The Ministry of Justice of Kyrgyzstan 21.04.1997  
The Ministry of Justice of Kazakhstan 23.05.2001  
The Ministry of Justice of Georgia 23.10.2001  
The Ministry of Justice of the Russian Federation 18.12.2004  
The Ministry of Justice of Ukraine 11.10.2006  
The Ministry of Justice of Slovakia 25.05.2008  
The Ministry of Justice and Protection of Rights of the Republic of Hungary 10.11.2009  
The Ministry of Justice of Belarus 20.09.2012

**(b) Observations on the implementation of the article**

613. Armenia has signed a number of international agreements on legal assistance in criminal matters. There are also cooperation memoranda and agreements signed between the Prosecutor General Office and the Ministry of Justice of Armenia with their counterparts in other countries.

614. While this practice is commendable, Armenia is recommended to consider the possibility of concluding bilateral or multilateral agreements or arrangements that would specifically serve the purposes of and give practical effect to or enhance the provisions of article 46 of the Convention with a particular focus on corruption offences.

**(e) Technical assistance needs**

615. Armenia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

1. *Technical assistance in setting up of the case management system allowing the classification and use of statistics for both extradition and mutual legal assistance;*

2. *Technical assistance in the preparation of the guideline applicable to the extradition and mutual legal assistance procedures based on the Convention against Corruption.*

*None of these forms of technical assistance has been provided to Armenia to-date.*

## **Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

616. According to Article 6 of the Constitution of Armenia (as cited under paragraph 1 of article 44 above), international treaties are a constituent part of the legal system of the Republic of Armenia. If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail.

617. Therefore, the provisions of the Convention, including the requirement of article 47 are self-executing and can be applied directly as per Article 6 of the Constitution.

618. Republic of Armenia also ratified the European Convention of 15.05.1972 on the transfer of proceedings in criminal matters, European Convention of 13.12.1957 on Extradition, the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 22.01.1993 and a number of other international documents, regulating the transfer of proceedings in criminal matters.

619. Regarding the examples of implementation, Armenia noted that in 2012, Prosecutor General's Office of the Republic of Armenia, upon a petition by competent authorities of foreign states on exercising criminal prosecution, received 11 criminal cases and materials, and 34 criminal cases and materials were sent to competent authorities of foreign states, while in 2011, 13 criminal cases and materials were received, and 24 criminal cases and materials were sent. Those cases and materials also included the matters involving several jurisdictions.

### **(b) Observations on the implementation of the article**

620. Armenia would consider the possibility of transferring criminal proceedings based on article 47 and may perform such transfers. However, no examples of the transfer of proceedings relevant to corruption offences has been observed to date.

## **Article 48 Law enforcement cooperation**

### **Subparagraph 1 (a)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

621. The provisions on the establishments of such channels or communication with foreign competent authorities are contained in a number of interstate and interagency agreements and memoranda concluded by relevant Armenian authorities with their foreign counterparts on the cooperation of authorized bodies in the area of fighting against crime including corruption.

622. The Republic of Armenia concluded bilateral and multilateral agreements with other countries on law enforcement cooperation and combating of crime including corruption crimes. For example:

Agreement between the Government of the Republic of Armenia and the Government of the Italian Republic on Police Cooperation. 23 April , 2010;

Agreement between the Government of the Republic of Armenia and the Government of the Republic of Cyprus on co-operation in combating organized and other forms of crime. 27.02.2008, etc.

Article 1 of the Agreement between the Government of the Republic of Armenia and the Government of the Republic of Cyprus on co-operation in combating organized and other forms of crime (27.02.2008), states that the Parties shall co-operate in combat, disclosure, suppression, prevention and prosecution of organized crime and other forms of crime including money laundering and corruption.

623. Armenian authorities are also collaborating with the other countries in the frame of Organization of the Black Sea Economic Cooperation (BSEC) which was established on June 25, 1992, in Istanbul, when the Summit Declaration was signed by the Heads of States and Governments of eleven countries: Republic of Albania, Republic of Armenia, Republic of Azerbaijan, Republic of Bulgaria, Georgia, Hellenic Republic, Republic of Moldova, Romania, Russian Federation, Republic of Turkey and Ukraine. Republic of Serbia joined the Organization as a Member State in 2004. The priorities of BSEC, as indicated in its Charter, are trade and economic development, cooperation in banking and financial fields, as well fighting crime, etc.

624. On October 2, 1998, in Kerkira the “Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in particular, in its Organized Forms” was adopted.

625. The Prosecutor General’s Office of Armenia is a party to the Agreement on Cooperation of the Prosecutor General’s Offices of the Commonwealth of Independent States of 2007. Other parties to the Agreements include the Prosecutor General’s Offices

of Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyz Republic, Moldova, Russian Federation, Tajikistan, Turkmenistan, Uzbekistan and Ukraine.

626. The Prosecutor General's Office of the Republic of Armenia has signed a cooperation memoranda with the prosecution offices indicated below:

Lithuania, Alma-Ata 08.10.1992.  
China, Beijing 09.09.1999.  
Slovakia. Yerevan, Armenia 10.1999.  
Georgia, Tbilisi 21.07.2005  
Latvia. Yerevan, Armenia 08.08.2005  
Belarus, Minsk 10.2005  
Russia. Yerevan, Armenia 22.09.2006  
Kazakhstan, Astana 06.11.2006  
Hungary. Yerevan, Armenia 06.07.2007  
Ukraine, Kiev. 13.11.2008  
Czech Republic. Yerevan, Armenia 18.05.2009  
Romania, Bucharest 13.09.2010  
Moldova, Kishinev 29.01.2012

627. The national police is closely cooperating with a number of international agencies, including the Group of States against Corruption (GRECO), the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) and the International Monetary Fund with a view to adopting best international practices in that regard.

628. There are several agreements between Armenian Police (before 2002 –Ministry of Interior) and Ministries of Interiors of different countries which also stipulate the possibility of exchanging information, including the information which is related to the corruption cases. For example, on 20 October, 2011 in Batumi the Police of Republic of Armenia signed with the Ministry of Internal Affairs of Georgia an Agreement on Cooperation in Operational and Search Activities and Exchange of Information on Criminal Matters including corruption crimes.

629. In November 1992 during the 61th session of Interpol General Assembly held in Dakar the Republic of Armenia has been accepted as a member country. INTERPOL National Central Bureau (NCB) of Armenia has been finally formed In June 1993 inside of the Ministry of Interior (Currently – Police of Armenia).

630. Starting from 1993 NCB of Armenia has been involved in exchanging of different type of information true the Interpol channels. NCB of Armenia actively works with many of Interpol member countries. Especially with the colleagues from Ukraine and Turkey Armenian officers from NCB are working on exchange information about wanted persons at the international level related to corruption.

631. The government Decision adopted on 04 May 2006 (N-654-N) established the terms of providing and receiving information by National Central Bureau of Interpol Police of Armenia. According to paragraph 2 of the Decision relevant information is exchanged between different national authorities including National Security Service, Ministry of

Defence, Justice, Culture, Prosecution Service, State Revenue Committee, Central Bank. All these institutions can share through Police (INTERPOL) information related to crime, including corruption offenses. Such information could be exchanged at the international level through the member countries of Interpol and could be used for the purpose of early identification of the offences.

**(b) Observations on the implementation of the article**

632. Armenia has concluded a number of bilateral and multilateral agreements on the fight against crime and corruption which also relate to the exchange of operational information in the investigation of corruption cases. Armenia is encouraged to continue this practice and establish more channels of communication with the competent authorities of other States Parties to the Convention.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (b)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

**(a) Summary of information relevant to reviewing the implementation of the article**

633. In addition to the information cited under subparagraph 1 (a) above, Armenia indicated that in the context of the matters addressed by the provision under review Armenia cooperates with other States Parties in the framework of International Criminal Police Organization (INTERPOL). Armenia was represented in The First StAR-INTERPOL Asset Recovery Focal Points Meeting (14-15 December 2010) which was organized by the Stolen Asset Recovery (StAR) Initiative, a partnership between the World Bank and United Nations Office on Drugs and Crime, together with the INTERPOL, in cooperation with the U.S. Department of State. This is a secure platform of law enforcement officials who are available 24 hours a day, seven days a week, to respond to emergency requests for assistance when a failure to act may cause law enforcement services to lose a money trail. 108 jurisdictions have become part of the Focal Points platform. The objectives of the First StAR-INTERPOL Focal Points Meeting were to provide the focal points with a forum for discussion of the actions that need to be taken to strengthen international cooperation amongst practitioners.

634. Specifically, it was intended to allow focal points to:

- exchange experiences on the operational aspects of the StAR-INTERPOL Asset Recovery Focal Points platform and views on how its capacity could be improved;
- exchange information on issues of common interest prior to the Fourth Intercessional Meeting of the Open-Ended Intergovernmental Working Group on Asset Recovery of the Conference of States Parties to UNCAC in Vienna;
- create a conduit for dissemination of technical products on asset recovery; and
- explore how to develop the platform into a global network of law-enforcement and other anti-corruption professionals which would build upon the experiences of existing networks in asset recovery.

The meeting brought together representatives from participating focal points agencies, various networks related to asset confiscation and recovery, central authorities responsible for providing mutual legal assistance, and other experts. The outcome of the meeting was presented to the meeting of the Fourth Open-ended intergovernmental Working Group on Asset Recovery.

635. The Financial Monitoring Center of Armenia (FMC) is a member of the Egmont Group of Financial Intelligence Units, an informal network of FIUs to facilitate international cooperation in fighting money laundering. Egmont Group is a useful platform for conducting inquiries with respect to the movement of proceeds of crime, including the proceeds derived from corruption offences.

**(b) Observations on the implementation of the article**

636. Armenia has taken some steps to implement the provision under review.

637. Armenia has partially implemented the provision under review and is encouraged to consider making further steps to enhance law enforcement cooperation in inquiries with respect to offences covered by the Convention.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (c)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

**(a) Summary of information relevant to reviewing the implementation of the article**

638. Bilateral and multilateral agreements which are mentioned in this report (for instance, Convention “On Civil, Family and Criminal Law Issues Legal Assistance and Legal Relationships” signed in Minsk on 22/1/1993) include the regulations allowing for the provision of necessary items or quantities of substances for analytical or investigative purposes.

639. Providing of necessary items or quantities of substances for analytical or investigative purposes could be done also in the frame of European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20.IV.1959).

**(b) Observations on the implementation of the article**

640. Armenia has taken some steps to implement the provision under review.

641. Armenia has partially implemented the provision under review and is encouraged to consider making further steps to enhance the implementation of the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (d)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

642. Armenia indicated that such exchanges may be conducted based on the provision under review, via its direct application per Article 6 of the Constitution as explained in the responses under paragraph 1 of article 44 above.

**(b) Observations on the implementation of the article**

643. Armenia has partially implemented the provision under review. Armenia has legislative basis to exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities. However, no actual examples of such exchanges were provided.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (e)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to*

*bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

**(a) Summary of information relevant to reviewing the implementation of the article**

644. Armenia indicated that such coordination and posting of liaison officers may be conducted based on some of the agreements mentioned under subparagraph 1 (a) above.

**(b) Observations on the implementation of the article**

645. Armenia has taken some steps to implement the provision under review.

646. Armenia has partially implemented the provision under review and is encouraged to consider making further steps to enhance the implementation of the provision under review.

**Article 48 Law enforcement cooperation**

**Subparagraph 1 (f)**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

647. Armenia indicated that such exchanges may be conducted based on the provision under review, via its direct application per Article 6 of the Constitution as explained in the responses under paragraph 1 of article 44 above, as well as based on some of the agreements mentioned under subparagraph 1 (a) above.

**(b) Observations on the implementation of the article**

648. Armenia has the mechanism for the exchange of information as stipulated in the provision under review. However, no actual examples of such exchanges were provided.

649. Armenia has partially implemented the provision under review.

**Article 48 Law enforcement cooperation**

**Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement*

*cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

650. Armenia has referred to its responses given under paragraph 1 above.

651. Armenia additionally clarified that it considers the Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by it.

**(b) Observations on the implementation of the article**

652. Armenia partially complies with the provision under review. There are certain international agreements that were concluded prior to signing of the UN Convention against Corruption without any further amendments.

**Article 48 Law enforcement cooperation**

**Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

653. Armenia clarified that this kind of cooperation may be provided within the framework of some of the above mentioned agreements.

**(b) Observations on the implementation of the article**

654. Armenia has taken some steps to implement the provision under review.

**(d) Challenges, where applicable**

655. Armenia has identified the following challenges and issues in fully implementing the provision under review:

*5. Limited resources for implementation (e.g. human/financial/other; please specify);*

**(e) Technical assistance needs**

656. Armenia has indicated that the following forms of technical assistance, if available, would assist it in better implementing the provision under review:

*3. Summary of good practices/lessons learned;*

*4. Technical assistance (e.g. set-up and management of databases/ information-sharing systems);*

*5. On-site assistance by a relevant expert;*

*6. Paragraph 3 of article 48 of the Convention refers to States Parties cooperation within their means to respond to offences covered by this Convention committed*

*through the use of modern technology. In this context Armenia need an assistance to enhance cooperating tools in this area.*

*None of these forms of technical assistance has been provided to Armenia to-date.*

## **Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

657. CIS Chisinau Convention of 2002 contains a provision allowing the establishment of joint investigative bodies (Article 63); additionally the possibility of conducting such joint investigations on a case-by-case basis exists.

### **(b) Observations on the implementation of the article**

658. Armenia would be willing to establish joint investigative bodies with other States Parties, but no such have been established to date. Armenia also additionally clarified that the conduct of joint investigations would require special agreements or arrangements with relevant authorities of other States Parties. If necessary, article 49 of UNCAC can be a legal basis for establishment of joint investigation teams with other States Parties as well.

## **Article 50 Special investigative techniques**

### **Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

659. Armenia indicated the provision under review is implemented via the Law on Operative and Search Activities (LOSA) (2007).

660. Paragraph 5 of part 1 of Article 14 of LOSA controlled supply (delivery) and purchase, are established as a separate operative and search activities (investigative technique in the meaning of the Convention). Article 14 part 1, inter alia, also includes

other special investigative techniques, such as, external observation (paragraph 7), internal observations (paragraph 8), control over the telephone conversations (paragraph 12); and, specifically imitation of taking and giving bribes (paragraph 16). Articles 19, 21, 22, 26 and 30 further clarify the nature of the referenced investigative techniques

661. Article 7 defines the order of usage of special investigative techniques.

662. Paragraph 1 of Article 40 of the Law stipulates that the results of the references special investigative techniques shall be deemed as evidence.

663. In 2012 the Police, the National Security Service, and the State Revenue Committee of Armenia signed an order on cooperation in exercise of “controlled supply and purchase” as an operative and search measure. Law enforcement agencies of Armenia (Police, National Security Service, State Revenue Committee, Military Police) in accordance with the Law on Operative and Search Activities can exercise internal surveillance and external surveillance. During these operative measures the officers of law enforcement bodies use diverse technical means for tracking and recording appropriate information.

664. Armenia has cited the following implementation measures.

***Law on Operative and Search Activities***

***Article 7. Special technical means***

1. The list of special technical means used during operative and search activities shall be approved by the Government of the Republic of Armenia upon submission by the authorised state body.
2. Special technical means used operative and search activities shall not harm human life and health as well as the environment.
3. The use of special technical and other means specified (developed, planned, adjusted) for acquiring confidential information and conducting operative and search activities by state authorities, departments or natural and legal persons not authorised under this Law shall be prohibited.

***Article 14. Types of operative and search activities***

1. 1. as cited under paragraph 1 of article 31 above

Operative and search activities shall be defined only by law.

2. The police is entitled to carry out operative and search activities laid down in points 1, 2, 3, 5, 6, 7, 8, 9, 10 11, 12, 13, 14, 15, and 16 of part 1 of this Article.
3. National security bodies are entitled to conduct operative and search activities laid down in points 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of part 1 of this Article.
4. Customs authorities are entitled to carry out operative and search activities laid down in points 1, 2, 3, 5, 6, 7, 8, 9, 13 and 14 of part 1 of this Article.
5. Tax authorities are entitled to carry out operative and search activities laid down in points 1, 2, 3, 4, 5, 6, 7, 10, 13 and 14 of part 1 of this Article.
6. Penitentiary authorities are entitled to carry out operative and search activities laid down in points 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of part 1 this Article, only in pre-trial detention facilities and corrective institutions of the penitentiary system of the Ministry of Justice of the Republic of Armenia.

***Article 19. Controlled supply and purchase***

1. Controlled supply and purchase is the control of circulation of goods and services, including for the purpose of disclosing the participants of a crime through purchase of goods and services and the sale thereof.
2. Controlled supply and purchase of items, goods and products - the free realisation of which is

prohibited or circulation of which is restricted - shall be carried out by the decision of the head of operational intelligence body.

**Article 21. External observation**

External observation is the tracing of persons without violating the inviolability of the residence, or monitoring of the course of specific incidents and events in open areas or public places with or without use of special and other technical means as well as the corroboration of surveillance results with or without use of video recording, photographic, electronic and other means.

**Article 22 Internal observation**

1. Internal observation is the tracing of a person (persons) inside the residence with or without use of special and other technical means and monitoring of certain incidents and events as well as the corroboration of surveillance results with or without use of video recording, audio recording, photographic, electronic and other means.

2. In this Law the term “residence” is used in the meaning defined in the Criminal Procedure Code of the Republic of Armenia.

**Article 26. Control over the telephone conversations**

Wiretapping is the secret monitoring of conversations, including internet telephone conversations and electronic communication, carried out using special and other technical means, which means:

1. in case of fixed telephony:

- a) recording of telephone conversation or corroboration of its content in any other form;
- b) calling line identification;
- c) collecting and/or corroborating the data necessary to disclose the personal data of the telephone line subscriber, location and movement of communicating persons at the beginning of or during the telephone conversation;
- d) in case of call forwarding or transferring, identification of the telephone line to which the call was transferred;

2. in case of mobile telephony:

- a) recording telephone conversation, including short messages (SMS) or voice messages or corroborating their content in any other form;
- b) collecting and/or corroborating the data necessary to disclose the date of the beginning of the telephone conversation, its beginning and end, telephone line, personal data of the telephone line subscriber, location and movement of communicating persons at the beginning of the telephone conversation and during it;

3. in case of Internet communication, including Internet telephone conversations and electronic messages transferred over the Internet, recording of messages or corroborating its content in any other form, as well as data through which it is possible to identify:

- a) geographic location, day, hour and duration of connecting to and disconnecting from the Internet, including IP (Internet Protocol) address;
- b) name of the Internet user or the subscriber and user ID;

**Article 30. Imitation of bribe taking and bribe giving**

1. Imitation of taking or giving bribes, as an operative and search activity, may be carried out only for the disclosure of the crime of taking and giving bribes based exclusively on the written statement of the person who was offered to take or give a bribe.

2. The concepts "take bribes" and "give bribes" referred to in part 1 of this Article are used in this Law in the meaning defined in the Criminal Code of the Republic of Armenia.

3. The results of the operative and search activity referred to in part 1 of this Article are corroborated exclusively through video or audio recording. Moreover, video or audio recording in the place of residence of a person is carried out exclusively by a court decision.

**Article 40. Use of results of operative and search activities**

1. The results of operative and search activities acquired in accordance with the procedure prescribed by this Law shall be deemed as evidence except for the results of operative and search activities laid down in points 1, 2, 6 and 9 of part 1 of Article 14 of this Law.
2. The record of operative and search activities shall be drawn up by the official who conducts these measures. Records shall include the place, time, circumstances, name, family name, position of the officer carrying out operative and search activity and the names, family names, and positions of other participants of operative and search activity, as well as the names and family names of the persons (or their legal representatives) to whom the operative and search activities are applied in such a sequence as they have been carried out, scientific-technical methods and means used, as well as information, materials and documents acquired as a result of the measure. The record shall be signed by the official (officials) conducting operative and search activity.
3. The rules for submitting the results of operative and search activities to bodies conducting criminal proceedings shall be prescribed by law and by legal acts of operational intelligence bodies. Operational intelligence body may communicate the information acquired during operative and search activities laid down in this Law only to bodies conducting criminal proceedings or to other operational intelligence bodies upon their request to exercise specific powers vested in them by law, except for the information that shall be destroyed as prescribed by this Law.
4. If during an operative and search activity information, materials and documents that do not refer to the person to whom the measure is being applied, are acquired and if acquisition thereof has not been foreseen by the decision on carrying out such activities, they shall not be deemed to be evidence and shall be destroyed except for the following cases:
  - 1) operational intelligence bodies have acted in good faith; and
  - 2) information acquired contains materials referring to grave and particularly grave crime or planning of such crime; and
  - 3) this Law authorises implementation of operative and search activity carried out to acquire such information. A separate record on acquiring information, materials and documents laid down in this part shall be drawn up.

**(b) Observations on the implementation of the article**

665. According to Law “Law on Operative and Search Activities” (LOSA) of 2007, competent authorities may conduct controlled delivery and use other special investigative techniques, such as electronic or other forms of surveillance and conduct undercover operations. Evidence derived from such activities is admissible in court.
666. Armenia has legislatively implemented the provision under review.

**Article 50 Special investigative techniques**

**Paragraph 2**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

**(a) Summary of information relevant to reviewing the implementation of the article**

667. Such provisions are contained in the CIS Chisinau Convention on Legal Assistance in Legal Affairs on Civil, Family and Criminal Cases (07/10/2002) (Article 108. Control Delivery).

668. On 20 October, 2011 in Batumi the Police of Republic of Armenia signed with the Ministry of Internal Affairs of Georgia an Agreement on Cooperation in Operational and Search Activities and Exchange of Information on Criminal Matters including corruption crimes.

**(b) Observations on the implementation of the article**

669. Armenia is encouraged to continue practice of the conclusion of appropriate bilateral or multilateral agreements or arrangements for using special investigative techniques in the context of cooperation at the international level.

**Article 50 Special investigative techniques**

**Paragraph 3**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

670. Armenia indicated that in accordance with paragraph 2 of Article 10 of the Law on Operative and Search Activities, operative and search activities may, in accordance with the procedure prescribed by this Law, be carried out upon inquiries from law enforcement authorities and special services of foreign countries and international law enforcement organizations in accordance with international treaties of the Republic of Armenia. Besides, in accordance with Article 11 of the same Law, bodies carrying out operative and search activities shall cooperate, in accordance with international treaties of the Republic of Armenia, with international law enforcement organizations and law enforcement authorities and special services of foreign countries.

671. There are no legislative impediments in Armenia to use special investigative techniques at the international level, but in the absence of an agreement or arrangement, decisions to use any special investigative techniques (controlled delivery etc.) shall be made depending on each case and can be also conducted based on article 50 of UNCAC.

672. There is no experience of using of controlled delivery as a special investigative technique at the international level in Armenia through the Interpol.

673. Armenia has cited the following implementation measures.

***Law on Operative and Search Activities***

***Article 10. Rights of bodies carrying out operative and search activities***

1. While exercising their tasks, bodies carrying out operative and search activities are entitled to:
- 1) carry out measures provided for in Article 14 of this Law using apparent or secret methods;

2) cooperate - with remuneration or gratuitously, with or without signing a contract - with persons who have expressed readiness to cooperate secretly with bodies carrying out operational intelligence activity;

3) use buildings, vehicles, special and other technical means belonging to the officials of the bodies carrying out operational and search activities, as well as to the bodies themselves. With the purpose of exercising the tasks defined by this Law, national security bodies and the police may, in accordance with the legislation of the Republic of Armenia, create non-existent organisations, as well as use cover documents made by national security bodies.

2. Operative and search activities may, in accordance with the procedure prescribed by this Law, be carried out upon inquiries from law enforcement authorities and special services of foreign countries and international law enforcement organisations in accordance with international treaties of the Republic of Armenia.

3. Bodies carrying out operative and search activity shall not exercise the rights provided for by this Article in favour or to the detriment of any natural or legal person or interfere with the activities of state or local self-government bodies or political parties.

#### ***Article 11. Responsibilities of bodies carrying out operative and search activities***

1. Bodies carrying out operative and search activities shall:

1) execute mandatory written assignments of the investigator, tasks assigned by the inquest body, mandatory written assignments issued by the prosecutor and decisions of the investigator and the court on carrying out necessary operative and search activities;

2) cooperate, in accordance with international treaties of the Republic of Armenia, with international law enforcement organisations and law enforcement authorities and special services of foreign countries;

3) protect the staff of operational departments, persons secretly cooperating with them, persons participating in criminal proceedings, as well as members of their families from criminal infringements;

4) when exercising their powers, cooperate with law enforcement authorities communicating to them the information relating to the competence of such authorities, except for the information which is subject to destruction under this Law.

#### **(b) Observations on the implementation of the article**

674. As indicated by the Armenian authorities, the provision under review is directly implemented.

### **Article 50 Special investigative techniques**

#### **Paragraph 4**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

675. Armenia indicated that the decisions to use such controlled delivery methods may be made based on the provision under review, via its direct application per Article 6 of the Constitution as explained in the responses under paragraph 1 of article 44 above.

676. Depending on each case of offences covered the Convention, Armenian law enforcement bodies would take into consideration all circumstances to decide which method is more preferable in each particular case.

**(b) Observations on the implementation of the article**

677. As indicated by the Armenian authorities, the provision under review is directly implemented.

UNODC