

(hereafter: Council) headed by RA Prime Minister, which would come to replace the previous Anti-Corruption Council.”

As you might have noticed, the need for adopting the above Draft is substantiated with the following:

- A. **Substantial constitutional and legislative changes** made;
- B. RA Government’s policy **to enhance fight against corruption and the anti-corruption policy to coordinate it efficiently.**

Thus, departing from the justifications presented, it is presumed that the decision of creating the Council must be **radically different** from the currently existing Anti-Corruption Council (*upon the adoption of this Draft, RA Prime Minister’s Decrees “On Approving the Individual Composition of the Anti-Corruption Council of the Republic of Armenia” from 18 September 2015 and “On Defining the Order of Call for Involving Non-Governmental Organisations in the Anti-Corruption Council of the Republic of Armenia and Its Rotation Order” from 18 April 2015 will be revoked*). Nonetheless, after studying the Draft it became clear that in the Draft and the legal acts regulating the activities of the currently existing Anti-Corruption Council **there are no substantial changes** conditioned with **legislative and constitutional changes** and reflecting the Government’s irrevocable desire to strengthen **fight against corruption and efficiently coordinate the anti-corruption policy**. Moreover, **the Coalition qualifies this Draft as “a step back” in fight against corruption** with the justifications mentioned below:

1. The authorities of the RA Ministry of Justice are limited, and the ministry will not carry out the organisation and coordination of the process of NGOs’ involvement in the Council:

As far as this change is concerned, perhaps there are no clear justifications on the kind of substantial constitutional and legislative reforms which resulted in the need for the change: Moreover, according to provision 3 of the Annex of the RA Law on the Government’s Structure and Order of Activities, adopted on 23 March 2018, **“The Ministry of Justice develops and implements Government’s anti-corruption policy in the areas of justice, including compulsory enforcement, penitentiary, probation, bankruptcy, advocacy, reconciliation, notary activities, state registration of civil status acts, state registration of legal entities, registration of individual entrepreneurs, registration of mass media, personal data protection, registration of rights of movable property,**

*legal expertise, international legal mutual assistance, united offices for providing **anti-corruption** and state services, ensures advocacy for the Republic of Armenia in international courts with participation of the Republic of Armenia.”*

Thus, it turns out that the Ministry of Justice is the authorised agency of the Government, to which the above law reserves the development and implementation of the anti-corruption policy in the RA on behalf of the Government. Therefore, **we suggest** that the powers of the Ministry of Justice not be limited without grounds, for the process of involving non-governmental organisations in the Council and other related functions foreseen by the Draft to continue being carried out by the Ministry of Justice of the Republic of Armenia, as opposed to the Anti-Corruption Programmes and Monitoring Department of Prime Minister’s Staff, as foreseen in the Draft.

2. The role of local government agencies in fight against corruption is reduced, including in the areas of development and implementation of the anti-corruption policy:

In particular, as regards the activities of the anti-corruption policy, local government agencies are left out of relations as the Draft terminates the membership of the Union of Communities of Armenia. Moreover, the Draft does not also include in the composition of the Council a representative from the RA Ministry of Territorial Administration and Infrastructures. The coalition deems it unacceptable to bypass local government agencies in fight against corruption. Surely, from this point of view, a logical question arises on the types of the substantial constitutional and legal changes which have generated a need for reducing the role of local government agencies. Therefore, we believe that the Union of Communities of Armenia whose members are the communities of the Republic of Armenia shall be represented in the Council and make the voice of local government agencies heard in fight against corruption. Thus, we **recommend** allotting 1 spot for the Union of Communities of Armenia, with its consent.

3. The role of CSOs in fight against corruption is reduced, including in the area of anti-corruption policy development and implementation:

The draft terminates the membership of the Public Council, which has had the status of a constitutional agency after 2015 constitutional changes.

Thus, if Prime Minister's Staff justifies adoption of this Draft with substantial legislative and constitutional changes or the anti-corruption policy to strengthen or efficiently coordinate fight against corruption, then it would at least be unfounded to terminate the participation of one agency with a constitutional status in anti-corruption policy relations; 15 of the 45 members were appointed by RA Prime Minister in September 2018 and the legitimacy of that agency has not been questioned. It is also bad that when drafting the legal act, the Prime Minister's Staff does not take into account the opinions of those agencies which have been removed without grounds from anti-corruption policy relations, without preliminary discussions. Taking into account the structure of the Public Council, it can successfully serve as a Government-CSO bridge. Hence, **we suggest** that 1 spot in the Council be allotted to the Public Council with consent.

The CSO Anti-Corruption Coalition of Armenia which unites more than 90 CSOs from Yerevan and marzes is also a link for ensuring sustainable Government-CSO dialogue and serving as a bridge. Again, the approach based on drafting a legal act on terminating Coalition's membership without prior discussions with the Coalition is not justified. Starting from 2014, the moment of its creation, the Coalition has been one of the pioneers in fight against corruption and has been recognised by the UN Convention against Corruption Coalition as one of the main players in anti-corruption.

At the moment, the Coalition is a permanent Board member and stands at the origins of the anti-corruption reforms carried out in Armenia over the past several years. In particular, the Coalition has initiated and introduced in Armenia important anti-corruption institutes, such as:

- Criminalisation of illicit enrichment in Armenia, article 310.1 of the RA Criminal Code, has been supplemented;
- Creation of the independent anti-corruption preventive agency, the corruption prevention agency, the RA Law on the Corruption Prevention Commission has been adopted;
- Introduction of the whistle-blowing institute, the RA Law on the Whistle-Blowing System has been adopted;
- Introduction of the beneficial owners' institution in the field of public procurement; the RA Law on Procurement has been adopted and the norm has been fixed in Article 28 of the Law;
- Changes in the system of income and asset declarations presented by high-ranking officials;

- More than 100 recommendations have been presented in the business sector; the majority of them have been adopted and implemented.

Apart from that, in January 2019 the CSO Anti-Corruption Coalition of Armenia and the Armenian Lawyers' Association presented an evidence-based opinion and more than 100 recommendations on the 2019-2022 Anti-Corruption Strategy and Its Action Plan; it is available at: <https://armla.am/en/3653.html>.

In addition, the Coalition's efforts resulted in the organisation of an international anti-corruption expert conference for the first time in Armenia on 17-18 April 2019. International and national anti-corruption experts, high-ranking representatives of RA state and local government agencies with anti-corruption functions, CSOs, business and mass media, participated. In total, their number was around 200. The event was organised in cooperation with the RA Government represented by the Ministry of Justice and other partners. The event results have been summarised to be submitted to the relevant agencies in the future.

Therefore, taking into account the above mentioned and guided by paragraph 1, part 1, article 13 of the UN Convention against Corruption, according to which: "*1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to **promote the active participation** of individuals and groups outside the public sector, such as **civil society**, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption,*" **we suggest** allocating 1 seat to the Coalition in the Council upon consent and select the remaining 4 CSOs through competition based on the established standards.

4. The Seats Allocated to Non-Governmental Organisations in the Council:

The draft suggests allocating 2 of the Council membership seats reserved for NGOs to business. This rule also works now in the scope of the existing legal regulations. We **suggest** envisaging the above-mentioned 4 seats for all types of NGOs, without highlighting business sector NGOs, even more so that the Draft left the representative of the RA Ministry of Economy out of the members' scope. In case of meeting the standards, the NGOs representing the sectors of not only business, but also other sectors, can apply and become Council members as well.

5. The Draft left out opposition factions of the Council composition:

The draft does not include a provision according to which the forces of the opposition factions would get involved in the work of the Council. In addition, the Draft does not foresee that extra-parliamentary forces **can also participate, in spite of not having a member's status**. We believe that the opposition factions of the National Assembly must become permanent Council members as it is presumed that important directions of Armenia's anti-corruption policy which shall be adopted solely based on public interest and consensus, will be discussed at this platform. Consequently, from this perspective, the working style and approach of the RA Prime Minister's staff to gather all the actors on the same platform is important. Surely, the Draft includes in the Council's composition 2 NA standing committee chairmen, with only one of them representing an opposition force. **We suggest** allocating by consent per 1 Council seat in the Council to each of the NA opposition factions and 1 seat to the State and Legal Commission.

6. The criteria for the non-governmental organisations to be involved in the Council:

The draft includes criteria for the non-governmental organisations to join the Council:

“7. The following non-governmental organisations can join the Council:

- 1) Those that have had at least three years' experience in the field of anti-corruption over the past five years;*
- 2) Those whose statute reserves anti-corruption activities as a goal;*
- 3) Those who will present information on at least 3 programmes implemented with international organisations in the field of anti-corruption.”*

Taking into account the fact that the Council has the ambition to present its claims from the main platforms for discussion of anti-corruption policy relations, we believe that the proposed criteria are not sufficient in terms of ensuring representation of the professional public sector.

Thus, currently, as previously, we find that the Council must include such representatives of the public sector who have serious professional capacities, experience in developing public policies and having them approved through constructive dialogue, in addition to presenting well-reasoned recommendations to be discussed by the Council, based on experts' opinions.

Based on the above-mentioned, we propose to add the below mentioned criteria to those set out in the Draft:

- 1) **Information on at least 3 cases of public policy development/improvement in the field of anti-corruption and their approval/adoption by the relevant agencies over the past five years;**
- 2) **A positive conclusion (evaluation) of an international partner organisation on the efficiency of at least 2 projects implemented with international institutions over the past five years;**
- 3) **Information on participation and membership in international anti-corruption networks.**

7. Increasing the powers of the Council member:

Attaching importance to the real involvement of each Council member and their right to be heard, we **suggest** adding the below mentioned powers to those of the Council members reserved in paragraph 13 of the Draft:

1. **Putting forward an agenda or issues to be included in it;**
2. **Carrying out inquiries related to activities stemming from this order.**

8. Council composition:

Taking into account the fact that currently a decentralised system of fight against corruption works in the Republic of Armenia and anti-corruption functions are fulfilled by various agencies, we suggest forming the Council with the following composition:

- Prime Minister of the Republic of Armenia (Council Chairman)
- Deputy Prime Minister of the Republic of Armenia
- Head of Staff of the Prime Minister of the Republic of Armenia
- Minister of Justice of the Republic of Armenia
- Chairman of the RA independent specialised anti-corruption agency (with consent)
- Prosecutor General of the Republic of Armenia (with consent)
- Head of the State Supervision Service of the Republic of Armenia

- Per one representative from the opposition factions of the National Assembly of the Republic of Armenia (with consent)
- Chairman of the State Legal Commission of the National Assembly of the Republic of Armenia (with consent)
- One representative from the Public Council (with consent)
- One representative from the Union of Communities of Armenia (with consent)
- One representative from the CSO Anti-Corruption Coalition of Armenia (with consent)
- Four representatives from non-governmental organisations (with consent)

9. Participation of third parties in the Council sessions:

Taking into consideration the fact that the Draft reduces participation of state agencies in the Council, **we suggest** setting out in the Draft that, based on the issues included in agendas of Council sessions, representatives of the relevant state agencies are invited to the sessions. For example, for the discussion of anti-corruption policy issues in the field of public procurement, it is important to ensure the presence of the RA Ministry of Finance. The same also applies to the ministries of health and education, other agencies adjacent to the government (Police, State Revenue Committee), institutes with the status of constitutional agencies (Human Rights Defender), etc.

10. Organisation of discussions at Council sessions:

We suggest also envisaging that every person participating in the sessions, regardless of their status in the Council, has the right to participate in discussions and express opinions.

11. Boosting active participation in Council sessions:

We suggest publishing information on the place, time, agenda (with attached materials, if available) at least three days prior to the Council session, enabling all stakeholders to get registered and participate in the Council sessions.

12. Broadcasting and coverage of Council sessions:

We suggest broadcasting the activities of the Council live and ensuring their coverage at the hall of sessions by mass media.

13. Drawing lots:

It is envisaged in the Draft that in order to become Council members, when more than five non-governmental organisations apply (in case their applications meet the criteria required for membership), a second round is held with applicant organisations, i.e. drawing lots.

We suggest not envisaging drawing lots as it is not acceptable to involve civil society in an agency dealing with anti-corruption policy based on the lottery results. Ultimately, drawing lots is neither a legal category nor a mechanism. We believe that the process of NGO involvement must be based on clear standards and evaluation system. In particular, we **suggest** evaluating each standard (*we have presented our recommendations on standards in paragraph 6*) and choosing the winner based on the overall evaluation points and not the lottery. For example, one point can be added for each year of anti-corruption experience, another one point can be added for each anti-corruption public policy development and adoption, in addition to evaluation carried out as regards the other criteria as well. We find that if we choose this system the competition will be professional and just.