



This project is funded by
the European Union



Why private sector should become intensively involved in the fight against corruption?

POLICY BRIEF



JULY 1, 2015

TRANSPARENCY INTERNATIONAL ANTICORRUPTION CENTER NGO

Author: Khachik Harutyunyan, Anti-corruption expert



This project is funded by
the European Union

This project is funded by the European Union. This Policy brief has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of Transparency International Armenia and can in no way be taken to reflect the views of the European Union. Starting from January 2015, this project is co-funded by the Open Society Foundations-Armenia.

Policy brief

Why private sector should become intensively involved in the fight against corruption?

Summary

As OECD in its Monitoring Report on Armenia (2014) “apart from several punctual examples ...government did fail to develop a dialogue with the private sector on prevention of corruption and promoting business integrity”¹, which means that private sector should become active in order to defend itself from negative consequences of “overarching black hand of corruption”. The recent “National Integrity System Assessment. Armenia. 2014” study showed that private sector of Armenia is extremely passive in anti-corruption policy engagement. Therefore, it is timely for private sector to get self-organized and to open another frontier to fight corruption in Armenia. The active fight against corruption from the private sector can become Trojan Horse for the corruption in Armenia.

Why it is important?

There is a strong business case for fighting corruption. Businesses that act with integrity and comply with anti-corruption regulations avoid the costs associated with corruption and even gain reputational, operational and financial benefits.² More importantly it reduces the costs of doing business: it adds up to 10% to the total cost of doing business globally.³ It possibly affects also the corporate growth: Fisman and Svenson in 2007, using dataset of bribe payment Ugandan firms, showed that bribes are negatively correlated with corporate growth: 1% increase in the bribery rate is associated with 3% reduction in corporate growth.⁴ In 1999, Kaufman and Wei revealed that, contrary to the prevailing theory that bribery can “grease” administrative procedures, firms that offer more bribes are likely to spend more of their management resources negotiating regulations with bureaucrats and face higher cost of capital.⁵ It also affects possibility

¹ OECD Anti-Corruption Network for Eastern Europe and Central Asia. Third Round of Monitoring. Armenia. Monitoring Report. Page 8. Available at: <http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>

² The business case for fighting corruption. TI Anti-corruption Helpdesk. Sofia Wickberg. 2012. Page 2

³ The business case against corruption. A joint publication by the International Chamber of Commerce, Transparency International, UN Global Compact and World Economic Forum Partnering Against Corruption Initiative. Page 2:

⁴ The business case for fighting corruption. TI Anti-corruption Helpdesk. Sofia Wickberg. 2012. Page 2

⁵ Ibid

of getting investments, endangers personnel's innovative attitude⁶ and morale,⁷ and damages reputation.⁸

What is the international legal framework on the issue relevant for Armenia?

Generally, the international legal framework on the issue is moderate, because the main focus of anti-corruption fight traditionally is on the demand side of corruption. Although, UN Convention against Corruption (UNCAC) contains few articles which are connected to the issue. Article 12 of the UNCAC (Private sector) stipulates:

“Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures”.

Article 12.2 of the Convention lists a variety of measures that States Parties should take to prevent corruption in the private sector, such as:⁹

- Promoting cooperation between law enforcement agencies and relevant private entities.
- Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities.
- Promoting transparency among private entities (e.g. identity of legal and natural persons involved in the establishment and management of corporate entities).
- Preventing the misuse of procedures regulating private entities (e.g. subsidies and licenses granted by public authorities for commercial activities).
- Preventing conflicts of interest (e.g. imposing restrictions on the professional activities of former public officials and/or their employment in the private sector).
- Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to auditing and certification procedures.

Furthermore, Article 12.3 refers to measures regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards to prohibit acts such as establishment of off-the-books accounts, recording of non-existent expenditures, and use of false documents.

With regard to the development of standards and procedures The UNODC Technical Guide to the United Nations Convention against Corruption (2009) states that the main preventive

⁶ Combating corruption: A private sector approach. CIPE. 2011. Page 2

⁷ The costs of corruption. Principal author Sadika Hameed. Contributing author Jeremiah Magpile. CSIS. 2014. Page 7

⁸ Why business should care about fighting corruption. Eric Gutierrez. 2011. <http://www.theguardian.com/global-development/poverty-matters/2011/jul/01/bribery-act-business-should-fight-corruption>

⁹ Civil society guide. UNCAC and the private sector. Transparency International and UNCAC Civil Society Coalition. 2013. Page 10

measures: codes of conduct, guidance on corruption or corporate governance codes, conflict-of-interest regulations and internal audit controls.

On the criminalization side, the article 21 of the UNCAC criminalizes bribery in the private sector. Quote:

“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; (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.”¹⁰

It is noteworthy also that article 26 of the UNCAC suggests to establish liability of legal persons. Besides UNCAC, the Council of Europe’s Criminal Law Convention on Corruption also criminalizes both active and private bribery in private sector via articles 7 and 8.¹¹

What kind of other commitments Armenia has also?

It must be mentioned that Armenia is participating in the Istanbul’s Anti-corruption Action Plan of OECD. During the 3rd monitoring round, in regard to Armenia’s commitments, the monitoring suggested new recommendations in regard to private sector:

“Conduct assessment of corruption risks involving the private sector and in cooperation with business representatives identify business integrity measures and include them in the anti-corruption strategy or another relevant policy document, ensure the monitoring of implementation of these measures.”¹²

What is the current situation in Armenia?

Transparency International Anticorruption Center NGO Armenia produced “National Integrity System Assessment. Armenia. 2014”, within which was also accessed Business pillar. It was assessed that among 13 pillars, Business presents the 3rd weakest pillar in Armenia, being ahead of just Civil Society and Media.¹³ Business sector was assessed among others in terms of its practical integrity, anti-corruption policy engagement and support for/engagement with civil society, too. Each of this indicators were assessed (0-100 points, where 100 is the highest positive). For practical integrity and anti-corruption policy engagement business sector received only 25 points, while for engagement with civil society 0.¹⁴ For anti-corruption policy engagement, it was particularly noted:

¹⁰ See at: https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

¹¹ See at: <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>

¹² OECD Anti-Corruption Network for Eastern Europe and Central Asia. Third Round of Monitoring. Armenia. Monitoring Report. Page 101. Available at: <http://www.oecd.org/daf/anti-bribery/Armenia-Round-3-Monitoring-Report-ENG.pdf>

¹³ See at: <http://transparency.am/files/publications/1430407572-0-563326.pdf> page 20

¹⁴ Ibid, pages 179-180

“Unfortunately, there are no cases to show that anti-corruption is on the agenda when large business associations and chamber of commerce meet with the government, or any examples of business associations publicly calling on the government to fight corruption. As for membership to UN Global Compact, Armenia has only 14 business participants to it, of which only seven are active.”¹⁵

What can be done to address the issue?

We suggest 5 steps approach:

1. **CLEAR and LOUD ANTI-CORRUPTION PLEDGE.** World Bank has classified into 4 groups Collective Action Anti-corruption initiatives: Anti-corruption declarations; Principle based initiatives; Integrity pacts; Certifying business coalitions.¹⁶ We are taking into consideration peculiarities, because there is no such approach as “one size fits all” which would make any such interventions by the private sector side effective. The first group (Anti-corruption declarations) is the same as pledge.
2. **ADOPTION OF ANTI-CORRUPTION PROGRAMME.** Transparency International developed “Business principles for countering briber”¹⁷ (2013) which basically is about 2 steps: prohibition of briber by the business and adoption of anti-corruption programme, the details of which are professionally developed in the same guide.
3. **CREATE SPECILIZED ANTI-CORRUPTION DEPARTMENT** (for big companies) or hire **ANTI-CORRUPTION SPECIALIST.** Task the department/specialist with oversight functions within the company.
4. **JOIN WITH OTHER CLEAR COMPANIES AND FORM CERTIFYING COALITIONS.** The main feature of such coalitions is to accept into coalition only those companies which are doing their business in a clean and transparent manner. Those members of coalition who are violating this principles, shall be suspended from their participation to the coalition.
5. **ACTIVELY ADVOCATE BEFORE THE GOVERNMENT.** The possible topics for advocacy can be: good governance, because the corruption is a symptom of lack of good governance; introducing liability of legal persons which will make ‘dirty’ companies cautioned and make the competition in the market fair; introduction of mandatory compliance programs; tax credits for good anti-corruption behavior of private companies.

The most important step above all those 5 steps is securing ultimate transparency in everyday work for letting civil society and media to monitor the activities. Transparency is a strength and not weakness for such coalitions.

Author

Khachik Harutyunyan

¹⁵ Ibid, page 180

¹⁶ Collective action and corruption. Mark Pieth.Internationa Center for Collective Action. Working Paper series no.13. 2012. Page 17

¹⁷ See at: http://www.transparency.org/whatwedo/publication/business_principles_for_countering_bribery