

# ARMENIA

## Handbook on Transparency and Citizen Participation

Original:

*Handbook on Transparency and Citizen Participation in Armenia (English version)*

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# Acknowledgements

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The research work and writing of this updated edition was carried out by the Transparency International Anticorruption center, an Armenia non-governmental organisation. The overall co-ordination was ensured by the Co-operation and External Relations Division of the Secretariat of the Congress of Local and Regional Authorities of the Council of Europe.

As of 2020, five handbooks have been produced with country-specific information for Albania, Armenia, Georgia, the Republic of Moldova and Ukraine. They aim to preserve and share the lessons learnt and best practices identified during the implementation of co-operation projects.

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# Foreword

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Governments can only function effectively if they enjoy the trust of their citizens. Local governments, municipalities and their civil servants have a crucial role in trust-building and participatory decision-making, since they have a certain degree of autonomy over the distribution of resources, play an intermediary role with regard to national governments, and represent the first interface between citizens and elected representatives. The professionalism and integrity of these governments and local administrations and their ability to function in a transparent, responsive and accountable manner will doubtlessly lead to enhanced, fair and equitable services to citizens. Local and regional elected representatives therefore must act as role models in the areas of public ethics, transparency and participatory decision-making.

However, we cannot ignore the fact that local authorities, as any public authority, are susceptible to corruption, which poses a major threat to the legitimacy of democratic institutions, as well as to the degree of trust that citizens place in their representatives. Threats such as the lack of transparency and poor public ethics are problems faced by all levels of government, including the local and regional levels. They affect citizens, governments and businesses alike and pose a threat to the universal access to basic services and local development. The fight against corruption needs to remain a long-term priority for local and regional governments and their associations. Concerted preventive action is paramount in order to **foster economic growth, improve living conditions and develop citizens' trust.**

As the decentralisation of power advances, the quality of local governance becomes even more decisive. Therefore, along with the introduction of criminal law provisions against corruption, it is essential to promote public ethics, transparency and participatory decision-making in order to reduce the risk of corruption and boost the citizen confidence in local and regional authorities. The Congress of Local and Regional Authorities of the Council of Europe took a firm step in the promotion of ethical governance by adopting, in 1999, the European Code of conduct for the political integrity of local and regional elected representatives. An advisory group revised this Code, which has been adopted as the European Code of Conduct for All Persons Involved in Local and Regional Governance in November 2018. The updated text addresses the new challenges, including new forms of communication, the impact of digital technology, the respect for the privacy of data, and enlarges the scope of its application to all actors involved in local and regional governance, and not just elected officials.

The Congress is committed to promote ethics and transparency at local and regional levels as an essential component of enhancing the quality of local and regional democracy, one of the key priorities for the period 2017-2020. **With that aim it set "Ethics and Transparency at local and regional level" as the theme for its two plenary sessions in 2016, and in October 2016 adopted a "Roadmap of activities for preventing corruption and promoting public ethics at local and regional levels". One of the objectives of this roadmap** is to deepen our understanding of the various risks and forms of corruption that exist at the local and regional levels. In that perspective the Congress recently adopted reports on the abuse of administrative resources in election campaigns, preventing corruption in public procurement, conflicts of interests, the protection of whistle-blowers, nepotism in the recruitment of staff, and transparency and open government.

As a sign of its political determination to tackle these issues, the Congress has appointed two spokespersons on promoting public ethics and preventing corruption at the local and regional levels, Mr Andrew Dawson and Mr Andreas Galster. In 2017, during the 33rd session of the Congress, it also brought

to the fore the important perspective of young people and open government in the fight against corruption. This is a comprehensive and long-term approach to corruption prevention, including through the co-operation activities of the Congress of which this *Handbook* and those prepared for Armenia, Georgia, the Republic of Moldova and Ukraine are just a few examples, which sends a clear signal of our intention to make this a priority activity for the years to come.

The attitudes and expectations of our citizens with regard to public governance are changing. We are witnessing a growing mistrust toward public institutions and their representatives. In this regard, effective mechanisms for the implementation and compliance with standards of conduct are essential to renew the confidence in public administration. Preventing corruption, reducing its risks, and developing effective, accountable and transparent institutions at all levels are key components of just and inclusive societies.

With this in mind, this *Handbook on transparency and citizen participation in Georgia* is aimed at local authorities, mayors, local councillors and civil servants, to support them in their efforts to improve the quality of local governance in their villages, towns and cities. The *Handbook* will provide local authorities with practical guidelines on transparency and citizen participation, identifying the relevant international standards and national legislation, and providing case-law examples and best practices which it recommends be applied and promoted by all Georgian local authorities.



Andreas Kiefer  
*Secretary General*  
*Congress of Local and Regional Authorities*

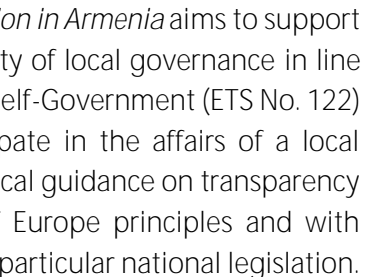


## PURPOSE AND STRUCTURE OF THE HANDBOOK

Transparency and citizen participation are key tools in the development of good governance. Both help to create the conditions for citizens to understand and evaluate the decisions which the government is taking on their behalf, as well as to ensure that their own needs and views are taken into account in the decision-making process.

Effective transparency and participation can help to drive out corruption and government malpractice. They are also more positive tools as they help produce the conditions for increased trust. Finally, they also help governments to draw on the skills and experience of citizens to enable better decision making and the delivery of more effective public services.

This *Handbook on Transparency and Citizen Participation in Armenia* aims to support local authorities in their efforts to improve the quality of local governance in line with the principles of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207). It provides them with practical guidance on transparency and citizen participation, based on the Council of Europe principles and with reference to the general international standards and particular national legislation.



To fulfil its purpose as a practical reference guide to support local authorities in their daily work, the *Handbook on Transparency and Citizen Participation in Armenia* includes country-specific information about anti-corruption legislation, transparency policies and citizen participation mechanisms. In particular, the user of this *Handbook* is provided with a straightforward look at relevant national legislation, a concise assessment of the most prevalent corruption risks, and a set of best practices to introduce and implement transparency and citizen participation mechanisms.

Furthermore, the implementation of the mechanisms included in this *Handbook* will help local authorities contribute to the Sustainable Development Goals (SDGs)<sup>1</sup> of the 2030 Agenda for Sustainable Development,<sup>2</sup> namely the goals 5 (gender equality), 11 (sustainable cities and communities), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals).

The *Handbook* is structured in four main chapters:

- Chapter 1 – Public Ethics and Accountability:  
This chapter highlights the importance and challenges of public ethics and accountability in Armenia. Moreover, it is emphasised how essential they are for an effective, transparent and participatory governance.
- Chapter 2 – Corruption Risks:  
This chapter introduces the most common corruption risks identified in Armenia and outlines relevant international anti-corruption standards, along with the national legal framework for each form of corruption. In addition, this chapter is supported with examples of case law related to each corruption risk.
- Chapter 3 – Transparency:  
This chapter introduces five transparency mechanisms, which have been selected to represent the diversity of approaches to transparency. Each mechanism includes an introductory description and an outline of international standards. This is followed by four sections summarising key national laws and presenting practical guidelines and best practices which may serve as examples for local authorities in their efforts to enhance transparency.
- Chapter 4 – Citizen Participation:  
This chapter introduces five citizen participation mechanisms, which have been selected to represent the diversity of approaches to citizen participation. Following the same structure as in the previous chapter, it includes an introductory description for each mechanism and outlines relevant international standards. This is followed by four sections summarising key national laws and presenting practical guidelines and best practices which may serve as examples for local authorities in their efforts to foster and improve inclusive citizen participation.



## Chapter 1

# PUBLIC ETHICS AND ACCOUNTABILITY

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## 1.1. INTERNATIONAL CONTEXT

Ethics and public accountability are essential features of an effective local or regional authority. They refer to the culture, processes, structures and rules that ensure those in public office act in the wider public interest, rather than their own self-interest. They are an essential feature of good governance, and apply equally to organisations in the private and civil society sectors, as well as public authorities.

Ethics are the rules that define the conduct of public officials<sup>3</sup> in order to ensure that the public is treated fairly and with equality. Ethics can help officials make better decisions in the public interest, as well as help people evaluate the decisions taken on their behalf by public officials.

Public accountability ensures that officials are openly answerable for the decisions they are taking on behalf of the public.

In the absence of ethics and public accountability, corruption and malpractice are able to thrive. As outlined in the following section, corruption is damaging to individuals, society, the economy and government in a number of respects. Ethics and public accountability can help curb the worst excesses of power, and encourage more responsible and fairer decision making by local authorities.

Even where corruption is not endemic, the absence of ethics and public accountability can be corrosive to public trust in government, public institutions and officials. While the relationship between both ethics and public accountability is complex, when done well, they can help to build and strengthen trust between the public and government.

On the other hand, ethics and public accountability can also play a much more positive role. They recognise that citizens and other stakeholders have much value to offer in decision making. They can help to ensure that their personal experiences, expertise, knowledge and scrutiny add value to, and strengthen, decisions taken by government and public officials.

Finally, effective ethics and public accountability are also key elements of improving public services. This is based on the idea that public services that are more responsive and accountable to people - and benefit from their insights, ideas, energy and scrutiny - will work better for people.

Taken together, ethics and public accountability help to ensure that decision-making and resource allocation are fair, efficient and effective, which in turn helps to enable a flourishing democracy, economy and society.

Transparency and citizen participation are important mechanisms for promoting ethics and public accountability in national and local government. A recent report for the European Committee of the Regions on **“Preventing Corruption and Promoting Public Ethics at the Local and Regional Level in Eastern Partnership Countries”** found that **lack of transparency was the main vulnerability in all of the cases assessed.**<sup>4</sup> This handbook outlines a range of transparency and citizen participation mechanisms that can be adopted by local and regional authorities.

## 1.2. NATIONAL CONTEXT

Public trust towards government very much depends on the government's accountability and ethics. In Armenia, the development of those mechanisms can increase public trust and help national and local governments successfully implement policies.

The public opinion survey conducted in 2019 showed that about 90 percent of respondents considered corruption as a very serious or serious problem in Armenia while more than 80 percent of them think that it is an evil that must be eliminated or neutralized.<sup>5</sup> To address this issue, national and local governments should develop mechanisms of accountability and ethics. These mechanisms can decrease corruption and bribery and increase trust towards government. The Corruption Prevention Commission of the Republic of Armenia as well as the Law on Public Service are efficient mechanisms, but those are not enough to solve the existing concerns. Additional mechanisms are necessary to increase accountability, and local governments have major role on developing and implementing such mechanisms.

## 1.3. CODES OF ETHICS AND PROFESSIONAL CONDUCT

A code of conduct sets out specific standards of professional behaviour expected in a host of situations and provides public officials with guidance for handling them. In addition, codes of conduct bring in transparency and public accountability in governmental operations.

Codes of conduct are often confused with codes of ethics, which establish basic principles to which public servants must abide, such as integrity, selflessness and openness, among others. A code of conduct applies and implements the code of ethics to the particular circumstances of an institution.

Well-designed codes of conduct and ethics will help meet the growing expectations from the public, business leaders and civil society, and places an onus on governments to ensure high ethical standards amongst public officials and elected representatives. As such, they can support the development of trust between the public and government institutions and officials.

### *International standards*

- The **Committee of Ministers of the Council of Europe's Recommendation on Codes of Conduct for Public Officials**<sup>6</sup> and the **European Code of Conduct for all Persons Involved in Local and Regional Governance**<sup>7</sup> are the reference texts for local and regional authorities in Europe for ensuring political integrity.
- The **Council of Europe's Abridged Handbook on Public Ethics at Local Level**<sup>8</sup> provides a high-level overview of good practice in public ethics.
- The **OECD Recommendation on Public Integrity**<sup>9</sup> shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.
- This **Transparency International paper on Implementing Effective Ethics Standards in Government and the Civil Service**<sup>10</sup> provides practical mechanisms for institutionalising high standards of ethical integrity for elected officials and civil servants.

### *National context*

The adoption of the new Law on Public Service in 2018 has changed the approaches to the establishment of the codes of ethics and conduct in state and local self-government bodies, as well as the formation of ethics committees. In the long run the proper function of the Corruption Prevention Commission may become a

major tool for increasing ethics and public accountability.

### *National legislation*

The Constitution of Armenia deals with only one issue regarding code of ethics. Article 107 of the Constitution states that ad hoc committees may be established upon decision of the National Assembly for the discussion of issues relating to parliamentary ethics, and for the submission of opinions to the National Assembly.

According to the legislation of Armenia, the institutions regulating the code of ethics of public servants in Armenia are:

- The ad hoc committee of the National Assembly for discussion of issues related to parliamentary ethics;<sup>11</sup>
- The Corruption Prevention Commission;<sup>12</sup>
- The Constitutional Court;<sup>13</sup>
- The Ethics and Disciplinary Committee of the General Assembly of Judges<sup>14</sup>;
- The Ethics Committee adjunct to the Prosecutor General;<sup>15</sup>
- Ethics Committees established for types of services – such as the civil service, tax service, customs service, diplomatic service, etc.;<sup>16</sup>
- The position of integrity officer envisaged in the personnel subdivisions of the state and local self-government bodies.

Functions of an ethics commission for the state officials, mayors and deputy mayors, heads of administrative areas in Yerevan, Mayor of Yerevan and his deputies are to be implemented by the Corruption Prevention Commission. Exceptions will include the members of parliament, judges, prosecutors, investigators, who will need to establish their own ethics committees.

The ethics commissions should follow the observance of the requirements of public servants' ethics. Rules of conduct for persons holding public office (except for a deputy, a judge, a member of the Supreme Judicial Council, a prosecutor, an investigator), heads of communities, their deputies, heads of administrative districts of Yerevan community, their deputies shall be defined by the Code of Conduct adopted by the Corruption Prevention Commission.<sup>17</sup>

### *National guidelines*

Law on Public Service states that typical rules of conduct for public servants shall be established by the Corruption Prevention Commission. The main issue is that neither the Law on Public Service, nor the Law on Local Self-Government regulates the procedure of creation of codes of conduct for the Council of Elders. The Corruption Prevention Commission shall establish the typical rules of conduct for public servants based on the principles of conduct established by the Law on Public Service. Though the Commission started functioning since 2019, the development of the typical rules of conduct is still in process. The rules of conduct of a public servant shall be defined on the basis of the typical rules of conduct established by the Corruption Prevention Committee.

### *Example of best practice*

The implementation of code of ethics and conduct in Armenia is not progressed much. At a national level, there are some examples. For instance, in February 2016, a deputy of the National Assembly addressed journalists using profane words. Three Armenian NGOs working to protect the rights of journalists applied to the Code of Ethics Committee of the National Assembly requesting the Committee to investigate the case. The Committee investigated the case and concluded that the deputy violated the ethical principle of conducting duties respectfully.<sup>18</sup>

At a national level, there is only one example of the decision of Corruption Prevention Commission on violation of rules of conduct. In 2019 the Commission initiated proceedings on the violation of the rules of ethics by the member of the RA Audit Chamber, based on the complaint of the member of the RA Chamber of Advocates. As a result of the proceeding the Commission made the following conclusion. The commission noted that the reply letter addressed to the member of the RA Chamber of Advocates, did not reflect the essence of the constitutional duty, politeness and respect for human rights by a public servant. However, in the absence of rules of conduct for the public servant, the Commission has no legal basis to characterize it as a violation of the Code of Conduct and to propose disciplinary action against the member of the Audit Chamber on that basis.<sup>19</sup>

## Chapter 2

# CORRUPTION RISKS

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In the absence of public ethics and accountability, corruption and malpractice are allowed to thrive, which undermines the foundations of a peaceful, prosperous and just society.

Corruption is a major challenge to democracy and the rule of law. It results in decisions and resource allocation that do not reflect the interests of the public and concentrates political power in the hands of the few. It in turn causes political leaders and institutions to lose legitimacy and public trust, which reduces their ability to govern.

Corruption also causes local and regional authorities to be inefficient and ineffective in exercising their duties. It results in decisions being made not on the basis of what is in the interests of society at large, but what is in the self-interests of the decision maker and their associates. It leads to public money being misspent, with contracts being awarded to inferior providers and budgets being misallocated. At its worst, it enables public officials to misappropriate money and resources, using their position to get rich to the cost of those they have a duty to serve.

Corruption can also result in public officials being appointed on the basis of favouritism rather than merit, meaning that local and regional authorities do not have access to the brightest and best talent. This in turn creates a fertile environment for further corruption and reduces even more the efficiency and effectiveness of the administration.

Inefficient and ineffective organisations, staffed by individuals who gained their position on the basis of something other than merit, result in poor quality public services and infrastructure, thereby eroding public trust and the legitimacy of public institutions. More importantly, however, it results in significant human costs, including poverty, deaths, illness, and restricted life chances.

Finally, corruption harms economic development. It leads to public money being directed to uncompetitive businesses, rather than those that offer more innovative or cheaper products and services. Uncompetitive markets, coupled with the negative impact of corruption on the quality of local public services and infrastructure, means that businesses do not have a solid foundation (of staff, security, investment, etc.) on which to build. In the end, this may cause private and international investors to avoid investing in an area.

## 2.1. BRIBERY

Bribery is the promise, offer, acceptance or solicitation of a personal advantage (e.g., gift, loan, reward, favour, etc.) in exchange for an unethical or illegal action. Bribery results in decisions not being taken in the public interest, which reduces public trust in institutions and leads to poor public services.

### *International standards*

The following international conventions and standards relate to bribery:

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions<sup>20</sup> establishes legally binding standards to criminalise bribery of foreign public officials in

international business transactions. It is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction.

- The International Anti-Bribery Standard 37001<sup>21</sup> specifies a series of measures to help organisations prevent, detect and address bribery.
- The OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance<sup>22</sup> which supports the convention on combating bribery.

### *National context*

90 percent of Armenian citizens involved in recent public opinion survey on corruption consider «corruption a very serious or serious problem, while their overwhelming majority thought that corruption is an evil and must be eliminated or neutralized». Compared to the results of a similar survey from 2010 there is a significant change in public perception in terms of the prevalence of corruption. Thus, in 2010, 83.7% of respondents believed that corruption is widespread in Armenia and exists in all spheres. In 2019, only 4.4% of respondents expressed such an opinion.<sup>23</sup> Among the current manifestations of corruption the citizens mostly mentioned the unsuccessful appointments, pressure from former authorities and sabotage of old personnel and lack of public administration experience among the problems in the public administration system».<sup>24</sup>

In 2018, after many years of slightly fluctuating data, Corruption Perception Index of Armenia marked an increase by 7 points, equalling 42, raising the position of the country from 107 to 77 as ranked among about 180 countries.<sup>25</sup> Promising developments aimed at deepening anti-corruption policy reforms followed the revolution and the elections of a new parliament in 2018.

### *National legislation*

The Criminal Code of Armenia sets a number of penalties for cases of bribery. Article 311 of the said code states that an official in receipt of a bribe should be punished with a fine amounting from 300 to 500 times the minimum salary, or imprisonment of up to twelve years, and are also barred from holding certain positions or engaging in certain activities for a maximum term of three years, with or without confiscation of property (depending on aggravating circumstances). Article 312 states that providing a bribe to an official is punishable by a fine amounting from 100 to 400 times the minimum salary, or with the arrest for a term of one to three months, or imprisonment for a term of up to seven years. The law also states that the bribe-giver is exempted from criminal liability if the extortion of bribe took place and the bribe-giver no later than within three days after the committed crime voluntarily informed the criminal prosecution authorities about the bribery and supported the disclosure of the crime. Criminal Code of Armenia also establishes liability for the intermediary in bribery (Art. 313), who should be punished with a fine amounting from 100 to 400 times the minimum salary, or with the arrest for a term of one to three months, or imprisonment for a term of up to five years.<sup>26</sup>

### *Example of case law*

In 2018, a representative of RA Police, inspector of the community police department in Yerevan, was accused of bribery. He was accused of demanding a bribe for obvious illegal inaction in favour of the bribe-giver. During the payment of the bribe, which amounted to AMD 241,880 (\$500), he was arrested and sentenced to four years of imprisonment without confiscation of property.<sup>27</sup>

## 2.2. CONFLICT OF INTEREST

A conflict of interest is where an individual is in a position to derive personal benefits from the actions or decisions they take in an official capacity. Conflicts of interest – either if they are actual, perceived or potential<sup>28</sup> – result in decisions that are, or are considered to be, unfair and self-interested. This reduces public trust in institutions and results in worse outcomes for the public.

### *International standards*

- The **Committee of Ministers of the Council of Europe's** Recommendation on Codes of Conduct for Public Officials<sup>29</sup> and the European Code of Conduct for all Persons Involved in Local and Regional Governance<sup>30</sup> cover the general issues normally thought to be necessary for avoiding such conflicts.
- The **Congress of the Council of Europe's Resolution and Recommendation on Conflicts of interest at local and regional level**<sup>31</sup> propose a set of measures to mitigate the risks of conflict of interest and ensure that it is identified at an early stage.
- The OECD Guidelines for Managing Conflict of Interest in the Public Service<sup>32</sup> identify principles and standards for developing policies.
- The Congress **of the Council of Europe's Resolution and Recommendation on Making public procurement transparent at local and regional levels**<sup>33</sup> and the OECD Checklist for Enhancing Integrity in Public Procurement<sup>34</sup> provide guidance for enhancing transparency and for promoting integrity in procurement.

Conflict of interest is also covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>35</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>36</sup>
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**<sup>37</sup> aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**<sup>38</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**<sup>39</sup> aims to fight corruption involving officials from the EU or its Member States. The OECD Recommendation on Public Integrity<sup>40</sup> shifts the focus from ad hoc integrity policies to a context dependent, behavioural, risk-based approach with an emphasis on cultivating a culture of integrity across the whole of society.

### *National context*

On 9 January 2012, the Commission on Ethics of High-Ranking Officials of Armenia was established in accordance with the Law on Public Service of Armenia. The mentioned entity was replaced with the Corruption Prevention Commission, established in November 2019 in accordance with the Law on Corruption Prevention Commission passed in June, 2017. The mission of the Commission is to build trust among citizens towards public institutions, to contribute to the implementation of good governance as well as to ensure transparency and accountability of public officials' activities in Armenia.<sup>41</sup>

The main functions of the Commission are:

- Detection of violations of the compliance requirements established in the Law on Public Service, as well as other non-compliance with restrictions by persons holding public office, heads of communities, their deputies, heads of administrative districts of Yerevan community, their deputies,
- Detection of conflict of interests and violations of ethics rules by persons holding public office (except for the Members of Parliament, Judges, Members of the Supreme Judicial Council, Prosecutors, Investigators),

heads of communities, their deputies, heads of administrative districts of Yerevan community, their deputies,

- Providing official interpretation of the principles of conduct of persons holding public office, as well as ensuring the uniformity of the observance of the typical rules of conduct of public servants,
- Regulation of the declaration process, verification and analysis of declarations,
- Ensuring the uniformity of the application of non-compliance requirements and other restrictions prescribed by law;
- Participation in the development of anti-corruption policy,
- Monitoring of the implementation of anti-corruption programs and measures developed, and submission of proposals to the competent authorities.<sup>42</sup>

Corruption Prevention Commission is still in process of formation. It shall consist of 5 members elected by the National Assembly of Armenia and maintain a large staff to implement its multiple functions - prescribed by the law as well as those in process of elaboration, such as the oversight of political party finance or the conduct of regulatory impact assessment of draft laws and by-laws in respect with corruption risks.

### *National legislation*

The Law on Public Service states that in the case of conflict of interest, person holding public office is obliged to submit a written statement to his / her superior or direct supervisor on the circumstances of the conflict of interest. The written statement is subject to immediate examination. The person holding public office should not take any action before receiving instructions from the management team. In case of not having a superior or direct supervisor, the person holding public office may submit a written statement to the Corruption Prevention Commission, which proposes to take steps to resolve the situation, including to make a statement on the existence of conflict of interests in a particular situation.<sup>43</sup> The Law also establishes the incompatibility requirements and other restrictions for public servants. It is forbidden for persons holding public office and public servants to hold positions that are not conditioned by their status in other state or local self-government bodies, any position in commercial organizations, to engage in entrepreneurial activity, to perform other paid work, except for scientific, educational and creative work. It is also forbidden for them to accept a gift or agree to accept it later.<sup>44</sup>

There have been several cases applied to the Corruption Prevention Commission to investigate the actions of public servants, but the Commission usually concludes that there is no any violation.

### *Example of case law*

On 5 December 2019 several online media resources published articles making concerns about the violation of incompatibility requirements by the mayor of Yerevan, who after assuming his post has retained his shares in several commercial organizations. On 9 December 2019 the Commission made a decision to initiate proceedings on the basis of violation of incompatibility requirements by the mayor of Yerevan.

**The Commission found that the evidence collected as a result of its investigation, including the defendant's explanation, provided grounds to conclude that there was no breach of the incompatibility requirements.** Though the formal interpretation of the law shows that not transferring the shares to trust management is a violation of incompatibility requirement, due to the fact that these companies did not actually operate, the Commission concluded that there is no breach of the incompatibility requirements in the substantive sense of the law.<sup>45</sup>



## 2.3. EXTORTION

Extortion is the use of coercion to obtain money, goods, services or some other advantage from an individual or institution. Beyond the damage it does to the victim, extortion reduces public trust in government and can discourage business growth and investment in the area.

### *International standards*

As one type of corruption, extortion is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>46</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>47</sup>
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**<sup>48</sup> aims to co-ordinate criminalisation of corrupt practices and improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**<sup>49</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**<sup>50</sup> aims to fight corruption involving officials from the EU or its Member States.

### *National context*

Armenia was included in the Global Corruption Barometer 2016, which assesses the general public's experience and attitudes towards corruption in countries around the world.<sup>51</sup> Only 14% of the respondents of the survey in Armenia rated the steps taken by the Armenian Government to handle the fight against corruption as fairly well or very well, whereas 65% of the respondents rated those steps as very badly or fairly badly.<sup>52</sup>

In comparison with 2016 survey, the public opinion survey on corruption in Armenia conducted in 2019 by the Caucasus Research Resource Center Armenia and commissioned by Transparency International Anticorruption Center showed that the vast majority of respondents (81.6%) assessed the Government anti-corruption actions as effective.<sup>53</sup>

### *National legislation*

The Criminal Code of Armenia defines forcing the electorate to vote in favour of a particular candidate or political party and forcing people to participation in elections as criminal acts. It also defines the abuse of official power of local authorities as a criminal act. Article 308 of the law states that the misuse of official position or the non-fulfilment of his/her official duties for mercenary or personal interest, or for group interests, which have caused substantial harm to the rights and legitimate interests of individuals, organizations, and the legitimate interests of society or the state is punished with a fine in the amount of 200 to 300 times the minimum salary, or deprivation of the right to hold certain positions or practice certain activities for a term of up to five years, or with arrest for the term of two to three months, or with imprisonment for the term of up to four years.<sup>54</sup>

### *Example of case law*

On 21 June 2019 The National Security Service of Armenia initiated criminal proceedings on the grounds of abuse of official power and bribery against the person occupying the position of the operative officer of the operative-intelligence department of the RA State Revenue Committee. The employee did not fulfil his official duties, did not take measures to register the illegal activity of his relative, as a result of which the fact of the

violation was not registered. Taking advantage of his permission, misuse of official duties caused significant damage to the legitimate interests of the state. He was found guilty and sentenced to a fine of AMD 200,000<sup>55</sup>.

## 2.4. FRAUD

Fraud is the use of deceit in order to gain an unfair or illegal advantage. Fraud erodes public trust in government and reduces the capacity of government to act. It often results in the loss of public money, which harms public services and the ability of governments to address the public's needs and aspirations.

### *International standards*

As one type of corruption, fraud is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>56</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>57</sup>
- The **Council of Europe's Criminal Law Convention on Corruption (ETS No. 173)**<sup>58</sup> aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe's Civil Law Convention on Corruption (ETS No. 174)**<sup>59</sup> defines common international rules for effective remedies for persons affected by corruption.
- The **European Union's Convention against Corruption Involving Officials**<sup>60</sup> aims to fight corruption involving officials from the EU or its Member States.

### *National context*

Public trust in elections in Armenia used to be very low. According to a Gallup survey in 2011, only 13% of women and 12% of men believed in the honesty of elections.<sup>61</sup> The OSCE Office for Democratic Institutions and Human Rights (ODIHR) final report on the 2017 parliamentary elections in Armenia urged authorities and political parties to increase public trust in elections.<sup>62</sup> Low level of trust in the electoral system was mostly explained by the widespread electoral fraud lasted for about two decades both at the national and local levels to achieve the favourable results. Reports of both national and international observation missions kept recording multiple violations and making recommendations for policy change. Major turn in the electoral practice happened only after the revolution of 2018. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) final report on the 9 December, 2018 Early Parliamentary elections, found that the election held enjoyed the protection of fundamental freedoms and were widely enjoyed by the public trust, which must be maintained in the further elections through reforms.<sup>63</sup>

The PACE delegation too concluded that the 9 December early parliamentary elections in Armenia were held with due regard for fundamental freedoms and enjoyed broad public trust that needs to be preserved through further electoral reforms. Open political debate, including in the media, contributed to a vibrant campaign. The peaceful so-called “velvet revolution”, in conjunction with the political will of the current authorities, enabled the holding of democratic elections.<sup>64</sup>

For the first time in many years the parliamentary elections in December 2018 were assessed by the major local observer initiatives – Akanates and Independent Observer, as truly competitive, free and fair that ensured the full exercise of the voters' will.<sup>65</sup>

### *National legislation*

Article 23 of the Electoral Code of Armenia places restrictions on election campaigns for candidates who are public servants. The code states that candidates who are public servants shall not campaign when undertaking official duties. They also cannot abuse official position in the interest of their party. The law also restricts the use of resources that are given to public officials to implement their official duties.<sup>66</sup>

Article 178 of Criminal Code of Armenia states: “Swindling, i.e. theft of a significant amount or **misappropriation of somebody’s property rights by cheating or abuse of confidence, is punished with a fine** in the amount of 300 to 1000 minimum salaries, or with arrest for the term of up to 2 months, or with imprisonment for the term of up to 7 years”.<sup>67</sup>

Article 22 of the Law on Combating Money Laundering and Terrorism Financing requires from reporting entities to maintain records of “customer identification data, including the data on the account number and **turnover, as well as business correspondence data [...] for at least 5 years following the termination of the business relationship or completion of the transaction**”.<sup>68</sup> If the reporting entity fails to meet the requirements of Article 22, it will “result in a warning and an assignment to eliminate the violation, or a fine equal to the 600-fold amount of the minimum salary”, as set forth in Article 30, paragraph 4, of the above-mentioned law.

### *Example of case law*

Before the 2017 Parliamentary elections on 24 March, the Union of Informed Citizens announced that a few of its activists, posing as senior Republican party representatives, telephoned the directors of 136 schools and kindergartens in and out of Yerevan, and revealed that 114 of them admitted to drawing up lists of pupils’ parents, as well as schoolteachers and staff, who promised to support the ruling Republican Party in the upcoming elections.<sup>69</sup>

The Prosecutor General’s Office (PGO) of Armenia formed a working group on the issue and investigated the 114 cases separately. After the investigation, the PGO concluded that only one of 114 recordings contained criminal elements. The other mentioned recordings did not contain criminal elements, and therefore they are under the jurisdiction of other authorised bodies.<sup>70</sup> Later, that one case was also dismissed on the grounds that the school director’s actions did not constitute a crime.<sup>71</sup>

## 2.5. CLIENTELISM

Clientelism is the promise and acceptance of a personal benefit (e.g. gift, loan, reward, favour, job, etc.) in exchange for political support. It is often based on an unequal relationship between a patron (e.g. political leader) and client (e.g. voter). Clientelism results in decisions that reflect the special interests of a few, rather than the wider public interest, leading to unfair and unjust outcomes.

### *International standards*

As one type of corruption, clientelism is covered by the following international standards and guidelines:

- The United Nations Convention against Corruption<sup>72</sup> is the only legally binding universal anti-corruption instrument.
- It is supported by this Technical Guide to the Convention.<sup>73</sup>
- The **Council of Europe’s Criminal Law Convention on Corruption (ETS No. 173)**<sup>74</sup> aims to co-ordinate criminalisation of corrupt practices and to improve international co-operation in the prosecution of offences.
- The **Council of Europe’s Civil Law Convention on Corruption (ETS No. 174)**<sup>75</sup> defines common

international rules for effective remedies for persons affected by corruption.

- The **Congress of the Council of Europe's Resolution and Recommendation on Fighting nepotism** within local and regional authorities<sup>76</sup> sets out standards for good practice and presents strategies for preventing corruption in the recruitment procedures of European local and regional governments.
- The **European Union's Convention against Corruption Involving Officials**<sup>77</sup> aims to fight corruption involving officials from the EU or its Member States.

### *National context*

In Armenia, clientelism is considered a governing problem. According to public opinion survey of 2019, 87-98 percent of respondents did not encounter corruption when dealing with government officials. Nevertheless, because of considerable decrease of other forms of corruption following the revolution of 2018, the volume of nepotism/clientelism in the current corruption typology became significant. The largest portion of respondents of the above-mentioned survey – 42 percent thought that currently the most common form of corruption is nepotism/clientelism.

The Law on Public Service tries to regulate some aspects of clientelism but overall, there are many loopholes and there are not concrete enforcement mechanisms.<sup>78</sup>

### *National legislation*

The Law on Public Service bans public servants from using their official position to provide actual benefits or privileges to political parties, public organizations, including religious groups. As regards nepotism, it also bans public servants from working with their close relatives (parent, spouse, child and sibling, as well as parent, child, sibling of spouse).<sup>79</sup> Article 311-2 of the Criminal Code of Armenia bans the use of real or alleged influence of personal or group interests. Such kind of actions is punished with fines of 200 to 400 times the minimum salary, or with imprisonment for a maximum term of ten years, with or without confiscation of property.<sup>80</sup>

### *Example of case law*

On 19 February 2020 the Court of General Jurisdiction of the first instance of Shirak region found guilty the former head of the "Artik" penitentiary institution of the RA Ministry of Justice for abuse of public office for private gain and failing to fulfil his official duties, which caused significant damage to the legitimate interests of the state. He was sentenced to fine in the amount of AMD 250.000.<sup>81</sup>

## Chapter 3

# TRANSPARENCY

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### 3.1. ACCESS TO INFORMATION

Access to information is the legal right for citizens to request and receive information from public authorities. It is often enacted by Freedom of Information legislation.

Access to information supports accountability along with informed public participation in decisions, and is therefore fundamental for the effective functioning of democracies.

#### *International standards*

Access to information is a fundamental component of a number of the conventions and standards against corruption listed elsewhere in this handbook. It also underpins a number of key UN human rights documents. The following specifically relate to Access to Information:

- The **Council of Europe’s Convention on Access to Official Documents (CETS No. 205)**<sup>82</sup> affirms an enforceable right to information.
- The Congress of **the Council of Europe’s Resolution and Recommendation on Transparency and open government**<sup>83</sup> call upon local and regional authorities to increase the use of open data and records management by their administrations, and to publish these in comprehensive, accessible and reusable ways.
- The Aarhus Convention<sup>84</sup> grants rights, including access to information, in decisions concerning the environment.
- The OECD Recommendation of the Council on Open Government<sup>85</sup> identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

#### *National context*

The Constitution and legislation of Armenia provide a wide range of mechanisms for access to information. These mechanisms are widely used by media and civil society organisations. Citizens and civic activist groups also use these mechanisms to access information, but not so often. According to research conducted by the Freedom of Information Center of Armenia (FOICA) on the right to freedom of information in local self-government bodies, 70% of the information requests sent to municipalities and village administrations were answered properly. Usually, requests for access to information are made by NGOs. As a matter of example, in 2009, the Administrative Court fined the head of the community of Yelpin AMD 50 000 (€89) for not providing information to FOICA. This was the first case where the court required the public servant to pay a fine from his personal account.<sup>86</sup> According to research conducted as of July, 2019 by Transparency International Slovakia on access to Information in European Capital Cities, Yerevan holds the last place. The research was conducted in the capitals of 26 European countries with 14 indicators, including access to information, decision-making process of municipalities, management of financial resources, transparency of procurement, availability of information on the content and process of Council of Elders meetings and format, as well as rules of ethics for elected representatives. The survey was conducted based on a study of the data of the official websites of the municipalities, as well as inquiries sent to the municipalities.<sup>87</sup>

### *National legislation*

The Constitution of Armenia gives citizens the right to freedom of information. Article 42 of the Constitution states: “Everyone shall have the right to freely express his or her opinion. This right shall include freedom to **hold one’s own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers.**”<sup>88</sup>

The Law on Freedom of Information defines the duties of the information holder as well as the procedure, form and conditions for obtaining information.<sup>89</sup> The procedure for registration, classification and maintenance of information developed by or delivered to the state and local self-governing bodies, state institutions, and state-funded organisations, including information requests sent to state bodies in electronic form has been adopted by the Government in 2015.<sup>90</sup>

The Law on Mass Media gives basic rights to journalists who work for mass media organisations to operate without unwarranted restrictions. It reaffirms the constitutional right to seek, receive and disseminate information. The law prohibits censorship, the interference in “the legitimate professional activities of a journalist”, and the disclosure of sources without a court order for the purpose of disclosing information pertaining to serious crimes.<sup>91</sup> Amendments to the Law On State Registration of Legal Entities, Separate Subdivisions of Legal Entities, Institutions and Private Entrepreneurs from 06 March 2020, provided the possibility for Mass Media to receive the information from the unified state register of companies without paying state fee.<sup>92</sup>

### *National guidelines*

The Freedom of Information Center of Armenia published guidelines for civil servants entitled *How to use the Law on Freedom of Information*.<sup>93</sup> According to the guidelines, everyone, regardless of their citizenship, has the right to receive and impart information. The institutions responsible for providing information are any state institution, local self-government body, state organisation, state-funded organisations and the official representatives of all the above-mentioned institutions.

The guidelines also explain the availability of information and the responsibility of state institutions to provide information as well as cases when requests for information can be refused. Those cases can be related with requesting information about state or bank secrets or violating the principle of personal data. In addition, the guidelines provide toolkits on how and where to apply in case the information is not provided.

In 2019 The Freedom of Information Center of Armenia published handbook for journalists entitled *Fact-checking and the right of journalists to receive information*. The Handbook presents all the effective online fact-checking tools that are up-to-date and easy to use today, as well as useful and applicable material related to freedom of information. It can help journalists, editors, students, lecturers, and Internet consumers to search extensively, verify the authenticity of information, images, and videos, use satellite data, and become more knowledgeable and media literate.<sup>94</sup>

### *Examples of best practice*

The decisions of the councils of elders and heads of communities in Armenia were electronically posted in PDF format on their respective official websites and didn’t allow for an effective search engine, making it difficult for users to find the legal acts they needed. In this regard, the Ministry of Territorial Administration and Development, along with regional governors’ offices (*marzpetarans*), considered convenient to add the regulatory legal acts adopted by the councils of elders and heads of communities into the Armenian Legal Information System ([www.arlis.am](http://www.arlis.am)). Thanks to this portal, which constitutes a single unified legal information system, users can access all decisions and acts adopted at local level through the tab “Acts of

Local Self-Government Bodies“ This initiative, which increases transparency and accountability at the local level, was implemented under the framework of the Third Action Plan of the Open Government Partnership (2016-2018).<sup>95</sup>

With development of e-government platforms in recent years, the government has increased the opportunities to view and receive information online (arlis.am, datalex.am, e-gov.am, e-request.am, etc.). Websites provide information on procurements, judicial acts, licenses, or other specific information.<sup>96</sup> In 2018, a unified platform for electronic inquiries – e-request.am – was launched, allowing to send an electronic request to state bodies in one window format, after which inquiries are sorted and sent to the responsible official.<sup>97</sup>

The Law on Local Self-Government establishes a duty for all communities to have an official website where, in particular, the following information should be made publicly available: documentation, procedures, location and timelines of meetings, public hearings and discussions with community residents; the results of public hearings and discussions on decisions of the community council and community head as well as on other documents prescribed by law; procedures on participation of local community residents in the self-government process, procedures of formation and operation of consultative bodies adjunct to the head of the community, of conducting open public hearings and discussions, other procedures and relevant information.<sup>98</sup>

## 3.2. OPEN DATA

Open data is the publication of data and information in a format that may be freely used, modified and shared. The OECD states that open data is «a set of policies that promote transparency, accountability and value creation by making government data available to all». By making data generated through the activities of public bodies available, government becomes more transparent and accountable to citizens. It also supports business growth and the development of services centred on citizens.

### *International standards*

Open data is a relatively new phenomenon without officially endorsed standards. However, a number of useful guidelines exist:

- The **Congress of the Council of Europe’s Resolution and Recommendation on Open data for better public services**<sup>99</sup> explain its importance for improving local democracy.
- The **Congress of the Council of Europe’s Resolution and Recommendation on Transparency and open government**<sup>100</sup> call upon local and regional authorities to increase the use of open data and records management by their administrations.
- The United Nations Guidelines on Open Government Data for Citizen Engagement<sup>101</sup> introduce policy guidelines and good practice recommendations.
- This World Bank Toolkit<sup>102</sup> starts from the basics, through to planning and implement, as well as avoiding common pitfalls.
- The Five Star Open Data Deployment Scheme<sup>103</sup> provides five steps to fully opening data, explaining the costs and benefits of each.
- The International Open Data Charter<sup>104</sup> sets out six principles for open, timely and interoperable government data.
- The OECD Recommendation of the Council on Open Government<sup>105</sup> identifies on-demand provision of information and proactive measures by the government to disseminate information as an initial level of citizen participation.

## *National context*

Currently in Armenia, the accumulated and released open data of many state institutions makes up quite a large volume. There are a number of databases which have considerable potential to help anti-corruption and civic journalistic investigations such as single-source procurement<sup>106</sup> and the Corruption Prevention Commission<sup>107</sup>. Journalists and researchers can use open data to carry out independent investigations and research.<sup>108</sup>

## *National legislation*

According to the Law on the Budgetary System, the budget formulation and approval process should be open. The Law states that after presenting the draft law on the state budget to the National Assembly, the Government should publish the budget within three days, with the exception of issues containing state secrets. The debate on the draft state budget in the National Assembly is covered by state media, again with the exception of issues containing state secrets. The Law requires local self-government bodies to publish draft community budgets in the local press within three days of submitting the draft to the Council of Elders.<sup>109</sup> The Law on Local Self-Government requires all communities to have a website and to publish the budget and its reports on the website.<sup>110</sup>

## *National guidelines*

In October 2014, the Digital Rights NGO, with the support of The Open Society Foundations, published policy guidelines on personal data protection.<sup>111</sup> The guidelines provide practical information on national and international practices and policies in the protection of personal data, making references to national and international instruments. In addition, the publication includes a set of European models and practical recommendations for the Armenian context.

In 2017 The Personal Data Protection Agency of the Ministry of Justice of the Republic of Armenia has developed guideline on the protection of children's personal data. The purpose of the guideline is to provide a unified interpretation of personal data protection legislation, to raise awareness of the rights and responsibilities of children, parents and data developers, and to raise the level of protection of children's personal data. The guideline outlines the principles of personal data protection for children, the rights of children in the field of personal data protection, the responsibilities of data developers, educational institutions, the Internet, the specifics of personal data processing, and the responsibility for violating children's right to personal data protection.<sup>112</sup>

## *Example of best practice*

A good example of publicly known open data is the state interactive budget,<sup>113</sup> which visually presents budget categories. Local self-government institutions have also copied this tool for presenting budgets. For example, the Yerevan municipality<sup>114</sup> and the Compass NGO in Gyumri<sup>115</sup> already publish interactive budgets, and state institutions (for example the President's office<sup>116</sup>) have copied the model. Another example is the website of the Central Electoral Commission (elections.am), an open data electronic system to search information on voters and their register.<sup>117</sup>

Another example is the website of the State Committee of the Real Property Cadastre (www.e-cadastre.am), an open data electronic system to search information on real state and land registries from 1 January 2012 onwards. The site is designed to provide e-services by the Committee, including online submission of applications and related documents for state registration of real property rights and restrictions. Therefore, this constitutes another example of how open data and electronic tools increases transparency and increases citizens' access to public services.



### 3.3. DISCLOSURE: DECLARATION OF ASSETS AND CONFLICT OF INTEREST

Disclosure is the act of routinely publishing certain information, sometimes required by law. It can support anti-corruption measures by requiring the routine publication of assets and declarations of conflict of interest, for example. It can also be for more positive reasons, such as to support policy making, or by ensuring that the public are better informed and therefore able to contribute more effectively.

#### *International standards*

Disclosure is an important element in the conventions and standards against corruption listed elsewhere in this handbook. Of particular relevance are:

- The **Committee of Ministers of the Council of Europe's Recommendation** on Codes of Conduct for Public Officials<sup>118</sup> and the European Code of Conduct for all Persons Involved in Local and Regional Governance<sup>119</sup> require private interests to be declared, made public and monitored.
- The Congress of the Council of **Europe's Resolution and Recommendation on Conflicts of interest** at local and regional level<sup>120</sup> call on local and regional authorities to promote the proactive disclosure of declarations of interest prior to public request and to ensure that disclosure policies are accompanied by appropriate measures for resolving conflicts of interest.
- The **OECD's Managing Conflict of Interest in Public Service: Guidelines and Country Experiences**<sup>121</sup> provides practical instruments for modernising conflict-of-interest policies.
- The **OECD's Asset Declarations for Public Officials: A Tool to Prevent Corruption**<sup>122</sup> identifies the key elements of asset declaration systems.

#### *National context*

The legal framework concerning disclosure and conflict of interest, as well as the prohibition or restriction of certain activities of public servants and high-ranking public officials, was mainly formed in 2010s in Armenia. The Law on Public Service was adopted in 2011, and the Commission on Ethics of High-Ranking Officials of Armenia was established in 2012.

Following that - the adoption of the new Law on Public Service in 2017 led to establishment of the Corruption Prevention Commission in 2019, which is the successor of the Commission on Ethics of High-Ranking Officials.

Public officials and public servants are obliged to submit declarations of assets and income before taking the respective position, on an annual basis and after leaving the position. Their declarations also include their family members living in the household.

Local community servants do not submit assets income and income declarations. The Law on Public Service also does not apply to the community council. Declaration of interest is submitted only by the head of the community and his deputy, the heads of the administrative districts of Yerevan community, their deputies. Thus, the heads of the administrative districts of the enlarged community and their deputies do not submit a declaration of interests. In order to enhance transparency and accountability at the local self-governance level, there is also a need to develop a code on disclosure at local level.

Usually, NGOs take the role of watchdogs by monitoring the level of disclosure available and required, and reporting to different ethical committees of state institutions. The state institutions concerned have started to respond more actively to the requests made by NGOs.

### *National legislation*

Article 95 of the Constitution states that «*a Deputy may not hold any position, not related to his or her status, within state or local self-government bodies, or any position within commercial organisations, engage in entrepreneurial activities or perform other paid work, except for scientific, educational and creative work*».<sup>123</sup> The Constitutional Law on Rules of Procedure of the National Assembly states that in the case of a breach of any of the provisions of Article 95 of the Constitution, which also applies to the members of the Central Electoral Commission, the TV and Radio Commission, the Audit Chamber and the Board of the Central Bank, their membership may be terminated on the basis of the conclusion of the Corruption Prevention Commission in the manner prescribed by the Article.<sup>124</sup>

According to the law the requirement for the disclosure of conflict of interest are limited to the public officials only holding political, administrative, autonomous positions, except for officials holding discretionary positions. The Law on Public Service defines the incompatibility requirements for all persons holding public office and the public servants. In case of declaration of interests, only those holding public office are obliged to declare their interests, except for a group of discretionary officials.

It is forbidden to take an action or make a decision in a situation of the conflict of interest.

### *National guidelines*

The Corruption Prevention Commission established Guidelines for annual declaration of property, income and interests for public officials and their interconnected persons.<sup>125</sup> On April 13, 2020, the electronic system for filling in the annual declarations of property, income and interests for 2019 was launched, and the process of submitting declarations has started.

### *Example of best practice*

There were several cases that NGOs took the role of watchdog and applied to different ethical committees of state institutions on disclosure. Currently, given the new concept of ethics commissions in according to the Law on Public Service, those do not operate properly and there is a need for more active practice of submitting applications and better monitoring of their activities.

In 2019 the "Investigative Journalists" NGO created a database (data.hetq.am) in order to make publicly accessible and user friendly the information published in official and unofficial sources. The application makes possible to get acquainted with the biographies of the deputies of the National Assembly, interconnected persons and the graphs of the declared property in one domain through just a few clicks. Information may also be downloaded in XLS format.

Within the establishment of the Corruption Prevention Commission and making amendments to the Law on Public Service the declaration requirements have changed. Currently they include declaration of interests. For example, if in the past the other members of the family did not declare their property and incomes at the time of the official assuming the position, now all the members of the family submit declarations with the same content with the declarant.<sup>126</sup>

## 3.4. EXTERNAL AUDIT

External audit is the regular, independent scrutiny of accounts and financial information to ensure that public money is used appropriately and effectively. External audits are undertaken in accordance with the relevant laws and rules of the country to support those external to government to hold it to account. External audit can also look beyond finances to assessing the performance of government against its own objectives, or in providing programmes and services.

### *International standards*

- The International Public Sector Accounting Standards<sup>127</sup> focus on the accounting, auditing, and financial reporting needs of national, regional, and local governments, related governmental agencies, and the constituencies they serve.
- The International Standards of Supreme Audit Institutions<sup>128</sup> website contains a complete collection of professional standards and best practice guidelines for public sector auditors.
- A number of the conventions and standards for combatting corruption include provisions and clauses relating to external audit.

### *National context*

In Armenia, the audit of state institutions is conducted by the Audit Chamber. The mission of the Audit Chamber is to perform high-quality external state control, which aims to prevent violations from happening in the areas of public funds and property management, thus improving efficiency.<sup>129</sup>

### *National legislation*

According to the Armenian Constitution, the Audit Chamber is «*an independent state body, which conducts audit, in the field of public finance and ownership, over the lawfulness and effectiveness of the use of the State Budget and community budget funds, loans and credits received, as well as state- and community-owned property. The Audit Chamber is entitled to conduct inspections of legal persons only in the cases prescribed by law*».<sup>130</sup>

The Law on Internal Audit<sup>131</sup> defines the principles, nature, scope, basic rights and obligations of the internal audit participants, as well as regulates basic relations related to the organisation and operation of the internal audit. This law states that, at local government level, the internal audit system is carried out under the subordination of the head of the community.

### *National guidelines*

In 2008, the World Bank published a report on the observance of standards and codes on *Accounting and Auditing in Armenia*. The report assessed financial reporting and auditing requirements and practices within the enterprise and financial sectors in Armenia. It also recommended a set of standards which should encourage greater transparency in state enterprises, thus allowing the public at large to assess management performance and influence its behaviour.<sup>132</sup>

### *Example of best practice*

There are no mechanisms and requirements for local government bodies to conduct external or internal audit for budget implementation. However, according to the amendments to the Law on Self-Government of Armenia from January 24, 2020, starting from January 1, 2022 all communities should have a website where they should publish the budget and budget implementation reports. The acting Law establishes a duty to have a website only for communities which have more than 3 000 residents. These mechanisms create

opportunities for civil society and citizens to audit budget. For example, the Gyumri municipality co-operated with the Compass NGO to publish an interactive budget and engage citizens in auditing and watchdogging the budget.

## Chapter 4

# CITIZEN PARTICIPATION

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### 4.1. COMPLAINTS MECHANISMS

Complaints mechanisms allow citizens to provide feedback to public authorities on the standards of services they receive. They provide an important accountability mechanism which allow civil servants and elected officials to identify where public services are being delivered ineffectively or inefficiently. When such mechanisms deal with complaints quickly, they can help to create the conditions for increased trust. If used proactively, complaints mechanisms can also help governments to identify new ideas and increase citizen participation.

#### *International standards*

There are no specific international standards for complaints mechanisms relating to public services. However, there are a number of civil society guidelines and handbooks which are helpful. See for example:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>133</sup> provides an international legal guarantee to this right, including the establishment of mechanisms and procedures for dealing with and responding to citizen complaints and suggestions.
- The **Danish Refugee Council's** handbook<sup>134</sup> describes how to setup and manage a complaints mechanism.
- The World Vision overview of the tools and mechanisms used by development agencies to receive complaints.<sup>135</sup>
- The Transparency International note on good practice in establishing community complaints mechanisms.<sup>136</sup>

#### *National context*

There is a strong need to develop complaints mechanisms for local government bodies, which can increase public trust towards those institutions. As the local government is the first contact point for citizens in accessing public services, it is important to deal with them in accordance with the principles of transparency and openness. Complaints mechanisms can help to highlight potential problems, to resolve them and to improve local government services.<sup>137</sup>

#### *National legislation*

In Armenia there are no specific legal provisions requiring the establishment of complaints mechanisms for local government, but it is necessary for local self-government bodies to form such mechanisms in order to improve accountability, and engage citizens in detecting issues and improving service for them. Local self-government bodies should therefore adopt complaint mechanisms on a voluntary basis.

#### *National guidelines*

Currently there are no concrete settings for the establishment of complaints mechanisms, as those mechanisms should be adapted to the local context, taking into consideration factors such as cultural norms, existing institutions, social patterns, etc. Even though there are no concrete settings for developing a complaints mechanism, there is broad a consensus on key principles which suggest that the mechanism should be

transparent, independent, accountable, accessible, safe and easy to use.<sup>138</sup>

According to a set of guidelines published by the Government of Ireland, a «*complaint form should be relatively easy to complete, and information requirements should be kept to a minimum*». In addition, the mechanism should «*make it as easy as possible for members of the public to make a complaint*». Local authorities should make every effort possible to publicise complaints mechanisms.<sup>139</sup>

It is worth mentioning here a reference guide on best practices for the implementation of effective complaint mechanisms made by Transparency International.<sup>140</sup> The purpose of this document is to set out guiding principles and good practices for establishing and implementing complaint mechanisms which provide safe channels for citizens to alert a public or private institution about any corruption risks or incidences.

### *Examples of best practice*

There are a few successful examples of using complaint mechanisms to increase efficiency and public trust towards local governments. For example, in the United Kingdom, Local Government and Social Care Ombudsman uses complaint mechanisms to increase the efficiency of the services that local public institutions provide to citizens. The Ombudsman's website ([www.lgo.org.uk](http://www.lgo.org.uk)) provides all necessary information for submitting complaints.<sup>141</sup> There is also a section on the website which provides top tips for making a complaint.<sup>142</sup>

## 4.2. OPEN POLICY MAKING

Open policy making is a broad term describing policy development which is transparent and participatory. It describes a way of making policy and decisions which draw on the latest analytical tools and are interactive in nature. There is no one-way to do open policy making: different policy decisions will need different approaches.

### *International standards*

Although there are no specific open policy making standards, the following provide a useful starting point:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>143</sup> provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation.
- The **Council of Europe's Guidelines for civil participation in political decision making**<sup>144</sup> sets out standards for engaging with citizens and civil society.
- The **Congress of the Council of Europe's Resolution and Recommendation on Transparency and open government**<sup>145</sup> provide standards and mechanisms to enhance transparency and promote the involvement and participation of citizens in the local public life.
- The **OECD's Guiding Principles**<sup>146</sup> support the development of a culture of openness.
- The **OECD's Focus on Citizens: Public Engagement for Better Policy and Services**<sup>147</sup> explores how to put open policy making into practice.
- The **OECD's Observatory of Public Sector Innovation**<sup>148</sup> lists useful toolkits and resources.
- The Open Government Partnerships Guide<sup>149</sup> and Toolbox<sup>150</sup> provide an extensive range of support.
- Both Australia<sup>151</sup> and the UK<sup>152</sup> have both produced useful toolkits.

### *National context*

The institutions of open policy making and public engagement are in formation process in Armenia. The Government has taken steps to reform the policy-making process to be more transparent.

In the autumn of 2011, the Armenian Government joined the Open Government Partnership (OGP) initiative and displayed readiness to ensure transparency and accountability in the provision of public services. Within the framework of the OGP, Armenia has already developed and adopted three Action Plans for 2012-2014, 2014-2016 and 2016-2018. Currently the country implements the fourth Action Plan 2018-2020.<sup>153</sup>

In 2016, the Government launched a website ([www.e-draft.am](http://www.e-draft.am)) where drafts of legal acts written by governmental bodies are made available on an online platform specially designed for their publication. The website allows for the presentation of drafts of legal acts to the public, organising online discussions, and as a consequence the active participation of representatives of civil society in the law-making process. The registered users are able to present their suggestions, and see the suggestions that are adopted and the justifications given for those that are rejected.

### *National legislation*

The Law on Local Self-Government requires that the public be kept informed about the sessions of the Council of Elders. The Law states that at least seven days before the regular session of the Council of Elders, the head of the community should publish the draft agenda of the council meeting, indicating the venue and the scheduled date and time of the session.

In addition, the Law defines citizen participation in local governance as a major principle. According to the Law, any citizen who is above 16 years old has a right to participate in local governance. In order to ensure their participation, the head of the community has to include in the community's five-year development programme the creation of a community-based consultative body.<sup>154</sup>

### *National guidelines*

In October 2019, the European Center for Not-for-Profit Law (ECNL) in cooperation with Transparency International Armenia published the Assessment of the civil society environment in the Eastern Partnership countries, developed on the basis of set of standards and indicators in 10 different areas that measure both law and practice.<sup>155</sup>

The report recommends the Government to introduce institutional mechanisms for engaging CSOs in the policy implementation and monitoring, including through state contracting; mandatory consultation in the early stages of decision-making to allow meaningful participation of professional CSOs experienced in relevant public policy areas and increase usage of offline participation tools such as public hearings, expert discussions, and surveys.<sup>156</sup>

### *Example of best practice*

2019 was marked by the adoption of the new strategies of the state policy in the field of anti-corruption, the protection of human rights, judicial and legal reforms. Civil society organizations were actively engaged in the discussion and adoption of the new 2019-2022 Anticorruption Strategy of the Republic of Armenia and its Action Plan, the 2019-2023 Strategy For Judicial And Legal Reforms Of The Republic Of Armenia And The Action Plans Deriving The Reform, 2020-2022 National Strategy of Protection of Human Rights and its Action Plan.<sup>157</sup>

## 4.3. PARTICIPATORY BUDGETING

Participatory budgeting began in Porto Alegre, Brazil in the late 1980s and has spread worldwide. It provides a way for community members to have a direct say in how public money should be spent. It creates opportunities for engaging, educating, and empowering citizens. It can also promote transparency, which in turn can help reduce inefficiency and corruption.

### *International standards*

Although there are no specific standards for implementing participatory budgeting, the following provide a useful starting point:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>158</sup> provides an international legal guarantee to this right, including the implementation of measures that would facilitate its exercise.
- The **Congress of the Council of Europe's Resolution on Gender budgeting**<sup>159</sup> recommends introducing gender budgeting methods in the annual budgets at local and regional levels.
- The OECD Policy Brief No. 22<sup>160</sup> provides a series of policy recommendations for how key stakeholders can contribute to successful participatory budgeting.
- The **World Bank's book *Participatory Budgeting***<sup>161</sup> provides an overview of the underlying principles, analyses current practice and includes seven in-depth case studies.
- The **UN Habitat's 72 Frequently Asked Questions about Participatory Budgeting**<sup>162</sup> explores how to implement participatory budgeting.
- The **UK's Participatory Budgeting Unit has a useful list of resources and toolkits**.<sup>163</sup>
- The Subnational Open Budget Survey Questionnaire<sup>164</sup> of the International Budget Partnership sets out a range of metrics for measuring the openness of local government budgets.
- The Principles of Public Participation in Fiscal Policy<sup>165</sup> of the Global Initiative for Fiscal Transparency.

### *National context*

Citizen and civil society participation in the state budget-making process is limited. There are no concrete mechanisms prescribed by the Law on State Budget to engage stakeholders in budget making. Instead, there are concrete participatory budget-making mechanisms in the Law on Local Self-Governance.

### *National legislation*

The Law on Local Self-Government provides mechanisms for public participation. Article 84 of the Law states that the head of the community should ensure the participation of community members in the formation of the annual budget, and should also ensure the creation of a consultative body adjunct to the head of the community which will consist of residents, experts and other stakeholders. For the same purpose, public hearings or discussions are organised on the above-mentioned documents prior to their submission to the council meeting.<sup>166</sup>

### *National guidelines*

The 2015 report *Support for the consolidation of local democracy in Armenia* gives guidelines on how to engage citizens and civil society organisations in the priorities identified in the community budget and how they can have a role in the allocation of resources. It teaches taxpayers to work with the government to help contribute towards making budget decisions that affect their lives. According to the guidelines, the public benefits of local authorities and civil society organisations working together are that local authorities are able to collect good ideas and suggestions for better solutions, and citizens develop a sense



of responsibility towards public goods and the community.<sup>167</sup>

### *Example of best practice*

On 1 November 2016, the Gyumri-based Civil Youth Centre NGO presented a number of suggestions to be included in Gyumri's five-year development plan and also in Gyumri's city budget. Thirteen of the suggestions were included in the final plan. The suggestions included lightening up the city, putting new waste containers in the streets and adding new bus stations in the city.<sup>168</sup> The active participation of civil society helped the municipality more efficiently target priorities and develop participatory governance.

In 2019 the "Active Citizen" platform was created by Yerevan Municipality to ensure more effective and close communication with citizens and to conduct participatory management. The platform aims for more effective communication of new projects and ideas, presentation of proposals and discussion with citizens. Citizens have the opportunity to improve their living together with the municipality, making the life of the capital more comfortable and attractive. The platform also aims to collect issues of concern to citizens and a common way to find solutions.<sup>169</sup>

## 4.4. PUBLIC CONSULTATION

Public consultation is a formal, often legally required, process for citizens and other stakeholders to give their views at key stages of the policy process. It can be both online and offline, or a mixture of both. Its main goals are to improve efficiency, transparency and public involvement in important decisions. Done in a timely and effective way, public consultation will increase the quality of decision making, improve compliance, reduce enforcement costs and support greater public trust in decision-making.

### *International standards*

Although there are no specific standards for implementing public consultations, the following provide a useful starting point:

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>170</sup> provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as consultative processes and local referendums.
- The OECD Background Document on Public Consultation<sup>171</sup> defines consultation and provides a summary of consultation tools.
- The **Council of Europe's** Guidelines for civil participation in political decision making<sup>172</sup> set out the different types of civil participation in decision making.
- The **Committee of Ministers of the Council of Europe's Recommendation on the participation of citizens in local public life.**<sup>173</sup>
- The OECD Recommendation of the Council on Open Government<sup>174</sup> supports initiatives for designing and delivering public policies and services, in an open and inclusive manner.

### *National context*

Public participation in the law-making process in Armenia is a «*growing but ineffective*» process. The ministries publish draft laws on the official website for public consultations (www.e-draft.am), but the suggestions are not usually taken into serious consideration.<sup>175</sup> Effective consultation would help policy makers to engage citizens in the policy-making process, to increase the capacity of implementation and to gain public trust, which is crucial for policy making.

### *National legislation*

According to the Rules of Procedure of the National Assembly (NA), the President of the NA and the parliamentary committees are authorised to «*organise hearings at which those whose interests are affected by draft legislation can make their views known, but the practice is not institutionalised*».<sup>176</sup>

The Law on Normative Legal Acts requires consultation with the public, which create opportunities to participate in law-making processes. Civil society consultation is undertaken by displaying the draft law on **the government's website and on the websites of the relevant ministries, and sometimes also by means of parliamentary hearings**. Of all the tools relevant to ensuring good quality legislation, public consultation seems to be the one that is currently the least anchored in the legislative process.<sup>177</sup>

The Law on Local Self-Government provides a number of opportunities for public participation at the local level. Sessions in the community council are open, and in communities with more than 3000 residents, **sessions should be broadcasted online at the community's official website. Residents of the community** should be informed on the local self-governance activities without any discrimination and can directly or indirectly influence the community decisions, either on individual level or through associations and civil initiatives. Community residents can also initiate the inclusion of an item on the session agenda if necessary, number of signatures is presented.<sup>178</sup>

### *National guidelines*

In 2018 the Government of Armenia approved the procedure of organising and conducting public consultations<sup>179</sup>. It is mandatory to conduct a public consultation of a draft normative legal act developed by a government agency through its publication on the official website of the given agency as well as on the Unified Website for Publication of Draft Legal Acts maintained by the RA Ministry of Justice e-draft.am.<sup>180</sup> According to the Procedure the summary, protocols and revised drafts are posted on the official website of the body organising public consultation, as well as on the e-draft.am website. Based on the analysis and summary of the received proposals, the body carrying out public consultation makes the necessary adjustments to the draft.<sup>181</sup>

### *Example of best practice*

**With the support and advice of the Council of Europe through the project 'Local initiatives on ethical governance and transparency'. 182** the Tashir and Aygepat communities started live broadcasting the meetings of the Council of Elders, which increased the quality of discussions. Now the Council members are more active in engaging in discussions and expressing their positions on issues at stake. The Tashir community even went further and, in co-operation with a local NGO, established and institutionalised a youth council, defined a consultation mechanism between citizens and local authorities and allocated funds from the municipal budget to the youth council so that it can implement their initiatives.

**In terms of public consultations, the "Center of Legislation Development and Legal Researches" Foundation** adjunct to the Ministry of Justice can serve as an example of successful practice. The foundation was

established in 2016 within the framework of USAID-funded project and, among other activities, organised public discussions with participation of state representatives and other bodies and stakeholders and public awareness-raising campaigns on legal drafts<sup>183</sup>.

## 4.5. PUBLIC PETITIONS

Public petitions enable citizens to raise issues with public authorities. The number of signatures collected can indicate the level of support for the issues being raised. They aim either to raise the profile of the issue, or also to demand that specific actions are taken. Petitions are often inspired by civil society activity, but they are increasingly submitted through official, often online, platforms whereby petitions with a defined number of signatures will receive an official response.

### *International standards*

- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207)<sup>184</sup> provides an international legal guarantee to this right, including the establishment of measures to ensure citizen participation, such as public petitions.
- The **OECD's Promise and Problems of e-Democracy**<sup>185</sup> provides a section on the value and challenges of establishing an online petitioning platform.

### *National context*

Around 72.2% of Armenia's population are active internet users<sup>186</sup>. Besides, 1 339 000 citizens are actively using social media from mobile devices.<sup>187</sup> Internet coverage enables citizens to promote and engage in local government activities via different mechanisms. Among them, public petitions are one method by which local authorities can engage more systematically with citizens.

### *National legislation*

Article 53 of the Constitution of Armenia states that «everyone shall have the right to submit, either individually or jointly with others, petition to state and local self-government bodies and officials and to receive an appropriate reply within a reasonable time period». The Constitution provides a mechanism for citizens to initiate constitutional change and propose, upon popular initiative, draft laws to the National Assembly. Article 202 states that if 200 000 citizens (who have the right of suffrage) sign a petition, the right to initiate the constitutional amendment process will be given. Article 109 states that citizens shall be entitled to propose, upon popular initiative, a draft law to the National Assembly if 50,000 citizens sign a petition. **Article 204 prescribes how citizens can overcome the National Assembly's rejection of the adoption of the draft law submitted by civic initiatives.** If an additional 300 000 citizens join the initiative of adopting draft law, then the draft law is put to a referendum.<sup>188</sup>

According to the Law on Local Self-Government, residents of a community can start a petition to bring any community level issue to the agenda of the Council of Elders. In order for the issue to be included on the **Council's agenda, the initiative should gather the signatures of 1% of the community's population if there are more than 10 000 residents in the community, 2% if there are less than 10 000 residents, and 4% if there are less than 1000 residents.** The residents should gather the signatures on paper and send them to the head of the community.

### *National guidelines*

The CoE “Support to Consolidating Local Democracy in Armenia” project, implemented by the Congress of Local and Regional Authorities within the framework of the Council of Europe Action Plan for Armenia 2015-2018 has developed a toolkit to present the results of initiatives to foster citizen participation and dialogue between local authorities and community residents under the project.<sup>189</sup> The citizen participation initiatives, which were part of the CoE in the Congress component, were conducted in the communities of Akhtala, Artik, Urtsadzor and Vardenik. Its objective was to enhance the active participation of citizens and civil society in decision making and problem solving in their communities, and to engage them in community-building efforts, priority setting and budgeting processes through public consultations and close interaction with their mayors and city councils. The project in Armenia was crucial for creating a space of “learning by doing” whereby the residents – while contributing to finding solutions to their communities’ problems – improved their knowledge of the workings of local self-government as well as capacities and limitations of municipal autonomy. As a result, the project participants agreed a set of principles, guidelines, methods and useful tips to steer participatory processes, which can be applied to future projects and which are also included in the toolkit, together with an overview of the legal framework for citizen participation at local level in Armenia.<sup>190</sup>

### *Example of best practice*

The Compass NGO developed a website in co-operation with the municipality of Gyumri ([www.gyumribudget.am](http://www.gyumribudget.am)) that also publishes petitions to engage citizens in local governance issues. For example, one of the latest public petitions asks citizens whether they are ready to sort the garbage at home. Based on the answers of the citizens, the Compass NGO develops policy proposals to the local authorities of the municipality of Gyumri.

## CONCLUSION

Local government plays a critical role for the well-being of citizens, delivering services, and providing the first point of contact between people and public administration. The proximity with citizens can help ensure that public authorities and services are **truly responsive and accountable, improving people's lives and their trust and confidence** in local institutions. However, the very qualities that make local and regional governments so important to citizens can also make it more prone to corruption.

Local governments in Armenia are taking important strides in improving the legal framework towards more open and inclusive decision-making. However, on a practical level, local government units should translate laws and policies into practice and increase their efforts to ensure transparency, accountability and meaningful participation of citizens in policy- and decision-making. As well as being important qualities of local democracy, transparency and civic participation can help deliver effective public services, combat and prevent **corruption, and build citizens' trust in government**.

The mechanisms outlined in this handbook present a variety of ways in which local and regional authorities can prevent corruption, reduce its risks, and develop effective and accountable institutions at all levels. Other reforms, such as protection of whistleblowers and support for independent media and civil society, are also critical to building open government, public ethics and accountability. An effective approach to rooting out corruption could be through reporting by public officials, the media and civil society, who need to feel confident that they will be listened to and protected.

The Congress of Local and Regional Authorities of the Council of Europe is committed to supporting local governments in their efforts to improve the quality of local democracy, prevent corruption, increase ethics and public accountability, and promote transparency and citizen participation.

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