

# Opinion

## of the Azerbaijan Republic Commission on Combating Corruption under the State Council on Management of the Public Service<sup>1</sup>

### on the “Country Corruption Assessment: Public Opinion Survey in Azerbaijan” presented by the Transparency International Azerbaijan

1. Commission on Combating Corruption under the State Council on Management of the Public Service considers that public opinion surveys in field of combating corruption are indispensable and for this purpose takes into account and appreciates the importance of the assessments conducted by the Transparency International Azerbaijan.

2. The position of the Republic of Azerbaijan in the field of combating corruption is that fighting of corruption should not be limited only to charging persons with corruption related offences, it should also include determination of the circumstances leading to corruption, elimination of such circumstances and implementation of preventive measures. Public opinion surveys are one of the means to determine such circumstances, to identify problems of the society confronted with corruption and to strengthen the fight against corruption.

3. These kinds of studies to be more effective should be more representative and reflect opinions of all the levels of the society; opinions of the persons who are confronted more with corruption, also opinions of businessmen, persons working in the financial, banking field and opinions of those who are in constant relationships with state bodies should be exposed in such studies. For the perception of the level of corruption should be assessed not only purely corruption problems but also standards of living and quality of life, financial and income situation of the population. According to the representativeness requirement criterions of the surveys, social status of the respondents should be proportionate to their general number. Though it may be difficult to respect all these requirements during surveys, essential criterions should nevertheless be absolutely taken into consideration. These essential criterions are: 1) age and sex, 2) social affiliation, 3) geographical situation. For example social affiliation of persons reflect their place in the society, their status, their interest, wealth values and positions. If in surveys such criterions are not totally taken into consideration, it is natural that the authenticity of the selection and results obtained be subject to doubts. As indicated in the Chapter of the survey “Respondents’ demographics data and sample representation” about 60% of the 1000 respondents is constituted of unemployed persons. The unemployment is not denied and proper measures are undertaken to address this problem. But such percentage proportion demonstrates that, for the purposes of the survey social composition of the population has not been properly taken into consideration in the selection. There are specific problems for each level of society and the responses of each group of persons can be different from responses of others. That’s why the fact

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<sup>1</sup> Commission on Combating Corruption under the State Council on Management of the Public Service has been established according to the law of the Republic of Azerbaijan “On Combating Corruption” and is an specialized institute in the field of prevention of corruption. The Commission is composed of the members appointed by the executive, legislative and judicial powers.

that respondents designate unemployment as the most serious problem faced by the country and characterize the economic situation in Azerbaijan as low can be regarded as logical.

4. In the survey it is indicated that to the question “How have the dynamics of the corruption level in Azerbaijan changed during the last 10 years or more?” responses were mostly negative and based on these responses level of corruption has been shown as aggravated. In the following question as the causes of aggravation of the level of corruption are mentioned the emergence of private sector and the liquidation of soviet control mechanisms. But on the other hand in the 13th diagram of the survey a weak private sector is designated as one of the causes of corruption in the country. Unlike those indicated in the survey it could be considered that one of the means for eliminating corruption is namely the privatization and the reducing of state regulation in the economic field as necessary for the development of marked based economy. As to the soviet control mechanism numerous studies show that one of the causes of corruption in the soviet system was namely the activity of these control bodies.

5. In the survey as other causes of aggravation of the level of corruption are designated decrease of income of the population during the last 10 years, absence of efficient state anti-corruption program and formation of the new legislation. It should be noted that during the last ten years (1995-2003) personal income and GDP per person in Azerbaijan has tripled<sup>2</sup>. State Program on Combating Corruption has been approved and numerous legislative acts have been adopted in the field of combating corruption (look at parag. 15-21).

6. Designation in the survey the impact of the high living standards of the western countries, emergence of the foreign aid, formation of new legislation as the causes of aggravation of the level of corruption seem to be incomprehensible and we consider that they merits no comment.

7. In the survey in the their responses to the question “What is the relation between legislation and corruption in our country?” respondents evaluate the legislation in the field of combating corruption and characterize the laws as imperfect and containing contradictory norms. But in the following question of the survey “Are you aware of the anti-corruption law adopted by Milli Majlis” 50.6% of the respondents answer that they are not aware of the adoption of such a law. If more than 50 % of the respondents are not aware of the adoption of the law, their assessment of legislation seems to be at least surprising. At the same time selection of respondents on the education criterion as indicated in the table D.5. and addressing to 86% persons without higher education for the purposes of legislation assessment can not be without effect on the results of the survey.

8. As indicated above, the authorities combating corruption should be able to identify the causes of corruption faced by the society with the help of public opinion surveys and should undertake proper measures for eliminating such causes. These kinds of surveys should help authorities to identify priority fields and activity directions in combating corruption. Designation of contradictory and unsubstantiated causes on the aggravation of the level of corruption and on the legislation could make inefficient

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<sup>2</sup> Azerbaijan Republic Statistics Committee. Statistical Yearbook of Azerbaijan 2003”

actions of the bodies combating corruption based on such surveys and conducting of such assessments.

9. In the survey are also assessed activities of the religious entities together with other state bodies. In the Republic of Azerbaijan religion is separated from state. That's why indication of the religious services together with other state bodies can not be accepted as right.

10. On the 28th page of the survey in the questions C7, C8 are indicated the frequencies of bribe giving. The persons responding to these questions are those respondents who answered positively to the previous question "Have you or your family members personally encountered with soliciting of bribe"<sup>3</sup>. These persons as indicated in the survey constitute only 46.1% of the respondents. About 70% of these 46 % respondents have answered negatively to the question "Have you or any of your family members paid a bribe in order to resolve one of the problems listed below? It means that only about 14% percent of the respondents constitute those who have responded positively to the question "Have you or any of your family members paid a bribe in order to resolve one of the problems listed below?" Of course every single case of corruption should be condemned no matter the percentage, but the indication of these facts in more exaggerated form may lead lecturers to confusion.

11. The misrepresentation of some statistical figures (for example, the number of refugees and IDP is not indicated as recognized by the UN), translation defects in the English version (for example, "bribe soliciting" is translated as "extortion", see also the translation of the question in B 8 and others), indication of the total number of the respondents as 1000 in "Methodology Description" Chapter and as 497 taken separately may lead to confusions during examination of the survey.

12. In the answers to the question "What measures, do you think, could help to strengthen the anti-corruption movement in Azerbaijan?" following anti-corruption measures are recommended:

- Tightening of criminal and administrative liability for corruption
- Adoption of an efficient national anti-corruption program, as well as establishment of a special anti-corruption agency
- Increase of transparency in the public administration system
- Replacement of the old most corrupt public officials by new cadres
- Public administration reform
- Education of the population and creation of public aversion towards corruption
- Judicial reform and establishment of independent courts
- Increase of salaries and pensions in the public sector to the level compatible with the private sector
- Institution of annual income declaration by public officials and disclosure thereof to the general public
- Annulment of liability for bribe giving

13. Before commenting these measures separately it should be noted concerning the last measure that combating bribe giving i.e. active corruption should constitute one of the important aspects of combating corruption. This is required both by the

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<sup>3</sup> see parag 11.

legislation of the Republic of Azerbaijan and Council of Europe Criminal law Convention on Corruption and UN Convention against Corruption that our country has adhered.

14. Agreeing with the topicality of other measures it should be noted that a major part of these measures have already been carried out and other different measures are under way for their realization. The political will and the basis of the strategic course of the Republic of Azerbaijan in fighting corruption has been defined by the decrees of the President of the Republic of Azerbaijan on “Strengthening the fight against criminality and measures on strengthening of the rule of law,” of August 9, 1994 and “Strengthening the fighting of corruption in Azerbaijan Republic,” of June 8, 2000.

15. During this period of time reformation of the economic, social security, financial and banking systems, court system, law enforcement and other fields has been initiated and the legislative basis has been improved. New laws on privatization, banks, public service, local self-governing, public procurement; new codes on customs, tax, criminal, criminal procedure, civil, civil procedure, administrative violations, labor; the “State Program II on Privatization of the State Property in the Republic of Azerbaijan;” the “State Program on Reducing Poverty and Economic Development” and other regulatory acts have been adopted. The decrees of the President of the Republic of Azerbaijan “On regulation of the public control on the production, service and financial-credit activity and prohibition of unreasonable controls“ of June 17, 1996; “On the improvement of State control system and elimination of artificial obstacles to development of entrepreneur activity” of January 7, 1999; “About the Measures on Acceleration of the Social-Economical Development in Azerbaijan Republic” of November 24, 2003; and “On Approving the State Program on Social-Economical Development of the Regions” of February 11, 2004 have initiated a new stage of economic reforms in the country and created the legal-economic background for fighting against corruption.

16. The Republic of Azerbaijan has joined all the international documents in the filed of combating corruption, including the Civil Law Convention on Corruption, Criminal Law Convention on Corruption of the Council of Europe the UN Convention Against Transnational Organized Crime and has signed the UN Convention Against Corruption.

17. As a result of judicial reforms, which began from 1997 the judicial system has been reformed, three-step court system has been established and judges were selected according to new procedures. Following these reforms in 2005 continuation of the judicial system is envisaged for the selection of judges. The purpose of these reforms is to promote the independence of judges and effectiveness of their activity, reform the Judicial-Legal Council, and provide for the participation of a new selection unit in the judicial selections procedures. In the framework of suggested reforms, definition of new procedures for initiating disciplinary actions against judges and the circumstances under which disciplinary actions against judges for corruption offenses can be initiated, measures for bringing into conformity the immunity of judges to the international standards and international experience are considered. For this purpose draft amendments on the law “On Courts and Judges” and draft law “On Judicial-Legal Council” have been prepared and will be soon presented to the parliament.

18. On January 13, 2004 the law of the Republic of Azerbaijan “On Combating Corruption” was adopted. The law defines corruption related offences, subjects of these offences and liability for such offences, obligations for public official to declare their assets and incomes. Draft law on the “Rules on declaration of assets by public officials” has been prepared and will be soon presented to the parliament. A Presidential Decree was signed on March 3, 2004 “On the implementation of the law of the Republic of Azerbaijan on Combating Corruption”.

19. By the Decree of the President of the Republic of Azerbaijan of 3 September, 2004 State Program on Combating Corruption was adopted. The State Program on Combating Corruption is designed to provide a national integrity system for the effective implementation of fighting corruption. For these purposes, the State Program determines general responsibilities and measures in the fight against corruption, participation of different bodies in the implementation process and coordination of mutual activities of these bodies. The State Program envisages measures to improve the legislation in the field of combating corruption, the activity of the law enforcement bodies, measures in the economic social field, also measures in the field of public awareness and cooperation for combating corruption. State Program also defines measures on the activity of public administration bodies and civil servants. These measures comprise increasing gradually salaries of civil servants (salaries of civil servant in different fields of public service and judges were doubled during the last year and their increase during the next year is also envisaged) , adoption codes of conduct of civil servants, improvement of recruitment to the civil service, elimination of conflict of interest, conclusion of reforms in the state administration system and strengthening of transparency.

20. In the Republic of Azerbaijan new specialized entities in the field of combating corruption: the Commission on Combating Corruption under the State Council on Management of the Public Service and the Department on Combating Corruption under the Prosecutor General were established. Draft law on the Statue of the Commission on Combating Corruption under the State Council on Management of the Public Service has been prepared and presented to the parliament. The Statue of the Department of Combating Corruption under the Prosecutor General of the Republic of Azerbaijan was approved by the Decree of the President of the Republic of Azerbaijan on October 28, 2004.

21. The Republic of Azerbaijan participates in different international initiatives in the field of combating corruption, also has joined Istanbul Anti Corruption Plan of the O.C.D.E, and Extractive Industries Transparency Initiative and became member of Group of State against Corruption (GRECO) of the Council of Europe. In the framework of these organizations the Republic of Azerbaijan has been assessed, experts of these organizations prepared recommendations on combating corruption and measures have been undertaken for the implementation of these recommendations.

22. Finally we consider that the while organizing public opinion surveys the organizers should content themselves with the presentation of the these surveys to the lecturer without their subjective comments. After having examined the survey, lectures by themselves and by their own judgment should come to a certain conclusion. The phrases in the survey such as “Based on our analysis of the survey results, we maintain that there exists conspicuous and systemic corruption in

Azerbaijan” may form a preliminary negative opinion on the lecturer and discourage him (her) to go further for more detailed researches.

23. Commission on Combating Corruption appreciates cooperation in the field of combating corruption with Transparency International Azerbaijan and other NGOs, representatives of private sector, media, independent experts and looks forward to continuing such cooperation in the future.