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# I. INTRODUCTORY INFORMATION

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Corruption is generally of a systemic nature, and fighting it requires a holistic approach and a comprehensive strategy. This is why in 2001 Transparency International developed the concept of the National Integrity System assessment.

The purpose of the study is to assess systemic corruption risks faced by a country and to produce a set of recommendations on how to mitigate those risks in the future. While acknowledging the challenges of the comprehensive assessment of governance institutions, the National Integrity System assessment points out key gaps in the anti-corruption legal framework, as well as weak spots in the execution of those laws, and it provides a road map for future reforms. Those recommendations can then be used by actors in government, civil society and the private sector for promoting integrity in the country.

To date, assessments have been completed in more than 100 countries. Transparency International has conducted several assessments in the region, including Ukraine (2011), Georgia (2011) and Moldova (2014), among others. Transparency International began a National Integrity System assessment for Azerbaijan in 2013, funded by the European Commission.

The assessment focuses on an evaluation of the key public institutions and non-state actors in the country's governance system with regard to (1) their overall capacity, (2) their internal governance systems and procedures, and (3) their role in the overall integrity system. The assessment examines both the formal legal framework of each pillar and the actual institutional practice. The analysis highlights discrepancies between the formal provisions and the reality on the ground, making it clear where there are gaps in the integrity system.

It is Transparency International's hope that the concrete recommendations for the country's key institutions and actors to strengthen transparency, accountability and integrity will be taken up by the relevant bodies. This assessment should also provide a set of good governance benchmarks for the citizens of Azerbaijan to hold their government and elected officials to account through public dialogue and policy engagement, whereas public institutions can use recommendations in designing their anti-corruption programmes.

## II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

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The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the “pillars” as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

## Definitions

The definition of *corruption* which is used by Transparency International is as follows:

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“The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs”.<sup>1</sup>

*Grand corruption* is defined as “acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good”.<sup>2</sup> *Petty corruption* is defined as “everyday abuse of entrusted power by low and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies”.<sup>3</sup> *Political corruption* is defined as “manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth”.<sup>4</sup>

## Objectives

The key objectives of the National Integrity System assessment are to generate:

- An improved understanding of the strengths and weaknesses of Azerbaijan's National Integrity System within the anti-corruption community and beyond.
- Momentum among key anti-corruption stakeholders in Azerbaijan for addressing priority areas in the National Integrity System.

The primary aim of the assessment is therefore to evaluate the effectiveness of Azerbaijan's institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Azerbaijan to advocate for sustainable and effective reform.

## Methodology

Based on Transparency International's methodology, the National Integrity System is formed by 13 pillars representing all key public and private institutions.

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1 The Anti-Corruption Plain Language Guide, Transparency International, 2009, p.14

[www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [accessed 21 December 2012]

2 Ibid., p.23

3 Ibid., p.33

4 Ibid., p.35

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public Sector	Political Parties
Executive	Law Enforcement Agencies	Media
Judiciary	Electoral Commission	Civil Society
	Ombudsman	Business
	Chamber of Accounts	
	Anti-Corruption Agency	

Each of the 13 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- Its overall capacity, in terms of resources and independence.
- Its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity.
- Its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption.

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources
Governance	Independence
Role within governance system	Transparency
	Accountability
	Integrity

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the “foundations” – in which the 13 pillars operate.

POLITICS	SOCIETY	ECONOMY	CULTURE
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The National Integrity System assessment is a qualitative research tool. It is guided by a set of “indicator score sheets”, developed by Transparency International. These consist of a “scoring question” for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary’s budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge’s knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Curaçao assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.<sup>5</sup>

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, both external and from within public institutions, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants – that is, people “in the field” – were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

## The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system’s overall robustness.

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

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<sup>5</sup> [http://www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology)



The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

## Consultative approach and validation of findings

The assessment process in Azerbaijan had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. A total of 37 external advisors contributed in this or that way. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

First, the advisory group meeting (19 July 2013) and interviews with leading experts for each pillar were conducted, including six interview forums with leading experts as guest speakers and civil society activists. These, as well as desk research and responses to the questionnaires sent to respective public agencies allowed for the collection primary data as well as awareness-raising among government and civil society of the research being conducted. Each draft pillar was subject to several thorough internal and external (by TI Secretariat) reviews and presented to the advisory group (11 February 2014).

To complete the assessment, after drafts had been prepared, a second round of interviews with experts was conducted and/or questionnaires were sent to public institutions to clarify details and include latest developments. To raise public awareness and seek more input from the government, experts and ordinary citizens, in April 2014 some crucial pillars (Ombudsman, Chamber of Accounts, Parliament, Media, and Anti-corruption Agencies) were discussed by experts and government representatives in five one-hour programmes on Azerbaijan radio Liberty. The general public had an opportunity to provide their feedback live on the air or through e-mails and text messages. We did not conduct a national workshop per se, but all of the pillars have been peer reviewed by experts, members of advisory groups and others who verified findings and validated scoring.

The upcoming sections provide an overview of the main findings based on the collected data, as well as recommendations to strengthen the National Integrity System assessment.

# III. EXECUTIVE SUMMARY

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## Snapshot of Azerbaijan

Azerbaijan became an independent country in 1991 following the demise of the former Soviet Union. Fundamental political and civil rights of citizens – as well as nearly all democratic institutions to ensure these rights – are set forth in the Azerbaijan legal framework. However, in practice, there are shortcomings in the application of these rights.

The largest external problem for Azerbaijan is the conflict with Armenia over the enclave of Nagorno-Karabakh. It plays a significant role in shaping domestic and foreign policies, from allocation of resources for persons displaced during the conflict (in total, about 700,000 refugees and internally displaced persons) to its energy policy.

While there is sustainable economic growth in Azerbaijan as well as development of the business environment with regard to support of the non-oil sector and macroeconomic stability, the economy of the country still depends on oil revenues. Despite the impressive economic growth, problems remain in terms of the social protection of citizens, access to health and education services, food security and potable water.

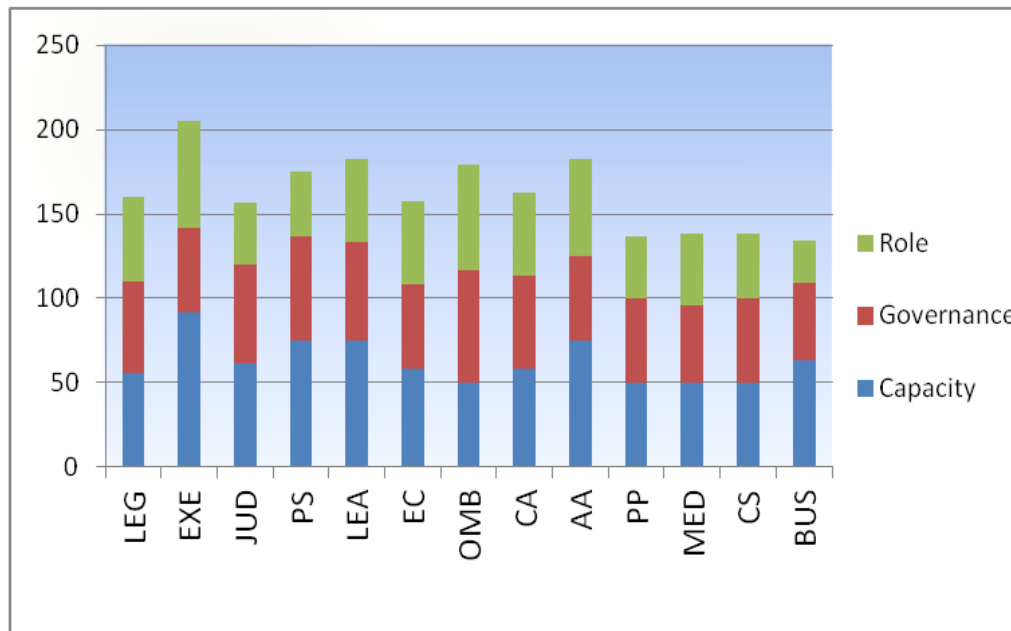
The major social problems facing Azerbaijani society include tolerance of corruption, the lack of a sufficient level of civic activism and civic engagement in democratic and decision-making processes in the country, and under-representation of women at the decision-making level. Alongside that, the traditional patriarchal culture of Azerbaijani people is slowly but surely changing, as a result of adaptation to a rapidly changing economic, social and political environment.

The level of corruption is perceived as rather high, though Azerbaijan ranks in-between its neighbours – beneath Georgia but above Ukraine and other Central Asian countries. A slight decrease in the levels of corruption has been noted as a result of several important reforms and national and international state programmes. Given the complexity of the challenge, it is unclear how far reaching the efforts of Azerbaijan on combating corruption will be. However, with the convergence of high level support from government leadership and international obligations of the government to address corruption, combined with a growing desire from within Azerbaijan to be a global economic player, the country is slowly but gradually decreasing the level of corruption and increasing resistance to it by the population.

More detailed information can be found in Chapters IV, V and VI.

## Overall assessment of the National Integrity System

The following diagram visualises the scores for the pillars and illustrates their relative strength. The overall score for each pillar is made up of the quantitative assessment of the three dimensions: capacity, governance and role.



LEG- Legislative

EXE-Executive

JUD-Judiciary

PS- Public Service

LEA-Law Enforcement Agency

EC-Electoral Commission

AA-Anti-Corruption Agency

COA-Chamber of Accounts

PP- Political Parties

CS-Civil Service

MED- Media

BUS-Business

OMB-Ombudsman

The Azerbaijan National Integrity System is characterised by a strong executive branch, law enforcement and anti-corruption agencies. The other two branches of power that creates a system of checks and balances, namely, the judiciary and the legislature, are comparatively weak. The pillars that perform the watchdog functions (civil society, media, and political parties) are rated as the weakest links. Business is not very strong either. The institutions of Ombudsman and the Chamber of Accounts do not enjoy much independence, as they lack the power of enforcement, but they rate relatively high due to professional performance. The public sector was rated rather well, but delays in reforms in public procurement brought the overall score of the public service somewhat down.

Major strengths of Azerbaijan's National Integrity System are the capacities of government institutions, including human, technical and financial resources and strong legal framework. Also, in

recent years, the government launched a number of important programmes that are already yielding first results. Thus, between 2011 and 2014, Azerbaijan saw reduction of the level of corruption, especially, in daily services provided by the network of public service halls known as ASAN centres; introduction of the system of electronic services and single government e-portal, as well as improved business start up procedures and enhanced practices of recruitment to the civil service.

Major weaknesses lie in practical application of the principles of accountability, transparency and integrity, not only by public agencies, but to a certain degree by the watchdog pillars (media, civil society, political parties) and business as well. The ability of independent pillars to hold the government accountable is low, whereas the judiciary and the legislature (including parliamentary oversight institutions such as the Chamber of Accounts and Institute of Ombudsman) do not effectively use the powers granted by the law to efficiently conduct oversight of the executive branch.

Even the executive, the strongest branch of the government, can become even stronger and more professional with strong oversight mechanisms and full transfer to e-government.

As a result, pillars tended to score better on law than on practice. In general, Azerbaijan is recognised to have a rather strong legal framework, including anti-corruption legislation, though some crucial anti-corruption laws are lacking (regulating whistleblower protection, conflict of interests and bribery in the private sector). Along with this, in many cases absence of supporting legal acts (e.g., there are no declaration forms to be filled by public officials to support execution of the Law on Rules for Submission of Financial Information by Officials Law) or flaws in practical application of other laws diminish the value of good laws.

At the same time, the level of corruption in the country remains rather high and democratic institutions need further development, the same as in other post-Soviet countries.

## Interconnection between pillars

The NIS is based on the principle that weakness in one institution may lead to serious flaws in the entire integrity system. Weaknesses of political parties and civil society – who are by definition to play the role of watchdogs – diminish the ability of citizens to sufficiently bring the government to a high level of accountability.

Deficiencies in the legal framework diminish independence of the judicial system (that is not fully authorised to manage its own budget) and of the supreme audit institution (there are no Constitutional guarantees of the independence of the Chamber of Accounts). Those flaws, in turn, undermine the ability of these institutions to hold the executive fully accountable, in particular, to conduct comprehensive reviews of the public procurement system. Lack of several important legal norms regulating e-government do not allow smooth and secure exchange of data between all public entities, thus creating obstacles in rendering interactive electronic services by the public servants.

Insufficient independence of the judiciary is also an obstacle for independence of the business sector that undermines its ability to defend its rights in courts against possible interference of the authorities. On the other hand, businesses, especially SMEs, feeling vulnerable, are not much interested in supporting anti-corruption efforts of civil society or urging the government to proceed with anti-corruption reforms.

Weakness of the media, arising from its unsecure revenue base due to the country's small advertisement market, as well as from limitations on access to information, such as crucial corporate data on shareholders imposed by the legislators, or application of defamation laws by the judiciary,

does not allow it to keep the general public fully informed of the problems of corruption and expose individual corruption cases.

## Key recommendations

As already discussed, the executive is the strongest branch of the government. To ensure an efficient system of checks and balances in the system of governance in Azerbaijan, the following key measures are recommended.

Reforms of the *executive* branch should include:

- Creating electronic government with a broad range of interactive services.
- Increasing transparency in the public procurement system.
- Improving practical application of the laws.

Reforms of the *judiciary* should include:

- Expanding powers of the Judicial Legal Council (a self-governing body of the justice system), including authority to manage the judicial budget.

Reforms of the *legislative* branch should include:

- Making adjustments to the regulatory framework to explicitly tighten criminal responsibility for the failure to act on the findings of the parliamentary watchdogs: the Ombudsman and the Chamber of Accounts.

Reforms of the non-state actors should include:

- Adjust regulation to minimise state control over the business and civil activities.
- Remove provisions setting forth criminal responsibility for defamation.
- Non-state actors shall pro-actively seek for cooperation between each other and government actors.

More detailed recommendations can be found at the end of each pillar in Chapter VII, whereas the summary of key findings, recommendations and main challenges for the coming years are described in Chapter VIII of this report.

# IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

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## Foundations of the National Integrity System in Azerbaijan

### Political-institutional foundations

Score: 50

#### TO WHAT EXTENT ARE THE POLITICAL INSTITUTIONS IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

According to the Constitution of the Republic of Azerbaijan, the country has a presidential form of government with the presidency exercising certain influence over the other two branches of power, namely the legislature and the judiciary and thus weakening the system of checks and balances.<sup>6</sup> The President is elected in general elections for a term of five years and there is no limit of terms. The country has a diverse political landscape with many opposition parties and the country continues its efforts in developing political pluralism.

Though the number of opposition parties is gradually increasing, their influence over political life in the country is not very strong and it would appear that the opposition has less say in policy formulation than civil society.<sup>7</sup> They base their political actions on personalities of their leaders rather than election programmes and ideology.<sup>8</sup> To a large extent this can be attributed to the fact that they all have roots in the Popular Front that was the main political power in opposition during the Soviet period towards the end of the 1980s and the ruling party in the early years of Azerbaijan's independence.

Elected officials generally have effective power to govern. The military is under civilian control and does not play a decisive role in the country's political decision making process.<sup>9</sup> Most of the Cabinet members hold their positions for over 10 years, though there was some re-shuffling after the last presidential elections of 2013.

The Constitution is the supreme law of the country and is accepted by all political forces. The law sets forth the right to a fair trial, although there are certain deficiencies in exercise of the access to justice. Namely, prosecutors may face a potential conflict of interest, as investigation and public

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6 Parliamentary Program of Azerbaijan Evaluation Final report July 2011 by Lincoln Mitchell, Ph.D. and Rashad Shirinov, M.A., publication by Democracy International Inc., [www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology)

7 Interview with Alimamed Nuriyev, Constitution Research Foundation, member of the State Council of Work with NGOs by the author, 11 April 2014

8 Caucasus Analytical Digest No. 24, 11 February 2011, The article by Andreas Heinrich, The Formal Political System in Azerbaijan, [www.css.ethz.ch](http://www.css.ethz.ch)

9 Caucasus Analytical Digest No. 24, 11 February 2011, The article by Andreas Heinrich, The Formal Political System in Azerbaijan, [www.css.ethz.ch](http://www.css.ethz.ch)

prosecution is performed by prosecutors working for the same institutions, though in different departments. Also, full independence of the judiciary, including financial independence, is yet to be achieved through planned reforms.

The last assessment of Azerbaijan's human rights track record was performed under the United Nations Universal Periodic Review (UPR) 2013 with the final report published in July 2013. Key recommendations included improving the rights of children and women; improvement of the environment for civil society; implementation of legal reforms, and guarantees of the freedom of expression.<sup>10</sup>

Fundamental political and civil rights of citizens, as well as almost all democratic institutions to ensure these rights are set forth in the Azerbaijan legal framework, however, there are shortcomings in application of these rights in practice.<sup>11</sup>

Freedom of assembly is fully guaranteed by the legislation. While the government approved a number of peaceful protests in 2013, those were located in the outskirts of Baku. There were reports about applications for political protests that have been rejected, and unsanctioned protests dispersed.<sup>12</sup> The authorities have been encouraged to find a compromise solution to allow protest action in some areas of Baku's city centre, complying with security requirements and mutually acceptable for both the organisers and the authorities.<sup>13</sup>

Freedom of speech is fully guaranteed by the Constitution. Since Azerbaijan abolished censorship in 1997, citizens are relatively free to express their views, even those critical of the government, which is truer of the internet based and print opposition and independent media. TV and radio channels mostly abstain from critical debate, although debates on anti-corruption issues and social problems are aired. In sum, ordinary citizens can express themselves relatively freely and have access to multiple spectrums of political views.<sup>14</sup>

### **Socio-political foundations**

Score: 50

#### **TO WHAT EXTENT ARE THE RELATIONSHIPS AMONG SOCIAL GROUPS AND BETWEEN SOCIAL GROUPS AND THE POLITICAL SYSTEM IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?**

Full citizenship rights are guaranteed to the entire population regardless of race, gender, ethnic or religious background. Even if Azerbaijan is a multi-ethnic and multi-religious country, this guarantee is normally observed in practice and the overwhelming majority of residents accept Azerbaijan citizenship and the nation-state concept.<sup>15</sup> However, on 30 May 2014, the Parliament passed – in the first reading – its amendments to the law<sup>16</sup> on Citizenship of the Republic of Azerbaijan to deprive holders of foreign passports of Azerbaijan citizenship for a number of reasons, including a rather vague principle of persons who “demonstrate behavior that seriously damage national security”.

<sup>10</sup> United Nations, Universal Periodic Review (UPR), Draft Report of the Working Group on the Universal Periodic Review (Azerbaijan), 5 July 2013

<sup>11</sup> Caucasus Analytical Digest No. 24, 11 February 2011, The article by Andreas Heinrich, The Formal Political System in Azerbaijan, [www.css.ethz.ch](http://www.css.ethz.ch)

<sup>12</sup> World Report 2013: Azerbaijan, by Human Rights Watch, [www.hrw.org](http://www.hrw.org)

<sup>13</sup> Parliamentary Assembly of the Council of Europe, Resolution 1917 (2013), The Honouring of Obligations and Commitments by Azerbaijan, [www.coe.int](http://www.coe.int)

<sup>14</sup> Bertelsmann Transformation Index 2014, Azerbaijan, <http://www.bti-project.org>

<sup>15</sup> Bertelsmann Transformation Index 2104I Azerbaijan, [www.bti-project.org](http://www.bti-project.org)

<sup>16</sup> Article 18, The Law on Citizenship of the Republic of Azerbaijan, 30 September 1998, [www.e-qanun.az](http://www.e-qanun.az)

The largest external problem for Azerbaijan is the conflict with Armenia over the enclave of Nagorno-Karabakh. It plays a significant role in shaping domestic and foreign policies from allocation of resources for persons displaced during the conflict (in total, about 700,000 refugees and internally displaced persons) to its energy policy. The conflict with Armenia over Nagorno-Karabakh is still unresolved despite continuing efforts at international mediation by the OSCE Minsk Group, co-chaired by France, Russia and the United States. The conflict being a poignant issue for Azerbaijan public, sometimes is used to justify unpopular policies.

There are about 3,000 registered NGOs along with many unregistered groups. Compared with the size of the population, the ratio is about one civil society institution per every 3,000 thousand citizens.<sup>17</sup> In terms of quantity, this indicator is not a bad indicator for a newly independent country. Also, in the past several years, numerous interest youth groups have been active, mostly, through social networks. These interest groups, comprised at large by alumni groups of various Western universities, are localised in the capital city of Baku and are focused on human rights, gender issues and the Karabakh conflict resolution.<sup>18</sup>

The government has made several important steps in recent years to closely cooperate with civil society. In 2007, the Azerbaijan government established the Council on State Support to Non-Governmental Organisations (NGO Support Council) with an aim to provide grants and informational support to Azerbaijan and foreign NGOs and facilitate NGO-government cooperation. Also a State Programme of Support to NGOs has been approved by a presidential decree. On the other hand, in 2013 and 2014, the Parliament passed several laws that increase the accountability of NGOs before the government, which raised concerns among civil society.<sup>19</sup> Also, control of banks over expenditures of grant funds has tightened. Though these measures will increase transparency and accountability of civil society, there are administrative obstacles in application of new requirements.

Azerbaijan is considered to be tolerant towards other religions and most religious groups were able to worship publicly without government interference.<sup>20</sup> Still, despite accepting UPR recommendations regarding freedom of religion, regulations on religious activity were tightened by requiring religious communities to re-register and by increasing fines for unauthorized activities.<sup>21</sup> Issues related to national minorities do not appear to be a significant factor of concern. Thus, representatives of national minorities were represented among candidates of all main political parties during the last Parliamentary elections of 2010 and Presidential elections of 2013. The authorities have been encouraged to create a national consultative organ, comprising representatives of the minorities in order to better take into account their specific needs.<sup>22</sup>

Women are still under represented in all decision making positions, whether the government or the private sector, except for civil society and social sphere.<sup>23</sup> However, there is some improvement. Thus, the share of female candidates increased in 2010 compared to the last Parliamentary elections as did the number of women elected (from 14 in the outgoing Parliament to 20). Still, the number of women in law enforcement, including police, remains very low, despite visible changes in the recruitment policy of the law enforcement around the Eurovision song contest in May 2012.<sup>24</sup>

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17 National Report on the State of the Civil Society 2010, by the State Council for NGO Support, [www.cssn.gov.az](http://www.cssn.gov.az)

18 Bertelsmann Transformation Index 2104I Azerbaijan, [www.bti-project.org](http://www.bti-project.org)

19 Azerbaijan Civil Society: the Current State and Future, 26 December 2013, [www.contact.az](http://www.contact.az)

20 International Religious Freedom Report for 2012: Azerbaijan, [www.state.gov](http://www.state.gov)

21 United Nations, Universal Periodic Review (UPR), Summary prepared by the Office of the High Commissioner for Human Rights, Working Group on UPR, 29 January 2013, p6

22 Document of the European Bank for Reconstruction and Development, Strategy for Azerbaijan, as approved by the boards of director at its meeting on 30 April 2014 [www.ebrd.com](http://www.ebrd.com)

23 Document of the European Bank for Reconstruction and Development, Strategy for Azerbaijan, as approved by the boards of director at its meeting on 30 April 2014 [www.ebrd.com](http://www.ebrd.com)

24 Letter No 002-659-1213 dated 28 June 2013 by Fazil Guliyev, Deputy Minister of Internal Affairs, Head of Chief Department of ational Inspection



## Socio-economic foundations

Score: 50

### TO WHAT EXTENT IS THE SOCIO-ECONOMIC SITUATION OF THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Alongside sustainable economic growth of Azerbaijan, development of the business environment with a particular focuses on the support of the non-oil sector, and macroeconomic stability, the economy of the country still depends on oil revenues. Problems in social protection of citizens, access to health and education services, as well as food security and potable water remain. After the demise of the former Soviet Union on 20 September 1994, Azerbaijan concluded a Product Sharing Agreement with a consortium of Western oil companies, referred to by Azerbaijan as the "Contract of the Century"<sup>25</sup> to emphasise its importance for the future of the country. This contract to produce oil and gas in the Caspian shelf, followed by construction of the Baku-Tblisi-Ceyhan pipeline and other huge infrastructure facilities, allowed Azerbaijan to integrate into the global economy as a petroleum supplier. As a result, annual economic growth of the country in 2005 – 2009 reached a point of 20 per cent<sup>26</sup> on average (the 2006 growth rate of 34.5 per cent allowed Azerbaijan to become the fastest growing country in the world).<sup>27</sup> Between 2003 and 2013 the country's GDP tripled. The 2013 GDP was US\$73.6 billion, while GDP per capita was US\$7,912, and the state reserves of the State Oil Fund of Azerbaijan (SOFAZ) estimated at US\$53 billion.<sup>28</sup> Economic prosperity of Azerbaijan is also demonstrated by the fact that the external debt of the country is only 8 per cent.<sup>29</sup>

As a result, Azerbaijan is subject to the Dutch disease, i.e. the economy is heavily dependent on the oil and gas industry. Thus, 47 per cent of the GDP is made up by petroleum revenues (a reduction from 60 per cent in 2007) and over 90 per cent of the country's exports are made up of oil, gas and petroleum products.<sup>30</sup> In the 2014 budget of 18.3 billion manat (US\$23.3 billion), only about one-third of revenues or 6.2 billion manats (US\$7.89 billion) are expected to come from tax and customs deductions of the non-oil sector.<sup>31</sup> Therefore, the main economic strategy of the government for the near future is to industrialise and diversify the economy and develop the non-oil sector.<sup>32</sup> According to the "Azerbaijan 2020: Look into the Future State Program", non-oil sector development is planned at 7 per cent growth per year and these plans are being realised, as the 2013 growth was 10 per cent.

Poverty – a problem typical of all transitional countries – has turned out to be one of the most poignant problems for Azerbaijan. The situation is especially acute for the 700 thousand refugees and internally displaced persons uprooted as a result of military conflict with the neighboring Armenia over the enclave of Nagorny Karabakh. Several poverty reduction state programmes have been implemented. According to the official statistics, the poverty rate fell from 49 per cent in 2001

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25 Experts Comment on How Azerbaijan Benefited from 'the Contract of the Century', 20 September 2007, Trend news agency, [www.trend.az](http://www.trend.az)

26 Azerbaijan Partnership Program Snapshot, 2014, [www.worldbank.org](http://www.worldbank.org)

27 Website of World Bank, <http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?page=1>

28 Website of State Oil Fund of Azerbaijan, [www.sofaz.gov.az](http://www.sofaz.gov.az)

29 Website of Azerbaijan Export and Import Foundation, [www.azpromo.az](http://www.azpromo.az)

30 Website of Azerbaijan Export and Import Foundation, [www.azpromo.az](http://www.azpromo.az)

31 Website of Ministry of Finance, [www.maliyye.gov.az/sites/default/files/Binder.pdf](http://www.maliyye.gov.az/sites/default/files/Binder.pdf)

32 "Azerbaijan 2020: Look into the future" State Program, [www.president.az](http://www.president.az)

to 6 per cent in 2013.<sup>33</sup> The method of calculation of the poverty line in Azerbaijan is disputed and is believed to be too low.<sup>34</sup>

According to official statistics, the unemployment rate is 6 per cent.<sup>35</sup> However, the level of unemployment, especially among the youth in the regions is quite high. The nominal average wage in the regions of Azerbaijan is 261 manat (US\$332) whereas in the capital city of Baku it is nearly two times higher at 566 manat (US\$721).<sup>36</sup> According to independent experts, the nominal wage does not provide for a decent standard of living.<sup>37</sup>

Social protection of the population is not adequate due to very low pensions and allowances being based on the minimum living standard discussed above. Two formats of social transfers are available to citizens of Azerbaijan: pensions conditioned on years of work, and social allowances that are not conditioned on work experience. State Social Protection Fund awards pensions that are formed by deductions from salaries: at 3 per cent by employees and 22 per cent by employers. As of 1 April 2014 the country has 1,282,000 pension recipients, of which over 60 per cent are labor pensions, 27 per cent disability pensions, while 11 per cent are awarded to families due to loss of the bread winner.<sup>38</sup> Alongside this, the Ministry of Labor and Social Protection of the Population awards over 324,000 social allowances based on two major criteria: social (age, disability, war veterans, for loss of a bread winner) and economic (for those who live below the poverty line). As of 1 April 2014, a total of 140,000 families (comprised by 612,000 family members) receive on the average 128 manats (US\$163) per month.<sup>39</sup> However, the implementation of this programme, especially in the regions, was marred by cases of corruption by local officials, which resulted in mass firings of officials.<sup>40</sup>

Security of food is not very high. According to *Global Food Security Index 2013*, Azerbaijan was rated as the 62nd country in the world.<sup>41</sup> According to local estimates, 35-40 per cent of food consumed by Azerbaijan is dependent on foreign supplies, whereas the best performance in the world is estimated at 5-10 per cent.<sup>42</sup>

There is some progress in supply of potable water; however, demands in clean potable water are not fully satisfied. Rural areas experience significant problems with access to potable water as compared to Baku and other big cities. According to 2010 official statistics, only 47 per cent of the rural population was covered by a centralised supply of potable water, while 53 per cent used water from wells, springs, rivers, and communal taps and in some cases bought water tank water from distributors.<sup>43</sup> As a result of steps taken, the 24 hour access to water in Baku increased from 50 per cent to 78 per cent, and in the regions the two fold increase resulted in 55 per cent coverage.<sup>44</sup>

Despite significant improvement in technical infrastructure of the health system and improvement in some indicators, such as child mortality rate,<sup>45</sup> quality medical service is yet to be achieved and profound structural reforms are still to be implemented.<sup>46</sup> Though the law on mandatory medical

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33 Website of State Social Protection Fund, [www.ssp.gov.az](http://www.ssp.gov.az)

34 According to the Law on Minimum Living Standards, 22 November 2013, [www.president.az](http://www.president.az), the minimum living standard for 2014 which is also used as the poverty line is fixed at 125 manat (US\$159),<sup>34</sup> therefore, poverty line in Azerbaijan would be interpreted as an extreme poverty or survival level by Western approaches

35 Website of State Social Protection Fund, [www.ssp.gov.az](http://www.ssp.gov.az)

36 Website of State Statistical Committee of Azerbaijan, [www.stat.gov.az](http://www.stat.gov.az)

37 Interview with Vugar Bayramov, Center for Economic and Social Studies

38 Website of State Social Protection Fund, [www.ssp.gov.az](http://www.ssp.gov.az)

39 Website of Ministry of Labor and Social Protection, [www.mlspp.gov.az](http://www.mlspp.gov.az)

40 Targeted social aid that failed to reach people targeted, 14 June 2013, [www.mediaforum.az](http://www.mediaforum.az)

41 The Economics Intelligence Unit, [www.foodsecurityindex.eiu.com](http://www.foodsecurityindex.eiu.com)

42 Evaluation of government agrarian policy, 2011, by Center of Support to Economic Initiatives, [www.sei.az](http://www.sei.az)

43 Local Water Management: Current Situation in Azerbaijan and international practices, by Centre of Support to Economic Initiatives, [www.sei.az](http://www.sei.az)

44 Access to potable water is improved, 4 June 2014, [www.xalqgazeti.com](http://www.xalqgazeti.com)

45 Website of World Health Organisation, [www.who.int](http://www.who.int)

46 Compulsory Medical System in Azerbaijan, 2009, [www.cesd.az](http://www.cesd.az)

insurance has been adopted,<sup>47</sup> in practice, application of a comprehensive and compulsory medical insurance is not executed.<sup>48</sup> In 2007-2014, state funding of the health system increased from 270 to 725 million manat (US\$343 to US\$923 million) equivalent to 1.4 per cent of GDP. Citizens of Azerbaijan prefer to receive medical services in neighboring Iran and Turkey. Thus, according to the Iranian ambassador, out of one million Azerbaijan tourists to Iran in 2013, most people travel to receive medical treatment.<sup>49</sup>

Infrastructure does not pose a significant problem for development of business. The lion's share of Azerbaijan oil revenues is spent on huge infrastructure projects, mostly transport systems. The 2014 budget's share of such sectors as industry, construction, and extraction of natural resources is 31 per cent and social sector (education, science, social protection and social allowances) is 21 per cent.<sup>50</sup> According to *Global Competitiveness Report 2013-2014*,<sup>51</sup> Azerbaijan is ranked 69 out of 148 countries surveyed.

The business environment in Azerbaijan is improving. Thus, Economic Freedom Index 2014 for the first time rated Azerbaijan as a "moderately free" country in terms of business environment (the score of 61.3 out of a total 100).<sup>52</sup> The *Doing Business Survey 2014* by the World Bank ranked Azerbaijan as 70 among 189 countries surveyed.<sup>53</sup> Improvements include: procedures for business registration, regulation for registration of real estate, protecting investors, and enforcement of contracts. Problems are: trading across borders, access to electricity, construction permits alongside corruption, low level of corporative management, and obtaining licenses and monopolies.<sup>54</sup>

### Socio-cultural foundations

Score: 50

#### TO WHAT EXTENT ARE THE PREVAILING ETHICS, NORMS AND VALUES IN SOCIETY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

The traditional patriarchal culture of Azerbaijan is slowly but surely changing as a result of adaptation to a rapidly changing economic, social, and political environment.

The prevailing ethical norm in the Azerbaijan society is that when it comes to cases of malpractice, embezzlement, and corruption, people restrain themselves from publicly naming and shaming public figures. This might in some cases be explained by their fear of the loss of reputation amongst their primary circles,<sup>55</sup> as people generally react negatively to others' public criticism of certain events of societal importance. This in turn is part of an even larger problem facing Azerbaijan society, which is the lack of sufficient level of civic activism and civic engagement in democratic and decision-making processes in the country.<sup>56</sup>

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47 Law on Medical Insurance, 28 October 1999, [www.e-qanun.az](http://www.e-qanun.az)

48 The undiscovered secret of 13 year old law, 22 June 2012, [www.cesd.az](http://www.cesd.az)

49 Iran expects more tourists from Azerbaijan this year, 2 May 2013, [www.azernews.az](http://www.azernews.az)

50 Website of Ministry of Finance, [www.maliyye.gov.az](http://www.maliyye.gov.az)

51 The Global Competitiveness Report 2013 – 2014, [www3.weforum.org](http://www3.weforum.org)

52 Index of Economic Freedom, 2014, [www.heritage.org](http://www.heritage.org)

53 Doing Business Report, 2014, [www.doingbusiness.org](http://www.doingbusiness.org)

54 Investment Climate Statement – Azerbaijan, 2013, [www.state.gov](http://www.state.gov)

55 Archetypical Azeris: Reflections of Mentality, by H. Guliyev, 2002, Baku, publication by Yeni Nesil

56 The effect of the Internet on civic engagement under authoritarianism: The case of Azerbaijan  
file://localhost/C:/Users/Toshiba/Downloads/PearceKendziorFreelonGIganet.pdf

As for citizen activity, there is also a difference in the degree of interest Azerbaijanis would demonstrate, depending on the nature of an issue of concern.<sup>57</sup> A greater number of people would take an initiative and/or join initiatives started by others that relate to a charity action, like blood donation, or money collection to help people in need, especially minor children who have serious medical conditions. Along with that, a significantly lower number of people would demonstrate enthusiasm in joining a petition campaign to address political issues, including but not limited to freedom of assembly, freedom of speech, a major corruption scandal that might involve a well-known public figure, etc.<sup>58</sup>

Nonetheless, with the enhanced technologies, media, and telecom, the societies (globally and in Azerbaijan in particular) have become more socially aware – if not socially engaged at all times.<sup>59</sup> Access to global social networks, such as Facebook (very popular in Azerbaijan), Twitter (less popular than Facebook, but still engaging more and more audiences over time), and partially LinkedIn, and youtube (with the fastest and most immediate reach) have significantly contributed to the increased awareness of people, especially young people, about the socio-political, economic, and cultural context in which the country operates.<sup>60</sup> In this sense, with the growing number of informed citizens there is great potential for developing a politically mature and socially responsible society, which is crucial for national integrity system and democracy building processes.

The notion of integrity has not been developed to a great extent in the Azerbaijan context. Even the term “integrity” itself has a few misleading vocabulary equivalents in the Azerbaijani language, being interchangeably used for national unity and consolidation more than it is used to express honesty and compliance with general standards of doing things right as well as doing the right things. This creates a lot of confusion around the concept of personal, professional and national integrity – as well as misunderstandings in the perception of such integrity amongst practitioners who are familiar with the terminology that is used in various anti-corruption literature and those who are not familiar with the terminology due to their completely different professional affiliation. Transparency International's *Global Corruption Report: Education*<sup>61</sup> draws upon the importance of the development of a new reformist curriculum within academia that would compulsorily include new learning disciplines on integrity, anti-corruption, and good governance.

Schools and academia in general is a powerful tool for developing socially and politically mindful and congruent citizens who, with the right approach employed in the education system, will demonstrate a strong understanding of social citizenry and personal integrity. Unfortunately, Azerbaijan these days is not the role model in such an approach in education. Corrupt curricular or “hidden curricular”<sup>62</sup> are not uncommon in many high schools and universities.<sup>63</sup> Additionally, academic integrity, precisely student's, associates' and teachers' compliance with non-plagiarism standards and rules – something that is expected from every student enrolled in academia anywhere in Europe or Americas, is a notion that is not always adequately perceived in Azerbaijan schools. Much work needs to be done in this area in order to enhance integrity both in academia, a professional setting and the public services sector. However, with the active reforms that are brought to the table by the

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57 Public opinion survey on Moral and Social Stance of Azerbaijani Youth, by Centre for Social Research by ADAM and Far Centers, 2010, [turkhan.wordpress.com](http://turkhan.wordpress.com)

58 Observations by Transparency Azerbaijan through activities conducted on its Facebook page from September 2012 – ongoing

59 Interview with Farid Gahramanov, media expert, Turan Information Agency by author, 11 April 2014

60 Interview with Nargiz Eyvazova, Integration of Azerbaijan Youth to Europe Public Association

61 Global Corruption Report: Education, publication by Transparency International, October 2013, [www.transparency.org](http://www.transparency.org)

62 Global Corruption Report: Education, publication by Transparency International, October 2013, [www.transparency.org](http://www.transparency.org)

63 Scholar Research Brief: Girls' Education in Rural Azerbaijan: A Case Study of Astara Region by T. Sivertseva, January 2012, [www.irex.com](http://www.irex.com)

new minister of education, things are more likely to change in a more positive way in Azerbaijan's education system.<sup>64</sup>

Gender roles are still fairly traditional in much of Azerbaijan with the man traditionally perceived to be the primary bread-winner and woman expected to take care of the domestic side of things<sup>65</sup> and have much less control over broader decision-making and democratic processes than their male counterparts. Although there has been some progress in the advancement of women's rights and opportunities over the recent decade (including the adoption of the Law of the Republic of Azerbaijan on Gender Equality, the adoption of the law on Domestic Violence, etc.) much needs to be done in the country for the voices of the women to be heard. The level of political empowerment among women in Azerbaijan, particularly in the rural communities is significantly low. Overall, Azerbaijan ranks 54 out of 148 countries in UNDP's 2012 Gender Inequality Index (GII).<sup>66</sup> According to the report, women hold 16 percent of Parliamentary seats. In comparison with the political activism, the situation with women's empowerment looks more optimistic in the economic activity. Female participation in the labour market is 61.6 percent compared to 68.5 per cent for men.<sup>67</sup> Numerous research points to the fact that gender mainstreaming in the society has an enormous effect on societal integrity and anti-corruption initiatives. Women, as the research suggests, are less tolerant to corruption.<sup>68 69</sup> Strengthening institutional growth and democratic capacity in the country is the key to the prevention of corruption. In that sense, gender equality and equity will be a value added asset to the overall national integrity system.

The rise of religiosity among Azerbaijanis occurred and further intensified as the aftermath of the collapse of the Soviet Union. According to opinion polls, about a quarter of the population is religious.<sup>70</sup> The turn towards religion occurred when in a newly independent Republic of Azerbaijan the hunger for religious identification and self-expression of the nation increased.<sup>71</sup> Despite the fact that politically Azerbaijan affiliates itself with Europe (West), geographically it is based in the intersection between East and West and has many characteristics of the oriental traditions and values. Thus, survival values put emphasis on economic advancement and physical security, which precisely describes actions undertaken by the Azerbaijan government in recent years.

The level of trust is rather low. In it's annually conducted Caucasus Barometer, the Caucasus Research and Resource Center (CRRC) concluded that only 9 per cent of respondents believe that most people in Azerbaijan can be trusted, while 18 per cent find trust among people a serious challenge and think that one "can't be too careful in dealing with people". The same research has stated that on a scale of 1 to 5 (where a score of 1 means you must be careful in dealing with people, and a score of 5 means that most people can be trusted), 33 per cent have selected the score "3" to reflect their opinion as to whether people in general are perceived as trustworthy or not.<sup>72</sup>

Another definitely positive stand with regard to Azerbaijan's level of comfort with personal integrity is undoubtedly worth mentioning here. That is the positive impact that transnational corporations

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64 Website of the Ministry of Education [www.edu.gov.az](http://www.edu.gov.az)

65 Archetypical Azeris: Reflections of Mentality, by H. Guliyev, 2002, Baku, publication by Yeni Nesil

66 UNDP Human Development Report 2013. The Rise of the South: Human Progress in a Diverse World. Explanatory note on 2013 HDR composite indices: Azerbaijan, [www.hrd.undp.org](http://www.hrd.undp.org)

67 Website of the State Statistics Committee [www.stat.gov.az](http://www.stat.gov.az)

68 GRECO, Council of Europe, Gender dimensions of corruption, November 2012, [www.coe.int](http://www.coe.int)

69 Transparency International Corruption and Gender in Service Delivery: The Unequal Impacts, Working Paper, 9 June 2010, [www.transparency.org](http://www.transparency.org)

70 World Values Survey 2104, WV6 Data Azerbaijan 2011 – 2012, [www.worldvaluessurvey.org](http://www.worldvaluessurvey.org)

71 Azerbaijan Islam in a Post-Soviet Republic, by Anar Valiyev, 2005, [www.muslimpopulation.com](http://www.muslimpopulation.com)

72 Caucasus Barometer 2013: Azerbaijan, [www.caucasusbarometer.org](http://www.caucasusbarometer.org)

operating in Baku and elsewhere across the country have on national employees<sup>73</sup> (who are usually fresh graduates and youth)<sup>74</sup> in that they require certain work and behavioral standards that are in line with professional integrity, non-disclosure, and (depending on the type of the business the firm is engaged and the roles assigned to a given employee) with non-plagiarism compliance. Some companies even require their newly hired staff members to attend mandatory learning courses on ethics and values of the company, which are core components of general integrity and compliance education process. Changes in values also occur as a result of globalisation and integration of Azerbaijan into global economy and politics.<sup>75</sup>

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73 Defining New Business Subculture: an Application of Hofstede's Value Survey Module across West-Oriented National Business Entities in Azerbaijan, abstract from master paper by Nargiz Sadigova, Supervisor Satu Teerikangas, University College London, Bartlett School of Construction and Project Management, Academic Year: 2012 – 2013, S/N: 12067379

74 The Study of Azerbaijani Youth Cultural Profile by P.Azizov and F. Ismayilov (2012), Baku, 2012, publication by Azerbaijan State Youth Fund

75 Globalization and Cultural Identity, G. Kerimova, in Azerbaijan's case, Khazar Journal of Humanities and Social Sciences, Volume 12, 4, [7], 2009



# V. CORRUPTION PROFILE

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Azerbaijan's economy relies substantially on revenues from the oil gas extracting industry. While the country's natural resource wealth has largely contributed to economic growth and political stability in the last decade, it is also conceived as one of the sources of corruption.<sup>76</sup>

Along with that, though the level of corruption in the country is still perceived to be high, it is slowly but surely declining. Thus, in 2013, Azerbaijan demonstrated its best performance in the rankings of *Corruption Perception Index*<sup>77</sup> since 2000<sup>78</sup> when the country was first included in the report. In 2013, Azerbaijan was ranked 128th out of 177 countries surveyed; as compared to 2001, when it was ranked 87th among 90 countries surveyed. Azerbaijan alongside Russia is somewhat in the middle of the ranking system as compared to its neighbours. Thus, Azerbaijan is well behind Turkey and Georgia in the region (53rd and 55th rank, respectively) but ahead of Kazakhstan (140th rank) and Ukraine, who shares the 144th rank with Iran. A World Bank Survey<sup>79</sup> also supports these findings and notes an improvement in the ability of the government to control corruption,<sup>80</sup> though it is obvious that the control should be significantly enhanced.

According to Transparency International's *Global Corruption Barometer 2013*,<sup>81</sup> people in Azerbaijan believe that corruption in the public sector is a serious problem and assess it at 3.6 score on a scale from 1 to 5, where 1 stands for a minimum and 5 for a very serious problem. Health services and judiciary (both assessed at 3.1) are viewed as the sectors most affected by corruption followed by the police (2.9), civil service and business sector (both assessed at 2.8). However, as compared to 2010 results,<sup>82</sup> people believe that the police (believed to be the most corrupt agency in 2010 at 3.6) and civil service (3.3 in 2010) have made good progress; while the business sector (from 2.6 to 2.8) plunged deeper into corruption; and Parliament with civil society remained at the same level of 2.5. Unlike the global tendency, people in Azerbaijan do not view political parties as very corrupt (2.6 in 2010 to 2.5 in 2013). Indeed, recent reforms in the police and civil service have not gone unnoticed by the citizens; whereas monopolies in business, problems with access to electricity, trading across borders and licensing are impediments to business development<sup>83</sup> that need to be overcome. The results confirm findings of this report that transparency and accountability of the Parliament and civil society need to be enhanced.

The government indeed achieved success in reducing petty corruption through introduction of electronic services, one window public service halls, a test-based system of recruitment to public service, and significant reforms in the road police, among others. Reduction of petty corruption can be seen through comparison of the two surveys by the *Caucasus Barometer* in 2010<sup>84</sup> and 2013.<sup>85</sup> Thus, in 2013, 24 per cent of the surveyed admitted having paid a bribe in the past twelve months, whereas in the 2010 survey bribe payers made up 29.5 per cent of all the respondents. However, suspicions of a high level of corruption voiced by the media and distributed through social networks are not closely attended to.

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76 Diversified Development: Making Most of Natural Resources in Eurasia, Indermit S. Gill et al, publication by EBRD/World Bank, 2014, [www.worldbank.org](http://www.worldbank.org)

77 Corruption Perception Index 2013, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

78 Corruption Perception Index 2000, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

79 Worldwide Governance Indicators 2013, Azerbaijan, [www.govindicators.org](http://www.govindicators.org)

80 Worldwide Governance Indicators are presented on a scale from minimum 0 to maximum 100

81 Global Corruption Barometer 2013, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

82 Global Corruption Barometer 2010, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

83 Doing Business 2014, publication by the World Bank, [www.doingbusiness.org](http://www.doingbusiness.org)

84 Caucasus Barometer 2010: Azerbaijan, [www.caucasusbarometer.org](http://www.caucasusbarometer.org)

85 Caucasus Barometer 2013: Azerbaijan, [www.caucasusbarometer.org](http://www.caucasusbarometer.org)

As noted in the latest OECD report,<sup>86</sup> there is a shortage of profound research that shows a full picture of the level of actual corruption in the country – rather than perception – as well as the location, frequency, levels and forms of corruption.

It is inspiring that, according to *Global Corruption Barometer 2013*, most people in Azerbaijan believe that the government is able to combat this serious challenge in Azerbaijan (66 per cent in 2010 and 68 per cent in 2010) by execution of a profound reform of the whole system of public administration as well as a mobilisation of public opinion, social institutions and civil society. People can imagine that they would get involved in the fight against corruption (81 per cent in 2013 as compared to 69 per cent in 2010), which can be partially explained by the multiple efforts of civil society in rendering free legal aid to population, including five advocacy and legal advice centres run by Transparency Azerbaijan since 2005.<sup>87</sup>

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86 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

87 [www.transparency.az](http://www.transparency.az)



# VI. ANTI-CORRUPTION ACTIVITIES

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## Anti-corruption programmes and measures

Since 2004, the Government of Azerbaijan has a basic Law on Combating Corruption,<sup>88</sup> followed by other state-led efforts aimed at increasing transparency and reducing corruption, although these have not significantly reduced the level of corruption in the country. However, the anti-corruption efforts of the government re-gained momentum in the past couple of years. Following the Cabinet of Ministers meeting on 27 January 2011,<sup>89</sup> Azerbaijan's Anti-Corruption Commission held a special meeting with the participation of all the relevant state bodies with instructions to take active measures to reduce corruption and increase development. This was further backed up by a series of Presidential speeches, prosecutions, firings, salary increases and other measures to demonstrate commitment at the highest levels.

In September 2011, the Government of Azerbaijan announced its intent to join the Open Government Partnership (OGP), a new multilateral initiative that aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. In September 2012, two important Action Plans were approved by the President.<sup>90 91</sup> If the Open Government Partnership Action Plan was a new initiative, the Anti-corruption Action Plan was an extension of the second five year plan. Implementation of the first (2004- 2006) and second Action Plans left much to be desired. According to civil society estimates, less than 50 per cent of the second Action Plan was implemented.<sup>92</sup> Alongside that, some reforms which were not fully implemented in 2007- 2011 have again been included into the new Action Plan.

As previously mentioned, the anti-corruption reforms have been given much more consideration since 2011. According to monitoring reports released by a project implemented by Transparency Azerbaijan,<sup>93 94</sup> the Anti-corruption Action Plan on Combating Corruption covering the period of 2012- 2015 was implemented by 34 per cent and the Open Government Partnership Initiative Action Plan was implemented by 25 per cent in the first year since its adoption. According to these reports, the best success lies in cooperation with civil society and informing the general public of corruption, its consequences and preventive measures; whereas unrestricted access to information held by the government is not sufficiently ensured. Transparency of the budget formation process and accountability of budgetary expenditures, as well as of public procurement process are

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88 The Law on Combating Corruption signed into a bill on 13 Jan 2004 and entered into force as of 1 Jan 2005, [www.e-qanun.az](http://www.e-qanun.az)

89 An Extended Meeting of the Anti-Corruption Commission, Chaired by the Head of Presidential Administration, Trend news agency, [www.az.trend.az](http://www.az.trend.az)

90 Presidential decree on Approval of the National Action Plans 2012 – 2015 under Open Government Initiative and Anti-Corruption Action Plan under National Strategy on Increasing Transparency and Combating Corruption, 5 September 2012, [www.e-qanun.az](http://www.e-qanun.az)

91 Open Government Initiative. National Action Plan 2012 – 2015, 5 September 2012, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

92 National Anti-Corruption Action Plan (NACAP) 2012 – 2015, 5 September 2012, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az), [www.president.az](http://www.president.az)

93 Monitoring by the NGO Network for Increasing Transparency and Combating Corruption 2005 – 2001, [www.anticorrupt.net.az](http://www.anticorrupt.net.az)

94 Monitoring Report on Implementation of Azerbaijan Open Government Initiative National Action Plan (September 2012 – September 2013), publication by Economic Research Centre in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

95 Monitoring Report on Implementation of Azerbaijan National Anti-Corruption Action Plan (September 2012 – September 2013), publication by Constitution Research Fund in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

the spheres where more efforts are required. Other areas that need to be developed are: protection of the rights of consumers, especially in the utilities sector, including electricity, gas and water supplied by natural monopolists and violation of property rights.<sup>95</sup>

Transparency in administration of justice is to be addressed. Policy of the Anti-Corruption Department under the Prosecutor General to bring corrupt officials to responsibility and establishment of a dedicated anti-corruption hotline is commendable; however they do not always act upon suspicions of the media.

In 2011, a Presidential Decree was issued<sup>96</sup> to order the Cabinet of Ministers to define the types of e-services to be rendered by national public agencies. The original list of 284 individual e-services to be initiated in 41 public agencies<sup>97</sup> was later expanded to 428.<sup>98</sup> Each agency is responsible for implementing its own e-service programme with the indirect oversight from the Anti-Corruption Commission. Azerbaijan has successfully created an e-government infrastructure, which would allow for further development of e-services. However, the process is currently still underway, as of the date of this report. Whereas the Ministry of Taxes provides high quality services, services by many other public agencies are not operational so far or provide information rather than interactive services. Obstacles are as follows: there are so far no means to secure exchange of data on individual, commercial, real estate and other types of property among all relevant public institutions. Also, data exchange standards (format and protocols) have not been finalised.<sup>99</sup> Electronic services are rendered by individual public agencies and duplicated through a single e-government portal uniting the government's e-services under one roof.<sup>100</sup>

Also, it shall be emphasised that the expectations of people of electronic services have not been fully met. If services designed for the business sector are of high quality in terms of their scope and coverage, services rendered to the population are marred by deficiencies. To be precise, some long life electronic services that people need are lacking, for example: State Social Protection Fund does not provide online registration of the insured; no facilities exist for online application for change of the state registration plate for vehicles, declarations for customs clearance of goods and vehicles are not available either.

The main institutional achievement of Azerbaijan in curbing petty corruption is establishment of ASAN public service centres<sup>101</sup> managed by the newly established State Agency for Citizens' Services and Social Innovations.<sup>102</sup> The aim of the six operating ASAN Service Centers is to provide various state services through a "single window" process, as well as information on legal procedures and state fees. Efficiency of these centers is highly evaluated by users of Baku centers as a working tool to prevent corruption (71 per cent of the surveyed) and increase transparency (35 per cent).<sup>103</sup> Also, the centres are staffed by many volunteers rendering services to customers seeking for information and actually receiving on-site training.

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95 Doing Business 2014: Azerbaijan, [www.doingbusiness.org](http://www.doingbusiness.org)

96 Establishment of e-services at public institutions of the Republic of Azerbaijan – 23 May 2011, [www.e-qanun.az](http://www.e-qanun.az)

97 Decision N 191 of the Cabinet of Ministers on "Guidelines for provision of e-services in specific areas, by central executive authority institutions" and the "List of e-services, 24 November 2011, [www.e-qanun.az](http://www.e-qanun.az)

98 On amendments to the Decision N 191 of the Cabinet of Ministers on "Guidelines for provision of e-services in specific areas, by central executive authority institutions" and the "List of e-services – 17 October 2012; [www.e-qanun.az](http://www.e-qanun.az)

99 Preliminary results of monitoring of e-services by Transparency Azerbaijan in June – December 2013

100 [www.e-gov.az](http://www.e-gov.az)

101 Website of ASAN centres [www.asan.gov.az](http://www.asan.gov.az)

102 Approved by Presidential decree on State Agency for Citizens' Services and Social Innovations, 13 July 2013, [www.president.az](http://www.president.az)

103 Baku residents are satisfied with results of fight against corruption in the country, survey by Rey (Opinion) Monitoring Center, 10-14 March 2014, Interfax news agency, 18 March 2014, [www.interfax.az/view/603252](http://www.interfax.az/view/603252)

## Legislation

In the last decade, the Parliament ratified the UN Convention against Corruption (ratified on 30 September 2005) and adopted several laws in field of transparency and anti-corruption, such as the Law on Combating against Corruption,<sup>104</sup> Law on the Statutes of the Commission on Combating Corruption,<sup>105</sup> Law on Approval of Procedures for Submission of Financial Information by Public Officials;<sup>106</sup> Law on Rules of Ethical Conduct of Civil Servants;<sup>107</sup> Law on Access to Information;<sup>108</sup> Law on Public Participation<sup>109</sup> etc. According to local experts<sup>110</sup> and international ratings,<sup>111</sup> even if these laws do not fully comply with European standards, they are still quite good and comprehensive.

Along with that, lack of several crucial laws and supporting regulatory acts that are long due impedes further success of the anti-corruption programmes. These are: conflict of interest law; whistleblower protection; punishment of deprivation of the right to hold certain positions in legal entities outside of public service; submission of financial declarations by public officials; criminalisation of illicit enrichment; as well as including sanctions for violation of provisions to respective codes, among others.

Civil society monitoring of the implementation of the newly adopted regulations is not sufficiently funded by the international donor community and the government.

## Discrepancy between law and practice

Thus, the *Global Integrity Index*<sup>112</sup> that measures availability and efficiency of anti-corruption mechanisms across the globe rather than the level of corruption or its perception assessed Azerbaijan legal framework as strong (at 89 out of 100), whereas the actual implementation scored as very weak (at 38 out of 100). Indeed, a number of important measures have recently been taken in Azerbaijan to combat corruption, particularly to improve the anti-corruption legislation and bring it in line with the provisions of international conventions, whereas development of supporting legislation and institutional tools to enable practical application of the new laws is somewhat delaying, thus causing a disparity of assessment. Results of the World Bank survey<sup>113</sup> are in accordance with these findings and assess regulatory quality higher (34 on a scale from minimum of 0 to maximum of 100) than the government's effectiveness (24) or rule of law (25).

## Civil society, business and external actors

Involvement of civil society in anti-corruption work is mainly limited to monitoring of government implementation of domestic and international anti-corruption obligations as well as designing of recommendations for the government that are partially heard through several channels. NGOs provide their views to the Anti-Corruption Commission through the Information and Cooperation Network of NGOs for Combating Corruption,<sup>114</sup> established in 2006 and uniting 29 NGOs. The

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104 Law on Combating against Corruption, 13 January 2004, [www.e-qanun.az](http://www.e-qanun.az)

105 Law on the Statutes of the Azerbaijan Republic Commission on Combating Corruption, 3 May 2005, [www.e-qanun.az](http://www.e-qanun.az)

106 Law On Approval of Procedures for Submission of Financial Information by Public Officials", June 24 2005, <http://www.commission-anticorruption.gov.az>

107 Law on Rules of Ethical Conduct of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

108 Law on the Right to Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

109 Law on Public Participation, 22 November 2013, [www.e-qanun.az](http://www.e-qanun.az)

110 Statement by Alimamed Nuriyev, coordinator of the Information and Cooperation Network of NGOs, Camiyyat (Society) program, Khazar TV, 23.00-23.40, 29 November 2013

111 Global Integrity Index 2011: Azerbaijan, [www.globalintegrity.org](http://www.globalintegrity.org)

112 Global Integrity Index 2011: Azerbaijan, [www.globalintegrity.org](http://www.globalintegrity.org)

113 Worldwide Governance Indicators 2013, Azerbaijan, [www.govindicators.org](http://www.govindicators.org)

114 Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption, [www.anticorrupt.net](http://www.anticorrupt.net)

Network is operating on the basis of a Memorandum of Understanding signed on 27 January 2012 with the Head of the Anti-Corruption Department under the Prosecutor General to promote advocacy campaigns and raise public awareness. It has the Anti-Corruption Commission (as an entity) and representatives of the Parliament among its members.<sup>115</sup> Other channels include: the National Budget Group<sup>116</sup> and Azerbaijan Partnership for Transparency Platform of NGOs<sup>117</sup> – both civil society groups – as well as Public Monitoring Councils established by several national agencies (Ministry of Labour and Social Protection of Population, Ministry of Justice, State Commission on Civil Service, etc), with civil society representatives having the majority of seats. However, implementation of this obligation is insufficient, as the involvement of civil society in preparatory discussions of socially significant laws is lacking.

The five Transparency Azerbaijan free advocacy and legal advice centres operating across the country since 2005 as well as similar facilities offered by other NGOs have raised public awareness and helped the population to build skills to resist corrupt practices.

Anti-corruption activities of businesses are rather narrow. In practice, the business sector is not active in engaging with the Azerbaijan government on anti-corruption. There are no known effective examples of such cooperation and there are no known examples of business associations publicly calling on the government to fight corruption.<sup>118</sup> The National Anti-Corruption Plan for 2012- 2015 envisaged improving transparency in the business environment,<sup>119</sup> but the business sector is not represented in the Anti-Corruption Commission.<sup>120</sup> The business sector in Azerbaijan is also not engaged with civil society in its task of combating corruption.<sup>121</sup> There are no effective examples of joint business-civil society initiatives on combating corruption or businesses providing financial support to civil society initiatives seeking to combat corruption, though some local companies have subscribed to the UN Global Compact that was set up in 2011, and about a half of its members are business entities (Pasha Insurance, Qarant Sigorta, Risk Company, Caspian Technology Company, Access Bank, etc).<sup>122</sup>

Media in Azerbaijan contributes to anti-corruption efforts through investigative journalism (for example, the Azerbaijan desk of radio Liberty)<sup>123</sup> as well as limited analytical articles (for example, Turan information agency) and education of citizens (for example, FM radio programme providing legal advice on traffic problems live on air).

External actors assist Azerbaijan in the development of legal framework and setting up institutional mechanisms to combat corruption, for example: GRECO and OECD Anti-corruption Network monitors Azerbaijan's commitments; the World Bank provides technical and financial assistance in execution of Judicial Modernisation project;<sup>124</sup> USAID provides funding to local watch dogs;<sup>125</sup> and OSCE has funded a network of free legal advice centres all over the country.<sup>126</sup>

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115 NGO Network for Increasing Transparency and Combating Corruption 2005 – 2001, [www.anticorrupt.net](http://www.anticorrupt.net)

116 Website of National Budget Group [www.nbg.az](http://www.nbg.az)

117 Launch of the "Azerbaijan Partnership for Transparency" Platform, 7 July 2013, [www.transparency.az/eng](http://www.transparency.az/eng)

118 Interview with Sabit Bagirov, chairman, Entrepreneurship Development Foundation, board member of Transparency Azerbaijan, dated 4 February 2014

119 National Anti-Corruption Action Plan 2012 – 2015, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

120 Members of Commission on Combating Corruption, [www.commission.gov.az](http://www.commission.gov.az)

121 Interview with Sabit Bagirov, chairman, Entrepreneurship Development Foundation, board member of Transparency Azerbaijan, dated 4 February 2014

122 UN Global Compact, Global Compact Launches Local Network in Azerbaijan, [www.unglobalcompact.org/](http://www.unglobalcompact.org/)

123 [www.azadigradiosu.org](http://www.azadigradiosu.org)

124 [www.worldbank.org](http://www.worldbank.org)

125 Azerbaijan Partnership for Transparency Project 2012 – 2016, involving 5 local partners with Transparency Azerbaijan leading the project, [www.transparency.az](http://www.transparency.az)

126 Legal Resource Centers in Azerbaijan, [www.osce.org](http://www.osce.org)

# VII. NATIONAL INTEGRITY SYSTEM

## 1. LEGISLATURE

### Summary

Several laws ensure transparency and independence of the Azerbaijan supreme legislative body - Milli Majlis. The law provides independence to Milli Majlis and gives immunity to Parliament members. According to the law, the legislature cannot be dismissed and there is no legal mechanism to dissolve the Parliament by law. At the last Parliamentary elections of 2010, the ruling party of Yeni Azerbaijan won most of the seats in the Parliament. Big opposition parties are not currently represented in the Parliament after the last Parliamentary elections; however, small opposition parties have seats in the Parliament.

Azerbaijan legal framework, including the anti-corruption laws, is generally assessed as quite good by international standards.

There is evidence of involvement of some deputies in business activities as well as some MPs working for the executive branch, which is not allowed under the law and can create conflict of interests during the legislative process.

Milli Majlis is fully equipped with technical and human resources. The salaries of MPs are quite high by local standards.

MPs are yet to develop a full understanding of their accountability before their constituencies and public in general. There is room for enhancement of transparency of the Parliament.

Taking the above into account, the Azerbaijan legislature needs to reinforce its position as an efficient element of the system of checks and balances, among the three branches of power.

### LEGISLATURE

Overall Pillar 53/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 56/100	Resources	75	50
	Independence	75	25
Governance 54/100	Transparency	75	50
	Accountability	75	25
	Integrity	75	25

Role 50/100	Executive Oversight	25
	Legal Reforms	75

## Structure and organisation

The Azerbaijan Parliament, named “Milli Majlis”, was established on 28 May 1918 by the declaration of independence of the Azerbaijan Democratic Republic and after the dissolution of the Soviet Union. It was re-established on 26 November 1991 by the decision of the Conciliatory Commission of the Supreme Soviet of Azerbaijan.<sup>127</sup> The legislature is unicameral and consists of 125 deputies elected for the period of five years on majoritarian system through general, equal, free, and direct elections with personal and secret ballot. Milli Majlis of the Azerbaijan Republic have powers, after authority of 83 of its deputies has been approved. Required for voting are 83 votes on such crucial issues as election of the president or Parliament, and organisation of a referendum. For most other issues, the quorum is made up by 63 votes.<sup>128</sup> According to article 93 of the Constitution of Azerbaijan,<sup>129</sup> Milli Majlis is responsible for adopting constitutional laws, and laws and decrees within its competence. The Constitution of Azerbaijan also states, that specific orders to the bodies of executive power and law courts cannot be envisaged in laws and decrees of Milli Majlis of the Azerbaijan Republic. Azerbaijan Parliament has 11 Parliamentary committees,<sup>130</sup> in addition to the Disciplinary Commission and the Computation Commission.

- Legal Policies and State Structuring Committee
- Defense and Security Committee
- Economic Policies Committee
- Committee on Natural Resources, Energy and Ecology
- Committee on Agrarian Policies
- Social Policies Committee
- Committee on Regional Issues
- Committee on Science and Education
- Committee on Cultural Issues
- International and Inter-Parliamentary Relations Committee
- Human Rights Committee

127 Website of Inter-parliamentary Assembly of Member Nations of the Commonwealth of Independent States: Azerbaijan Parliament, [www.iacis.ru](http://www.iacis.ru)

128 Constitution of Azerbaijan Republic, Article 91.2, 12 November 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

129 The Constitution of the Republic of Azerbaijan, 12 November, 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

130 Website of Milli Majlis, [www.meclis.gov.az](http://www.meclis.gov.az)

The Parliament also has quite an extensive apparatus that plays an important,<sup>131</sup> if not a leading role in the law-making process.

## Assessment

### Resources (law): 75

*To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?*

Resources of the Milli Majlis are sufficient; for example, the 2012 budget of the Parliament was 18,589.5 thousands manat<sup>132</sup>, and moreover, it approves its own budget. It determines cost estimates during annual budget review for the next year at the Milli Majlis.<sup>133</sup> Salaries are benchmarked against each other, the highest being that of the speaker of the house. According to the Law on the Status of the Member of the Azerbaijan Parliament,<sup>134</sup> the salary of the first vice-speaker of the Parliament is equal to 90 per cent, the salary of the deputy speaker to 85 per cent, the salary of Parliamentary committee and commission chairman to 80 per cent, the salary of deputy chairman of the Parliamentary committee and commission to 75 per cent, the salary of the MP is equal to 70 per cent of the speaker's salary.

### Resources (practice): 50

*To what extent does the legislature have adequate resources to carry out its duties in practice?*

Resources of Milli Majlis are adequate for carrying out its responsibilities. Milli Majlis has sufficient budgets for salaries, equipment and training.<sup>135</sup> According to the last amendment,<sup>136</sup> monthly salary of the speaker of the Parliament has been increased from 1,950 manat (US\$2,990) to 2,250 manat (US\$3,450) and respectively salaries of deputy chairman of the Parliamentary committee, commission and MPs also increased.<sup>137</sup> Salaries are not equaled to the European standards, neither are they very high as compared to the Azerbaijan private sector,<sup>138</sup> but they are still much higher than the official national standards.<sup>139</sup> For comparison, according to the official statistics,<sup>140</sup> the average monthly salary in Azerbaijan by December 2013 amounted to 423 manat (US\$656), with 334 manat (US\$518) in the public sector and 496 manat (US\$769) in the non-public sector.<sup>141</sup>

Also, the Parliament received international support to strengthen its resource base. The Parliamentary Program of Azerbaijan, implemented by Development Alternatives, Inc., with funding from the USAID, was aimed to strengthen the effectiveness and representative capacity of the Parliament of Azerbaijan from 2007 to 2011. The programme helped to establish 125 local representative offices and considerably enhanced the Parliament's website.<sup>142</sup> However, MPs

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131 Adam Hug, Introduction to Spotlight on Azerbaijan, edited by Adam Hug, publication by Foreign Policy Centre, London, May 2012, <http://fpc.org.uk/fsblob/1462.pdf>

132 The order of Milli Majlis on the 2012 Expenditure Schedule of the Milli Majlis, 6 December 2011, [www.meclis.gov.az](http://www.meclis.gov.az)

133 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 52, 17 May 1996,

[www.meclis.gov.az](http://www.meclis.gov.az)

134 The Law on the Status of the Member of the Azerbaijan Parliament, 17 May 1996, [www.meclis.gov.az](http://www.meclis.gov.az)

135 Interview with Gultekin Hajibeyli, former MP by the author, 30 October, 2013

136 Amendments to the Law on the Status of the Member of the Azerbaijan Parliament, 25 December 2013,

[www.president.az](http://www.president.az)

137 Amendments to the Law on the Status of the Member of the Azerbaijan Parliament, 25 December 2013,

[www.president.az](http://www.president.az)

138 Interview with Fuad Suleymanov, independent legal expert by the editor, 14 April 2014

139 Interview with Gultekin Hajibeyli, former MP by the author, 30 October, 2013

140 Website of the State Statistics Committee, [www.stat.gov.az/indexen.php](http://www.stat.gov.az/indexen.php)

141 Real average salary in Azerbaijan reduces its growth rate, Fineko/abc news agency, 22 February 2014

[abc.az/eng/news/main/79604.html](http://abc.az/eng/news/main/79604.html)

142 Parliamentary Program in Azerbaijan, website of Development Alternatives, Inc, [www.dai.com](http://www.dai.com)



representatives have offices at the respective constituencies to keep in touch with the voters, whereas MPs are also in need of personal assistants.<sup>143</sup>

Substantial amounts have been spent to enhance infrastructure and human capacity of the Parliament's staff.<sup>144</sup>

## Independence (law): 75

*To what extent is the legislature independent and free from subordination to external actors by law?*

The law provides independence to Milli Majlis and gives immunity to Parliament members. According to the law, the legislature cannot be dismissed and there is no legal mechanism to dissolve the Parliament by law. The Chairman of Milli Majlis may call extraordinary sessions at the request of the President of the Azerbaijan Republic, or the 42 deputies of Milli Majlis and an agenda of extraordinary session will be prepared by those who summoned the session.<sup>145</sup> Meetings of the Milli Majlis are held in accordance with the legislative action plan adopted at the beginning of the regular spring and fall session seasons of the Milli Majlis.<sup>146</sup>

The chairman of the Milli Majlis is elected amongst the members of the Milli Majlis by secret voting with ballots. Members of the Milli Majlis may nominate the candidate to the position of the chairman of the Milli Majlis. Every member may nominate only one candidate. Self-rejection of candidates is accepted without taking a vote. The names of the candidates supported by at least ten members are included in the ballots. The candidates may make speeches and answer the questions of the members. The discussions are held on the candidates included in the ballot. Every candidate for the position of the chairman of the Milli Majlis may include one additional member to the Computational Commission.

The election of the chairman of the Milli Majlis enters into force upon the decision of the Milli Majlis. This decision is signed by the person presiding at the meeting of the Milli Majlis.<sup>147</sup> The chairman of the Milli Majlis appoints to and dismisses from the position, the administrative staff of the Milli Majlis.<sup>148</sup>

Activities of standing commissions of the Milli Majlis are organised on the principles of difference of opinions, political pluralism, publicity, and independent consideration of issues.<sup>149</sup>

The special regime of the building of the Milli Majlis is defined by the order of the chairman of the Milli Majlis. No search shall be conducted in the building of the Milli Majlis without permission of the chairman of the Milli Majlis.<sup>150</sup>

According to the Constitution, a deputy of Milli Majlis of Azerbaijan enjoys immunity during the whole term of his powers. A deputy of Milli Majlis of the Azerbaijan Republic may not be called to criminal responsibility during the whole term of his/her authority; arrested, subject to disciplinary measures by law court or personal search. A deputy of Milli Majlis may be arrested only if he/she has been

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143 Interview with MP Ilyas Ismaylov, leader of the Adalat party by the author, 21 April 2014

144 Bertelsmann Transformation Index: Azerbaijan Country report, 2012, <http://www.bti-project.de>

145 Constitution of Azerbaijan Republic, 12 November, 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

146 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 7, 17 May 1996, [www.meclis.gov.az](http://www.meclis.gov.az)

147 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 33, 17 May 1996, [www.meclis.gov.az](http://www.meclis.gov.az)

148 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 31, 17 May, 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

149 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 35, 17 May, 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

150 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 1, 17 May 1996 [www.meclis.gov.az](http://www.meclis.gov.az)



caught at a place of crime<sup>151</sup> and a resulting motion by law enforcement bodies to lift immunity was approved by the Milli Majlis.<sup>152</sup>

## Independence (practice): 25

To what extent is the legislature free from subordination to external actors in practice?

Some MPs take a lenient position and avoid criticism.<sup>153</sup> During the last years Milli Majlis several times amended the Law on NGOs and other respective legal acts<sup>154</sup> to adopt amendments regulating activities of civil society. Milli Majlis also adopted legislation extending criminal defamation provisions onto online content.<sup>155</sup> Also, in June 2012 the Parliament adopted amendments to legislative acts, which restrict access to information.<sup>156 157</sup> According to the amendments, information about the founders and financial resources of legal entities, the amount of their charter capital, and other similar data, will be accessible only to law enforcement bodies. This provision contradicts other international obligations of the country, for example, the principle of transparency as set forth by the Open Government Partnership initiative that Azerbaijan joined in 2012<sup>158</sup> and the Access to Information Law.<sup>159 160</sup> This provision was debated in the Parliament and some independent MPs (Asim Mollazadeh, Gudrat Hasanguliyev, Fazil Mustafa, Iqbal Aghazade) stood against it.<sup>161</sup>

## Transparency (law): 75

*To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?*

Legal provisions ensure transparency of Milli Majlis and its activities. Resolutions of the Milli Majlis shall be officially published in the Statement of Milli Majlis, as well as minutes and shorthand records of the Milli Majlis meetings, that shall be published in a document entitled Minutes and Shorthand Records of Meetings of the Milli Majlis of the Republic of Azerbaijan.<sup>162</sup> Information on the content of secret meetings of the Milli Majlis shall not be disclosed and may be used only by members of the Milli Majlis in their activities in the Milli Majlis.<sup>163</sup>

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151 Constitution of Azerbaijan Republic, 12 November, 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

152 The Law on the Status of the Member of the Azerbaijani Parliament, 17 May, 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

153 Statement by MP Zahid Oruj, Media Forum, 3 May 2013 [www.mediaforum.az/az/2013/03/05/Zahid-Oruc-parlamenti-hokumete-guzestli-movqe-020120974c00.html](http://www.mediaforum.az/az/2013/03/05/Zahid-Oruc-parlamenti-hokumete-guzestli-movqe-020120974c00.html)

154 On 15 February 2013 Milli Majlis approved the bill on amendments to the Law on NGOs and Criminal Code tightening responsibility for registration of grants with the Ministry of Justice signed into a law on 11 March 2013; further changes were made on 3 February 2014 to the laws on State Registration of Legal Entities and the State Register, the Law on Grants and to the Code of Administrative Offences to specify the requirements to register grants with the Ministry of Justice, as well as to set forth timely notification of executive authority of changes in the legal status and activities of NGOs

155 Amendments to Articles 147 and 148 of the Criminal Code dated 14 May 2013, [e-qanun.az](http://e-qanun.az)

156 Azerbaijan: Parliament Throws Veil of Secrecy over Business Sector, by Shahin Abbasov, Eurasia Net, 13 June 2013, [www.eurasianet.org/node/65534](http://www.eurasianet.org/node/65534)

157 Amendments dated 12 June 2012 to the Law on Registration of Legal Entities and State Registry, dated 12 December/2003 and the Law on Commercial Secret, dated 4 December 2001 and Law on the Right to Obtain Information, dated 30 September 2005

158 Presidential decree dated 5 September 2012 on Approval of the Azerbaijan's Action Plan for 2012 – 2015 under Open Government Partnership Initiative, [www.president.az](http://www.president.az)

159 Law on the Right to Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

160 Hand Book on Freedom of Information in the South Caucasus, publication by Transparency (International) Georgia, Transparency (International) Armenia, Transparency (International) Azerbaijan, May 2012, [www.transparency.az](http://www.transparency.az)

161 From now on the list of founders and their equity stake regarded as commercial secret in Azerbaijan, 12 June 2012, FINECO/ABC news agency, [http://abc.az/eng/news\\_12\\_06\\_2012\\_65667.html](http://abc.az/eng/news_12_06_2012_65667.html)

162 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 53, 17 May 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

163 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 3, 17 May 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

The language of Article 3 of the Regulations<sup>164</sup> is rather broad; though it states that the Milli Majlis's meetings shall be held in open and transparent conditions, it fails to specify what this means exactly in terms of practical implementation.<sup>165</sup> On the other side, the law states that persons may also participate in the meetings of the Milli Majlis by the invitation of the Milli Majlis, Chairman of the Milli Majlis and his deputies, as well as the head of the administration of the Milli Majlis.<sup>166</sup>

The law sets forth two voting approaches: an open vote and a secret ballot. The standard procedure is an open vote through electronic system. Other types of voting need to be formalised through a protocol. In cases where a minimum of 25 votes are required, name-by-name open vote through electronic system is applied. The law sets forth other open vote procedures as well – a show of hands and a hard copy questionnaire based survey. Secret ballot is made through electronic system or paper based ballots. Results are counted by the Computation Commission (except for electronic voting) and announced by the person presiding at the meeting of the Milli Majlis.<sup>167</sup>

According to the law, MPs should regularly be in contact with voters.<sup>168</sup>

There is no provision about public asset disclosures. Even the law<sup>169</sup> states that financial information submitted by MPs shall be considered as private information and its confidentiality maintained. Specified information may be provided under reasonable enquiries of the Prosecutor's Office and courts in association with corruption related violations.

## Transparency (practice): 50

*To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?*

Legislature activities and decision-making process are partially transparent for the public. Some media organisations passed accreditation by Milli Majlis and MPs usually contact them. Those media outlets are invited to attend plenary sessions, as well as meetings at the Parliamentary standing committees.<sup>170</sup> Some MPs are more transparent with the media than others; however, most usually prefer to avoid opposition media organisations.<sup>171</sup> Generally, laws, most draft laws and transcripts of the Milli Majlis debates are available for the public on the website,<sup>172</sup> whereas transcripts of debates at the Parliamentary committees are not published. Instead, brief summaries of discussions and decisions of the Parliamentary committees are published by journalists who attend the meeting.<sup>173</sup> However, neither national TV, nor online TV regularly broadcast legislative sessions live, or produce records of it. More often than not there are no open polemics at Milli Majlis, therefore, TV channels are not interested in broadcasting, and neither is the population interested in watching.<sup>174</sup>

Milli Majlis always debates the bills before adopting. However, according to some deputies, the time allocated for discussions is not sufficient. The agendas of legislative sessions and committee

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164 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 3, 17 May 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

165 Support to the anti-corruption strategy of Azerbaijan (AZPAC), Technical Paper: Expert Opinion on Regulation of Lobbying in the Republic of Azerbaijan, by Quentin REED, United Kingdom, Long-term Advisor, AZPAC Project, 2009, [www.coe.int](http://www.coe.int)

166 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, article 3, 17 May 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

167 The Internal Regulations of the Milli Majlis of the Republic of Azerbaijan, articles 24-26, 17 May 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

168 The Law on the Status of the Member of the Azerbaijani Parliament, 17 May, 1996 [www.meclis.gov.az](http://www.meclis.gov.az)

169 The Law on Approval of Procedures for Submission of Financial Information by Public Officials, 24 June 2005, [www.e-qanun.az](http://www.e-qanun.az)

170 Interview with Ramil Iskandarli, Legal Analysis and Research Public Union by the author, 26 March 2014

171 Interview with Gultekin Hajibeyli, former MP by the author, 30 October 2013

172 Adam Hug, Introduction to Spotlight on Azerbaijan, edited by Adam Hug, publication by Foreign Policy Centre, London, May 2012, <http://fpc.org.uk/fsblob/1462.pdf>

173 Interview with Ramil Iskandarli, Legal Analysis and Research Public Union by the author, 26 March 2014

174 Interview with Gultekin Hajibeyli, former MP by the author, 30 October 2013

hearings are distributed among MPs a couple of weeks in advance. All sessions of Milli Majlis are recorded and distributed amongst the MPs as well. Reports on government performance are not discussed at length or in detail. Milli Majlis has its own journal, published in a timely manner. The journal offers interviews with MPs, etc, however there are no separate journals of committees. Individual budgets and balance reports on expenditures and MPs assets are not disclosed or published.

Due to the vague language of the legislation, described above, in practice, ordinary citizens cannot access and attend legislative sessions, as the access to the Parliament is controlled through IDs and one time permits for visitors.<sup>175</sup> Means of communication for MPs is limited. Thus, access to social networks is prohibited within the building of the Parliament and MPs cannot support and communicate with their constituency members through social networks.<sup>176</sup> Though legislators usually respond to citizens' queries, MPs more often than not are not able to solve people's problems,<sup>177</sup> as their powers are limited to the MPs information request.<sup>178</sup>

Even if the effectiveness of the MPs' free interaction with their constituencies has considerably increased – due to the establishment of the MPs' assistants offices in constituencies<sup>179</sup> – with the help of the international community,<sup>180</sup> real independence of the Parliament and free interaction between the MPs and their constituencies is yet to be achieved in Azerbaijan.<sup>181</sup>

The deputies of the Milli Majlis do not conduct many consultations with the political forces outside those represented in the Parliament.<sup>182</sup>

## Accountability (law): 75

To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?

Under the law,<sup>183</sup> a deputy of Milli Majlis loses his/her mandate in the following cases:

- Falsification in calculation of votes at the elections.
- On giving up the citizenship of the Azerbaijan Republic or accepting other citizenship.
- Upon commitment of crime pursuant to a valid verdict of law court/
- On taking up position in state bodies, religious organisations, involvement in business, commercial or other paid activity (except scientific, pedagogical and creative activity).
- On a voluntary basis.

The law does not ensure that the legislature has to be answerable for its actions. In particular, there are no mechanisms set forth to handle complaints against decisions or actions by the legislature or its individual members, apart from the general procedure to review citizens' complaints.<sup>184</sup>

According to the law, the powers of the Constitutional Court are limited to audit and approval of the accuracy of results of Parliamentary elections.<sup>185</sup> Deputies of Milli Majlis Republic cannot be made

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175 Personal experience of Transparency Azerbaijan

176 Difficult Parliament by Fazil Mustafa, Modern az, 11 January 2014, <http://modern.az/articles/50224/1/>

177 Interview with Gultekin Hajibeyli, former MP by the author, 30 October 2013

178 Interview with MP Ilyas Ismaylov, leader of the Adalat party by the author, 21 April 2014

179 Interview with Ramil Iskandarli, Legal Analysis and Research Public Union by the author, 26 March 2014

180 Parliamentary Program in Azerbaijan, website of Development Alternatives, Inc, [www.dai.com](http://www.dai.com)

181 Parliamentary Program of Azerbaijan Evaluation Final report July 2011 by Lincoln Mitchell, Ph.D. and Rashad Shirinov, M.A., publication by Democracy International Inc., [www.democracyinternational.com](http://www.democracyinternational.com)

182 Resolution 1917 (2013): The honouring of obligations and commitments by Azerbaijan, Council of Europe Parliamentary Assembly, [www.europarl.europa.eu](http://www.europarl.europa.eu)

183 Constitution of Azerbaijan Republic, Constitution of Azerbaijan Republic, Article 89, 12 November, 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

184 Law on Procedures for Review of Applications by Citizens, 10 June 1997, [www.e-qanun.az](http://www.e-qanun.az)

responsible for their activity, voting and statements made in Milli Majlis. They are not obliged to give explanations and evidence to support their statements in the Parliament.<sup>186</sup> There are no provisions that require the legislature to organise public consultation on relevant issues. This is not even covered in the new Law on Public Participation<sup>187</sup> that regulates involvement of public in the decision-making process.

## Accountability (practice): 25

*To what extent do the legislature and its members report on and answer for their actions in practice?*

The Milli Majlis usually carries out consultation with relative government structures before adoption of the respective bills and in a few cases with civil society. For example, significant amendments to the Tax Code<sup>188</sup> were extensively discussed with civil society,<sup>189 190</sup> as well as the Law on Public Participation.<sup>191 192 193 194</sup>

Immunity regulations give MPs privileges to avoid accountability, but in the case of lawfully proven illegal acts, Milli Majlis usually withdraws the MP mandate and lifts immunity, like in Gular Ahmadova's case,<sup>195</sup> discussed below.

Several MPs hold positions within the executive power or work closely with businesses.<sup>196</sup> This is a violation of the respective provisions of the Constitution<sup>197</sup> and the Election Code.<sup>198</sup>

Accountability of MPs before its constituencies has improved somewhat upon establishment of the onsite representative offices; however, with general level of political knowledge being low, voters mostly approach MPs with a request to solve their personal problems, mostly of financial character, rather than to attend to social and community needs, provide their feed-back on the laws discussed or hold MPs accountable.<sup>199</sup> Moreover, MPs see their roles as solving concrete problems of individual voters rather than understanding their role in representation of the community's needs.<sup>200</sup>

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185 Constitution of Azerbaijan Republic, Constitution of Azerbaijan Republic, Article 86, 12 November 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

186 Constitution of Azerbaijan Republic, Constitution of Azerbaijan Republic, Article 91, 12 November, 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

187 Law on Public Participation, adopted on 22 November 2013 and will enter into force on 1 June 2014, [www.e-qanun.az](http://www.e-qanun.az)

188 Tax Code, 11 July 2000 with amendments of 27 December 2013  
[www.e-qanun.az](http://www.e-qanun.az)

189 Eurasia Partnership Fund Took Part in the Session of the Parliament to Discuss the Tax Code, 17 June 2011, [www.epfound.az/azeri/yenilikler/press-revizler/aef-gomruk-mecellesini-muzakire-etmek-uchun-milli-meclisin-iclasinda-ishtirak-edib.html](http://www.epfound.az/azeri/yenilikler/press-revizler/aef-gomruk-mecellesini-muzakire-etmek-uchun-milli-meclisin-iclasinda-ishtirak-edib.html)

190 Transparency Azerbaijan first-hand experience

191 Law on Public Participation, adopted on 22 November 2013 and will enter into force on 1 June 2014, [www.e-qanun.az](http://www.e-qanun.az)

192 Public Discussion of the Draft Law on Public Participation was organised by Socio-Economic Development Activity in Azerbaijan (SEDA); the Council of State Support to NGOs under the President of the Republic of Azerbaijan, Azerbaijan Lawyers Confederation and Parliament on 2 April 2013

193 Bill on Public Participation Discussed in Azerbaijan by Sabina Idayatova, 3 April 2013  
[www.azernews.az/azerbaijan/51582.html](http://www.azernews.az/azerbaijan/51582.html)

194 Transparency Azerbaijan first-hand experience

195 Sentence Passed in Azerbaijan High Profile Bribery Case, 7 December 2013 [www.azerireport.com/index.php?option=com\\_content&task=view&id=4218&Itemid=42](http://www.azerireport.com/index.php?option=com_content&task=view&id=4218&Itemid=42)

196 List of Milli Majlis Deputies at [www.meclis.gov.az/?/az/deputat/](http://www.meclis.gov.az/?/az/deputat/)

197 Articles 85 and 89 of the Constitution, 12 November 1995, last amended on 18 March 2009, [www.e-qanun.az](http://www.e-qanun.az)

198 Part V. of the Election Code, 11 November 2003, [www.msk.gov.az](http://www.msk.gov.az)

199 Interview with MP Ilyas Ismaylov, leader of the Adalat party by the author, 21 April 2014

200 Parliamentary Program of Azerbaijan Evaluation Final report July 2011 by Lincoln Mitchell, Ph.D. and Rashad Shirinov, M.A., publication by Democracy International Inc., [www.democracyinternational.com](http://www.democracyinternational.com)

## Integrity Mechanisms (law): 75

*To what extent are there mechanisms in place to ensure the integrity of members of the legislature?*

Despite the fact that there is no special Code of Conduct for Milli Majlis, a code which has been strongly recommended by outside experts since 2009,<sup>201</sup> the Law on Status of MPs sets forth ample provisions regulating behaviour of legislators. According to the law, MPs shall avoid illegal actions, as well as rude words and actions that could abuse the honor and dignity of anybody.<sup>202</sup> The Law on Approval of Procedures for Submission of Financial Information by Public Officials requires disclosing assets of the Chairman of the Milli Majlis and MPs to the Commission on Prevention of Corruption of State Service Supervision Council. The Law<sup>203</sup> also states that the members of the Milli Majlis shall submit their relevant financial information to the authority identified by the Milli Majlis,<sup>204</sup> however, this body has not been identified so far and the forms for submission of declarations not designed yet.<sup>205</sup>

## Integrity Mechanisms (practice): 25

*To what extent is the integrity of legislators ensured in practice?*

Very little is known by the general public about the integrity of the MPs. In 2013, media shared photos and video featuring MPs voting in lieu of their colleagues during adoption of the law on 29 October 2013.<sup>206</sup> After this occasion an MP Igbal Aghazadeh publicly admitted this practice has existed in Milli Majlis for some time,<sup>207</sup> though this is definitely prohibited by the law. There is no data available testifying whether this issue was reviewed by the integrity committee of the Parliament, who the perpetrators were and if they were penalised.

At the end of 2012, Azerbaijan became an onlooker to an incident involving a scandalous video, showing one of the leading YAP members of Parliament, Gular Ahmadova, asking for a million dollar bribe for getting “elected” into Milli Majlis.<sup>208 209</sup> The video was allegedly released on the internet by Elshad Abdullayev, “applicant” for a seat in the Parliament, a former business owner in Azerbaijan and an exile in France at the time of the video’s release. Authenticity of the clip was immediately confirmed by the deputy’s assistant (however, with some amendments).<sup>210</sup> In December

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201 Support to the anti-corruption strategy of Azerbaijan (AZPAC), Technical Paper: Expert Opinion on Regulation of Lobbying in the Republic of Azerbaijan, by Quentin REED, United Kingdom, Long-term Advisor, AZPAC Project, 2009, [www.coe.int](http://www.coe.int)

202 The Law on the Status of the Member of the Azerbaijani Parliament, 17 May, 1996, [www.meclis.gov.az](http://www.meclis.gov.az)

203 Law on Approval of Procedures for Submission of Financial Information by Public Officials, dated 7 April 2006, [www.csc.gov.az](http://www.csc.gov.az)

204 Law on Approval of Procedures for Submission of Financial Information by Public Officials, dated 7 April 2006, [www.csc.gov.az](http://www.csc.gov.az)

205 Statement by Alimamed Nuriyev, Constitution Research Foundation, at the meeting of Azerbaijan Partnership for Transparency Platform and presentation of the draft Monitoring report on the implementation of the government’s obligations under the national Anti-corruption Action Plan for 2012 – 2015 dated 19 September 2013, [www.transparency.az](http://www.transparency.az)

206 One of the Deputies Voting in Lieu of His Colleague Spoke, 29 October 2013, Virtual.az website <http://virtualaz.org/bugun/12156>

207 Scandal in Milli Majlis, 29 October 2013, by Emil Mustafayev and Gunel Rahimli, Minval.az website <http://minval.az/news/24651/>

208 Video: Million Dollar Bribe for a Seat in Azerbaijan Parliament, 26 September 2012, [www.azadliq.info/english/347-megaleen/21633-video-million-dollar-bribe-for-a-seat-in-azerbaijani-parliament.html](http://www.azadliq.info/english/347-megaleen/21633-video-million-dollar-bribe-for-a-seat-in-azerbaijani-parliament.html)

209 [www.youtube.com/watch?v=V04el-Kr7Wc&feature=player\\_embedded](http://www.youtube.com/watch?v=V04el-Kr7Wc&feature=player_embedded)

210 Prosecutor General of Azerbaijan Investigates Record of Negotiations on Bribe Offer for a Seat in the Parliament, by Faiq Mejid, Kavkazskiy Uzel (Caucasian Knot), 27 September 2012, [www.kavkaz-uzel.ru/articles/213224/](http://www.kavkaz-uzel.ru/articles/213224/)

2013, Ahmadova was sentenced to a three year prison term for embezzlement.<sup>211</sup> The scandal has been nicknamed as “Gulargate” by the media.

Parliament also has an integrity or disciplinary commission, though practically nothing is known to the general public of its work, findings or penalties imposed.

## Executive Oversight: 25

*To what extent does the legislature provide effective oversight of the executive?*

Some circles of the population believe that the Azerbaijan legislature needs to reinforce its position as an efficient element of the system of checks and balances among the three branches of power.<sup>212</sup> The annual work plan of Milli Majlis is not believed to leave much room for the law making activity of the MPs.<sup>213</sup>

In practice, reports of the prime minister are not extensively debated or contested, apart from a scandal of several years ago when the, then MP Huseyn Abdullayev, severely criticised the report.<sup>214</sup>

The legislature’s power to set up committees of inquiry is not effectively enforced; at least there is no available information on such inquiries.

## Legal reforms: 75

*To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?*

Azerbaijan is performing rather well in terms of establishing its anti-corruption legal framework.<sup>215</sup> Although several crucial laws are yet to be adopted, including: the Law on Conflict of Interests and the Law on Protection of Whistleblowers as well as legal norms taking away the right to hold certain positions in legal entities outside of public service.<sup>216</sup>

During the last years, Milli Majlis adopted several laws in the field of transparency and anti-corruption, for example: the Law on Combat against Corruption,<sup>217</sup> Law on the Statutes of the Commission on Combating Corruption,<sup>218</sup> Law on Approval of Procedures for Submission of Financial Information by Public Officials,<sup>219</sup> [http://www.commission-anticorruption.gov.az/upload/file/law\\_on\\_financial\\_declarations.pdf](http://www.commission-anticorruption.gov.az/upload/file/law_on_financial_declarations.pdf) Law on Rules of Ethical Conduct of Civil Servants,<sup>220</sup> Law on Access to Information,<sup>221</sup> Law on Public Participation.<sup>222</sup> According to

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211 Sentence Passed in High-Profile Azerbaijani Bribery Case, Caucasus Report, radio Azadlyg, 6 December 2013, [www.rferl.org/content/caucasus-report-azerbaijan-ahmedova-sentenced/25192020.html](http://www.rferl.org/content/caucasus-report-azerbaijan-ahmedova-sentenced/25192020.html)

212 Parliamentary Program of Azerbaijan Evaluation Final report July 2011 by Lincoln Mitchell, Ph.D. and Rashad Shirinov, M.A., publication by Democracy International Inc., [www.democracyinternational.com](http://www.democracyinternational.com)

213 Interview with MP Ilyas Ismaylov, leader of the Adalat party by the author, 21 April 2014

214 Fistfight in Azerbaijani Parliament indicates controversy within ruling block, Today Az news agency, 23 March 2007, [www.today.az/print/news/politics/38230.html](http://www.today.az/print/news/politics/38230.html)

215 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

216 Corruption Perception Index 2013, press release by Transparency Azerbaijan, 3 December 2013, <http://www.transparency.az>

217 Law on Combating against Corruption, 13 January 2004, [www.e-qanun.az](http://www.e-qanun.az)

218 Law on the Statutes of the Azerbaijan Republic Commission on Combating Corruption, 3 May 2005, [www.e-qanun.az](http://www.e-qanun.az)

219 Law On Approval of Procedures for Submission of Financial Information by Public Officials”, June 24 2005, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

220 Law on Rules of Ethical Conduct of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

221 Law on the Right to Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

222 Law on Public Participation, 22 November 2013, [www.e-qanun.az](http://www.e-qanun.az)



experts interviewed for this assessment, even if these laws do not fully comply with European standards, they are still quite comprehensive.<sup>223 224 225</sup>

Azerbaijan also ratified the UN Convention against Corruption (on 30 September 2005) and joined several international initiatives, including:

- Technical cooperation project, “Support for the Anti-Corruption Strategy of the Republic of Azerbaijan” (AZPAC), implemented in cooperation with the Council of Europe in 2007-2009.
- “Twinning Programme” (2009 – 2011) between the Anti-Corruption Department of the Prosecutor General's Office and the Special Investigation Service (STT) of Lithuania
- Set up CAUPAC, a regional branch of GOPAC (Global Organisation of Parliamentarians against Corruption) in 2009.
- Adopted the Open Government Initiative and its respective National Action Plan (5 September 2012).
- According to the law,<sup>226</sup> five MPs are represented in the State Commission on Combating Corruption and thus have an instrument to participate in the formulation of the country's anti-corruption policies and monitor implementation thereof, as per the Commission's mandate.

## Recommendations:

- To place Parliamentary debates on the Parliament's website in a timely manner. Also to add debates in the Parliamentary committees; ensure that debates on most crucial issues are broadcast live on national TV and/or online TV; to make amendments to the laws to ensure that the public can observe Parliamentary sessions (in person).
- To ensure better representation in the Parliament of the needs of their respective constituencies, through active onsite work of the institute of MP's assistants; to encourage MPs to actively communicate with their constituencies through social networks.
- To organise discussions with political forces outside of the Parliament through forums, round tables, permanent work groups, etc.; ensure participation of civil society representatives at the meetings of Parliamentary committees, with the aim of discussing new draft laws.
- To publish findings and penalties imposed by the Parliamentary integrity (disciplinary) commission for violations of the law and enforce submission of financial declaration by MPs.

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223 Interview with Gultekin Hajibeyli, former MP, by the author, 30 October 2013

224 Interview with Zaur Ibrahimli, senior researcher, Constitution Research Foundation by the author, 19 September 2013

225 Statement by Alimamed Nuriyev, coordinator of the Information and Cooperation Network of NGOs, Camiyyat (Society) program, Khazar TV, 23.00-23.40, 29 November 2013

226 The Law on Approval of the Statutes of the Anti-corruption Commission, 3 May 2005, [www.e-qanun.az](http://www.e-qanun.az)

## 2. EXECUTIVE

### Summary

Executive power in Azerbaijan Republic is the strongest branch of the government and is accountable to the President. The Executive possesses all necessary resources to perform its duties, including the salaries and provisions of its staff. Accountability of the Executive is well provisioned for in the law, but in practice needs to be improved through enhancing independence of the other two branches of power – the Legislature and Judiciary. Civil society has some impact on the decision-making processes through several NGO networks, including the development of the state budget. As of recently, the Executive designates funding for common projects with NGOs under several national and international programmes and action plans.

There is also much room to enhance transparency of the executive, especially online transparency, which is slowly but surely being accomplished under various governments' programmes.

Though the level of corruption in the country is perceived to be relatively high, there have been significant advancements in the last couple of years, including the development of the anti-corruption legislation with the executive as one of the actors initiating the law making process, improvement of recruitment to the civil service, introduction of electronic services, and establishment of district public service centres.

The provided table presents the indicator scores summarising the capacity, governance and the role of the Executive on the public sector and legal systems. The assessment section will present more detailed information on the score and analyse the different aspects of the Executive.

### EXECUTIVE

Overall Pillar Score 68/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 92/100	Resources	-	75
	Independence	100	100
Governance 50/100	Transparency	50	50
	Accountability	75	25
	Integrity	50	50
Role 63/100	Executive Oversight	50	
	Legal Reforms	75	



## Structure and organisation

The authority and responsibility of the executive is regulated by the Constitution of Azerbaijan Republic.<sup>227</sup> Executive is one of the three branches of government along with Legislature and the Judiciary. The executive consists of two structures – Office of the President and the Cabinet of Ministers. Local executive authorities represent the authority of the Office of the President in the regions.

The President of the Republic of Azerbaijan is a Supreme Commander-in-Chief of the armed forces of the Republic of Azerbaijan. The President of Azerbaijan Republic can be dismissed if he/she commits grave crimes upon a motion from the Constitutional Court and the confirmation of Supreme Court within 30 days pursuant to presentation of the case to the Parliament. The minimum of 95 votes of the members of the Parliament are required to validate the impeachment or dismissal of the President. The respective decree of the Parliament has to be signed by the Constitutional Court as a final step.

The president forms the Presidential Administration and appoints the head of the Administration who is authorized to implement the Constitutional authorities.

According to the Article 114 of the constitution,<sup>228</sup> the President of the Republic of Azerbaijan forms the Cabinet of Ministers and appoints the Prime Minister with the approval of the Parliament. The Cabinet of Ministers is a superior body of the executive power of the president. The cabinet is responsible for the implementation of the executive authorities. The Cabinet of Ministers includes the Prime Minister, Vice-Prime Ministers and the 20 ministries.

Local executive duties are performed by heads of local executive offices. Heads of local executive offices are assigned and/or dismissed by the president. Local executive offices function according to the “Statutes on Local Executive Offices”, adopted in June 2012.<sup>229</sup>

## Assessment

### Resources (practice): 75

*To what extent does the executive have adequate resources to effectively carry out its duties?*

The Executive has appropriate resources to carry out its duties and is equipped with all the necessary financial, technical and human resources.<sup>230</sup> The budget of executive is financed from the state budget. Funding extended to the public entities, including the executive branch, has increased significantly in the recent years.<sup>231</sup> Thus, in 2006 the budget envisioned about 139 million manat (US\$151.9 million) for support of the executive power<sup>232</sup>, the 2013 budget allocated 290 million manat (US\$369.4 million)<sup>233</sup> and the 2014 budget 309 million manat (US\$393.6 million) in the same budget line.<sup>234</sup> Improved tax collection and growth of oil revenues since 2006 has allowed increase of the state budget expenditure.<sup>235</sup>

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227 Constitution of the Republic of Azerbaijan, 12 November 1995, [www.president.az](http://www.president.az)

228 Constitution of the Republic of Azerbaijan, 12 November 1995, [www.president.az](http://www.president.az)

229 Statutes on Local Executive Offices approved by presidential decree, 6 June 2012, [www.president.az](http://www.president.az)

230 Response from the Office of the President to information request by Transparency Azerbaijan, 11 January 2014

231 Interview with Qubad Ibad oglu, Economic Research Centre by the author, 15 April 2014

232 Presidential decree on Execution of the 2006 State Budget, 26 November 2005, [www.e-qanun.az](http://www.e-qanun.az)

233 Presidential decree on Execution of the 2013 State Budget, 13 December 2012, [www.e-qanun.az](http://www.e-qanun.az)

234 Presidential decree on Execution of the 2014 State Budget, 19 December 2013, [www.e-qanun.az](http://www.e-qanun.az)

235 Interview with Qubad Ibad oglu, Economic Research Center by the author, 15 April 2014

The staff of the executive are classified as civil servants and they receive higher remuneration than the employees of other branches of power. For example a division head in the Office of President receive 1,500 manat (US\$1,853), while a division head in the Parliament receives 1,300 manat (US\$1,606). However, the current level of salaries of civil servants was approved in 2008<sup>236</sup> and has not critically changed ever since, apart from some amendments in 2013.<sup>237</sup>

The central and urban executive offices generally do not have problems with human resources and technical support, whereas human resources of local executive offices are in need of more training programmes, mostly in application of modern technologies and professional education.<sup>238</sup> The need for enhancement of the human resources capacity is recognised by the government and development of proposals for improvement of rules regulating complementary education of civil servants is envisioned in the second National Anti-Corruption Action Plan,<sup>239</sup> however, no public data on developments in this area is available so far.<sup>240</sup>

## Independence (law): 100

*To what extent is the executive independent by law?*

There are no provisions in the legal framework that unduly restrict independence of the executive.

According to the Constitution of the Azerbaijan Republic,<sup>241</sup> executive is an independent part of the government and reports to the president. It is separate from other branches of government and does not depend on any other entity.

The prime minister, deputy prime ministers, ministers, and head of other central executive offices may not possess any other elected or appointed positions, neither hold any business activities such as entrepreneurship, commercial or other paid duties, with the exception of scientific, pedagogical and creative activities.<sup>242</sup>

According to the Constitution,<sup>243</sup> should any cases of overlaps with the separation of powers with other branches occur, those shall be solved by the Constitutional Court.

## Independence (practice): 100

*To what extent is the executive independent in practice?*

Executive is fully independent, the strongest branch of the government and is reported to have a certain influence on the other branches of the government, discussed elsewhere in this report.<sup>244 245</sup>

<sup>246 247</sup> There are no facts suggesting undue interference with the activities and decisions of the

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236 Presidential decree on Increasing the Salaries of Civil Servants, 9 July 2008, [www.e-qanun.az](http://www.e-qanun.az)

237 Presidential order on Increase of Salaries of Public Servants, 2 December 2013, Modern agency, 5 December 2013, [www.modern.az](http://www.modern.az)

238 Personal experience of Transparency Azerbaijan under Baku, Ganja, Sheki, Lankaran and Quba centres since 2005

239 National Anti-Corruption Action Plan approved by the presidential decree dated 5 September 2013, [www.president.az](http://www.president.az)

240 Monitoring Report on Implementation of Azerbaijan National Anti-corruption Action Plan (September 2012-September 2013), publication by Constitution Research Fund in Partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

241 Constitution of the Republic of Azerbaijan, 12 November 1995, [www.president.az](http://www.president.az)

242 Constitution of the Republic of Azerbaijan, 12 November 1995, [www.president.az](http://www.president.az)

243 Point 8 of part III of article 130 of the Constitution of Republic of Azerbaijan, 24 August 2002, [www.e-qanun.az](http://www.e-qanun.az)

244 Eastern Partnership: Civil Society Forum, Judicial Independence in the Eastern Partnership Countries. [www.eap-csf.eu/assets/files/publications/Judicial\\_Independence\\_in\\_the\\_EaPCountries.pdf](http://www.eap-csf.eu/assets/files/publications/Judicial_Independence_in_the_EaPCountries.pdf)

245 Bertelsmann Transformation Index 2012: Azerbaijan Country Report, [www.bti-project.de](http://www.bti-project.de)

246 Resolution 1917 (2013): The honouring of obligations and commitments by Azerbaijan,

executive by any other inside or outside actors. It has a certain influence over the other branches of power.

## Transparency (law): 50

*To what extent are there regulations in place to ensure transparency in relevant activities of the executive?*

There are some legal provisions to ensure transparency of the government's activities, however, those need to be further developed.

Under the law, the activities of the executive are not required to be recorded in the government information system. The law does not require the cabinet meeting minutes be made publicly available, including the meetings of other executive bodies. However, the law regulating access to information<sup>248</sup> ensures that information requests may be submitted in verbal or written form and responded to in a timely manner. The same law stipulates proactive information disclosure of all of the information held by public authorities, except for those explicitly prohibited in legislation,<sup>249</sup> and defines the scope of information classified as confidential.

According to the Law on Budget System,<sup>250</sup> the information about the government budget and expenditure shall be open to the public. However, this law does not contain any provisions requiring participation of civil society in the preparation and discussion of the state budget. More details are provided in the pillar on Supreme Audit Institutions of this report.

Under Article 5 of the Law on Combating Corruption,<sup>251</sup> public officials should file regular asset disclosure forms. Furthermore, the Law on Approval of Rules for Submission of Financial Information by Officials<sup>252</sup> details this process. However, under the law, this information is not to be disclosed to the general public. Also, supporting legislation has not been designed. More details are provided in the pillars on Public Service and Anti-Corruption Agencies of this report.

Azerbaijan National Action Plan under the Open Government Partnership Initiative<sup>253</sup> envisions some important steps to further develop legal framework, and to facilitate access to information and on-going publicity of the state institutions and activities.

## Transparency (practice): 50

*To what extent is there transparency in relevant activities of the executive in practice?*

According to the results of monitoring conducted by a local NGO in 2011,<sup>254</sup> online transparency of the Cabinet of Ministers ([www.cabmin.gov.az](http://www.cabmin.gov.az)) was rated at a low 19 per cent. For comparison, public agencies most transparent online, such as the State Commission on Civil Service, Ministry of

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Council of Europe Parliamentary Assembly, [www.europarl.europa.eu](http://www.europarl.europa.eu)

247 Adam Hug, Introduction to Spotlight on Azerbaijan, edited by Adam Hug, publication by Foreign Policy Centre, London, May 2012, <http://fpc.org.uk/fsblob/1462.pdf>

248 Law on the Right to Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

249 Global Right to Information Rating: Azerbaijan, [www.rti-rating.org](http://www.rti-rating.org)

250 The Law on Budget System, 2 July, 2002 [www.maliyye.gov.az/sites/default/files/The Law on budget system of the Republic of Azerbaijan.pdf](http://www.maliyye.gov.az/sites/default/files/The Law on budget system of the Republic of Azerbaijan.pdf)

251 The Law on Combating Corruption, 1 January 2005, [www.e-qanun.az](http://www.e-qanun.az)

252 Law on Approval of Rules for Submission of Financial Information by Officials, 24 June 2005, [www.e-qanun.az](http://www.e-qanun.az)

253 Action Plan under the Open Government Partnership Initiative approved by the presidential decree, 5 September 2012, [www.presidents.az](http://www.presidents.az)

254 Online Transparency of the State Agencies, Media Rights Institute, 2011, [www.mediarights.az](http://www.mediarights.az)

Tax, State Oil Fund and Prosecutor General, were awarded the highest scores of 55-56 per cent, which proves that there is considerable room for further enhancement of the transparency of public agencies. Along with that, the website of the President ([www.president.az](http://www.president.az)) is quite informative and includes information on activities, decrees of the president and other decisions.

In line with the law, the government shares information on its performance, not only through the dedicated websites and portals but also through media and NGO networks.

There is room for further enhancement of the transparency of the budgetary process. According to the Open Budget Index, Azerbaijan received the score of 30 out of maximum 100 in 2006, 37 in 2008, 43 in 2010 and 42 in 2012.<sup>255</sup> More details are provided in the pillar on Supreme Audit Agency.

Though the legislation requires disclosure of assets by public servants, due to lack of supporting legislation and lack of formal procedures, this mechanism has not worked so far,<sup>256</sup> despite numerous urges from civil society.<sup>257</sup> Nevertheless, civil society is closely cooperating with the government on this issue. Thus, the Constitution Research Foundation has developed a draft of an income declaration form and presented to the Anti-Corruption Commission, Parliament and the Cabinet of Ministers.<sup>258</sup> There are some discussions in media that assets declaration shall be enforced after financial amnesty,<sup>259</sup> however, no such plans are known to the general public. In general, under amnesty media means suspension of the law to enable public officials to declare their assets without fear of prosecution. More details are provided in the pillars on Public Service and Anti-corruption Agencies of this report.

Also, civil society members report problems with establishing necessary communication with executive authorities, especially, in the regions, most probably, because of a low level of awareness of government's national and international programmes among local authorities.<sup>260</sup> As the law<sup>261</sup> gives too much discretionary power to public agencies to make a decision on what information shall be classified confidential, sometimes they abuse this power by unnecessarily broadening the scope of state secrets. Public agencies also often avoid responding to the questions viewed as sensitive, for example, those requesting financial information, or they offer ample references to legal bases, but refrain from giving direct responses.<sup>262</sup>

However, there is a considerable improvement in this area, thanks to various information technology projects that have been introduced recently, such as ASAN public service centres<sup>263</sup> and a single e-government portal uniting the government's e-services under one roof.<sup>264</sup> The aim of the ASAN Service Centers is to provide various state services through a "single window" process, as well as information on legal procedures and state fees. Also, some progress has been made in the course of implementation of the first year of the Action under the OGP in facilitation of access to

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255 Open Budget Survey, 2012, [www.internationalbudget.org](http://www.internationalbudget.org)

256 Interview with Alimammad Nuriyev, Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption by the author, 29 November 2013

257 Discussions by the civil society during 29 November 2013 presentation of the Monitoring Report on Implementation of Azerbaijan National Anti-corruption Action Plan (September 2012 – September 2013), publication by Constitution Research Fund in partnership with Transparency Azerbaijan, November 2013, Caspian Plaza conference hall

258 Interview with Alimammad Nuriyev, Constitution Research Foundation, co-author of the draft asset declaration form, by the author, 29 November 2013

259 Financial amnesty to be declared in Azerbaijan, 7 February, 2014

[www.en.apa.az/xeber\\_financial\\_amnesty\\_to\\_be\\_declared\\_in\\_azer\\_206774.html](http://www.en.apa.az/xeber_financial_amnesty_to_be_declared_in_azer_206774.html)

260 Monitoring Report on Implementation of Azerbaijan Open Government Initiative Action Plan 2012-2015, publication by Economic Research Center and Transparency Azerbaijan, September 2013, [www.transparency.az](http://www.transparency.az)

261 Law on the Right to Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

262 Hand book on Freedom of Information in South Caucasus Countries, publication by Transparency International, May 2012, [www.transparency.az](http://www.transparency.az)

263 [www.asan.gov.az](http://www.asan.gov.az)

264 [www.e-gov.az](http://www.e-gov.az)

information. Thus, civil society assessed implementation at 24 per cent by September 2013<sup>265</sup> and the government at 64 per cent by the end of 2013.<sup>266</sup> Though the government's self-assessment is more favorable than the evaluation by civil society, the progress is obvious.

## Accountability (law): 75

*To what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?*

The constitution and other laws have adequate provisions regulating accountability of the executive.

As mentioned above, the executive branch reports to the president as stated in the Constitution of Azerbaijan Republic.<sup>267</sup> Meanwhile, the Cabinet of Ministers governs the ministries and other executive offices. The oversight of the executive is regulated by the Order of the President on "Regulations of Work with the Documents in the Office of the President of Azerbaijan Republic".<sup>268</sup> Article 16 of the Regulations sets the guidelines for the oversight of the actions of executive members by judiciary and legislative branches, whereas the oversight of the progress on decrees or orders of the President is performed through the designated divisions of the Office of the President.

Actions of the executive are to be overseen by the Parliament, the judiciary and the chamber of audit, and accountable to the Parliament, as discussed in the respective chapters of this report.

According to the Constitution, one of the functions performed by the Parliament is the vote of confidence to the Cabinet of Ministers<sup>269</sup> that is regulated by a dedicated law.<sup>270</sup> According to Article 1 of this law, the Cabinet shall submit its annual report at the 5th meeting of the spring Parliamentary session. Also, the Parliament is entitled to submit an enquiry to the Cabinet on the issues within the range of its responsibilities, which has to be responded to within one month by an authorised official of the cabinet. Members of the Parliament are also entitled to send enquiries to the cabinet and individual ministries.

The Constitutional Court's function is to review compliance of the legislative acts, issued by the executive, with the constitution and to make decisions in case of legal loopholes.<sup>271</sup>

Under the law,<sup>272 273</sup> the chamber of accounts is entrusted to exercise control over formation and implementation of the state budget, including extra-budgetary funds, and budgetary expenditure. In general, according to the Open Budget Survey,<sup>274</sup> the oversight of the budget is not well provided for in the legislation. Also, the country is in the process of creating an efficient system of internal audit in

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265 Monitoring Report on Implementation of Azerbaijan Open Government Action Plan (September 2012-September 2013), publication by Economic Research Center in partnership with Transparency Azerbaijan, September 2013, [www.transparency.az](http://www.transparency.az)

266 Information by the Anti-Corruption Commission on the on Implementation of Azerbaijan Open Government Action Plan for 2012 – 2013, [www.anti-corruption.gov.az](http://www.anti-corruption.gov.az)

267 Constitution of Republic of Azerbaijan, 15 November 1995 with amendments of 24 August 2002, [www.e-qanun.az](http://www.e-qanun.az)

268 Regulations of Work with the Documents in the Office of the President of Azerbaijan Republic, 10 February 2014, [www.president.az](http://www.president.az)

269 Article 95 – 14, Constitution of Republic of Azerbaijan, 15 November 1995, Constitution of Republic of Azerbaijan, 15 November 1995 with amendments of 24 August 2002, [www.e-qanun.az](http://www.e-qanun.az)

270 The Constitutional law on Additional Guarantees To Ensure Vote of Confidence of Milli Majlis to the Cabinet of Ministers, 24 December 2002, [www.e-qanun.az](http://www.e-qanun.az)

271 The Law on Constitutional Court, 23 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

272 The Law on the Chamber of Accounts, 9 July 1999, [www.ach.gov.az](http://www.ach.gov.az)

273 Article 92, Constitution of Republic of Azerbaijan, 12 November 1995, [www.e-qanun.az](http://www.e-qanun.az)

274 Open Budget Survey 2012, by International Budget Partnership, [www.internationalbudget.org](http://www.internationalbudget.org)

the public offices,<sup>275 276 277</sup> however cooperation of these structures with the chamber of accounts is not provided for in the regulatory framework.<sup>278</sup>

The prime minister is immune from any criminal cases unless captured in the process of committing a crime. The immunity of the prime minister can be lifted by the president, according to the presentation of the Supreme Court.<sup>279</sup>

Under the law, the executive is not obliged to consult on any actions taken with public or with any special groups; however, members of the executive are accountable for their wrongdoings.

## Accountability (practice): 25

### *To what extent is there effective oversight of executive activities in practice?*

There is much room to improve the government's reporting system and oversight of executive activities in practice. Steps are slowly but surely being taken under two important government Action Plans.<sup>280 281</sup> Many government entities prepare annual reports with information on achievements and shortcomings, place those on the websites, as well as arrange meetings with civil society and media dedicated to discussion of the year's results. However, there is no single standard or guideline regulating the content and format of these reports. Also, these reports are not assessed as very detailed.<sup>282</sup>

In practice the cabinet of ministers presents its annual reports to the Parliament, however, these reports are not extensively debated or contested judging by media coverage, neither are these reports available to the general public in full, nor contain much information on shortcomings or targets that have been not met.<sup>283</sup>

The Chamber of Accounts presents quarterly and annual reports on audits conducted to the Parliament. Even though there are reports on the activities of the chamber of accounts on their website, those reports contain rather general information. As public disclosure of the reports on individual audits conducted by the Chamber of Accounts is not mandatory under the law,<sup>284 285</sup> only limited information seeps out to media either at random and or at the discretion of the chamber. Also, the chamber does not plan or conduct any audits against corruption or fraud based on

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275 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-Corruption Network for Eastern Europe and Central Asia, Istanbul Anti-Corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

276 [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

277 Corporate and Public Sector Accountability Project, [www.worldbank.org](http://www.worldbank.org)

Analysis of Legislation Regulating Chamber of Account, Presentation by Qubad Ibad oglu, Economic Research Center at the Conference on the Outside Supervision of Public Funds, organised by Entrepreneurship Development Foundation, 17 January 2014, [www.edf.az/ts\\_general/download/ESPFCP\\_Gubad\\_Ibadoglu\\_17\\_01\\_14.pdf](http://www.edf.az/ts_general/download/ESPFCP_Gubad_Ibadoglu_17_01_14.pdf)

278 The Law on Internal Audit, 22 May 2007, [www.e-qanun.az](http://www.e-qanun.az)

279 Constitution of Republic of Azerbaijan, 12 November 1995, [www.e-qanun.az](http://www.e-qanun.az)

280 National Anti-corruption Action Plan for 2012 – 2015 approved by the presidential decree 5 September 2012, [www.president.az](http://www.president.az)

281 Open Government Partnership Action Plan for 2012 – 2015 approved by the presidential decree 5 September 2012, [www.president.az](http://www.president.az) OGP and A-C

282 Discussions by the civil society during presentation of the Monitoring Report on Implementation of Azerbaijan Open Government Initiative National Action Plan (September 2012 – September 2013), publication by Economic Research Center in partnership with Transparency Azerbaijan, November 2013, Caspian Plaza conference room

283 Interview of Mahammad Talibli, Institute of Economic Research, to Azadliq newspaper, 14 March 2014, [www.azadliq.info](http://www.azadliq.info)

284 Internal Regulations of the Chamber of Accounts, 5 March 2002, [www.ach.gov.az](http://www.ach.gov.az)

285 Rules on Preparation, Performance and Documenting Results Of Financial-Budgetary Supervision Activities Performed by the Chamber of Accounts, approved by the Board of the Chamber of Accounts, 11 March 2009, [www.ach.gov.az](http://www.ach.gov.az)



suspensions of the media and general public,<sup>286</sup> as under the law, the chamber conducts audit only in accordance with the annual plan and at request of law enforcement agencies.<sup>287</sup> Last but not the least, in practice, the government does not arrange nation-wide budget discussions,<sup>288 289</sup> apart from Parliamentary economic policy commission discussions.

## Integrity (law): 50

*To what extent are there mechanisms in place to ensure the integrity of members of the executive?*

Legal framework contains adequate provisions to ensure integrity of the staff of the executive offices. The integrity rules are managed by the general Law on the Code of Conduct of Civil Servants<sup>290</sup> and sectoral codes. Anti-corruption provisions, such as gift giving and receiving, acceptance of any kind of privileges, and so on, are included in the Codes of Conduct of civil servants. Therefore, civil servants are not allowed to demand or receive any kind of extra gifts, prizes, or rewards that would create biased decision-making. According to Article 8.2 of Anti-Corruption Law,<sup>291</sup> any kind of gifts for hospitality and valued at an amount not succeeding 55 manat (\$70USD) are allowed. The gifts exceeding that amount are considered the property of the organisation that the recipient belongs to.

The responsibilities of civil servants on prevention of conflicts of interest are reflected in the Article 8.2 of the Codes of Conduct.<sup>292</sup> According to the article, a civil servant is not allowed to create room for any kind of conflict of interest or abuse the job responsibilities for personal reasons.

Along with this, there are no specific regulations to ensure integrity of the senior members of the executive, i.e. ministers and deputy ministers, which may be considered a gap in the legislation. According to Article 2.3 of the National Action Plan Against Corruption for 2012 – 2015, the Supreme Court, Ministry of Justice, and Commission on Fighting Corruption have been assigned to develop the draft law on protecting whistleblowers on corruption cases.<sup>293</sup> The Action Plan indicates the preparation of the draft law rather than the law itself which might take longer than expected to adopt the actual law on whistleblower protection. However, the representatives of the Supreme Court – that is the main responsible party on this law – indicated the importance of protection of persons on providing the information on corruption cases.

There are not any laws indicating the restrictions on post-ministerial employment.

## Integrity (practice): 50

*To what extent is the integrity of members of the executive ensured in practice?*

The control on getting familiarised and obeying the Code of Conduct is performed by the respective agencies and the Commission on Civil Service. Commission on civil service organises trainings and conveys the information on Code of Conduct to the members of executive. Commission on civil

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286 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

287 The Law on the Chamber of Accounts, 2 July 1999, [www.ach.gov.az](http://www.ach.gov.az)

288 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

289 Interview with Qubad Ibad oglu, Center for Economic Research dated 17 September 2013 by the author

290 The Law of the Republic of Azerbaijan on the Code of Ethics and Conduct of Civil Servants, 31 May 2007, [www.e-qanun.az](http://www.e-qanun.az)

291 The Law on Combating Corruption, 13 January 2004, [www.e-qanun.az](http://www.e-qanun.az)

292 The Law of the Republic of Azerbaijan on the Code of Ethics and Conduct of Civil Servants, 31 May 2007, [www.e-qanun.az](http://www.e-qanun.az)

293 National Anti-Corruption Action Plan (NACAP) 2012 – 2015 (Endorsed by the Presidential Decree of the 5th September 2012), [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)



service prepares reports on annual basis activities sought for raising awareness and the current situation on obeying the Codes of Conduct. According to the 2013 report, there have been administrative charges to 390 civil servants working in different executive offices.<sup>294</sup>

There are some symptoms of the “revolving door” as some of the members of executive and their family members are reported by media to be engaged in business activities,<sup>295</sup> though this is prohibited under the law. However, there are no proven cases of the conflict of interest of the high rank executive officials, though it is difficult to say if such cases are not in existence or have not been duly monitored.

## Public sector management: 50

*To what extent is the executive committed to and engaged in developing a well-governed public sector?*

Improvement of public sector management is set forth in two important documents: National Action Plans on Open Government Initiative<sup>296</sup> and National Anti-Corruption Action Plan for 2012-2015.<sup>297</sup>

The executive branch has achieved some accomplishments in reducing the low level corruption through introduction of the system of electronic services and ASAN centres,<sup>298</sup> launched in January 2013 by a new government agency – State Agency on Citizens’ Services and Social Innovations. ASAN centres represent a single window agency for public service delivery to render services promptly and transparently.<sup>299</sup> Moreover, the competition with ASAN centres drives respective public agencies to render the same services in a much more efficient and corruption free manner.<sup>300</sup>

Pursuant to the strategic decision of the government of Azerbaijan on introduction of electronic services,<sup>301</sup> followed by adoption of the list of electronic services<sup>302</sup> (e-services) and the requirements on their development, central executive bodies of the Republic of Azerbaijan started creating e-service sections on their websites. Currently, the number of e-services announced by 41 public institutions is 448.<sup>303</sup> However, many of those are of informative character rather than interactive services as discussed elsewhere in this report.

Along with this, Azerbaijan has successfully created an e-government infrastructure, which would allow for further development of e-services. Whereas the Ministry of Taxes provides high quality services, many services are not operational so far nor do they provide informative services. There is

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294 The 2013 Report on the State of Compliance with Ethical Behaviour Rules, Civil Service Commission, [www.csc.gov.az](http://www.csc.gov.az), [www.csc.gov.az/aze/index.php?option=com\\_content&view=article&id=3031%3Aetik-davran-msllri-il-bal-2013-cw-il-uezr-mlumat&catid=106%3Aetik-davran-qaydalar-il-bal-hesabatlar&Itemid=331&lang=az](http://www.csc.gov.az/aze/index.php?option=com_content&view=article&id=3031%3Aetik-davran-msllri-il-bal-2013-cw-il-uezr-mlumat&catid=106%3Aetik-davran-qaydalar-il-bal-hesabatlar&Itemid=331&lang=az)

295 Interview with Panah Huseynov, former Prime Minister by the author, 25 November 2013

296 Open Government Initiative. National Action Plan 2012 – 2015. 5 September 2012, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

297 National Anti-Corruption Action Plan (NACAP) 2012 – 2015, 5 September 2012, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az), [www.president.az](http://www.president.az)

298 [www.asan.gov.az](http://www.asan.gov.az)

299 Report on Results of Monitoring of Implementation of Recommendations to Four Public Agencies under Azerbaijan Partnership for Transparency project: Ministry of Labor and Social Protection of the Population; Ministry of Justice; State Registry of Real Estate; Baku Electric Network, publication by Transparency Azerbaijan, presented to government at the round table of 24 January 2014, [www.transparency.az](http://www.transparency.az)

300 Personal experience of Transparency Azerbaijan lawyers under Baku, Ganja, Sheki, Lankaran and Quba centers since 2005

301 Establishment of e-services at public institutions of the Republic of Azerbaijan – 23 May 2011 [www.e-qanun.az](http://www.e-qanun.az)

302 Decision N 191 of the Cabinet of Ministers on “Guidelines for provision of e-services in specific areas, by central executive authority institutions” and the “List of e-services, 24 November 2011, [www.e-qanun.az](http://www.e-qanun.az)

303 On amendments to the Decision N 191 of the Cabinet of Ministers on “Guidelines for provision of e-services in specific areas, by central executive authority institutions” and the “List of e-services – 17 October 2012; [www.e-qanun.az](http://www.e-qanun.az)

also a strong need for development of e-services aimed at the general population, which require more investments.<sup>304</sup>

Both Action Plans aim at improving the internal supervision system and reinforcing the financial and technical capability of government entities. Some of the government organisations have already created the internal supervision divisions to oversee the performance of their staff.<sup>305 306</sup> These divisions have a broad range of authority and report directly with the head of organisation as per the law.<sup>307</sup> The information on performance or the non-performance of the civil servants must be submitted to the Civil Service Commission.<sup>308</sup> After the analysis of the case by the commission, the results are shared with the public. All the information on the above-mentioned cases is reflected in the report in the results of 2013 on Implementation of the Code of Conduct.<sup>309</sup> However, the resources of the commission, both human and financial are not sufficient to closely monitor compliance with ethical procedures by the executive branch, along with recruitment to the public service and the need to be enhanced.

The last couple of years has seen some improvement in cooperation of the public sector with government organisations. Thus, public monitoring councils with the representatives of civil society have been created within the government organisations and the activities of the organisations in certain areas are performed with the cooperation of civil servants.<sup>310</sup> Recently, government entities (mostly in the social sector, i.e. Ministry of Labour and Social Protection of Population and Ministry of Health) tend to provide more funding for collaborative projects with NGOs.

## Legal system: 75

*To what extent does the executive prioritise public accountability and the fight against corruption as a concern in the country?*

Projects and actions in increasing accountability and fighting against-corruption have increased since 2004 when the Law on Combat against Corruption was adopted.<sup>311</sup> In order to eliminate the cases leading to corruption, “State Program on fighting corruption for 2004-2006”, “National Strategy on increasing transparency and fight against corruption along with the National Activity Plan on its implementation for 2007-2011” have been adopted by the government. To ensure compliance with the UN Convention Against Corruption, specialised entities – the Anti-Corruption Commission (to take care of policy issues) and Anti-Corruption Department under the Prosecutor General (to investigate and prosecute corruption cases) been established. The head of the Office of the President is also the head of the Commission on Fighting against Corruption.<sup>312</sup>

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304 Preliminary results of monitoring of e-services by Transparency Azerbaijan in June – December 2013

305 Monitoring Report on Implementation of Azerbaijan National Anti-corruption Action Plan (September 2012 – September 2013), publication by Constitution Research Fund in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

306 Monitoring Report on Implementation of Azerbaijan National Anti-corruption Action Plan (September 2012 – September 2013), publication by Constitution Research Fund in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

307 Law of the Republic of Azerbaijan On Rules of Ethics Conduct of Civil Servants, (changes and amendments made on the basis of law No 807-IIIQD dated of 28 April 2009, [www.csc.gov.az](http://www.csc.gov.az)

308 Website of the Civil Service Commission, [www.csc.gov.az](http://www.csc.gov.az)

309 The 2013 Report on the State of Compliance with Ethical Behaviour Rules, Civil Service Commission, [www.csc.gov.az](http://www.csc.gov.az)

310 Monitoring Report on Implementation of Azerbaijan National Anti-corruption Action Plan (September 2012 – September 2013), publication by Economic Research Center, in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

311 The Law on Combating Corruption, 13 January 13, 2004, [www.e-qanun.az](http://www.e-qanun.az)

312 Response from the Office of the President to information request by Transparency Azerbaijan, 11 January 2014

The Presidential decree dated 8 April 2011 requested the Cabinet of Ministers to develop proposals on amendments to legal documents to enable the use of the electronic database of the Anti-Corruption Department in real time. However, there are crucial problems with these functions. Investigations and charges are generally focused on medium and low level officials.<sup>313</sup>

Though the ranking of Azerbaijan in the Corruption Perception Index<sup>314</sup> so far is not much to be proud of, (127th place out of 177 countries surveyed in 2013), according to Global Corruption Barometer, 68 per cent of Azerbaijan respondents believe that the government's efforts to combat corruption are effective.<sup>315</sup>

## Recommendations:

- To expedite implementation of the activities set forth under two important government programmes: National Anti-Corruption and Open Government partnership Action Plans.
- To duly oversee development of e-services; to ensure secure data exchange between all public agencies; to educate the population on use of e-services.
- To involve broader circles of the public in the combat against corruption through establishment of public monitoring councils at the national and local levels.

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313 Interview with Alimamed Nuriyev by the author, 29 November 2013

314 Corruption Perception Index 2013, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

315 Global Corruption Barometer 2013, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

### 3. JUDICIARY

#### SUMMARY

Azerbaijan has a three-stage judicial system: courts of first instance and courts of appeal and cassation. The judiciary has implemented reforms since 2000, with the assistance of international organisations. However, there is still a long way to go towards modern and efficient systems of justice administration.

Most of the success so far has been focused on investment into resources: technical infrastructure (court buildings and equipment) and human resources (judge selection process and training). Though the number of courts, judges and defence lawyers has substantively increased in the past 20 years, it is still far from the average European standards and the workload of the courts remains heavy.

Though courts are more transparent than before, with the creation of the single judicial portal on the Internet and online publication of high instance court decisions, full transparency of courts is yet to be achieved through the planned E-court system.

Though judges are penalised for unethical behaviour and misconduct, the provisions on immunity of judges are too broad – thus they put limitations on bringing them to criminal responsibility.

Independence of courts shall be enhanced to allow it to represent an efficient element of the system of checks and balances in the country, through expanding powers of the Judicial Legal Council (a self-governing body of the justice system), including authority to manage the judicial budget and through closer cooperation with civil society.

#### JUDICIARY

Overall Pillar 52/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 62/100	Resources	75	75
	Independence	75	25
Governance 58/100	Transparency	75	50
	Accountability	75	25
	Integrity	75	50
Role 37/100	Executive oversight		25
	Corruption prosecution		50

## Structure and organisation

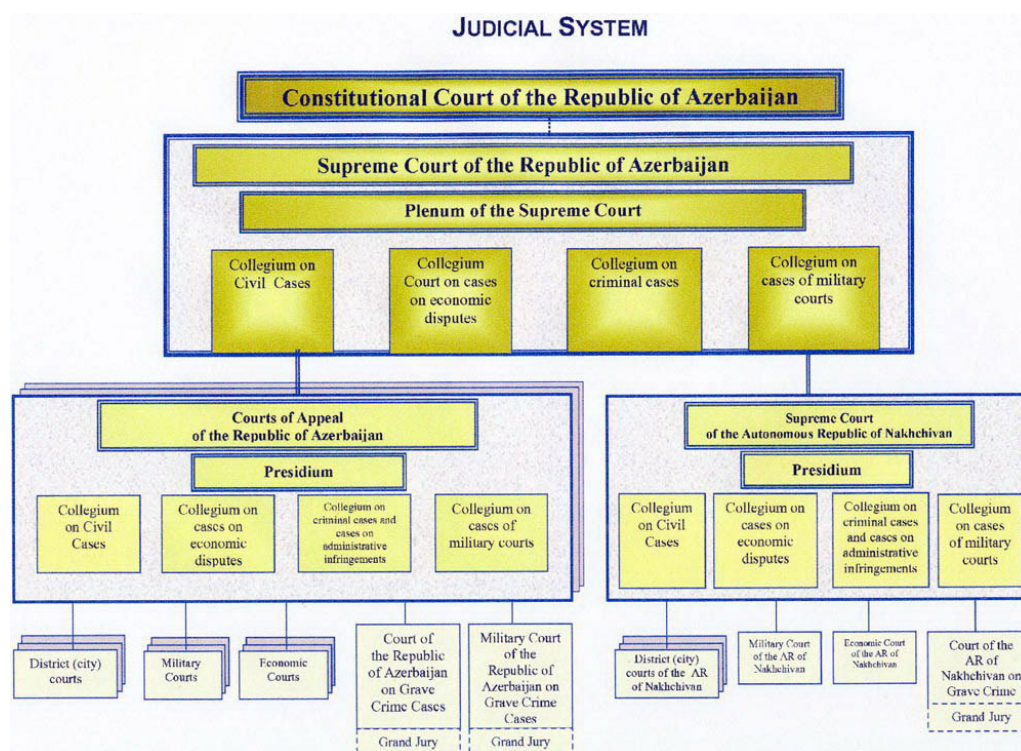
Azerbaijan has a three-stage judicial system: courts of first instance, and courts of appeal and cassation.

The courts of first instance are district courts, as well as military and administrative-economic courts and courts of grave crimes that have a jurisdiction over a certain district. The court of appeal stands as the next instance for civil, administrative and economic disputes for administrative and criminal offences. The Supreme Court of the Azerbaijan Republic is the supreme body for general and specialized courts to review civil (including administrative and economic cases) and criminal and other cases. The courts of appeal and cassation consist of 4 chambers: civil, criminal, military and administrative-economic chambers.

Along with this, the Constitutional Court being the highest constitutional justice body maintains the supremacy of the Constitution of Azerbaijan, as well as of the rights and freedoms of citizens.

The judges' are selected through a multi stage selection process and appointed by the President upon recommendation from the Judicial-Legal Council.

The following diagram represents the judicial system in detail.<sup>316</sup>



<sup>316</sup> The website of Judicial Legal Council, [www.jlc.gov.az](http://www.jlc.gov.az)

The law does not provide for an independent and impartial jury in civil matters; all trials are decided by the judge. Though the law envisions establishment of the court of juries, this provision remains on paper and is suggested to be removed.<sup>317</sup> On the other side, supporting legislation to create elements of the e-courts system is being developed.<sup>318</sup>

Citizens have the right to bring lawsuits seeking damages for, or cessation of, human rights violations.

Complaints of violation of rights and freedoms set forth by the legislation, normative acts of executive bodies, municipal acts and court, should be submitted to the Constitutional Court.

As with criminal trials, all citizens have the right to appeal to the European Court of Human Rights (ECHR) within six months after exhausting all domestic legal options.

## Assessment

### Resources (law): 75

*To what extent are there laws seeking to ensure appropriate salaries and working conditions of the judiciary?*

Legal framework regulating judicial budget, including salaries and other reimbursements of the judiciary, is generally adequate and includes primarily the Law on Courts and Judges;<sup>319</sup> along with the Law on Constitutional Court<sup>320</sup> and other statutory legal acts.<sup>321 322</sup> Under the Law on Courts and Judges,<sup>323</sup> judicial budget is provided under a separate article of the state budget, however, there are no legal mechanisms that require apportion of a fixed percentage of the general budget to judiciary.

Under the law, high instance courts are entitled to send proposals with regards to their next year's budget. According to the language of Article 90 of the Law on Judges and Courts,<sup>324</sup> a relevant body of the executive power (further specified by supporting legal acts as the Cabinet of Ministers and Ministry of Justice<sup>325 326</sup>) shall take necessary measures to secure timely financial and logistical support of courts. The organisational chart of first instance courts, the staff schedule, cost estimate and staff salaries are also defined by the Ministry of Justice.

At the moment, a draft law is being prepared in order to ensure mechanisms that prevent external interference into the activities of judges as well as mechanisms to reinforce their independence by

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317 The Court of Juries Will Not be Established in Azerbaijan, statement by Ali Huseynov, chairman of the Parliamentary Committee on Legal Policy and State Building, 2 June 2014, [www.qafqazinfo.az](http://www.qafqazinfo.az)

318 Presidential order on Establishment of E-courts Information System, 13 February 2014, [www.president.az](http://www.president.az)

319 Article 106 of the Law on Courts and Judges, 10 June 1997; [www.jlc.gov.az](http://www.jlc.gov.az)

320 Article 71 of the Law on Constitutional Court, 23 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

321 Presidential decree on Implementation of the Law Judges and Courts and Implementation of the Judicial Reform, 1 December 1998, [www.president.az](http://www.president.az)

322 Presidential decree on Implementation of the Law on the Constitutional Court, 12 February 2004, [www.president.az](http://www.president.az)

323 Article 90 of the Law on Courts and Judges, 10 June 1997, [www.jlc.gov.az](http://www.jlc.gov.az)

324 Law on Courts and Judges, 10 June 1997, [www.jlc.gov.az](http://www.jlc.gov.az)

325 Presidential decree on Application of the Law on Courts and Judges and Implementation of Judicial Reforms, 1 December 1998, [www.president.az](http://www.president.az)

326 Presidential decree on Implementation of the Law on the Constitutional Court, 12 February 2004, [www.president.az](http://www.president.az)



involving the Judicial Legal Council into preparation of draft budgets of courts and by making an explicit prohibition to reduce salaries of judges during their term of office.<sup>327 328</sup>

Income of judges is set forth in the laws; therefore, income reduction can be made only through amendments to the respective laws that have to be approved by the Parliament. Though there are no mechanisms securing salary adjustment with regards to inflation, salaries of judges are growing on an on-going basis. For example, in 2013 the salary of the chairman of the Supreme Court was raised from 1,785 manat (US\$2,273) to 2,070 manat (US\$2,636). The salaries of the Supreme Court judges constitute 80 per cent of the chairman's salary. Salaries of heads of other courts are tied to the salary of the head of the Supreme Court, while salaries of judges constitute a certain percent of the salaries of the heads of their courts.<sup>329</sup> Overall, according to the Minister of Justice, by 2011, salaries of judges have increased 30-fold as compared to the year 2000.<sup>330</sup> Though there are no laws that correlate judicial salaries to the salaries of other government employees, judges are among one of the most highly paid groups of public sector employees. The average nominal wage of civil servant was 447 manat (US\$568) in 2012 (unfortunately, the 2013 statistics was not available as of the date of this report),<sup>331</sup> as compared to the judicial salaries described above.

On the top of the salaries, judges enjoy other material benefits. Thus, the Law on Judges and Courts<sup>332</sup> provides the right of accommodation for judges. According to article 108, judges in need of residential facilities at the place of their appointment, or improvement of their living conditions, shall be provided for by the relevant executive body, within six months after their appointment. Article 109 of the same law regulates social security of the judges. According to this article, life and health of judges are insured at the rate of their 5 year wage and insurance expenditures paid from the state budget. Insurance is further detailed in a specialised law.<sup>333</sup> Also, amendments were passed in 2010, allowing judges to be reimbursed for expenses related to their office duties, such as travel and communication costs and to claim per diems.<sup>334</sup> Benefits are exempt from taxes.

## Resources (practice): 75

*To what extent does the judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?*

Though in comparison to budgets of the EU countries, Azerbaijan judicial budget is relatively low, along with this, the budget of courts is increasing every year.<sup>335</sup> Since 2007, the country saw several on-going big-scale projects aimed to improve judicial infrastructure and resources led by the World Bank,<sup>336</sup> and estimated at approximately \$400 million.<sup>337</sup> Under these projects, three new court

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327 Proposals Have Been Made to Reinforce Independence of Judges, 22 May 2014, 525 newspaper,

[www.525.az/site/?name=xeberprint&kecid=1&news\\_id=18918](http://www.525.az/site/?name=xeberprint&kecid=1&news_id=18918)

328 Website of the Judicial Legal Council, [www.jlc.gov.az](http://www.jlc.gov.az)

329 Article 106 to the Law on Courts and Judges, 10 June 1997, with amendments of 27 December 2013, [www.e-qanun.az](http://www.e-qanun.az)

330 Judicial Reforms are Highly Evaluated by the International Community, interview of Fikrat Mammadov, Minister of Justice, Chairman of the Judicial Legal Council, 23 December 2011, [www.jlc.gov.az](http://www.jlc.gov.az)

331 Table Salaries of public officials: Dynamics 2012 [www.stat.gov.az/source/labour/](http://www.stat.gov.az/source/labour/)

332 Law on Courts and Judges, 10 June 1997, [www.e-qanun.az](http://www.e-qanun.az)

333 The Law on Mandatory Health Insurance of the Employees of the Prosecutor General's and Judiciary, 5 October 1999 with latest amendments of 17 December 2013, [www.e-qanun.az](http://www.e-qanun.az)

334 Law on Courts and Judges, 10 June 1997 with amendments of 8 October 2010, [www.e-qanun.az](http://www.e-qanun.az)

335 Eastern Partnership, Enhancing Judicial Reforms in the Eastern Partnership Countries, Project Report by Working Group on Efficient Judicial Systems, Directorate General of Human Rights and Rule of Law of the Council of Europe, Strasbourg, March 2013, [www.coe.int](http://www.coe.int)

336 Azerbaijan: Judicial Modernization Project, [www.worldbank.org](http://www.worldbank.org)



buildings equipped with modern equipment have been built, construction of 4 more court buildings and 2 court complexes has started, and layouts for 30 more court buildings have been prepared.<sup>338</sup>

Large investments have been made into new court buildings (22.8 per cent of the 2008 -2010 judiciary budgets),<sup>339</sup> however, small court rooms in some local and regional courts still cause problems for citizens who want to attend open trials.<sup>340</sup>

There are well developed programmes and courses aimed to enhance a judge's knowledge of the law, judicial skills, including court and case management, judgment writing and conflicts of interest, provided by a newly established education institution – Justice Academy. The Academy was set up in 2009 pursuant to a presidential decree<sup>341</sup> to conduct training for the judiciary, including successful semi-finalists for positions of judges, as well as clerical staff, members of the bar, and prosecutors. It is reported to provide good training programmes<sup>342</sup> on its own and jointly with other public agencies. For example, a joint training on detection of suspicious financial transactions was arranged together with the Financial Monitoring Service under the National Bank to judges and employees of law-enforcement bodies.<sup>343</sup>

Despite recent increases of salaries,<sup>344</sup> judicial clerks are underpaid and need to improve their skills through targeted training programmes.<sup>345</sup>

According to the current legislation, people without access to paid legal aid shall be provided with free legal assistance by the state. However, free defence provided by the state is not adequate due to low reimbursement rates fixed at 2 manats (US\$2.50) per hour, whereas a fee for interpreter, specialist and expert is symbolic at 0.35 manat (\$0.43).<sup>346</sup> Along with this, absence of any concrete rules regulating free legal aid, provided by the state absence creates certain problems in access to this aid.<sup>347</sup>

Azerbaijan expands the number of courts on an on-going basis, thus 20 new regional courts – including the courts of appeal, the court for grave crimes, administrative economic courts – have been established in Azerbaijan in 2000-2011,<sup>348</sup> but with less than 1 court per 100,000 inhabitants, the country is still to reach the European median standard.<sup>349</sup> Even if 307 new judges have been appointed through a total four rounds of judges' selection processes, still judges are overloaded and

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337 The Assessment of Additional Funding for Judicial Modernization Project to Last Until February 16, FINEKO/abc news agency, 30 January 2014, <http://abc.az/eng/news/79055.html><http://abc.az/eng/news/79055.html>

338 Court Reforms Continue With Success, website of the Judicial Legal Council, [www.judicialcouncil.gov.az](http://www.judicialcouncil.gov.az)

339 Eastern Partnership: Enhancing Judicial Reform in the Eastern Partnership Countries, Project Report by Working Group on Efficient Judicial Systems, Strasbourg, March 2013, [www.coe.int](http://www.coe.int)

340 Azerbaijan 2013 Human Rights Report, by the US State Department, [www.state.gov](http://www.state.gov)

341 Presidential decree on Development of Justice Bodies, 17 August 2006, [www.president.az](http://www.president.az)

342 Interviews with several applicants for position of judges, 4 December 2013

343 Website of the Financial Monitoring Service [www.fiu.gov.az](http://www.fiu.gov.az)

344 Presidential order on Increase of Salaries of Public Servants, 2 December 2013, Modern agency, 5 December 2013, [www.modern.az](http://www.modern.az)

345 Personal experience of Transparency Azerbaijan lawyers from Legal Resource Centers in Ganja, Lenkoran and Sheki

346 Decree No 31 of the Cabinet of Ministers On the Rate of Reimbursement for Translators, Specialists and Experts, 1 February 2001, [www.e-qanun.az](http://www.e-qanun.az)

347 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

348 Single Investigation Committee and Court of Jury Are Not Excluded, Lent.az news agency, 15 March 2013, <http://news.lent.az/news/119243>

349 Eastern Partnership: Enhancing Judicial Reform in the Eastern Partnership Countries, Project Report by Working Group on Efficient Judicial Systems, Strasbourg, March 2013, [www.coe.int](http://www.coe.int)

it would be desirable to increase the number of judges.<sup>350</sup> The judicial system would benefit if the Bar more proactively advocated for an increase in the number of defence lawyers as well.<sup>351</sup>

Indeed, current salaries of judges, though high as compared to public servants, are not commensurate with incomes of practicing lawyers. Especially, members of the Bar, with their profound experiences, who make much more and usually charge 300 manat (US\$382) and 5,000 manat (US\$6,371) per case<sup>352</sup> and generally are not very high as compared to income of other qualified legal professionals.<sup>353</sup>

Equipment of courts with computers and library resources is not even at the moment as courts are in the process of modernisation.<sup>354</sup>

## Independence (law): 75

*To what extent is the judiciary independent by law?*

The judiciary is based on self-governance principles that are administered by the Judicial Legal Council.<sup>355</sup> The authorities of this body include: organisation of election of the candidates for the position of judges; organisation of induction and subsequent training programmes for judges; assessment of the judges performance; change of work place of judges; promotion; bringing to administrative responsibility; and other functions as set forth by the law.<sup>356</sup>

The Constitution broadly guarantees judicial independence along with immunity.<sup>357</sup> According to Article 14 of the Law on Constitution Court,<sup>358</sup> nine judges of Constitutional Court shall be appointed by the Parliament upon recommendation of the President for a period of 15 years, while the Chairman and Deputy Chairman of Constitutional Court shall be appointed by the President, from among the list of those previously approved by the Parliament. After expiration of his/her term of office, a judge of the Constitutional Court may not be re-appointed to the same post.

The initial term of appointment for judges is five years. During their first term, judges are invited to take part in training programmes at least once a year, with a performance assessment to follow at the end of this term. Should the performance assessment fail to reveal any professional deficiencies; the Judicial Legal Council extends his/her term of office until the retirement age of 65. In case there is a need for a professional judge over the retirement age, upon recommendation from the Judicial Legal Council, the term of office may be extended until 70 years of age.<sup>359</sup>

Judges of the first instance courts are appointed by the President of the Republic of Azerbaijan; whereas, judges of the courts of appeal and Supreme Courts are appointed by the Parliament, upon

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350 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

351 Rule of Law by Monica Martinez, in the Spotlight on Azerbaijan, edited by Adam Hug, publication by Foreign Policy Centre, London, May 2012, [www.fpc.org.uk](http://www.fpc.org.uk)

352 Interview with independent lawyer Samir Isayev by the author, 22 April 2014

353 Interview with Samira Agayeva, Lawyer by author, 23 September 2013

354 Personal experience of Transparency Azerbaijan lawyers from Legal Resource Centers in Ganja, Lenkoran and Sheki

355 Website of the Judicial Legal Council, [www.judicialcouncil.gov.az](http://www.judicialcouncil.gov.az)

356 Law on Judicial-Legal Council, 28 December 2004 with amendments of 21 December 2012, [www.e-qanun.az](http://www.e-qanun.az)

357 Article 127 (independence) and 128 (immunity), the Constitution of the Republic of Azerbaijan, 12 November, 1995 (entered into force on 27 November), [www.e-qanun.az](http://www.e-qanun.az)

358 Law on Constitution Court, 28 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

359 Law on Courts and Judges, 10 June 1997, [www.e-qanun.az](http://www.e-qanun.az)

recommendation from the President. The candidates for appointment to the high instance courts shall have at least five years of experience as judges of low instance courts.<sup>360</sup>

According to article 127 of the Azerbaijan Republic Constitution and article 97 of the Law on Courts and Judges, the judges' term of service is not subject to change. Except for cases set forth in the legislation, judges cannot be alienated from their positions, neither their term of office terminated before its time.

## Independence (practice): 25

*To what extent does the judiciary operate without interference from the government or other actors?*

According to some international research<sup>361 362 363</sup> and local experts,<sup>364</sup> the judicial system does not represent a very strong wing of the system of checks and balances in the country. The legal provisions, as discussed above, leave room for subtle interference of the executive branch over the Judicial Legal Council, in the matters of judges' selection and execution of the judicial budget.

However, there are cases that are encouraging and show that the reforms aimed to ensure full independence of the judicial system are under way. In general, statistical data of the newly created administrative-economic courts shows that over 80 per cent of the claims raised by the citizens against public entities are resolved in favor of citizens.<sup>365 366</sup>

## Transparency (law): 75

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?*

Transparency of judiciary is regulated by the general law on access to information,<sup>367</sup> respective procedural legislation, as well as by other legal acts regulating court activities. The legislators made a considerable effort to adopt a special law regulating access to judicial information,<sup>368</sup> which was to enter into force as of 1 January 2011. However, the draft law passed in the second reading in mid-2010 but has not been adopted so far.

The existing legal framework provides for public trials, except in cases involving state, commercial, or professional secrets or confidential, personal, or family matters.

Article 5 of the Law on Courts and Judges sets forth that all decisions by the courts of cassation and appeal shall be published. The law also sets forth online distribution of these decisions. Along with this, decisions by the low instance courts that have been annulled or amended shall also be

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360 The Law on Courts and Judges, 10 June 1997, [www.e-qanun.az](http://www.e-qanun.az)

361 Bertelsmann Transformation Index 2012: Azerbaijan Country Report, [www.bti-project.de](http://www.bti-project.de)

362 Resolution 1917 (2013): The honouring of obligations and commitments by Azerbaijan, Council of Europe Parliamentary Assembly, [www.europarl.europa.eu](http://www.europarl.europa.eu)

363 Adam Hug, Introduction to Spotlight on Azerbaijan, edited by Adam Hug, publication by Foreign Policy Centre, London, May 2012, <http://fpc.org.uk/fsblob/1462.pdf>

364 Interview with Samira Agayeva, lawyer by the author, 23 September 2014

365 An Important Step in Ensuring Human Rights and Freedoms, interview by Ramiz Rizayev, Chairman of Constitutional Court, 7 July 2012, [www.azerbaijan-news.az](http://www.azerbaijan-news.az)

366 Public Agencies Shall Build Their relations With Citizens on the Basis of Precise and Clear Rules, interview by Nigar Rasulbayova, judge of Supreme Court, 5 December 2013, [www.azerbaijan-news.az](http://www.azerbaijan-news.az)

367 Law on Right to Obtain Information 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

368 Draft Law on Right to Obtain Information about Court Activities, second reading 5 May 2010, [www.monitoring.az/public/print.php?lngs=aze&ids=1481](http://www.monitoring.az/public/print.php?lngs=aze&ids=1481)

published. Decisions of the first instance courts that have legally entered into force are to be disclosed in a manner set forth in the legislation.

According to the law, decisions on closed trials shall be also published and made accessible to the public. The laws require provision of information on activities and decisions of Courts to the public, in a timely manner.<sup>369</sup>

Along with this, the recent presidential decree on Electronic Courts,<sup>370</sup> which established the electronic court system, envisions application of audio, video and other recording equipment during the court trials, as well as the possibility of the online regime allowing the following of court trials on the Internet.

According to the 2005 law,<sup>371</sup> officials, including judges, should disclose their assets to the Anti-corruption Commission.<sup>372</sup> Though the plans to ensure submission of declarations by judges were announced back in 2008,<sup>373</sup> legal mechanisms to implement it have not been designed so far, as the Cabinet of Ministers to date has not drawn up such forms and rules. Therefore, though the legal framework is in place, a lack of supporting legislation does not allow for its implementation.

## Transparency (practice): 50

*To what extent does the public have access to judicial information and activities in practice?*

A local NGO provided monitoring of all court websites in 2012 and presented their findings regarding online transparency of the courts. The report's main finding<sup>374</sup> was the absence of a clear single standard for the type of information and the degree of detail that would oblige courts to publish information on the Internet. The courts also do not provide annual narrative reports on their activities, except the Supreme Court of Nakhchivan Autonomous Republic. According to the monitoring results,<sup>375</sup> the average transparency of courts was found at about 30 per cent.

Along with this, a single court Internet portal was created ([www.courts.az](http://www.courts.az)) to improve access to court services for the population. This portal allows citizens to apply to the courts and receive responses online, to obtain samples of court claim applications, as well as of other court documents, to enquire into court reception days and to obtain other relevant information.<sup>376</sup>

In practice, observers, both foreign and domestic, can freely attend trials,<sup>377</sup> except those involving espionage or treason charges, as set forth in the law.<sup>378</sup> Along with this, sometimes there are problems with video and audio recording of the trial process.<sup>379</sup>

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369 Law on Right to Obtain Information 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

370 Presidential decree on Electronic Courts, 13 February 2014, [www.president.az](http://www.president.az)

371 Law on Approval of Procedures for Submission of Financial Information by Public Officials, 24 June 2005, [www.e-qanun.az](http://www.e-qanun.az)

372 Website of the national Anti-corruption Commission [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

373 Judges in Azerbaijan Will Submit Information on Their Incomes: by Member of Parliament, by K Zarbaliyeva, Trend news agency 4 September 2008, [www.az.trend.az/news/society/1285997.html](http://www.az.trend.az/news/society/1285997.html)

374 Online Transparency of Courts, publication by Media Rights Institute, December 2012, [www.mmediarights.org](http://www.mmediarights.org)

375 Interview of Rashid Hajili, director, Media Rights Institute to Azerbaijan desk of Voice of America [www.amerikaninsesi.org/content/azerbaijan-mehkeme-/1568622.html](http://www.amerikaninsesi.org/content/azerbaijan-mehkeme-/1568622.html)

376 Electronic Courts Have Been Assesses as Serving to the Wellbeing of People, Interview of Minister of Justice and Chairman of the Judicial Legal Council, APA news agency, 8 April 2014, <http://www.az.apa.az/news/337896>

377 Personal experience of Transparency Azerbaijan lawyers from Legal Resource Centers in Ganja, Lenkoran and Sheki

378 Article 127-5, Constitution of the Republic of Azerbaijan, 12 November 1995, [www.e-qanun.az](http://www.e-qanun.az)

379 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

## Accountability (law): 75

*To what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?*

Judicial Legal Council - a self-governing body of the judicial power - is composed of 15 members, mainly judges, but also includes representatives of the President of Azerbaijan, Milli Majlis, the Prosecutor's office, and the Bar Association. Unfortunately, the Council does not have any representative of civil society amongst its members; neither has it any other mechanism to receive feedback from civil society on an ongoing basis.

The Council is entrusted to start disciplinary proceedings and bring judges to administrative responsibility, whereas Judges Selection Committee<sup>380</sup> was established by the Council, to select candidates for positions of judge.

The Law provides ample protection against discretionary rulings (order, verdict) of the judges. According to the Article 295 of the Criminal Code, those who knowingly pass unfair judgments; face at minimum a fine of 5,000 manats (US\$6,370) and at maximum a 3 year prison term. In case a wrong decision of a judge resulted in an imprisonment verdict and/or other serious consequences for the convicted, penalty for a defaulting judge increases from 5 to 8 years in prison. The Parliament plans to make these provisions even more stern and to increase the prison term to 6 year and, in case of serious consequences, from 8 to 12 years.<sup>381</sup>

## Accountability (practice): 25

*To what extent do members of the judiciary have to report and be answerable for their actions in practice?*

Judges are held accountable for their actions in practice. According to the Chairman of the Judicial Council (and simultaneously the Minister of Justice), the Council alienated 70 judges for gross and other violations, and started disciplinary proceedings against 161 judges.<sup>382</sup> . Though there are no cases of prosecution of a judge for corruption filed by the law enforcement agencies of Azerbaijan since 2000,<sup>383</sup> (as the provisions regulating immunity of judges are considered to be broad – an issue discussed elsewhere in this report), judges are penalised for other violations of the law.<sup>384</sup>

However, some lawyers' claim that their complaints filed with the Judicial-Legal Council about illegal actions and unprofessionalism of some particular judges are not always attended to.<sup>385</sup>

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380 Website of the Judicial System [www.courts.gov.az](http://www.courts.gov.az)

381 Judges Purposely Passing Unfair Judgments May Face up to 12 Years Imprisonment in Azerbaijan, by Mubariz Aslanov, APA news agency, 9 September 2013

[www.en.apa.az/xeber\\_judges\\_purposely\\_passing\\_unfair\\_judgment\\_199076.html](http://www.en.apa.az/xeber_judges_purposely_passing_unfair_judgment_199076.html)

382 Judicial Reform Continues with Success, website of Judicial Legal Council, [www.judicialcouncil.gov.az](http://www.judicialcouncil.gov.az)

383 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

384 Website of the Judicial Legal Council, [www.jlc.gov.az](http://www.jlc.gov.az)

385 Discussions by the civil society at the advocacy round table on Increasing Transparency of Courts, organised by Transparency Azerbaijan with the Judicial Legal Council, 30 March 2011, Caspian Plaza, [www.transparency.az](http://www.transparency.az)

## Integrity Mechanisms (law): 75

*To what extent are there mechanisms in place to ensure the integrity of members of the judiciary?*

The Code of Ethics for Judges is a collection of the principles and standards of ethical norms regulating judge's activity.

The selection of judges is based on written and verbal exams followed by a substantive training for applicants, final interview and appointment to the position of a judge.<sup>386</sup> This detailed procedure is handled by the Judges Election Committee<sup>387</sup> under the Judicial Legal Council<sup>388</sup>, the governing body for the judicial system, followed by appointment described above. According to civil society, the exams are organised in a rather transparent environment and monitored by civil society.<sup>389</sup> However, the law does not define duration of the training course and in practice the training takes six months, plus another six months of court practice,<sup>390</sup> after which successful candidates are invited to a final interview.

There is a legal mechanism that allows a by-pass of procedures of selection to the position of judges as envisaged in Article 93-3 of the Law on Courts and Judges. According to Article 93-4 of the same law, candidates eligible under general requirements, with 20 and more years of professional experience, authority in the sphere of jurisprudence and of high moral standards, can be appointed by executive authorities for the position of senior judges upon the recommendation of the Judges Selection Commission, by-passing the examination system. However, no appointments under this procedure have been made within the last five years.<sup>391</sup>

If selection process is rather transparent, promotion of judges is regulated by multi-stage and technical procedures.<sup>392</sup> Even if the Law on the Judicial Legal Council<sup>393</sup> sets some general provisions, clear systems of performance reviews that form grounds for career advancement are not regulated in details.

The language of legislation regulating immunity of judges is considered to be too broad by international observers. There is a need to amend the laws to allow: primary investigation of the reported crimes allegedly committed by judges;<sup>394</sup> to enable prosecution bodies to collect sufficient material to raise before the Judicial Legal Council; a motion to lift immunity of the judges in question or to drop a case. At the moment, the immunity status of judges does not allow prosecutors to investigate; prosecutors cannot raise a motion to lift immunity without sufficient evidence, to be collected during primary investigation.

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386 Article 93-3 of the Law on Courts and Judges, 10 June 1997, [www.jlc.gov.az](http://www.jlc.gov.az)

387 The Judges Election Committee was established by the Legal Judicial Council as envisaged by Article 14 of the Law on the Legal Judicial Council, 28 December 2004, [www.jlc.gov.az](http://www.jlc.gov.az)

388 Judicial Legal Council was established under the Presidential decree 30, 1 December 1998 and functions in accordance with the Law on the Legal Judicial Council, 28 December 2004, [www.president.az](http://www.president.az)

389 Personal experience of Transparency Azerbaijan

390 Interviews with several candidates for the judges positions, 4 December 2013

391 Interview with Javid Huseynov, head of the Judicial Legal Council Office by the author, 30 May 2014

392 Interview with Hafiz Hasanov, Law and Development Public Association by the author, 22 May 2014

393 Article 13, Law of on Judicial-Legal Council, 28 December 2004 with amendments of 21 December 2012, [www.e-qanun.az](http://www.e-qanun.az)

394 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)



In line with this OECD recommendation, Azerbaijan put an obligation to prepare respective legislative proposals under the National Anti-corruption Action Plan 2012-2015<sup>395</sup> and currently the process is under way,<sup>396</sup> though no further details are available.

Introduction of an electronic system for random distribution of cases to judges is a commendable step; however, further improvement of procedures will minimise opportunities for discretionary decisions of court administration.<sup>397</sup>

## Integrity Mechanisms (practice): 50

*To what extent is the integrity of members of the judiciary ensured in practice?*

According to the *Global Corruption Barometer 2013*,<sup>398</sup> judiciary along with the health sector is perceived by the population to be the most corrupt of the sectors and assessed at the score of 3.1 at a scale from 1 (minimum corruption) to 5 (for extremely corrupt), though a minor decline from the score of 3.2 in 2010 is noted.<sup>399</sup> The Information and Cooperation Network of NGOs for Combating Corruption<sup>400</sup> reports that the largest numbers of citizens' complaints about corruption involve the courts.<sup>401</sup> This echoes with the experience of Transparency Azerbaijan, through its five Advocacy and Legal Advice Centres providing free advice to the population since 2005. However, it cannot be ruled out that to a certain degree this is fed by frustrations of the party that has lost a court case.<sup>402</sup>

Indeed, ethical training is offered to judges,<sup>403</sup> however, little is known to the general public about the content of these trainings and whether the judges are coached as to how to behave in concrete situations, to avoid violation of the code provisions.<sup>404</sup>

## Executive oversight: 25

*To what extent does the judiciary provide effective oversight of the executive?*

Under the law, the courts have jurisdiction to review the actions of the executive, however, very little information is available to general public.

## Corruption prosecution: 50

*To what extent is the judiciary committed to fighting corruption through prosecution and other activities?*

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395 National Anti-corruption Action Plan for 2012-2015 approved by the presidential decree of 5 September 2012, [www.president.az](http://www.president.az)

396 Interview with Alimamed Nuriyev, Coordinator of the Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption and member of the Ad-hoc Working Group under the National Anti-corruption Commission by the author, 29 November 2013

397 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

398 Global Corruption Barometer 2013, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

399 Global Corruption Barometer 2010, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

400 Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption, [www.anticor.net.az](http://www.anticor.net.az)

401 Discussions by the civil society at the round table on Increasing Transparency in the Judicial System organised by Transparency Azerbaijan, 30 March 2011, Caspian Plaza

402 Judicial Reforms, Presentation by Javid Huseynov, head of the Judicial Legal Council Office at the round table on Increasing Transparency in the Judicial System organised by Transparency Azerbaijan, 30 March 2011, Caspian Plaza

403 Website of the Judicial Legal Council, [www.jlc.gov.az](http://www.jlc.gov.az)

404 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)



The Department to Combat Corruption under the General Prosecutor's Office is the only public agency that provides the statistical information about the cases that have been sent to the courts; also there is no statistical information about corruption related cases reviewed by courts on the websites of the courts.

In 2011, information that the judicial system began the process of summarising court decisions on corruption related offenses was released to media. Analysis also planned to include mistakes committed by judges during the litigation process. Even if the findings were intended to be published by the Supreme Court,<sup>405</sup> no data on implementation of these plans is available.

## Recommendations:

Continue the reform of the judiciary and adopt the Judiciary Reform Program beyond 2014.

To amend legal framework in order to:

- Increase the court budget and to apportion judiciary budget to the general state budget; to delegate the authority to manage judiciary budget to the courts themselves and/or Judicial Legal Council.
- Simplify the multi-stage and complicated process of judges selection; to annul the legal mechanism that allows by-pass of procedures of selection to the position of judges; to adopt regulation clearly stating judges performance assessment and promotion.
- Adopt the Law on the Right to Obtain Judicial Information that will set up clear standards on the type and format of judicial information available to the general public.
- Prepare legislation limiting judges' immunity.

Other steps:

- Cover judicial clerks with adequate training programmes and increase their salaries substantially.
- Prepare and publish court statistics on corruption cases reviewed.
- Include representatives of civil society into the Judicial Legal Council; to arrange regular monitoring of the court decisions by the Judicial Legal Council with participation of civil society.
- Further develop the electronic system for random distribution of work load among judges.
- Increase the number of judges in order to relieve their workload.
- Adopt a separate law regulating free legal aid provided by the state and increase the number of lawyers.
- Conduct a nation-wide public opinion survey to enquire into perception of the population of the judicial system and its reasons.

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<sup>405</sup> Azerbaijanе обобщаются решения судов по коррупционным преступлениям, Day az agency, 12 October, 2011 [www.news.day.az/society/293118.html](http://www.news.day.az/society/293118.html)

## 4. PUBLIC SECTOR (INCLUDING PUBLIC PROCUREMENT)

### Summary

The Azerbaijan government has undertaken some significant public sector reforms in recent years, which have improved the procedures for recruitment of civil servants and delivery of services in certain areas. Azerbaijan authorities have expressed on many occasions their willingness to enhance accountability of state agencies and combat corruption, yet the pace and scope of reforms have not been sufficient to completely eradicate the root causes of corruption from many aspects of public service. Some important steps are yet to be taken; thus, the laws on conflict of interest and protection of whistleblowers have yet to be adopted. Moreover, normative-regulatory mechanisms of financial reporting, including disclosure of assets by civil servants have not been developed yet. Also, the state procurement system needs to further improve its transparency and accountability.

### PUBLIC SECTOR

Overall Pillar Score 58/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 75/100	Resources	-	75
	Independence	75	75
Governance 62/100	Transparency	75	50
	Accountability	75	50
	Integrity	75	50
Role 38/100	Public education	50	
	Reducing corruption risks by safeguarding integrity in public procurement	25	

### Resources (Practice): 75

*To what extent does the public sector have adequate resources to effectively carry out its duties? Are public services being delivered effectively?*

The state paid salaries in Azerbaijan have seen a continual increase in recent years, but are still far from the level necessary to attract talented young people, especially the foreign educated youth, to public sector jobs.<sup>406</sup> It is difficult to draw a comparison of public and private sector salaries in the

<sup>406</sup> Nation Building and State Building in Azerbaijan: the Challenges of Education Abroad, by Murad Ismayilov and Michael Tkacik, the article builds and expands on Michael Tkacik and urad Ismayilov, "Education Abroad, Civil Society

country, because the government lacks reliable statistics on private sector pay. However, if we limit the analogy to the salaries paid by international companies and organisations, as well as local private businesses, currently operating in Azerbaijan, it becomes clear that the former is not adequately matched to the demand of a highly skilled work force. This problem is more acutely felt by 5-7th categories of civil servants, whose salaries are less competitive.<sup>407</sup>

Azerbaijan's public sector wage bill was 158 million manat (US\$200 million) in the state budget for 2012.<sup>408</sup> The average nominal wage of civil servant was 447 manat (US\$568) in the same year. The pay assigned to senior civil service comprised 534 manat (US\$679) for the same period. There is a significant disparity in the salaries of civil servants in the capital compared to those in the regions of Azerbaijan. The average wage of a civil servant hovers between 300-340 manat (US\$381-432) in the regions of Azerbaijan (excluding Nakhchivan AR, where it stands at above 400 manat [US\$508]), while in Baku it is approximately 600 manat (US\$763).<sup>409</sup>

The Civil Service Commission has adopted a system of performance assessment to provide merit-based incentives to civil servants and plans to implement it by the end of 2014. The new system will regulate 3rd-7th categories of civil servants.<sup>410</sup> This policy measure may improve competitiveness of public sector jobs and positively impact the wages of civil servants. The 2nd section of the "Regulations on Types and Rules of Civil Servants Rewarding" states that the period for which reward is granted (calculation period) and the terms of the reward are determined by the head of the state agency in which the civil servant serves. The 12th section of this act also stipulates that for the purpose of rewarding civil servants, the allocation from the state budget for the next year for individual agencies will also include additional funds three times that of the monthly wage fund. However, there is currently no uniform rule about their size and sources, some of those coming from the budget and some from extra-budgetary funds, composed of a certain percent of state fees charged by some agencies.<sup>411</sup>

Delivery of public services is more efficient under ASAN roof to be discussed later. ASAN service, which was established under the State Agency for Public Service and Social Innovations in 2012, is a "one stop shop" body where multiple government agencies deliver services to the citizens.<sup>412</sup>

## Independence (Law): 75

*To what extent is the independence of the public sector safeguarded by law?*

The procedure for recruiting civil servants has improved in recent years,<sup>413</sup> in particular, as a result of the establishment of the Civil Service Commission under the President (the CSC) and the introduction of a centralised and transparent examination procedure for entry into the civil service for lower grades. Besides, the Law on Civil Service contains provisions prohibiting political affiliation of

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and Nation-Building: The Case of Azerbaijan", Current Politics and Economics of the Caucasus Region, Vol. 2, Issue 3 (October 2008),

[www.esiweb.org/pdf/esi\\_turkey\\_tpg\\_vol8\\_no4\\_murad-ismayilov.pdf](http://www.esiweb.org/pdf/esi_turkey_tpg_vol8_no4_murad-ismayilov.pdf)

407 Letter from Civil Service Commission No 01/07-2 to Transparency Azerbaijan dated 2 December 2013

408 Table Salaries of public officials: Dynamics 2012 <http://www.stat.gov.az/source/labour/>

409 Table Salaries of public officials: Dynamics 2012 <http://www.stat.gov.az/source/labour/>

410 The Regulations of Performance Assessment of Civil Servants, 10 February 2014, [www.csc.gov.az](http://www.csc.gov.az)

411 Ministry of extra-budgetary revenue tax in the first half of the year amounted to 200 million manat, 30 July 2013 [http://www.contact.az/docs/2013/Economics & Finance/073000044284en.htm#\\_UvHpsWKSzno](http://www.contact.az/docs/2013/Economics%20&%20Finance/073000044284en.htm#_UvHpsWKSzno)

412 ASAN Service, [www.asan.gov.az/](http://www.asan.gov.az/)

413 Recommendations by Transparency Azerbaijan to the State Civil Service Commission, presented on 2 February 2011, [www.transparency.az](http://www.transparency.az), as well as on-going monitoring of developments in this area, [www.transparency.az](http://www.transparency.az)

civil servants, which should reduce the use of partisan considerations in selection and promotion of employees.

The advent of competitive examinations has narrowed the room for the use of personal discretion in appointing public employees. The CSC holds two-phase examination for entry into 5<sup>th</sup>-7<sup>th</sup> categories of civil service, which are the lowest grades in public service. The Commission has also recently begun organising competitive exams or interviews for higher ranks of civil service such as heads of local branches of the Central Executive Authority, namely in the Ministry of Labour and Social Protection of Population and the State Social Protection Fund. Currently, the examination consists of a single test taken by all applicants and interviews with successful candidates. The test examination is conducted by the CSC and is computerised to limit external interferences and to make the process transparent. The CSC invites civil society representatives, including Transparency Azerbaijan, to observe the exams upon recommendations from civil society.<sup>414</sup> The letter Transparency Azerbaijan received from the Commission states that the test examination has been broadcasting live, since the end of 2013.<sup>415</sup>

Once they successfully pass the examination, the candidates are then interviewed by a panel of no fewer than three persons, representing the CSC, the hiring agency and civil society.<sup>416</sup> Media and civil society representatives can observe the interview process after they are accredited by the CSC.<sup>417 418</sup> The interviews are required to be video recorded and archived for a year to ensure transparency.<sup>419</sup> The CSC then presents successful candidates to the head of the respective agency for appointment to civil service. The latter appoints the successful candidate to a one year internship pending a probationary period of 6 months.<sup>420</sup> Other candidates who were introduced to the head of state agency for appointment and who were not recruited, are included in the reserve staff of the Commission and the respective state body. At the end of this period, those candidates not appointed to a vacant position are excluded from the list.

Azerbaijan's law provides certain other safeguards to prevent political partisanship in the appointment and promotion of civil servants. The Law of the Republic of Azerbaijan on Civil Service, the main document regulating the country's public service, prohibits establishing bodies of political parties and social organisations in state institutions.<sup>421</sup> It is incumbent on public employees to refer to no other document than the Constitution and other legislative acts of Azerbaijan when performing their duties, and not to be influenced by the decisions of political parties and public unions.<sup>422</sup> The Law on Civil Service also prohibits public servants' participation in the activities of political parties in the period of their service.<sup>423</sup> That being said, the law does not restrict the right of public employees to be members of public or political entities, which may challenge effective implementation of previously stated restrictions in the law.<sup>424</sup> Also, the law does not cover certain groups of civil

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414 Recommendations by Transparency Azerbaijan to the State Civil Service Commission, presented on 2 February 2011, [www.transparency.az](http://www.transparency.az), as well as on-going monitoring of developments in this area

415 Letter No 02/07 – 07/0826 from Vafadar Mirov, deputy chairman of the Civil Service Commission to Transparency Azerbaijan dated 23 May 2014

416 Letter from the Civil Service Commission No 01/07-2 to Transparency Azerbaijan dated 2 December 2013

417 An interview with Bahram Khalilov (the head of Civil Service Commission - in Azeri), Malahat Najafova, APA TV, 20 January, 2014, [www.apa.tv/video/5815](http://www.apa.tv/video/5815)

418 Transparency Azerbaijan has been monitoring the recruitment process since 2010

419 Rules of holding an interview for recruitment to civil service and holding administrative positions, 30 July 2013, [www.csc.gov.az](http://www.csc.gov.az)

420 Presidential decree on Approval of the Rules of Competitive Recruitment to Public Bodies, 24 June 2009 [www.csc.gov.az](http://www.csc.gov.az)

421 Law on Civil Service, Article 4.2, Baku, 21 July 2000, No 926-IQ, [www.csc.gov.az](http://www.csc.gov.az)

422 Law on Civil Service, Article 4.3, 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

423 Law on Civil Service, Article 20.1.6, 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

424 Law on Civil Service, Article 18.1, 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

servants, such as law enforcement officials, officials of the National Bank and of regional/local administration, and their status and activities are regulated by sector specific acts.<sup>425,426</sup>

The service conduct of civil servants is primarily regulated under the Law on Rules of Ethical Conduct of Civil Servants. This act stipulates that public sector employees are responsible for executing provisions of law guided by “the rule of law, human rights, democratic principles and high ethical conduct rules”.<sup>427</sup> It, in particular, requires the civil servant to “be impartial when fulfilling service duties or issuing decisions, and not give any advantage to persons or a group of persons based on their race, nationality, religion, language, gender, social background, property and service status, faith, membership in the public or social unions”.<sup>428</sup> Like the Law on Civil Service, this law, too, requires public employees to observe political objectivity while discharging their duties. Finally, it mentions the impermissibility of the influence of the private interests of the civil servant, or interests of stakeholders on their service.

There is a certain institutional mechanism in place to ensure the implementation of ethical rules pertaining to civil servants, including the prevention of arbitrary dismissals or political interference. The Civil Service Commission is obligated to oversee the execution of the ethical rules in public service. There is a consultative body, albeit with a low profile, called the Civil Service Management Board, comprised of appointees by the President, the speaker of Parliament and the chairman of the Constitutional Court, and tasked with oversight of regulations and guarantees applied to civil servants.<sup>429</sup>

The process of the establishment of Ethics Commissioner, whose responsibilities include oversight and monitoring of ethical conduct of civil servants in state bodies, in accordance with the rules of ethical behaviour set forth in the legislation, has been launched. To facilitate citizens' direct appeal to the Ethics Commissioner, personal information and changes made to the information pertaining to Ethics Commissioner (as well as [etik@csc.gov.az](mailto:etik@csc.gov.az)) was placed on the Commission's website. However, the Commissioner can only initiate disciplinary proceedings, which are subject to the approval of the head of a respective state body.<sup>430</sup> The civil servant can appeal the decision to the CSC and administrative courts.

## Independence (Practice): 75

*To what extent is the public sector free from external interference in its activities?*

Most Cabinet members and high-ranking state officials have been in their positions for over 10 years (17 ministers have been in the government since 2003, while the prime minister has held his position since 1996).<sup>431</sup> Therefore, for the most part, there are no systematic changes in the ranks of their personnel. However, there were shifts in the Cabinet of Ministers before and after the presidential election of 2013.

<sup>425</sup> Law on Civil Service, Article 2.3; 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

<sup>426</sup> Technical Paper: Country risk assessment – “Azerbaijan. Ethics in Civil Service”, Tilman Hoppe, September 2012, Eastern Partnership-Council of Europe Facility Project on “Good Governance and Fight against Corruption”, [www.coe.int](http://www.coe.int)

<sup>427</sup> Law of the Republic of Azerbaijan On Rules of Ethics Conduct of Civil Servants, Baku, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

<sup>428</sup> Law on Rules of Ethical Conduct of Civil Servants, Article 1.2, Baku, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

<sup>429</sup> Statutes on Civil Service Management Board, Article 2.1.8, see: [www.e-ganun.az/files/framework/data/1/c\\_f\\_1570.htm](http://www.e-ganun.az/files/framework/data/1/c_f_1570.htm)

<sup>430</sup> Technical Paper: Country risk assessment – “Azerbaijan. Ethics in Civil Service”, p.10

<sup>431</sup> 17 members of cabinet have been in government since 2003, 23 October 2013, Mediaforum, [www.mediaforum.az/az/2013/10/23/Kabinetin-17-per-centC3-per-centBCzv-per-centC3-per-centBC-h-per-centC3-per-centB6kum-per-centC9-per-cent99t-per-centC9-per-cent99-2003-c-per-centC3-per-centBC-ild-per-centC9-per-cent99n-per-centC9-per-cent99vv-per-centC9-per-cent99l-121208517c00.html#UvDr4z1\\_uvV](http://www.mediaforum.az/az/2013/10/23/Kabinetin-17-per-centC3-per-centBCzv-per-centC3-per-centBC-h-per-centC3-per-centB6kum-per-centC9-per-cent99t-per-centC9-per-cent99-2003-c-per-centC3-per-centBC-ild-per-centC9-per-cent99n-per-centC9-per-cent99vv-per-centC9-per-cent99l-121208517c00.html#UvDr4z1_uvV)

Cases in point are the recent appointments to the posts of Minister of Education and Minister of Labour and Social Protection of Population, which set off dismissals in different tiers of their bureaucratic apparatus over poor performance.<sup>432 433 434</sup>

As stated earlier, procedures of competitive recruitment cover civil servants in the three categories of public service (categories 5 to 7), but the rest of the public employees are appointed by the head of an agency. Also, after applicants successfully make it through the civil service competition, the decision of which of the candidates will be accepted to the vacant position is at the discretion of the agency's head.

Decisions of heads of public agencies on dismissal of staff can be disputed in courts. However, the period of one month, defined in the law for applying to the court on matters of labour dispute, may not suffice to effectively appeal the decision of the head of the respective body.

## Transparency (law): 75

*To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?*

The Law on Combating Corruption lays down certain preventative controls for the abuse of power by civil servants; however, there are currently no legal mechanisms to ensure their enforcement and no statistics to monitor compliance.<sup>435</sup> Pursuant to the law, civil servants must disclose information on their income and personal assets, and there are legal sanctions for failing to comply with these requirements. Moreover, public servants cannot work under the supervision of their next-of-kin and cannot receive gifts with the value over 55 manat (US\$70).

Public officials are obligated to submit an asset declaration to the Commission on Combating Corruption, which must include information on the following subjects:<sup>436</sup>

- The sources, types and amount of annual income.
- Taxable property.
- Deposits in bank securities and other financial instruments.
- Participation in the activity of companies, funds and other economic entities as a shareholder or founder, and property share in such enterprises.
- Debt exceeding 5 thousand times the nominal financial unit.
- Other obligations of financial and property nature, exceeding a thousand times the nominal financial unit.

The government's National Action Plan for Combating Corruption for 2012-2015 (NAP) envisions some important steps towards establishing a functioning procedure of asset declaration, i.e. it sets

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<sup>432</sup> Salim Muslumov fired 14 heads of medical-social expert commissions, APA news agency, 29 November 2013, [www.az.apa.az/news/322791](http://www.az.apa.az/news/322791)

<sup>433</sup> Heads of 5 branches of State Labor Inspection Service dismissed," APA news agency, 4 December 2013 [www.az.apa.az/news/325855](http://www.az.apa.az/news/325855)

<sup>434</sup> Who Left the Ministry of Education, Who Came? Editor.az, 23 August 2013, <http://editor.az/?p=292052>

<sup>435</sup> Interview with an anonymous public servant by the author, 14 October 2014

<sup>436</sup> The Law on Combating Corruption, 1 January 2005, [www.e-qanun.az](http://www.e-qanun.az)

forth that proposals on e-submission of financial declarations by public officials be developed.<sup>437</sup> The monitoring conducted by “Constitution” Research Fund, within the framework of Transparency Azerbaijan’s APT project, found that the government has taken some steps towards improvement of the legislation on conflict of interests and e-submission of officials’ finance-related documents.<sup>438</sup>

Azerbaijan’s law also requires civil servants to submit an annual financial report on their personal income (including the sources, types and amount of any additional income they receive) and their property status, to the head of their respective institution.<sup>439</sup> Under the law,<sup>440</sup> officials file the financial statement to the financial body (accountant) appointed by the head of the institution, in which they serve.<sup>441</sup> They must report this information in the period from January 1 to January 30. Public officials are obligated to submit the financial statement in the first 30 days of their new job (Article 6). The Cabinet of Ministers was instructed to draw up such forms and rules,<sup>442</sup> which has not been carried out so far. Therefore, though the legal framework is in place, lacking supporting legislation does not allow for its implementation.<sup>443</sup>

The law provides for unhindered and timely access by the general public to information held by the government. To begin with, the freedom of information is enshrined in the Constitution of Azerbaijan.<sup>444</sup> Under Article 50 of the Constitution, the citizens are free “to seek, acquire, transfer, prepare and distribute information”.<sup>445</sup> The citizens are also entitled to appeal individually or collectively with written applications to public authorities, to which respective bodies must respond “in an established order and term”.<sup>446</sup> The Law on the Right to Obtain Information, enacted in 2005, establishes the legal framework for the citizens’ free, unrestricted and equal access to information, “based on the principles of open society and a democratic, law-governed state, as well as to create conditions for control by citizens on the exercising of public duties”.<sup>447</sup> Article 29 of the Law enumerates the types of information that the state authorities are required to make public.<sup>448</sup> But, reportedly one of the deficiencies of the law is that it broadly and vaguely defines the categories of information that could be withheld from the public.<sup>449</sup> Most importantly however, there are no standard reporting rules for public agencies. Consequently, there arises disparity in the content and scope of information provided by individual agencies.<sup>450</sup>

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437 National Action Plan for Combating Corruption for 2012-2015, Action 9.3., approved by the Presidential Decree of 5 September, 2012, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

438 Monitoring Report on Implementation of Anti-Corruption Action Plan for 2012-2015 (period of September 2012 to September 2013), Baku, 2013, publication by “Constitution” Research Foundation and Transparency Azerbaijan, [http://transparency.az/alac/files/Report\\_per\\_cent20CRF\\_eng\\_AP.pdf](http://transparency.az/alac/files/Report_per_cent20CRF_eng_AP.pdf)

439 Law on Civil Service, Article 18.0.9, [www.csc.gov.az](http://www.csc.gov.az)

440 Law On Approval of Procedures for Submission of Financial Information by Public Officials, approved by the Law of 24 June, 2005, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

441 Law On Approval of Procedures for Submission of Financial Information by Public Officials, approved by the Law of 24 June, 2005, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

442 Presidential Decree on Amendments and Changes to the Civil Code, dated 9 August 2005, [e-qanun.az](http://e-qanun.az)

443 Discussions by the civil society at 29 November 2013 presentation of Monitoring report on implementation of Anti-corruption Action Plan for 2012-2015 (period of September 2012-2013), Baku, 2013, publication by Constitution Research Foundation and Transparency Azerbaijan

444 The Constitution of the Republic of Azerbaijan, Article 50, 12 November, 1995 (entered into force on 27 November), <http://www.constcourt.gov.az/laws/26>

445 The Constitution, Article 50.

446 The Constitution, Article 57.

447 The Law on the Right to Obtain Information, Article 1, Baku, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

448 The Law on the Right to Obtain Information, Article 1, Baku, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

449 Time to reset the code locks: Realizing the right to know in Azerbaijan after the adoption of the 2005 law on the right to obtain information, Article 19: Global Campaign for Free Expression, October 2009, [www.article19.org/data/files/pdfs/publications/azerbaijan-freedom-of-information-report.pdf](http://www.article19.org/data/files/pdfs/publications/azerbaijan-freedom-of-information-report.pdf)

450 Discussions by the civil society at 22 November 2013 presentation of Monitoring report on implementation of Open Government Partnership Action Plan for 2012 – 2015 (period of September 2012-2013), Baku, 2013, publication by Economic Research Center and Transparency Azerbaijan



Furthermore, the Law on Rules of Ethical Conduct of Civil Servants contains certain regulatory provisions as to the role of civil servants in provision of public information. Article 7.3 of that law stipulates that the civil servant is liable for delivering accurate information to media representatives so that the latter are able to inform the public about the performance of public agencies and their officials.<sup>451</sup>

In recent years, the government of Azerbaijan has made certain progress in enhancing the management and accessibility of public information, notably by undertaking a number of legislative initiatives to enable the electronic delivery of government services. The State Programme on Development of Communications and Information Technologies in the Republic of Azerbaijan for 2010-2012 set out the ambitious goals of expanding access by physical and legal entities to the information on the activities of state bodies., as well as state, public and sectoral information resources, broadening the delivery and improving the quality of information and communication services provided by the government.<sup>452</sup> In terms of intra-governmental management of information, the government set out to integrate state information resources and systems based on unified technological standards, facilitation of reliable and secure information exchange between state bodies, and to increase the quality of ICT personnel, etc.

Both the Law on Civil Service and the Regulations on the Civil Service Commission under the President stipulate that the recruitment of the civil service personnel is conducted on a competitive basis and in a transparent manner.<sup>453</sup>

## Transparency (practice): 50

*To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?*

Only a few public agencies publish their budgets on their websites so far.<sup>454</sup> However, there has been recent considerable progress in this area. The Ministry of Finance publishes the consolidated state budget on its website<sup>455</sup> and recently accompanied the document with the “Budget Guide for Citizens”, as implementation of its obligations under the newly adopted National Action Plan, under the Open Government Initiative.<sup>456</sup>

Under Article 5 of the Law on Combating Corruption,<sup>457</sup> public officials should file regular asset disclosure forms, illustrating sources, types and amount of income, stock holdings, taxable properties and other assets. Furthermore, the Law on Approval of Rules for Submission of Financial Information by Officials,<sup>458</sup> covers appointed as well as elected officials, and requires submission of declarations within 30 days of taking up their responsibilities. Later the Cabinet of Ministers was instructed to draw up such forms and rules for both types of official, which so far have not been

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451 Law of the Republic of Azerbaijan On Rules of Ethics Conduct of Civil Servants, Baku, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

452 State Program of the Republic of Azerbaijan on Development of Communication and Information technologies for 2010 – 2012 (Elektron Azərbaycan), 11 August 2010, [www.president.az](http://www.president.az)

453 Regulations on the Civil Service Commission under the President of the Republic of Azerbaijan, approved by Decree of the President of the Republic of Azerbaijan 3 June 2005, [www.csc.gov.az](http://www.csc.gov.az)

454 Monitoring Report on Implementation of Open Government Partnership Action Plan for 2012 – 2015 (period of September 2012 to September 2013), Baku, 2013, publication by Economic Research Centre and Transparency Azerbaijan, <http://transparency.az/alac/files/AHP%20Monitoring%20Hesabati-%20AZE.pdf>

455 Website of the Ministry of Finance, [www.maliyye.gov.az](http://www.maliyye.gov.az)

456 Monitoring Report on Implementation of Anti-Corruption Action Plan for 2012-2015, September 2013, publication by Constitution research Foundation and Transparency Azerbaijan, [www.transparency.az](http://www.transparency.az)

457 The Law on Combating Corruption, 1 January 2005, [www.e-qanun.az](http://www.e-qanun.az)

458 Law on Approval of Rules for Submission of Financial Information by Officials, 24 June 2005, [www.e-qanun.az](http://www.e-qanun.az)

carried out. Therefore, though the law exists on paper, lack of supporting legislation prevents the law from enforcement.

The mechanism for verification of financial declarations has not yet been set up and the legislation does not define an independent auditing of the executive branch's asset disclosure forms.

In recent years public agencies were active in creating websites that contain rather comprehensive information on their activities.<sup>459</sup> As for the records public sector keeps on citizens, the process of disclosure of such information has just begun. In November 2013 the list of recipients of targeted social aid was published on the website of the Ministry of Labour and Social Protection of the Population,<sup>460</sup> in line with recommendations from CSOs, including Transparency Azerbaijan.<sup>461</sup> The State Social Protection Fund, a body regulating social insurance and provision of pensions in Azerbaijan, is working on preparation of mechanisms to enable citizens to track their payments to the fund.<sup>462</sup>

Procedures for recruitment to lower grades of the civil service handled by the Civil Service Commission are transparent and efficient. Unfortunately, those do not extend onto all medium and senior level classifications of administrative positions, or to the law enforcement bodies that handle their own recruitment.<sup>463</sup>

## Accountability (law): 75

*To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?*

The existing laws of Azerbaijan provide a framework for holding civil servants accountable for the acts of corruption offences. The Law on Combating Corruption has identified the list of acts and cases of inaction by civil servants that constitute corruption offences, which can implicate disciplinary, civil, administrative or criminal responsibility. Articles 308-312 of the Criminal Code define the corruption-related and other civil service offences and set penalties for these violations.

Azerbaijan's law requires both internal and external audit of state bodies. Under the Law on Internal Audit, Audit Committees established within individual agencies are liable for developing and executing internal audit policy and providing for audit control.<sup>464</sup> The Chamber of Accounts is also required to conduct regular external audits of these institutions. However, the Chamber only publishes a summary of its audit report on its website. There is no explicit provision in the Constitution to guarantee the independence of the country's main audit office, the Chamber of Accounts.

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459 Monitoring of the websites of Azerbaijan public agencies, 2013-2014 by Multimedia Center, [www.cit.az](http://www.cit.az)

460 List of recipients of Targeted Social Aid, [www.mlspp.gov.az](http://www.mlspp.gov.az)

461 Recommendations to the Ministry of Labor and Social Protection of Population to Improve Transparency in Distribution of Targeted Social Aid, from Transparency Azerbaijan presented on 11 March 2013, [www.transparency.az](http://www.transparency.az)

462 Interview with prof. Salim Muslimov, chairman of the State Social Protection Fund, 5 November 2013, [www.day.az](http://www.day.az) reprinted by [www.sspgf.go.az](http://www.sspgf.go.az)

463 Recommendations to the Civil Service Commission to Improve Transparency in Recruitment to the Civil Service, from Transparency Azerbaijan presented on 2 February 2011, [www.transparency.az](http://www.transparency.az)

464 The Law of Azerbaijan Republic On Internal Audit, Article 1, Baku, 22 May 2007, [www.audit.gov.az](http://www.audit.gov.az)

It is incumbent on the Prime Minister to report about the activities of the Cabinet to the members of Parliament annually, in the fifth meeting of spring session,<sup>465</sup> however, individual ministers do not report to the Parliament.

Azerbaijan lacks an official policy on protection of whistleblowers, but the government has made clear its intention to develop a law on whistleblowing. Under the National Anti-Corruption Action Plan for 2012-2015, the General Prosecutor's Office, the Ministry of Justice and the Commission on Combating Corruption have been tasked with developing a draft law on whistleblower protection by 2014.<sup>466</sup> The document has yet to be completed.<sup>467</sup>

There are no legal provisions to protect whistleblowers for reporting procurement fraud either. However, the Law on Public Procurement does provide certain mechanisms for the contractors to lodge a complaint of potential misconduct in procurement procedures. The State Procurement Agency, which is tasked among other responsibilities with supervising legality of procurement of goods, works and services on a competitive basis and performance of contracts, can suspend procurement procedures for seven banking days if it finds a violation of law. It can also raise the matter of cancellation of tender results to the procuring agency. Also, if a procuring agency discovers fraud on the part of the contractor to influence the decision-making concerning the procurement procedures, the agency refuses the contractor's offer; suspends its participation in future tenders; provides respective public authorities with information for the investigation of fraud; and adds information about the rejection of the offer and its reasons in the report on procurement, which the respective contractor is also informed of.<sup>468</sup>

Azerbaijan's Constitution recognises the right of citizens to make an appeal to government and the law provides mechanisms for exercise of this right. The right of appeal to state bodies is enshrined in the Constitution, which requires public authorities to respond to each application submitted to them individually or collectively.<sup>469</sup> The Law on Civil Service enumerates as one of the duties of the civil servant to "timely consider appeals of the citizens, enterprises, institutions and organisations, and impartially settle them within the limits of their authority".<sup>470</sup> The procedural aspects of handling complaints are regulated in accordance with the Law on Procedures for Review of Citizen Applications and Law on Administrative Proceedings.<sup>471</sup> <sup>472</sup> The Law on Procedures to Review Citizens Appeals requires the citizens to file their proposals and statements to public institutions, which are directly responsible for respective issues. If the settlement of the issue is not in the competence of the body, which is appealed, it sends the application to the relevant organisation no later than 5 days and informs the applicant about it. The application is considered reviewed, if the subject matter of the application is investigated and the citizen is provided with a thorough response. The response letter to the citizen must be signed by the head of the respective organisation or enterprise. The information about the identity, place of residence or employment of the applicant must be indicated in the letter, as anonymous applications are not considered by public authorities.

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465 Constitutional Law on additional guarantees of the right of the solution of the question of trust of Milli Majlis of the Azerbaijani Republic to the Cabinet of Ministers of the Azerbaijani Republic, Baku, 24 December 2002, [www.millimajlis.gov.az](http://www.millimajlis.gov.az)

466 Monitoring Report on Implementation of Anti-Corruption Action Plan for 2012 – 2015, September 2013, publication by Constitution research Foundation and Transparency Azerbaijan, [www.transparency.az](http://www.transparency.az)

467 Effective anti-corruption policy yields results," 23 July 2013, Kamran Aliyev, Azerbaijan newspaper, [www.azerbaijan-news.az/index.php?mod=3&id=26693](http://www.azerbaijan-news.az/index.php?mod=3&id=26693)

468 The Law Of The Republic Of Azerbaijan On Public Procurements, Article 12, approved by the Presidential Decree dated 29 January, 2002, No 668, [www.tender.gov.az](http://www.tender.gov.az)

469 The Constitution, Article 57

470 Law on Civil Service, Article 18.0.5

471 The Law on Procedures to Review Citizens Appeals, 10 June 1997, [www.e-qanun.az](http://www.e-qanun.az)

472 Law on Administrative Proceedings, 1 January 2007, [www.e-qanun.az](http://www.e-qanun.az)

## Accountability (practice): 50

*To what extent do public sector employees have to report and be answerable for their actions in practice?*

The current accountability framework has certain merits; however, there are certain problems along with accomplishments in the implementation of these regulations. This is evidenced by numerous complaints filed by citizens to the hotline at the Department of Combat against Corruption under the Prosecutor General's office, which regularly presents its reports to the general public, civil society and media.<sup>473</sup>

The establishment of ASAN Service has made considerable contribution towards tackling the problem of corruption at the front offices. Even though, at the time of writing, no public opinion survey had been conducted to evaluate its performance, the public mood appears generally favourable to the newly introduced institution, primarily for the quality of service delivery. A growing number of people are turning to these centres for public services.<sup>474</sup>

The government has explicitly stated that combating corruption is one of the country's priorities, and there is political will to carry it through. As recently as 10 January 2014, the President stated at the Cabinet of Ministers meeting, that the employees of the central and local public authorities involved in corruption must be relieved of their posts and face criminal charges.<sup>475</sup>

The annual report of the Commission for 2012 indicates that there were 23 complaints by citizens to the Commission on ethical violations of civil servants. Of these complaints, 3 were settled in favour of the applicants, 11 were sent to the respective bodies for investigation, and 7 were rejected.<sup>476</sup>

## Integrity Mechanisms (law): 75

*To what extent are there provisions in place to ensure the integrity of public sector employees?*

The main ethical framework for civil servants is contained in the Law on Rules of Ethical Conduct of Civil Servants, which was entered into force in 2007. The law establishes principles of ethical behaviour in public service and sets out legal mechanisms to put them into operation. On the subject of conflict of interest, the law prohibits the use by a civil servant of his/her service authority for his/her private interest. A public employee bears responsibility for reporting to the authorities about the nature and scale of the conflict of interest, if there is any. There is also a separate draft law on prevention of conflict of interest, which has been in the Parliament for several years now. Despite the fact that the government has collaborated with the Council of Europe to bring the quality of the draft law in line with the European standards, the pace of the work has remained very slow over the years.

Both the Law on Rules of Ethical Conduct and the Law on Combating Corruption impose stringent rules on acceptance of gifts by civil servants. The similar clauses in these acts outlaw requesting or receiving gifts that may influence or appear to influence the impartiality of the civil servant, including rewards for the relatives of the civil servant. The law sets the annual limit of 55 manat (US\$70) for

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473 Top Azerbaijani prosecutor announces statistics on crimes for this year, Azernews agency, 2 October 2013, [www.azernews.az/azerbaijan/60190.html](http://www.azernews.az/azerbaijan/60190.html)

474 Report on Combating Corruption: work done and problems, 23 July 2013, [Tapdig Farhadoghlu](http://Tapdig.Farhadoghlu.VoiceofAmerica.com/content/korrupsiya_hesabat/1707299.html), Voice of America, [www.amerikaninsesi.org/content/korrupsiya\\_hesabat/1707299.html](http://www.amerikaninsesi.org/content/korrupsiya_hesabat/1707299.html)

475 Civil servants involved in corruption must be immediately relieved of their jobs, 10 January 2014, Mediainfo, [www.mediainfo.az/siyaset/22151](http://www.mediainfo.az/siyaset/22151)

476 2012 Annual Report of Civil Service Commission, [www.csc.gov.az](http://www.csc.gov.az)

gifts received from natural or legal persons.<sup>477</sup> Gifts with the value above this threshold are considered the property of the state. Doing otherwise constitutes a corruption offence under the Law on Combating Corruption.

The Act also prohibits the use of public property for purposes unrelated to the exercise of service duties as a civil servant. The civil servant is liable for efficient use of state property, including funds, communication, computer and other communicative systems, vehicles and other logistical provisions at his disposal.<sup>478</sup> A civil servant cannot use the information acquired during his service for his private gain.<sup>479</sup>

When it comes to governing principles of ethical conduct, most public agencies, including those which are not covered under the previously mentioned act, have their own codes of conduct, which can be accessed on the CSC's website.<sup>480</sup>

Article 9 of the Law on Combating Corruption enumerates corruption-related offences, including bribery of/by public sector employees, which give rise to disciplinary, civil, administrative and criminal responsibility (10.1). When it comes to public procurement however, bidding documents do not contain a specific anti-corruption clause, like Integrity Pacts recommended by Transparency International.<sup>481</sup>

## Integrity Mechanisms (practice): 50

*To what extent is the integrity of public sector employees ensured in practice?*

Judging by violations of code of conduct published by the Civil Service Commission,<sup>482</sup> as well as by some individual agencies, and by the frequent dismissals of officials for ethical violations<sup>483</sup> available through media, provisions of the laws are not always enforced.

Regulations requiring professional training were adopted in 2009, but entered into force as of 1 January 2010.<sup>484</sup> More concrete obligations of the state bodies to educate employees are foreseen in some sector regulations. For example, Article 2.9 of the Law on Rules of Ethical Behaviour for Civil Servants<sup>485</sup> provides for rights and obligations with regard to the conduct of training programmes. That being said, in order to ensure regularity of ethical trainings, the Commission confirmed the Action Plan for 2012-2015 by Order No 163K on 25 September 2012.<sup>486</sup> The 10th paragraph of the Action Plan envisages arrangement of regular educational programmes and training courses on ethical conduct of civil servants. Pursuant to the Action Plan, the Commission sends letters on issues of ethical conduct to state bodies in the beginning of each year. Those letters, in accordance with articles 20.0.2 and 22.1.4 of the Law on Rules of Ethical Conduct of Civil Servants, request state bodies to submit to the Commission annual information covering regular and continuous training courses arranged by them on issues related to ethical conduct of civil servants, complaints filed in connection with violations of ethical rules and administrative penalties imposed.

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477 Law on Combating Corruption, Article 8.2

478 Rules of Ethical Conduct of Civil Servants, Article 16

479 Rules of Ethical Conduct of Civil Servants, Article 17.3

480 Rules of Ethical Conduct of Civil Servants for individual agencies, [www.csc.gov.az](http://www.csc.gov.az)

481 Transparency Azerbaijan [www.transparency.org](http://www.transparency.org)

482 Civil Service Commission, [www.csc.gov.az](http://www.csc.gov.az)

483 Salim Muslimov dismissed 14 heads of medical-social commissions and asked them to leave the meeting, 29 November 2013, APA News Agency <http://az.apa.az/news/322791>

484 Cabinet of Ministers Decree No 44, Rules on Financial Support and Types, Forms, Terms of Additional Professional Training for Public Servants, 19 March 2009, [www.president.az](http://www.president.az)

485 Law on Rules of Ethical Behaviour for Civil Servants, 31 May 2007

486 Letter No 02/07 – 07/0826 from Vafadar Misirov, deputy chairman of the Civil Service Commission to Transparency Azerbaijan dated 23 May 2014

The Commission has taken steps to develop uniform standards of training courses on ethical issues and has prepared a training module.<sup>487</sup> The training module is composed of the training programme, a presentation on ethical issues, a methodical manual, a video presentation on ethical rules and a guide on ethics.

In practice public officials are thought to receive sufficient training both in professional and managerial skills, as well as on ethics and behaviour. Those are conducted by agencies themselves, as well as by the Civil Service Commission.<sup>488</sup> Information on those trainings is included in the annual reports of the Commission,<sup>489</sup> as well as of many public agencies published on their websites. However the content of these trainings and their impact is not disclosed in detail.<sup>490</sup>

Core values are included in the employment contracts' job descriptions (or internal instructions). Many agencies have their own codes of conduct, which are known to public employees.

Information on enforcement of the anti-corruption clauses in the bidding documents is not available.

## Public education: 50

*To what extent does the public sector inform and educate the public on its role in fighting corruption?*

The Civil Service Commission has taken some important steps towards enhancing accessibility of information to the public. These steps inter alia include the regular update of the Commission's website and development of an effective working relationship with Azerbaijan's mass media and civil society organisations. The monitoring by local NGOs of the Commission's performance also indicates that in terms of utility, the Commission's website fares better than many other state agencies.<sup>491</sup>

Both of the two important government Action Plans for 2012-2015<sup>492</sup> set forth cooperation with civil society, in the combat against corruption and anti-corruption education of the general public. According to a monitoring report by civil society,<sup>493</sup> educating the general public on anti-corruption is assessed as successful, and discussions together with representatives of civil society on anti-corruption issues aimed to educate the general public appear on national and local television, for example, the "Pulse of the Day" programme on AzTV.

There are several institutional instruments for cooperation between the government and civil society in the field of the fight against corruption, the most prominent being Information and Cooperation Network of NGOs for Increasing Transparency and Combating Corruption,<sup>494</sup> working on the basis of a memorandum signed with the Anti-corruption department under the Prosecutor General's office. Other instruments (though not directly dealing with the anti-corruption issues) are Public Council at

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487 Letter No 02/07 – 07/0826 from Vafadar Misirov, deputy chairman of the Civil Service Commission to Transparency Azerbaijan dated 23 May 2014

488 Courses have been arranged, Sia news agency, 1 December 2012 <http://sia.az/az/news/culture/323339>

489 Annual Report on the performance of the Civil Service Commission for 2013, [www.csc.gov.az](http://www.csc.gov.az)

490 Discussions by the civil society during 29 November 2013 presentation of the Monitoring Report on Implementation of Anti-Corruption Action Plan for 2012-2015, September 2013, publication by Constitution Research Foundation and Transparency Azerbaijan, [www.transparency.az](http://www.transparency.az)

491 Letter from the Civil Service Commission to Transparency Azerbaijan dated 2 December 2013, No 01/07-07/2494

492 Presidential order on Approval of the National Anti-corruption and Open Government Partnership Initiative Action Plans for 2012 – 2015, 5 September 2013, [www.president.az](http://www.president.az)

493 Monitoring Report on Implementation of Anti-Corruption Action Plan for 2012 – 2015, September 2013, publication by Constitution Research Foundation and Transparency Azerbaijan, [www.transparency.az](http://www.transparency.az)

494 Information and Cooperation Network of NGO's acting in the field of combating corruption, press release by the national Commission on Combating Corruption, 30 April 2009, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)



the Ministry of Labor and Social Protection<sup>495, 496</sup> established upon internal order of the Ministry<sup>497</sup> and Council of Trustees for Penitentiary Institutions under the Ministry of Justice.<sup>498</sup> The other instrument is Azerbaijan Partnership for Transparency NGO Platform<sup>499</sup> that was created on 5 August 2013, to jointly deliver results of monitoring of implementation of the government's obligations under OGP and National Anti-corruption Action Plans. Also, in order to develop relations between the Commission and non-governmental organisations and to discuss the courses of future activities there was held a meeting of Cooperation Network comprised of the Commissioner and civil society organisations and the establishment of the network was confirmed by order of the Commission's head.<sup>500</sup>

Monitoring results show that about 40 per cent of all actions envisioned by OGP and National Anti-corruption Action Plans are based on recommendations coming from civil society.

Though in the past government officials were sceptical with regard to recommendations from civil society, now recommendations are heard. For example, in the result of recommendations given by civil society organisations, including Transparency Azerbaijan in 2010-2013, the following legal and institutional changes took place:

The government is establishing free legal advice centres run by the Ministry of Justice.

Telephone/online hotlines have been established by most national agencies, and as well as by civil society<sup>501</sup> and media.<sup>502</sup>

Substantial changes have been made to simplify and streamline procedures of recruitment for civil service (i.e. number of documents required from applicants significantly reduced; on-line application tools introduced). Also, transparency of the recruitment process was improved due to monitoring by civil society of all stages of recruitment (i.e. video recording of final interviews introduced; civil society representatives invited to sit on the commission reviewing complaints from applicants).

Provision of utilities has been enhanced by the introduction of meter-produced bills and online payment tools for utilities, which eliminate many corruption possibilities, as compared to onsite cash-based fee collection by local inspectors.

Establishing of civil society oversight mechanisms over the distribution of social benefits to vulnerable groups, reception of applications for targeted social aid via post offices and online tools, considerably limits possibilities of bribe extortions.

The recent changes to the Rules on Notary Public Activities allow the notary public to obtain on behalf of customers a non-encumbrance certificate on real estate.

The State Registry of Real Estate began to receive applications and supporting documents from citizens electronically for registration of real estate.

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495 On Public Council, <http://www.mlspp.gov.az/az/pages/174>

496 Letter from the Ministry of Labor and Social Protection to Transparency Azerbaijan dated 26 August 2011

497 Order on establishing the Public Council under Ministry of Labor and Social Protection LSPP dated 18 July 2001

498 Established by decree of the Cabinet of Ministers No 16, 15 January 2001, [www.president.az](http://www.president.az)

499 Azerbaijan Partnership for Transparency (APT) project: Engaging Civil Society in Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, <http://transparency.az/alac/files/book.pdf>

500 Letter No 02/07-07/0826 from Vafadar Misirov, deputy chairman of the Civil Service Commission to Transparency Azerbaijan dated 23 May 2014

501 Fund of Struggle against Corruption <http://www.aznocorruption.az>

502 Avtostop radio program, [www.106-3.fm.az](http://www.106-3.fm.az)



## Recommendations:

- To expedite adoption of the laws on conflict of interest and protection of whistleblowers.
- To develop and enforce normative-regulatory mechanisms of disclosure of assets by civil servants.
- To constantly increase the reimbursement rate of the civil servants with an aim to bring it to the level competitive with the private sector.
- To expand the number of ASAN centres and the scope of their services.
- To design standards and rules for reporting of public agencies to the general public, including their individual budgets.

## Reducing corruption risks by safeguarding integrity in public procurement: 25

*To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?*

The State Procurement Agency, established on 16 May 1997 by Presidential Decree,<sup>503</sup> is an independent body that enforces the state policy in the sphere of public procurement of goods, works and services (hereinafter goods), whereas individual procuring entities (state enterprises and organisations, including those institutions, in the charter capital of which the state share makes up 30 per cent or more) bear direct responsibility for acquisition of goods. The Charter laying down the Agency's duties was approved by a Presidential Decree dated 20 February 2003.<sup>504</sup> The Agency's spheres of responsibility include: participating in the development and enhancement of the legal framework governing public procurements, overseeing the legality of the procurement of goods by state agencies and enforcement of procurement contracts, reviewing the disputes and taking measures against the violators of the law on public procurement, providing methodical and organisational assistance to procuring agencies, making documents on public procurement accessible to the public, and developing and submitting an annual report on public procurement to the President and the Cabinet of Ministers.<sup>505</sup> In Azerbaijan the authority to carry out the procurement of goods resides in individual contracting agencies. Tender Commission, a temporary task group set up by a contracting agency carries out procurement procedures on behalf of the agency.<sup>506</sup> Under the Law on Public Procurement, the Commission is independent and takes its decision in accordance with that law "absolutely independently".<sup>507</sup> The chairman and members of the Commission must remain fair and neutral when performing their duties.<sup>508</sup>

Article 17 of the Law on Public Procurement stipulates that public procurements are to be made through open bidding when the amount of the procured goods or services exceeds the legal minimum. This amount, as determined by the supporting legislation<sup>509</sup> is 50 thousand manat (US\$63,700) for goods, services and works. The minimum and maximum thresholds of public procurements through request for quotation are 5 thousand and 50 thousand manat (US\$6,370 – US\$63,700). All procurements under 5 thousand manat are free of these procedures. If the

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503 Presidential decree on Establishment of the State Procurement Agency, 16 May 1997, [www.president.az](http://www.president.az)

504 The Statutes of the State Procurement Agency, 20 February 2003, [www.president.az](http://www.president.az)

505 Law on Public Procurement, 29 January, 2002, Article 4, [www.tender.gov.az](http://www.tender.gov.az)

506 Law on Public Procurement, Article 2, 29 January, 2002, [www.tender.gov.az](http://www.tender.gov.az)

507 Law on Public Procurement, Article 2, Article 38.1, 29 January, 2002, [www.tender.gov.az](http://www.tender.gov.az)

508 Law on Public Procurement, Article 38.1, 29 January, 2002, [www.tender.gov.az](http://www.tender.gov.az)

509 Decision of the Collegiums of the Ministry of Finance, No Q-12, 30 May 2013, [www.tender.gov.az](http://www.tender.gov.az)

estimated price of goods is above 10 thousand manat (US\$12,700), then the announcement about it must be placed "on an internationally well-known media outlet and the internet".

Furthermore, in cases when the amount of goods and services to be procured is over 5 billion manat (US\$6.36 billion) by organisations that receive at least 1.5 billion manat (US\$ 1.9 billion) from the state budget, the representatives from the Ministry of Finance, Ministry of Economy and Industry and representatives of respective central executive authorities relating to the tender subject are required to be included in the Commission.<sup>510</sup>

The Law on Public Procurement defines open bidding as a general method of public procurement. Although the exceptions to open bidding are regulated by the Law on Public Procurement, the law does not effectively ensure that their number is kept to a minimum. The law does not indicate in a straightforward language that the use of other procurement methods, which include two-stage tenders, tenders with limited participation, closed tenders, and single source procurement, must be "the exception rather than the rule". Thus, the law leaves the contracting agencies considerable discretion in selecting a method of procurement. As indicated, the Agency submitted a package of proposals to limit the use of non-competitive procurement methods to the Cabinet of Ministers.<sup>511</sup>

The Law on Public Procurement lays down qualification requirements for contractors and qualification compliance determination procedures, which bidders must satisfy to be able to participate in a tender. It also provides the list of standard documents, which the bidders must submit to the Tender Commission to be eligible to participate in the bidding.<sup>512</sup> The Law does not discriminate against foreign bidders, except in the special cases determined by regulations governing public procurement.<sup>513</sup> A procuring agency is obligated to include in the procurement procedures report (submitted to President and the Cabinet of Ministers), the information pertaining to the process of a successful bidders' selection by the Commission, but this report is not made available to the public.

In its current form, the Commission is comprised of the experts and officials of a procuring agency (with the head of the Commission being a senior official from that agency). However, the Law gives the prerogative to involve independent experts in the Commission's work to the administration of a procuring agency. Thus, Article 27.2 states that the agency brings in a specialist for assessment of the price of goods to be purchased in "important cases". Obviously, an agency's staff may not always measure up to such important undertakings as needs assessment, selection of investment and its quantity. Therefore, one of the shortcomings of the Law is that it does not clearly mandate the participation of external specialists. Additionally, the Commissions do not actively engage the representatives from civil society in the procurement process.<sup>514</sup>

The Law also expressly rules out the disclosure of information pertaining to study, assessment and comparison of tender proposals, offers and quotations, except for their summary.<sup>515</sup> This limitation creates barriers for civil society and other stakeholders to research on how efficiently public agencies perform procurements.<sup>516</sup> Including disinterested professionals and civil society representatives into the activities of the Commissions, and expanding the scope of information for

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510 About us, the website of the State Agency for Procurement, [www.tender.gov.az](http://www.tender.gov.az)

511 Interview with Alakbar Guliyev- head of the Administration of Public Procurement Agency by author, 7 November 2013

512 Law on Public Procurement, Article 28, 29 January, 2002

513 Law on Public Procurement, Article 8.1, 29 January, 2002

514 Presentation by Transparency Azerbaijan at the work shop organised by Transparency Ukraine on Comparative Analysis of Transparency of the System of Public Procurement in Eastern Partnership Countries, October 2013, Lvov, Ukraine

515 Law on Public Procurement, Article 10.3.2, 10.1.5, 29 January 2002

516 Interview with Vugar Bayramov, Center for Economic and Social Studies by the author, 25 April 2014

public disclosure will enhance the accountability and transparency of the decision-making process in the procurement.

The Agency keeps the register of basic statistics on public procurement, which can be accessed electronically (for the years 2012-2013-2014 only). The data includes the names of procuring agencies and the contractors (successful bidders), goods purchased and the price of procurement projects. Significant details, such as bidding related documents, the names of competing contractors and the reasons for the successful bidders' are not available.

Introducing e-tendering has been on the Agency's agenda for some time now, but there has not been much progress on that front. The Agency, in compliance with the Cabinet of Minister's required list of electronic services,<sup>517</sup> has introduced three e-services on its website, but they cover rudimentary aspects of the procurement process. The Agency plans to introduce electronic tendering in 4 phases, and as of the date of writing, it has finished the first stage so far:

- Placing tender announcements on the website.
- Providing bidding documents on the website.
- Submitting bids electronically.
- Evaluating bids electronically.

The Chamber of Accounts has not developed assessment of public procurements, although methods and measures of holding tenders are very important for the system of checks and balances.<sup>518</sup>

The State Procurement Agency has proposed a package of amendments to the Law on Public Procurement in order to increase the effectiveness of anti-corruption measures and enhance transparency and competitiveness of the bidding process. The amendments were submitted to the Cabinet of Ministers on 12 November 2012 and are yet to be approved.<sup>519</sup> The suggested changes include:

- Formal requirement of a procurement planning by individual agencies.<sup>520</sup>
- Introduction of general principles of e-procurement.
- Explicit guarantees ruling out discrimination against bidders.
- Disclosure of the estimated price of goods to be procured.
- Simplification of the bidding documents.
- Prohibition of the use of criteria other than those indicated in the law to evaluate the bidding proposals.

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517 Cabinet of Ministers Decision No 255 on amendments to the Decision N 191 of the Cabinet of Ministers of the Republic of Azerbaijan on "Guidelines for provision of e-services in specific areas, by central executive authority institutions" and the "List of e-services", 17 October 2012

518 Are Tenders Transparent in Azerbaijan? Interview of Rashad Hasanov, Centre for Economic and Social Studies, Olaylar agency, 21 January 2103, [www.olaylar.az/news/economy/27667](http://www.olaylar.az/news/economy/27667)

519 Report on the Results of Procurements by state enterprises and organisations of the Republic of Azerbaijan in 2012, <http://tender.gov.az/new/index.php?inc=report&rep=2012>

520 Most agencies lack short and long term procurement plans, a situation which adds unpredictability to the purchases made by contracting agencies.

- Limits on the use of non-competitive procurement methods.
- Lowering the participation fee for tenders.

Once approved and enforced, these amendments will significantly enhance transparency and efficiency of the public procurement system in Azerbaijan. Reforms in this sector must be accelerated. According to Azerbaijan civil society monitoring,<sup>521</sup> only 17 per cent of the activities on improvement of transparency in the public procurement, planned within three and a half years, have been implemented by the end of the first year of the National Anti-Corruption Action Plan.

#### Additional recommendations may include:

- To make amendments to the Law on Public Procurement to mandate the participation of external specialists in the Work of Tender Commission at all stages of the procurement process.
- To make public, procurement procedures reported by all procuring parties submitted to the President and the Cabinet of Ministers; including bidding related documents, the names of competing contractors, and the reasons for the successful bidders' winning.
- To develop and conduct assessment of the public procurement by the Chamber of Audit.
- To expedite introduction of e-services and create an efficient system of e-procurement.
- In line with the new Law on Public Participation,<sup>522</sup> involve the representatives of civil society into consultations and monitoring of the procurement process.

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521 Monitoring Report on Implementation of the National Anti-corruption Action Plan for 2012-2015, publication by Constitution Research Foundation and Transparency Azerbaijan, Baku 2013, [www.transparency.gov.az](http://www.transparency.gov.az)

522 The Law on Public Participation, adopted on 22 November 2013, to enter into force 1 June 2014

## 5. LAW ENFORCEMENT AGENCIES

### Summary

Law enforcement is going through a reform process in Azerbaijan. Reforms are yielding positive results; however, law enforcement in Azerbaijan needs to further improve its efficiency and increase the level of trust of the population.

There are eight law enforcement agencies in Azerbaijan. The main law enforcement agencies include: the Prosecutor's Office, the Ministry of Internal Affairs (which administers the National Police) and the Ministry of National Security.

The Prosecutor's Office, being part of the judicial system, files and investigates criminal cases; conducts operational searches; controls the execution and application of the law by other law enforcement agencies; supports prosecution in courts; raises claims in court; and contests court decisions. The Ministry of Internal Affairs is the central executive agency responsible for public order and security; it prevents criminal offences and files criminal investigations.

Though there are claims that law enforcement agencies are not corruption free, in recent years, the steps of the government to improve the situation in the police yielded results reflected in the *Global Corruption Barometer 2013* by Transparency International.

Under the law, the law enforcement agencies are independent; however, some experts believe that the investigative and enforcement activities of the law enforcement agencies can be influenced by political factors, or the government.

While the Prosecutor's Office and the Ministry of Internal Affairs provided ample information for this assessment, the Ministry of National Security (MNS) did not respond to our questionnaire. Moreover, in contrast with the MNS, the Prosecutor's Office and MIA make information on their activities publicly available every six months and publish it in their official websites, circulate it in the media and present it to civil society.

This pillar evaluates the two main law enforcement agencies of Azerbaijan in terms of their capacity, governance and role played in the National Integrity System. The MNS is left out, as practically no information is available.

#### LAW ENFORCEMENT AGENCIES

#### Overall Pillar Score 61/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 75/100	Resources	-	100
	Independence	75	50
Governance 58/100	Transparency	75	50
	Accountability	75	50

	Integrity	75	25
Role 50/100	Corruption prosecution	50	

## Structure and organisation

There are eight law enforcement agencies in Azerbaijan. The main law enforcement include: the Prosecutor's Office, the Ministry of Internal Affairs which administers the National Police, and the Ministry of National Security.

The Prosecutor's office, being part of the judicial system, files and investigates criminal cases; conducts operational searches; controls the execution and application of the law by other law enforcement agencies; supports prosecution in courts; raises claims in court; and contests court decisions.<sup>523</sup> According to the Law on the Prosecutor's Office,<sup>524</sup> the Prosecutor's Office is a single centralised body, with district and specialised prosecutors reporting to the Prosecutor General.

The Ministry of Internal Affairs is the central executive agency responsible for public order and security; it prevents criminal offences and files criminal investigations.<sup>525</sup> The Ministry of National Security is a central executive authority which carries out the competencies as set forth by the legislation of the Republic of Azerbaijan, in the fields of intelligence, counter-intelligence, protection of state secrets, revealing, preventing, precluding and detection of crimes.<sup>526</sup> Corruption cases are investigated by the Department of Combating Corruption under the Office of Prosecutor General.

Thus, these three agencies have a broad range of respective functions, while the other five law enforcement agencies are authorised to deal with crimes in specific areas through their internal investigation offices. These include the following government institutions: Ministry of Taxes, Customs Committee, Ministry of Justice, State Border Service and Ministry of Emergency Situations. Such decentralisation is believed to impede efficient organisation of the investigation process.<sup>527</sup>

## Assessment

### Resources (practice): 100

*To what extent do law enforcement agencies have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?*

All law enforcement agencies have sufficient budgets to perform their basic duties and mandates. Salaries in the Ministry of Internal Affairs are higher than in the respective Ministries of neighbouring

<sup>523</sup> Constitution of Azerbaijan Republic, Article 133, 12 November, 1995 (entered into force on 27 November), [www.constcourt.gov.az/laws/26](http://www.constcourt.gov.az/laws/26)

<sup>524</sup> Article 2, Law on the Prosecutor's Office, 7 December 1999, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

<sup>525</sup> Website of MIA [www.mia.gov.az/](http://www.mia.gov.az/)

<sup>526</sup> Website of MNS [www.mns.gov.az/en/](http://www.mns.gov.az/en/)

<sup>527</sup> Interview with independent lawyer Samir Isayev by the author, 22 April 2014

counties.<sup>528</sup> One of the major problems here is absence of full coverage by medical insurance of the police staff and their family members.<sup>529</sup> The neighboring Georgia covers the police staff and their family members with full medical insurance. During the last 20 years the budget allocations for the MIA have been increased by a factor of 12.<sup>530</sup> On the average, 81 per cent of this amount is allocated for salaries and other social benefits for the personnel. At the same time the MIA is supplied with new and modern technical equipment.<sup>531</sup>

The Prosecutor's Office is also equipped with modern equipment and professional staff. In particular, the material and technical base of the Anti-Corruption department was strengthened and a ceremony, opening a new administrative building, was conducted on 30 September 2013.<sup>532</sup>

The law enforcement staff regularly participates in international, regional and local conferences and training programmes, including those organised by the International Anti-Corruption Academy<sup>533</sup> and other international organisations, such as the UN, NATO, OSCE, etc.<sup>534</sup>

## Independence (law): 75

### *To what extent are law enforcement agencies independent by law?*

The law sets provisions for neutrality and independence of law enforcement. Article 5 of the Law on the Prosecutor's office sets forth that the main principle of prosecution is political neutrality.<sup>535</sup> The Article 36 of the Law on Prosecutor's Office sets provisions for independence of a prosecutor in his/her work and states that a prosecutor cannot be alienated, removed and/or dismissed from the prosecutor's system other than in cases and in line with procedures, as set forth by the same law. Interference into the performance of duties by a prosecutor, denigration of honour and dignity, threat, resistance or violence, attempt on the life, health or property of a prosecutor or his/her family member, entrails responsibility as set forth in the legislation.

Article 5 of the Police Act also regulates the activity of the police "in the field of protection of human rights and freedoms" and states that the police shall protect the rights and legal interests of all individuals without any relation to their official position or affiliation to political parties.<sup>536</sup> According to the law, a police officer shall be politically non-partisan and abstain from membership in any political party.<sup>537</sup> Along with this, apart from persons authorised by the law, no one can limit the legal activities of police, or impact or interfere in any other way.<sup>538</sup> Also, the law enforcement can defend their rights and duties in court.<sup>539 540</sup>

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528 Letter No 002-659-1213 dated 28 June 2013 by Fazil Guliyev, Deputy Minister of Internal Affairs, Head of Chief Department of Organisational Inspection

529 Interview with independent lawyer Samir Isayev by the author, 22 April 2014

530 Website of MIA <http://www.mia.gov.az/?/en/news/view/474/>

531 Letter No 002-659-1213 dated 28 June 2013 by Fazil Guliyev, Deputy Minister of Internal Affairs, Head of Chief Department of Organisational Inspection

532 Letter from Kamran Aliyev, head of Anti-corruption Department under the Prosecutor General to Transparency Azerbaijan No 02-113GIX-14, dated 3 April 2014

533 Presentation of the results of the first six months of 2013 to the civil society and media by Kamran Aliyev, head of the Anti-corruption Department, 23 July 2013, at the Prosecutor's Training Center

534 Letter from the Ministry of Internal Affairs to Transparency Azerbaijan, No 002-639, dated 30 May 2014

535 Law on the Prosecutor's Office, 7 December 1999, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

536 The Law on Police, 28 October 1999 (with latest amendments of 23 February 2010), [www.mia.gov.az](http://www.mia.gov.az)

537 Article 32, the Law on Police, 28 October 1999 with latest amendments of 23 February 2010), [www.mia.gov.az](http://www.mia.gov.az)

538 Article 32, the Law on Police, 28 October 1999 with latest amendments of 23 February 2010), [www.mia.gov.az](http://www.mia.gov.az)

539 Article 37, Law on Prosecutor's Office, 7 December 1999, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

540 Article 34, Law on Police, 28 October 1999 (with latest amendments of 23 February 2010), [www.mia.gov.az](http://www.mia.gov.az)



Appointments to the prosecution bodies are to be made on a competitive basis. General rules for competitive appointment to the Prosecutor's Office are provided in the Constitution.<sup>541</sup> Whereas written tests are handled by the Students' Admission Commission; verbal interviews are conducted by the Interviewing Commission under the Prosecutor's Office, comprised of seven members. Applicants unsatisfied with the results can file their complaints with the Prosecutor General.<sup>542</sup> Since 2002 the staff of the Prosecutor's Office is recruited through a test system and to date, 52 per cent of the personnel were employed through the test system,<sup>543</sup> which is commendable. However, it is publicly accepted that despite the fact that the first written part of the exams is carried out fairly and transparently and monitored by civil society, final interviews are held behind closed doors and eligibility criteria are not clearly stated.<sup>544</sup>

Recruitment to the Ministry of Interior Affairs is based on test exams and interview, with the procedure and requirements set forth in a legal act regulating service in the organs of interior affairs. The competition takes into account education and physical condition of applicants.<sup>545</sup> To ensure transparency of the process, parents of the candidates are also allowed to be present at the interview,<sup>546</sup> however, the recruitment process as a whole is closed to the general public. The performance assessment and promotion of the staff of the Ministry of Internal Affairs is performed through an attestation process as per the statutes.<sup>547</sup> Promotion is further regulated by a special instruction No Q12-001-13 dated 19 April 2013, that takes into account both professional and personal moral qualities of the staff.<sup>548</sup>

Under the Article 133 of the Azerbaijan Constitution, the President appoints and dismisses the Prosecutor General upon the agreement of the Parliament.<sup>549</sup> According to Article 16 of the Law on Prosecutor's Office,<sup>550</sup> the Prosecutor General's office term used to cover five years. One citizen could not be appointed to the same position more than twice. However, on 20 October 2009, amendments were made to the Law on Prosecutor's Office,<sup>551</sup> removing limitation on appointment of prosecutors, apart from specialised and district prosecutors.<sup>552</sup>

To ensure independence of a public prosecutor, the Article 84.4 of Criminal Procedures Code envisions that, a prosecutor conducting or leading a team that had conducted preliminary investigation of a criminal case cannot stand as a public prosecutor in court, as public prosecution is

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541 Article 109-32 Constitution of Azerbaijan Republic, 12 November 1995 (entered into force on 27 November), [www.constcourt.gov.az/laws/26](http://www.constcourt.gov.az/laws/26)

542 Article 2, Rules To e Competition Among the Candidates To Be Recruited to the Prosecutor's Office, approved by the order of Prosecutor General No 10/101, 3 December 2007, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

543 Letter from Kamran Aliyev, head of Anti-corruption Department under the Prosecutor General to Transparency Azerbaijan. No 02-113GIX-14 To Transparency Azerbaijan dated 3 April 2014

544 Results of monitoring of recruitment process by Transparency Azerbaijan

545 The Law on Approval of the Statutes on the Service in the Internal Bodies of Azerbaijan Republic 29 June 2001, [www.mia.gov.az](http://www.mia.gov.az)

546 Letter from the Ministry of Internal Affairs to Transparency Azerbaijan, No 002-639-1214, dated 30 May 2014

547 Article 44, The Law on Approval of the Statutes on the Service in the Internal Bodies of Azerbaijan Republic 29 June 2001, [www.mia.gov.az](http://www.mia.gov.az)

548 Letter from the Ministry of Internal Affairs to Transparency Azerbaijan, No 002-639-1214, dated 30 May 2014

549 Constitution of Azerbaijan Republic, Article 91.2, 12 November 1995 (entered into force on 27 November), [www.constcourt.gov.az/laws/26](http://www.constcourt.gov.az/laws/26)

550 Law on Prosecutor's Office, 7 December 1999, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

551 Article 16, Law on Prosecutor's Office, 7 December 1999, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

552 Azerbaijani Parliamentary Committee Adopts Law on Removing Limitation on Prosecutor General's Appointment, 5 October 2009, Trend news agency, [www.en.trend.az/news/politics/1553052.html](http://www.en.trend.az/news/politics/1553052.html)

conducted by an independent structure under the Prosecutor General - Public Prosecution Department.

## Independence (practice): 50

*To what extent are law enforcement agencies independent in practice?*

According to the law, external interference in the work of law enforcement is excluded. However, some experts believe that the investigative and enforcement activities of agencies can be influenced by political actors or the government.<sup>553</sup>

The government is reported to have used the law enforcement agencies to disperse several protest actions in 2012<sup>554</sup> (many of those actions had not been authorised by the government in advance) and to apply unnecessary force against peaceful demonstrators.<sup>555</sup> The process of arresting political activists on various grounds continued through 2013.<sup>556</sup>

During the trial, judges often support the accusation of prosecutor,<sup>557</sup> which can be seen from Azerbaijan's low ratio of non-guilty verdicts.<sup>558</sup> To be precise, the ratio in 2010 was 0.25 per cent as compared to 7.17 per cent in the UK courts.<sup>559</sup> As an investigator and a prosecutor in court are directly tied to the same institution, in some cases independence of a public prosecutor is limited and they face the risk of being an interested party in a criminal case.

Full independence of the law enforcement is yet to be achieved through further reforms.

## Transparency (law): 75

*To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agencies?*

In 2005, Azerbaijan adopted the Law on Right to Obtain Information, which established a legal framework to ensure free, unrestricted and equal access to information, as prescribed by Article 50 of the Constitution, as well as to create conditions for control by citizens on the exercising of public duties.<sup>560</sup> Even if there is a law that requires assets of law enforcement officials to be disclosed regularly anyway, under the law this information shall not be made publicly available<sup>561</sup> and lack of supporting legislation does not allow this law to be implemented in practice.<sup>562</sup>

Article 27 of the Criminal Procedure Code sets forth public nature of prosecution, i.e., material of criminal proceedings, except for circumstances safeguarding state, professional, commercial,

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553 Interview with Muzaffar Bakhishev – Head of Constitution Research Foundation Legal Reforms by the author, 17 May 2013

554 World Report 2013: Azerbaijan, by Human Rights Watch, [www.hrw.org](http://www.hrw.org)

555 Country Reports on Human Rights Practices for 2013 Azerbaijan by US Department of State [www.state.gov/j/drl/rls/hrrpt/humanrightsreport/-wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/-wrapper)

556 Nations in Transit 2013: Azerbaijan by Freedom House, [www.freedomhouse.org/report/nations-transit/2013/azerbaijan](http://www.freedomhouse.org/report/nations-transit/2013/azerbaijan)

557 Interview with Muzaffar Bakhishev, Head of Legal State Research Foundation by the author, 17 May 2013

558 Rule of Law, by Monica Martinez, Head Rule of Law, OSCE-Baku, in Spotlight on Azerbaijan, ed. by Adam Hug, publication by the Foreign Policy Center, UK, May 2012, [www.fpc.org.uk](http://www.fpc.org.uk)

559 Trial Monitoring Report 2010 by OSCE Office in Baku, [www.osce.org/baku](http://www.osce.org/baku)

560 The Law on the Right To Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

561 Law on Approval of Rules for Submission of Financial Information by Officials, dated 24 June 2005, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

562 This issue is discussed in more details in the pillar on Public Service

personal and family secrets, shall be made public<sup>563</sup>. On the other hand, on 12 June 2012 the Azerbaijan Parliament voted to limit public access to corporate information.<sup>564</sup> In other instances, corporate information can be provided to the public only with the consent of the company in question. It means that public access to many cases investigated by Law Enforcement Agencies, especially those involving corruption and assets of public officials, is closed because of the above limitations on disclosure of corporate information. MP Asim Mollazade objected to the bill stating that “changing the law will negatively affect the fight against corruption and money laundering. There are no such provisions in the legislation of the European countries”.<sup>565</sup>

According to the Law of the Azerbaijan Republic on Procedures for Review of Citizens’ Applications,<sup>566</sup> applications of citizens to government institutes shall be reviewed within one month, with the exception of cases stipulated under legislation and applications, not requiring additional review and inspection, no later than within 15 days, unless another term is stipulated under legislation.

## Transparency (practice): 50

*To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?*

According to the Law on the Right to Obtain Information,<sup>567</sup> information about criminal or administrative investigation is considered confidential until the case is sent to the court or closed; therefore, law enforcement does not disclose this information. However, the Anti-Corruption Department and the MIA regularly provide information to the media on operational activities conducted, cases filed, and cases preliminarily investigated and sent to courts and publish this information on their websites.

In 2011, the Media Rights Institute issued the State of Online Transparency Report,<sup>568</sup> which was based on the web-based resources of 67 state agencies. The Office of Prosecutor General was ranked as the most transparent in the report. According to this report, the website of MIA was also developed during the last couple of years. The Ministry of Internal Affairs meanwhile has a regularly updated website with such information, as official meetings, criminal news, job vacancy announcements, tariffs for different services provided by MIA and respective application forms. The Ministry also publishes on its website information on combating crimes, and public safety, as well as annual and interim statistical data, with analysis of the work performed by law enforcement agencies in the field of combating crime and providing public order and public safety. The Ministry is currently developing tools to enable access to this website through mobile phones.<sup>569</sup>

However, despite abundant information provided online, information of interest for the general public, i.e. the data on penalties imposed on the law enforcement officers for corruption and other offenses is not detailed and provides only general statistics on the number and types of penalties.

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563 Criminal Procedure Code, 1 September 2000, [www.e-qanun.az](http://www.e-qanun.az)

564 Amendments dated 12 June 2012 to the Law on Registration of Legal Entities and State Registry, dated 12 December/2003 and the Law on Commercial Secret, dated 4 December 2001 and Law on the Right to Obtain Information, dated 30 September 2005

565 INFORMATION ABOUT COMPANY’S FOUNDERS TO BE CONSIDERED CONFIDENTIAL IN AZERBAIJAN, TREND NEWS AGENCY, 12 JUNE 2012 [WWW.EN.TREND.AZ/NEWS/POLITICS/1553052.HTML](http://WWW.EN.TREND.AZ/NEWS/POLITICS/1553052.HTML)

566 Law on Procedures to Review Citizens’ Applications, 10 June 1997, [www.e-qanun.az](http://www.e-qanun.az)

567 Article 35.2.1, the Law on the Right To Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

568 Online Transparency of Government Organisations, report of the monitoring of websites of 67 state organisations released by the Media Rights Institute (MRI), 2011, [www.mediariights.az](http://www.mediariights.az)

569 Letter No 002-659-1213 dated 28 June 2013 by Fazil Guliyev, Deputy Minister of Internal Affairs, Head of Chief Department of Organisational Inspection

Another problem is registration of criminal cases in police offices. According to the law, the police are required to register any report of a crime and give the informer a respective written notification. Unfortunately, there are widespread reports that in practice, sometimes the local police stations are reluctant to file a case based on citizens' reports, in order to reduce crime statistics<sup>570 571</sup>. Along with this, complaints entered via a centralized telephone based hotline 102 are immediately recorded. According to the information of the Ministry, the hotline accepts over 13,000 applications annually.<sup>572</sup>

## Accountability (law): 75

*To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?*

The Prosecutor's Office is an independent institution of the judicial branch by law. Prosecutors are not required to give reasons to any other institution about the decision to prosecute or not. The prosecutor's decision can be appealed to a higher prosecutor's authority or to the court that performs judicial supervision. The accused (together with their lawyer or individually), can gain access to the materials of criminal proceedings before other participants of the criminal case<sup>573</sup> to ensure fair prosecution, whereas the victim, claimant or defendant in a civil case can access the materials only in the presence of their lawyer.

Whereas, under article 12 of the Law on Police, supervision of police activity is implemented both intra-corporate (by MIA) and extra-corporate by another respective executive body (President of Republic of Azerbaijan). Supervision of compliance, with the legislation, by the police service, rests with the Prosecutor's Office and courts.<sup>574</sup>

According to the Law on Police, citizens may file complaints against police misconduct with the Ministry of Internal Affairs through administrative procedures. Furthermore, under the Law on Ombudsman,<sup>575</sup> citizens may complain to the Ombudsman of police actions as well. According to Article 33 of the Law on Police, police officers are responsible for their actions under the legislation and can be investigated and prosecuted for their actions.

Under the law,<sup>576</sup> the Prosecutor's office supervises compliance with the law, of other law enforcement agencies in investigation, inquest and operational search, but decentralisation of these offices makes supervision extremely difficult.<sup>577</sup>

## Accountability (practice): 50

*To what extent do law enforcement agencies have to report and be answerable for their actions in practice?*

The Department for Combating Corruption under the Office of Prosecutor, organises semi-annual press conference for the mass media and representatives of NGOs, where it discloses information

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570 Interview with Muzaffar Bakhishev, Head of Legal State Research Foundation by the author, 17 May 2013

571 Transparency Azerbaijan ALAC data base

572 Letter from the Ministry of Internal Affairs to Transparency Azerbaijan, No 002-639-1213 , dated 30 May 2014

573 Criminal Procedure Code, 1 September 2000, [www.e-qanun.az](http://www.e-qanun.az)

574 The Law on Police, 28 October 1999 (with latest amendments of 23 February 2010), [www.mia.gov.az](http://www.mia.gov.az)

575 The Law on Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

576 Criminal Procedure Code, Criminal Procedure Code, 1 September 2000, [www.e-qanun.az](http://www.e-qanun.az)

577 Interview with Muzaffar Bakhishev, Head of Legal State Research Foundation by the author, 17 May 2013

about their activity in their interim and yearly reports.<sup>578 579</sup> The MIA also maintains relations with civil society since recently.<sup>580</sup>

The MIA reports of sanctions taken against their employees for violation of the laws. According to the vice-minister of the MIA,<sup>581</sup> law enforcement officials do face disciplinary actions under article 114 and 114.1 of Statute on Service in Internal Affairs Organs of Azerbaijan,<sup>582</sup> in case they breach the requirements of the law. Cases in which criminal action is determined to have taken place are referred to the Prosecutor's office for prosecution.<sup>583</sup>

In May 2011 an Internal Security Service was created within the Anti-Corruption Department, under the Prosecutor General, to deal with corruption offences committed by the staff of the law enforcement.<sup>584</sup> In 2013 internal security of the Prosecutor General's Office looked at 82 applications and filed 55 criminal cases against law enforcement personnel.<sup>585</sup>

Despite the fact that under the law, the law enforcement officials are not immune from criminal proceedings and are held accountable for their illegal actions in practice; sometimes they receive informal protection by their immediate superiors.<sup>586</sup> Also, in practice, prosecutors do not always penalise their own investigators, as well as those from other law enforcement agencies, for procedural offences in collection of materials at the operational search stage.<sup>587</sup>

## Integrity Mechanisms (law): 75

*To what extent is the integrity of law enforcement agencies ensured by law?*

Integrity of law enforcement agencies is sufficiently ensured by law. The Code of Ethics for Prosecutors<sup>588</sup> and of MIA<sup>589</sup> date back several years. Both codes regulate conflict of interests, as well as gifts and hospitality rules. The codes state that police officers and prosecutors, in case of conflict, should not abuse their authority for personal interest and have to inform his/her chief about a potential or existing conflict of interest.<sup>590</sup>

Along with this, there are several dedicated office instructions, that are important documents regulating behavior of the police. These are: Statutes of the Post Patrol Police; On the Traffic Police; On Activities of the District Police Inspectors and Heads of District Police Stations; On Ensuring Public Order during Mass Events, etc.<sup>591</sup>

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578 Letter No 02/1-2247xio/ 13/168cix dated 12 July 2013 by Kamran Aliyev, Head of the Department for Combating Corruption under the Office of Prosecutor General

579 Personal experience of Transparency Azerbaijan

580 Personal experience of Transparency Azerbaijan

581 Letter No 002-659-1213 dated 28 June 2013 by Fazil Guliyev, Deputy Minister of Internal Affairs, Head of Chief Department of Organisational Inspection

582 Statute on Service in Internal Affairs Bodies of Azerbaijan, approved by Presidential decree 1 June 2001, [www.e-ganun.az](http://www.e-ganun.az)

583 Letter No 002-659-1213 dated 28 June 2013 by Fazil Guliyev, Deputy Minister of Internal Affairs, Head of Chief Department of Organisational Inspection

584 Letter from Kamran Aliyev, head of Anti-corruption Department under the Prosecutor General to Transparency Azerbaijan No 02-113GIX-14 To Transparency Azerbaijan dated 3 April 2014

585 Letter from Kamran Aliyev, head of Anti-corruption Department under the Prosecutor General to Transparency Azerbaijan No 02-113GIX-14 To Transparency Azerbaijan dated 3 April 2014

586 Transparency Azerbaijan ALAC data base

587 Interview with Muzaffar Bakhishev, Head of Legal State Research Foundation by the author, 17 May 2013

588 Code of Ethical Conduct for Prosecutors, 8 February 2008, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

589 Code of Ethics for Staff of Internal Affairs Bodies, 8 April 2005, [www.mia.gov.az](http://www.mia.gov.az)

590 Code of Ethical Conduct for Prosecutors, 8 February 2008, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

591 Letter from the Ministry of Internal Affairs to Transparency Azerbaijan, No 002-639-1214, dated 30 May 2014

## Integrity Mechanisms (practice): 25

*To what extent is the integrity of members of law enforcement agencies ensured in practice?*

Though the trust in the police has increased somewhat in recent years, in practice integrity of law enforcement agencies leaves more to be desired, especially of the police force.<sup>592 593</sup> Ordinary people download on the Internet video recordings with the misbehaving police.<sup>594595</sup> It should be pointed out, that the law enforcement bodies immediately react to violations committed by their staff, featuring in the videos. The 102 hotline of the Ministry of Interior ranks more highly than those of most other public agencies, thanks to prompt response and quality of attendance to the complaints, which in many cases are handled fairly.<sup>596</sup>

According to the deputy minister of Internal Affairs, the Ministry provides special training to their staff on combating corruption and ethical behaviour during regular vocational training.<sup>597</sup> Indeed, improvements in the personnel policy of the MIA, the process that started before the Eurovision song contest held in Baku in May 2012, are visible to the naked eye. The police began to recruit more females, there was overall more ethical behaviour of the junior policemen in contact with the population (road police, post patrol police), and also their physical training is improving.

Even if the police have ample documents providing office instructions, in practice the police staff, especially those maintaining public order, are not always aware of the limits of their job obligations.<sup>598</sup>

The government made efforts to increase transparency and improve governance of the traffic regulation. A Presidential order<sup>599</sup> sets forth to increase transparency of driving license tests and exercise tighter control to prevent corruption in investigation of road accidents and other violation of traffic rules. Attention is also drawn to this problem by a very good approach by the media – live on air legal aid on the road traffic issues by radio Azad Azerbaijan 106.3 FM.600. There was a visible decline of corruption in the police (the score dropped from 3.6 in 2010 Global Corruption Barometer to 2.9 in 2013 out of a maximum of 5)<sup>601</sup> and this can be explained by significant reforms in the road police system and introduction of the “smart transport system” on major streets and roads which, inter alia, ensure video records of the police behaviour and set a good standard of transparency for other agencies to follow.

## Corruption prosecution: 50

*To what extent do law enforcement agencies detect and investigate corruption cases in the country.*

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592 Azerbaijan Country Profile 2013 by Business Anti-corruption Portal, [www.business-anti-corruption.com](http://www.business-anti-corruption.com)

593 Country Reports on Human Rights Practices for 2012: Azerbaijan, report by US Department of State, [www.state.gov](http://www.state.gov)

594 <http://silent.az/maraqli-yazilar/747-azerbaycan-polisi-qudurub-video.html>

595 [www.youtube.com/watch?v=4c92d\\_mSLXw](http://www.youtube.com/watch?v=4c92d_mSLXw)

596 Transparency Azerbaijan ALAC data base

597 Letter No 002-659-1213 dated 28 June 2013 by Fazil Guliyev, Deputy Minister of Internal Affairs, Head of Chief Department of Organisational Inspection

598 Interview with independent lawyer Samir Isayev by the author, 22 April 2014

599 Presidential decree on Some measures to Increase Safety of Traffic in Connection with Traffic Accidents and Transparency of the Traffic Management, 26 December 2012, [www.106fm.az](http://www.106fm.az)

600 [www.106fm.az](http://www.106fm.az)

601 Global Corruption Barometer 2010 as compared to Global Corruption Barometer 2013, publications by Transparency International, [www.transparency.org](http://www.transparency.org)

Detection and investigation of corruption offences is the exclusive prerogative of the Anti-Corruption Department, under the Prosecutor's Office and is discussed in detail in the pillar on Anti-Corruption agencies of this report.

### Recommendations:

- To make amendments to the legal framework to separate functions of investigation, operational searches, and supervision of the law enforcement agencies from supporting accusation in courts.
- To create a single centralised investigation body (except for cases involving national security), within the authority of the Ministry of National Security.
- To enhance procedures of registration of criminal cases and criminality.
- To cover staff of the police and their family members with full mandatory state medical insurance.
- To continue reform of the human resources of the police: employ more females and young professionals, enhance physical training and ethical education of recruits; to invite civil society to monitor all the stages of recruitment to the law enforcement.
- To invite civil society to monitor the work of the hotlines operated by the police and prosecutors.



## 6. ELECTORAL COMMISSION (CEC)

### Summary

The electoral management body (EMB) – the Central Election Commission (CEC) – has adequate resources to efficiently administer technical preparations and conduct of elections. It performs duties within legal deadlines and operates in an open manner.

However, the composition of the CEC, where the ruling party enjoys the decision-making power, undermines independence and impartiality of the EMB. Existing provisions and practices regulating transparency and accountability of the process need further improvement; especially electoral dispute resolution procedures and publication of audited financial reports of the CEC.

The CEC made efforts to improve voter registration, conduct training and strengthen technical capacity of lower level commissions; however further improvement is needed to eliminate procedural shortcomings.

The table below presents general evaluation of the EMB in terms of capacity, governance and role in national integrity systems. The table is further followed by a qualitative assessment of the relevant indicators.

### ELECTORAL COMMISSION

Overall Pillar Score 52/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 58/100	Resources	-	75
	Independence	50	50
Governance 50/100	Transparency	75	50
	Accountability	50	25
	Integrity	50	50
Role 50/100	Campaign Regulation	50	
	Election Administration	50	

### Structure and Organisation

Azerbaijan has a three-tier electoral administration consisting of the CEC, Constituency Election Commissions (ConECs), and Precinct Election Commissions (PECs). The legal status and scope of power of the election administration are anchored in the Election Code. The CEC is the highest level instance for all other commissions and consists of eighteen members: nine members are nominated by the Parliamentary majority, another nine members represent the remaining political parties

represented in the Parliament, and the final nine members are nominated by MPs without party affiliation. The CEC members elect the chairperson, deputy chairperson, and two secretaries at the first session. The chairperson is nominated by the Parliamentary majority. One of the secretaries represents the Parliamentary minority while another is nominated by MPs without party affiliation.<sup>602</sup>

The Secretariat of the Commission provides the CEC with expert, legal, technical and other support. The Secretariat consists of ten units. There are nine departments: Organisational, Legal, International Relations, General, Monitoring, Media and Public Relations, Editorial and Publishing, Finance, and Economical as well as the Information Centre which, along with the State Automatic Information System is charged to provide IT services for the conduct of elections.<sup>603</sup>

## Assessment

### Resources (practice): 75

The CEC has adequate financial and technical resources to perform duties prescribed by law. The CEC receives three types of funds for annual operation of election commissions from the state budget. The Commission's institutional costs are covered by a special budget line. The CEC also receives money from the state budget and administers funds assigned for 125 ConECs and for maintaining voter registry. Expenses for maintaining voter registry remained stable whereas costs of lower-level commissions have decreased in recent years. The budget allocated for institutional costs of the CEC has increased 32 per cent over the last four years (*see Chart 1 below*). The increase mostly targeted improvement of the technical capacity, as salaries of the CEC members changed only at the end of 2013,<sup>604</sup> since they were last fixed in 2006.

In election years, the state additionally transfers to the CEC, variable funds for the conduct of elections. The CEC received 39.8 million manat (US\$49,458,877) for conducting Parliamentary elections in 2010 and 44.9 million manat (US\$57,339,558) for presidential elections in 2013. The cost of elections per voter was 7.8 manat (US\$10) and 8.6 manat (US\$11) respectively.<sup>605</sup>

The CEC has sufficient human resources, operational structures, and facilities to conduct its work.<sup>606</sup> According to the OSCE/ODIHR Election Observation Missions (EOM), the CEC efficiently administered the technical preparations in the last three elections.<sup>607608609</sup>

OSCE/ODIHR LTOs also assessed the performance of ConECs as "generally efficient and professional as far as the technical preparations of the election process were concerned".<sup>610</sup>

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602 The Election Code, 11 November 2003, Articles 19 and 24, [www.msk.gov.az](http://www.msk.gov.az)

603 The Charter of the Central Election Commission's Secretariat, adopted on 24 February 2012, Article 3, [www.msk.gov.az](http://www.msk.gov.az)

604 Presidential order on Increase of Salaries of the Central Election Commission, 18 December 2013, [www.president.az](http://www.president.az)

605 IFES/UNDP Getting to the CORE research, 2005, [www.undp.org](http://www.undp.org)

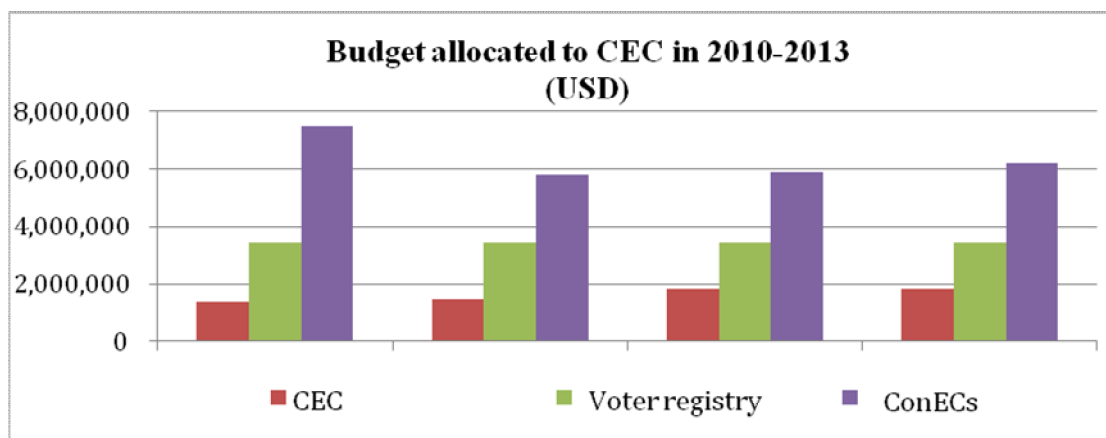
606 Interview of a former CEC member Gulagha Aslanly with the author, 5 December 2013

607 OSCE/ODIHR EOM Statement on Preliminary Findings and Conclusions, Presidential Election in Azerbaijan, 9 October 2013, [www.osce.org](http://www.osce.org)

608 OSCE/ODIHR EOM Final Report, Presidential Election in Azerbaijan, 7 November 2010 15 October 2008, [www.osce.org](http://www.osce.org)

609 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 15 October 2008, [www.osce.org](http://www.osce.org)

610 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, [www.osce.org](http://www.osce.org)



Sources: Decree of the President "On State Budget of the Republic of Azerbaijan in 2010" No.187, adopted on 26 November 2009; Decree of the President "On State Budget of the Republic of Azerbaijan in 2011" No.358, adopted on 24 November 2010; Decree of the President "On State Budget of the Republic of Azerbaijan in 2012" No.546 adopted on 19 December 2011; Decree of the President "On State Budget of the Republic of Azerbaijan in 2013" No.760, adopted on 13 December 2012.

The overwhelming majority of the CEC members are lawyers.<sup>611</sup> The Secretariat of the Commission employs 118 civil servants.<sup>612</sup> The CEC members and the staff function on a permanent basis, and regularly receive training and participate at international seminars and election observation missions. Most of them have been on duty for years, which is conducive for sustaining institutional memory. In 2010, the CEC moved into a new building with spacious infrastructure that allows for safekeeping a systematised archive and library.<sup>613</sup>

However, further efforts are needed for promoting equal opportunity for representation of women and ethnic minorities in the CEC. Only four out of eighteen CEC members are women. Among four people in the leadership, only one is a woman.<sup>614</sup> There is no available data on representation of ethnic minorities in the CEC, though the Ministry of Foreign Affairs declared that some representatives of ethnic minorities work in the CEC.<sup>615</sup>

## Independence (law): 50

The legal framework contains provisions to provide for independence of election commissions. The Constitution of Azerbaijan does not specifically mention the CEC except for article 101.5 in the context of postponing the presidential election in case of a war. In this case, "the state body responsible for the conduct of elections" makes a proposal to the Constitutional Court, to prolong the president's term until the end of military operations.<sup>616</sup>

The Election Code defines the legal status of election commissions as permanent state bodies, responsible for implementation of functions defined in Article 3 (referendum), Article 83 (Parliamentary elections), Article 101 (presidential election), and Article 142 (municipal elections) of

<sup>611</sup> Article 24.3 of the Election Code requires that the CEC members nominated by MPs without party affiliation should be lawyers. There is no such requirement for nominees from political parties.

<sup>612</sup> The CEC Decision 17/54, adopted on 23 December 2011

<sup>613</sup> The CEC website, [www.msk.gov.az](http://www.msk.gov.az)

<sup>614</sup> The CEC website, [www.msk.gov.az](http://www.msk.gov.az)

<sup>615</sup> The CEC website, [www.msk.gov.az](http://www.msk.gov.az)

<sup>616</sup> The Constitution, adopted on 12 November 1995, last amended on 18 March 2009, Article 101.5, [www.e-qanun.az](http://www.e-qanun.az)

the Constitution.<sup>617</sup> Further, the law specifies that election commissions shall ensure preparation and conduct of elections, counting and tabulation of voting results as well as implementation, protection, and oversight of citizens' election rights.<sup>618</sup>

The Election Code declares that undue interference of state institutions, municipalities, political parties, non-governmental organisations, and any other legal entities or persons, in the work of election commissions, should be punished according to the Criminal Code and the Code of Administrative Offences.<sup>619</sup> Within the scope of their responsibilities, decisions of election commissions are mandatory for all state, local, political, and public institutions to implement.<sup>620</sup>

The CEC members may resign from the post or be dismissed by the Parliament in certain cases such as if they run in elections, change citizenship, or are confined by a court decision.<sup>621</sup> They may be arrested or detained only with permission of the Prosecutor General.<sup>622</sup>

The main factor that undermines confidence in the independence and impartiality of the CEC is the procedure for appointment of its members. The composition of the CEC reflects the representation of political forces in the Parliament. Three equal quotas are reserved for members nominated by the Parliamentary majority party, Parliamentarians elected as independent candidates, and the remaining political parties represented in the Parliament.

The status, type of activities and authority of the CEC are regulated by the Election Code and the charter. Alongside with this, according to the charter, the CEC has a Secretariat authorized to perform legal, organisational, analytical, financial and other functions. The charter, the structure of the Secretariat and the list of staff are to be published pursuant to the Commission's approval.

Although the CEC is nominally a collegial body, its chairperson enjoys broad rights. The Chairperson defines the responsibilities of the deputy chairperson, both secretaries, and members. The CEC chairperson heads the Commission's Secretariat and appoints and dismisses the Secretariat's director and staff.<sup>623</sup>

## Independence (practice): 50

Independence and impartiality of the CEC has been questioned by the opposition parties, media, civil society, and international organisations, due to domination of pro-government forces in the EMB.

From 2006 to 2010, some opposition parties boycotted the formula of composition of election commissions and two seats at the CEC, allocated for the Parliamentary minority, remained vacant.<sup>624</sup>

The law strictly regulates the procedure for dismissal of the CEC members and does not provide for unjustifiable removal from the position. If parties were not satisfied with the performance of their

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617 The Election Code, Article 18.3, [www.msk.gov.az](http://www.msk.gov.az)

618 The Election Code, Article 17.2, [www.msk.gov.az](http://www.msk.gov.az)

619 The Election Code, Article 17.3, [www.msk.gov.az](http://www.msk.gov.az)

620 The Election Code, Article 17.4, [www.msk.gov.az](http://www.msk.gov.az)

621 The Election Code, Article 22, [www.msk.gov.az](http://www.msk.gov.az)

622 The Election Code, Article 27.2, [www.msk.gov.az](http://www.msk.gov.az)

623 The Charter of the Central Election Commission's Secretariat, Article 5.2., [www.msk.gov.az](http://www.msk.gov.az)

624 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, p 7, [www.osce.org](http://www.osce.org)

representatives at the CEC, in practice, they did not renew the nominations after expiry of the term.<sup>625</sup>

## Transparency (law): 75

There are extensive provisions in the Election Code requiring the transparency of the EMB. The law prescribes election commissions to work in a manner that is transparent for voters.<sup>626</sup> The CEC sessions are open for candidates and their proxies, domestic and international observers, and media representatives.<sup>627</sup> Further, they have the right to observe all activities which involve the CEC, such as printing of sensitive election materials and recounting of votes.<sup>628</sup> When the CEC reviews relevant complaints, the complainants have the right to participate at that session.<sup>629</sup> If the CEC does not allow for the observation, this action may be appealed at the Court of Appeals.<sup>630</sup>

Public and state television, radio, and print media allocate free space to the CEC to explain legislation, inform the public on its activities, and respond to voters' questions in an election period.<sup>631</sup> The CEC is required to make all decisions public within 24 hours.<sup>632</sup> In addition, the CEC may publish preliminary election results on its website and has to publish final results with breakdown per ConEC and PEC in the media and online.<sup>633</sup>

The CEC is required to make some reports, on pre-election propaganda campaign funds, public. During election period, the CEC releases information about income and expenses of the campaign budgets of political parties and candidates to the media every two weeks. The CEC also makes final campaign funding reports public within five days after receipt.<sup>634</sup> However, there is no requirement for the CEC to disclose information provided by nominated candidates about their personal property and income.<sup>635</sup>

## Transparency (practice): 50

In general, the work of the CEC could be assessed as transparent in selective matters. The CEC sessions are public and attended by the media, as well as international and domestic observers, who receive notifications on the planned meetings in advance. The CEC maintains an informative website containing sections on: relevant legislation, rules for accreditation of observers, CEC structure, guidelines and instructions on different aspects of elections, news digests, periodical activity reports, interactive maps with facts on elections and candidates, election results with breakdown per DEC and PEC level etc.<sup>636</sup> A search engine enables voters to clarify whether they are included in voter lists. Voters may file an online appeal or call a CEC hotline with queries.<sup>637</sup>

Along with this, during the last Parliamentary (2010) and Presidential (2013) elections, the CEC published on its website preliminary results, based on the data provided by 80 per cent of electoral precincts within 5-6 hours after the elections. At the same time the CEC always publishes on the

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625 Interview of the former CEC member Anvar Aliyev for the "Fakt Xeber" newspaper on 9 May 2011

626 The Election Code, Article 40.1, [www.msk.gov.az](http://www.msk.gov.az)

627 The Election Code, Articles 40.2, 40.4, and 43.1, [www.msk.gov.az](http://www.msk.gov.az)

628 The Election Code, Articles 99.5, 100.7, 108.4, [www.msk.gov.az](http://www.msk.gov.az)

629 The Election Code, Article 40.10, [www.msk.gov.az](http://www.msk.gov.az)

630 The Election Code, Article 40.6, [www.msk.gov.az](http://www.msk.gov.az)

631 The Election Code, Article 20, [www.msk.gov.az](http://www.msk.gov.az)

632 The Election Code, Article 28.4, [www.msk.gov.az](http://www.msk.gov.az)

633 The Election Code, Article 109, [www.msk.gov.az](http://www.msk.gov.az)

634 The Election Code, Article 95, [www.msk.gov.az](http://www.msk.gov.az)

635 The Election Code, Article 58.1.4-6

636 Website of CEC [www.msk.gov.az](http://www.msk.gov.az)

637 Website of the CEC Information Center, [www.infocenter.gov.az/default.aspx](http://www.infocenter.gov.az/default.aspx)

website and in the media, in the 45 days after the elections, all the information contained in the protocols of the election constituencies. Within 6 months after the elections, the CEC publishes the information from the protocols of electoral precincts and constituencies in its official publication.

All CEC decisions are published in a timely manner on the website and in the state-owned newspaper. However, the OSCE/ODIHR noted in 2010 that the CEC members did not receive draft agenda and decisions in advance, which negatively affected the discussions.<sup>638</sup>

Complaints and appeals received by the CEC are reviewed by an expert commission, comprised of 9 members. The commission is guided by the Election Code of the Republic of Azerbaijan and by a special Instruction<sup>639</sup> prepared with the help of the EU Venetian Commission. In order to ensure transparency during the review process, the work of the expert group is open for the complainants and international observers, who are informed of the process and are invited to observe.<sup>640</sup>

The CEC took a selective approach to making public, information which the law does not regulate precisely. For instance, the Election Code guarantees the right of a complainant to be present and provide evidence, it does not require the CEC to notify the subject of a complaint, or that a complaint has been submitted against them, or give them the opportunity to present their opinion to the expert assigned to the case. However, during the 2013 presidential election, the CEC notified subjects of a complaint against them and gave them an opportunity to respond.<sup>641</sup>

In addition, further improvements are needed with regards to increasing transparency of electoral dispute resolution procedures.

## Accountability (law): score 50

The legal framework does not adequately ensure the accountability of the CEC. The Election Code declares that elections are "conducted in a transparent and accountable manner".<sup>642</sup> The law defines the EMB as independent, within the scope of its authority, from state institutions, municipalities, political parties, public organisations, legal entities, and persons<sup>643</sup> and does not prescribe annual or any other regular reporting. However, the CEC has to publish decisions and report on election results to the public.<sup>644</sup> Voters and other election stakeholders may appeal against the CEC activities and decisions, to the Court of Appeals, within three days after that action took place, or the stakeholder received relevant information.<sup>645</sup>

According to the law, citizens have the right to obtain information from state institutions.<sup>646</sup> The respective structural unit of the CEC Secretariat is responsible for maintaining a registry of incoming inquiries from citizens as per the law.<sup>647 648 649</sup>

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638 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, p 7, [www.osce.org](http://www.osce.org)

639 Instruction on the Procedures to Submit Complaints and Appeals Relation to Violation of Electoral Rights to the Central Elections Commissions and Constituencies, 12 August 2008, [www.msk.gov.az](http://www.msk.gov.az)

640 Interview with Rovzat Gasymov, head of the Election Commission Secretariat by the author, 31 May 2014

641 OSCE/ODIHR EOM Preliminary Statement, Presidential Election in Azerbaijan, 9 October 2013, p 11, [www.osce.org](http://www.osce.org)

642 The Election Code, Article 2.5, [www.msk.gov.az](http://www.msk.gov.az)

643 The Election Code, Article 17.3, [www.msk.gov.az](http://www.msk.gov.az)

644 The Election Code, Article 26, [www.msk.gov.az](http://www.msk.gov.az)

645 The Election Code, Article 112.1, [www.msk.gov.az](http://www.msk.gov.az)

646 The Law on Access to Information, 30 September 2005, Article 9.1.1, [www.e-qanun-az](http://www.e-qanun-az)

647 The Law on Procedures to Review Citizens Appeals, 10 June 1997, [www.e-qanun-az](http://www.e-qanun-az)

648 Instruction on Conducting Clerical Work in State Bodies, Offices, Organisations and Institutions, 29 December 1998, [www.e-qanun-az](http://www.e-qanun-az)

The legislation has some requirements about the financial accountability of the EMB. With regards to reporting on institutional costs; the CEC provides monthly, quarterly, and annual reports to the Ministry of Finances.<sup>650</sup> The Chamber of Audit may conduct auditing of funds allocated to the CEC from the state budget.<sup>651</sup> In an election period, the CEC establishes an internal audit service, composed of election commission members and experts from government institutions and the Central Bank, to monitor expenditures from the state funds for elections, as well as income and expenditures from campaign funds of candidates and political parties.<sup>652</sup> There is no requirement for independent or external auditing. Within three months after the announcement of election results, the CEC provides a financial report on the use of state funds and expenditures from campaign funds to the president, the Parliament, and media.<sup>653</sup> The Group of States against Corruption (GRECO) urged "authorities to step up their efforts in order to ensure more substantial and independent monitoring of election campaign funding".<sup>654</sup>

## Accountability (practice): 25

Despite the CEC putting some efforts in to fulfill the existing gaps in the legislation, accountability needs further improvement. The CEC published periodic activity reports, which the law does not prescribe for. Although in non-uniform format, the CEC posted on its website monthly or annual reports for 2007-2010 and 2013. The reports contained information on: CEC activities to maintain voter registration systems, instructions and guidelines produced for lower-level election commissions, co-operation with international organisations, training sessions organised for commission members, voter education activities, media coverage of the CEC's work, preparation for and conduct of elections, accreditation of observers, considered complaints and appeals etc.<sup>655</sup>

The CEC regularly prepares reports on its activities in Azerbaijan, in English and Russian languages, places those on its websites and distributes them via e-mail to local and international organisations.<sup>656</sup>

The CEC also established the Monitoring Department within its Secretariat for the oversight of lower-level commissions.<sup>657</sup> However, the department does not account for the results of monitoring to the CEC members but to the chairperson.<sup>658</sup>

In practice, the CEC has not posted financial reports on its website and provided only selective financial information to the media<sup>659</sup>. Inexistence of independent auditing of the election campaign finance, also shadows the accountability of the EMB. The OSCE/ODIHR noted "the lack of information available for public scrutiny and the absence of audits limited the transparency and accountability of campaign finance".<sup>660</sup>

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649 The Charter of the Central Election Commission's Secretariat, 24 February 2012, Articles 4.11.5, [www.msk.gov.az](http://www.msk.gov.az)

650 Decision on the Rules for Preparation and Implementation of the State Budget, on 24 May 2004, Article 5.30, [www.e-qanun.az](http://www.e-qanun.az)

651 The Law on Chamber of Audit, 2 July 1999, Article 16, [www.e-qanun.az](http://www.e-qanun.az)

652 The Election Code, 11 November 2003, Article 97.1, [www.msk.gov.az](http://www.msk.gov.az)

653 The Election Code, 11 November 2003, Article 96.9, [www.msk.gov.az](http://www.msk.gov.az)

654 GRECO Compliance Report on Azerbaijan, adopted on 19 October 2012, p 15, [www.coe.int](http://www.coe.int)

655 The CEC website, [msk.gov.az](http://msk.gov.az)

656 Interview with Rovzat Gasymov, head of the Election Commission Secretariat by the author, 31 May 2014

657 The Charter of the Central Election Commission's Secretariat, Article 4.14, [www.msk.gov.az](http://www.msk.gov.az)

658 Interview of a CEC member Akif Gurbanov with the author, 13 December 2013

659 Interview of a former CEC member Gulagha Aslanly with the author, 5 December 2013

660 OSCE/ODIHR EOM Preliminary Statement, Presidential Election in Azerbaijan, 9 October 2013, p 8, [www.osce.org](http://www.osce.org)



## Integrity (law): 50

There is no separate code of conduct for the CEC members and the staff, but some articles of the Election Code contain a number of integrity provisions. The CEC members as well as the staff are required to behave impartially while on duty. They have to: strictly implement laws, demonstrate fair attitude towards each election stakeholder, provide quality service for voters and other election stakeholders, refrain from actions in support of a candidate or a party, avoid conflict of interests, not receive gifts from participants of the election campaign, not implement orders that are illegal or contradictory to their duties, and refrain from wearing or carrying symbols of any political party.<sup>661</sup>

According to the Election Code, a CEC member may not be a civil servant.<sup>662</sup> The Law on Civil Service specifically mentions that the CEC chairperson, deputy chairperson, secretaries, and members do not fall under the scope of that law.<sup>663</sup> Although inapplicable for the CEC secretaries and members, the Law on Providing Financial Information by Officials prescribes the CEC chairperson and deputy to provide annual financial reports to the Commission on Combating Corruption.<sup>664</sup>

The CEC staff are civil servants.<sup>665</sup> With the exception of recruitment rules, they fall under the scope of the Law on Civil Service and the Law on Code of Conduct for Civil Servants. While entering into duty, they have to swear an oath to uphold the principles of the Constitution, keep impartiality and integrity, protect state secrets and strictly implement laws. Civil servants have to avoid conflict of interest, provide quality service to stakeholders, and work efficiently. After leaving the duty, the CEC staff may not be employed by institutions they have been supervising, e.g. ConECs or PECs.<sup>666</sup> As civil servants, they may be members of political parties<sup>667</sup> but may not participate in activities of a political party while on duty.<sup>668</sup> On a negative note, the CEC staff are excluded from the scope of recruitment rules of civil servants,<sup>669</sup> which limits the transparency of employment procedures. The CEC chairperson recruits, dismisses, awards, and penalises the staff.<sup>670</sup>

## Integrity (practice): 50

It is difficult to assess the implementation of legal integrity provisions in practice, due to lack of available public information. There are negative and positive reasons for the absence of information. Negatively, the law does not require transparency of some relevant procedures. For instance, financial reports by the CEC chairperson and deputy chairperson, to be filed to the Commission on Combating Corruption and are not required to be made public. The employment of the CEC staff also lacks transparency as they are not hired through a competitive civil servants recruitment process but appointed by the CEC chairperson. A CEC member evaluated the staff as responsible and professional but stressed their dependence on the chairperson.<sup>671</sup> Positively, there have been no reported cases when the CEC members or staff, either violated the provisions of the legislation, or committed corruption offences while on duty. According to a former CEC member, there exists a

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661 The Election Code, Article 17.6, [www.msk.gov.az](http://www.msk.gov.az)

662 The Election Code, Article 22.2, [www.msk.gov.az](http://www.msk.gov.az)

663 The Law on Civil Service, 21 July 2001, Article 2.4, [www.msk.gov.az](http://www.msk.gov.az)

664 The Law on Providing Financial Information by Officials, 24 June 2005, Article 3.1, [www.e-qanun.az](http://www.e-qanun.az)

665 The Law on Civil Service, Article 8.1.3, [www.e-qanun.az](http://www.e-qanun.az)

666 The Law on Code of Conduct for Civil Servants, adopted on 31 May 2007, articles 14-17, [www.e-qanun.az](http://www.e-qanun.az)

667 The Law on Code of Conduct for Civil Servants, article 18.1, [www.e-qanun.az](http://www.e-qanun.az)

668 The Law on Civil Service, Article 20.1.6, [www.e-qanun.az](http://www.e-qanun.az)

669 The Law on Civil Service, Article 2.3, [www.e-qanun.az](http://www.e-qanun.az)

670 The Charter of the Central Election Commission's Secretariat, Article 5.2, [www.msk.gov.az](http://www.msk.gov.az)

671 Interview of a CEC member Akif Gurbanov with the author, 13 December 2013

professional working environment at the CEC and no incidents between the employees have been observed.<sup>672</sup>

The CEC regularly provides training programmes to election commissions of various levels, as well as to the secretariats of the constituency commissions, in order to increase their skills and capacity.<sup>673</sup>

Although the CEC is the highest instance for all election commissions, it is not responsible for integrity of the whole election process. There were cases when the lower-level commissioners were charged with criminal and administrative offences for breaching the integrity of elections. After the 2005 Parliamentary elections, two ConEC chairpersons were arrested and charged with forging election documents. The CEC dismissed 6 ConECs and 108 PECs in their entirety. The CEC also forwarded materials on possible criminal violations to the Prosecutor General's Office regarding 29 PECs. The OSCE/ODIHR noted "while this indicates recognition on the part of the authorities on the need to address electoral violations, further steps would be necessary to address the issue comprehensively".<sup>674</sup>

## Campaign regulation (law and practice): 50

The Election Code grants the CEC extensive powers in terms of campaign regulation. The CEC is responsible for the overall conduct of elections and referenda, including: registration of initiative groups and candidates, publication of the list of venues for campaign meetings, supervision of campaign finance obligations, and regulation of air time for candidates on media.<sup>675</sup> These provisions have been implemented with a number of deficiencies.

In presidential elections and referenda, it is entirely the role of the CEC to register candidates and initiative groups. In Parliamentary and municipal elections, ConECs register candidates, but the CEC may cancel or grant the registration to candidates as the highest election administration instance. For instance, the CEC granted registration to 35 candidates by own decision and to 9 candidates on basis of decisions by the Court of Appeals and the Supreme Court, in the 2010 Parliamentary elections. It also annulled the registration of one candidate.<sup>676</sup> The OSCE/ODIHR noted that over half of the candidates nominated by opposition parties had their registrations rejected, while all candidates from the ruling party who had submitted the required documents were registered.<sup>677</sup> The OSCE/ODIHR further recommended "ensuring an inclusive candidate registration process" and that "decisions to reject candidacies should be well grounded and reasoned".<sup>678</sup>

The CEC oversees the observance of campaigning rules by candidates and initiative groups in all elections and referenda.<sup>679</sup> Although party funding in general does not fall under the scope of CEC responsibilities, it controls the campaign funding.<sup>680</sup> While applying for registration, nominees have to provide initial information on their finances and assets to the CEC, or a relevant ConEC in Parliamentary and municipal elections, but in all cases the CEC decides whether to make that

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672 Interview of a former CEC member Gulagha Aslanly with the author, 5 December 2013

673 Interview with Rovzat Gasymov, head of the Election Commission Secretariat by the author, 31 May 2014

674 The OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 6 November 2005, p 24, [www.osce.org](http://www.osce.org)

675 The Election Code, Articles 25-26, [www.msk.gov.az](http://www.msk.gov.az)

676 The CEC activity report [www.msk.gov.az](http://www.msk.gov.az)

677 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, p 9, [www.osce.org](http://www.osce.org)

678 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, p 24, [www.osce.org](http://www.osce.org)

679 The Election Code, Articles 25-26, [www.msk.gov.az](http://www.msk.gov.az)

680 The Election Code, Article 25.2.14, [www.msk.gov.az](http://www.msk.gov.az)

information public.<sup>681</sup> Further, registered candidates and initiative groups, open accounts for election funds in a bank defined by the CEC, receive private donations based on rules agreed between the CEC and the Central Bank,<sup>682</sup> and provide interim and final reports.<sup>683</sup> Meanwhile, the relevant bank has to report weekly on transactions to and from the election funds to the CEC.<sup>684</sup> The CEC and each ConEC establish internal audit services consisting of the commission members and representatives from state institutions and the Central Bank, appointed through the CEC.

Despite detailed regulation of campaign funding, there are lack of provisions on making this information public, which limits the transparency and accountability of the process (See *Transparency and Accountability sections*). In addition, opposition parties and a number of independent candidates complained to the OSCE/ODIHR about the absence of public funding, "which in their view limited their ability to campaign", and also about the general environment "in which private business feared consequences if they openly gave financial or other support to them".<sup>685</sup>

During the campaign, public television and radio, as well as state owned media, should create equal conditions for candidates, parties, and initiative groups. Parties and electoral blocs which register candidates in more than 60 constituencies are eligible for free airtime on public TV and free space in state-owned newspapers.<sup>686</sup> The state television is exempt from this provision, which was criticised by the OSCE/ODIHR.<sup>687</sup> By informing the CEC, public and private media outlets may allocate paid space for election contestants on an equal basis.<sup>688</sup> The CEC regulates the format for free and paid campaigning on media.<sup>689</sup> In the 2010 Parliamentary elections, none of the political parties, except for the ruling party, qualified for free space and the CEC decided to allocate four minutes of free airtime to each candidate, in the form of regular daily roundtable discussions on public television. The CEC established a special working group on the media, composed of CEC members and journalists, to assist the CEC in overseeing compliance with the media-related provisions of the Election Code.<sup>690</sup> This group reviewed some election-related programmes, considered appeals, and issued warnings, but "it did not conduct systematic media monitoring".<sup>691</sup>

## Election administration (law and practice): 50

The election administration handles the technical preparations for elections efficiently, e.g. voter registration, notification of voters about the place and time of voting, printing and distribution of ballot papers and other election material.

The integrated nationwide voter registry is handled by the CEC, within the state computerised information system, on the basis of the data updated annually.<sup>692</sup> The OSCE/ODIHR noted "the CEC undertook serious efforts to improve the centralised voter register, including through an active voter education campaign. Voter lists of all polling stations were available on the CEC website".<sup>693</sup> Before each election, the CEC prepared information posters and television spots to educate voters. In

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681 The Election Code, Article 58.3, [www.msk.gov.az](http://www.msk.gov.az)

682 The Election Code, Article 94.1, [www.msk.gov.az](http://www.msk.gov.az)

683 The Election Code, Articles 94.3.2-3, [www.msk.gov.az](http://www.msk.gov.az)

684 The Election Code, Articles 95.2, [www.msk.gov.az](http://www.msk.gov.az)

685 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, p 11, [www.osce.org](http://www.osce.org)

686 The Election Code, Articles 77.1-2, [www.msk.gov.az](http://www.msk.gov.az)

687 OSCE/ODIHR EOM Final Report, Presidential in Azerbaijan, 15 October 2008, p 26, [www.osce.org](http://www.osce.org)

688 The Election Code, Articles 78.3, [www.msk.gov.az](http://www.msk.gov.az)

689 The Election Code, Articles 79.1, [www.msk.gov.az](http://www.msk.gov.az)

690 Decision of the CEC, adopted on 28 July 2008, [www.osce.org](http://www.osce.org)

691 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, p 13, [www.osce.org](http://www.osce.org)

692 The Election Code, Articles 45-46, [www.msk.gov.az](http://www.msk.gov.az)

693 OSCE/ODIHR EOM Final Report, Parliamentary Elections in Azerbaijan, 7 November 2010, p 8, [www.osce.org](http://www.osce.org)

2013, the CEC received and processed some 4,000 voter list enquiries via website or telephone hotline.<sup>694</sup>

Despite technical improvements, such as installation of web-cameras in polling stations, voter education campaigns, and training for lower-level election commissions, serious shortcomings remain in the ability of the election administration, such as procedural shortcomings.<sup>695</sup> In some cases, observers did not have a clear view of the process, and international and candidate observers did not receive copies of protocols upon request.<sup>696</sup> One of the CEC members refused to sign the results protocol in protest against violations.<sup>697</sup>

## Recommendations

- To make explicit provisions in the Constitution to ensure independence of the CEC.
- To take further efforts for promoting equal opportunity for representation of women and ethnic minorities in the CEC.
- To enhance transparency and accountability of the process; to post audited financial reports of the CEC; as well as financial reports of election campaign expenditures of the candidates.
- To attend to procedural shortcomings in the work of the election administration.
- To provide thorough training to domestic and international election observers.

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694 OSCE/ODIHR EOM Preliminary Statement, Presidential Election in Azerbaijan, 9 October 2013, p 5, [www.osce.org](http://www.osce.org)

695 OSCE/ODIHR EOM Preliminary Statement, Presidential Election in Azerbaijan, 9 October 2013, [www.osce.org](http://www.osce.org)

696 OSCE/ODIHR EOM Preliminary Statement, Presidential Election in Azerbaijan, 9 October 2013,

697 Interview of a CEC member Akif Gurbanov with the author, 13 December 2013

## 7. OMBUDSMAN

### Summary

The Constitutional Law (hereinafter Law on Ombudsman) on the Human Rights Commissioner of the Republic of Azerbaijan (hereinafter the Commissioner or the Ombudsman) declares that the activities of the Ombudsman are based on the principles of publicity, transparency, legality, justice and impartiality. However, the government does not always actually act on the findings of the Ombudsman. The Ombudsman generally acts on citizen's complaints within a reasonable period of time. Last year, the Ombudsman received: 2,287 complaints about the violation of the rights of owners; 690 complaints on prosecutor supervision; 694 complaints about traffic police; and 266 complaints about other structures of the Ministry of Internal Affairs. The Ombudsman usually makes visits to prisons and detention centres.

The current budget of the Ombudsman used to be sufficient for performance of its core duties, but now it falls short of adequately covering the new responsibilities transferred to this institution since 2011.

Under the law, this institution cannot investigate any activities of the President, Parliamentarians or judges. Along with this, the Ombudsman's Office has the mandate to attend to complaints involving activities of other bodies of the executive power.

Further efforts are required to enhance the competencies of this institution. Overall, the society places too high expectations on the Ombudsman's Office and expects that all their complaints will be attended to, including those outside of its mandate or institutional capacity.

### OMBUDSMAN

Overall Pillar Score 60/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 50/100	Resources	-	50
	Independence	75	25
Governance 67/100	Transparency	75	50
	Accountability	75	75
	Integrity	75	50
Role 62/100	Investigation	50	
	Promoting good practice	75	

## Structure and organisation

The institution of Ombudsman was established in accordance with the Constitutional Law<sup>698</sup> and through the election of the first Ombudsman by the Parliament, from among three candidates nominated for this position by the President. This took place on 2 July 2002. The Ombudsman has a broad mandate to safeguard against violation of human rights and freedoms enshrined in the Constitution<sup>699</sup> and in the international treaties, to which the Republic of Azerbaijan is a party. The Commissioner's local centres can and actually are, established in the regions of the country.<sup>700</sup> The structure, staff schedule and expenditure estimates of the Ombudsman's Office and the regional centres of the Commissioner, are determined by the Commissioner.

It should be emphasised that unlike many other countries that have several Ombudsmen institutions, such as the Ombudsman for human rights, children's rights, and for information, Azerbaijan has one institution to oversee implementation of the freedoms and liberties guaranteed by the Constitution, including the right of the citizens to access information – which was originally envisaged to be a responsibility of a separate institution. There are plans to establish the Office of the Financial Ombudsman, to protect rights of consumers in the financial sector and solve their problems in a swift manner.<sup>701</sup>

## Assessment

### Resources (practice): 50

*To what extent does an Ombudsman or its equivalent have adequate resources to achieve its goals in practice?*

The Commissioner receives regular funding from the state budget and the annual amount of the allocations is never smaller than in the previous years. However the resources of the Ombudsman's Office are deemed inadequate by some experts.<sup>702</sup> The current budget of the Ombudsman was sufficient for performance of its core duties, but now it falls short of adequately covering expenses, due to the new responsibilities transferred to this institution since 2011. In accordance with the amendments and additions made to the Constitutional Law on Ombudsman in 2011,<sup>703</sup> the Ombudsman was delegated additional authority to supervise the implementation of requirements envisaged in Law on Access to Information.<sup>704</sup> An increase in the budget is desirable for implementation of those additional duties.<sup>705</sup> Also, the institution was delegated independent monitoring of the implementation of the UN Convention on the Rights of People with Disabilities<sup>706</sup> that Azerbaijan ratified in 2009,<sup>707</sup> without respective increase in budget or human resources.<sup>708</sup>

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698 The Constitutional Law on Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

699 Constitution of the Republic of Azerbaijan, 12 November 1995, [www.president.az](http://www.president.az)

700 Apart from the central office in the capital of Baku, regional offices operate in Ganja, Sheki, Lankaran and Quba  
701 "Financial Ombudsman to be created in Azerbaijan", "Ses" Information Agency, 28 November 2012, <http://sia.az/ru/news/economy/322909>

702 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy, 31 October, 2013

703 The Constitutional Law on Amendments to the Constitutional Law on Ombudsman, 24 June 2011, [www.e-qanun.az](http://www.e-qanun.az)

704 The Law on Access to Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

705 Letter from the Ombudsman Office to Transparency Azerbaijan No 1/13293-13 dated 21 October 2013

706 <http://www.un.org/disabilities/convention/conventionfull.shtml>

707 Azerbaijan signed the Convention on 8 January 2008 and ratified on 28 January 2009, [www.treaties.un.org](http://www.treaties.un.org)

708 Letter from the Ombudsman Office to Transparency Azerbaijan No 1/13293-13 dated 21 October 2013

According to experts, the number of staff is not sufficient for implementation of its functions in full.<sup>709</sup> In short, the agency is neither sufficiently staffed nor budgeted.<sup>710</sup>

The staff is sufficiently professional and is exposed to multiple training programmes as well as international experience.<sup>711</sup> The Ombudsman's Office has a more open environment, for independent individuals from civil society to build a professional career, as compared to many other public agencies.<sup>713</sup> This might be connected to the personality of the Ombudsman, Prof. Suleymanova, with her strong academic and NGO background.<sup>714</sup>

## Independence (law): 75

*To what extent is the Ombudsman independent by law?*

According to the constitutional law, the Commissioner is independent and guided only by the Constitution and laws of the Republic of Azerbaijan. The 2001 Law on Ombudsman<sup>715</sup> includes the principle of independence of this institution. The following provisions ensure the formal independence of the Commissioner:

- The Ombudsman cannot be replaced, while in office.
- The Ombudsman enjoys immunity.
- Governmental and municipal bodies and officials are prohibited from interfering with the Ombudsman's activities.
- The Ombudsman is provided with financial and social guarantees.
- Declaration of a state of emergency or martial law does not cease or restrict the activities of the Ombudsman.<sup>716</sup>

At the same time, the Law on Ombudsman declares professional criteria for the position of the Ombudsman. According to the Law, the Commissioner should be of high moral character, over 30 years of age, with higher education and experience in the field of human rights protection. The Commissioner is elected by a majority of votes of the Milli Majlis (the Parliament) from among three candidates nominated by the President of Azerbaijan. The law bans the Ombudsman from engaging in any political activity and from political party affiliation. The Commissioner may not be represented in the leadership of any non-governmental organisation either.<sup>717</sup>

It should also be stressed that no competitive centralised exams for recruitment of the Ombudsman's staff are set forth by the law. Under the law, the authority to appoint and dismiss the

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709 Statement by MP Zahid Oruj, Media Forum, 3 May 2013

<http://www.mediaforum.az/az/2013/03/05/Zahid-Oruc-parlamenti-hokumete-guzestli-movqe-020120974c00.html>

710 Freedom of Information in Azerbaijan: Annual Report by Media Rights Institute, January 2014,

<http://www.mediarights.az/index.php?lngs=aze&id=526>

711 Situation with Ensuring and Protection of Human Rights and Freedoms in Azerbaijan, 2012 Annual Report of Azerbaijan Human Rights Defender (Ombudsman), [www.ombudsman.gov.az](http://www.ombudsman.gov.az)

712 OSCE assists in strengthening role of Azerbaijan's Commissioner for Human Rights (Ombudsman) to prevent torture, press release 24 May 2010, <http://www.osce.org/baku/69315>

713 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy, 31 October, 2013

714 Biography of Elmira Suleymanova, [www.ombudsman.gov.az](http://www.ombudsman.gov.az)

715 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

716 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

717 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)



staff members of the Ombudsman's Office and its regional centres lies with the Ombudsman.<sup>718</sup> Along with this, according to the regulation on civil service, the staff of the Ombudsman's Office is qualified as the 1st grade category public servants and consequently recruitment is performed through interview, which poses certain risks of a subjective approach.

The Ombudsman is elected for a period of seven years and holds the position for the maximum of two terms.<sup>719</sup>

The Ombudsman's salary as per the law originally stood at 1,800 manat<sup>720</sup> (US\$ 2,293 and was recently raised to 2,025 manat<sup>721</sup> (US\$2,580). It is sufficiently high when compared to salaries for senior positions in public sector. For instance, ministerial salary is fixed at 1,500 manat (US\$1,853) under Presidential Order, dated 9 July 2008.<sup>722</sup>

The expenditures of the Ombudsman's Office are financed from the state budget. The annual budget may not be reduced as compared to the previous financial year.<sup>723</sup> According to the law, the staff of the Office and regional centres are appointed and dismissed by the Ombudsman. The rights, duties and responsibilities of the staff of the Office and regional centres are regulated by the Labour Code, the Law on Civil Service<sup>724</sup> and other legislative acts.<sup>725</sup>

The powers of the Ombudsman can be terminated before expiry of his or her term of office by a decision of Milli Majlis taken by majority on its own initiative. Alternatively, this can also be done following the recommendation of the President, in cases where the requirements relating to the Ombudsman have been violated, or if the Ombudsman has completely lost his or her capacity to perform the prescribed duties.<sup>726</sup>

The person holding the position of the Ombudsman has immunity from criminal or administrative proceedings, searches, examinations, arrests or detentions save in cases where he or she was caught red-handed. If the Ombudsman is caught red-handed and consequently arrested, the body that has arrested the Ombudsman must inform Milli Majlis and the Prosecutor General within 24 hours. The inviolability of the Ombudsman may be terminated only through the majority vote in Milli Majlis, following a respective motion of the Prosecutor General. The immunity of the Ombudsman extends also onto his or her home, service premises, means of transport and communication, correspondence, private property and documents.<sup>727</sup> In short, the law provides ample provisions for independence of the Ombudsman.

## Independence (practice): 25

*To what extent is the Ombudsman independent in practice?*

Despite the formal guarantees and the fact that in practice the Commissioner is not effectively safeguarded against political interference, according to both local and international experts, in the

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718 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December 2001, [www.e-qanun.az](http://www.e-qanun.az)

719 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December 2001, [www.e-qanun.az](http://www.e-qanun.az)

720 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December 2001, [www.e-qanun.az](http://www.e-qanun.az)

721 The Constitutional Law on Amendments to the Constitutional Law on Ombudsman, 27 December 2013, [www.e-qanun.az](http://www.e-qanun.az)

722 Presidential Order on Raising Salaries of Civil Servants, 9 July 2008, [www.president.az](http://www.president.az)

723 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

724 The Law on Civil Service, 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

725 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

726 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

727 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

past couple of years the Ombudsman has become more vocal in voicing her position on violations of human rights.<sup>728 729</sup>

According to the Ombudsman, Elmira Suleymanova, this institution takes serious steps towards ensuring the rights of media within the scope of its newly acquired responsibilities.<sup>730</sup> However, as of today, the impact of the Ombudsman's Office in terms of improved access to information is rather limited, primarily due to lack of funding for the newly delegated powers. That being said, the Commissioner has indeed demonstrated on more than one occasion its readiness to issue critical statements and appeals about human rights violations, and at least, in most outstanding cases and severe violations of human rights,<sup>731</sup> hold regular meetings with political prisoners, imprisoned journalists and bloggers.<sup>732</sup>

However, it should be added that the public places high expectations on the Ombudsman's Office and expects that all their problems will be attended to by this institution.<sup>733</sup> For example, people may seek assistance of the Ombudsman with the litigation process,<sup>734</sup> whereas under the law the agency does not have the authority to supervise or interfere with the judiciary.

The incumbent Ombudsman Elmira Suleymanova is the first person to be elected to this position in Azerbaijan. Hence, the country does not have a practice of removal from this position.

Overall, the Ombudsman's Office is efficient in law making.

## Transparency (law): 75

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Ombudsman?*

The law ensures transparency of the Ombudsman and provides the public with the right of access to relevant information. According to the law, no later than two months after the end of each year, the Commissioner submits the annual report on the protection of human rights to Milli Majlis. The report is published in the newspaper Azerbaijan and the Compilation of Legislative Acts of the Republic of Azerbaijan. At the same time, the law declares that the Ombudsman protects information constituting a state secret in accordance with respective legislation.<sup>735</sup> Moreover, under the law, no data concerning personal and family life of applicants, which became known to the Ombudsman while investigating the circumstances, indicated in a complaint, shall be made public without consent of those persons.<sup>736</sup> So, privacy of those seeking protection is adequately covered by the law as well.

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728 National Human Rights Commissions; Azerbaijan, by Internal Displacement Monitoring Center, [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/0E7EEA22271355E2C12577F10057598C?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/0E7EEA22271355E2C12577F10057598C?OpenDocument)

729 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy, 31 October, 2013

730 Azerbaijan Makes Serious Steps to Ensure Rights of Media, Statement of Ombudsman Elmira Suleymanova, 26 April 2012, SIA news agency, <http://sia.az/ru/news/economy/322909>

731 Ombudsman Elmira Suleymanova Demands Investigation of Elvin Askerov's Death, Azeri Report, 17 January 2011, [http://azerireport.com/index.php?option=com\\_content&task=view&id=2570](http://azerireport.com/index.php?option=com_content&task=view&id=2570)

732 Ombudsman Meets with Political Prisoners, Radio Azadlig, 4 June 2013, <http://www.azadliqradiosu.az/content/news/25007062.html>

733 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy by the author, 31 October, 2013

734 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy, by the editor, 23 April 2014

735 Presidential decree on Application of the Law on State Secret, 05 November 2004; Presidential decree on Approval of the List of Information Constituting State Secret, 03 June 2005, [www.president.az](http://www.president.az)

736 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December 2001, [www.e-qanun.az](http://www.e-qanun.az)

## Transparency (practice): 50

*To what extent is there transparency in the activities and decision-making processes of the Ombudsman in practice?*

The Ombudsman's Office makes the reports publicly available. Within two months of the next year, the Ombudsman submits the annual report to Milli Majlis and publishes it in the official newspaper Azerbaijan and the Legislation Database of the Republic of Azerbaijan. Annual reports are also available to the public on the website of the Ombudsman's Office and can be downloaded free of charge.<sup>737</sup> The reports are also available on the website of the International Ombudsman Institute.<sup>738</sup> The Ombudsman is easily reachable by the public through the telephone number (050-370-98-96) and a website based general hotline and a special hotline for children rights (916), as well as through designated officials receiving citizens in person.<sup>739</sup> Since its establishment by the end of 2013, the institution has published approximately 9,500 press releases, including around 250 in the year 2013 alone.<sup>740</sup>

## Accountability (law): 75

*To what extent are there provisions in place to ensure that the Ombudsman has to report and be answerable for its actions?*

The law stipulates the accountability of the Ombudsman to the President and to Milli Majlis. Under the law, the Ombudsman submits to the President an annual report on the protection of human rights in the country and presents its findings before Milli Majlis. The annual report identifies the governmental and municipal bodies or officials that violated human rights and failed to comply with the demands of the Ombudsman, as well as indicates measures that were taken in this connection. The report also offers a general picture of the situation of human rights and freedoms and makes recommendations. The report is submitted to the Cabinet of Ministers, the Constitutional Court, the Supreme Court and the Prosecutor General as well. Besides this, the Ombudsman presents the financial information to the Commission on Combating Corruption of the Republic of Azerbaijan.<sup>741</sup>

It should be stressed that there are no legal provisions guaranteeing protection of persons reporting misconduct of public officials to the Ombudsman's Office; nor are there special provisions attending to the misconduct of the Office staff. The Ombudsman's staff is accountable for misconduct, non-performance or unduly performance of the duties under the general law for civil servants,<sup>742</sup> whereas this law shall not be applicable onto Ombudsman staff, as they do not qualify as civil servants, being accountable to the Parliament and the President at the same time.

Reports of the Ombudsman are not subject to court review; and on the other side, activities of the Ombudsman do not extend onto cases under litigation, whereas citizens, due to low level of legal education, appeal to the Ombudsman instead of high instance courts.<sup>743</sup> This is an unjustified issue of discontentment with the Ombudsman for many complainants, who express their grievances of the courts.<sup>744</sup>

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737 Official website of the Ombudsman's Office, [www.ombudsman.gov.az](http://www.ombudsman.gov.az)

738 <http://www.theioi.org/europe/azerbaijan/commissioner-for-human-rights-ombudsman>

739 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy, 31 October 2013

740 Letter from the Ombudsman Office to Transparency Azerbaijan No 1/13293-13 dated 21 October 2013

741 The Law on Procedures on Submission of Financial Information by Public Officials, 24 June 2005, [www.e-ganun.az](http://www.e-ganun.az)

742 Law of the Republic of Azerbaijan on Civil Service, 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

743 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy, 31 October 2013

744 Personal experience of Transparency Azerbaijan staff

## Accountability (practice): 50

*To what extent does the Ombudsman report and is answerable for its actions in practice?*

The Ombudsman's Office submits an annual report on the state of human rights and freedoms in Azerbaijan. The report contains: suggestions and recommendations concerning the restoration of human rights and freedoms violated by officials, protection of human rights and prevention of violations, legal education and the results of scientific and analytical work, collaboration with the government agencies, the public and the media, as well as other suggestions to enhance protection of the human rights and freedoms in the country. After the discussions in Milli Majlis, the report is distributed to the media. However, very few media campaigns are organised to highlight the main aspects of this report and to keep it in the public eye. In practice, the findings of the reports are debated amongst the experts and members of civil society during the meetings and public hearings.<sup>745</sup>

Though the Ombudsman institution organises public presentations and hearings around its annual report, this is more to present activities performed and results, rather than discuss their policy implications, objectives and limitations; a tendency common for all public institutions in Azerbaijan.

The finances of the Ombudsman's Office are annually audited by the Chamber of Auditors and so far, according to the institution, no violations have been found.<sup>746</sup>

## Integrity Mechanisms (law): 75

*To what extent are there provisions in place to ensure the integrity of the Ombudsman?*

The Ombudsman's staff is required to follow the general regulation applicable to civil servants.<sup>747 748</sup> This law states impermissibility of acquiring material and non-material gifts, privileges and concessions, prevention of corruption and restrictions on acceptance of gifts, use of property, use of information and public or political activity issues.<sup>749</sup> The law also ensures prevention of conflict of interests. At the same time, under the law, the Ombudsman's staff shall submit annual financial reports on personal income and property condition to the head of the body with indication of source, type and amount of additional income.<sup>750</sup>

## Integrity Mechanisms (practice): 50

*To what extent is the integrity of the Ombudsman ensured in practice?*

The Ombudsman builds its work under rights granted by the Constitutional Law and pursuant to the Paris Principles. The work of the Ombudsman's Office was highly assessed by experts of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights and awarded the highest "A" status.<sup>751</sup> There are no reported complaints about violation of codes of conduct by Ombudsman's staff. According to information from the

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745 Interview with Nazir Guliyev, Legal World Public Union for Legal Advocacy, 31 October 2013

746 Letter from the Ombudsman Office to Transparency Azerbaijan No 1/13293-13 dated 21 October 2013

747 Law On Rules of Ethical Conduct of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

748 Law on Civil Service, 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

749 Law On Rules of Ethical Conduct of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

750 Law on Civil Service, 21 July, 2000, [www.csc.gov.az](http://www.csc.gov.az)

751 Interview with Aydin Safikhanli Head of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan by the editor, 22 April 2014

Ombudsman,<sup>752</sup> in the 12 years since its establishment, the agency received over 100 thousand complaints and appeals, all of which were responded to. The agency submitted 460 proposals and recommendations to various public agencies, related to enhancement of the situation with human rights, 65 per cent of which have been implemented.

Also, financial declarations are not submitted by the staff or by any other public officials, because lack of supporting legislation for the legal requirement of financial reporting by senior officials prevents the law's implementation,<sup>753</sup> despite numerous urges from civil society.<sup>754</sup>

## Investigation: 50

*To what extent is the Ombudsman active and effective in dealing with complaints from the public?*

The Ombudsman primarily collaborates with the Ministry of Internal Affairs and the General Prosecutor's Office for providing oversight of investigation procedures and the Ministry of Justice for the monitoring of the detention facilities conditions.<sup>755</sup> Violations revealed are duly reported and remedy measures recommended.<sup>756</sup> Moreover, under the law, the Ombudsman may carry out investigations on his or her own initiative in cases of special public importance, or to protect interests of persons who are not capable to vindicate their rights themselves.<sup>757</sup>

At the same time, there are also examples of successful cases involving the Ombudsman's Office. For instance, citizen's appeal to the State Traffic Police Office of the Ministry of Internal Affairs was responded to after the Ombudsman addressed a request to the chief of that Office (Application. No. 2086-12; 14.03.12); or the request for information made to the Committee on Work with Diaspora was responded to when the Ombudsman appealed to the chief of the Committee (Application No. 282-12; 23.01.12).<sup>758</sup>

Last year, the Ombudsman received 12,470 complaints or 210 fewer than in the previous year. It is difficult to pass a judgment as to whether the decrease speaks of improvement of the human rights situation in the country or decrease of public trust in the ability of the institution to solve the problems. About 20 per cent of complaints alleged violation of property rights and more than 10 per cent of complaints concerned law enforcement agencies. Most public complaints have been sent to law enforcement agencies and the executive power. Out of 960 complaints involving employees of the Ministry for Interior Affairs, 268 policemen were punished, 231 of whom were taken against administrative sanctions and 15 were dismissed.<sup>759</sup>

The Ombudsman conducted joint awareness raising training for governmental bodies, NGOs, civil society and journalists, as well as prepared and published useful educational programmes and modules. Furthermore, the "Learn and Enjoy your Rights" booklet, summarising the provisions of the

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752 Interview with Aydin Safikhanli Head of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan by the editor, 22 April 2014

753 Law on Approval of Rules for Submission of Financial Information by Officials, 24 June 2005, [www.e-qanun.az](http://www.e-qanun.az)

754 Monitoring report on Implementation of Azerbaijan National Anti-corruption Action Plan 2012 – 2015, 19 September 2012 – 2013) by Constitution Research Foundation under Azerbaijan Partnership for Transparency project by Transparency Azerbaijan, November 2013 [www.transparency.az](http://www.transparency.az)

755 Situation with Ensuring and Protection of Human Rights and Freedoms in Azerbaijan, 2012 Annual Report of Azerbaijan Human Rights Defender (Ombudsman), [www.ombudsman.gov.az](http://www.ombudsman.gov.az)

756 Violations Revealed at Temporary Detention Facilities, Azadlig Radio 7 June 2012, <http://www.azadliqradiosu.az/content/news/24606810.html>

757 The Constitutional Law on Commissioner for Human Rights (Ombudsman), 28 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

758 Situation with Ensuring and Protection of Human Rights and Freedoms in Azerbaijan, 2012 Annual Report of Azerbaijan Human Rights Defender (Ombudsman), [www.ombudsman.gov.az](http://www.ombudsman.gov.az)

759 Parliament Approves the Report of the Ombudsman, Turan news agency, 5 March 2013 <http://www.contact.az/docs/2013/Politics/030500030764en.htm#UstkbtJdU7C>

Law on Access to Information, was made and disseminated among media representatives in the regions.<sup>760</sup>

However, success of the institution in ensuring access to information is much less visible. Thus, no legal remedies are offered to information seekers, as well as no recommendations to the owners of information on how to improve access to information.<sup>761</sup>

The Ombudsman's institution is one of the few agencies in Azerbaijan that effectively cooperates with civil society organisations through its Experts' Council established in 2003 and Business and Human Rights work group.<sup>762</sup>

## Promoting good practice: 75

*To what extent is the Ombudsman active and effective in raising awareness within government and the public about standards of ethical behaviour?*

Though the institution does its best to raise awareness among public institutions and the general public about standards of good behaviour, the powers of the Ombudsman are rather limited. Usually, the Ombudsman applies to the Amnesty Commission under the President of the Republic of Azerbaijan to solicit pardon with certain success.<sup>763</sup> The staff meets with most of the people that are believed to be detained and arrested for political reasons.<sup>764 765 766</sup>

Also, success of the institution in ensuring access to information is much less visible. Thus, no legal mechanisms have been developed for information seekers yet.<sup>767</sup>

Also, according to the OSCE, no reliable government statistics or analysis on the implementation of the law on access to information is available.<sup>768</sup>

At the same time, the Ombudsman regularly makes proposals to the Milli Majlis on improvement of the national legislation. The Ombudsman also makes a proposal to Milli Majlis concerning international conventions. For example, after the proposals of the Ombudsman, the UNESCO Convention of Elimination of Discrimination in Education, Protocol 14 to the European Convention on Human Rights, Convention on Rights of Persons with Disabilities and additional Protocol thereto, the OPCAT that implies the establishment of the national mechanism were all ratified.<sup>769</sup> The latest

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760 Situation with Ensuring and Protection of Human Rights and Freedoms in Azerbaijan, 2012 Annual Report of Azerbaijan Human Rights Defender (Ombudsman), [www.ombudsman.gov.az](http://www.ombudsman.gov.az)

761 Freedom of Information in Azerbaijan, Annual report, by Media Rights Institute, January 2014, [www.mediarights.az/index.php?lngs=aze&id=526](http://www.mediarights.az/index.php?lngs=aze&id=526)

762 Letter from the Ombudsman Office to Transparency Azerbaijan No 1/13293-13 dated 21 October 2013

763 Ombudsman Appealed to the President for Pardon, Azadlig Radio, 2 June 2012, [www.azadligradiosu.az/content/news/24601321.html](http://www.azadligradiosu.az/content/news/24601321.html)

764 Representative of Ombudsman meets with Tural Abbasov, Azadlig Radio, 13 August 2013, [www.azadligradiosu.az/content/news/25074086.html](http://www.azadligradiosu.az/content/news/25074086.html)

765 Ombudsman Spoke about the Youth Detained, 22 April 2013, [www.azadligradiosu.az/content/news/24965073.html](http://www.azadligradiosu.az/content/news/24965073.html)

766 Ombudsman Appealed to the Prosecutor General With the case of Khadija Ismaylova, 3 March 2012, [www.azadligradiosu.az/search/search.aspx?k=ombudsman+&p=2#article](http://www.azadligradiosu.az/search/search.aspx?k=ombudsman+&p=2#article)

767 Freedom of Information in Azerbaijan, Annual report, by Media Rights Institute, January 2014, [www.mediarights.az/index.php?lngs=aze&id=526](http://www.mediarights.az/index.php?lngs=aze&id=526)

768 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

769 Activity of the Ombudsman of the Azerbaijan Republic in Ensuring Human Rights, Presentation by Aydin Safikhani, Head of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, at the 2011 Human Rights Dimension Implementation Meeting, Working session 3, Warsaw, 26 September to 7 October 2011, <http://www.osce.org/odihr/83008>

legislative initiative of the agency is the draft law on the administrative arrest and it has been discussed by the Parliament.<sup>770</sup>

### Recommendations:

- To increase the budget and human capacity of the Ombudsman's institute in the view of its additional responsibilities on ensuring access to information.
- To create legal aid mechanisms for information seekers to access public information.
- To expand the scope of coverage of the population and accessibility of the Ombudsman (i.e. mobile sessions to receive complaints from people on site should be organised and social ads should be aired on TV and radio programmes).
- In order to settle disputes within business sector, as well as decrease the workload of courts, to expedite establishment of the institute of financial Ombudsman.

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<sup>770</sup> Law on Administrative Arrest Comes onto Agenda, Media Forum, 21 January 2014  
[www.mediaforum.az/az/2014/01/21/inzibati-habs-haqqinda-qanun-gundeme-gelir-055028337c00.html](http://www.mediaforum.az/az/2014/01/21/inzibati-habs-haqqinda-qanun-gundeme-gelir-055028337c00.html)



## 8. CHAMBER OF ACCOUNTS

### Summary

Azerbaijan was the last country in the post-Soviet space to establish its supreme audit institution – the Chamber of Accounts – in 2001. The Chamber of Accounts exercises two types of budgetary control: analysis of expected results (ex-ante) by reviewing draft budget related legislation and analysis of budget execution (ex-post). Though legislation provides the Chamber with a relatively high degree of independence, in practice it does not exercise in full its right to supervise extra-budgetary funds and public funds awarded to the private sector.

The Chamber does not act on suspicions of the media and general public of possible corruption, neither does it audit socially important projects outside of its scheduled activities, or closely cooperate with civil society. The Chamber informs the general public of its activities; however, it provides general information about agencies audited. The reports are written in a good technical language and presented before the Parliament in a timely manner. The Chamber of Accounts is reported to have improved its ability to conduct audit in recent years. The country is in the process of creating an efficient system of internal audit in the public offices.

Another institution – Chamber of Audits – supervises work of auditing institutions that perform audits of the non-state funds.

### CHAMBER OF ACCOUNTS

Overall Pillar Score 54/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 58/100	Resources		50
	Independence	75	50
Governance 55/100	Transparency	75	25
	Accountability	75	50
	Integrity	50	-
Role 50/100	Effective financial audit		50
	Detecting and sanctioning misbehaviour		50
	Improving financial management		50

## Structure and organisation

The Chamber of Accounts operates in the Republic of Azerbaijan as a Supreme Audit Institution.<sup>771</sup> The legal status of the Chamber of Accounts is enshrined in Article 92 of the Constitution of the Republic of Azerbaijan, whereas its organisational structure, responsibilities and other related issues are set forth in the Law of the Republic of Azerbaijan on the Chamber of Accounts<sup>772</sup> and detailed in supporting legislation. The Chamber of Accounts is accountable to the Parliament of the Republic of Azerbaijan and its main function is control over formation and implementation of the state budget, including extra-budgetary funds, and budgetary expends. The Chamber is entrusted to audit any recipient of the budget funds,<sup>773774</sup> not limited to public institutions and municipalities. It also issues supporting legal acts regulating organisation and conduct of audit in public agencies and municipalities, including internal auditors thereof, as well as supervises compliance to these legal acts.

There is another audit institution – the Chamber of Auditors of Azerbaijan Republic – which was established in 1996. The latter is an independent body responsible for state regulation of the audit service in the country. Their functions include supervision of compliance by the auditors (auditor organisations) in their auditing activities with the respective legislation.<sup>775</sup> Members of the Chamber of Auditors conduct audit for non-state budget funded entities, whereas public institutions may also resort to their services on a voluntary basis in addition to planned audits by the Chamber of Accounts, should their budgets permit. Since 1 January 2010, the Chamber of Auditors applies International Standards on Auditing (ISA) in the Azerbaijan Republic.<sup>776</sup>

However, the scores are based on assessment of the Chamber of Accounts only and do not extend onto the Chamber of Auditors.

## Assessment

### Resources (practice): 50

*To what extent does the audit institution have adequate resources to achieve its goals in practice?*

The limited budget of the Chamber of Accounts affects the ability of the institution to properly perform its functions.<sup>777</sup> Moreover, even this limited budget is spent unevenly. Thus, only 2.8 million manat (US\$3.57 million) were spent out of 3.5 million manat (US\$4.45 million) from 2013 budget, of which reimbursement and other related expends constituted 2.3 million manat (US\$2.9 million),<sup>778</sup> which leaves operational budget lines largely unspent. In addition, no expends on personnel development and training is envisioned in the budget.

The auditors of the Chamber of Accounts have not been exposed to domestically designed training programmes to reveal corruption and fraud, and apart from participation in international events,

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771 Website of the Chamber of Accounts, <http://www.ach.gov.az/?/en/content/342/>

772 The Law on the Chamber of Accounts, 9 July, 1999, [www.ach.gov.az](http://www.ach.gov.az)

773 Interview of Zohrab Ismail, Public Association of Assistance to Free Economy, to radio Azadlyg program Do We Know Chamber of Accounts?, 8 February 2014, [www.youtube.com/watch?v=-X8qPLhgrmA](http://www.youtube.com/watch?v=-X8qPLhgrmA)

774 In case of agents with partial state funding, only the state funds are subject to audit by the Chamber of Accounts.

775 Letter No 01-1/051 from Vahid Novruzov, chairman of the Chamber of Accounts to Transparency Azerbaijan dated 5 September 2013

776 Interview of Islam Bayramov, managing partner HLB LLC Azerbaijan, member of Chamber of Auditors with the report's editor, 7 November 2013

777 Chambers of Accounts in connection with the international practice and norms, publication by Public Association for Assistance to Free Economy, Baku, 2013

778 The report on implementation of the 2013 Budget of the Chamber of Accounts, [www.ach.gov.az](http://www.ach.gov.az)

neither are such plans known.<sup>779</sup> Exchange of experience to improve work quality is envisioned in the mutual memorandums of understanding signed between the Chamber of Accounts and SAs of different countries, such as Audit Office of Bulgaria, Chamber of Accounts of France, Supreme Control Chamber of Poland and others.<sup>780</sup>

Within the framework of the World Bank Corporate and Public Sector Accountability Project (CAPSAP)<sup>781</sup> with the Ministry of Finance, trainings were organised for strategic development and capacity building of the Chamber of Accounts in 2007-2014. Apart from consultations with the project executors,<sup>782</sup> no tangible results are available to the public so far.

## Independence (law): 75

*To what extent is there formal operational independence of the audit institution?*

The Constitution of Azerbaijan Republic puts the Chamber of Accounts under responsibility of the Parliament.<sup>783</sup> In addition to the respective article of the Constitution, there are three main legal documents that regulate the status and activity of the Chamber of Accounts. These are the Law on the Chamber of Accounts,<sup>784</sup> Internal Regulations of the Chamber of Accounts<sup>785</sup> and Rules on Planning the Activities of the Chamber of Accounts.<sup>786</sup> However, the Constitution does not explicitly state independence of the Chamber of Accounts, which reduces its ability to act independently.<sup>787</sup>

The Chairman, Deputy Chairman and seven auditors of the Chamber of Accounts are appointed for a maximum term of office of seven years. The law does not provide clear mechanisms for the appointment process in the Chamber of Accounts.<sup>788</sup> However, the law clearly states that the number and composition of the members of the Board of the Chamber of Accounts shall be approved by the Chairman of Milli Mejlis (Parliament of Azerbaijan) upon presentation of the Chairman of the Chamber of Accounts. They can be dismissed by the Parliament upon a motion by the Chairman of the Parliament supported by a respective consent of the Parliamentary Economic Committee. The requirements regarding members of the Chamber of Accounts and rules for their appointment are specified in Article 44 of the Internal Regulations of the Parliament<sup>789</sup> and in Article 10 of the Law on Permanent Commissions of the Milli Majlis.<sup>790</sup>

As per the law,<sup>791</sup> the Chairman cannot be involved in any paid activities, except for teaching, academic or creative activity. Neither shall the candidate nominated to this position by the Chairman of the Parliament be a direct relative of the following first rank officials: the Chairman of the Parliament, Prime Minister, Minister of Finance, Prosecutor General, Chairman of the Supreme Court, Chairman of the Economic Court, or Chairman of the Board of the National Bank. Other

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779 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

780 The report on the activity of the Chamber of Accounts of the Republic of Azerbaijan for 2009, [www.ach.gov.az](http://www.ach.gov.az)

781 [www.worldbank.org](http://www.worldbank.org)

782 Press release by the Chamber of Accounts, 6 February 2014, [www.ach.gov.az](http://www.ach.gov.az)

783 Article 9 of the Constitution of AR, [www.ach.gov.az](http://www.ach.gov.az)

784 The Law on the Chamber of Accounts, 2 July 1999, [www.ach.gov.az](http://www.ach.gov.az)

785 The Law on Approval of the Internal Regulations of the Chamber of Accounts, 5 March 2002, [www.ach.gov.az](http://www.ach.gov.az)

786 Rules on Planning the Activities of the Chamber of Accounts, approved by the Board of the Chamber of Accounts, 30 January 2009, [www.ach.gov.az](http://www.ach.gov.az)

787 Interview of Zohrab Ismail, Public Association of Assistance to Free Economy and Kanan Aslanli, Public Finance Monitoring Center, to Radio Azadlig program "Do We Know Chamber of Accounts?" 8 February 2014

788 Interview of Kanan Aslanli, Public Finance Monitoring Center, with editor, 12 March 2014

789 Internal Regulations of the Parliament, 17 May, 1996, [www.ach.gov.az](http://www.ach.gov.az)

790 Law on Permanent Commissions of the Milli Majlis of the Republic of Azerbaijan, 1 December 2000, [www.ach.gov.az](http://www.ach.gov.az)

791 The Law on the Chamber of Accounts, 2 July 1999, [www.ach.gov.az](http://www.ach.gov.az)

eligibility criteria are: minimum 5 years of experience in state administration, state control, economy and finance, along with higher education and citizenship of the Republic of Azerbaijan.

Under the law, the Chairman, the Deputy Chairman and the auditors of the Chamber of Accounts enjoy immunity to fulfil their duties properly without being threatened or manipulated, i.e. they are exempt from detention, personal search, and investigation and cannot be brought to criminal responsibility, as well as to court-based administrative penalties, unless immunity is lifted by the Parliament. However, these provisions are not applicable to administration staff of the Chamber of Accounts with a status of civil servants, who are regulated by the general Law on Civil Service.<sup>792</sup>

As per existing legislation,<sup>793</sup> the Chamber of Accounts conducts audits according to its Annual Plan, prepared with suggestions from the Parliamentary Economic Committee and Presidential Administration taken into account. However, the law allows for unscheduled audits with a direct order from the president of the country. This provision is also applicable to the Ministry of Finance,<sup>794</sup> that is – unlike the Chamber – a part of the executive branch. Therefore, formally the supreme audit institution is reasonably independent but the law provides a loophole for political interference from the executive branch.

## Independence (practice): 50

*To what extent is the audit institution free from external interference in the performance of its work in practice?*

While presenting the 2012 annual report to the Parliament in April 2013, the former Chairman of the Chamber Heydar Asadov stated that the Chamber did not face any pressure during their work.<sup>795</sup> However, in accordance with the Open Budget Index, the influence of the Chamber was rated at a low 20 points out of a total 100, the assessment being based on the following four indicators:<sup>796</sup>

- Authority to remove the head of supreme audit institution.
- Legal power to audit public finances.
- Financial resources available to the SAI and the authority to determine its own budget.
- The availability of skilled audit personnel.

There are no precedents when heads of the supreme audit institutions were dismissed before the end of their tenure for political reasons. The first chairman retired after six years of service out of a maximum of seven for health reasons,<sup>797</sup> which was quite understandable at his advanced age; however, the second chairman was promoted to the ministerial rank before expiry of his term of office.<sup>798</sup> Additionally, no public statement of relief of responsibilities by the Parliament or resignation prior to appointment has been made.

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<sup>792</sup> The Law on Civil Service 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

<sup>793</sup> Article 16 of the Law on the Chamber of Accounts, 2 July 1999, [www.ach.gov.az](http://www.ach.gov.az) and Article 3 of the Internal Regulations of the Chamber of Accounts, 5 March 2002, [www.ach.gov.az](http://www.ach.gov.az)

<sup>794</sup> The Law on the Budget System, 2 July 2002, [www.ach.gov.az](http://www.ach.gov.az)

<sup>795</sup> Mubariz Aslanov, Azerbaijani Parliament has adopted annual report of Chamber of Accounts after discussions, APA New agency, 5 April 2013. <http://en.apa.az/news/190614>

<sup>796</sup> Open Budget Index 2012: Azerbaijan, by International Budget Partnership, <http://internationalbudget.org/what-we-do/open-budget-survey/research-resources/methodology/>

<sup>797</sup> Website of the Chamber of Accounts [www.ach.gov.az](http://www.ach.gov.az)

<sup>798</sup> Heydar Asadov was appointed to the position of chairman of the Chamber of Accounts on 17 April 2007 upon expiry of the term of office of the first chairman and promoted to the position of Minister of Agriculture on 22 October

The Chamber of Accounts is reported to have improved its ability to conduct audits in recent years, as compared with the past when some public agencies would not allow the Chamber to audit their accounts.<sup>799</sup> In general, Azerbaijan officials are believed to be ready to accept existence of an independent auditing agency.<sup>800</sup>

## Transparency (law): 75

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAI?*

The Chamber of Accounts is directly involved in the preparation, discussion and approval of the draft laws on the state budget and extra-budgetary funds for the subsequent year,<sup>801</sup> as well as other financial and economic legal acts in the competence of the Parliamentary Economic Committee.

In accordance with Article 25 of Internal Regulations<sup>802</sup> and a procedure set forth in more details in a special document,<sup>803</sup> the Chamber shall prepare a report per each organisation audited, sending copies thereof to the audited agency, and if any violations covered by the Criminal Code are revealed, to the Prosecutor's Office. There is no provision in the Law on Chamber of Accounts enforcing the Chamber of Accounts to disclose information on each individual audit to the mass media or the Parliament (unless the latter specifically requests it). However, another normative act<sup>804</sup> stipulates that the Chamber is authorized to share with mass media information on audits conducted and their results, pursuant on submission of the official reports to the Parliament. The content and form of these reports is defined by the Board of the Chamber of Accounts. The Chamber also can arrange press conferences to present its quarterly, semi-annual or annual reports to the media at its discretion.

As for mandatory reporting, the Chamber is obliged to submit to the Parliament quarterly reports on its activities, as well as semi-annual and annual budget execution reviews, providing an independent evaluation of the budget implementation – i.e. including most parts of the government's accounts. These reports shall be debated and approved by the Parliament. Deadlines for the semi-annual and annual reviews are 15 April and 15 of October respectively.

Annual reports shall be published in the Bulletin of the Parliament of Azerbaijan Republic. At the same time, information disclosed to the general public is subject to the requirements of the relevant legislation, i.e. the Law on State Secret,<sup>805</sup> supported by a respective presidential decree<sup>806</sup> and the Law on Access to Information.<sup>807</sup>

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2013 at formation of the new Cabinet of Ministers pursuant to presidential elections 9 October 2013, more details at [www.agro.gov.az/index.php?cat=2&ses=b9358](http://www.agro.gov.az/index.php?cat=2&ses=b9358)

799 Interview of Zahid Oruj, MP to Radio Azadlig program "Do We Know Chamber of Accounts?," 8 February 2014

800 Interview of Rashad Hasanov, expert of Center for Economic and Social Development, Radio Azadlig, 9 April 2014, [www.youtube.com/watch?v=bWcqhUnwUDI](http://www.youtube.com/watch?v=bWcqhUnwUDI)

801 The procedure is described in details in the Rules on Preparation, Review and Approval of the Draft Laws on the State Budget and Extra-budgetary Funds. Approved by the Board of the Chamber of Accounts, 18 June 2009

802 Internal Regulations of the Chamber of Accounts, 5 March 2002, [www.ach.gov.az](http://www.ach.gov.az)

803 Rules on Preparation, Performance and Documenting Results Of Financial-Budgetary Supervision Activities Performed by the Chamber of Accounts, approved by the Board of the Chamber of Accounts, 11 March 2009, [www.ach.gov.az](http://www.ach.gov.az)

804 Rules on Preparation of Materials on Activities of the Chamber of Accounts and Dissemination thereof in Mass Media, approved by the Board of the Chamber of Accounts, 13 September 2008, [www.ach.gov.az](http://www.ach.gov.az)

805 The Law on State Secret, 5 November 2004, [www.president.az](http://www.president.az)

## Transparency (practice): 25

*To what extent is there transparency in the activities and decisions of the audit institution in practice?*

Following mandatory submission to the Parliament of its annual activities report, approved by the Chamber's board, the full text thereof is published in "the Bulletin of the Parliament of Azerbaijan Republic",<sup>808</sup> as set forth by the legislation. Quarterly reports are also submitted to the Parliament but not published in full in media. These reports do provide an independent assessment of state budget execution, which is recognized by international observers.<sup>809</sup>

As public disclosure of the results of the reports on audits conducted is not mandatory under the law, limited information seeps to media. The Chamber does not audit projects outside of its scheduled activities.<sup>810</sup>

The Chamber does not closely cooperate with civil society, however, the Chamber responds to the questions and information queries by different NGOs in a precise and timely manner.<sup>811</sup> Another mechanism to ensure transparency of the Chamber is its web site that provides the public with the information on the activity of the Chamber of Accounts. Information on the website provided by the Chamber on its activities is very general. Data on quarterly budget execution is too aggregate and fragmentary and does not allow the making of any concrete conclusions or the revealing of discrepancies.<sup>812</sup> It is interesting that an Azerbaijani civil society report ranked the Chamber of Accounts with 42.29 per cent score as one of the leaders of online transparency against the average score of 24.36 per cent for national public agencies.<sup>813</sup>

The survey conducted among citizens to learn perceptions and awareness of citizens about the Chamber of Accounts revealed that only 23 per cent of the respondents are aware of existence of the Chamber of Accounts, while only 11.6 per cent of the survey participants were aware of the purpose of the Chamber. It is clear from the survey results that awareness of the population about the Chamber of Accounts is very low.<sup>814</sup>

## Accountability (law): 75

*To what extent are there provisions in place to ensure that the SAI has to report and be answerable for its actions?*

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806 Presidential decree on Approval of the List of Information Constituting State Secret, 3 June 2005, [www.president.az](http://www.president.az)

807 The Law on the Right to Obtain Information, 9 December 2005, [www.president.az](http://www.president.az)

808 Rules on Preparation of Materials on Activities of the Chamber of Accounts and Dissemination thereof in Mass Media, approved by the Board of the Chamber of Accounts, 13 September 2008, [www.ach.gov.az](http://www.ach.gov.az)

809 Open Budget Index 2012: Azerbaijan, by International Budget Partnership, <http://internationalbudget.org/wp-content/uploads/OBI2012-AzerbaijanCS-English.pdf>

810 R.Hasanov, N.Ibrahimova, T.Abbasov, Opinion on the Activities of the Chamber of Accounts, Center for Economic and Social Research, Baku, 2013 [http://www.cesd.az/new/wp-content/uploads/2011/05/CESD\\_Report\\_Chamber\\_of\\_Accounts.pdf](http://www.cesd.az/new/wp-content/uploads/2011/05/CESD_Report_Chamber_of_Accounts.pdf)

811 Experience of Transparency Azerbaijan experts.

812 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

813 Online Transparency of Government Organisations, report of the monitoring of websites of 67 state organisations released by the Media Rights Institute (MRI), 2011, [www.mediariights.az](http://www.mediariights.az)

814 R.Hasanov, N.Ibrahimova, T.Abbasov, Opinion on the Activities of the Chamber of Accounts, Center for Economic and Social Research, Baku, 2013 [www.cesd.az/new/wp-content/uploads/2011/05/CESD\\_Report\\_Chamber\\_of\\_Accounts.pdf](http://www.cesd.az/new/wp-content/uploads/2011/05/CESD_Report_Chamber_of_Accounts.pdf)



As it is already mentioned above, the Chamber of Accounts is required to present midyear and annual reviews to the Parliament, including the types and results of financial control activities conducted. These semi-annual and annual reports cover a broad range of issues, including: types of financial-budgetary supervision activities performed during the year, their number, justification for audit, identified shortcomings and discrepancies alongside with reasons of those and proposed countermeasures, as well as other relevant information on activities of the Chamber as set forth by the legislation in force.<sup>815</sup> The deadlines for these reports are, as a rule, complied with. Thus the annual report for 2013 was presented, debated and approved by the Parliament on 5 April 2013.<sup>816</sup> The Chamber also shall inform the Parliament of its activities and execution of the state budget on a quarterly basis, complementing the above semi-annual and annual reviews.

According to Article 25 of the Law on the Chamber of Accounts<sup>817</sup> and Article 17 of Internal Regulations,<sup>818</sup> the Chairman and the Deputy Chairman assign tasks to the auditors and exercise control over their activity. Apart from that there are no legal provisions, requiring audit of the Chamber of Accounts itself.

There are no specific rules for administrative bodies, audited by the SAI, to challenge or appeal against audit results, apart from the general procedure of court appeal as per Administrative Procedures and Civil Procedures Codes.

Legislation on accountability of SAI is limited. But the law provides ample provisions regulating reporting mechanisms of SAI.

## Accountability (practice): 50

*To what extent does the SAI have to report and be answerable for its actions in practice?*

The reports of the Chamber of Accounts meet all the legal requirements discussed above<sup>819</sup> and are written in good technical language,<sup>820</sup> however, their analysis of the budget execution is assessed as rather shallow by independent sources.<sup>821</sup> The Parliamentary Economic Committee accepts and evaluates these reports and presents their findings to the Parliament. In other words, the Chamber is reasonably accountable about its own work, but provides too general information about agencies audited. Though the Chamber of Accounts has a special section on its website on the audits conducted, it is not working and no detailed information on audits conducted is available elsewhere.

The Chamber undertakes its own performance assessment. Taking this self-assessment into account, one may conclude that the objectivity and reality of the result may be disputed.<sup>822</sup> The

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815 Website of the Chamber of Accounts [www.ach.gov.az/?/en/content/342/](http://www.ach.gov.az/?/en/content/342/)

816 The Parliament Adopted the Annual Report of the Accounting Chamber of Azerbaijan, Contact news agency, 5 April 2013, [www.contact.az/docs/2013/Economics&Finance/040500033673en.htm#.UpYLgMRSq1I](http://www.contact.az/docs/2013/Economics&Finance/040500033673en.htm#.UpYLgMRSq1I)

817 The Law on Chamber of Accounts, 2 July 1999, [www.ach.gov.az](http://www.ach.gov.az)

818 Internal Regulations of the Chamber of Accounts, 5 March, 2002, [www.ach.gov.az](http://www.ach.gov.az)

819 Interview of Islam Bayramov, managing partner of HLB Azerbaijan, LLC, member of the Chambers of Auditors, with author, 15 August 2013

820 Statement by Qubad Ibad oglu, Economic Research Center at the Conference on the Outside Supervision of Public Funds, organised by Entrepreneurship Development Foundation, 17 January 2014, JW Marriott Absheron hotel, Baku, Azerbaijan

821 R.Hasanov, N.Ibrahimova, T.Abbasov, Opinion on the Activities of the Chamber of Accounts, Center for Economic and Social Research, Baku, 2013 [www.cesd.az/new/wp-content/uploads/2011/05/CESD\\_Report\\_Chamber\\_of\\_Accounts.pdf](http://www.cesd.az/new/wp-content/uploads/2011/05/CESD_Report_Chamber_of_Accounts.pdf)

822 R.Hasanov, N.Ibrahimova, T.Abbasov, Opinion on the Activities of the Chamber of Accounts, Center for Economic and Social Research, Baku, 2013 [www.cesd.az/new/wp-content/uploads/2011/05/CESD\\_Report\\_Chamber\\_of\\_Accounts.pdf](http://www.cesd.az/new/wp-content/uploads/2011/05/CESD_Report_Chamber_of_Accounts.pdf)



Chamber of Accounts is not audited by any international audit institutions or by a special Parliamentary commission, as neither is envisioned by the law.

## Integrity Mechanisms (law): 50

*To what extent are there mechanisms in place to ensure the integrity of the audit institution?*

The administration of the Chamber of Accounts, as civil servants, is guided by the values and principles reflected in the Chamber's own code<sup>823</sup> based on the national code for civil servants.<sup>824</sup> Both codes state values of professionalism, integrity and impartiality, cover conflict of interest and have provisions on gifts and hospitality, whereas post-employment restrictions are set forth only in the Article 15.3 of the national code and the Law on Civil Service.<sup>825</sup> Failure to implement the tasks assigned to the civil servants or trespass their limitations will end up in liabilities with the resulting consequences.

At the same time, there is a legal gap in legislation regulating behaviour of the chairman, deputy chairman and auditors. They do not fall under the jurisdiction of the above codes as they are not civil servants, and there is no holistic and dedicated document to regulate their behaviour, apart from disparate provisions in the Law on the Chamber of Accounts.<sup>826</sup> Implementation of the provisions of the Code is delegated to the Chairman of the Chamber of Accounts and the State Civil Service Commission as per the legislation in force.<sup>827 828</sup>

## Integrity Mechanisms (practice): -

*To what extent is the integrity of the audit institution ensured in practice?*

As discussed earlier, the ethical regulation in force does not apply onto the senior staff of the Chamber. The staff has been covered by training programmes on ethical regulations.<sup>829</sup> Monitoring of implementation of the provisions of the Code is performed by the chairman and the State Commission on Civil Service and no violation has been reported.

The level of public awareness on Chamber of Accounts or interest towards its activities is very limited in Azerbaijan,<sup>830</sup> and a lack of information does not allow for the evaluation of the integrity of external audit institution.

## Effective financial audits: 50

*To what extent does the audit institution provide effective audits of public expenditure?*

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823 Rules of Ethical Behavior of the Civil Servants of the Chamber of Accounts, 11 October 2007, [www.ach.gov.az](http://www.ach.gov.az)

824 The Law on Approval of the Rules of Ethical Behavior of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

825 Article 20.1.4. of the Law on Civil Service, 21 July 2000, [www.csc.gov.az](http://www.csc.gov.az)

826 Articles 6 through 11 of the Law on the Chamber of Accounts, 2 July, 1999, [www.ach.gov.az](http://www.ach.gov.az)

827 Rules of Ethical Behavior of the Civil Servants of the Chamber of Accounts, 11 October 2007, [www.ach.gov.az](http://www.ach.gov.az)

828 The Law on Approval of the Rules of Ethical Behavior of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

829 [www.ach.gov.az](http://www.ach.gov.az)

830 Mini-survey among residents of Baku by Arifa Kazimova, for the radio program Do we Know Chamber of Audit, Radio Azadlig, 8 February 2014, [www.youtube.com/watch?v=-X8qPLhqrMA](http://www.youtube.com/watch?v=-X8qPLhqrMA)

The right of the Chamber to legally oversee financial management of the subject of its audit on a regular basis is enshrined in the law. The Chamber of Accounts has procedures to regulate and monitor post-audit rectification measures. According to an official of the Chamber,<sup>831</sup> in case violations are revealed, a new audit sanctioned by the decision of the Collegium is conducted one month later and is reflected in the annual report. Annual reports<sup>832</sup> give the general number of officials penalized in the result of audits, but no further details are available.

Also, the gaps in the Law on Budget,<sup>833</sup> i.e. absence of clearly stated relationship between the revenues and expenditures of the government and its political and macro-economic goals, do not provide sufficient legal grounds to review impact of the budget on the development of the country.

In general, according to the Open Budget Survey, the oversight of the budget is not well provided for in the legislation, therefore, the supervision of the Chamber is not necessarily strong, since there are no detailed provisions in the law clearly stating what accounts are liable to audit.<sup>834</sup>

Article 2 of the Law on Chamber of Accounts and supporting legislation<sup>835</sup> defines subjects of the audit as “expenditure of the state budgetary and extra-budgetary funds”. Thus, in practice the Chamber supervises execution of the state budget and extra-budgetary funds, as well as conducts audit of current budget, and provides an opinion of their draft budgets and budget execution, except for the State Oil Fund (SOFAZ). The SOFAZ being the country's main fund accumulates a big chunk of revenues from natural reserves of oil and gas. The reserves of SOFAZ as of 1 January 2013 made US\$34,130 million.<sup>836</sup> Though the SOFAZ is audited by reputed international audit organisations in execution of its obligations under the Extractive Industries Transparency Initiative,<sup>837</sup> this shall not rule out an audit by the national supreme audit institution, mandatory by the law.

Another organisation not covered by the Chamber's review is the State Procurement Agency. Every year the Agency conducts tenders approximately of 2.5-3 billion manat (US\$3.1 billion) worth for the public procurement purposes.<sup>838</sup> Taking into account that all costs are paid from the state budget (though not by the Agency itself), the Chamber of Accounts shall provide review of the organisation of the tenders and their results to ensure that state funds have been spent appropriately. At the moment there is no publicly accessible information on reviews of the above agencies and no information in the reports to the Parliament.<sup>839</sup>

The Chamber does not audit public funds awarded through the public procurement system to the private sector either.<sup>840</sup>

## Detecting and sanctioning misbehaviour: 50

### *Does the audit institution detect and investigate misbehaviour of public officeholders?*

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831 Interview with Faiq Najafov, head of legal department of the Chamber of Accounts, 7 April 2014

832 2012 Annual report of the Chamber of Accounts, [www.ach.gov.az](http://www.ach.gov.az)

833 The Law on the Budget System, 2 July 2002, [www.ach.gov.az](http://www.ach.gov.az)

834 Chambers of Accounts in connection with the international practice and norms, publication by Public Association for Assistance to Free Economy, Baku, 2013

835 Rules on Preparation, Review and Approval of the Draft Laws on the State Budget and Extra-budgetary Funds, approved by the Board of the Chamber of Accounts, 18 June 2009

836 The SOFAZ press release dated 17 April 2013, [www.oilfund.az](http://www.oilfund.az)

837 [www.eiti.org](http://www.eiti.org)

838 [www.tender.gov.az](http://www.tender.gov.az)

839 R.Hasanov, N.Ibrahimova, T.Abbasov, Opinion on the Activities of the Chamber of Accounts, Center for Economic and Social Research, Baku, 2013 [www.cesd.az/new/wp-content/uploads/2011/05/CESD\\_Report\\_Chamber\\_of\\_Accounts.pdf](http://www.cesd.az/new/wp-content/uploads/2011/05/CESD_Report_Chamber_of_Accounts.pdf)

840 Interview with Faiq Najafov, head of Legal Department of the Chamber of Accounts, 7 April 2014

Should any cases of fraud, misuse, or violation of any office rules under prevailing legislation be identified in the course of audit, the auditing group prepares a pertinent report to be approved by the Board of the Chamber. Respective materials shall be submitted to the higher authorities for administrative violations and to the Prosecutor General Office in case the misbehaviour falls under provisions of the Criminal Code. This procedure is regulated by a special dedicated normative act.<sup>841</sup>

However, the Chamber is not authorized to investigate criminal violations, which are the responsibility of the Prosecutor's Office. Neither sanction is applicable, as it is the function of the court. Apart from administrative measures, such as freezing accounts and imposing administrative penalties, the Chamber has no authority to impose other sanctions. In practice, in 2012 upon recommendation of the Chamber of Accounts, 44 officials were dismissed; and 208 received administrative penalties of various degrees.<sup>842</sup>

The Chamber conducts audit only in accordance with the annual plan and at request of law enforcement agencies.<sup>843</sup> The Chamber does not plan or conduct any audits against corruption or fraud based on suspicions of the media and general public.<sup>844</sup> These powers have not been so far envisioned by the law. However, according to an official of the Chamber,<sup>845</sup> such publications in media, as well as negative results of the previous audits are taken into consideration at the compilation of the activity plan for the next year.

The country is in the process of creating an efficient system of internal audit in the public offices,<sup>846</sup> both under national programmes such as National Anti-corruption Action Plans for 2007-2011 and 2012-2015,<sup>847</sup> and international assistance programmes, such as the CAPSAP project with the World Bank.<sup>848</sup> Cooperation of these structures with the Chamber of Accounts is important to ensure control over efficient expenditure of public funds;<sup>849</sup> however, the regulatory framework<sup>850</sup> fails to cover these relations.

## Improving financial management: 50

*To what extent is the SAI effective in improving the financial management of government?*

The annual report of the Chamber of Accounts to the Parliament contains special notes on information to be delivered to the Parliament. Shortcomings and discrepancies – discovered through audit activities – as well as the status of implementation by the Government of proposals and

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841 Rules on Preparation, Performance And Documenting The Results Of Financial-Budgetary Supervision Activities Performed by the Chamber of Accounts, by Collegiums of the Chamber of Accounts 9 March 2009, [www.ach.gov.az](http://www.ach.gov.az)

842 2012 Annual report of the Chamber of Accounts

843 The Law on the Chamber of Accounts, 2 July 1999, [www.ach.gov.az](http://www.ach.gov.az)

844 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

845 Interview with Faiq Najafov, head of Legal Department of the Chamber of Accounts, 7 April 2014

846 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

847 [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

848 Corporate and Public Sector Accountability Project, [www.worldbank.org](http://www.worldbank.org)

Analysis of Legislation regulating Chamber of Account, Presentation by Qubad Ibad oglu, Economic Research Center at the Conference on the Outside Supervision of Public Funds, organised by Entrepreneurship Development Foundation, 17 January 2014, [www.edf.az/ts\\_general/download/ESPFCP\\_Gubad\\_Ibadoglu\\_17\\_01\\_14.pdf](http://www.edf.az/ts_general/download/ESPFCP_Gubad_Ibadoglu_17_01_14.pdf)

849 Analysis of Legislation regulating Chamber of Account, Presentation by Qubad Ibad oglu, Economic Research Center at the Conference on the Outside Supervision of Public Funds, organised by Entrepreneurship Development Foundation, 17 January 2014, [www.edf.az/ts\\_general/download/ESPFCP\\_Gubad\\_Ibadoglu\\_17\\_01\\_14.pdf](http://www.edf.az/ts_general/download/ESPFCP_Gubad_Ibadoglu_17_01_14.pdf)

850 The Law on Internal Audit, 22 May 2007, [www.e-qanun.az](http://www.e-qanun.az)

recommendations of the Chamber for the purpose of elimination of gaps in the legal framework are also reflected in the Report.

Open Budget Survey methodology developed by International Budget Partnership,<sup>851</sup> strongly recommends Supreme Audit Institutions (e.g. Chamber of Accounts) or legislature release to the public, a report that tracks actions taken by the executive to address audit recommendations. Also, the supreme audit institution must provide the public with information on the input into the audit process provided by the public and on whether, and how, that input influenced auditors or the audit process. These reports are not publicly available in Azerbaijan.<sup>852</sup>

## Recommendations:

- To clearly state independence of the Chamber of Accounts in the Constitution.
- To make amendments to the law to ensure audit of the Chamber of Accounts by a reputed international auditing institution, or by Parliamentary economic commission.
- In addition to the audit by a reputable international audit institution, to audit the SOFAZ as required under the national law.
- To audit public funds awarded through the public procurement system to the private sector.
- To make amendments to the law to allow the Chamber to conduct anti-corruption and anti-fraud audits, i.e. to assign the Chamber of Accounts the authority to conduct primary investigation (in line with the Turkish model).
- To attend to the gaps in the Law on Budget – i.e. to clearly state relationship between the revenues and expenditures of the government and its political and macro-economic goals – which will enable the Chamber to provide sufficient legal grounds to review impact of the budget on the development of the country.
- To enhance professional skills of auditors, especially in detecting corruption and fraud.
- To increase awareness of the general public of the supreme audit institution and provide the public with information on recommendations of the audit institution with regards to public agencies audited and actions taken by the executive to address audit recommendations.
- To involve civil society in preparation of the Chamber's annual work plan.

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851 Budget Index 2012: Azerbaijan, by International Budget Partnership, June 2011, [www.internationalbudget.org](http://www.internationalbudget.org)

852 Interview of Kanan Aslanli, Public Finance Monitoring Center, 12 March 2014, with editor

## 9. ANTI-CORRUPTION AGENCIES

### Summary

Anti-corruption agencies of Azerbaijan Republic include two entities – State Commission on Combating Corruption (Anti-Corruption Commission) and the Head Department on Combating Corruption under the General Prosecutor's Office (Anti-Corruption Department). Both are established in order to institutionalise and ensure an efficient fight against corruption in the Azerbaijan Republic.

The Commission on Combating Corruption was established as a specialised agency in the field of preventing corruption through policy making; whereas the Anti-Corruption Department mostly has a mandate to prosecute for corruption offences. Until now it has been able to investigate a number of criminal cases related to corruption – though limited to petty and medium rank level officials' misdeeds, which is an issue of concern for civil society. The two agencies operate independently of each other as they have different functions. However in some cases, the competencies of the department overlap with the Azerbaijan Anti-Corruption Commission, particularly in the sphere of analytical studies, public education and international cooperation.

Azerbaijan has undertaken two important programmes to combat corruption – the National Anti-Corruption Action Plan and the Open Government Partnership Action Plan for 2012- 2015, overseen by the commission. According to civil society estimates, implementation of those action plans is progressing, though with delays. Generally, the Commission on Combating Corruption is influenced by political incentives and in practice the commission cannot compel the government to reveal sensitive information. It lacks the participation of civil society and the government's strong presence in the commission does not allow it to act independently.

Azerbaijan made good legal efforts to criminalise corruption. Alongside this, a loophole in the legislation allows for the artificial increase of anti-corruption statistics. The Criminal Code of Azerbaijan does not list private sector corruption as a separate criminal offence and authorities of Azerbaijan reported numerous cases of prosecution and adjudication of corruption, mixing corruption in the public sector, and embezzlement in the private sector based on the existing legislation.

### ANTI-CORRUPTION AGENCIES

Overall Pillar Score 61/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 75/100	Resources	75	75
	Independence	100	50
Governance 50/100	Transparency	50	50
	Accountability	50	50
	Integrity	50	50

Role 58/100	Prevention	50
	Education	50
	Investigation	75

## Structure and organisation

Azerbaijan's anti-corruption institutional framework is made up of the Commission on Combating Corruption<sup>853</sup> and the Anti-Corruption Department under General Prosecutor's Office.<sup>854</sup> The commission was set up according to article 4.2 of the Law on Combating Corruption<sup>855</sup> and functions as a specialised agency to design the anti-corruption policy of the country and oversee its implementation. The commission includes 15 members, of which 5 are appointed by the President of Republic of Azerbaijan, another 5 by the Parliament and the remaining 5 by the Constitutional Court. Civil society is not represented in the commission, despite numerous urges for this to happen.<sup>856</sup> The agency is participating in corruption related policy formation, analysis of the anti-corruption measures taken by the government, and assessment of the effectiveness of the fight against corruption.

The commission is currently chaired by the head of the Presidential Administration, elected from among its members, while the head of administration is appointed by the President of Azerbaijan and can be removed from the latter position at his will.

The Anti-Corruption Department under the Prosecutor General is a constituent of the prosecutor's system in Azerbaijan and submits information on its activities to relevant bodies of the executive power and the Commission on Combating Corruption, through the office of the Prosecutor General. The head of the department is at the same time deputy to the Prosecutor General and is appointed and dismissed under Article 133 of the Constitution.<sup>857</sup> The department employs about 100 operational staff members, including the head of department, deputy heads, three senior prosecutors, prosecutors, investigators and operatives.<sup>858 859 860</sup> The Department has mostly an investigative mandate to investigate and prosecute corruption cases in the country.

In several cases, the competencies of the department overlap with the commission, particularly in the sphere of analytical studies, public education and international cooperation. Regarding analytical studies, article 5.5 of the Regulations on the Department on Combating Corruption under the General Prosecutor's Office,<sup>861</sup> the Anti-Corruption Department studies the state of the struggle

<sup>853</sup> Web pages of the Commission, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az); [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

<sup>854</sup> Web page of the Prosecutor General's, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

<sup>855</sup> The Law on Combating Corruption, January 13, 2004, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

<sup>856</sup> Interview with Alimammad Nuriyev, coordinator, Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption, 29 November 2013

<sup>857</sup> Constitution of the Republic of Azerbaijan, Article 91.2, 12 November 1995 (entered into force on 27 November 1995), [www.president.az](http://www.president.az)

<sup>858</sup> The Law on Prosecutor's Office, 7 December 1999, with changes of 14 February 2014 [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az);

<sup>859</sup> The Law on Service in the Prosecutor's Bodies, 19 June 2001, with changes of 14 February 2014, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

<sup>860</sup> Letter from Kamran Aliyev, head of Anti-corruption Department under the Prosecutor General, No 02-113GIX-14 To Transparency Azerbaijan dated 3 April 2014

<sup>861</sup> Law on Establishment of the Department on Combating Corruption under the General Prosecutor's Office, 28 October 2004, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

against corruption, collects data on corruption related offenses, analyses and summarises relevant data, and prepares proposals and recommendations to increase efficiency of the fight against corruption. Chapter II of the Azerbaijan Anti-Corruption Commission Law<sup>862</sup> actually duplicates this function and requires the commission to analyse the state and efficiency of the fight against corruption.<sup>863</sup>

The assessment includes both of the agencies and the scores presented show an aggregate score for the performance of the two institutions.

## Assessment

### Resources (law): 75

*To what extent are there provisions in place that provide the ACA with adequate resources to effectively carry out its duties?*

The Secretariat of the commission is funded from the state budget.<sup>864</sup> In the meantime, the commission may propose its own budget to government. The fiscal stability of the commission seems to be secure, considering the demonstrated political will of the government and its international and domestic obligations to combat corruption.<sup>865</sup>

At the same time, the commission may not acquire further funding from other sources, such as confiscation of assets or through raising grants. As staff of the commission's secretariat are considered civil servants, policies on salary and compensations are determined by the respective regulations on civil service discussed elsewhere in this report. The staff of the department are governed by the Law on the Prosecutor's Office, as they are employed by this institution.<sup>866</sup>

The structure and budget of the Anti-Corruption Department is managed by the relevant decrees of the president, while at the same time, the budget for the department is approved by the Cabinet of Ministers. Presidential orders define the personnel structure, regulations and the terms of references of the department. Funding is provided by the Ministry of Finance according to the relevant orders of the Cabinet of Ministers. As the funding level is not fixed under the law, there is no guarantee of sustainability of funding. The core funding is allocated for the department while the governmental budget is formed.<sup>867</sup>

### Resources (practice): 75

*To what extent does the ACA have adequate resources to achieve its goals in practice?*

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862 The Law on Combating Corruption, 13 January 2004, [www.mia.gov.az](http://www.mia.gov.az)

863 Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan, by B.Michael and Natalya Mishyna, 2008, [www.ancorage-net.org](http://www.ancorage-net.org)

864 Statutes of the Commission on Combating Corruption, 3 May 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

865 Interview with Vasif Movsumov, Executive Director of Fund of Struggle against Corruption with the author, 25 September 2013

866 The Law on the Prosecutor's, 7 December, 1999, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

867 Decree on approving Statute of Department on Combating Corruption under General Prosecutor's Office and its staff, October 26, 2004, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)



Both the Commission on Combating Corruption and the Anti-Corruption Department have adequate and sufficient resources and budgets to effectively carry out their duties.<sup>868</sup>

According to the Global Integrity Report, the staff of the Secretariat of the Commission on Combating Corruption and the Anti-corruption Department are sufficiently professional.<sup>869</sup> Staff of the Secretariat working under the Presidential Administration (senior advisor, head advisor, leading advisor, advisor) are public servants of the fifth category.<sup>870</sup> According to the law, they are recruited through competition conducted by the Civil Service Commission. The competition is made up of an examination and an interview.<sup>871</sup> However, in practice, the staff is recruited from among persons with work experience in other state agencies, through in-house interviews; therefore it is difficult to evaluate the recruitment process and professional level of the hired staff. The staff of the Prosecutor's Office is recruited through competition (test and written examination) and interview,<sup>872</sup> with the process monitored by civil society.<sup>873</sup>

According to the Statutes of the Commission on Combating Corruption, the commission is composed of and operated by 15 members, 5 of them are appointed by the president and the rest proportionally represent Parliament and Constitutional Court. The head of commission is elected by a simple majority of votes by the commission members.<sup>874</sup>

As the head of the commission is elected by appointed members only, from among their own ranks, there is no public input or Parliamentary preference. Therefore, the competitiveness and efficiency of the agency and its members may be questioned because of the above-mentioned issue.

There have been some changes to Anti-Corruption Department structure and staffing in the last years. Under the decree of 11 March 2011 on measures for the improvement of the work of the Anti-Corruption Department at the Prosecutor General's Office of the Republic of Azerbaijan, the staff of the Anti-Corruption Department have increased from 40 to 100 prosecutors.<sup>875</sup> There has been a significant rise in the number of technical employees as well. The Cabinet of Ministers is also instructed to increase substantially the salaries of officers of the department and take necessary measures to improve its material maintenance. A new office building for the Anti-Corruption Department has been opened and has begun to operate. The new building is equipped with all necessary equipment and technical infrastructure.<sup>876</sup>

According to the recent changes within the Anti-Corruption Department, the preventive measures and investigation division has been created on the basis of the analytical-information division, to conduct preliminary investigations into corruption-related crimes and handle information-related work. The internal security service has been set up on the basis of the internal investigation division, to uncover, solve and combat corruption-related crimes in prosecutor's agencies, to launch lawsuits and conduct investigations, to protect technical systems in the department against leakage of information and to discover bugs that extract information. The Group of Experts has been formed to

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868 Overview of Corruption and Anti-corruption in Azerbaijan 2013, by Transparency International, [www.transparency.org](http://www.transparency.org)

869 Global Integrity Report 2011: Azerbaijan, [www.globalintegrity.org](http://www.globalintegrity.org)

870 Presidential decree on Classification of Administrative and Support Positions, 4 August 2003, [www.e-qanun.az](http://www.e-qanun.az)

871 Rules of Recruitment to the Civil Service approved by Presidential decree 24 June 2009, [e-qanun.az](http://e-qanun.az)

872 Statutes of the Rules to Conduct Competition with Applicants for the Prosecutor's System, approved by the Presidential decree 19 June 2001, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

873 Transparency Azerbaijan monitored the recruitment process along with other civil society organisations on 6 January 2011

874 Statutes of the Commission on Combating Corruption, 3 May, 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

875 Presidential Decree on Measures for the Improvement of the Work of the Anti-Corruption Department at the Prosecutor General's Office of the Republic of Azerbaijan, March 11, 2011, [www.president.az](http://www.president.az)

876 The opening of a new office building of the Anti-Corruption Department under the Prosecutor-General held, 30 September, 2013, <http://en.president.az/articles/9445>

provide recommendations to prosecutors and investigators about criminal cases related to: finance, accounting, banking, credits, science, technology and other spheres, to conduct checks in this sphere, give feedback and manage a single database about corruption-related crimes.<sup>877</sup>

According to the 14 February 2014 changes to the legal framework – the Law on Prosecutor's Office<sup>878</sup> and the Law on Service in the Prosecutor's Bodies,<sup>879</sup> the Anti-Corruption Department is led by the department head that enjoys the status of the deputy to the Prosecutor General, appointed and dismissed under the provisions set forth in Article 133, part IV of the Constitution.

## Independence (law): 100

*To what extent is the ACA independent by law?*

The Commission on Combating Corruption was established on 3 May 2005 according to Section 4.2 of the Anti-Corruption Act 2004 and acts as a specialised agency in the field of preventing corruption. The commission is governed by the Constitution of the Republic of Azerbaijan, international treaties to which it is a party, legal normative acts of the Republic of Azerbaijan, and other statutory instruments as well as its Statutes.<sup>880</sup>

The commission is set out as an independent body by legislation. Members of the commission are independent in their activities.<sup>881</sup> However, there is no mechanism to protect the commission from political interference in implementing its mission.

There are no detailed provisions regarding the tasks and responsibilities of the head, members and the Secretariat staff of the commission, according to the Statutes of the commission.

However, the Law on Civil Service<sup>882</sup> stipulates that positions in the civil service should be filled in on a competitive basis through tests and interviews. The recent amendments to the Law on Civil Service<sup>883</sup> are designed to strengthen recruitment policy, as well as lay legal framework for a competitive mechanism for recruitment of civil servants, and institute a periodic performance review that will be carried out to assess the professional level of the staff.

The law does not provide legal restrictions on political activities of the head of the commission. There are also no provisions fixing the term of office of the head of the commission and the law does not prohibit or permit his/her reappointment. At the same time, the head and the staff are not protected from removal without relevant justifications, and are not immune against prosecution while implementing their duties. These provisions also apply to the staff members of the Anti-Corruption Department.

The Anti-Corruption Department was established under the Presidential Decree dated 3 March 2004 on Implementation of the Anti-Corruption Act.<sup>884</sup> The Prosecutor's Office, to which the department

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877 Azerbaijan Demonstrated Good Results in Anti-corruption, Interview of Zakir Garalov, Prosecutor General of Azerbaijan, Trend news agency, 5 January 2013, <http://az.trend.az/news/society/2218596.html>

878 Additions and amendments to the Law on Prosecutor's Office, 7 December 1999 with changes of 14 February 2014 [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

879 The Law on Service in the Prosecutor's Bodies, 19 June 2001 with changes 14 February 2014, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

880 Statutes of the Commission on Combating Corruption, 3 May 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

881 Statutes of the Commission on Combating Corruption, 3 May 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

882 The Law on Civil Service, 21 July, 2000, [www.csc.gov.az](http://www.csc.gov.az)

883 Additions and Amendments to the Law on Civil Service, 20 April 2012, [www.president.az](http://www.president.az)

884 Presidential Decree on Implementation of the Anti-Corruption Act, March 3 2004, [www.w-qanun.az](http://www.w-qanun.az)

belongs, is an independent agency according to the Constitution of Azerbaijan<sup>885</sup>. It falls within the judicial power and has its own independent structure.<sup>886</sup>

## Independence (practice): 50

### *To what extent is the ACA independent in practice?*

In general, as mentioned before, the commission has been granted adequate powers in anti-corruption policy formulation and the coordination of anti-corruption activities of public institutions. It has the mandate to request information from state agencies and to make recommendations.<sup>887</sup> However, in some cases, due to lack of the resources or loopholes in the legal framework, the commission cannot fully fulfil its functions. According to the Global Integrity Report (2011), the commission is not protected from political interference.<sup>888</sup>

As the members of the commission represent different state entities, by definition they cannot be considered as fully politically impartial or independent in general.<sup>889</sup> Also, appointments to the commission tend to be based on political considerations rather than professional criteria.<sup>890</sup>

In general, Azerbaijan's anti-corruption legal framework (like that of many former Soviet countries) suffers from an excessive reliance on legislative strategies and action plans which cannot be translated into ministry level rule-making (supporting regulation).<sup>891</sup> In particular, insufficient delegation of anti-corruption rule-making authority to executive agencies, as well as uncoordinated revisions to the criminal, civil and administrative codes, impede implementation of generally good laws in practice.<sup>892</sup>

There are no cases regarding dismissal of staff members or commission members within the commission before expiry of their authorities, and there are no office term limits for the members of the commission.

The Anti-Corruption Department was granted powers to conduct investigations in line with changes made to the Law on Searches and Investigations and on the Prosecutor's Office on 18 March 2011.<sup>893</sup> The Presidential decree dated 8 April 2011 requested the Cabinet of Ministers to develop proposals on amendments to legal documents, to enable the use of the electronic database of the Anti-Corruption Department in real time. However, there are crucial problems with these functions. Investigations and charges are generally focused on low-level officials, a fact which is criticised by civil society.<sup>894 895</sup> According to the Anti-Corruption Department, they do not have sufficient facts or

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885 Constitution of the Republic of Azerbaijan, Article 133, [www.azerbaijan.az](http://www.azerbaijan.az)

886 Letter from Kamran Aliyev, head of Anti-corruption Department under the Prosecutor General, No 02-113GIX-14 To Transparency Azerbaijan dated 3 April 2014

887 Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan, by B.Michael and Natalya Mishyna, 2008, [www.ancorage-net.org](http://www.ancorage-net.org)

888 Global Integrity Report 2011: Azerbaijan, [www.globalintegrity.org](http://www.globalintegrity.org)

889 Interview with Fuad Agayev, independent lawyer, 8 April 2014

890 "Overview of corruption and anti-corruption in Azerbaijan" 2013, Transparency International, [www.transparency.org](http://www.transparency.org)

891 Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan, by B.Michael and Natalya Myshyna, 2008, [www.ancorage-net.org](http://www.ancorage-net.org)

892 European Neighborhood Policy: Monitoring Azerbaijan's Anti-corruption Commitments 2010, publication by Transparency Azerbaijan, May 2011, [www.transparency.az](http://www.transparency.az)

893 Decree on Amendments to Laws on Searches and Investigations and On the Prosecutor's Office, March 18 2011, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

894 Why Are We Prone to Give Bribes? Interview of Rena Safaraliyeva, ANS Press, 31 July 2012

<http://www.anspress.com/index.php?a=2&lng=az&nid=162887>

895 Interview with Fuad Agayev, independent lawyer, 8 April 2014

evidence against high and mid-level government officials.<sup>896</sup> Even though there is some open evidence and have been media investigations on high level corruption issues, the Anti-Corruption Department does not respond or act upon media information. This suggests that the Anti-Corruption Department is not fully politically independent in performing its actions, neither is it politically impartial.<sup>897</sup>

## Transparency (law): 50

*To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision making processes of the ACA?*

The provisions regulating access to information on the activities and processes of the anti-corruption agencies are rather strong, but not without deficiencies. Thus, general legal framework regulating transparency of public agencies is rather strong. According to the Law on Right to Obtain Information,<sup>898</sup> the state bodies, including those dealing with anti-corruption activities, are obliged to disclose all information about their activities and ensure their transparency, unless those are explicitly prohibited elsewhere.<sup>899 900</sup> However, there is no clear indication in the statutes of the commission regulating its activities whether the commission is required to make information on its activities publicly available or not. Along with this, the commission is required to prepare an annual report and present it to the President of the Republic of Azerbaijan, Parliament and Constitutional Court.<sup>901</sup> Each government agency has to submit the report on their actions on fighting corruption and present it to the commission by the month of September. In the meantime the commission gathers all the information from state agencies and prepares the final report by February of the following year.<sup>902</sup> However, there are no provisions setting a single standard for those reports. Other than that, the commission is required to hold surveys, discussions and other activities amongst the public regarding the fight against corruption. The commission is also required to submit a final report on assessment of the action plan upon completion of the term.<sup>903</sup>

As the Anti-Corruption Department is mainly an executive organisation in the fight against corruption, it is required to prepare reports twice a year on the actions taken against corruption, such as accusations, charges, and notifications and make them publicly available. In the meantime, the Anti-Corruption Department is required to report on the status of corruption among government agencies and on the main areas where the corruption exists.<sup>904</sup>

## Transparency (practice): 50

*To what extent is there transparency in the activities and decision making processes of the ACA in practice?*

The commission makes some of the information on its activities open to the public through their dedicated website. Even though there is some information on legislation, action plans and news,

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896 Why Only Petty Officials are Penalized for Corruption? By Gultakin Alasgar, Modern az. 11 May 2012 <http://modern.az/articles/24046/1/>

897 Azerbaijan's Anti-Corruption Drive: Fact or Fallacy?, by Rashad Aliyev, [http://azerireport.com/index.php?option=com\\_content&task=view&id=2796](http://azerireport.com/index.php?option=com_content&task=view&id=2796)

898 Law on the Right to Obtain Information, September 30, 2005, [www.president.gov.az](http://www.president.gov.az)

899 Article 5 of the Law on State Secret, 7 September 2004, [www.e-qanun.az](http://www.e-qanun.az)

900 Presidential decree on Application of the Law on State Secret, 05 November 2004, [www.president.az](http://www.president.az)

901 Statutes of Commission on Combating Corruption, 3 May 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

902 Interview with Vasif Movsumov, Executive director, Fund of Struggle Against Corruption by the author, 25 September 2013

903 Response from the Commission to information request by Transparency Azerbaijan, 11 January 2014

904 Law on the Right to Obtain Information, 30 September 2005, [www.president.gov.az](http://www.president.gov.az)

some of the crucial information such as up-to-date reports, reviews, and updates on action plan executions and others are lacking. In some cases there are dedicated headlines, but the content is missing.<sup>905</sup>

Even though the commission is required to disclose the reports to the public, the reports stay as internal documents and are not shared with civil society.<sup>906</sup> It is a great concern of civil society that the commission does not disseminate any information regarding the outcomes or the status of the action plan, despite many requests by civil society and the media.<sup>907</sup> However, a detailed and comprehensive report of the implementation of the Anti-Corruption Strategy for 2007- 2011 was prepared by the commission and made publicly available through its website,<sup>908</sup> with considerable delay, in early 2014.

An ongoing problem with all public agencies is that all the documents uploaded onto the websites are written in a professional technical legal language and are difficult to understand for common people.<sup>909</sup>

On the other hand, the commission conducts web-based surveys about the spread of corruption in different public institutions. However, no results of these surveys were made available to the public.<sup>910</sup> At the same time, several studies about levels and trends of corruption were used for the development of the National Strategy on Increasing Transparency and Combating Corruption (NSITCC) along with input from civil society.<sup>911</sup> The results of the analysis, which is reflected in the priority list of the action plan<sup>912</sup> were not disclosed either.

Despite the fact that the Anti-Corruption Department does not have its own website, it organises regular press conferences, where it presents to civil society and the media both mid-term and annual reports on investigation and prosecution of corruption cases.<sup>913</sup> These reflect the scope of the corruption offences, the perception of citizens as to what they consider as corruption offences, the ability of the law enforcement agencies to detect corruption offences, and their success in the criminal investigation and others.<sup>914</sup>

On 3 March 2011, the Prosecutor General's Office launched a special hotline with the number "161" for anti-corruption matters. The easy-to-access, toll-free hotline is designed to receive citizens' complaints about corruption offences directly. This hotline has received a significant number of cases of complaints.

The Anti-Corruption Department created modern comfortable facilities in its new administrative building for citizens' use, equipped with electronic kiosks to facilitate access to information; to

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905 [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

906 Interview with Zaur Ibrahimli, senior researcher, Constitution Research Foundation, by the author, 19 September 2013

907 Interview with Vasif Movsumov, executive director Fund of Struggle Against Corruption, by the author, 25 September 2013

908 [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

909 Customer feed-back survey by Transparency Azerbaijan five legal advice centers (internal documentation of Transparency Azerbaijan)

910 Interview with Vasif Movsumov, executive director Fund of Struggle Against Corruption, by the author, 25 September 2013

911 The draft Action Plan for 2012-2015 was reviewed by the Information and Cooperation Network of NGOs, [www.anticorrupt.net](http://www.anticorrupt.net)

912 Anti-corruption Action Plan for 2012-2015, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

913 [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

914 The Fight Against Corruption Does not Affect the Upper Echelons of Power, Contact news agency, July 23, 2013, <http://www.contact.az/docs/2013/Politics/072300043411en.htm#UmfKWHATDGw>

establish telephone connection with the staff of the Department; to use online e-services, etc.<sup>915</sup> The Department also efficiently operates a hotline (161) to accept complaints from citizens.

## Accountability (law): 50

*To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?*

The legislation sets forth general provisions enforcing accountability of the commission. The commission sets its activities in cooperation with legislative, executive and judicial powers and regularly informs them on the state of struggle against corruption.<sup>916</sup> As mentioned earlier, despite provisions of the general law on access to information, there is no clear indication in the statutes whether the commission is required to make information on its activities publicly available or not, but the commission is required to prepare its annual report and present it to the President, Parliament and Constitutional Court.<sup>917</sup>

Statutes of commission do not define performance indicators, which can be used to assess the commission's viability and accountability. The lack of performance indicators makes it difficult to assess the accountability of the commission and its reports.<sup>918</sup> There is also no specific provision regulating the channels to file complaints against the commission, but everyone can apply to the court under general provisions.<sup>919</sup>

According to Item 14 of the Statutes of the Anti-Corruption Department, the Department is required to submit its annual reports to the President of the Azerbaijan Republic and the Commission on Combating Corruption.<sup>920</sup>

Under the law, no specific protection is provided to civil servants or private sector employees reporting corruption cases, other than general security measures for witness protection prescribed by the Law on State Protection of Persons Participating in Criminal Proceedings<sup>921</sup> (which is applicable only at the stage of criminal proceedings).<sup>922</sup>

There is no judicial review mechanism established with the anti-corruption law or with other guidelines.

## Accountability (practice): 50

*To what extent does the ACA have to report and be answerable for its actions in practice?*

In practice, the commission is required to prepare its annual report and present it to the President, Parliament and Constitutional Court.<sup>923</sup> The commission does not regularly publish its annual reports

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915 Letter from Kamran Aliyev, head of Anti-corruption Department under the Prosecutor General, No 02-113GIX-14 To Transparency Azerbaijan dated 3 April 2014

916 Statutes of the Commission on Combating Corruption, 3 May 2005, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

917 Response from the Commission to information request by Transparency Azerbaijan, 11 January 2014

918 Presentation by Zaur Ibrahimli, senior researcher, Constitution Research Foundation, at presentation of the results of monitoring of implementation of the National Anti-corruption Action for 2012 – 2005 November 2013

919 Article 1, the Law on Procedures to Appeal to Court in Case of Violation of Citizens' Rights and Freedoms by Decisions or Actions (Inaction), 11 June 1999, [www.e-qanun.az](http://www.e-qanun.az)

920 Statutes of Department on Combating Corruption, 28 October, 2004, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

921 Law of the Azerbaijan Republic on State Protection of Persons Participating in Criminal Proceedings, December 11, 1998, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

922 Overview of Corruption and Anti-corruption in Azerbaijan, 2013 query by Transparency International, [www.transparency.org/files/content/corruptiongas/Overview\\_of\\_corruption\\_in\\_Azerbaijan\\_2.pdf](http://www.transparency.org/files/content/corruptiongas/Overview_of_corruption_in_Azerbaijan_2.pdf)

923 Response from the Commission to information request by Transparency Azerbaijan, 11 January 2014



on their website; however, information on individual activities and the state of implementation of various programmes is disclosed through their website and the media.<sup>924</sup> Though the commission is not obliged to respond to citizens' queries, as per the statutes, there is more trust in the commission amongst the population than in different ministries or other state entities. The number of information requests, complaints, enquiries and other applications from public and NGOs to the commission confirms this statement.<sup>925</sup>

The commission along with the Cabinet of Ministers is one of the two bodies responsible for monitoring the implementation of the National Strategy on Increasing Transparency and Combating Corruption (NSITCC).<sup>926</sup> The commission collects and analyses the information from law enforcement agencies and other state bodies and reports to the President twice a year.<sup>927</sup> These reports are also published in mass media and are available to the public.<sup>928</sup> The commission makes the final decision on whether the implementation of the strategy is satisfactory or not. The NSITCC states that the new World Bank governance indicators will be used for the assessment of its implementation. However, no further details are disclosed.<sup>929</sup>

According to the Global Integrity Report (2011), while there are reporting mechanisms in place in many departments in the forms of websites or hotlines, there is no specific legal protection for whistleblowers.

There are no citizens oversight committees in practice. However, individuals or different organisations can track the specific cases and achieve some results. Since NGOs do not have a seat on the commission, civil society can only provide their views to the commission through civil society representative on the Working Group on Legislation under the commission. However, this working group does not have a role in the monitoring of the strategy.<sup>930</sup> Another channel for feedback without a decision making power is the Information and Cooperation Network of NGOs Combating Corruption.<sup>931</sup>

A newly established Azerbaijan Partnership for the Transparency NGO Platform, initiated by Transparency Azerbaijan,<sup>932</sup> pursues a goal to monitor implementation by the government of its obligations under National Anti-Corruption and Open Government Partnership Initiative Action Plans, implementation of which is supervised by the commission. Therefore, this platform along with the NGO network can be viewed as the only two existing tools to monitor rather than oversee the work of the commission. In general, civil society should play an active role in the oversight of the commission and directly participate in its work.<sup>933</sup>

## Integrity Mechanisms (law): 50

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924 Website of the Commission on Combating Corruption, 3 May 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

925 Interview with Vasif Movsumov, Executive Director of Fund of Struggle against Corruption with the author, 25 September 2013

926 [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

927 Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan, by B. Michael and Natalya Mishyna, 2008, [www.ancorage-net.org](http://www.ancorage-net.org)

928 Global Integrity Report 2011: Azerbaijan. [www.globalintegrity.org](http://www.globalintegrity.org)

929 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

930 Interview with Alimammad Nuriyev, coordinator, Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption by the author, 29 November 2013

931 [www.antikornet.az](http://www.antikornet.az)

932 Launch of the Azerbaijan Partnership for Transparency Platform, press release by Transparency Azerbaijan, posted 7 July 2013, [www.transparency.az/eng](http://www.transparency.az/eng)

933 Interview with Alimammad Nuriyev, Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption by the author, 29 November 2013



*To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?*

Legal mechanisms to ensure integrity of the anti-corruption agencies are plentiful and quite developed but need some clarification. There are two general laws regulating this area: the Law on Civil Service<sup>934</sup> and the Law on Rules on Ethical Conduct of Civil Servants 2007.<sup>935</sup> Most national-level government agencies opted to design their own sectoral Rules on Ethical Conduct.<sup>936</sup> The Commission on Combating Corruption does not have its own rules; however, as its secretariat staff members are civil servants, their behaviour is regulated by the above two laws, while members of the commission are governed by their respective sectoral rules, whereas the Anti-Corruption Department has its own rules for prosecutors. These rules state that alongside the general Rules of Ethical Conduct for Civil Servants, the prosecutors shall follow provisions of their own rules.<sup>937</sup>

Upon recruitment, all civil servants are obliged to sign an oath of service. The Law on Civil Service and the Law on Rules on Ethical Conduct mentioned above preclude: the practice of inappropriate recruitment and supervision of civil servants by family members, outside employment, engagement in political activity while on duty, the imposing of post-employment limitations and regulation of issues of conflicts of interest and gifts and hospitality.

When the Law on Rules on Ethical Conduct of Civil Servants was adopted in 2007,<sup>938</sup> the draft Law on the Conflicts of Interest that was to regulate this area in more detail got stuck in Parliament after a first reading several years ago – even though it constitutes a part of Azerbaijan's international obligations.<sup>939</sup>

The Law on Civil Service also declares that civil servants holding administrative and auxiliary positions shall be attested no more often than once every five years. During attestation, ethical qualities of civil servants shall also be evaluated.<sup>940</sup> However, procedures to conduct and execute impartial performance assessments are defined by a newly adopted regulation.<sup>941</sup>

One of the objectives of Rules on Ethical Conduct of Civil Servants is to prevent corruption in state agencies and conflict of interests in the operations of civil servants. Conflict of interest is not sufficiently regulated in the above law and is covered in more details in a specific draft Law on Conflict of Interests yet to be adopted.<sup>942</sup>

## Integrity Mechanisms (practice): 50

*To what extent is the integrity of members of the ACA(s) ensured in practice?*

There is no known case of violation of the ethical regulations discussed above by commission staff so far.<sup>943</sup>

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934 The Law on the Rules of Ethics Conduct of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

935 The Law on the Rules of Ethics Conduct of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

936 Website of the Civil Service Commission, [www.csc.gov.az](http://www.csc.gov.az)

937 The Code of Ethics for Prosecutor's, 11 February 2006, [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

938 The Law on the Rules of Ethics Conduct of Civil Servants, 31 May 2007, [www.csc.gov.az](http://www.csc.gov.az)

939 EU Azerbaijan Action Plan 2006 – 2011,

[www.ec.europa.eu/world/enp/pdf/action\\_plans/azerbaijan\\_enp\\_ap\\_final\\_en.pdf](http://www.ec.europa.eu/world/enp/pdf/action_plans/azerbaijan_enp_ap_final_en.pdf)

940 Law of the Republic of Azerbaijan on Civil Service, 1 September 2001, [www.csc.gov.az](http://www.csc.gov.az)

941 Rules on Performance Appraisal of Civil Servants, approved by the Commission's decision, 22 February 2014, [www.csc.gov.az](http://www.csc.gov.az)

942 Interview of Rena Safaraliyeva, executive director, Transparency Azerbaijan, Trend news agency, 17 February 2012 <http://az.trend.az/news/society/1993586.html>

943 Interview with Vasif Movsumov, Executive director Fund of Struggle Against Corruption by the author, 25 September 2013

Though legislation requiring a wide range of public officials to disclose their assets on a regular basis exists, the mechanism to submit declarations by public officials is not implemented in practice, to leave alone their review.<sup>944</sup> The Azerbaijan Commission on Combating Corruption is supposed to collect asset declarations from government officials, but there is no clear procedure in place and the Cabinet of Ministers has failed to design a form for those declarations to date; despite the fact that this instruction was given quite some time ago.<sup>945</sup>

Azerbaijan Anti-Corruption Laws<sup>946</sup> treatment of gift giving makes practical enforcement impossible. Though the law requires that gifts costing "more than fifty five manat" be surrendered to the State, it does not refer to mechanisms by which gifts can be monitored or the procedure for the confiscation of these gifts, therefore these mechanisms are not in existence.<sup>947</sup>

The staff members do not regularly get trained about integrity issues. There have been some seminars with participation of representatives of civil society from different organisations<sup>948</sup> but no more information on training around integrity issues for staff of both the commission and the Anti-Corruption Department is available.

The process of performance appraisal has just started and no results are available so far.

## Prevention: 50

*To what extent does the ACA engage in preventive activities regarding fighting corruption?*

The commission's function is mainly considered as preventive. It performs this function through development and implementation of the National Strategy on Increasing Transparency and Combating Corruption (NSITCC), its action plan and the overseeing of its implementation. Indirectly and non-formally it can recommend legislative reforms through the members of the commission or representatives of the Parliament.<sup>949</sup>

Recently the commission developed a new Action Plan for Open Government Partnership Initiative and the second<sup>950</sup> National Action Plan on Combating Corruption covering the period of 2012-2015.<sup>951</sup> The NSITCC and action plans are important achievements in the development of anti-corruption policy in Azerbaijan. In the framework of these action plans, "ASAN service centers"<sup>952</sup> were created in Azerbaijan, which prevent the loss of time for citizens and help to combat corruption in the country.<sup>953</sup> Independent civil society monitoring, over implementation of those two plans, shows that 25 per cent of actions envisioned in the OGP Action Plan for four years have been

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944 Interview with Alimammad Nuriyev, Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption by the author, 29 November 2013

945 Overview of corruption and anti-corruption in Azerbaijan, 2013, Transparency International, [www.transparency.org](http://www.transparency.org)

946 Law on Combating Corruption, 13 January, 2004, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

947 Law on Combating Corruption, 13 January, 2004, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

948 Support to the Anti-Corruption Strategy of Azerbaijan" AZPAC Project Evaluation Report 2009, [www.coe.int](http://www.coe.int)

949 Interview with Vasif Movsumov, Executive director Fund of Struggle Against Corruption by the author, 25 September 2013

950 The first Action Plan covered the period of 2007 – 2011

951 Both Action Plans approved by the presidential decree dated 5 September 2013, [www.president.az](http://www.president.az)

952 ASAN centers represent a single window agency for public service delivery under State Agency on Citizens' Services and Social Innovations. Currently four centers are functioning in Baku, Sumgait and Ganja.

953 OECD report appreciates Azerbaijan's policy in combating against corruption, Azernews, 1 October, 2013, <http://www.azernews.az/azerbaijan/60170.html>

implemented by September 2013,<sup>954</sup> while implementation of the Anti-Corruption National Action Plan by the same time reached 34 per cent of the actions planned.<sup>955</sup>

On the other hand, under the commission's statutes,<sup>956</sup> its powers are restricted to request information from state agencies and to make recommendations. However, according to the Azerbaijan Anti-Corruption Law,<sup>957</sup> the functions of a specialised body in the field of prevention of corruption shall be discharged by the commission. In brief, though the commission coordinates the anti-corruption activities, it does not enjoy broad authority to enforce measures set forth in the respective action plans.

The commission performs limited research through organising surveys and evaluations, though it does not have a special unit for research or similar activities.<sup>958</sup> They mainly prepare reports which are submitted to the president and Parliament. As an example of activities, the commission launched a public survey and study programmes in September 2007 and 2009 in order to gain a clearer insight into the extent of corruption in Azerbaijan, its causes, its features and the sectors most affected by it. The commission entrusted this activity to the Information and Cooperation Network of NGOs<sup>959</sup> involved in the fight against corruption.<sup>960</sup> However, as mentioned above, the results of this research were not broadly disseminated.

In order to enhance collaboration in combating corruption, the Prosecutor's Office and the Ministry of Internal Affairs signed a joint order on 15 April 2009 on "Mutual cooperation between the Prosecutor's Office and the Ministry of Internal Affairs in Combating Corruption" and there is close partnership between them. The two institutions closely work together to investigate and prosecute corruption committed by law enforcement officials.<sup>961</sup> This is one of the best examples of inter-governmental cooperation which is relatively low in Azerbaijan.

As mentioned earlier, the commission is entitled to request information from state agencies and to make recommendations.

## Education: 50

*To what extent does the ACA engage in educational activities regarding fighting corruption?*

Article 5.11 of the Anti-Corruption Department Law<sup>962</sup> mandates the Anti-Corruption Department to implement preventive and public awareness raising measures in the area of combating corruption and ensure transparency of its activities. The commission's statutes<sup>963</sup> authorise the commission to

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954 Monitoring Report on Implementation of Azerbaijan Open Government Initiative National Action Plan (September 2012-September 2013), publication by Economic Research Center in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

955 Monitoring Report on Implementation of Azerbaijan National Anti-corruption Action Plan (September 2012-September 2013), publication by Constitution Research Fund in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

956 Statutes of the Commission on Combating Corruption, 3 May, 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

957 Law on Combating Corruption, January 13, 2004, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

958 Interview with Zaur Ibrahimli, senior researcher, Constitution Research Foundation by the author, 19 September 2013

959 [www.anticorrupt.net](http://www.anticorrupt.net)

960 Main measures implemented in the area of combating corruption in the Republic of Azerbaijan, information sheet by Commission for Combating Corruption of the Republic of Azerbaijan

961 Overview of corruption and anti-corruption in Azerbaijan 2013, Transparency International, [www.transparency.org](http://www.transparency.org)

962 Law on the Department on Combating Corruption under the General Prosecutor's Office of the Republic of Azerbaijan, October 28 2004, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

963 Statutes of the Commission on Combating Corruption, 3 May 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

take measures for organisation of public awareness in the area of combating corruption and the holding of public surveys.

In practice, activities and programmes to raise awareness about corruption among public officials and law-enforcement officials – especially in the area of legal issues and reporting – are undertaken by the government and civil society. However, a more comprehensive approach is needed. Measures to build practical skills to prevent and fight corruption and extend training onto target groups of the society and businesses are required.<sup>964</sup>

The commission regularly publishes anti-corruption booklets and flyers, and distributes them among public institutions, local executive powers, NGOs, media and universities. The Anti-Corruption Department of the Prosecutor General's Office also publishes booklets about results of its activities, for example, handbooks on investigation and prosecution of corruption in 2007 and 2009.

Members of the commission, prosecutors and investigators regularly give interviews about their anti-corruption activities.

Other than that, a number of awareness raising activities were held, including the hotlines to report corruption, the publication of anti-corruption brochures and leaflets, and talk shows and discussions on radio and TV. A working group with the participation of the Anti-Corruption Department under the Prosecutor General, and training institutions from the Prosecutor's Office, Ministries of Interior, Taxes and National Security, developed an anti-corruption training curriculum. The Prosecutor's Office and the US Embassy ran a series of seminars on prosecuting of corruption offences in 2007 and 2009.<sup>965</sup> While these efforts provided anti-corruption information to the citizens and training to civil servants, they could not be regarded as a comprehensive awareness raising campaign.

While public awareness is growing and the scope of anti-corruption training for public administration is expanding, there are still important shortcomings. There are no comprehensive and sustained public awareness raising programmes implemented by the commission in close cooperation with civil society, neither is there a permanent system of education for public officials on public sector ethics and prevention of conflicts of interest; criminal liability for bribery and abuse of office; identification of corruption risks and internal corruption prevention measures. One of the recent accomplishments of the commission is a relatively newly set up website ([www.rusum.az](http://www.rusum.az)), which publishes an exhaustive list of official rates and tariffs for all kinds of fees charged by the government – from utilities to taxes on foreign incomes.<sup>966</sup>

## Investigation: 75

*To what extent does the ACA engage in investigation regarding alleged corruption?*

Azerbaijan has made significant progress in the criminalisation of corruption.<sup>967</sup> Active and passive bribery in the public sector, trading in influence, non-material benefits and bribery through third person are criminalised in accordance with relevant international standards.

Pursuant to transfer of the authority to conduct operational search functions to the Anti-Corruption Department, increase in the number of criminal investigations is notable. Along with this, there is a

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964 Statement by Rena Safaraliyeva, executive director, Transparency Azerbaijan, Camiyyat (Society) program, Khazar TV, 23.00-23.40, 29 November 2013

965 [www.genprosecutor.az](http://www.genprosecutor.az)

966 <http://www.rusum.az/eng/>

967 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

loophole in the legislation that allows for artificially increasing anti-corruption statistics. Traditionally, corruption was attributed to the public sector only and since recently private sector corruption has been listed as a separate offence in international practice. The Criminal Code of Azerbaijan does not list private sector corruption as a separate criminal offence and authorities of Azerbaijan reported numerous cases of prosecution and adjudication of corruption, mixing corruption per se and embezzlement in the private sector based on the existing legislation.

Azerbaijan mostly complies with international standards in confiscation of proceeds from corruption crimes; however, practical application of the confiscation provisions leaves a lot to be desired.<sup>968</sup>

The laws that give some mandate of investigation (like assessment of asset declarations) to the anti-corruption agencies have gaps and contradictions, along with other provisions. As an example, the commission's statutes<sup>969</sup> grant competence to the commission to monitor asset declarations. However, article 3.4 of the Asset Declaration Law stipulates that local self-government officials shall "submit their financial information to relevant executive authorities, and persons implementing administrative and supervisory authorities in the local self-government authority."<sup>970</sup>

The Anti-Corruption Department has sufficient investigation competence unlike other respective entities that provide criminal and internal investigations.<sup>971</sup> During the first nine months of 2013, the Anti-Corruption Department has conducted preliminary investigation on 322 criminal cases, with 137 criminal cases being submitted to court. Upon the completion of some of the cases, assets worth 3,358 million manat (US\$4,278 million) were confiscated.<sup>972</sup>

Although each ministry and government agency has reported firing and prosecuting several dozen corrupt officials,<sup>973</sup> so far, mostly petty and mid-level officials have been fired from their jobs on charges of corruption. The avoidance to prosecute high rank officials has been voiced regularly by civil society, as it impedes effective implementation of the anti-corruption policies<sup>974</sup> and reduces the trust of the population in the integrity of the law enforcement agencies.<sup>975</sup> For example, during 1992 – 2012, a total of 22,332 students illegally entered the university or changed the university.<sup>976</sup> Former deputy chief of the Finance Department of the Ministry of Education was alone held accountable for this crime<sup>977</sup> and prosecuted under Articles 311.3.1, 311.3.2, 311.3.3 and 308.2 of Criminal Code for abuse of office.<sup>978</sup> It goes without saying that neither the Law on Education nor the Statutes of the Ministry of Education vested the authority to approve of admission, by-passing the Students' Admission Commission<sup>979</sup> or illegally change a university. Illegal procedures on admission or changing a university could be performed in conspiracy between the high ranking officials of the

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968 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

969 Statutes of the Commission on Combating Corruption 3 May 2005, [www.antikorrupsiya.gov.az](http://www.antikorrupsiya.gov.az)

970 Law of on Approval of Procedures for Submission of Financial Information by Public Officials, 24 June 2005, [www.commission-anticorruption.gov.az](http://www.commission-anticorruption.gov.az)

971 [www.genprosecutor.gov.az](http://www.genprosecutor.gov.az)

972 Top Azerbaijani prosecutor announces statistics on crimes for this year, Azernews agency, 2 October 2013, [www.azernews.az/azerbaijan/60190.html](http://www.azernews.az/azerbaijan/60190.html)

973 How serious is Azerbaijan's anti-corruption campaign?, by Scott Rosenblum, Central Asia –Caucasus Analyst, Vol 13, No 4, 2 March 2011 [www.silkroadstudies.org/new/docs/publications/110302analyst.pdf](http://www.silkroadstudies.org/new/docs/publications/110302analyst.pdf)

974 The Fight Against Corruption Does not Affect the Upper Echelons of Power, Contact news agency, July 23, 2013, <http://www.contact.az/docs/2013/Politics/072300043411en.htm#.UmfKWHATDGw>

975 Global Corruption Barometer 2013, publication by Transparency International, [www.transparency.org](http://www.transparency.org)

976 Interview by the Chief of The State Commission on Student Admission (SCSA) to newspaper "BizimYol" <http://bizimyolinfo.com/index.php?sehife=1&xeber=1299>

977 Several employees of Education Ministry Detained, 7 June 2011, News Az information agency, <http://www.news.az/articles/society/37867>

978 Transparent Corruption in Education, Bizim Yol news agency, 27 July 2012, <http://bizimyol.info/index.php?xeber=1299>

979 Website [www.tdqk.gov.az](http://www.tdqk.gov.az)

ministry and rectors of universities<sup>980 981</sup>. However, it must be emphasised that as high rank officials do not directly participate in corruption transactions, their prosecution is a very difficult process. Substantial evidence has to be collected which is very difficult due to secrecy of corruption transactions.<sup>982</sup>

The media frequently publishes information on prosecution of officials for corrupt deeds, but it does not provide sufficient coverage of the final verdicts and penalties imposed. Also, according to Article 226 of the Criminal Procedures Code,<sup>983</sup> information provided by the media regarding a criminal offence committed or being prepared provides sufficient grounds to launch criminal investigation, however, law enforcement agencies do not always act upon media publications.<sup>984</sup>

## Recommendations

- There is a serious need for strengthening of coordination efforts and overseeing of implementation of National Anti-Corruption Action Plan (NAP) activities by the Commission on Combating Corruption. A mechanism should be established to enable the commission to receive information promptly and on a regular basis, rather than at the end of the implementation year through annual reports, which will allow putting efforts for additional measures to reduce delays and non-compliance; especially in the high risk corruption areas.
- The Laws on Conflict of Interests and Protection of Whistle Blowers shall be adopted; also supporting legislation to establish concrete mechanisms for execution of these laws and of the earlier adopted Law on Submission of Financial Information by Public Officials shall be designed and enforced.
- Amendments shall be made to legislation to distinguish between public and private sector corruption.
- Cooperation with civil society institutions must be broadened and include developing draft laws and regulatory tools; public awareness raising and education programmes; and civil society must be represented in the Commission on Combating Corruption.
- In order to improve transparency of the anti-corruption agencies and other public agencies, corruption cases published in the media have to be investigated by the Anti-Corruption Department and the results of these investigations should be made publicly available; the website of the Commission on Combating Corruption has to be updated regularly and completed with comprehensive annual reports and up-to-date information; standardised reporting by relevant public agencies on corruption related violations have to be designed.
- To expand the capacity of the Commission on Combating corruption (both human resources and financial support) to enable it to cope with the existing and anticipated tasks.

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980 Orkhan Karimov Revealing Shocking Facts During the Trial, by Ramin Deco, Azadlyq newspaper, 7 October 2012, <http://www.azadlyq.info/asagi-manset/351-asagi-manshet/22064-orkan-krimov-mhkmd-ok-faktlar-acqlad.html>

981 Orkhan Karimov Accused Misir Mardanov of Students' Transfer, Musavat newspaper, 21 April 2013, [http://musavat.com/news/%C3%B6lk%C9%99/Orxan-K%C9%99rimov-t%C9%99l%C9%99b%C9%99-k%C3%B6%C3%A7%C3%BCrm%C9%99l%C9%99rind%C9%99-Misir-M%C9%99rdanovu-ittiham-etdi-fotolar\\_149594.html](http://musavat.com/news/%C3%B6lk%C9%99/Orxan-K%C9%99rimov-t%C9%99l%C9%99b%C9%99-k%C3%B6%C3%A7%C3%BCrm%C9%99l%C9%99rind%C9%99-Misir-M%C9%99rdanovu-ittiham-etdi-fotolar_149594.html)

982 Interview by Alimamed Nuriyev, Constitution Research Foundation; coordinator of the Information and Cooperation Network of NGOs, Demokratiya Info agency, 22 February 2014, <http://demokratiya.info/karusel/650-elimemmed-nuriyev-memur-hebslerinin.html>

983 Criminal Procedures Code, 1 September 2000, [www.e-qanun.az](http://www.e-qanun.az)

984 Interview with independent lawyer Samir Isayev by the author, 22 April 2014



## 10. Political parties

### Summary

There are no significant differences among the major opposition parties in terms of their political ideologies or policies. Many of them lack clear ideological preferences, which is reflected in their party programmes. They base their political actions on the personalities of their leaders, rather than election programmes and ideology. To a greater extent this can be attributed to the fact that they all have roots in the Azerbaijan Popular Front Party (APFP), which was the main political power in opposition during the Soviet period towards the end of the 1980s and the ruling party in the early years of Azerbaijan's independence. Centre-right and nationalist parties dominate the political landscape, and even though the number of registered parties may seem diverse, the political landscape of Azerbaijan is still dominated by the ruling party.

### POLITICAL PARTIES

Overall Pillar Score 46/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 50/100	Resources	75	25
	Independence	75	25
Governance 50/100	Transparency	75	25
	Accountability	75	25
	Integrity	75	25
Role 38/100	Interest aggregation and representation	50	
	Anti-corruption commitment	25	

### Structure and organisation

More than 50 political parties have been registered in Azerbaijan. However, few of them are active in the political sphere. The largest party is the ruling New Azerbaijan Party (NAP), chaired by President Ilham Aliyev. The opposition bloc – the National Council of Democratic Forces (NCDF) – was established in early June 2013, and included the majority of parties with roots in the National Popular Front Movement from the early years of the country's independence. But only a few of them enjoy popularity and they have little support among the citizens. Apart from the ruling New Azerbaijan Party, the popular parties include Məsavət,<sup>985</sup> the Popular Front, the Liberal Party and the Democratic Party. There are also a number of smaller pro-government parties, such as the Ana

<sup>985</sup> Məsavət (Equality) is a historic party founded in 1911. The restoration congress took place in 1992.



Veten Party and the Social Prosperity Party. The Great Creation Party, the United Azerbaijan Popular Front Party, the Democratic Reforms Party, Adalat (Justice), Citizen's Solidarity and Umid also have seats in the Parliament. The opposition parties with the largest support base are Müsavat and Popular Front.

## Assessment

### Resources (law): 75

*To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?*

The legal framework for the establishment and operation of political parties can be assessed as reasonably strong. Activities of political parties are regulated by the Constitution of the Republic of Azerbaijan (AR), the Law on Political Parties<sup>986</sup> and the Election Code of the Republic<sup>987</sup>. Accordingly, the principles of freedom of association, equality of rights of their members, self-government, legality and publicity set the basis of the establishment and functioning of political parties. It is a constituent congress through which a political party is established in Azerbaijan. Under the law, the charter and programme of a political party as well as its governing and supervising bodies are defined by the constituent congress.<sup>988</sup> For this, first the organisational committee is established by the initiators of a political party. The organisational committee must carry out all the work related to the establishment of the political party, and its bodies, charter and programme are to be approved by the supreme governing body of the political party – its Congress – which is held at least once every five years.<sup>989</sup>

The Law on State Registration and State Registry of Legal Entities<sup>990</sup> sets the framework for registration of a political party. Within a month following its establishment, a political party is required to apply for registration by the Ministry of Justice. For registration, it needs to provide a document certifying the number of party members, which is required to be at least 1,000 citizens of the Azerbaijan. In addition, only adult, legally competent citizens of the Azerbaijan, who have adopted the charter and programme of a political party, may become party members. Subsequently, political parties must register their members.<sup>991</sup>

The law does not expressly forbid establishment of regional and local political parties – however, according to the law, political parties can operate only at the national level. In other words, regional or local political parties are prohibited. Local activities of political parties can only be conducted through a geographic branch structure in the regions. Even in the Nakhchivan Autonomous Republic, which has a high level of administrative autonomy with its own constitution, Parliament, judicial and executive bodies, such regional political parties cannot be set up. For another example, foreigners and stateless persons may not hold the membership of political parties operating in Azerbaijan, but they can become members of NGOs. To compare, only citizens of Azerbaijan who have reached 18 years of age may be members of a political party, while there is no age restriction

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986 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

987 Election Code of the Republic of Azerbaijan, 27 May 2003, [www.msk.gov.az](http://www.msk.gov.az)

988 Article 4, The Law on Political Parties, [www.e-qanun.az](http://www.e-qanun.az)

989 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

990 Law on State Registration and State Registry of Legal Entities, 12 December 2003, [www.justice.gov.az](http://www.justice.gov.az)

991 The Law on Political Parties, 3 June 1992 with amendments of 20 April 2012, [www.qanun.az](http://www.qanun.az)

for membership in NGOs (but there is an age requirement of 18 years for the founders of NGOs and 16 years for the founders of youth organisations).<sup>992,993</sup>

The law also distinguishes between registered political parties and those that are not registered. If originally the law did not explicitly prohibit operation of non-registered political parties, the new amendments<sup>994</sup> (Article 14 of the abovementioned law) contain clear provisions that ban operation of non-registered political parties.

Political parties can own premises, equipment, publishing and printing houses, means of transport, as well as other kinds of property necessary to implement the tasks set forth in their charters. Parties can also purchase the use of the premises and property of other legal entities or individuals legalised through the purchase contracts on lease agreements signed between them. Nonetheless, political parties cannot possess land, industrial enterprises, production unions or cooperatives.

The new provisions of the law<sup>995</sup> also regulate public funding of the political parties. However, registration is not the only criterion for being eligible for such funding. This kind of funding is tied to the performance of the political parties at the Parliamentary elections. The political parties that received more than 3 per cent of the votes in the last elections, but were not represented in the Parliament, receive 10 per cent of the total amount of funding allocated for political parties based on pro rata distribution. Forty per cent of the funds are divided equally among the parties represented in the Parliament, while the remaining 50 per cent of the funds are distributed among the political parties represented in the Parliament on a pro rata basis, according to the number of the Parliamentarians from those political parties. Even if several parties create an election bloc and run a joint campaign to win the seats in the Parliament, their funding is calculated separately.<sup>996</sup>

The last amendments to the law, particularly regarding the funding sources of political parties, are viewed as generally restrictive,<sup>997</sup> though in fact they also increase transparency of party funding. These laws prohibit political party funding and donations from municipal bodies of political parties and bodies under their supervision in foreign countries and foreign legal entities; foreigners and stateless persons; those who are under age; individuals that do not specify name, surname, patronymic, series and number of ID card or its substitute; military units; associations and foundations; religious organisations; and legal entities.

## Resources (practice): 25

*To what extent do the financial resources available to political parties allow for effective political competition?*

Political parties cannot compete on equal terms mainly because of the problems associated with their funding. The majority of parties do not receive an adequate level of funds – either from the government or businesses. In addition, citizens fearing political repercussions of party affiliation do not sign up as party members and, therefore, membership fees are not a feasible or adequate source of funding for political parties. Recent years have witnessed the appearance of many small

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992 The Law on NGOs (Public Associations and Foundations), 13 June 2000, [www.justice.gov.az](http://www.justice.gov.az)

993 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

994 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

995 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

996 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

997 The Law on Political Parties or the Law on Yap? Azadliq radio, 21 April 2012, <http://www.azadliq.info/syast/327-siyaset/15918-siyasi-partiyalar-haqqnda-yoxsa-yap-haqqnda-qanun.html>

political parties, yet only a few of them have any real influence on politics. The majority of them are small, underfunded and do not have significant popular support.<sup>998</sup>

Individual businesses avoid providing financial support to opposition parties.<sup>999</sup> Although there are several television channels with national and some with local coverage, major opposition parties do not have access to TV channels to express their political views. Opposition parties mostly use online resources and internet media, while most of the population in Azerbaijan receives information from television. Consequently, citizens are much less informed about a limited array of political views besides those of the ruling party. Conversely, the governing party is bound by no restrictions in benefitting from the country's TV stations. During the last presidential and Parliamentary elections, the airtime was divided in accordance with the number of contenders participating in the debate from among registered candidates for agitation. Political parties also complain about the expensiveness of media advertising and the reluctance of broadcast media to air these ads.<sup>1000</sup>

One of the main requirements for efficient operation of a political party is to have a headquarter, which is a problem in Azerbaijan. The only owner of a modern technically-equipped headquarter premises, enabling smooth operation, is the ruling New Azerbaijan Party. The majority of other parties either do not have headquarters, or the head offices at their disposal are not well equipped. The headquarters of some political parties are located in buildings leased from businesses and the state, but some parties can find it hard even to acquire these offices.<sup>1001</sup>

## Independence (law): 75

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?*

The legal framework provides sufficient guarantees restricting interference of state institutions in the operation of political parties. Except for special cases stated by the law, the interference of state agencies and government officials in the activities of political parties is prohibited. But the law does not foresee legal responsibility for violation of this prohibition. It is only through the decision of the party congress or a court that a political party could be dissolved. And it is only on the grounds of the application of the relevant body of executive authority and in accordance with the Code of Administrative Procedure of the Republic of Azerbaijan that the court decision on liquidation of the political party can be made.<sup>1002</sup> The establishment and functioning of political parties are prohibited if proven to:

- have the purpose or the method of operation to overthrow or change forcibly the constitutional order and secular form or to violate its territorial integrity
- advocate for war, violence and brutality
- instigate racial, national and religious hatred

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998 "The Formal Political System in Azerbaijan", Caucasus Analytical Digest No. 24, 11 February 2011, The article by Andreas Heinrich, [www.css.ethz.ch/publications/pdfs/CAD-24-2-5.pdf](http://www.css.ethz.ch/publications/pdfs/CAD-24-2-5.pdf)

999 Interview with Zafar Guliyev, political expert, by the author, 6 September 2013

1000 OSCE/ODIHR Needs Assessment Mission Report 17-21 June 2013 [www.osce.org/odihr/elections/103561](http://www.osce.org/odihr/elections/103561)

1001 "Opposition with no headquarters: Mobile political parties," [Modern.az](http://Modern.az), 12 March 2013

1002 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

On the other hand, the law also defines what political parties are not allowed to do. Establishing structures of political parties in central and local governmental institutions is prohibited under the Law on Political Parties<sup>1003</sup> and the Law on Civil Service.<sup>1004</sup>

Membership in any political party is forbidden; during the tenure of chairpersons; deputy chairpersons; judges of all the courts; the Human Rights Commissioner (Ombudsman); servicemen; employees of the public prosecutor's office; justice; internal affairs; national security; border service; customs; finance; taxation; courier communication service; emergency, migration bodies; state-owned press bodies as well as members, director general and deputy director general of the Broadcasting Council of Public Television and the Radio Broadcasting Company; members of the Management Board of the Central Bank of the Republic of Azerbaijan; and religious figures, with the exception of auxiliary and technical staff, are banned from membership in political parties.<sup>1005</sup>

## Independence (practice): 25

*To what extent are political parties free from unwarranted external interference in their activities in practice?*

Despite being the main opposition parties, Müsavat and the Azerbaijan Popular Front Party have not been represented in the Parliament since 2010. They report to have faced violations of basic freedoms, such as freedom of expression and of assembly, as well as restrictions on the sources of funding and access to public television.

There are also some "constructive" political parties which have seats in the Parliament.<sup>1006</sup> In an obvious breach of the Law on Political Parties, Elshan Musayev, the chairman of the Democratic Enlightenment Party, which belongs to the latter category of political parties, is also the host of a programme on Lider TV station, a channel with national broadcasting coverage. He is reported to have been primarily criticising main opposition parties in this programme.<sup>1007</sup>

The members of the opposition parties claim that their attempts to engage in political activity during the election campaigning period are forcefully restricted by the government through mobilisation of police and civilians.<sup>1008</sup>

Two other cases indicating a trend of increased pressure on the opposition are the arrests of Tofiq Yagublu, a deputy chairman of Müsavat, and Ilgar Mammadov, the chairman of REAL movement on 4 February 2013. They were charged with the organisation of "mass disorder" in Ismayilli, a region of Azerbaijan that witnessed mass protests against the head of local executive authorities in January of the same year.<sup>1009</sup>

## Transparency (law): 75

*To what extent are there regulations in place that require parties to make their financial information publicly available?*

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1003 Article 4 of the Law on Political Parties, 3 June 1992 with amendments of 20 April 2012, [www.ganun.az](http://www.ganun.az)

1004 Article 4.2 of the Law on Civil Service, 21 July 2000, [www.e-qanun.az](http://www.e-qanun.az)

1005 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

1006 Azerbaijan: From bad to worse. Vugar Gojayev Spotlight on Azerbaijan, publication by Foreign Policy Centre, May 2012, <http://fpc.org.uk/fsblob/1462.pdf>

1007 "Lider TV is prepared to attack", 16 May 2013, <http://sun.az/index.php?sid=52204#aa>

1008 "Azerbaijan: From bad to worse". Spotlight on Azerbaijan, Vugar Gojayev, publication by Foreign Policy Centre, May 2012, <http://fpc.org.uk/fsblob/1462.pdf>

1009 "Azerbaijan: Government Detains Outspoken Critics," Human Rights Watch, 6 February 2013, <http://www.hrw.org/news/2013/02/06/azerbaijan-government-detains-outspoken-critics>

The legislation does not impose any limitations on the ability of political parties to independently build their activities. Parties can freely organise their activities in the manner set forth by the law, provided they disclose their sources of information, as envisioned by the respective normative act.<sup>1010</sup>

The 2012 amendments to the Law on Political Parties<sup>1011</sup> require political parties to submit their programmes at the time of registration with the Ministry of Justice. Any changes made later to the party programme have to be presented to the relevant governmental institution. It also sets out that political parties have to report on their finances annually no later than 1 April of each year. Moreover, political parties are required to produce accounting records and draw up financial statements in accordance with the Law on Accounting.<sup>1012</sup> Political parties also have the responsibility before the state to publish annual financial statements in the mass media along with an auditor's report. As required by the law, the number of all party members who pay membership fees to the political parties shall be released. The provisions forbidding the funding of political parties by Azerbaijan nationals living abroad also came along with the new amendments to the abovementioned law. In addition, those nationals living in the country who would like to fund the political parties need to identify themselves. As a result of all these new provisions, political parties in Azerbaijan are left with very few legally feasible funding sources.

## Transparency (practice): 25

*To what extent can the public obtain relevant financial information from political parties?*

Transparency International's *Global Corruption Barometer 2013* on the state of corruption in the world also presents results from a survey of citizens' opinions and practices related to corruption in Azerbaijan. Twenty-eight per cent of the respondents believe that political parties are infected with corruption.<sup>1013</sup> Political parties do not provide the public with detailed information on their finances, says Zafar Guliyev, an independent expert. He also notes that it is difficult for parties to be funded through declared membership fees and donations.<sup>1014</sup> Some civil society organisations argue that contributions to parties are not always properly recorded or reflected in their financial reports.<sup>1015</sup> The level of transparency of the issues related to party financing is generally considered low.<sup>1016</sup> There are some difficulties with tracing the sources and amounts of donations made to political parties. This is mainly due to the fact that donations are mostly made in cash. None of the political parties provide any significant information on their donations and expenditures through their websites or other channels. Therefore, it is hard to argue that the general public has easy/any access to this information.<sup>1017</sup> Nevertheless, no information is available regarding criminal or administrative sanctions enforced in cases of infringements by political parties of financing regulations.<sup>1018</sup>

## Accountability (law): 75

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1010 Rules of Simplified Accounting Record Keeping by Political Parties, approved by Cabinet of Ministers of 30 August 2013, [www.president.az](http://www.president.az)

1011 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

1012 The Law on Accounting, 29 June 2004, [www.maliyye.gov.az](http://www.maliyye.gov.az)

1013 Global Corruption Barometer 2013, publication by Transparency International July 2013, [www.transparency.org](http://www.transparency.org)

1014 Interview by Zafar Guliyev, political expert, with author, 6 September 2013

1015 Advisory group meeting, 19 July 2013

1016 Advisory group meeting, 19 July 2013

1017 Interview by Zafar Guliyev, political expert, with author, 6 September 2013

1018 Evaluation Report on Azerbaijan Transparency of Party Funding (Theme II) Adopted by GRECO at its 48th Plenary Meeting, 01 October 2010, [www.coe.int](http://www.coe.int)

*To what extent are there provisions governing financial oversight of political parties by a designated state body?*

The law requires political parties to submit their financial statements annually to the relevant body of executive authority. Nevertheless, the tax legislation also requires tax authorities to supervise the sources of income of political parties, the amount of the resources earned and payment of the taxes.<sup>1019</sup>

To ensure transparency during the election campaign, on the one hand, the Election Code mandates the Central Election Commission<sup>1020</sup> to define the record keeping of the establishment and use of special bank accounts, rules for reporting, raising and spending election funds of candidates, registered candidates, political parties, blocs of political parties, and referendum campaign groups at least 55 days prior to Election Day, in agreement with the National Bank. On the other hand, it obliges candidates, registered candidates, political parties, blocs of political parties, and referendum campaign groups to register the raising and spending of their election funds.

The current regulation requires political parties to submit the initial financial reports together with other relevant documents for registration with the Central Election Commission from 50 to 30 days prior to Election Day, including financial information from up to two days prior to the date of the report. Next report shall be submitted between 10 to 20 days prior to the Election Day and shall cover the previous period up to 7 days prior to the date of the report. The final financial report is submitted at the latest, 10 days after the results of elections are announced with the initial financial documents about the receipt and spending of funds to the election fund attached.<sup>1021</sup>

The sources of funding of political parties are not defined precisely, neither are they regulated in detail. Even in some cases, they envisage rather vague concepts of 'other proceeds'. There is no detailed definition of donation. The types of sources of income which are not covered by these requirements need more clarification too. This makes it unclear whether donations in kind are also covered and are to be accounted for at their commercial value. As for the membership fees, the only obligation of parties is to indicate the number of party members paying such fees into their annual accounts.<sup>1022</sup>

If there is infringement of the provisions of the Law, including party funding and transparency regulations, the Ministry of Justice is entitled to issue a warning. In the case of repeated infringements, the Ministry of Justice can petition to the court and the court may decide whether the political party may or may not continue to operate. The law foresees also those violations of the legislation on political parties which lead to criminal, administrative, financial or other responsibility in accordance with the legislation of Azerbaijan. In case of failure to submit their annual financial statements, political parties are held liable as provided by the law.<sup>1023</sup> According to the legal framework,<sup>1024</sup> political parties can be brought to administrative responsibility for receipt of funds and donations not permissible under the law, donations not reported in the financial reports, and accepting donations in cash.

## Accountability (practice): 25

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<sup>1019</sup> The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

<sup>1020</sup> [www.msk.gov.az](http://www.msk.gov.az)

<sup>1021</sup> Election Code of the Republic of Azerbaijan, approved by the law dated 27 May 2003, [www.msk.gov.az](http://www.msk.gov.az)

<sup>1022</sup> The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

<sup>1023</sup> The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

<sup>1024</sup> Article 49-4, 247-4 and 247-5 of the Code of Azerbaijan on administrative violations, approved by the law dated 11 July 2000, [www.e-qanun.az](http://www.e-qanun.az)



### *To what extent is there effective financial oversight of political parties in practice?*

Despite the laws with certain provisions holding political parties financially accountable, in practice, political parties do not submit related formal documents. There is no effective oversight of the funding of an election campaign by non declared funding – in particular, by cash donations, donations exceeding the legal thresholds or donations in kind. It should be mentioned that no criminal, administrative or civil sanctions are known to have been imposed for infringements of the regulations on transparency of party financing and of the funding of election campaigns until now<sup>1025</sup>. This can be explained by the fact that the respective obligations of political parties are defined by the recent legislative act,<sup>1026</sup> which is dated 30 August 2013. Financial reports qualifying new requirements were to be submitted by spring 2014, and sanctions, if any, were to be imposed beyond April 2014.

### Integrity Mechanisms (law): 75

#### *To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?*

Political parties build their internal administration work on the provisions of their respective statutes. Practically no political party operating in Azerbaijan today has its own code of conduct, or any other document specifying rights or obligations of its members, apart from the statutes. The statutes are based on the same model (Articles 8-9 of the Law on Political Parties) for different parties and regulate internal administration, election process and party ideology. The law entitles the members of political parties:

- to be elected to and to elect its governing bodies
- to obtain information about the activities of the political party and those of its governing bodies
- to lodge complaints against decisions of governing bodies, as provided in the charter of the political party
- to enjoy other rights, provided in the charter of the political party

Citizens of Azerbaijan who accept the charter and programme of a political party may become members of the political party. But this is conditional upon the age of maturity and full legal capacity. Political parties are required to register their members. Under the law, a person may not be forced to join any political party or remain in its membership,<sup>1027</sup> as this is a subject of criminal responsibility.<sup>1028</sup>

### Integrity Mechanisms (practice): 25

#### *To what extent is there effective internal democratic governance of political parties in practice?*

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1025 Evaluation Report on Azerbaijan Transparency of Party Funding (Theme II) Adopted by GRECO at its 48th Plenary Meeting, 01 October 2010, [www.coe.int](http://www.coe.int)

1026 Rules of Simplified Accounting Records Keeping by Political Parties approved by Cabinet of Ministers of 30 August 2013, [www.president.az](http://www.president.az)

1027 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

1028 Article 169-1 of the Criminal Code, [www.e-qanun.az](http://www.e-qanun.az)



Until now there have been no complaints about the selection process of party leaders. However, cases are reported when people were forced to join political parties and retain membership. Political parties base their activities on their statutes; however, there is no clear information on consultations by party leaders with their party members for the change of the party leaders or decision making process. Thus, the leadership of political parties has remained the same over a long period of time, and there is only a paucity of examples regarding their replacement. Moreover, the general public has limited information about decision making mechanisms of political parties. The meetings conducted by political parties and their decisions are not known to the public. Therefore, it is difficult to assess the internal management.

## Interest aggregation and representation: 50

*To what extent do political parties aggregate and represent relevant social interests in the political sphere?*

The lack of clear party programmes is the main problem for which political parties cannot be considered as fairly representing or aggregating social interests in the political sphere. This also leads to confusion among citizens concerning what the parties stand for. Party officials are more accountable to their party leaders than to their own constituencies. This can also contribute to the political apathy in the country.

Personalities play more important roles in Azerbaijani politics than weak and divided political parties. It would be wrong to argue that people are familiar with political platforms of parties rather than personalities of their leaders. It is not surprising that people offer very weak support to political parties.

Political parties have a limited ability to advocate for changes in the country, therefore, this role is oftentimes performed by civil society organisations.<sup>1029</sup> Most of the draft laws are actively discussed by civil society rather than political parties. In modern day Azerbaijan, the reality is that many NGO leaders come from the political sector<sup>1030</sup> and continue this work in their new capacity, whereas political parties are actively engaged in political life in pre-election periods.

Two articles of the Law on Political Parties are usually cited by experts to be in contradiction with each other or mutually exclusive. On the one hand, article 5 of the Law on Political Parties<sup>1031</sup> identifies the ways of impact on politics by political parties via:

- delivering the position of a political party on public issues to state authorities and bodies of local self-government
- influencing the activity of the legislative and executive bodies in accordance with their charters
- exerting influence on the formation of internal and foreign policy of Azerbaijan through elaborating political and social programmes

On the other hand, however, another article of the law obliges political parties not to interfere with the activity of state authorities and officials. The law sets forth administrative responsibility for interference of political parties into affairs of public agencies and officials.

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1029 Azerbaijan Partnership for Transparency (APT) Project Engaging Civil Society in the anti-Corruption Work: Mapping Civil Society Survey, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1030 Advisory group meeting, 19 July 2013

1031 The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

## Anti-corruption commitment: 25

*To what extent do political parties give due attention to public accountability and the fight against corruption?*

Public accountability and the fight against corruption are not very popular themes with the political parties, even if under the Law on Political Parties, one of the forms of activities of political parties is raising awareness among the population of the country's most burning problems.<sup>1032</sup> In practice, political parties provide very limited information on these issues in their statements and speeches and pay little attention to them.

Transparency and accountability are topics to be proposed within both the ruling and opposition parties' programmes.<sup>1033</sup> However, as discussed above, political parties in Azerbaijan prefer to base their activities on statutes rather than to develop their own political programmes. By definition, statutes cannot provide detailed anti-corruption policies of political parties. The result then is that no party has a developed anti-corruption manifesto or a clear approach on how to combat corruption. Opposition parties prefer to comment on individual corruption allegations raised by media or civil society rather than conduct their own investigation or research.

If the ruling party quotes the recent steps of the government as successful and popular among people, their opponents criticise the government's current practices of combating corruption. The ruling New Azerbaijan Party only supports the government's policy in combating corruption, but the party lacks its own programme or approach to addressing the corruption problem. In this connection, it is not easy to ascertain whether the government's anti-corruption policy is also the ruling party's political platform.

In practice, political parties pay little attention to and give limited coverage of anti-corruption activities in their manifestos and speeches, except for the election race when anti-corruption slogans are used mostly for populist reasons.<sup>1034</sup>

### Recommendations:

- To foresee legal responsibility for illegal interference into affairs of political parties.
- Political parties shall prepare their political programmes and arrange broad public presentations thereof.
- Political parties are in need of preparation of their individual anti-corruption programmes, and it would be reasonable if each party formulated a clear position on corruption in a separate document.
- Political parties shall design and develop their websites to cover their activities, programmes and political platforms, so that citizens can familiarise themselves with their activities directly through their web pages.
- Many parties do not have internal management policies and documents, such as codes of ethics. Parties need to prepare these regulatory policies and refer to them in order to respond effectively and swiftly to internal and external environment changes.

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<sup>1032</sup> Article 5, The Law on Political Parties, 3 June 1992, with amendments of 20 April 2012, [www.e-qanun.az](http://www.e-qanun.az)

<sup>1033</sup> Interview with Fuad Suleymanov, independent expert by editor, 7 April 2014

<sup>1034</sup> Interview with Fuad Suleymanov, independent expert by the editor, 7 April 2014

- Parties shall follow new legal requirements on transparency of their financial information and release financial reports.
- Political parties shall promptly respond to important domestic and foreign policies, legal, economic and social events, and prepare and share with the general public their analysis thereof to form legal and political points of view.
- Political parties shall display ongoing political activity and not be limited to the pre-election race.

## 11. MEDIA

### Summary

There are over 5,000 media outlets registered in Azerbaijan. Over 50 magazines, more than 36 daily and 100 weekly newspapers are published nationally, and about 80 newspapers are printed in the regions.

Although Azerbaijan's mass media laws and regulations provide basic guarantees for freedom of press, certain legal and practical restrictions continue to pose a challenge to independent and pro-opposition media's exercising of their rights. Censorship of media in Azerbaijan was formally abolished in 1998 and the Law on Mass Media of 2000 expressly forbids any act of censorship, except for temporary restrictions on the media activities in emergency situations. However, defamation is a criminal penalty under the Azerbaijan law. The fact that these provisions remain in force and are applied in practice make journalistic activities susceptible to external influences and lead to a practice of self-censorship among journalists. On the other side, the professional ethics of journalists and self-regulatory mechanisms are not well developed.

Though the country has a broad spectrum of online and print media; independence of the media, especially the broadcasting media, leaves much to be desired. Even though the licenses for TV and radio are nominally issued on a competitive basis, transparency of this process leaves much room for improvement. In general, effective legal institutional mechanisms ensuring independence of media should be developed. Involvement of the media, especially broadcast media, in anti-corruption public awareness programmes is not very broad.

Financial aspects of media management, including transparency of media expenditures need improvement.

The small size of the country's advertisement market and unwillingness of private companies to place advertisement with oppositional media, limits revenues of the latter.

### MEDIA

Overall Pillar Score 46/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 50/100	Resources	75	50
	Independence	50	25
Governance 46/100	Transparency	50	25
	Accountability	50	25
	Integrity	75	50
Role 42/100	Investigate and expose cases of corruption practice		25

Inform public on corruption and its impact	50
Inform public on governance issues	50

## Structure and organisation

According to Aflatun Amashov, the head of the Press Council, over 5,000 media outlets have been registered with the Ministry of Justice, however only a small portion of them are currently operational. Mr. Amashov noted that over 50 magazines, 36 daily and 100 weekly newspapers are published nationally and about 80 newspapers are printed in the regions.<sup>1035</sup> IREX's Media Sustainability Index puts the number of active media outlets at 36 daily, 200 weekly and 85 monthly print outlets, 9 AM and 17 FM radio stations, 23 television stations, including 9 broadcasting nationwide and 14 in the regions.<sup>1036</sup>

Azerbaijan has created a legal framework regulating TV and radio broadcasting. The Law on TV and Radio Broadcasting, which established the National TV and Radio Broadcasting Council, was adopted on 25 June 2002<sup>1037</sup> and entered into force on 5 October 2002. The Council is mandated to implement the state policy in the field of granting licenses to TV and radio broadcasters and to monitor their activities.<sup>1038</sup> Finally, the Press Council was established in 2003 "to protect freedom of the press and freedom of speech".<sup>1039</sup>

## Assessment

### Resources (law): 75

*To what extent does the legal framework provide an environment conducive to a diverse and independent media?*

Although Azerbaijan's mass media laws and regulations provide basic guarantees for freedom of press, certain legal restrictions continue to pose a challenge to independent and pro-opposition media's exercising of their rights.

Censorship of media in Azerbaijan was formally abolished in 1998<sup>1040</sup> and the Law on Mass Media of 2000<sup>1041</sup> expressly forbids any act of censorship, except for temporary restrictions on the media activities in emergency situations. In a similar vein, the Law on TV and Radio Broadcasting stresses

<sup>1035</sup> Media statistics of Azerbaijan, 11 April 2014, <http://www.mediaforum.az/az/2014/04/11/Azerbaycanin-media-statistikasi-062644788c08.html>

<sup>1036</sup> Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

<sup>1037</sup> Law on TV and Radio Broadcasting, 25 June 2002, [www.e-qanun.az](http://www.e-qanun.az)

<sup>1038</sup> Website of the National Television and Radio Council of the Republic of Azerbaijan, [www.ntrc.gov.az](http://www.ntrc.gov.az)

<sup>1039</sup> Website of the Press Council, [www.presscouncil.az](http://www.presscouncil.az)

<sup>1040</sup> Presidential decree on "Additional measures for providing for freedoms of expression thought and information in the Republic of Azerbaijan" dated 6 August 1998, [www.president.az](http://www.president.az)

<sup>1041</sup> Law of the Republic of Azerbaijan on Mass Media, 21 July 1992, [www.e-qanun.az](http://www.e-qanun.az)

that broadcasting is free and stipulates; the key role of the state in safeguarding this freedom is to provide for unimpeded acquisition and distribution of information through legal ways.<sup>1042</sup>

Pursuant to the Law on Mass Media, a legal or physical person wishing to establish a print publication is not required to obtain public authorities' permission, but is obliged to officially notify the relevant body of executive authority, 7 days before the publication is put out.<sup>1043</sup> It is believed that in contrast to broadcasting media, print media enjoy good start-up conditions. Rules of establishing a print media outlet and tax regulations for print media are said to be fair and favourable compared to other industries. For instance, newspapers are not required to pay 18 per cent taxes on imported newsprint.<sup>1044</sup>

Two laws, the Law on Public TV and Radio Broadcasting<sup>1045</sup> and the Law on Radio and TV Broadcasting,<sup>1046</sup> regulate the country's public and private broadcasting channels, which happen to be the main sources of information (together with foreign TV channels accessed via cable television) for most Azerbaijanis. The government established the Public Television and Radio in 2005, "to ensure the interests of the population of the Azerbaijan Republic – the society as a whole and its different groups in quality information," and "to prepare and disseminate information based on the concepts of freedom of speech and ideas".<sup>1047</sup> The law stipulates as the guiding principles of public broadcasting, its "independence; fair, unbiased, precise and accurate information; openness to political interests, etc".

Experience shows that registering a newspaper with the Ministry of Justice is not as problematic and is easier as compared to getting a licence for broadcasting.<sup>1048</sup> According to the Law on Radio and TV Broadcasting, channels other than state and public TV and Radio, must obtain a licence to broadcast by winning the tender organised by the National Television and Radio Council. There is considerable obscurity surrounding the bidding process. The evaluative criteria are broad and leave much room for personal judgement. The members of the Council are appointed by the executive; a situation that places the formally independent institution in a dubious position. Considering that the regulatory body for broadcasting should be accountable to the public, the optimal institution to provide for it is the legislature.<sup>1049</sup>

Some recent legislative changes have adversely impacted the ability of media to deliver a full spectrum of views to the public or to address problems faced by journalists. The freedom of the press was hit particularly hard by the amendments of July 2012, limiting disclosure of information of corporate entities. The amendments restrict public access to information about the ownership of commercial entities: the amount of their charter capital, ownership structure, etc.<sup>1050</sup>

On the other side, the government changed the legislation requiring the setting up of a separate institution of Information Commissioner, by transferring its envisaged responsibilities to another institution – the Human Rights Commissioner (Ombudsman). There are many skeptics of the government's decision to forgo Information Commissioner, not least because the Ombudsman is

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1042 National Television and Radio Council, [www.ntrc.gov.az](http://www.ntrc.gov.az)

1043 The Law on Mass Media dated 7 December 1999, [www.e-qanun.az](http://www.e-qanun.az)

1044 Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

1045 Law of Azerbaijan Republic on Public TV Radio Broadcasting, 28 September 2004, [www.e-qanun.az](http://www.e-qanun.az)

1046 Law of the Azerbaijan Republic on Radio and TV Broadcasting, 25 June 2002, [www.e-qanun.az](http://www.e-qanun.az)

1047 Law of Azerbaijan Republic on Public TV Radio Broadcasting, 28 September 2004, [www.e-qanun.az](http://www.e-qanun.az)

1048 Azerbaijan Country Report 2006: Integrity Scorecard Report, Sub-Category: Media, Global Integrity: Independent Information on Governance & Corruption,

<http://back.globalintegrity.org/reports/2006/azerbaijan/scorecard.cfm?subcategoryId=7&countryID=3>

1049 "Media Development Indicators: A framework for assessing media development," 2008, Intergovernmental Council of the International Programme for the Development of Communication, UNESCO, [www.unesco.org](http://www.unesco.org)

1050 Amendments to the Law on the Right To Obtain Information, 5 March 2013, [www.e-qanun.az](http://www.e-qanun.az)

already tasked with diverse responsibilities, and transfer of new responsibilities increases the workload of this institution and diminishes its efficiency.<sup>1051</sup>

## Resources (practice): 50

A variety of problems, including the problems inherent in the laws, adversely impact the ability of mass media to operate effectively. One of these problems is the use of the publishing services offered by the state-owned Azerbaijan Publishing Company as a tool of pressure. Many Azerbaijani newspapers, including such major opposition media as Azadliq and Yeni Müsavat are published by this company. What makes this company attractive is the lower prices charged for its services than those offered by the growing number of private publishers.<sup>1052</sup> However, the printing house is reported to refuse to print newspapers critical of the government (formally non-political reasons). Thus, the publishing company ceased to print Azadliq, one of Azerbaijan's key opposition newspapers, after the latter failed to pay off its debt in 2013. The newspaper representatives explained the company's inability to make good on its debt by the failure of another company responsible for the newspaper's distribution – Gasid – to pay its 40,000 manats (US\$50,000) debts to Azadliq.<sup>1053</sup> In other developments, Kabira Mammadova, a local businesswoman and Tagi Mammadov, the former head of Baku Metro won libel suits against Azadliq, which only served to further exacerbate the financial conundrum the newspaper faced. As a result of these cases, the newspaper's bank account was frozen rendering the organisation unable to cover even its administrative costs.<sup>1054</sup>

Another type of pressure exerted on mass media is retaliatory measures by individual officials against media outlets that publish unfavourable reports about them. A case in point of such measures is the recent ban on sale of Yeni Müsavat in Baku's subway stations, after views critical of the head of the city's subway system were apparently published in the paper.<sup>1055</sup> Later, the sale of newspapers in metro stations was banned altogether.

There are barriers to entry into the broadcasting business. The procedures for obtaining a licence are complicated and the bidding process is not transparent. The chances of independent media organisations winning the tenders for national TV and radio frequencies are limited. For example, several years ago Turan News Agency and Obyektiv TV,<sup>1056</sup> both took part in the bidding process for a local radio frequency, but the winner of the tender was a company previously not involved in the media business.<sup>1057</sup>

Although it is generally recommended that the broadcasting regulator should be accountable to the public via the legislature, in Azerbaijan's case, its members are appointed by the executive branch. According to Nushiravan Maharramli the Chairman of the Council, as Azerbaijan is a presidential republic, the executive branch has a key role in governance issues, including appointing the members of the Council.<sup>1058</sup>

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1051 Interview with Farid Gahramanov, media expert, Turan Information Agency by author, 11 April 2014

1052 Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

1053 "Azadliq is Strangled though Gasid, 20 July 2013, <http://www.azadliq.info/cmmyt/330-cmyyt1/33208-azadliq.html>.

1054 "Repeal of arrest order on Azadliq's bank account wanted", Media Rights Institute, 14 November 2013, [www.mediariights.org](http://www.mediariights.org)

1055 Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

1056 Obyektiv TV is the internet TV project of Turan News and Information Agency and Institute for Reporters' Freedom and Security

1057 Interview with Farid Gahramanov, media expert, Turan Information Agency by author, 11 April 2014

1058 Interview of Nushiravan Maharramli, the chairman of the Council, with Radio Liberty, 23 April 2014, [www.azadliqradiosu.org](http://www.azadliqradiosu.org)



Azerbaijan's broadcasters refrain from covering diverse political perspectives in their reporting. The results of the monitoring by the Institute for Reporters' Freedom and Safety (IRFS) of 8 TV channels – AzTV, Lider, ANS, Azad Azerbaijan (ATV), Space, Khazar TV, Public TV (ITV) and Idman-Azerbaijan (Sport Azerbaijan) – within the framework of the Free Airwaves Project, indicated that there is no political pluralism on any of the above TV channels; and news reports are often inaccurate and biased.<sup>1059</sup> Also, foreign broadcasters have been banned from accessing national frequencies in Azerbaijan since January 2009, a move that took the Azerbaijan services of the BBC, Radio Free Europe/Radio Liberty (RFE/RL), and Voice of America – easily accessible international sources of broadcast news in the country – off the national air.<sup>1060</sup>

The Press Council regularly publishes a “black list” of newspapers engaged in so-called “racketeering” activities or violation of professional journalistic ethics, which is seen by some as damaging to these media outlets’ ability to find funding. Views diverge concerning the legality and ethicality of the Council publishing such a list, on account of the fact that racketeering is a criminal act under Azerbaijan’s law and the Council’s designation of individual outlets as “racketeering” – a prerogative exclusively reserved for courts – is at loggerheads with the national law.<sup>1061</sup>

The state provides aid to local media, through the State Fund for the Support of Mass Media, which was established in 2009. Even though one of the aims of this fund, as indicated by its charter, is to enhance freedoms of thought, speech and information, in reality a significant portion of the fund’s grants are allocated to pro-government media.<sup>1062</sup> In January 2014, the fund ceased funding of Azadliq, one of the few recipients of its grants from the opposition media.<sup>1063</sup>

On the other side, the government has recently handed out apartments (construction costing the government 5 million manats (US\$6.25 million) to 155 journalists, including 15 representatives of the opposition media.<sup>1064</sup> According to the government, this initiative aimed to provide low-income journalists with housing, which would enable them to work free from outside influence.<sup>1065</sup>

## Independence (law): 50

Despite the fact that the Constitution of Azerbaijan and the Law on Mass Media ensure freedom of speech and press, the provisions of the Criminal Code relating to defamation set limits on media freedom and thereby contradict the country’s supreme law.

Article 50 of the Constitution stipulates that mass media is free and state censorship is prohibited. Article 1 of the Law on Mass Media underlines the state’s role in guaranteeing freedom of press in the spirit of the Constitution, too. Article 8 of the same law states the right of mass media to acquire information from public authorities and requires government agencies to respond to information requests of the media. Article 50 stipulates that journalists accredited with government agencies must be able to attend events and access the information. However, in practice, there are problems with all of these issues.

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<sup>1059</sup> Press Freedom in Azerbaijan/2009 Annual Report, Institute for Reporters' Freedom and Safety, [www.ifex.org](http://www.ifex.org)

<sup>1060</sup> Jamming in Azerbaijan: Foreign News Outlets Unable to Broadcast, Rebecca Vincent, 9 July 2013, <http://www.aljazeera.com/indepth/opinion/2013/07/201379559301632.html>

<sup>1061</sup> Interview with Farid Gahramanov, media expert, Turan Information Agency by author, 11 April 2014

<sup>1062</sup> Interview with Farid Gahramanov, media expert, Turan Information Agency by author, 11 April 2014

<sup>1063</sup> Experts Claim that the State Fund for the Support of Mass Media is Unjust, 6 January 2014, <http://www.azadliq.info/asagi-manset/351-asagi-manshet/39815-ekspertlr-kvdf-ni-daltsizlikd-succladlar.html>

<sup>1064</sup> Azerbaijan: Concern at Journalists' Windfall, Institute for War & Peace Reporting, 5 August 2013, <http://iwpr.net/report-news/azerbaijan-concern-journalists-windfall>

<sup>1065</sup> Azerbaijan: Concern at Journalists' Windfall, Institute for War & Peace Reporting, 5 August 2013, <http://iwpr.net/report-news/azerbaijan-concern-journalists-windfall>

One of these problems is the risk of criminal penalties for defamation under Azerbaijan law. Articles 147, 148 and 323 of the Criminal Code prohibit dissemination of information that in some way damages the honor and dignity of a person, or, in the case of Article 323, the president of the Republic of Azerbaijan<sup>1066</sup>. The fact that these provisions remain in force makes journalistic activities susceptible to external influences and leads to a practice of self-censorship among journalists.<sup>1067</sup> In 2010, 36 libel suits were filed against journalists, but none resulted in their arrests. In 2010, two media NGOs submitted draft bills on libel and defamation to Parliament, but none had been adopted at the time when this report was published.

Despite the repeated promises of the government to libel, the defamation provisions of the Criminal Code, as one expert put it, “continue to hang like a sword of Damocles over the head of Azerbaijan’s journalists”.<sup>1068</sup> Until recently, government officials argued that the media was not ready for adoption of the law on defamation.<sup>1069</sup> In her December interview with 1news agency, Rabiyyat Aslanova, chair of the Parliament’s Committee for Human Rights, said that the Law on Libel would be adopted only when journalists in Azerbaijan prove themselves to be ethical. “Only when Azerbaijan journalists become responsible for what they write and comply with high journalistic principles, we will agree to adopt this bill,” said Aslanova. However, the Parliament’s passing of amendments to articles 147 and 148 of Criminal Code on 14 May 2013 have been passed, extending criminal defamation onto Internet speech and reducing the odds of any significant reforms in this area for the foreseeable future.<sup>1070</sup>

There is no efficacious legal-institutional mechanism ensuring the independence of broadcasting in Azerbaijan. As mentioned earlier in the report, even though the licenses for TV and radio are nominally issued on a competitive basis, transparency of this process leaves much room for improvement and allows evaluative criteria for selecting the winners to be made more concrete.

Sometimes the Council applies double standards in its evaluation of violations by television broadcasters, of professional ethics and ethical conduct. Thus, the Council oftentimes fails to adequately react to campaigns against opposition journalists.<sup>1071</sup>

## Independence (practice): 25

Political, legal and financial problems confronted by Azerbaijan’s media encroach on their freedom and independence. Journalists are charged under defamation, as well as other articles of the Criminal Code. Although lately there has been a reduction in the number of criminal charges against journalists for defamation, it still remains a problem. In the recent past, several criminal charges were brought against journalists, including Eynulla Fatullayev, Faramaz Allahverdiyev, Rovshan Kabirli and Yashar Aghazadeh based on Article 147 (slander) and 148 (insult) of the Criminal Code.<sup>1072</sup>

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1066 Criminal Code of Azerbaijan Republic, 30 December 1999, [www.e-qanun.az](http://www.e-qanun.az)

1067 Free Expression Under Attack: Azerbaijan’s Deteriorating Media Environment, Report of the International Freedom of Expression Mission to Azerbaijan, 7 – 9 September 2010, [www.article19.org](http://www.article19.org)

1068 Interview with Farid Gahramanov – media expert Turan Information Agency by author, 11 April 2014

1069 Top official: Azerbaijani media is not ready for adoption of law on defamation, TREND/T.Hajiyev, 28 October 2011, <http://en.trend.az/news/society/1951048.html>

1070 “Azerbaijan criminalizes online libel and insult”, 22 May 2013, [www.rferl.org](http://www.rferl.org)

1071 Interview with Farid Gahramanov – media expert, Turan Information Agency by author, 11 April 2014

1072 Azerbaijan: Journalists sentenced on defamation charges, English PEN, 28 October 2009, [www.englishpen.org/azerbaijan-journalists-sentenced-on-defamation-charges/](http://www.englishpen.org/azerbaijan-journalists-sentenced-on-defamation-charges/)

Recently, the first court decision has been made under the controversial Internet libel law (article 147.1 of Criminal Code).<sup>1073</sup> Mikayil Talibov, a former bank employee, posted remarks about the bank, the bank's management appealed to a local court for what it considered to be "libelous content" and the court found Talibov guilty of charges based on the online content.<sup>1074</sup> However, later the Court of Appeal remanded the case to the local court for reconsideration and the latter revoked the original verdict.<sup>1075</sup>

Criminal prosecution of journalists affects independence of media and makes self-censorship among journalists unavoidable. The Media Rights Institute reported 106 acts of violence against journalists in 2010.<sup>1076</sup> According to the Institute for the Freedom and Security of Journalists (IRFS), the number of cases of journalists being attacked or threatened in 2011 was 50.<sup>1077</sup>

Another form of indirect intervention in the media is the policy of selective advertisement. Companies fear to place their ads in pro-opposition newspapers.<sup>1078</sup> However, it should be added that the country's advertisement market is relatively small, which is a problem too. Estimates from 2012 showed that print media related advertisement sales in Azerbaijan were €2 million (US\$2.7 million), while in Hungary, a country of relatively similar size and population, this figure stood at €160 million (US\$217.7 million).<sup>1079</sup>

## Transparency (law): 50

*To what extent are there provisions to ensure transparency in the activities of the media?*

Under the Law on Mass Media, print media ownership must be disclosed publicly.<sup>1080</sup> But there is no law regulating transparency of the media's financial resources or reporting policies. There are also no regulations for providing transparency for National Television and Radio Council: its meetings, agendas and decisions.

## Transparency (practice): 25

*To what extent is there transparency in the media in practice?*

It is difficult to obtain comprehensive information on the ownership of some media outlets, specifically, private broadcasters.<sup>1081</sup> Of commercial broadcasters, only ANS TV has posted

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1073 First Court Judgment Made on Internet Defamation (in Azeri), Bizim Yol Online Newspaper/Rəşad Vəqifoglu, 14 August 2013, <http://bizimyolinfo.com/?sehife=1&xeber=13975>

1074 On Criminal Prosecution for Expressions on Facebook, Media Rights Institute, August 14 2013, [www.mediariights.az](http://www.mediariights.az)

1075 Court revoked previous decision on Mikayil Talibov, an author of critical post on Facebook," 26 November 2013, [www.mediaforum.az/az/2013/11/26/M%C9%99hk%C9%99m%C9%99-Facebook-da-t%C9%99ngid-yazan-Mikay%C4%B1-Tal%C4%B1bova-094004291c00.html#.U0U-Kgh\\_uSd](http://www.mediaforum.az/az/2013/11/26/M%C9%99hk%C9%99m%C9%99-Facebook-da-t%C9%99ngid-yazan-Mikay%C4%B1-Tal%C4%B1bova-094004291c00.html#.U0U-Kgh_uSd)

1076 Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

1077 Between state control and self-censorship, Reporters without Borders, 24 May 2012, [www.reporter-ohne-grenzen.de/fileadmin/rte/docs/2012/120524\\_ROG-Report-Azerbaijan\\_ENG.pdf](http://www.reporter-ohne-grenzen.de/fileadmin/rte/docs/2012/120524_ROG-Report-Azerbaijan_ENG.pdf)

1078 Interview with Mehman Aliyev- Director of Turan Information Agency by author 7 June 2013

1079 "Why does the unfree media need self-regulation?" (in Azeri), Voice of America, 24 October 2012, [www.amerikaninsesi.org/content/rati\\_konfrans/1532491.html](http://www.amerikaninsesi.org/content/rati_konfrans/1532491.html)

1080 The Law on Mass Media, dated 7 December 1999, [www.e-qanun.az](http://www.e-qanun.az)

1081 Global Integrity Report: 2011 - AZERBAIJAN, Global Integrity, [www.globalintegrity.org](http://www.globalintegrity.org)

information on its founding ownership and other relevant issues on its website.<sup>1082</sup> Other broadcasters do not disclose such information to the public.

Major media outlets do not publish financial statements.

### Accountability (law): 50

The Professional Code of Ethics of Journalists contain provisions on accountability and the Press Council is supposed to exercise the “self-regulation” of Azerbaijan’s media. The mission of the Press Council, which was set up in 2003, is to exercise public control over the media representatives’ adherence to the rules of the Professional Code of Ethics of Journalists, strengthen contacts and build trust between the public, the state bodies and the mass media, and create more favorable conditions for freedoms of expression, thought and information.<sup>1083</sup>

This institution’s chief task is to investigate complaints addressed to it, seek to settle the conflict between the complainer and the subject of complaint. The main lever of the Press Council to punish infringers of journalistic ethics is to include them in the Council’s “blacklist”. This type of public denunciation is used against media outlets that “neglect professional standards, damage the honor, dignity and business reputation of individuals”.<sup>1084</sup> The July 2013 version of the “blacklist” includes 84 mass media outlets.<sup>1085</sup>

The updated version of the Journalists’ Code of Ethics by OSCE and the Press Council was released in 2010. This document requires journalists to correct their errors as soon as possible, regardless of the person, who identifies the error. The correction should make it clear whether the respective piece of information was inaccurate in whole or in part.<sup>1086</sup> Some experts think that the Code has remained “on paper” and has not led to better accountability.<sup>1087</sup>

The body responsible for ensuring accountability in the country’s broadcasting sector, is the National Television and Radio Council. Among the duties of the Council are “regulating the activities of television and radio broadcasting, protecting their independence and the public interests, and exercising control over the observance of the legislation on television and radio broadcasting”.

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It should be highlighted that currently there are no mechanisms in place to ensure the prudent stewardship of public funds by the national broadcaster. AzTV, the official broadcaster, received a generous budget of 35 million manats (US\$44.5 million) in 2011, in addition to advertisement fees, but did not report on how these funds were used.<sup>1090</sup>

### Accountability (practice): 25

Views diverge as to the role of the Press Council in maintaining accountability in the mass media. Elchin Shikhli, editor of Ayna-Zerkalo, an independent newspaper and a member of the Council, stated that the Council has succeeded in settling thousands of disputes before they could go to court

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1082 “About ANS”, <http://www.ansgroup.ws>

1083 The Press Council, [www.presscouncil.az](http://www.presscouncil.az)

1084 The Press Council, [www.presscouncil.az](http://www.presscouncil.az)

1085 “84 Azerbaijani Mass Media Entities Included in Press Council’s “Blacklist”” (in Azeri), TREND/E.Mehdiyev, 11 July 2013, <http://az.trend.az/news/society/2169828.html>

1086 Code of Professional Ethics for Journalists of Azerbaijan, OSCE website, <http://www.osce.org/baku/72211>

1087 Interview with Farid Gahramanov, media expert by author, Turan Information Agency, 11 April 2014

1088 National Television and Radio Council, [www.ntrc.gov.az](http://www.ntrc.gov.az)

1089 National Television and Radio Council, [www.ntrc.gov.az](http://www.ntrc.gov.az)

1090 Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

and thereby spared many journalists jail terms.<sup>1091</sup> In 2011 alone, 651 appeals were filed with the Council, of which 499 involved complaints of the media outlets.<sup>1092</sup> The settlement of the complaints through the Council reportedly helps prevent a significant number of potential court cases thereby helping journalists avoid disproportionate penalties, including arrests.<sup>1093</sup>

As stated earlier, there are also arguments that the Press Council, which is registered as a nonprofit in the Ministry of Justice, does not have the authority to compile a list of “racketeering newspapers”. Furthermore, it is asserted that because “racketeering media” primarily include media outlets with limited circulation and readership, the “black list” can achieve little except publicising the names of little-known publications.

Reporters from major media outlets and some editors have interactive blogs, which provide a space where they can interact with the public. The main channel of communication is social media, namely interaction on Facebook. Ganimat Zahid, editor of Azadliq and Rauf Arifoglu, editor of Yeni Məsəvat, major opposition newspapers, along with İlgar Hasanov, editor of Trend news agency – a pro-government news organisation – are but three examples of media representatives, who can be accessed via social media. Also, on the websites or Facebook pages of Azerbaijan’s notable media outlets, there is generally a space for readers to exchange their commentary.

Azerbaijan does not have a separate institution of press ombudsman. The Law on Access to Information, which was passed by Parliament in 2005,<sup>1094</sup> contained a provision that required the establishment of information commissioner within the period of 6 months after the legislation’s enactment. However, this requirement did not become operative and the amendments dated 21 December 2010 to the Constitutional Law on the Human Rights Commissioner (Ombudsman) transferred duties reserved by the law for Information Commissioner to the Human Rights Commissioner or Ombudsman. As for individual media organisations, no media outlet had their separate institution of ombudsman at the time this report was written.

When erroneous reporting is the case, outlets usually provide a clarification rather than publish a retraction. When no complaint is lodged against them, reporters/reporting outlets prefer to hush up the incident.

## Integrity Mechanisms (law): 75

The Code of Ethics of Journalists, updated by OSCE and the Press Council, delineates the basic principles of ethical journalism.<sup>1095</sup> The final version of the Code entails a more detailed coverage of ethical conduct standards in collecting information and disclosing it, reporting crime and presumption of innocence, editorial independence and journalists’ rights.<sup>1096</sup> The Code lists 4 general principles of journalistic ethics, which include: serving the truth, accuracy, and objectivity, treating respectfully sources of information, protecting honor, dignity, and inviolability of personal life, and finally, protecting reputation of journalists, and the organisation for which the journalist works.<sup>1097</sup>

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1091 Disputes Settled by Press Council (Video in Azeri), ANS Press, 16 March 2013,

<http://anspress.com/index.php?a=2&lng=az&nid=193453>

1092 “Why does the unfree media need self-regulation?” (in Azeri), Voice of America, 24 October 2012,

[www.amerikaninsesi.org](http://www.amerikaninsesi.org)

1093 “Why does the unfree media need self-regulation?” (in Azeri), Voice of America, 24 October 2012,

[www.amerikaninsesi.org](http://www.amerikaninsesi.org)

1094 Law on the Right to Obtain Information, 30 September 2005, [www.e-qanun.az](http://www.e-qanun.az)

1095 Before that the Press Council had an older version of the code.

1096 Press Release: Revised code of ethics introduced at OSCE Office conference on media self-regulation in Azerbaijan, OSCE Office in Baku, 6 September 2010, [www.osce.org/baku](http://www.osce.org/baku)

1097 Code of Professional Ethics for Journalists of Azerbaijan, OSCE website, [www.osce.org/baku](http://www.osce.org/baku)

The Code states that journalists should not accept any personal, political or financial favours that could influence their ability to report accurately.

### Integrity mechanisms (practice): 50

Although there are provisions in the Code of Ethics calling for integrity in the mass media, journalists oftentimes fail to comply with those principles.

In a sense, this lack of conformity stems from the fact that there is a top-down approach to application of ethic rules, whereas for effectiveness there should be a demand for ethical conduct at the bottom. Also, because of lack of funding, many journalists simply disregard ethical rules and come to depend on individual officials.

Salaries of Azerbaijan journalists are low. A survey by the Journalists' Trade Union of Azerbaijan (JuHI) among 37 national newspapers, 5 information agencies, 3 news portals, also 18 weekly newspapers (8 regional, 10 national), and 7 TV channels (4 regional, 3 national), found out that the average monthly salary for their employees hovers between 400 manat (US\$510) and 500 manat (US\$637). The investigation indicates that banks, as a rule, refuse giving out loans to journalists. Journalists are usually unable to obtain a mortgage either, as a result of the fact that their salaries often fall below the required minimum of 500 manat (US\$637) by the lenders.<sup>1098</sup>

Another factor that casts a shadow on the independence of journalists is that they are often reportedly employed without a job contract, which allows the employers to hire or fire them, as they will.<sup>1099</sup> In these circumstances, it is very difficult for them to demonstrate professional independence from their employers.

Officials frequently explain the delay of the decriminalisation of defamation by arguing that journalists fail to act in accordance with ethical standards, however, the government must take adequate measures to foster professionalism of journalists. In most cases, it is international organisations that provide training opportunities for those employed in the mass media. Yet, even these tools sometimes fall short of achieving their objective, due to the fact that most employers in media are not themselves interested in raising the levels of professionalism.<sup>1100</sup>

### Investigate and expose cases of corruption practice: 25

Profound journalist investigation is not a very wide spread practice in Azerbaijan, one of the reasons being that reporters, who enquire into corruption facts, are at risk of facing various forms of intimidation.<sup>1101</sup> Since doing investigative reporting on corruption requires substantial investment of time and resources, most journalists cannot commit themselves to this kind of investigative journalism.<sup>1102</sup> Moreover, law enforcement agencies do not always act on corruption suspicions of media.

### Inform public on corruption and its impact: 50

Mass media gives information about corruption and its impacts, however, this information is provided mostly on print and online media. Television and radio channels allocate much less space

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1098 JuHI, Journalists' Trade Union, <http://www.juhi.az/index.php?newsid=533>

1099 Free Expression Under Attack: Azerbaijan's Deteriorating Media Environment, Report of the International Freedom of Expression Mission to Azerbaijan, 7 – 9 September 2010, [www.article19.org](http://www.article19.org)

1100 Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

1101 Global Integrity Report: 2011 - AZERBAIJAN, Global Integrity, [www.globalintegrity.org](http://www.globalintegrity.org)

1102 Interview with Farid Gahramanov, media expert by author, Turan Information Agency, 11 April 2014



to such programmes.<sup>1103</sup> Some of the programmes inform and educate citizens on legal provisions. The most popular programme is the radio programme on the traffic regulation broadcast on 106.3 FM frequency. Besides, there are also several similar programmes on other radio channels. In general, these programmes do not focus on corruption and its impact per se. They can be rather assessed as the programmes preventing corruption through education. Some television channels arrange debates on corruption related topics, with the participation of the representatives of the government and civil society; however, the quantity and quality of these programmes leave a lot to be desired.

## Inform public on governance issues: 50

Although the broadcast media is reported to be generally biased towards government, there is a growing trend of Internet television projects, which provide a relatively balanced view of public policies. However, the answer to the question as to how effective their performance is in terms of their outreach to the citizens is not clear for now.<sup>1104</sup>

One of the key problems in the coverage of governance issues is that despite the requirements of the Law on Access to Information, public agencies do not always share the information on the important aspects of their activities, with the mass media.<sup>1105</sup> Moreover, public agencies do not apply the principle of equal treatment when sharing information with the mass media. Individual agencies usually disclose more information to the pro-government media outlets than independent and opposition media.<sup>1106</sup>

## Recommendations:

- Enhance transparency of the activities of the National Television and Radio Council (NTRC); specifically, transparency of the bidding process for broadcast licenses; create public oversight mechanisms; make objective and specific rules for selecting members of NTRC; create rules guaranteeing transparency of meetings, agenda and decisions of National Television and Radio Council.
- Enhance public participation in the activities of the State Fund for the Support of Mass Media Development; create rules that ensure inclusion of independent experts sitting on the commissions of the fund evaluating project proposals by mass media.
- Ensure transparency of expenditures of major media outlets, including Azerbaijan State Television and Radio Company and Public Television and Radio Broadcasting Company.
- Arrange training opportunities for journalists to encourage their compliance with professional ethics and develop more effective self-regulatory mechanisms in media, which would enable discarding articles of Criminal Code making defamation a criminal offence.
- Encourage more corruption awareness raising programmes on TV and radio stations.

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<sup>1103</sup> Transparency Azerbaijan recommendations to public agencies under ALAC and APT projects, [www.transparency.az](http://www.transparency.az)

<sup>1104</sup> Media Sustainability Index 2012: Azerbaijan, IREX, [www.irex.org](http://www.irex.org)

<sup>1105</sup> "Mass Media Situation in Azerbaijan: What Has Changed over the Year?", Arif Aliyev, [www.osce.org](http://www.osce.org)

<sup>1106</sup> Interview with Farid Gahramanov – media expert by author, Turan Information Agency, 11 April 2014



## 12. CIVIL SOCIETY

### Summary

Following independence, Azerbaijan saw the process of formation of civil society alongside other democratic institutions.

There are about 3,000 registered NGOs along with many unregistered groups. Compared to the size of the population, the ratio is about one civil society institution per every 3,000 thousand citizens.<sup>1107</sup> In terms of quantity, this indicator is not a bad indicator for a newly independent country.

The government has made several important steps in recent years to closely cooperate with civil society. In 2007, the Azerbaijan government established the Council on State Support to Non-Governmental Organisations (NGO Support Council), with the aim to provide grants and informational support to Azerbaijani as well as foreign NGOs and to facilitate NGO-government cooperation. A State Programme of Support to NGOs has also been approved by a presidential decree. There are numerous examples of the government's cooperation with civil society, through public monitoring councils established by national public agencies and networks and work groups comprised by NGO and government representatives.

On the other hand, in 2013 and 2014 the Parliament has passed several laws that increase the accountability of NGOs before the government. Also, control of banks over expenditures of grant funds has tightened. Though these measures will increase transparency and accountability of civil society, there are administrative obstacles in application of new requirements, attempted to be solved by all parties involved.

Civil society needs capacity building and professional staff, especially in administration and management, and fund raising; as well as further improvement of transparency and accountability. Lack of sustainability of funding creates a substantive barrier to active involvement of the NGOs in public life and their ability to impact the political and social agenda in the country.

As for its strength, civil society is most successful in educating citizens on public issues and building the capacity of people to organise themselves, mobilise resources and work together to solve common problems, and in providing legal services. Civil society needs to increase its impact on the budget formation and budgetary expenditures, or ability to hold the government accountable; and policy formulation.

Azerbaijan's civil society is not fully mature and is going through a painful process of capacity building and consolidation. It is also polarised in terms of political orientation and degree of cooperation with the government.

### CIVIL SOCIETY

Overall Pillar Score 46/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity	Resources	50	50

<sup>1107</sup> National Report on the State of the Civil Society 2010, by the State Council for NGO Support, [www.cssn.gov.az](http://www.cssn.gov.az)

50/100			
	Independence	50	50
Governance 50/100	Transparency	-	50
	Accountability	-	50
	Integrity	-	50
Role 38/100	Hold government accountable	25	
	Policy reform	50	

## Structure and organisation

Azerbaijan legislation applies either term “Public Association”<sup>1108</sup> or “Foundation”<sup>1109</sup> to what is universally understood as being an NGO. Under the law, public association is a non-profit entity established by a group of legal entities or physical persons united around a common purpose, while a foundation can be set up by one or more legal entities or a physical person and share common property to perform social or other important public functions.

The Azerbaijan legislation does not provide for a broader concept of several organisations coming together to work on a common agenda, in the form of a forum or platform, or coalition – the terms often used in international practice.

Groupings of NGOs sometimes reach a point where they attempt to register as a single Public Association, to enable them to reach their aims and secure funding, as registered status of a legal entity is mandatory under the law and a prerequisite for donor funding.<sup>1110</sup> Also, funds received by an NGO are formally required to be registered. The law provides for such an organisational and legal form, as an alliance that can be formed by several legal entities coming together.

Civil society in Azerbaijan is rather active. There are about 3,000 registered NGOs<sup>1111</sup> and many active unregistered groups.<sup>1112</sup>

In 2007, the Azerbaijan government established the Council on State Support to Non-Governmental Organisations (NGO Support Council)<sup>1113</sup> with an aim to provide grants and informational support to Azerbaijan and foreign NGOs and facilitate NGO-government cooperation.

<sup>1108</sup> Article 2.1 of the Law on Non-Governmental ations (Public Associations and Foundations), 13 June 2000

<sup>1109</sup> Article 2.2 of the Law on Non-Governmental ations (Public Associations and Foundations), 13 June 2000

<sup>1110</sup> Emin Amrullayev, The Report on the Assessment of the ational and Management Capacity of NGOs in Azerbaijan by Democracy Learning Public Association, February 2012 <http://dlpu.az/senedler/Azerbaijan.pdf>

<sup>1111</sup> Website of the Ministry of Justice, [www.justice.gov.az](http://www.justice.gov.az)

<sup>1112</sup> NGO Law Monitor: Azerbaijan, International Center for Non-profit Law, last updated 7 February 2014 <http://www.icnl.org/research/monitor/azerbaijan.html>

<sup>1113</sup> Website of the State Council for NGO Support, [www.cssn.gov.az](http://www.cssn.gov.az)

## Assessment

### Resources (law): 50

*To what extent does the legal framework provide an environment conducive to civil society?*

In general, Azerbaijan legislation regulating civil society needs further development. The State Council of Support to NGOs and NGOs themselves, regularly make recommendations in order to enhance the legal framework regulating NGO activities. For example, the Civil Society Forum in Azerbaijan under the auspices of the Eastern Partnership Program, (organised on 17 May 2012),<sup>1114</sup> adopted a package of proposals to the government to, inter alia, enhance the respective legal framework.

In Azerbaijan, the right to freedom of association is guaranteed by Article 58 of the Azerbaijan Constitution<sup>1115</sup> and Article 11 of the European Convention on Human Rights.<sup>1116</sup> The legal framework for NGO activities is defined by the Constitution of Azerbaijan Republic and several laws, such as: the Law on State Registration and State Register of Legal Entities,<sup>1117</sup> the Law on Non-Governmental Organisations,<sup>1118</sup> the Law on Grants,<sup>1119</sup> the Law on Voluntary Activities,<sup>1120</sup> and supporting legal acts, such as Rules on Registration Contracts (Decisions) To Award (Receive) Grants,<sup>1121</sup> etc.

Though in the past there was no provision in Azerbaijan legislation explicitly obligating NGOs to be registered to operate, on 15 February 2013, the Azerbaijan Parliament adopted a set of amendments to the Law on Grants<sup>1122</sup> and to the Law on Non-Governmental Organisations,<sup>1123</sup> which implicitly oblige NGOs to register in order to be able to operate. The respective amendments of 15 February 2013 to the Code of Administrative Violations<sup>1124</sup> envision that any donations of a value exceeding 200 manat (US\$255) shall be formalised through a formal agreement with the donor; otherwise the recipient NGO shall be subject to massive fines: 2,500 to 5,000 manat (US\$3,184 to US\$6,368) for physical persons; and from 8,000 to 15,000 manat (US\$10,188 to US\$19,103) for legal entities along with confiscation of the donations.

On 17 December 2013, new amendments to some legislative acts on the activities of non-governmental organisations<sup>1125 1126 1127</sup> were adopted. The amendments in the Code of Administrative Offences under Article 223-1.4 outline penalties for individuals or officials in the

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1114 The 1st Civil Society Forum "Civil Society in Azerbaijan: National Agenda for Changes", [www.eap-csf.eu/en/national-platforms/azerbaijan/](http://www.eap-csf.eu/en/national-platforms/azerbaijan/)

1115 Constitution of Azerbaijan Republic, Article 91.2, 12 November, 1995 (entered into force on 27 November), <http://www.constcourt.gov.az/laws/26>

1116 Article 11 of the European Convention on Human Rights, [www.echr.coe.int](http://www.echr.coe.int), ratified by Azerbaijan in 2001, <http://www.icnl.org/research/monitor/azerbaijan.html>

1117 Law on State Registration and State Register of Legal Entities, 12 December 2003, [www.justice.gov.az](http://www.justice.gov.az)

1118 Law on Non-Governmental organisations (Public Associations and Foundations), 13 June 2000, [www.cssn.gov.az](http://www.cssn.gov.az)

1119 The Law on Grants, 31 August 2009, [www.cssn.gov.az](http://www.cssn.gov.az)

1120 Law on Voluntary Activities, 31 August, 2009, [www.cssn.gov.az](http://www.cssn.gov.az)

1121 Presidential decree on Approval of the Rules for Registration of Grant Reception (Award) Agreements (Award Decisions), 12 February 2004, with amendments of 21 December 2009 [www.president.gov.az](http://www.president.gov.az)

1122 The Law on Changes to the Law on Grants of 15 February 2013, [www.cssn.gov.az](http://www.cssn.gov.az)

1123 Law on Changes to the law Non-Governmental ations (Public Associations and Foundations), 15 February 2013, [www.cssn.gov.az](http://www.cssn.gov.az)

1124 The Law on Changes to Code of Administrative Violations, 15 February 2013, [e-qanun.az](http://e-qanun.az)

1125 The Law on Changes to the Law on State Registration of Legal Entities and the State Register, 17 December 2013, [www.justice.gov.az](http://www.justice.gov.az)

1126 The Law on Changes to the Law on Grants of 15 February 2013, [www.cssn.gov.az](http://www.cssn.gov.az)

1127 Article 223-1.4, the Code of Administrative Violations, 11 July 2000, with amendments of 17 December 2013, [www.e-qanun.az](http://www.e-qanun.az)

amounts of from 2,500 to 5,000 manat (US\$3185 to US\$6370), while legal entities are fined 5,000 to 8,000 manat (US\$6370 to US\$10,192) for conduct of bank or other operations under grants unregistered with the Ministry of Justice.

Pursuant to amendments of 17 December 2013, on 17 March 2014, the board of the Central Bank adopted a decision<sup>1128</sup> obliging banks to conduct cashless operations and money transfers on grants according to submission of a document certifying the grant – to enable banks to penalise operations for bank operations on unregistered grants. Pursuant to these changes, NGOs shall obtain a testifying document from the Ministry of Justice to submit to banks in order to be able to operate their accounts. The main problem here is that, unlike the law<sup>1129</sup> and the presidential decree<sup>1130</sup> discussed above, the Central Bank refers to a hard copy document. The Ministry of Justice quite efficiently operates an online registry of grants, which is publicly available,<sup>1131</sup> while banks referring to the decision of the National Bank require a hard copy document. Sometimes banks use new amendments retroactively and extend new requirements onto previously received and registered grants; also some banks require a new document for every subsequent instalment of the same grant; and finally sometimes this requirement is extended onto grants awarded by the Azerbaijan government that, under the law, have to be registered by the donor organisations themselves.<sup>1132</sup> While these changes stimulate the NGOs to be more transparent and accountable with their activities and expenditure, at the same time the practical application of the new regulations causes delay in their activities. Civil society together with the State Council for NGO Support developed a working group in an attempt to solve this controversy.<sup>1133 1134</sup>

The process of registration of grant agreements with notary public offices prior to submission of a notarised copy of a grant agreement to the Ministry of Justice, as per existing legislation,<sup>1135</sup> shall be further developed. In practice, some notary publics are cautious to notarise grant agreements, as they do not meet requirements. There are no clear provisions in the legislation regulating the format of grant agreements between donors and recipients; apart from basic information on the grant purpose, amount, subject duration, and conditions raised by the donor before the recipient, if any,<sup>1136</sup> moreover that each donor has its own contract format. Another difficulty lies with the donors that are located outside of Azerbaijan. In many cases it is difficult to obtain originals of grant agreements for technical reasons; therefore, donors send scanned versions of grant agreements. In order to assist NGOs to overcome bureaucratic obstacles, the Ministry of Justice is introducing the system of individual electronic windows for NGOs.<sup>1137</sup>

The taxation system was assessed as moderate by civil society in the recent Transparency Azerbaijan survey among civil society representatives (NGO leaders and members), in order to

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1128 Instruction for Cashless Settlements and Money Transfers in the Azerbaijan Republic, 17 September 2013 with amendments approved by the board of Azerbaijan Central Bank on 17 March 2014, (New section 1.6 added), [www.taxes.gov.az](http://www.taxes.gov.az)

1129 Law on Non-Governmental ations (Public Associations and Foundations), 13 June 2000, [www.cssn.gov.az](http://www.cssn.gov.az)

1130 Presidential decree on Approval of the Rules for Registration of Grant Reception (Award) Agreements (Award Decisions), 12 February 2004, with amendments of 21 December 2009 [www.president.gov.az](http://www.president.gov.az)

1131 <http://www.justice.gov.az/notariat.php?page=3001>

1132 Interview with Sahib Mammadov, Citizens' League for Labor Rights, member of the State Council of Work with NGOs by the author, 11 April 2014

1133 Interview with Sahib Mammadov, Citizens' League for Labor Rights, member of the State Council of Work with NGOs by the author, 11 April 2014

1134 Interview with Alimamed Nuriyev, Constitution Research Foundation, member of the State Council of Work with NGOs by the author, 11 April 2014

1135 Presidential decree on Approval of the Rules for Registration of Grant Reception (Award) Agreements (Award Decisions), 12 February 2004, with amendments of 21 December 2009 [www.president.gov.az](http://www.president.gov.az)

1136 Article 4, The Law on Grants, 31 August, 2009, with amendments of 17 December 2013, [www.cssn.gov.az](http://www.cssn.gov.az)

1137 Presidential decree on Measures To Facilitate Electronic Services for NGOs, 20 November 2013, [www.president.az](http://www.president.az)

identify organisations that have the capacity and the will to form a coalition, and promote anti-corruption reforms. According to the law, NGOs do not pay any taxes from grants as legal entities, apart from employer's tax on salaries.<sup>1138</sup> Technically, they are not VAT exempt but pay VAT at zero rates, which requires additional reporting to the tax authorities. Employees shall also pay income tax<sup>1139</sup> and social tax.<sup>1140</sup> However, as most of the grants cover a short period of time (on the average, between six months and one year), NGOs prefer to hire most of their staff on a temporary service contract basis, with a simplified taxation system<sup>1141</sup> rather than as permanent employers. Service providers must be registered with the tax authorities, have an individual taxpayer identification number and be responsible for their own income<sup>1142</sup> and social taxes.<sup>1143</sup>

In 2011, the NGO Support Council designed and initiated discussion of several draft laws to further refine the legal framework regulating civil society – the Law on Public Participation that was adopted recently<sup>1144</sup> – while the Laws on Social Order and Professional Associations are yet to be adopted as of the date of this report, though the former is already on the Parliament's agenda.

## Resources (practice): 50

*To what extent do CSOs have adequate financial and human resources to function and operate effectively?*

As per the recent survey conducted by Transparency Azerbaijan,<sup>1145</sup> NGOs are relatively free to advocate for reforms (60 per cent of the surveyed NGO activists believed so, whereas 22 per cent thought they had a full freedom to do so). In general, the government willingly cooperates with some NGOs engaged in constructive criticism and is cautious of civil society groups viewed as oppositional.

Lack of sustainable funding streams is among the major challenges faced by Azerbaijan's CSOs. As the philanthropic culture is not well developed in Azerbaijan, most NGOs rely exclusively on grants.<sup>1146</sup>

According to many recent sources,<sup>1147 1148 1149</sup> most of the funding received by local organisations in the near past came from the foreign donors, including non-profit and foreign government agencies,

1138 The employer's tax is fixed at 22 per cent as per amendments to the Law on Social Insurance, 30 September 2011, [www.e-qanun.az](http://www.e-qanun.az); however, grants extended by the US government agencies (such as USAID) are exempt of employer's tax as per a special agreement between the Governments of the US and Azerbaijan.

1139 As per amendments to the Fiscal Code dated 23 April 2013, [www.e-qanun.az](http://www.e-qanun.az), income tax is fixed at 14 per cent of the gross for salary under 2,500 manat (US\$3184); 350 manat (US\$446) plus 25 per cent of the part of the salary exceeding 2,500 manat (US\$3184) for salaries over 2,500 manat (US\$3184);

1140 Social insurance tax for employees at 3 per cent as per amendments to the Law on Social Insurance, dated 30 September 2011, [e-qanun.az](http://e-qanun.az)

1141 Article 155 Tax Code, 11 July 2000, [www.e-qanun.az](http://www.e-qanun.az), sets forth simplified taxation system for businesses/individuals with annual revenue of less than 120,000 manat (US\$152.827)

1142 Article 220.1 of the Tax Code, 11 July 2000, [e-qanun.az](http://e-qanun.az) sets forth income tax for simplified tax payers in percent of the total amount of the payer's revenue. The rate is 4per cent for Baku and at 2 per cent for other regions of the country.

1143 Article 14 of the Law on Social Insurance 18 February 1998 with amendments of 30 September 2009, [www.e-qanun.az](http://www.e-qanun.az), sets forth the fixed monthly rate of social tax for individual tax payers (except for trade and construction industries) at 20 per cent of minimum wage for Baku. The rate for regions is calculated at between 90 per cent and 50 per cent of the Baku rate, depending on the region. Since 1 September 2013 minimum wage is set at 105 manat (US\$134) by the Presidential order on Increase of Minimum Wage, 31 August 2013, [www.president.az](http://www.president.az)

1144 The Law on Public Participation, adopted on 22 November 2013 and will enter into force 1 June 2014, [www.icnl.org](http://www.icnl.org)

1145 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1146 CSO Sustainability Index, 2012: Azerbaijan, <http://www.usaid.gov/sites/default/files/documents/1863/AZE.pdf>

whereas less than a quarter of the financial support to NGOs was provided by the government of Azerbaijan, including the State Council of Support to NGOs,<sup>1150</sup> established in 2007.<sup>1151</sup> Thus, the Centre for Economic and Social Development estimated that registered NGOs received 39.5 million manat (US\$50.2 million) through 1,054 grants from local and international donor organisations in 2012. Of these grant-giving organisations, 18 are local donors, 10 of which are governmental agencies.<sup>1152</sup> Altogether, in 2012 the government assigned about 10 million manat (US\$12.7 million) to NGOs,<sup>1153</sup> with three quarters of the NGO funding coming from foreign donors.

The situation has changed dramatically in 2013 and local donors began to play a more substantial role in financial provision for civil society. Thus, simple analysis of data provided by the Ministry of Justice,<sup>1154</sup> shows that out of 1,817 grants registered in 2013 and summing up to a total of 67,217 manat (US\$85,507), only 35 per cent or 23,551 manat (US\$29,959) comes from foreign donors.

Funding from the private sector, membership fees and donations from citizens in the near past were not popular sources of income either.<sup>1155</sup> However, the situation is rapidly changing. From the numbers provided by the Ministry of Justice<sup>1156</sup> on registered grants as per the new requirements, one can easily deduct that in 2013, out of 29 local donors providing funding to NGOs, 17 were business entities that support civil society as part of their newly emerging corporate social responsibility programmes. Between one third and a quarter of NGOs employ a staff member dealing specifically with fundraising, otherwise fund raising is the responsibility of the chairman or chief executive officer.

In general, lack of qualified human resources is a significant problem faced by NGOs<sup>1157 1158</sup> especially regarding knowledge of the English language,<sup>1159</sup> which impedes access to foreign funding. To rectify the situation, the Education and Training Centre of the State Council of Support to NGOs, proposed to the government to introduce special programmes at universities to train cadres for civil society and preparatory work is under way.<sup>1160</sup> Many NGOs employ volunteers,

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1147 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1148 Emin Amrullayev, The Report on the Assessment of the National and Management Capacity of NGOs in Azerbaijan by Democracy Learning Public Association, February 2012 [www.dlpu.az/senedler/Azerbaijan.pdf](http://www.dlpu.az/senedler/Azerbaijan.pdf)

1149 Civil Society Briefs, Azerbaijan, publication by Asian Development Bank, December 2011, [www.adb.org](http://www.adb.org)

1150 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1151 Website of the State Council [www.sccn.gov.az](http://www.sccn.gov.az)

1152 The 2012 CSO Sustainability Index For Central And Eastern Europe and Eurasia, [http://cesd.az/new/wp-content/uploads/2013/08/Azerbaijan\\_Report\\_2012\\_in\\_English.pdf](http://cesd.az/new/wp-content/uploads/2013/08/Azerbaijan_Report_2012_in_English.pdf)

1153 Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs by the author, dated 28 November 2013

1154 Summary data for grant agreements (contracts) submitted for registration in 2013, Ministry of Justice, <http://www.justice.gov.az/notariat.php?page=2015>

1155 Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs by the author, dated 28 November 2013

1156 Summary data for grant agreements (contracts) submitted for registration in 2013, Ministry of Justice, <http://www.justice.gov.az/notariat.php?page=2015>

1157 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1158 Civil Society Briefs, Azerbaijan, publication by Asian Development Bank, December 2011, [www.adb.org](http://www.adb.org)

1159 Katrin Böttger/Mariella Falkenhain, The EU's policy towards Azerbaijan: what role for civil society? SPES Policy Papers, June 2011 [http://www.iep-berlin.de/fileadmin/website/09\\_Publikationen/SPES\\_Policy\\_Papers/SPES\\_Policy\\_Paper\\_2011\\_The\\_EUs\\_policy\\_towards\\_Azerbaijan\\_BOETTGER\\_FALKENHAIN.pdf](http://www.iep-berlin.de/fileadmin/website/09_Publikationen/SPES_Policy_Papers/SPES_Policy_Paper_2011_The_EUs_policy_towards_Azerbaijan_BOETTGER_FALKENHAIN.pdf)

1160 Letter No 172 from State Council of Support to NGOs to Transparency Azerbaijan, dated 17 July 2013



usually high school students<sup>1161</sup> and the number of volunteers exceeds the number of contracted employees by a point of two.<sup>1162</sup>

Funding gaps that force NGOs to hire staff on a project period basis only and the resulting insecurity of employment, make NGOs less attractive employers when compared to the booming private sector,<sup>1163</sup> with more attractive reimbursement schemes, or the public sector with more stable jobs.<sup>1164</sup> Only a small fraction of NGOs have their own offices,<sup>1165</sup> which also affects sustainability of civil society organisations. Ability of civil society to earn income from the sale of services is limited by the loopholes in the legislation that do not prohibit income generation, but do not have any tax advantages for non-profit entities either, as compared to the private sector.<sup>1166</sup> And the last but not least, about half of NGOs in Azerbaijan encounter difficulties because of the donor-imposed budget limitations (such as small grant amounts or types of disallowed budgetary expenses).<sup>1167</sup> More often than not, international NGOs operating in Azerbaijan rather than local civil society organisations, are awarded huge foreign grants as the national NGOs, in addition to low administrative capacity to manage huge grants, are not able to raise funds elsewhere if the grant is conditioned on co-sharing principles.

To improve the situation with civil society, the State Council of Support to NGOs prepared the National Action Plan for NGO Development for 2013-2018 and submitted it to the government.<sup>1168</sup> However, up to the date of this report, this programme has either not been accepted or made public.

Despite all of this, Azerbaijan NGOs have come a long way in the past 20 years since the concept of civil society first emerged.<sup>1169</sup>

## Independence (law): 50

*To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?*

The law provides independence to NGOs in the choice of their activities within their sphere of work. NGOs can be engaged both at home and abroad, in any type of activities that are not prohibited by Azerbaijan legislation and do not contradict purposes of the NGO as stated in their statutes. The law states that all state bodies shall protect the rights of NGOs. Along with this, the law states that the state agencies can render financial and other types of assistance to NGOs.

The latest amendments to the legal framework entrust the Ministry of Justice to check compliance of foreign and domestic NGOs, as well as their branches. At the moment rules of the audit are being prepared and it is planned that civil society will be invited in the later stages.<sup>1170</sup>

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1161 Civil Society Briefs, Azerbaijan, publication by Asian Development Bank, December 2011, [www.adb.org](http://www.adb.org)

1162 Christine Leiser, Mapping of Civil Society ation in Azerbaijan, The European Union's EIDHR Programme, October 2010, [www.oneglobalexpert.com](http://www.oneglobalexpert.com)

1163 Civil Society Briefs, Azerbaijan, publication by Asian Development Bank, December 2011, [www.adb.org](http://www.adb.org)

1164 Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs by the author, dated 28 November 2013

1165 CSO Sustainability Index 2012: Azerbaijan <http://www.usaid.gov/sites/default/files/documents/1863/AZE.pdf>

1166 Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs by the author, dated 28 November 2013

1167 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1168 Letter No 172 from State Council of Support to NGOs to Transparency Azerbaijan, dated 17 July 2013

1169 Statement by Rasim Musabekov, MP and political analyst, at the 1st Civil Society Forum on Civil Society in Azerbaijan: National Agenda for Changes, 18 May 2012, [www.erc.az](http://www.erc.az)



Along with this, possibilities to terminate NGO activities have expanded. According to recent changes, discovery of more than two warnings in writing and/or notifications of the failure to rectify deficiencies, give a respective body of the executive branch authority to close an NGO, pursuant to a respective court verdict.

Along with this, the law does not provision for direct interference of the state in the NGO work. In other words, there are no explicit provisions stipulating state membership on CSO boards or regulations allowing for mandatory state attendance at CSO meetings.

## Independence (practice): 50

*To what extent can civil society exist and function without undue external interference?*

A recent survey by Transparency Azerbaijan among civil society<sup>1171</sup> found that the government's interference with the NGOs is not unanimously assessed by NGOs. About half of all respondents believed that NGOs can operate without excessive government interference. One quarter found interference excessive and another quarter denied tight control by the government. Therefore, it can be concluded that NGOs do not have a unanimous approach on this issue. Moreover, the situation differs between the capital city of Baku and the provinces, where NGOs have less freedom to operate independently.<sup>1172</sup>

NGOs report problems with registration, thus, the Human Rights Club believe that up to 1,000 of the active NGOs remain unregistered in Azerbaijan today.<sup>1173</sup>

There are claims that the government interferes in the work of some NGOs.<sup>1174</sup> On the other hand, the government cooperates with reputed NGOs, for instance: through Anti-corruption NGO Network,<sup>1175</sup> Azerbaijan Partnership for Transparency NGO Platform,<sup>1176</sup> and through civil society oversight mechanisms (Public Monitoring Councils) at some national agencies (e.g., Ministry of Labour and Social Protection of the Population, Ministries of Justice and Tax). This dual approach towards NGOs is supported by international researchers as well.<sup>1177</sup>

## Transparency (practice): 50

*To what extent is there transparency in CSOs?*

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1170 Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs by the author, dated 28 November 2013

1171 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1172 Experience of Transparency Azerbaijan through its central office in the capital and 4 regional centers in Ganja, Quba, Sheki and Lankaran

1173 Human Rights Club is Concerned about the Situation with Human Rights in Azerbaijan, Voice of America, Azerbaijan desk, 2 April 2014, <http://www.amerikaninsesi.org/content/beyanat/1807159.html>

1174 Pressure On Nongovernmental actions, February 2013, [http://www.hrw.org/he/node/118308/section/8#\\_ftn201](http://www.hrw.org/he/node/118308/section/8#_ftn201)

1175 [www.anticorrupt.net](http://www.anticorrupt.net)

1176 [www.transparency.az](http://www.transparency.az)

1177 Ritvo, R. A. (2011). Oil Can Make A Difference: Collaborating With NGOs In Azerbaijan. International Journal Of Management & Information Systems (IJMIS) , 2011 Volume 15, Number 1 © 2011 <http://journals.cluteonline.com/index.php/IJMIS/article/view/1591>

Unfortunately, the level of transparency of NGOs themselves is not exemplary and has space for enhancement. Only half of active NGOs produce audited annual financial statements<sup>1178</sup> as required by the respective legislation.<sup>1179 1180</sup> Most of those who undergo financial audit make their audit statements available to the public through websites or in printout form.<sup>1181</sup> Thus, less than half of civil society groups do share with the general public, information about their revenues and expenditures.<sup>1182</sup> However, the majority of NGO's publish annual activities reports and make them available to the general public through their websites, local newspapers, social networks and electronic groups.<sup>1183</sup> Pursuant to the amendments of 17 December 2013 to the Law on NGOs, civil society organisations will have to enhance transparency of their activities.

The NGO Support Council attempts to increase transparency of civil society through its own grant award procedures that are believed to be transparent.<sup>1184</sup>

## Accountability (practice): 50

*To what extent are CSOs answerable to their constituencies and other stakeholders?*

Civil society in Azerbaijan by and large does not represent broad constituencies and the link between the NGOs and the general public is weak.<sup>1185</sup> NGOs do not engage large segments of the population in their work and civic participation (NGO membership) is limited to less than 1 per cent of the entire society.<sup>1186</sup> Moreover, most of the active NGOs are located in the capital city of Baku and the regions of the country are poorly covered by civil society in general<sup>1187 1188</sup>

However, pursuant to adoption of the Law on Social Service<sup>1189</sup> (that explicitly says that NGOs can be awarded tenders to perform social services), the government, represented mainly by the Ministry of Labor and Social Protection of Population and Ministry of Health, began to award grants or tenders to civil society organisations for social services; a practice that will in the long term bring NGOs closer to ordinary people and hopefully increase their accountability.

NGOs are also accountable before the state for their tax and financial reporting. NGOs, the same as other legal entities, provide detailed reports to different public institutions.

## Integrity Mechanisms (practice): 50

1178 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013,

[www.transparency.az](http://www.transparency.az)

1179 Article 25.5.4. of the Law on Non-Governmental ations (Public Associations and Foundations), 13 June 2000, [www.justice.gov.az](http://www.justice.gov.az)

1180 Financial Statement Forms Approved by the Cabinet of Ministers Decree dated 25 December, 2009,

[www.president.az](http://www.president.az)

1181 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013,

[www.transparency.az](http://www.transparency.az)

1182 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013,

[www.transparency.az](http://www.transparency.az)

1183 Emin Amrullayev, the Report on the Assessment of the ational and Management Capacity of NGOs in

Azerbaijan by Democracy Learning Public Association, February 2012 <http://dlpu.az/senedler/Azerbaijan.pdf>

1184 NGO Law Monitor: Azerbaijan, as of 7 February 2014, [www.icnl.org/research/monitor/azerbaijan.html](http://www.icnl.org/research/monitor/azerbaijan.html)

1185 Katrin Böttger/Mariella Falkenhain, The EU's policy towards Azerbaijan: what role for civil society? SPES Policy

Papers, June 2011 [www.iep-](http://www.iep-berlin.de/fileadmin/website/09_Publikationen/SPES_Policy_Papers/SPES_Policy_Paper_2011_The_EUs_policy_towards_Azerbaijan_BOETTGER_FALKENHAIN.pdf)

[berlin.de/fileadmin/website/09\\_Publikationen/SPES\\_Policy\\_Papers/SPES\\_Policy\\_Paper\\_2011\\_The\\_EUs\\_policy\\_towards\\_Azerbaijan\\_BOETTGER\\_FALKENHAIN.pdf](http://www.iep-berlin.de/fileadmin/website/09_Publikationen/SPES_Policy_Papers/SPES_Policy_Paper_2011_The_EUs_policy_towards_Azerbaijan_BOETTGER_FALKENHAIN.pdf)

1186 Emin Amrullayev, The Report on the Assessment of the National and Management Capacity of NGOs in

Azerbaijan by Democracy Learning Public Association, February 2012 <http://dlpu.az/senedler/Azerbaijan.pdf>

1187 Civil Society Briefs, Azerbaijan, publication by Asian Development Bank, December 2011, [www.adb.org](http://www.adb.org)

1188 Interview with Qubad Ibad oglu, Center for Economic Research dated 15 April 2014 by the author

1189 Article 26, The Law on Social Service, 29 March 2012, [www.mlspp.gov.az](http://www.mlspp.gov.az)

### *To what extent is the integrity of CSOs ensured in practice?*

The general public do not hold a high opinion of the integrity of NGOs.<sup>1190</sup> Integrity of NGOs is assessed as medium by the general public (at the score of 2.5. on a scale from 1 to 5, where 1 stays for a minimum and 5 for a very serious problem). The public at large is more familiar with the concept of civil society compared to several years ago.<sup>1191</sup>

NGOs also do not always have proper internal accountability procedures either. Thus, according to a recent survey,<sup>1192</sup> only about a third of NGOs hold regular staff meetings.

Though practically all (95 per cent) NGOs have formal boards or councils of trustees and hold general meetings to make strategic decisions, these meetings most often carry a formal character rather than yield to collective decisions.<sup>1193</sup>

Systematic self-monitoring of the organisation's performance is not strongly developed in civil society in Azerbaijan.<sup>1194</sup> A Code of ethics, or conduct is not a widely spread document among the NGOs, neither is it mandatory under existing legislation (unlike for public officials, for example). Some leading NGOs have made attempts to introduce self-regulation, for example, the Charter of Responsibility, suggested by one of the leading Azerbaijan NGOs<sup>1195</sup> and supported by the State Council of Support to NGOs.<sup>1196</sup>

In sum, the system of checks and balances in the country, including civil society, is yet to be developed.<sup>1197</sup>

## Hold government accountable: 25

### *To what extent is civil society active and successful in holding government accountable for its actions?*

Ability of civil society to hold the government accountable is low.<sup>1198</sup> Thus, NGOs believe that they have a limited, but still tangible impact on public policy, most notable in good governance and combating against corruption. Also, NGOs are active in monitoring the state performance, but less confident of the impact they make. The area of least success for NGOs, in terms of impact, is national budget discussions.<sup>1199 1200</sup> However, recently the NGOs achieved small but tangible success in public advocacy for anti-corruption reforms<sup>1201</sup> and budgetary discussions.<sup>1202</sup> Also, civil

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1190 CSO Sustainability Index 2012: Azerbaijan <http://www.usaid.gov/sites/default/files/documents/1863/AZE.pdf>

1191 Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs, dated 28 November 2013

1192 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1193 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1194 Christine Leiser, "Mapping of Civil Society ation in Azerbaijan," The European Union's EIDHR Programme, October 2010, [www.oneglobalexpert.com](http://www.oneglobalexpert.com)

1195 Entrepreneurship and Market Development Assistance Foundation, [www.edf.az](http://www.edf.az)

1196 Website of the State Council for NGO Support [www.cssn.gov.az/en/xerberler/20110217115124512.html](http://www.cssn.gov.az/en/xerberler/20110217115124512.html)

1197 Central Asia-Caucasus Analyst, 2 March 2011

[www.silkroadstudies.org/new/docs/publications/110302analyst.pdf](http://www.silkroadstudies.org/new/docs/publications/110302analyst.pdf)

1198 Interview with Qubad Ibad oglu, Center for Economic Research dated 17 September 2013 by the author

1199 Engaging Civil Society in the Anti-corruption Work, publication by Transparency Azerbaijan, July 2013, [www.transparency.az](http://www.transparency.az)

1200 Interview with Qubad Ibad oglu, Center for Economic Research dated 17 September 2013 by the author

1201 Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs by the author, dated 28 November 2013

1202 Interview with Qubad Ibad oglu, Center for Economic Research dated 15F April 2014 by the author

society urges the government to ensure inclusion of civil society and the public at large in the decision making process.<sup>1203</sup>

In response, networking among NGOs is developing as NGOs realise that their strength lies in their unity. Over the last 10 years, there have been 17 different coalitions – with participation of different NGOs from urban and rural areas – established in Azerbaijan.<sup>1204</sup> Those include: National NGO Forum,<sup>1205</sup> Coalition for Increasing Transparency in Extractive Industries,<sup>1206</sup> National Assembly of Youth Organisations of the Republic of Azerbaijan (NAYORA),<sup>1207</sup> Civil Response Network,<sup>1208</sup> European Neighbourhood Policy Civil Society Forum,<sup>1209</sup> Information and Cooperation Network of Non-Governmental Organisations for Combating Corruption,<sup>1210</sup> and Azerbaijan Partnership for Transparency Platform,<sup>1211</sup> among others.

## Policy reform: 50

*To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?*

The role NGOs play in policy reform cannot be assessed uniformly.

Civil society organisations have limited capacity to influence the political agenda; however, their impact is bigger than that of the oppositional parties.<sup>1212</sup> Recommendations of the international organisations to include representatives of civil society into the Anti-corruption Commission,<sup>1213</sup> which can provide for civil society channels to feed these views into the official process, have not been implemented so far. At the moment, civil society is represented only in the Legislation Working Group under the Commission.

Nevertheless, NGOs can and do provide their views to the commission through the Information and Cooperation Network of NGOs for Combating Corruption<sup>1214</sup> and Azerbaijan Partnership for Transparency Platform of NGOs, initiated by Transparency Azerbaijan.<sup>1215</sup> The network operates on the basis of a Memorandum of Understanding signed on 27 January 2012 with the Head Anti-Corruption Department under the Prosecutor General.

In the past, civil society organised public discussions on the implementation of certain elements of the previous Anti-Corruption Strategy for 2007-2011 through public hearings and round tables. In 2008, several NGOs conducted alternative monitoring of the implementation of the National Strategy for Increasing Transparency and Combating Corruption. During the monitoring, the organisers cooperated with the commission and the representatives of the commission participated in the presentation of the results of the monitoring. The results of the monitoring, as well as relevant

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1203 The 1st Civil Society Forum “Civil Society in Azerbaijan National Agenda for Changes”, [www.eap-csf.eu/en/national-platforms/azerbaijan/](http://www.eap-csf.eu/en/national-platforms/azerbaijan/)

1204 Civil Society Briefs, Azerbaijan, publication by Asian Development Bank, December 2011, [www.adb.org](http://www.adb.org)

1205 [www.azngoforum.org](http://www.azngoforum.org)

1206 [www.eiti-ngo-azerbaijan.org](http://www.eiti-ngo-azerbaijan.org)

1207 [www.nayora.az](http://www.nayora.az)

1208 [www.crn.az](http://www.crn.az)

1209 [www.civilsocietyforum.az](http://www.civilsocietyforum.az)

1210 [www.anticorrupt.az](http://www.anticorrupt.az)

1211 [www.transparency.az](http://www.transparency.az)

1212 Interview with Qubad Ibad oglu, Center for Economic Research, dated 17 September 2013 by the author

1213 [www.anti-corruption.gov.az](http://www.anti-corruption.gov.az)

1214 Information and Cooperation Network of Non-Governmental organisations for Combating Corruption, [www.anticorrupt.az](http://www.anticorrupt.az)

1215 Launch of the “Azerbaijan Partnership for Transparency” Platform, 7 July, 2013, [www.transparency.az/eng](http://www.transparency.az/eng)

recommendations of the NGOs were submitted to the commission, which used these monitoring results in its annual evaluation of the National Strategy.<sup>1216</sup>

The new Anti-Corruption and Open Government Partnership Action Plans for 2012- 2015 are important achievements in the development of an anti-corruption policy in Azerbaijan and are prepared with input from civil society.<sup>1217</sup> Under these Action Plans, the State Anti-Corruption Commission is to prepare reports on its implementation, also with the inputs from NGOs. Both Action Plans will be annually monitored through the Azerbaijan Partnership for Transparency project, implemented by Transparency Azerbaijan and its partners: Constitution Research Foundation and Economic Research Centre. The first monitoring reports for each of the Action Plans were presented to the Government in November 2013. According to civil society estimates, the measures set forth for 2012- 2015 in Anti-Corruption Action have been implemented by 34 per cent,<sup>1218</sup> and those envisioned in the Open Government Action Plan to be set by September 2013, have been implemented by 25 per cent.<sup>1219</sup>

In some cases, NGOs are invited to provide expertise, especially in the social field. The Ministry of Labour and Social Protection, as well as Ministry of Health have platforms where they meet with certain carefully selected NGOs to see at which point the latter can assist in implementation of government programmes, especially those implemented with the support from international organisations. These two agencies also award tenders to NGOs to perform social services.

In conclusion, Azerbaijan's civil society is not fully mature and is going through a painful process of capacity building and consolidation. It is also polarised in terms of their political orientation and degree of cooperation with the government.

## Recommendations for the government

- To make clear amendments to the legislation and explicitly introduce a legal status of non-profit income generating legal entity, with tax advantages that can earn money and spend it to support operations and activities.
- To reduce the tax burden on NGOs and eliminate the 22 per cent employer's tax on the top of the gross salary; as well as eliminate reporting for zero VAT.
- To simplify the process of registration for NGOs in consultation with civil society.
- To clearly formulate procedures and rules for the state supervision of NGO activities; to eliminate inconsistencies in procedures of various monitoring entities; to explicitly state in the supporting legislation that entry of a grant into the online registry by the Ministry of Justice qualifies as mandatory state registration.
- To expedite the process of introduction, professional education at the university level to train cadres for civil society.

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<sup>1216</sup> OECD Anti-Corruption Network for Eastern Europe and Central Asia, March 31, 2010

[www.oecd.org/countries/azerbaijan/44996103.pdf](http://www.oecd.org/countries/azerbaijan/44996103.pdf)

<sup>1217</sup> Interview with Alimamed Nuriyev, president of Constitution Research Fund, member of the State Council for Support of NGOs by the author, dated 28 November 2013

<sup>1218</sup> Monitoring Report on Implementation of Azerbaijan National Anti-corruption Action Plan (September 2012 – September 2013), publication by Constitution Research Fund in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

<sup>1219</sup> Monitoring Report on Implementation of Azerbaijan Open Government Initiative National Action Plan (September 2012 – September 2013), publication by Economic Research Center in partnership with Transparency Azerbaijan, November 2013, [www.transparency.az](http://www.transparency.az)

- To expand the programme of involving NGOs in provision of social services on tender basis and ensure sustainability of funding.
- To establish public monitoring councils in all national public agencies; and extend these practices onto local executive authorities.
- To support the cooperation and dialogue between civil society and the private sector.

### Recommendations for foreign donors

- To continue the programmes for institutional capacity building for civil society; especially in the fields of reporting and fund raising capabilities.
- In addition to funding activities, also provide funding for NGOs to enable them to open administrative positions to cope with the toughening reporting requirements from the state.

### Recommendations for civil society

- In order to enhance capacity of the regional NGOs and initiative groups, Baku based NGOs shall form alliances with local activists in the regions and treat them as local affiliates.
- Improve transparency through conducting annual financial audits and making this information public for accountability.
- Introduce the practice of systematic self-monitoring and adopt codes of ethics.
- To expand networking for a common goal.
- To proactively look for the opportunities to establish cooperation with the private sector.

## 13. BUSINESS

### Summary

As of 2013, the private sector represents 85 per cent of Azerbaijan economy. The registration of a business is fairly easy from both a legislative and practical point of view. Recently, a "single window" registration system was created under the Ministry of Tax and ASAN centre to accelerate the process of business registration. Moreover, it is possible to register as an individual entrepreneur or as legal entities via electronic services. An electronic information portal on permissions (business licenses) was launched to provide information about all permits in Azerbaijan. Likewise, a single data registration centre of all inspection (<http://yoxlama.gov.az>) has been created under the Ministry of Justice in order to reduce the groundless inspection of business entities. Hopefully, the adoption of a new law on inspection and protection of the interests of business entities will contribute to the solution of problems.

On the negative side, small businesses suffer the most from the current market conditions (high cost of licences and permits, monopoly, limited access to finance, lack of skilled labour, foreign trade and custom regulations, tax rates and cases of corruption). The issuing of permits and licences can be very difficult in some areas. In addition, the provision of licences and permits is not centralised. Nor are they provided via e-services. Although the "single window" system has been installed in custom services, Azerbaijan shows poor performance, as told in the *Doing Business 2014* report. The procedure of registration of property has been simplified recently; however the property issue problems still remain a problem for business. The Code of Migration and the Code of Land ownership are restrictive for foreigners. Small businesses are not well aware of their rights – a situation that is very conducive to corruption.

The Ministry of Economy and Industry has introduced standards for corporate governance and samples of code of conduct for local businesses, though the corporate governance culture is traditionally very low in the country. Yet, these requirements are not enforced by law. Mainly, companies do not publish finance audit reports on their web pages. In June 2012, the Parliament adopted reactionary amendments to legislative acts, which will considerably restrict access to information of share-holders of companies. The Azerbaijani business sector is not seriously involved in the anti-corruption engagement, and does not support also civil society to combat the corruption.



## BUSINESS

Overall Pillar Score 48/100

DIMENSION	INDICATOR	LAW	PRACTICE
Capacity 63/100	Resources	75	50
	Independence	75	50
Governance 42/100	Transparency	50	25
	Accountability	50	50
	Integrity	50	25
Role 38/100	Interest aggregation and representation		25
	Anti-corruption commitment		50

### Structure and organisation

The GDP of the country reached US\$73 billion in 2013.<sup>1220</sup> The share of oil and oil products accounts for 92 per cent of the export of the country in total.<sup>1221</sup> The main economic strategy of the country is to reduce the dependence on oil revenue and to boost the non-oil sector. Compared to the previous year, the non-oil sector grew 10 per cent in 2013, constituting 57 per cent share of the GDP.<sup>1222</sup>

As of 2013, the private sector produced 85 per cent of Azerbaijan GDP.<sup>1223</sup> Nevertheless, the oil sector holds the largest share in the private sector. Transnational cooperation companies such as SOCAR, BP, TOTAL GDF SUEZ, STATOIL and LUKOIL operate in the petroleum sector under the product-sharing agreements<sup>1224</sup> signed since 1994.

There are over 540 thousand business entities operating in Azerbaijan. Of these, 84.1 per cent are individual entrepreneurs, and only 15.9 per cent are registered as legal entities; 80 per cent are small business entities, while medium and big business entities constitute only 20 per cent of all enterprises.<sup>1225</sup>

Business is self-regulated through a number of chambers of commerce - Commerce and Industry Chamber of Azerbaijan Republic, American Chamber of Commerce in Azerbaijan (AMCHAM), Azerbaijan-Italy Commerce Chamber, and Azerbaijan-Germany Commerce Chamber, representing both Azerbaijan and foreign companies.

<sup>1220</sup> Website of Azerbaijan Export and Investment Promotion Foundation, [www.azpromo.az](http://www.azpromo.az)

<sup>1221</sup> Website of Center for Economic and Social Development, [www.cesd.az](http://www.cesd.az)

<sup>1222</sup> Website of Center for Economic and Social Development, [www.cesd.az](http://www.cesd.az)

<sup>1223</sup> Website of Ministry of Economy and Industry, [www.economy.gov.az](http://www.economy.gov.az)

<sup>1224</sup> Website of State Oil Company of Azerbaijan, [new.socar.az/socar/en/company/production-sharing-agreements-offshore/absheron](http://new.socar.az/socar/en/company/production-sharing-agreements-offshore/absheron)

<sup>1225</sup> Website of the Ministry of Economy and Industry, <http://economy.gov.az/media/pdf/analitika-2013.pdf>

Besides the National Fund for Entrepreneurship Support, Azerbaijan Investment Company, Azerbaijan Export and Investment Promotion Foundation (AZPROMO) are all under the Ministry of Economy and Industry. The National Confederation of Entrepreneurs (Employers) Organisations of Azerbaijan Republic (AEC) also operates within the Azerbaijan business environment.

## Assessment

### Resources (law): 75

*To what extent does the legal framework offer an enabling environment for the formation and operations of individual businesses?*

The legal framework for business is moderately developed. Two documents, namely, Civil Code of Azerbaijan Republic on Legal Entities<sup>1226</sup> (Chapter 4) and the Law on State Registration of Legal Entities,<sup>1227</sup> provide the main regulatory framework for doing business in Azerbaijan; covering issues such as the formation, operation, insolvency and closing of businesses. Besides, the Law on Entrepreneurship<sup>1228</sup> – approved in 1992 – determines the rights and obligations of the subjects of entrepreneurial activity, and sets forth forms and methods of protection by the state, determined by the relationship between the state authorities and entrepreneurs. Several laws<sup>1229 1230 1231</sup> regulate the foreign investment environment in Azerbaijan. At the same time, several crucial laws such as the Code of Competitive Conduct, the Law on Licences and Permits and the Law on Corporative Governance are yet to be adopted by the Parliament.

There are five legal forms for doing business in the country. These are: General Partnership (GP), Limited Partnership (LP), Limited Liability Company (LLC), Additional Liability Company (ALC) and Joint Stock Company (JSC).

General partnership is an enterprise established by two or more physical and/or legal persons. The owners of a general partnership have “unlimited” liability for the obligations of the general partnership.

Limited partnership may be established by two or more physical and/or legal persons, with at least one of the participants bearing unlimited liability for the obligations of the limited partnership and not participating in entrepreneurial activity.

A limited liability company is an enterprise which is established by one or more physical and/or legal persons. The legal fund of a limited liability company is divided into authorised shares as specified in its charter. The shareholders of a limited liability company have limited liability that is commensurate with their shares in the limited liability company.

An additional liability company has a legal status similar to that of a limited liability company, with the exception that the participants of an additional liability company may assume liability in excess of their contributions.

A joint stock company's structure is similar to that of a limited liability company. Joint stock companies may be established either as “open” or “closed” business entities. An “open” joint stock

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1226 Civil Code of Azerbaijan Republic on Legal Entities, 28 December 1999, [www.e-qanun.az](http://www.e-qanun.az)

1227 Law on State Registration of Legal Entities, 12 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

1228 Law on Entrepreneurship, 15 December 1992, [www.e-qanun.az](http://www.e-qanun.az)

1229 The Law on Protection of Foreign Investment, 15 January 1992, [www.e-qanun.az](http://www.e-qanun.az)

1230 The Law on Investment Activity, 13 January, 1995, [www.e-qanun.az](http://www.e-qanun.az)

1231 The Privatization Law, 16 May 2000, [www.emdk.gov.az/?/az/content/183/](http://www.emdk.gov.az/?/az/content/183/)

company is able to offer its shares to investors, while a “closed” joint stock company can only redistribute its shares among its founder shareholders and other predetermined persons.<sup>1232 1233</sup>

When creating a legal entity, state registration of persons engaged in entrepreneurial activities is carried out through a one-stop shop at the Ministry of Tax and since recently, also through ASAN centres.<sup>1234</sup> The Law on the State Fee<sup>1235</sup> exempts online registration of business from the state fee. According to the respective law,<sup>1236</sup> registration shall be granted within 3 days.

Individual entrepreneurs shall obtain a Tax Payer Identification Number (TPIN). To apply for this, the following documents are required to be submitted:

- Standard application form.
- Founding documents – the charter of the entity approved by the founder or his/her legal representative and minutes of the foundation meeting.
- If the founder is an individual – a copy of his/her identity card.
- A document confirming the legal address of the entity.

Licences are still required for banking, insurance, auditing, transportation, dealing with securities and other types of activity. A licence’s term of validity is usually five years, with the right to extend it. A respective Presidential Decree,<sup>1237</sup> approving the Rules on Granting Licences (hereafter “Licencing Rules”), substantially reduced the number of licensable activities from 240 to 30.<sup>1238</sup> Now Azerbaijan is the only state of the former USSR where licencing is not yet regulated by a separate law.<sup>1239</sup> A Presidential Decree of 26 October 2011 assigned the Cabinet of Ministers to provide the new draft of the “Law on Licenses and Permits,” but the draft law is not prepared yet.

There are nine state taxes in Azerbaijan. Under the Tax Code, Azerbaijan legal entities shall pay corporate (profit) tax of 20 per cent. The VAT rate is 18 per cent of the price of goods or services. All employers in Azerbaijan are required to make contributions to the State Social Protection Fund at 22 per cent of the gross salaries and other qualifying income of their employees. Employees are also obliged to contribute 3 per cent of their qualifying gross income for this purpose<sup>1240</sup> and on average, 14 per cent of income tax.<sup>1241</sup> Individual entrepreneurs or legal entities with total revenues of less than respectively 90,000 manat (US\$114,66) and 120,000 manat (US\$152,89) in 12 consecutive months, pay between 2 per cent and 4 per cent of the total revenues, plus monthly social tax tied to 20 per cent and less percent of minimum wage, depending on the region of the country.<sup>1242</sup>

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1232 Legal and Tax Aspects of Doing Business in Azerbaijan, CABC, 2011, [www.cabc-global.com/pdf/Azeri-Tax-Legal-Overview-2011.pdf](http://www.cabc-global.com/pdf/Azeri-Tax-Legal-Overview-2011.pdf)

1233 Law on State Registration and State Registry of Legal Entities, 12 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

1234 [www.asan.gov.az](http://www.asan.gov.az)

1235 Law On State Fee, 4 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

1236 Law on State Registration of Legal Entities and State Registry, 12 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

1237 Presidential Decree approving the Rules on Granting Licenses, 2 September, 2002, [www.e-qanun.az](http://www.e-qanun.az)

1238 Business Licencing, IFC report, Website of International Finance Corporation, [www.ifc.org/](http://www.ifc.org/)

1239 Website of Entrepreneurship Development Foundation, <http://edf.az/>

1240 Website of Backer and Mckenzi Company, [www.bakermckenzie.com](http://www.bakermckenzie.com)

1241 Minimum living standard at 120 manat (US\$150) as of date is deductible for income tax purposes and this rate works for the salaries of 2,500 manat (US\$3,125) and lower; for salaries over this threshold a different scheme is applied, i.e. the tax is calculated as follows: 350 manat (US\$437.5) plus 25per cent of the amount exceeding 2,500 manat (US\$3,125)

1242 Website of Ministry of Tax, [www.taxes.gov.az](http://www.taxes.gov.az)

The Code of Migration,<sup>1243</sup> which was adopted on 1 August 2013, provides the main legal framework for migration issues. The migration code places restrictions on the foreign workforce. Foreign individuals wishing to work in Azerbaijan must obtain a work permit from the Ministry of Labour and Social Protection of Population.<sup>1244</sup> An individual permit is issued for a term of one year. A work permit is not required if an individual has a domicile in Azerbaijan, or holds a managerial position in an entrepreneurial organisation established under an international agreement.<sup>1245</sup> The state fee for one year work permit is 1,000 manat (US\$1,274).<sup>1246</sup> The legislation contains a penalty for employers that fail to obtain the work permit. The amount of such penalty is 3,000 to 5,000 manat (US\$3,823 to US\$6,371) for officials and 30,000 to 35,000 manat (US\$38,226 to US\$44,597) for legal entities.<sup>1247</sup>

The laws on registration of property are quite favourable and have been simplified recently.<sup>1248</sup> Now, there are 4 main procedures to follow.<sup>1249</sup>

- Verification of a title and obtaining a non-encumbrance certificate at the Real Estate State Register.
- Notarisation of a sale-purchase agreement.
- Buyer applies to the State Registry for Real Estate to register the property.
- Registration of buyer's title for land and building at the State Registry for Real Estate.

Land ownership is limited for foreigners in Azerbaijan. Thus, foreign individuals and legal entities cannot own land in Azerbaijan but have rights to lease land. If a land parcel was transferred to a foreigner as an inheritance or a gift, a foreign owner must sell the land parcel within one year.<sup>1250</sup> Dealing with construction permits remains difficult in Azerbaijan. According to data collected by *Doing Business 2014*, dealing with construction permits requires 28 procedures.<sup>1251</sup>

## Resources (practice): 50

*To what extent are individual businesses able in practice to form and operate effectively?*

In practice the procedure to register is easy, quick and inexpensive,<sup>1252</sup> though there are cases reported when companies refused registration, connected the refusal with the protection of interests of monopolies.<sup>1253</sup> Based on the principle of a one-stop shop, a new business registration mechanism was created by the government under the [Ministry of Taxes](#), allowing companies to register within three days. The government has also created a new online registration mechanism,

1243 Website of State Migration Service, [www.migration.gov.az/](http://www.migration.gov.az/)

1244 Website of the Ministry of Labour and Social Protection of Population, [www.mlspp.gov.az](http://www.mlspp.gov.az)

1245 Website of State Migration Service, [www.migration.gov.az/](http://www.migration.gov.az/)

1246 Tax Guide 2009-2010, Deloitte, [www.deloitte.com/assets/Dcom-Azerbaijan/Localper cent20Assets/Documents/PDFper cent20forper cent20Insights/dtt\\_Foreghn\\_en\\_AZ.pdf](http://www.deloitte.com/assets/Dcom-Azerbaijan/Localper cent20Assets/Documents/PDFper cent20forper cent20Insights/dtt_Foreghn_en_AZ.pdf)

1247 Guide to doing business in Azerbaijan, 2014, Ernst and Young Holding, [www.ey.com/](http://www.ey.com/)

1248 Doing Business 2014, Azerbaijan, World Bank, [www.doingbusiness.org](http://www.doingbusiness.org)

1249 Website of the State Property Committee, <http://emdk.gov.az/>

1250 Guide to doing business in Azerbaijan, 2014, Ernst and Young Holding, [www.ey.com/](http://www.ey.com/)

1251 Doing Business 2014, Azerbaijan, World Bank, [www.doingbusiness.org](http://www.doingbusiness.org)

1252 Interview with Alipasha Qeybullayev, chairman of National Productivity and Competitiveness Centre, 3 Feb 2014

1253 Interview with 2 anonymous owners of two SMES, customers of Advocacy and Legal Advice Centers run by Transparency Azerbaijan, dated 10 December 2013

which has been available since 30 December 2011,<sup>1254</sup> and which is completed within three days,<sup>1255</sup> exempt from state fees,<sup>1256</sup> and available to holders of an electronic signature.<sup>1257</sup>

Some types of entrepreneurial activity require permits (licenses). Obtaining required licences is an issue, which can become problematic in some cases for companies.<sup>1258</sup> A presidential decree in 2002 reduced the business licences from 240 to 30, but over the last 12 years, these licences increased 3 times (90 permits).<sup>1259</sup> High bureaucracy causes time wasting, additional costs, difficulties in access to market, diminishing of productivity and the worsening of the competitive environment.<sup>1260</sup> All of these problems push small businesses into corrupt practices. Local studies show that 37 per cent of businesses made under the table payments to obtain licences in 2007.<sup>1261</sup> Another survey which took place in 2011 showed that 56 per cent of 95 respondents did not believe in obtaining licences without under-table payments.<sup>1262</sup> In 2011, an information portal on permits and licenses was created to increase the awareness of entrepreneur.<sup>1263</sup> Although this portal provides the necessary information on permits and licenses, it does not offer any e-services. More than that, there is no centralised agency to provide services on permits and licenses.

The *Doing Business 2014* report ranks Azerbaijan as 77th among 189 countries, in terms of the simplicity of payment of taxes (compared to placing in 102nd position in 2009). Accordingly, businesses are subject to 18 obligatory payments (including taxes), wasting 214 hours compared to 376 hours in 2009 and spending almost 40 per cent of profit.<sup>1264</sup> Business is subject to two types of taxes: simplified and standard (VAT). Since 2009, Azerbaijani taxpayers can pay their taxes online. The electronic services provided by the Ministry of Taxes were scored at 4 out of 5 total points.<sup>1265</sup>

According to another study, 95 per cent of individual entrepreneurs and 65 per cent of small and medium entrepreneurs benefit from the simplified taxation system.<sup>1266</sup> The main motivation for shifting from the standard taxation system to the simplified taxation system is to bypass administrative burden and pay less taxes. Being subject to the standard taxation system, businesses pay for 18 per cent VAT, 20 per cent profit tax as well as finance operation costs; while in the simplified taxation system business pay for merely 2 – 4 per cent of turnover.<sup>1267</sup> As it is already stated above, it is individual entrepreneurs or legal entities, with total revenues of less than respectively 90,000 manat (US\$114,664) and 120,000 manat (US\$152,886) in 12 consecutive months, that are subject to the simplified taxation system. Since businesses sometimes purchase goods or services from business subjects, which are either unregistered or do not provide financial reports as necessity, they lose the VAT they paid for and thus, the right to VAT return. Therefore, businesses tend to hide their turnover above this level in order not to be subject to VAT. Such a risky situation creates conditions for further corruption during financial audits.<sup>1268</sup>

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1254 Law on State Registration of Legal Entities and State Registry, Article 7.1., 12 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

1255 Law on State Registration of Legal Entities and State Registry, Article 7.1., 12 December 2003, [www.e-qanun.az](http://www.e-qanun.az)

1256 Law On State Fee, Article 20.1.3, 4 December, 2001, [www.e-qanun.az](http://www.e-qanun.az)

1257 An electronic signature is a pre-requisite to online registration and is issued by the State Certificate Center under the Ministry of Communications and Information Technologies within 10 days of application date.

1258 Business Anti-corruption Portal: Azerbaijan Country Profile, 2013, [www.business-anti-corruption.org](http://www.business-anti-corruption.org)

1259 Website of Support for Economic Initiatives, [www.sei.az/news-1114.html](http://www.sei.az/news-1114.html)

1260 Licences in Azerbaijan and international practices, Kanan Aslanli, 2013,

[http://edf.az/ts\\_general/azl/ksid/downloads/lisenziyashdirma\\_Az.pdf](http://edf.az/ts_general/azl/ksid/downloads/lisenziyashdirma_Az.pdf)

1261 Study small and medium size enterprises in Azerbaijan, 2009, International Financial Corporation [www.ifc.org/](http://www.ifc.org/)

1262 Survey among 700 entrepreneurs, 2011, Support for Entrepreneurship Development,

[http://edf.az/ts\\_general/download/Hesabat\\_09\\_09\\_11\\_a.pdf](http://edf.az/ts_general/download/Hesabat_09_09_11_a.pdf)

1263 [www.icazeler.gov.az](http://www.icazeler.gov.az)

1264 Doing Business Report, 2014, [www.doingbusiness.com](http://www.doingbusiness.com)

1265 E-service monitoring report, 2014, Transparency Azerbaijan, not published

1266 Study small and medium size enterprises in Azerbaijan, 2009, International Financial Corporation [www.ifc.org/](http://www.ifc.org/)

1267 Study small and medium size enterprises in Azerbaijan, 2009, International Financial Corporation [www.ifc.org/](http://www.ifc.org/)

1268 Interview with anonym entrepreneur, 30 May 2014

As of the first quarter of 2014, there are 43 banks and 154 credit organisations operating in Azerbaijan.<sup>1269</sup> In the *Doing Business 2014* report, Azerbaijan is ranked 55th among 189 according to the easiness of access to credit.<sup>1270</sup> In general, the rate of business credit remains very high in Azerbaijan, as the average rate of business credit changes between 20 per cent and 25 per cent, which is very high in comparison with the corresponding figures in the American and European credit markets. The studies indicate that the main reason for this is the high risk for the re-payment of credits. This risk can be explained by two factors: the underdevelopment of the mortgage system and the problems in the judiciary system, for example, dispute resolutions.<sup>1271</sup> In order to decrease credit risks, the Central Bank established a credit registry<sup>1272</sup> in 2010 which allows banks to have access to the financial information of customers and thus, to assess the related financial risks properly. However, this has not led to the decrease of credit rates.

Local banks provide small to medium businesses with credits between 100,000 and 500,000 manat (US\$127,405 to US\$637,024) to support small to medium business, but the percentage of loan interest remains high at 20 to 25 per cent.<sup>1273 1274 1275</sup> In order to support the business sector's access to finance, the National Fund for Entrepreneurship Support was created under the Ministry of Economy and Industry and offers credits between a minimum of 5,000 manat (US\$6370) and a maximum of 10 million manat (US\$12.75 million) with the loan recovery term of a maximum of ten years. This foundation aims to provide 250 million manat (US\$318.5 million) in loans to the business sector for each year.<sup>1276</sup> As of 2013, allocations of 193 million manat (US\$245.8 million) were made from the state budget to the support of entrepreneurship which was 30 per cent higher than the same indicator in 2012. Of those funds, 150 million manat (US\$191.1 million) was allocated to the National Fund for Entrepreneurship Support; 35 million manat (US\$44.6 million) to Agrolizing OJSC, and 8 million manat (US\$10.19 million) to the State Agency for Agriculture Credits. The concerning issue is that no effective public supervision mechanism is in place to monitor the transparency of these public funds. This can be explained by the low level of accountability of the abovementioned state organisations on use of public funds.<sup>1277</sup>

One of the biggest obstacles to the development of business in Azerbaijan is customs or foreign trade regulations. In spite of the application of the "single window" system and the electronic information exchange system, there have been insignificant changes in this field. Thus, the *Doing Business 2014* report ranks Azerbaijan in 168th position out of 189 countries, according to the trade across border sub-index.<sup>1278</sup> In another study, 66 per cent of individual entrepreneurs and 38 per cent of small and medium entrepreneurs consider the procedures of import problematic.<sup>1279</sup> For the export of a standard container, 9 documents, 28 days and US\$3,540 are needed, while for the import of the same kind of container, the requirements are for 11 documents, 25 days and US\$3,560. The simplification of the custom procedures is one of the main conditions set for the admission to WTO.<sup>1280</sup>

1269 Website of Central Bank of Azerbaijan, [www.nba.az/assets/](http://www.nba.az/assets/)

1270 Doing Business Report, 2014, [www.doingbusiness.com](http://www.doingbusiness.com)

1271 Assessment of factors influencing the high rate of credits in Azerbaijan, 2011, Support for Economic Initiatives, <http://sei.az/upload/files/bankkredititedqiqati.pdf>

1272 Website of Central Bank of Azerbaijan, [www.nba.az/standalone/ccrs/](http://www.nba.az/standalone/ccrs/)

1273 Website of Unibank, [www.unibank.az/az](http://www.unibank.az/az)

1274 Website of Demirbank, [www.demirbank.az/](http://www.demirbank.az/)

1275 Website of Access Bank, [www.accessbank.az/](http://www.accessbank.az/)

1276 Letter from the Ministry of Economic Development, 2 August 2013, N-IIN-X/O-6662/2013

1277 Review for the state budget of Azerbaijan, 2012 – 2014, National Budget Group

1278 Doing Business Report, 2014, [www.doingbusiness.com](http://www.doingbusiness.com)

1279 Study small and medium size enterprises in Azerbaijan, 2009, International Financial Corporation [www.ifc.org/](http://www.ifc.org/)

1280 Azerbaijan's accession to World Trade Organization, July 2010, <http://cesd.az/>



Reforms in the real estate management allowed the World Bank<sup>1281</sup> *Doing Business 2014* to rate registration of real estate in Azerbaijan as number 13 out of 185 countries surveyed, though a minor decline from the score of 9 in 2013 is obvious. However, experiences of Transparency Azerbaijan's advocacy and legal advice centre's customers testify that, in practice, the process is much more complicated than its legal framework suggests, it takes a long time, and the reforms need to be continued.<sup>1282</sup>

## Independence (law): 75

*To what extent are there legal safeguards to prevent unwarranted external interference in activities of private businesses?*

The Civil Code establishes the regulatory framework for entrepreneurs to protect their businesses from unnecessary state interference. There are several other legal acts, which protect interests of entrepreneurs and prohibit unauthorised inspections in the field of business regulation.

The government has taken a number of steps to remove the undue interference into entrepreneurial activity in the country. In particular, the presidential decree of 28 September 2002 has especially changed the situation in this field. According to this decree, all state inspections of any business entities (except for the Ministry of Tax) should be carried out in the presence of an official representative of the Ministry of Economy and Industry.<sup>1283</sup>

The decree of the president of the Republic of Azerbaijan of 15 February 2011, "... on regulating business inspections and protecting entrepreneurial interests ..." was another step to improve the situation for the better.<sup>1284</sup> This decree stipulates that any state inspection in the field of entrepreneurship should be registered in a single-data register as of 1 May 2011. In this regard, each agency should report its planned inspection of any business entity to single-data registry under the Ministry of the Justice. At the same time, all data registry information should be reported quarterly to the Cabinet of Ministers and to the President by the Ministry of Justice.

Recently, the Parliament has passed a law on regulation of inspections in the sphere of entrepreneurship and protection of the rights of the entrepreneurs, which came into force on 1 March 2014.<sup>1285</sup> The law sets forth goals and principles of inspection, defines rights and powers of inspection agencies and the requirements for the protection of rights and interest of entrepreneurs. This law does not apply to tax auditors. The main points of this law are as follows:

- **Audit should be carried out on the basis of risk assessment of business groups.** Thus, this law divides the entrepreneurs into risk groups (high, medium and low risk) and accordingly envisions inspections for high risk group once a year, for medium risk group once every two years, while low risk groups will be audited once every three years. The inspection for low and medium groups will last 5 days, and for high risk groups 10 days.

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1281 World Bank Doing Business 2013: Azerbaijan, [www.doingbusiness.org](http://www.doingbusiness.org)

1282 Report on Results of Monitoring of Implementation of Recommendations to Four Public Agencies under Azerbaijan Partnership for Transparency project: Ministry of Labour and Social Protection of the Population; Ministry of Justice; State Registry of Real Estate; Baku Electric Network, publication by Transparency Azerbaijan, presented to government at the round table of 24 January 2014, [www.transparency.az](http://www.transparency.az)

1283 Letter from the Ministry of Economic Development, 2 August 2013, N-IIN-X/O-6662/2013

1284 Presidential decree On regulating business inspections and protecting entrepreneurial interests, 15 February 2011. [www.president.az](http://www.president.az)

1285 Law on regulation of inspections in the sphere of entrepreneurship and protection of the rights of the entrepreneurs, 2 July 2013, <http://e-qanun.az>



- **Business shall be supported by the consulting services of auditors.** According to this law, a business body has a right to receive advice and assessment of the situation from the inspecting agency.
- **Audit should notify business in advance (with the exception for cases when a business submits false information).** The law sets for a single registry of inspections to be created by the Ministry of Justice so that the businesses can obtain the information about the period, sequence, repetition, and results of the audits.

According to the presidential decree supporting execution of this law,<sup>1286</sup> the Cabinet of Ministers defines inspection bodies and inspection areas and prepares the risk assessment criteria for the inspection of small, medium and large business. At the same time, the Ministry of Justice and Ministry of Economy and Industry must twice a year organise trainings for inspection bodies on recent legal changes, as per the new law.

Along with these positive developments, amendments to the Civil Code, adopted in 2004 and 2007, that allow authorities to forcibly purchase and expropriate property for the state needs, have created opportunities for the abuse of property rights.<sup>1287</sup> Also, amendments recently made to the Law on Insurance Activity,<sup>1288</sup> setting forth special reinsurance licenses for insurance companies, were assessed by experts as a possibility for over-interference into business of the insurance community.<sup>1289</sup>

## Independence (practice): 50

*To what extent is the business sector free from unwarranted external interference in its work in practice?*

The presidential decree of 28 September 2002<sup>1290</sup> made it possible to sharply reduce the number of inspections of business entities and interference in their activities without grounds.<sup>1291</sup> Also, a Single Data Registry system for inspections<sup>1292</sup> has been launched since May 2011. The registry can be addressed through an automated phone service "1650" and e-services section of the website of the Ministry of Justice. Despite this fact, as a result of the investigations it was found that 92 per cent of entrepreneurs are not aware of this.

However, groundless interference and non-systematic inspections were quite a challenge for the development of the business sector in Azerbaijan. The study conducted by International Finance Cooperation (IFC) for the 2008 – 2012 periods is particularly important. It was found that the average number of inspections was 11 and 12 in 2008 and 2012, respectively. For the sake of comparison it should be mentioned that the corresponding figures in 2008 were 1 in Georgia, 5 in Belarus and 13 in Tajikistan. In Azerbaijan, 57 per cent of the inspections conducted in 2008 and 61 per cent of inspections in 2012 did not result in follow-up measures. The business entities in the surveys who reported making non-official payments decreased from 58 per cent in 2008 to 20 per

<sup>1286</sup> <http://president.az/articles/9105>

<sup>1287</sup> US Department of State, March 2013, "Investment Climate Statement Azerbaijan", Bureau of Economic And Business Affairs, [www.state.gov/e/eb/rls/othr/ics/2013/204596.htm](http://www.state.gov/e/eb/rls/othr/ics/2013/204596.htm)

<sup>1288</sup> Law on Insurance Activity, 25 December 2007, <http://cis-legislation.com/document.fwx?rgn=24584>

<sup>1289</sup> Amendments to Law on Insurance contradict to state policy and provoke capital flight from Azerbaijan, Fineco/abc, 31 October 2013, <http://abc.az/eng/news/77082.html>

<sup>1290</sup> Presidential decree on Improvement of Regulations of Granting Special Permissions (Licenses) for Some Types of Activities, 28 September 2002, [www.e-qanun.az](http://www.e-qanun.az)

<sup>1291</sup> National business agenda for the improvement of the business climate in Azerbaijan in 2009, Entrepreneurship Development Foundation, [www.cipe.org/sites/default/files/publication-docs/azerbaijanNBA\\_2009.pdf](http://www.cipe.org/sites/default/files/publication-docs/azerbaijanNBA_2009.pdf)

<sup>1292</sup> [www.yoxlama.gov.az](http://www.yoxlama.gov.az)

cent in 2012.<sup>1293</sup> Hopefully, the adoption of a new law on inspection and protection of the interests of business entities, which entered into force on 1 March 2014, will contribute to the solution of problems.

The state interference in business shows its monopolistic dimension in some public utility areas and the oil and gas sector. Thus, though formally there are no state-owned companies which have been delegated governmental powers, the State Oil Company of the Azerbaijan Republic (SOCAR) (oil and gas), Azerenerji (electricity) and Azersu (water) legally are closed joint-stock companies, with majority state ownership and limited private investment, creating a monopoly in each of their spheres, and meaning that they are, in fact, state entities.

There are no problems with filing a legal case with the judicial system, contesting interference of the government or any other actor, but the outcome of litigation is a problematic matter.<sup>1294</sup> Therefore, entrepreneurs prefer to bargain with state officials. According to the results of the survey conducted among entrepreneurs, 47 per cent of respondents reported not to take business disputes to court, or prefer to bargain with state officials, while 13 per cent of them refer to Ministries, 12 per cent to other organisations, 10 per cent to the President and 2 per cent to the Parliament.<sup>1295</sup>

## Transparency (law): 50

*To what extent are there provisions to ensure transparency in the activities of the business sector?*

The legal framework needs further development to ensure transparency in the activities of the business sector. This area is mainly regulated by the Tax Code, the Law on Audit Services,<sup>1296</sup> the Anti-Money Laundering Law,<sup>1297</sup> the Law on Internal Audit<sup>1299</sup> and several other legal acts.

In June 2012, the Parliament adopted amendments to legislative acts that considerably restrict access to corporate information.<sup>1300</sup> According to the amendments, information about the founders and financial resources of legal entities, the amount of their charter capital, and other similar data, will be accessible only to law-enforcement bodies.

Normally, the Tax Code requires all companies to submit an annual tax return by the end of the first quarter of the next year. There are differences between tax accounting and financial accounting and therefore, companies have to keep double accounting books. Since 2008, all companies have to transfer accounting records into the new National Accounting Standards based on International Financial Reporting Standards (IFRS).

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1293 Reform in the field of inspections, needs and recommendations, IFC, 2012, [http://edf.az/ts\\_general/download/SME\\_Conference\\_IFC\\_19\\_12\\_2012.pdf](http://edf.az/ts_general/download/SME_Conference_IFC_19_12_2012.pdf)

1294 Interview with Alipasha Qybulayev, chairman of National Productivity and Competitiveness Centre, 3 Feb 2014

1295 The results of a face-to-face poll conducted among 700 (seven hundred) small businesses in the Azerbaijan Republic, by Entrepreneurship Development Foundation: center for Support to Development of Small and Medium Business, 2011

[http://edf.az/ts\\_general/download/Preliminary\\_analysis\\_09\\_09\\_11\\_e.pdf](http://edf.az/ts_general/download/Preliminary_analysis_09_09_11_e.pdf)

1296 The Law on Audit, 16 September 1994, [http://e-qanun.az/files/framework/data/9/c\\_f\\_9236.htm](http://e-qanun.az/files/framework/data/9/c_f_9236.htm)

1297 Law on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism, dated 10 February 2009, [www.e-qanun.az](http://www.e-qanun.az)

1298 Law on amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism, dated 5 March 2010, [www.e-qanun.az](http://www.e-qanun.az)

1299 The Law on Internal Audit, 22 May 2007, [http://e-qanun.az/files/framework/data/13/f\\_13241.htm](http://e-qanun.az/files/framework/data/13/f_13241.htm)

1300 Amendments dated 12 June 2012 to the Law on Registration of Legal Entities and State Registry, dated 12 December /2003 and the Law on Commercial Secret, dated 4 December 2001 and Law on the Right to Obtain Information, dated 30 September 2005

Auditing is a licensed activity in Azerbaijan. It is regulated by the Law on Audit<sup>1301</sup> and the Law on Chamber of Auditors.<sup>1302</sup> Companies are not obliged to publish their auditors' reports which creates difficulties in ensuring their transparency.

## Transparency (practice): 25

*To what extent is there transparency in the business sector in practice?*

In practice not all spheres of the business sector are believed to be transparent. Some information about companies is available online. This includes the company's date of incorporation, the name of its directors and members of its management board. Database of the Ministry of Tax until 9 July 2012 was open for everybody.<sup>1303</sup> The 2012 amendment to the law<sup>1304</sup> makes information about the founders of legal entities (participants) and their shares in the charter capital a commercial secret.

Furthermore, there are many areas in which transparency is still needed, such as the disclosure of production-sharing agreements between the government and foreign companies (some of those are available at the National Library), and publicly disclosed disaggregated revenue reporting, an area in which Western companies other than BP and Statoil should be leading.<sup>1305</sup> In terms of internal company control, the legislation is quite loose. Companies are free to have one such system or not. The business sector is not obliged under the law to have business ethics rules.<sup>1306</sup>

The [Ministry of Taxes](#) has very efficient online tools used by the individual entrepreneurs and companies to submit their tax declarations online, however, this information is not open to public, also most companies do not place this kind of information or their audit reports on their websites.

## Accountability (law): 50

*To what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?*

Corporative governance legislation in Azerbaijan needs further development. Azerbaijan does not have a law on corporate social responsibility, though some provisions regulating this area are scattered in the legislation (such as Tax Code, Labour Code, etc). Even if the Law on Corporative Governance has not been adopted so far, the Ministry of Economic Development has made a first step in this direction and in 2011 approved Corporative Governance Standards.<sup>1307</sup> The Corporative Governance Standards are voluntary recommendations aimed at improving and guiding the governance practices of corporations. They attempt to address the most evident corporate governance problems, such as shareholders' rights abuses, checks and balances between governance bodies, and disclosures to shareholders and the general public.<sup>1308 1309</sup>

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1301 The Law on Audit, 16 September 1994, [http://e-qanun.az/files/framework/data/9/c\\_f\\_9236.htm](http://e-qanun.az/files/framework/data/9/c_f_9236.htm)

1302 Law on Chamber of Auditors, 19 September 1995,

[http://e-qanun.az/files/framework/data/9/c\\_f\\_9418.htm](http://e-qanun.az/files/framework/data/9/c_f_9418.htm)

1303 [www.bridgewest.eu/article/trade-register-azerbaijan](http://www.bridgewest.eu/article/trade-register-azerbaijan)

1304 Amendments to the Law on Commercial Secret of the Republic of Azerbaijan, 9 July 2012, [www.president.az](http://www.president.az)

1305 Crude Accountability, October 2012. "After the BTC Pipeline and EITI Validation: Where are Prosperity and Transparency in Azerbaijan?" [www.crudeaccountability.org](http://www.crudeaccountability.org)

1306 Third Round of Monitoring: Azerbaijan, Monitoring Report, by OECD, Anti-corruption Network for Eastern Europe and Central Asia, Istanbul Anti-corruption Action Plan, Paris, 25 September 2013, [www.oecd.org](http://www.oecd.org)

1307 Corporative Governance Standards, 28 January 2011, [www.economy.gov.az](http://www.economy.gov.az)

1308 Azerbaijani Corporate Governance Standards, 2011, IFC [www.ifc.org/](http://www.ifc.org/)

1309 Azerbaijani Corporate Governance Standards, 2011, <http://economy.gov.az/>

According to the legislation, entrepreneurs must report about the state of their activities to statistical and financial institutions in the specified form.<sup>1310</sup> Other types of reports are identified in the statutes of each individual legal entity, as the Civil Code stipulates.

## Accountability (practice): 50

*To what extent is there effective corporate governance in companies in practice?*

Corporate governance culture is not widespread in Azerbaijan business sector, which is a major obstacle to attract foreign investment. In terms of the quality of auditing and reporting standards in 2013- 2014, Azerbaijan ranks 99th out of 148 countries.<sup>1311</sup> In spite of the low level of corporate culture in business, some progress has been made in recent years.

In order to attract investments, banks and some limited liability companies are cooperating with IFC in the framework of corporate governance projects and this cooperation has yielded some results. Thus, Davachi Brolyer managed to attract investment from the Azerbaijan Investment Company, which now owns shares at 25 per cent of Davachi Brolyer.<sup>1312</sup>

In order to stimulate the corporative governance in the business sector, Ministry of Economy and Industry organised evaluation of the application of corporative standards within 33 local companies. Demir Bank (85 per cent), Azerbaijan Lizing Company (92.9 per cent), and İsmayilli Qushchiluq (90 per cent) were found to be the best among local companies.<sup>1313</sup>

Very few companies in Azerbaijan officially report on corporate responsibility and sustainability (CSR), however, there are several commendable examples. BP is one of a few multinationals in Azerbaijan which releases a Sustainability Report.<sup>1314</sup> Furthermore, companies acting in the mobile service market, in many cases publish information about the projects on CSR, among them Azercell.<sup>1315</sup> PASHA Holding and Access Bank present a brief description of activities under the heading of social responsibility on its website.<sup>1316 1317</sup> However, state owned companies are not known to report on corporate responsibility and sustainability. As for SMEs, the idea of CSR is an alien concept which they do not even comprehend,<sup>1318</sup> apart from rudimental philanthropy.

International oil companies operating in Azerbaijan could lead the process of accountability. The NGO Coalition for Improvement of Transparency in Extractive Industries reports, that although some of the oil producing companies operating in Azerbaijan are ready to transfer individual accountability on their deductions to the Azerbaijan government, still some companies: (Devon, Chevron, ExxonMobil, Total, Petro-Hong Kong-Pirsaat, Azgerneft, Karasu Operating Company, Itochu Oil Exploration (Azerbaijan) Inc., Rafi Oil FZE, Shirvan Oil, Anshad Petrol, Absheron Operating Oil Limited Commonwealth) are not. However, some companies such as the State Oil Company of Azerbaijan Republic and Hess (ACG) Limited Company stated they would be ready for individual accountability only when other companies support the idea. Companies ready for individual

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1310 Law on Entrepreneurship, 15 December 1992, [www.e-qanun.az](http://www.e-qanun.az)

1311 Global Competitiveness Report, 2013-14 [www3.weforum.org/](http://www3.weforum.org/)

1312 Website of Azerbaijani Investment Company, <http://aic.az/>

1313 Evaluation Table of Local Companies in terms of the application corporative standards, [www.economy.gov.az/](http://www.economy.gov.az/)

1314 BP Sustainability Report, 2012, [www.bp.com](http://www.bp.com)

1315 Background to Azercell and telecommunications in Azerbaijan, Supporting Children, 2014 [www.teliasonera.com/en/newsroom/news/2012/background-to-azercell-and-telecommunications-in-azerbaijan/](http://www.teliasonera.com/en/newsroom/news/2012/background-to-azercell-and-telecommunications-in-azerbaijan/)

1316 Social Responsibility of Pasha Holding, 2014, <http://pasha-holding.az/>

1317 Website of Access Bank, [www.accessbank.az/](http://www.accessbank.az/)

1318 Interview with Alipasha Qybullaev, chairman of National Productivity and Competitiveness Centre, 3 Feb 2014

accountability are: BP, Middle East Petroleum Company, Shell, Statoil-Hydro, and Binagadi Oil Company.<sup>1319</sup>

## Integrity Mechanisms (law): 50

*To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?*

The legal framework to ensure integrity mechanisms in the business sector has a long way to go. Still, the Law on Conflict of Interest, and Law on Whistle-Blowers is yet to be adopted.

Despite it, there is no specific provision to render the punishment for commercial bribes in the business sector. However, Azerbaijan has passed several pieces of anti-corruption legislation, including laws regulating [gifts](#) to civil servants, and administrative relations with private companies. According to Azerbaijan legislation, the receipt by officials of a bribe for illegal actions (inaction) – is punished by imprisonment for the term of from five and up to ten years.<sup>1320</sup>

In order to meet this gap in this field, the Ministry of Economy and Industry presented the example of code of conduct to business entities on its website.<sup>1321</sup> The Code of Ethics of SOCAR covers conflict of interest, bribery and corruption, good commercial practices, gifts and entertainment policies, and whistle blowing.

## Integrity Mechanisms (practice): 25

*To what extent is the integrity of those working in the business sector ensured in practice?*

Corruption is perceived to be the most problematic factor for doing business in the country by companies surveyed for the World Economic Forum's *Global Competitiveness Report 2013-2014*.<sup>1322</sup> According to the *Corruption Barometer Index*, one third of all respondents evaluating the sector believed it to be "corrupt/extremely corrupt".<sup>1323</sup> These findings suggest that despite measures taken to improve the business climate, corruption still represents a major obstacle to foreign investment and economic development in the country.

Some companies set a good example by having approved "road maps", more exactly policies, to rectify the situation. For example, the State Oil Company of Azerbaijan Republic (SOCAR) has taken the necessary steps according to the "National Strategy on Increasing Transparency and Combating Corruption".<sup>1324</sup> SOCAR's policy on anti-corruption and several internal standards – aimed to reduce corruption and enhance transparency – were approved by the order of the President of the Company, dated 10 August 2012. The SOCAR, being the leading state owned company, will hopefully set a pattern for other local businesses to follow.

Civil society also makes its contributions into this sphere. In order to promote the business ethics within the Azerbaijan business community, Transparency Azerbaijan developed the Promoting Business Ethics in Azerbaijan Project. This project included the development of 10 sample draft

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<sup>1319</sup> Most companies are against individual accountability, NGO Coalition held conference on "Improvement of EITI reports" [www.eco-az.org/?p=136](http://www.eco-az.org/?p=136)

<sup>1320</sup> Criminal Code of Azerbaijani Republic, [e-qanun.az](http://e-qanun.az)

<sup>1321</sup> Example of Code of Corporate Conduct, 2011, <http://economy.gov.az/>

<sup>1322</sup> World Economic Forum's Global Competitiveness Report 2013-2014, [www3.weforum.org/](http://www3.weforum.org/)

<sup>1323</sup> Global Corruption Barometer, 2013, [www.transparency.org](http://www.transparency.org)

<sup>1324</sup> National Strategy on Increasing Transparency and Combating Corruption for 2012-2015, [www.commission.gov.az](http://www.commission.gov.az)

business ethics codes for different sectors of industry,<sup>1325</sup> and a Business Ethics manual for Azerbaijan companies.<sup>1326</sup>

## Interest aggregation and representation: 25

*To what extent is the business sector active in engaging the domestic government on anti-corruption?*

In practice the business sector is not active in engaging the domestic government on anti-corruption. There are no known effective examples of such cooperation and there are no known examples of business associations publicly calling on the government to fight corruption.<sup>1327</sup>

The National Anti-Corruption Plan for 2012-2015 envisaged improving transparency in the business environment,<sup>1328</sup> but the business sector is not represented in the Anti-Corruption Commission.<sup>1329</sup>

The legislation in force does not envision protection for those who report cases of corruption in the private sector. In other words, no specific protection is provided to private sector whistleblowers reporting corruption cases other than general security measures for witness protection, prescribed by the Law on State Protection of Persons Participating in Criminal Proceedings.<sup>1330</sup>

Despite the fact that there is no law to protect whistle-blowers, the biggest company in the country, SOCAR also established the reporting system about violations of business ethics standards and anticorruption requirements via whistleblowing channels (a hotline).<sup>1331</sup> This is a good example for public and business companies to develop its internal whistle-blowing channels.

## Anti-corruption commitment: 50

*To what extent does the business sector engage with/provide support to civil society on its task of combating corruption?*

The business sector in Azerbaijan is not engaged with support to civil society in its task of combating corruption.<sup>1332</sup> There are no effective examples of joint business/civil society initiatives, where business provides financial support to civil society initiatives seeking to combat corruption.

However, there are some examples that businesses engage with civil society to fulfill anti-corruption commitments. For instance, some local companies have subscribed to the UN Global Compact, which was set up in 2011. Moreover, four local companies (Pasha Insurance, Garant Sigorta, Risk Company and Caspian Technology Company), one bank (Access Bank), and four business associations (National Confederation of Entrepreneurs, Azerbaijan Micro-finance Association, Azerbaijan Turkey Business Association and the Azerbaijan Marketing Society) agreed to support the ten principles of the Global Compact, particularly with respect to human rights, labour,

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<sup>1325</sup> Business Ethics codes for 10 Azerbaijan companies, publication by Transparency Azerbaijan, 2005, [www.transparency.az](http://www.transparency.az)

<sup>1326</sup> Business Ethics Manual, publication by Transparency Azerbaijan, 2004 [www.transparency.az](http://www.transparency.az)

<sup>1327</sup> Interview with Sabit Bagirov, chairman, Entrepreneurship Development Foundation, board member of Transparency Azerbaijan, dated 4 February 2014

<sup>1328</sup> National Anti-Corruption Action Plan 2012 – 2015, [www.commission-anticorruption.gov.az/](http://www.commission-anticorruption.gov.az/)

<sup>1329</sup> Members of Commission on Combating Corruption, [www.commission.gov.az](http://www.commission.gov.az)

<sup>1330</sup> Law on State Protection of Persons Participating in Criminal Proceedings, 1998, [www.e-qanun.az](http://www.e-qanun.az)

<sup>1331</sup> "The reporting system about violations of business ethics standards and anticorruption requirements of the State Oil Company of the Azerbaijan Republic", 2012, <http://socar.az/>

<sup>1332</sup> Interview with Sabit Bagirov, chairman, Entrepreneurship Development Foundation, board member of Transparency Azerbaijan, dated 4 February 2014

environment and anti-corruption. They also committed to report annually on progress within two years of joining the Global Compact. At the moment, one of them – Caspian Technology Company – has a non-communicating status within the project.<sup>1333</sup>

Simultaneously, some companies in the oil and mining industry committed to disclose financial information in the framework of EITI (Extractive Industry Transparency Initiatives) project. Within this project, coalition made up of government, company, and civil society representatives is charged to oversee the EITI implementation in a country. This multi stake group develops the country work plan and publishes the EITI annual report in which companies disclose aggregated tax and other payments, and government discloses what it has received.<sup>1334</sup> The publication of their annual report should be prepared on the basis of consensus approach of three parties: government, civil society and companies.

## Recommendations:

- To award business permits and licenses through e-services (e-license).
- To provide license provision services under the centralised agency (ASAN centres).
- To enhance legal framework by accelerating the adoption of the Code of Competitive Conduct, Law on Corporative Law, Law on Social Responsibility, Law on Whistle Blowers and Law on Conflict of Interest.
- To mandate by the law and enforce application of ethics codes and anti-corruption policies in business entities.
- To create an anti-corruption fund that is funded by large business entities.
- To invite large business companies to be corporative members of the NGOs that are involved in anti-corruption activities.
- To create instruments of free legal aid services to small businesses.
- To create a Business Ombudsman institution to protect the interests of small and medium size business entities.

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<sup>1333</sup> UN Global Compact, Global Compact Launches Local Network in Azerbaijan, [www.unglobalcompact.org/](http://www.unglobalcompact.org/)

<sup>1334</sup> Extractive Industries Transparency Initiatives, [www.eiti.az/](http://www.eiti.az/)



# VIII. CONCLUSIONS AND RECOMMENDATIONS

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The Azerbaijan National Integrity System assessment reveals the strengths and the weaknesses of each pillar and highlights imbalances in Azerbaijan's National Integrity System, as well as provides recommendations to attend to those gaps and outlines major challenges for the future.

## LEGISLATURE

Several laws ensure transparency and independence of the Azerbaijan supreme legislative body, Milli Majlis, including immunity of Parliament members. However, in practice, transparency and accountability of MPs is not very high. MPs are yet to develop a full understanding of their accountability before their constituencies and the public in general. There is room for enhancement of transparency of the Parliament. Moreover, MPs do not consult with forces that are not represented in the Parliament. It is believed that the annual work plan of Milli Majlis does not leave much room for the law-making activities of MPs, nor is the right to Parliamentary inquiry actively enforced, which diminishes the independence of the Parliament. The Azerbaijan legislature needs to reinforce its position as an efficient element of the system of checks and balances among the three branches of power.

### Recommendations:

- To improve transparency of the Parliament by making Parliamentary debates open for all interested parties through online coverage.
- To enhance accountability of the Parliament through better representation in the Parliament of the needs of their respective constituencies through active onsite work of the institute of MPs' assistants.
- To organise discussions with political forces outside of the Parliament, including civil society with the aim of discussing new draft laws.
- To actively enforce the right of Parliamentary inquiry.

## EXECUTIVE

Executive power in Azerbaijan is the strongest branch of the government and is accountable to the president, including the Office of the President, the Cabinet of Ministers and local executive authorities. The executive possesses all necessary resources to perform its duties. Accountability of the executive is well provisioned for in the law, but in practice it needs to be improved through enhancing independence of the other two branches of power: legislative and judicial. Under the law, the executive is not obliged to consult with the public or any special groups on any actions taken; however, in practice, members of the executive are accountable for their wrongdoings. The Cabinet of Ministers presents its annual reports to the Parliament; however, judging by media coverage,

these reports are not extensively debated or contested, and they are neither available to the general public in full nor do they contain much information on shortcomings or targets that have been not met.

### Recommendations:

- To expedite implementation of the anti-corruption activities set forth under two important government programmes: National Anti-Corruption and Open Government Partnership Action Plans.
- To enhance accountability of the executive by introducing respective accountability provisions in the law and through establishment of public monitoring councils at the national and local levels in practice.

## JUDICIARY

The Azerbaijan judiciary has implemented reforms since 2000 with the assistance of international organisations, which has enhanced judge selection practices. However, there is still a long way to go towards a modern and efficient system of justice administration. Independence of the courts needs enhancement through expanding powers of the Judicial Legal Council (a self-governing body of the justice system), including authority to manage the judicial budget and through closer cooperation with civil society. Only high instance courts publish their decisions on the internet, whereas rulings of the low instance courts are not available to general public. The law does not provide for an independent and impartial jury in civil matters; all trials are decided by the judge. Little is known about the integrity of judges as the regulation on immunity of judges is too broad. The country is developing supporting legislation to create elements of the e-courts system. The Azerbaijan judiciary system needs to reinforce its position to become an efficient element of the system of checks and balances among the three branches of power.

### Recommendations:

- To ensure financial independence of the courts through an increase of the court budget and apportioning of the judiciary budget to the general state budget; to delegate the authority to manage judiciary budget to the courts themselves and/or Judicial Legal Council.
- Adopt the Law on the Right to Obtain Judicial Information that will set up clear standards on the type and format of judicial information available to general public.
- Prepare legislation limiting judges' immunity.

## PUBLIC SECTOR (INCLUDING PUBLIC PROCUREMENT)

Azerbaijan has made significant strides towards reforming its public sector in the recent past, yet there also remain certain shortcomings. Some important achievements that have been made include: improved civil service hiring processes thanks to the broadening of the competencies of the Civil Service Commission and enhanced delivery of certain public services, especially, through the introduction of ASAN Service centers, a one-stop-shop entity for public service, including electronic services. However, some serious problems remain, which hinder the success of the government's

anti-corruption policy. Draft laws on conflicts of interest and protection of whistleblowers remain on the shelves and normative regulatory mechanisms of financial reporting by senior officials have not been drawn up. Though many public agencies publish their annual reports, the lack of a single standard for reporting allows agencies to disclose selective information, thus reducing their accountability. Also, public agencies do not, as a rule, disclose financial information. Last but not least, transparency and accountability of public procurement has not been adequately provided for in law and practice.

#### Recommendations:

- To expedite adoption of the laws on conflict of interest and protection of whistleblowers; to develop and enforce normative regulatory mechanisms of disclosure of assets by civil servants.
- To expedite development of electronic services.
- To design standards and rules for reporting of public agencies to the general public, including their individual budgets.

## LAW ENFORCEMENT AGENCIES

Law enforcement is going through a reform process in Azerbaijan – a process which is yielding positive results; however, law enforcement in Azerbaijan needs to further improve its efficiency and integrity and increase the level of trust of the population. There are claims that law enforcement agencies are not corruption free. In recent years, the steps of the government to improve the situation in the policeforce yielded results reflected in Transparency International's *Global Corruption Barometer 2013*, and trust in the police has somewhat increased. Still, in practice, integrity of law enforcement agencies leaves little to be desired, especially of the police force. Under the law, the law enforcement agencies are independent; however, some experts believe that the investigative and enforcement activities of the law enforcement agencies can be influenced by political actors or the government. Also, the prosecutors may face a potential conflict of interest due to dual function of investigation and supporting accusation in court. Full independence of the law enforcement agencies is yet to be achieved through further reforms.

#### Recommendations:

- To make amendments to the legal framework to separate functions of investigation, operational search and supervision of the law enforcement agencies from supporting accusation in courts.
- To create a single centralised investigation body (except for cases involving national security within the authority of the Ministry of National Security).

## ELECTORAL COMMISSION (CEC)

Azerbaijan has a three-tier electoral administration. The CEC has adequate financial and technical resources to perform duties prescribed by law. The legal framework contains provisions to provide for independence of election commissions. But, independence and impartiality of the CEC is not

guaranteed by the Constitution and has been questioned by the opposition parties, media, civil society and international organisations due to domination of pro-government forces in the CEC. In general, the work of the CEC could be assessed as transparent in selective matters. The CEC maintains an informative website; however, existing provisions and practices regulating transparency and accountability of the process are not adequate, especially of electoral dispute resolution and some other procedures. Also, audited financial reports of the CEC and election campaign expends of the candidates are not published.

### Recommendations:

- To ensure true independence of the CEC by making explicit provisions in the Constitution stating its independence and promoting equal opportunity for representation of women and ethnic minorities in the CEC.
- To enhance transparency and accountability of the process; to post audited financial reports of the Commission; as well as financial reports of election campaign expends of the candidates.
- To attend to procedural shortcomings in the work of the election administration.

## OMBUDSMAN

The Ombudsman's Office generally acts on citizens' complaints within a reasonable period of time. However, the state bodies do not always act on the findings of the Ombudsman. Also, there are claims that in practice the Commissioner is not effectively safeguarded against political interference, though, according to both local and international experts, in the past couple of years the Ombudsman has become more vocal in voicing violations of human rights. The new mandate was transferred to this institution in 2011 to oversee the regulation on access to information as a media Ombudsman. Success of the institution in ensuring access to information is much less visible. Thus, no legal remedies are offered to information seekers, nor are recommendation to the information owners on improvement of access to information is known. The current budget of the Ombudsman was sufficient for performance of its core duties, but now it falls short of adequately covering the new responsibilities transferred to this institution since 2011.

### Recommendations:

- To make adjustments to the regulatory framework in order to explicitly tighten criminal responsibility for the failure to act on the findings of the Ombudsman.
- To increase the budget and human capacity of the Ombudsman's institute in the view of its additional responsibilities on ensuring access to information.
- To create legal aid mechanisms for information seekers to access public information.

## CHAMBER OF ACCOUNTS

Independence of the Chamber of Accounts is not sufficiently ensured in law or in practice. The chamber conducts audits only in accordance with the annual plan and at request of law enforcement agencies. The chamber is not authorised to investigate criminal violations, which is the responsibility of the Prosecutor's Office, neither does it define applicable sanctions, which is the function of the court – that is, apart from administrative measures, such as freezing accounts and imposing administrative penalties. The chamber informs the general public of its activities; however, it only provides very general information concerning agencies audited. In practice, it does not exercise in full its right to supervise extra-budgetary funds and public funds awarded to the private sector. Thus, the State Procurement Agency and the State Oil Fund are not covered by the chamber's review. The chamber is not guaranteed from executive power's interference, neither does it provide review of the impact of the budget on the development of the country.

### Recommendations:

- To clearly state independence of the Chamber of Accounts in the Constitution.
- To audit the State Oil Fund as required under the national law; as well as public funds awarded through public procurement system to the private sector.
- To make amendments to the law to allow the Chamber to conduct anti-corruption and anti-fraud audits, i.e. to assign the Chamber of Accounts the authority to conduct primary investigation (in line with the Turkish model).
- To attend to the gaps in the Law on Budget, i.e., to clearly state the relationship between the revenues and expenditures of the government and its political and macro-economic goals that will enable the Chamber to provide sufficient legal grounds to review impact of the budget on the development of the country.

## ANTI-CORRUPTION AGENCIES

Anti-corruption agencies include two entities – the State Commission on Combating Corruption (Anti-Corruption Commission) and the Head Department on Combating Corruption under General Prosecutor's Office (Anti-Corruption Department). The commission is engaged in policy-making and oversight of implementation of domestic and international anti-corruption obligations, whereas the Anti-Corruption Department has a mandate to prosecute for corruption offences, and until now it has been able to investigate a number of criminal cases related to corruption, though limited to petty and medium rank level officials' misdeeds. However, lack of a clear separation between public and private sector corruption artificially increases the anti-corruption statistics. In some cases, the competencies of the department overlap with the commission, particularly in the sphere of the analytical studies, public education and international co-operation. Both the commission and the department have adequate and sufficient resources and budgets to effectively carry out their duties. The law does not provide ample protection to commission members from removal, nor are its members immune against prosecution while implementing their duties.

## Recommendations:

- To strengthen coordination efforts and oversight of implementation of National Anti-Corruption Action Plan (NAP) activities by the Anti-Corruption Commission; to expand the capacity of the commission (both human resources and financial support) to enable it to cope with the existing and anticipated tasks.
- To streamline the regulations to ensure better independence of the commission.
- Cooperation with civil society institutions must be broadened and include developing draft laws and regulatory tools; also, civil society must be represented in the Anti-Corruption Commission.
- Amendments shall be made to legislation to distinguish between public and private sector corruption.

## POLITICAL PARTIES

Out of more than 50 political parties registered in Azerbaijan, only a few are active in the political sphere. The biggest party is the ruling New Azerbaijan Party (NAP), chaired by the President. There are no significant differences among the major opposition parties in terms of their political ideologies or policies. Many of them lack clear ideological preferences reflected in their party programmes. They base their political actions on personalities of their leaders rather than election programmes and ideology. Political parties cannot compete on equal terms mainly because of the problems associated with their funding. The majority of parties do not receive an adequate level of funds either from the government or businesses. In addition, citizens fearing political repercussions of party affiliation do not sign up as party members and, therefore, membership fees are not a feasible or adequate source of funding for political parties. Recent years have witnessed the appearance of many small political parties, yet only a few of them have any real influence on politics. The majority of them are small, underfunded and do not have significant popular support.

## Recommendations:

- Political parties shall display ongoing political activity and promptly respond to important domestic and foreign policies, legal, economic and social events in order to gain public support.
- Political parties shall prepare their political programmes, including anti-corruption programmes, and shall arrange broad public presentations thereof.

## MEDIA

Although Azerbaijan's mass media laws and regulations provide basic guarantees for freedom of press, certain legal and practical restrictions continue to pose a challenge for independent and pro-opposition media in exercise of their rights. Despite the fact that the Constitution of Azerbaijan and the Law on Mass Media ensure freedom of speech and press, the provisions of the Criminal Code relating to defamation set limits on media freedom and, thereby, contradict the country's supreme law. Though the country has a broad spectrum of online and print media, independence of the media, especially the broadcasting media, leaves much to be desired. Even though the licenses for

TV and radio are nominally issued by the National Television and Radio Council on a competitive basis, transparency of this process needs improvement. In general, effective legal institutional mechanisms ensuring independence of media are not well developed. Involvement of the media, especially broadcast media, in anti-corruption public awareness programmes is not very broad. Financial aspects of media management, including transparency of media expenditures, as well as professional ethical standards of some journalists need improvement.

## Recommendations

- Enhance transparency of the activities of the National Television and Radio Council (NTRC) – specifically, transparency of the bidding process for broadcast licenses – and create public oversight mechanisms.
- Remove legal provisions that make defamation a criminal offence.
- Media shall develop more effective self-regulatory mechanisms to promote professional ethics standards.

## CIVIL SOCIETY

Despite the existence of thousands of registered and unregistered civil society organisations, there is a need to improve the legal framework, which broadly entrusts the government to check compliance of the foreign and domestic NGOs with their statutes and Azerbaijan legislation. The government has made several important steps in recent years to closely cooperate with civil society through public monitoring councils established by national public agencies and networks and working groups comprised by NGO and government representatives. On the other hand, in 2013 and 2014, the Parliament passed several laws that increase the accountability of NGOs before the government. Also, control of banks over expenditures of grant funds has tightened. Though these measures will increase transparency and accountability of civil society, there are administrative obstacles in application of new requirements. Civil society needs capacity building and professional staff, especially in administration, management and fundraising. Further improvement of transparency and accountability is also needed. A lack of sustainability of funding as well as unfavourable tax regulations create a substantive barrier to active involvement of the NGOs in public life as well as their ability to impact the political and social agenda in the country. Also, development of civil society in the capital city of Baku and provinces is very uneven.

## Recommendations

- To explicitly introduce a legal status of non-profit income generating legal entities with tax advantages and reduce the tax burden on NGOs (eliminate the 22 per cent employer's tax on the top of the gross salary).
- To simplify the process of registration for NGOs and clearly formulate procedures and rules for the state supervision of NGO activities in consultation with civil society.
- In order to enhance capacity of the regional NGOs and initiative groups, Baku based NGOs shall form alliances with local activists in the regions and treat them as local affiliates.



- NGOs shall improve transparency through conducting annual financial audits and making this information public for accountability; introduce the practice of systematic self-monitoring and adopt codes of ethics.

## BUSINESS

As supported by international and national data, the business environment in Azerbaijan is improving. The registration of business is easy from a legislative and practical point of view, while getting licenses (permits) in some areas remains a major problem for businesses. Although a single data registration centre of all inspections was created in order to reduce the groundless inspections of business entities, it did not considerably improve the situation. The procedure of registration of property is simplified recently; however, the property registration problems still exist. The problems related to trading across borders, access to electricity, construction permits, corruption, low level of corporative management, and monopolies are other things that pose as main challenges for the business sector in Azerbaijan. Local business is not seriously involved in anti-corruption engagement; neither does it support civil society in fighting against corruption. SMEs are especially vulnerable as they can not afford professional staff to duly comply with all the state regulations – which are set forth in a highly technical language.

### Recommendations:

- To simplify procedures for business permits through e-services (e-license) and/or include this service in the scope of services rendered by ASAN centers.
- To enhance legal frameworks by accelerating the adoption of the Code of Competitive Conduct, Law on Corporative Law and Law on Social Responsibility, and to ensure their enforcement.
- To mandate by law and enforce application of ethics codes and anti-corruption policies in business structures.
- To create instruments of free legal aid services for small businesses, including mass production and dissemination of how-to-guides, written in a simple language.

## MAIN CHALLENGES IN THE COMING YEARS

As noted earlier in this report, Azerbaijan has recently achieved some success in preventing and curbing corruption – especially at the level of petty corruption, whereas grand corruption has been given less attention so far. The main challenge for the future will be preventing grand corruption through a profound reform of the public procurement system.

The non-government actors (media, civil society, political parties and business) of the National Integrity System remain weak, and their role and anti-corruption commitments as an average were assessed as rather low at 25. Enhancing the anti-corruption involvement of the non-state actors will be a challenge for the years to come.

Some pillars should more effectively use the powers granted to them by the law. In particular, the judiciary and the Parliament have to strengthen their capacity to efficiently conduct oversight of the executive branch.

The gaps between law and practice should be attended to through improving mechanisms of law enforcement and expanding the power of enforcement onto the Parliamentary oversight institutions (the Chamber of Accounts and the Office of Ombudsman).

Performance of some pillars is affected by insufficient cooperation between various pillars, including state and non-state actors.

And last, but not least, the key to success is further enhancement of the joint efforts already carried out by the government, civil society, media, the business community and the citizens of Azerbaijan.