

Fighting Corruption in Eastern Europe and Central Asia

# Anti-corruption reforms in Azerbaijan

4<sup>th</sup> round of monitoring of the Istanbul Anti-Corruption Action Plan

OECD ANTI-CORRUPTION NETWORK FOR EASTERN EUROPE AND CENTRAL ASIA

# **Anti-Corruption Reforms in** **AZERBAIJAN**

**Fourth Round of Monitoring of the  
Istanbul Anti-Corruption Action Plan**

**2016**



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The Istanbul Anti-Corruption Action Plan is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kyrgyzstan, Kazakhstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of participating countries' implementation of recommendations to assist in the implementation of the UN Convention against Corruption and other international standards and best practice. Find out more at [www.oecd.org/corruption/acn/istanbulactionplan/](http://www.oecd.org/corruption/acn/istanbulactionplan/).

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## ACRONYMS

<b>ACD</b>	Anti-corruption Directorate, Prosecutor General's Office of Azerbaijan
<b>ACGS</b>	Azerbaijan Corporate Governance Standards
<b>ACN</b>	Anti-Corruption Network for Eastern Europe and Central Asia
<b>Action Plan</b>	National Action Plan for 2016-2018 on Promotion of Open Government
<b>ASAN</b>	Azerbaijani Service and Assessment Network
<b>AZN</b>	Currency of Azerbaijan
<b>CC</b>	Criminal Code
<b>CCC</b>	Commission on Combating Corruption
<b>CEC</b>	Code of Ethical Conduct
<b>CoE</b>	Council of Europe
<b>CPC</b>	Criminal Procedure Code
<b>CPI</b>	Corruption Perception Index
<b>CSC</b>	Civil Service Commission
<b>EBRD</b>	European Bank of Reconstruction and Development
<b>EITI</b>	Extractive Industries Transparency Initiative
<b>EU</b>	European Union
<b>FMS</b>	Financial Monitoring Service
<b>FIU</b>	Financial Monitoring Unit
<b>FOI</b>	Freedom of information
<b>GRECO</b>	Group of States against Corruption
<b>IAP</b>	Istanbul Anti-Corruption Action Plan
<b>IT</b>	Information technologies
<b>JLC</b>	Judicial-Legal Council
<b>LCC</b>	Law on Combatting Corruption
<b>LCJ</b>	Law on Courts and Judges
<b>Milli Majlis</b>	Parliament of Azerbaijan
<b>MLA</b>	Mutual legal assistance
<b>MoE</b>	Ministry of Education
<b>MoU</b>	Memorandum of understanding
<b>MP</b>	Member of Parliament
<b>NAR</b>	Nakhchivan Autonomous Republic
<b>NGO</b>	Non-governmental organisation
<b>NIS</b>	National Integrity System
<b>OGP</b>	Open Government Partnership
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PGO</b>	Prosecutor General's Office
<b>PG</b>	Prosecutor General
<b>POA</b>	Prosecutor's Office Act
<b>POSA</b>	Act on Service in the Prosecutor's Office
<b>PR</b>	Public relations
<b>SEC</b>	State Examination Centre
<b>SIGMA</b>	Support for Improvement in Governance and Management, OECD/EU joint initiative
<b>SMEs</b>	Small- and medium-sized enterprises
<b>SOEs</b>	State-owned enterprises
<b>TI</b>	Transparency International
<b>UNODC</b>	United National Office on Drugs and Crime
<b>USAID</b>	United States Agency for International Development
<b>VET</b>	Vocational Education and Training

## EXECUTIVE SUMMARY

This report analyses progress made by Azerbaijan in carrying out anti-corruption reforms and implementing recommendations of the IAP since the adoption of the Third Monitoring Round report in 2013. The report focuses on four areas: anti-corruption policy, prevention of corruption, enforcement of criminal responsibility for corruption and prevention and prosecution of corruption in education sector.

### Anti-corruption policy

Azerbaijan has made progress in preventing corruption in several sectors, such as public services delivery, traffic police and public education. Reforms have started in customs and business licencing. However, serious and complex corruption challenges have yet to be tackled. Addressing the corruption-prone areas requires stronger political will, efforts and healthy environment for broad stakeholder participation in the fight against corruption.

Azerbaijan developed National Action Plan for 2016-2018 on Promotion of Open Government (Action Plan), fourth policy document addressing anti-corruption, through public consultations taking into account proposals of several Non-governmental organisations (NGOs). While mainly preventive focus of the Action Plan is welcome, it is regrettable that the policy document does not have clear anti-corruption goals and is not evidence-based. Recent work of the Anti-corruption Directorate (ACD) to identify corruption problems and risks and to propose recommendations to specific agencies is commendable. However, the government does not commission or conduct corruption studies regularly. Azerbaijan is recommended to develop comprehensive evidence-based anti-corruption policies, with clear objectives, timeline, outcome indicators and budget for implementation. Existing corruption risks and problems should be systematically analysed and the evaluation of impact of anti-corruption measures carried out. In addition, a monitoring and evaluation mechanism promoting performance by state bodies should be set up to review progress and evaluate impact of implementation regularly, including at the sector level, involving civil society. Internal risk assessments in the agencies should be promoted and sectoral approach used to share experience and replicate achievements of the leading agencies in other public sectors as well.

**Awareness** of various forms of corruption and public trust towards selected institutions increased in Azerbaijan since the previous monitoring. ACD in cooperation with the Commission on Combating Corruption (CCC) has engaged in awareness raising activities. Azerbaijan is encouraged to use systematic and targeted approach to anti-corruption awareness, plan measures for the corruption-prone sectors, adapt the activities to various target groups and allocate budget for implementation of the measures foreseen by the Action Plan.

Central body responsible for **corruption prevention and policy coordination** in Azerbaijan is the CCC which enjoys broad statutory functions. Since the previous monitoring, the CCC coordinated consultations between the state bodies and civil society aimed at preparation of the Action Plan and facilitated its adoption. CCC Secretariat also gathered sectoral plans, collected the implementation reports from state agencies and coordinated the working group on the development of legislation. However, many statutory functions of the CCC remained unenforced and these mentioned steps had little effect on the anti-corruption policy, monitoring of implementation and prevention of corruption. The functions, resources and capacities of the Secretariat continued to be limited. The report urges Azerbaijan to strengthen its central body for prevention of corruption and implement comprehensive, evidence-based anti-corruption policy, addressing high corruption risk sectors. Further, to give CCC a new life and a fresh start Azerbaijan could consider revising its mandate and composition to include open government issues.

Report expresses strong concerns on deterioration of the environment for functioning of **civil society** and urges the authorities to remedy the situation as a matter of priority to ensure the open participation of civil society in anti-corruption reforms, policy development, implementation and monitoring and create an enabling environment for investigative journalism and media reporting on corruption.

### Prevention of corruption

Azerbaijan continued to enforce existing legislation on **merit-based recruitment**, including the appeals procedure and adopted **performance appraisal** rules for certain categories of civil servants. These efforts

are commendable and should be extended to the higher categories of civil servants as well. Merit-based recruitment should be applicable to all professional civil servants regardless of their rank. Azerbaijan merged the *Civil Service Commission (CSC)* and the Student Examination Center (SEC) establishing a new agency, State Examination Center. New agency is responsible for recruitment to civil service, student admission to higher education and training. However, at the time of the on-site visit key functions of the CSC, such as oversight of the civil service policy, including enforcement of ethics rules, performance appraisal, had not been transformed to SEC.

Azerbaijan still does not have clear and comprehensive *conflict of interest* rules for civil servants and effective mechanism for their implementation. A draft Law on the prevention of conflict of interest in the performance of public officials has been under development for several years. The issue of enforcement of *asset declarations* has remained unresolved since 2005 when the legislation was first adopted. The report calls upon Azerbaijan to develop without further delay the necessary form for asset declarations and to ensure implementation in practice. The report recommends Azerbaijan to adopt legislation on conflict of interest and separation of political and professional public service and ensure effective coordination and implementation of reforms.

*Ethics commissioners* have been introduced in public agencies with the responsibility to monitor compliance with ethical rules, give guidance on ethical issues and organise trainings. The heads of human resources and internal security departments are appointed as ethics commissioners. CSC organized a series of training of trainers for ethics commissioners. However, no viable network of ethics commissioners has been established. Azerbaijan is recommended to consider establishing full time staffing positions for independent ethics commissioners with reporting obligation to the civil service oversight body. *Ethics training* is not mandatory in civil service, however it was carried out regularly. CSC annually requested the report from state agencies on training and enforcement of ethical rules.

The Azerbaijani public continues to widely believe that the *judiciary* lacks integrity and independence. Azerbaijan is therefore recommended to conduct an analysis on the internal causes of this perception; carry out a risk assessment; and develop an anticorruption policy for the judiciary. The independence of the Judicial-Legal Council (JLC) could be enhanced by granting representatives of civil society and academia membership in the JLC or at least a right to observe meetings. Azerbaijan should take steps to ensure that objective and transparent criteria apply to judicial appointments to the Supreme Court and Court of Appeal to avoid undue political interference. The Presidents of the Supreme Court and Nakhchivan Autonomous Republic (NAR) Supreme Court should be appointed upon the recommendation of the JLC based on objective, transparent criteria and process. The JLC's capacity to consider allegations of judicial misconduct needs to be strengthened. Requiring Azerbaijani judges to annually declare assets, income, liabilities and interests to the JLC, and making the declarations publicly available, could go some ways towards reducing public concerns about judicial integrity. Azerbaijan should also systematically train judges on ethical conduct and anticorruption standards. It should implement an electronic case assignment system nationally, and ensure that the monthly analysis of the case assignment system identifies and addresses vulnerabilities in the system. Efforts must also be made to ensure that all courts' websites contain up-to-date information on hearings and judgements.

Overall Azerbaijan's legislation provides for the institutional and operational *independence of the prosecution service*. Nevertheless there are some practical issues related to the independence of the Prosecutor General and corruption risks of the individual activity of the prosecutors which merit consideration. Azerbaijan is recommended to address them by further strengthening legislative safeguards on reporting obligations of the Prosecutor General and giving consideration to limiting the number of his/her consecutive mandates. The same applies to the recruitment process of the prosecutors. It follows a well written-out procedure but with some caveats. Azerbaijan should review it with participation of the civil society to ensure that the entire procedure follows the principles of transparency and uses objective and merit based criteria.

Similarly, in legislative terms, Azerbaijan has a well-regulated system of ethical rules and other restrictions for prosecutors. Some practical steps have also been taken. Nevertheless Azerbaijan is recommended to do more in order to increase the trust of citizens in the activities of prosecutors. For instance, former prosecutors should be temporarily prohibited from acting as a private lawyer or legal counsellor in cases which are being investigated or prosecuted by their former unit, necessary steps to

make legislation on asset disclosure operational should be taken, and practical training to all prosecutors on ethics and anti-corruption standards should be continued.

And finally Azerbaijan should develop a better communication policy with the civil society and the media to address a certain reluctance of the citizens to file complaints to the prosecution office, and a lack of trust in the independence of the prosecutors to tackle sensitive cases that are relevant for the public.

**Access to information** legislation in Azerbaijan overall is well-developed, however, broad exceptions to the right to access and lack of sanctions for violations remain of concern. Azerbaijan is recommended to limit the exemptions, provide for a proportionality test to grant wider access to information. Implementation shortcomings such as: refusals or inadequate responses to the access to information requests; need for personal contacts to receive needed information; disregarded timeframes; inconsistent interpretation of the meaning and the scope of public information throughout the agencies need to be addressed as well. The Ombudsman has to be provided with the necessary resources in order to perform its functions in the area of access to information. The report encourages Azerbaijan to effectively enforce proactive publication of information and publish high interest data-sets in open data format. The report raises concerns that Azerbaijan has not decriminalized **defamation** and insult stressing that the recent crackdown on the media and on independent civil society is alarming. It urges the government to ensure enabling environment for investigative journalism and media reporting on corruption.

The report praises Azerbaijan for advancing **Azerbaijani Service and Assessment Network (ASAN)** centres, which has contributed to eliminating the conditions that are conducive to corruption when delivering various administrative services to the public. As one stop shops, ASAN centres have limited administration discretion and significantly improved interface between government and citizens in providing services. The business environment has improved due to the simplification of licensing procedures, fee reduction and the ongoing expansion of ASAN, as well as the introduction of some services being offered regardless of residential registration. Azerbaijan has been downgraded in Extractive Industries Transparency Initiative (EITI) and made inactive in Open Government Partnership (OGP) initiative. In order to remedy this Azerbaijan must address the core issue of ensuring enabling environment for civil society participation.

In the period 2013 to 2015, no significant improvements have been made in the area of **public procurement** in general and in regards to the implementation of the recommendations for procurement of the Third Round of Monitoring in particular. The State Agency on Public Procurement was abolished and its responsibilities transferred to the State Service for Antimonopoly Policy and Consumers' Rights Protection. However, this unit only became operational in spring 2016 and it is too early to gauge whether such transfer will lead to improvements in this area and if it is equipped with the sufficient number and quality of human resources to fulfil its mandate on public procurement. There are considerable expectations by the government that the new Law on Public Procurement will facilitate the required changes in the public procurement system for a more transparent and efficient procurement process. It will be of utmost importance that any changes and improvements of the new law will be accompanied by adequate implementation guidelines and the training, professionalization and recruitment of an adequate quantity and quality of public procurement staff and institutions. This would need to be organised by the State Service in conjunction with the procuring public sector entities. Furthermore, the full introduction of an adequate e-procurement system would be one important factor in the facilitation of a more transparent and efficient procurement system in the public sector.

Azerbaijan has taken steps to improve the business environment but not to strengthen **business integrity** specifically. Azerbaijan should therefore conduct a business integrity risk analysis and develop a business integrity policy with the active engagement of the private sector. It should also work with the private sector to promote corporate internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption.

## **Enforcement of criminal responsibility for corruption**

### ***Criminalisation***

Azerbaijan remains non-compliant with the core international standard of imposing corporate liability for corruption offences. It should introduce without delay criminal procedure provisions for the enforcement of the corporate liability provisions that were enacted in 2012. Further efforts should be made to ensure



that corporate liability is autonomous and to raise the private sector's awareness of the corporate liability provisions. Azerbaijan should provide additional training and guidelines on cases of bribe offers, bribe promises, non-material bribes, foreign bribery, the money laundering offence, and corporate liability. The legal provisions allowing pre-trial seizure and confiscation are in place but problems remain with their application. Azerbaijan therefore needs to continue to monitor the effectiveness of the seizure and confiscation regime; ensure that investigators, prosecutors and judges place more emphasis on seizing and confiscating the proceeds of corruption; enhance law enforcement's capacity to identify, evaluate and seize corruption-related property; and make the Asset Management Office operational. In the area of immunity, Azerbaijan is again recommended to reduce the scope of immunity of Members of Parliament (MPs) and judges; ensure that the decision to lift immunity is based only on whether the request is abusive and not on the merits of the allegations; and substantially reduce the deadline for the Parliament of Azerbaijan (*Milli Majlis*) and JLC to lift immunity. Azerbaijan should also further analyse the application of the effective regret defence with a view to limiting its application and increasing the prosecution of active bribery offences.

### ***Investigation and prosecution of corruption offences***

Azerbaijan took some steps to increase detection and be more proactive, namely through a more extensive use of analytical tools. Analytical capacities of ACD have been steadily developing and this should be continued. However, other sources of detection continue to be underutilised. The role of the media as a source of information for criminal investigations is not correctly understood and utilised in Azerbaijan. The low number of referrals from tax authorities, Financial Monitoring Units (FIUs), auditors also shows poor dynamics. The same applies to information originating from international cooperation. As a result, enforcement actions in regards to new crimes are still very limited.

In addition, while Azerbaijan granted its prosecutors direct access to the data bases of public institutions and considered changing the procedure on access to bank and financial information, the procedure remained intact. It does not give enough instruments to prosecutors to early detect and investigate complex corruption cases where the money passes through a chain of intermediaries, draw the financial profile of the suspect and follow the money trail.

To address these issues Azerbaijan should continue providing training and guidelines to investigators, prosecutors and judges, amend legislation and revise the practice that hinders the use of information revealed by the media. It should also take necessary measures to facilitate the speedy and confidential access to bank and financial information. Finally, international cooperation on corruption cases in practice could benefit from measures reflected in the new recommendation.

### ***Anti-corruption criminal justice bodies***

No major institutional changes took place in the system of criminal justice bodies of Azerbaijan which would relate to corruption cases. ACD continues to be the investigative body for corruption offences. In 2014 its status was upgraded from department to the directorate level and its capacities have been further developing over the last three years. There is no specialised anti-corruption prosecution body or unit. Nor are there specialised prosecutors in Azerbaijan. Corruption cases are taken to court by the prosecutors from the Department of Public Prosecutions of the GPO. There are also no specialised anti-corruption courts or judges in Azerbaijan. Cases are tried in the criminal courts of relevant jurisdiction. Current institutional set up on the whole is in line with international standards, however Azerbaijan is recommended to make some improvements. In particular, Azerbaijan should envisage a communication channel between investigative prosecutors and trial prosecutors to better prepare the corruption cases for trial and ensure success of prosecution. This could be done by considering the possibility to establish a trial prosecutors unit within the ACD or through a system of designation of trial prosecutions to the ACD.

### **Prevention and prosecution of corruption in education**

In Azerbaijan the education sector is perceived to be vulnerable to integrity violations. Recent anti-corruption reforms represent a positive step forward in responding to integrity challenges. The development, implementation, monitoring and assessment of anti-corruption policies should be more transparent and evidence-based, and provide for wider civil society engagement.

### ***Sectoral anti-corruption policy and bodies***

The government of Azerbaijan developed two successive anti-corruption national action plans (2012-2015 and 2016-2018) that address the education sector. The Ministry of Education (MoE) was involved in the design of these policy documents and was responsible for the development of sectoral action plans supporting their implementation. The monitoring team noted some deficiencies in the strategic planning of national and sectoral action plans. Policy development does not appear to be based on a formalised risk assessment. Performance indicators for integrity monitoring have not been established. Neither a timeline for implementation of reforms nor a budget set dedicated to integrity measures in education have been clearly developed. Many non-governmental organisations are de facto excluded from the process of policy development, implementation and monitoring or assessment due to a lack of information, resource constraints and a restrictive regulatory climate. The report therefore recommends reviewing and improving existing mechanisms and platforms for a large stakeholder involvement in the design and monitoring of anti-corruption policy in education. The report also calls to continue introducing performance and impact indicators to track the progress made in the implementation of sectoral anti-corruption plans. Further it encourages Azerbaijan to communicate anti-corruption efforts and their measured impact, for example by providing access to relevant data and research (government, NGOs, universities)

The Action Plan for 2016-2018 outlines a number of anti-corruption measures in the education sector, namely improvement of electronic services for preschool and secondary school electronic admission, use of electronic services in higher education and anti-corruption education. The implementation of this action plan is ongoing. The MoE is to prepare its sectoral action plan by the end of 2016.

### ***Prevention measures***

The report welcomes positive developments in the process of human resource management of teachers and principals. The government recognizes the existence of corrupt practices in the management of human resources in education, namely bribing and nepotism in selection, hiring and promotion, arbitrary dismissals, and violation of labour rights of education employees. To respond to these challenges, the National Anti-Corruption Plan 2012-2015 provides for amendments to teacher recruitment and the diagnostic assessment of teachers, proposes to increase teachers' wages and to implement a code of conduct and ethics training for teachers. In addition, some amendments were introduced in the hiring of principals to make the process more transparent. While some civil society representatives point out to remaining cases of favouritism in teacher recruitment, overall these policies were positively assessed and, according to the government, more than doubled the number of candidates for teaching.

ASAN service centres provide information about services delivered by the state entities, including education services. Many education-related processes at risk of malpractice are currently being transferred to electronic platforms, including school enrolment, recruitment of teachers, and the recognition of educational credentials. However, effectiveness of these services and user satisfaction with them is unknown, and should be assessed in the future.

The report discusses that insufficient funding can create risks to integrity in education. Azerbaijan is therefore encouraged to conduct a public expenditure review in education to assess whether public funding allocated to schools is adequate for providing quality education. The MoE procurement and construction administration established in 2013 is in charge of public procurement for educational institutions, the function that was transferred from the local to the central level in January 2016. Despite these changes, according to some stakeholders, decision-making and budget allocation process in procurement in education remains opaque and unaccountable, creating opportunities for misappropriation and the embezzlement of funds. The report therefore recommends strengthening procurement policy and implementation, including further guidelines for discretionary selection of procurement methods to encourage more use of competitive methods to enhance the transparency of the process.

### ***Enforcement and results, impact***

Enforcement in Azerbaijan should be enhanced, especially with regards to high-ranking officials. Enforcement is principally led by the ACD with the support from the MoE. The involvement of all relevant stakeholders is necessary to develop a comprehensive detection and enforcement strategy in the education sector and to enable public participation in the enforcement of anti-corruption policy.

The report recommends maintaining and publishing the data on the corruption complaints, investigations, prosecutions, convictions and sanctions in the education sector. The report further recommends the government to strengthen the civil society oversight of the government-led prevention efforts to ensure prompt consideration of the identified vulnerabilities and taking remedial measures.

## SUMMARY OF COMPLIANCE RATINGS

Table 1. Summary table of compliance ratings for the Third Monitoring round recommendations

Third Monitoring Round Recommendation	Compliance Rating			
	Fully	Largely	Partially	Not
1. Anti-corruption policy			×	
2. Civil society involvement, awareness-raising, monitoring			×	
3. Anti-corruption policy coordination institutions			×	
4. Detection, investigation and prosecution			×	
5. Foreign bribery enforcement			×	
6. Effective regret, immunities				×
7. Confiscation			×	
8. Access to financial data		×		
9. Databases, internal investigations			×	
10. Corruption and organised crime		×		
11. Money-laundering			×	
12. Integrity in the public service			×	
13. Transparency in public administration/ASAN	×			
3.4 Public financial control and audit *	N/A			
14. Public procurement				×
15. Access to information			×	
16. Political corruption*	N/A			
17. Immunities of judges; corruption in judiciary				×
18. Independence and integrity of judges			×	
3.9. Business integrity				×

\* “Public financial control and audit” and “Political corruption” are not covered by the Fourth Round of Monitoring.

## INTRODUCTION

The Istanbul Anti-Corruption Action Plan (Istanbul Action Plan, or IAP) was endorsed in 2003. It is the main sub-regional initiative in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The Istanbul Action Plan covers Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan; the other ACN countries participate in its implementation. The implementation of the Istanbul Action Plan includes a systematic and regular peer review of the legal and institutional framework for fighting corruption in the covered countries.

Azerbaijan joined the Istanbul Action Plan in 2003. The initial review of legal and institutional framework for the fight against corruption and recommendations for Azerbaijan were endorsed in 2004. The first monitoring round report, which assessed the implementation of initial recommendations and established compliance ratings of Azerbaijan, was adopted in 2005. The second monitoring round report was adopted in 2010 and the Third monitoring round report – in 2013. The monitoring reports updated compliance ratings of Azerbaijan with regard to previous recommendations and included new recommendations. In between of the monitoring rounds Azerbaijan provided updates about actions taken to implement the recommendations at all IAP monitoring meetings. Azerbaijan has also actively participated and supported other activities of the ACN. All reports and updates are available at the ACN web-site at: [www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm](http://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm).

The Fourth Round of Monitoring under the Istanbul Action Plan was launched in 2016 according to the methodology adopted by the ACN countries. Azerbaijan authorities submitted replies to the country-specific questionnaire in May 2016 along with other requested materials. Transparency International (TI) Azerbaijan and the CoE/EU Project “Strengthening capacities to fight and prevent corruption in Azerbaijan” provided material for the report as well.

According to the methodology of the fourth monitoring round, the report includes an in-depth study of a sector – Integrity in Education in Azerbaijan. The sector was selected based on the survey of non-governmental representatives and Azerbaijani authorities. The monitoring team is thankful to representatives of NGOs, international organisations, business and the government who took part in the survey.

An on-site visit to Baku took place on 21-24 June 2016. After the on-site visit, Azerbaijan authorities provided additional information as requested. Ms Enery Quinones, Chair of the OECD/ACN Istanbul Anti-Corruption Action Plan, led the monitoring team. The team included:

- Ms Anca Jurma, Chair of the Law Enforcement Network of ACN, Chief Prosecutor, DNA Romania
- Ms Mari-Liis Sööt, Ministry of Justice, Estonia
- Mr Dirk Plutz, Associate Director, Policy Advisor at the Procurement Policy Department, European Bank of Reconstruction and Development (EBRD)
- Ms Aziza Umarova, Advisor on Public Sector Innovation, UNDP Global Centre for Public Service Excellence
- Mr Batuhan Aydagül, Director of the Education Reform Initiative, Turkey
- Mr William Loo, Deputy Head of the OECD Anti-Corruption Division
- Ms Tanya Khavanska, Project Manager, OECD/ACN
- Ms Rusudan Mikhelidze, Project Manager, OECD/ACN
- Ms Kateryna Obvintseva, Analyst, OECD Directorate for Education and Skills.

The monitoring team would like to thank the government of Azerbaijan for excellent cooperation in the framework of the Fourth Monitoring Round. The co-ordination on behalf of Azerbaijan was ensured by the ACN National Co-ordinator Mr Kamran Aliyev, Deputy Prosecutor General – Head of the Anti-Corruption Directorate with the Prosecutor General (ACD) and the staff members of the ACD: Mr Elnur Musayev (Senior prosecutor of the ACD), Mr Sabuhi Aliyev (Prosecutor, Organizational and Information Support Department), Mr Isfandiyar Hajiyev (Prosecutor, Organisational and Information Support Department), and others.

During the on-site visit, the monitoring team held 11 thematic panels with representatives of various public authorities of Azerbaijan organised by the national co-ordinator. The OECD Secretariat arranged

separate meetings with representatives of civil society, business and international organisations. *Constitution Research Foundation* hosted and co-organised meetings with representatives of NGOs, *Entrepreneurs' Confederation* hosted and co-organised the meetings with the business community and the *Swiss Cooperation Office for the South Caucasus* hosted and co-organised meeting with international community.

Representatives of the following government agencies participated in the meetings: the Anti-Corruption Directorate with the Prosecutor General (ACD), Commission on Combating Corruption (CCC), Advisor of the President of the Republic of Azerbaijan on economic reforms, Ministry of Justice/ Municipal Affairs Centre, Cabinet of Ministers/Chancellery of the Government, Administration of the President, Members of Parliament, Legal Affairs Committee of Parliament, Council of State Support to NGOs under the President of the Republic of Azerbaijan, State Agency for Public Services and Social Innovations, Ministry of Justice, Ministry of Economy, Ministry of Taxes, State Customs Committee, State Oil Fund, Financial Market Supervision Chamber, Prosecutor General's Office, Ministry of Interior, State Examination Centre, Mutual legal assistance (MLA) authorities, Central Bank Legal Department, Ministry of Finance, Chamber of Accounts, Central Elections Commission, Public Administration Academy under the President, Human Rights Commissioner (Ombudsman); Judges; Academy of Justice; Judicial Legal Council; Ministry of Communication and High Technologies. The monitoring team visited the Ministry of Education (MoE) and met with its various department representatives.

This report was prepared on the basis of the government of Azerbaijan's answers to the questionnaire, the monitoring team's findings from the on-site visit, additional information provided by the government of Azerbaijan and NGOs, and research by the monitoring team, as well as relevant information received during the plenary meeting. Work on the in-depth study of the education sector was led by Ms Kateryna Obvintseva, Mr Richard Yelland and Mr Thomas Weko of the OECD Directorate for Education and Skills, with the support of the ACN secretariat, including Ms Olga Olson.

The report was adopted at the ACN/Istanbul Action Plan plenary meeting in Paris on 16 September 2016. It contains the following compliance ratings with regard to recommendations of the Third Round of Monitoring of Azerbaijan: **out of 20 previous recommendations Azerbaijan was found to be not compliant with 4 recommendations, partially compliant with 11 recommendations, largely compliant with 2 recommendations and fully compliant with 1 recommendation. Two recommendations of the previous round (Public financial control and audit, political corruption) were not evaluated, as the fourth monitoring round does not cover relevant topics. The fourth round monitoring report includes 29 new recommendations; 2 previous recommendations were recognised to be still valid.**

The report will be made public after its adoption, including at [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn). The authorities of Azerbaijan are invited to disseminate the report as widely as possible. To present and promote implementation of the results of the fourth round of monitoring the ACN Secretariat will organize a return mission to Azerbaijan, which will include a meeting with representatives of the public authorities, civil society, business and international communities. The government of Azerbaijan will be invited to provide regular updates on measures taken to implement recommendations at the Istanbul Action Plan plenary meetings.

The Fourth Round of Monitoring under the OECD/ACN Istanbul Anti-Corruption Action Plan is carried out with the financial support of Latvia, Liechtenstein, Lithuania, the Slovak Republic, Sweden, Switzerland and the United States.

## *Chapter 1*

# ANTI-CORRUPTION POLICY

### 1.1 Key anti-corruption reforms and corruption trends

Azerbaijan achieved progress in its anti-corruption efforts in several sectors of public administration such as *services delivery, police* and *education*. The perception of corruption in police and education decreased as a result of the measures to reform the education system and the road police. Efficient service delivery by ASAN centres is a commendable achievement. The performance of the Anti-Corruption Directorate increased and the Civil Service Commission started to show progress. Government efforts resulted in increased trust of citizens and positive changes in the level of corruption.<sup>1</sup> However, addressing the corruption-prone areas requires stronger political will, efforts and healthy environment for broad stakeholder participation in the fight against corruption. With the existing financial resources, growing skills and capacities in government institutions, Azerbaijan has the potential for more significant and comprehensive actions to rid public institutions and the business sector from entrenched corruption.<sup>2</sup>

#### ***Key anti-corruption reforms***

After the Third Monitoring Round, the primary objective of the government has been advancing economic reforms to overcome the challenges caused by the decreased oil price, and raise the country's international profile. Azerbaijan continued to focus on e-government, service delivery and simplification of regulations as the way to prevent corruption. Anti-corruption reforms started in licencing regulations, tax, customs and defence sectors. Azerbaijan has explicitly stated its goal to reduce red tape and promote open government. However, policy document is not based on evidence and would benefit from explicit anti-corruption goals. Fundamental results in key anti-corruption areas such as the civil service, public procurement and the judiciary are yet to be achieved.

While several new structures were created to deal with economic challenges, two bodies key to the prevention of corruption – the Commission on Civil Service and the Procurement Agency -- were abolished with some of their functions transferred to the new institutions. These changes have given rise to concerns with regard to the anti-corruption preventive framework. In addition, concerns regarding the effective performance of the CCC have been raised due to lack of sufficient resources and the capacity of the Secretariat. Anti-Corruption Directorate under the Prosecutor General's Office remains as a core functional anti-corruption institution in Azerbaijan. Draft legislation has been stalled for years and enforcement of some of the already adopted laws such as on asset declaration and liability of legal person have been made impossible leaving the monitoring team with the impression that mentioned laws were adopted to formally meet international standards, however, without the willingness to enforce them in practice.

#### ***Corruption trends***

This section summarizes corruption trends in Azerbaijan based on the international surveys and reports. Results of the national study conducted in 2014 are also included. The findings present mixed picture of the corruption situation in Azerbaijan: some figures show progress, yet others demonstrate negative trends. Overall, the section shows some improvements in the perception of corruption, increased trust towards specific institutions (education, police, ASAN), positive figures in service delivery and business environment simplification, however, deterioration in freedom of speech and democracy.

According to the *Transparency International's Corruption Perceptions Index 2015*, Azerbaijan ranks at 119 out of 168 countries included in the index. This is an improvement compared to 2013 (score 28; rank

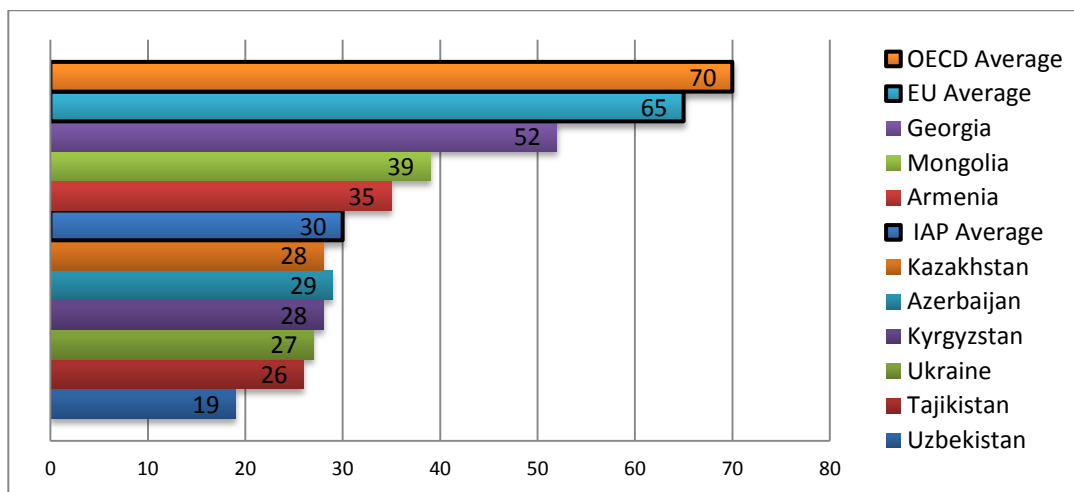
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<sup>1</sup> See section 1.1 of this Report.

<sup>2</sup> TI National Integrity System (2014) available at: <http://goo.gl/aRWHSE>; Freedom House (2016), [Nations in Transit](#).

127/177).<sup>3</sup> TI Azerbaijan has carried National Integrity System Assessment of Azerbaijan in (2014) which analyses achievement and challenges in anti-corruption policy framework of Azerbaijan.<sup>4</sup>

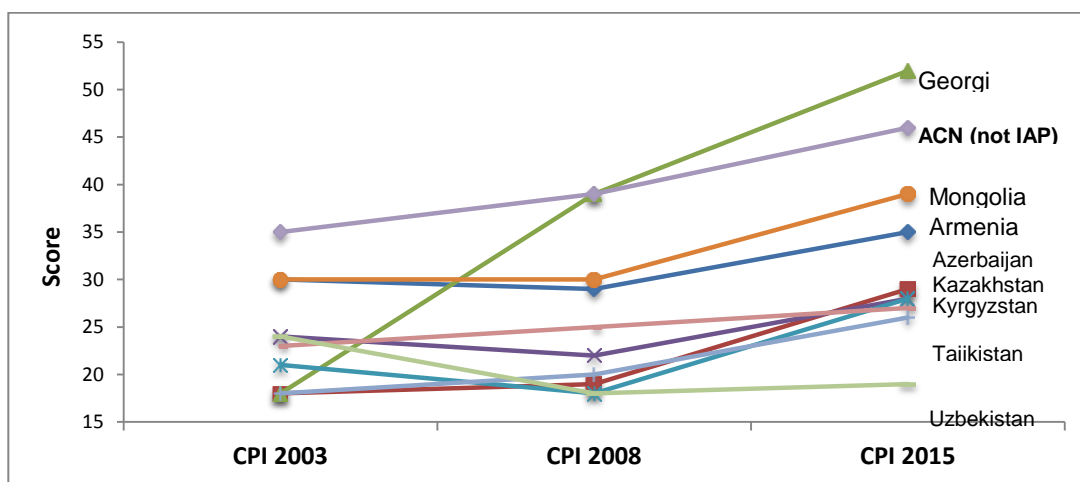
Figure 1. IAP, EU and OECD countries in the TI's Corruption Perception Index (CPI)(2015, Score)



Note: Higher score means 'less corrupt'.

Source: Transparency International, CPI, <http://goo.gl/1Ag4HZ>.

Figure 2. IAP countries in the Transparency International Corruption Perception Index (CPI Score)



Notes: Higher score means 'less corrupt'.

“ACN (not IAP)” means: Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, FYRM, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia.

Source: Transparency International, CPI, <http://goo.gl/1Ag4HZ>.

Results of the *TI Global Corruption Barometer 2013* show some progress as well. 41% of respondents think that corruption has decreased, and 27% believe it has increased (compared to 52% in 2010). 69% believe that government's efforts to combat corruption are effective (compared to 66% in 2010). There is

<sup>3</sup> Transparency International, [Corruption Perceptions Index](http://www.transparency.org).

<sup>4</sup> “[...] important legal and institutional developments have taken place in the areas of public sector reform and money laundering, among others. These efforts have started to pay off, translating in a significant decrease in citizens' perceptions of corruption in many sectors, as reflected by the recently launched Global Corruption Barometer 2013.” At the same time, “Azerbaijan faces major challenges of endemic corruption. Deeply entrenched patronage networks permeate all spheres of public life and hamper the long term economic and social development prospects of the country. [...]Economic and political powers are largely concentrated in the ruling elite, creating a blurred line between political and business interests. While the country's natural resource wealth has largely contributed to economic growth and political stability in the last decade, it is also considered a major source of corruption and driver for political patronage networks. Public financial management, political processes, the judiciary and the police count among the sectors considered to be most vulnerable to corruption. National Integrity System (2014) available at: <http://goo.gl/aRWHSE>.



an improvement in perception of corruption for police, civil service and education too, while medical and health services and the judiciary are viewed as the most corrupt.<sup>5</sup>

**Table 2. Perception of corruption by institution, % that think it is corrupt or extremely corrupt**

Institution	2010	2013
Medical and health services	-	44
Police	54	41
Public officials/ civil servants	50	37
Education system	49	37
Judiciary	46	42
Political parties	28	28
Business/ private sector	27	35
Military	31	29
Parliament/ legislature	27	29
NGOs	23	26
Media	19	27
Religious bodies	13	26

Source: Transparency International, [www.transparency.org](http://www.transparency.org).

On the *World Bank's Worldwide Governance Indicators for 2014* Azerbaijan improved for *control of corruption* and for the *rule of law*.<sup>6</sup>

**Table 3. Worldwide Governance Indicators, Control of corruption and Rule of law**

Country	Control of corruption*		Rule of law*	
	2014	2009	2014	2009
Armenia	40	33	44	41
<b>Azerbaijan</b>	<b>18</b>	<b>10</b>	<b>31</b>	<b>22</b>
Georgia	75	52	64	49
Kazakhstan	26	21	34	33
Kyrgyzstan	12	6	16	6
Mongolia	38	24	41	46
Tajikistan	14	10	15	11
Ukraine	15	16	23	24
Uzbekistan	11	7	12	7
<i>High income: OECD</i>	85	86	88	87
<i>Europe and Central Asia</i>	64	62	68	65

Note: Percentile rank indicates the percentage of countries worldwide that rank lower than the indicated country, so that higher value means better governance score.







Source: Worldwide Governance Indicators, World Bank, <http://goo.gl/WA66JU>.

<sup>5</sup> Medical and health services were not included in the 2010/2011 Global Corruption Barometer.

<sup>6</sup> ACN Summary Report (forthcoming) based on "[World Bank Worldwide Governance Indicators 2014](http://www.worldbank.org/governance)".

According to the *ERCAS Index of Public Integrity 2016*, Azerbaijan ranks 64<sup>th</sup> among 105 countries.<sup>7</sup> Azerbaijan ranks the 2<sup>nd</sup> in the region and the 4<sup>th</sup> in the world in administrative burden component, whereas in the freedom of press component, it is the worst performer in the world.

Figure 3. Azerbaijan in the Index of Public Integrity, 2016

Components		Component Score	World Rank	Regional Rank	Income Group Rank
Judicial Independence		4.29	74/105	5/12	16/28
Administrative Burden		9.66	4/105	2/12	2/28
Trade Openness		4.92	90/105	9/12	25/28
Budget Transparency		8.5	23/105	3/12	7/28
E-Citizenship		5.27	53/105	6/12	17/28
Freedom of the Press		1	105/105	12/12	28/28

Note: Scores vary between 1 and 10, with a higher value representing better performance.

Source: Index of Public Integrity, 2016, European Research Centre for Anti-Corruption and State-Building, <http://integrity-index.org>.

Azerbaijan's ranking in *World Bank's Doing Business 2016* rank improved from 67 in 2013 to 63 in 2016.<sup>8</sup> Improvements include the simplification of preregistration and registration formalities for businesses, construction permits, new building regulations and the one-stop-shop.<sup>9</sup>

According to the *national survey* conducted in Azerbaijan in 2014 by Constitution Research Foundation<sup>10</sup> which seems to have looked at the public perception of prevalence, causes and threats of corruption and to some extent the experience of corruption, 46% of respondents believe that the level of corruption has dropped in Azerbaijan, 26% believe that the level of corruption has increased, the rest believe that there has been no change. Among the most problematic issues for Azerbaijan, corruption is named as the third (by 35.8%). Institutions with the highest public trust are: Presidential Administration, ASAN, the Ministry of Education. The least trusted institutions are: Parliament, Courts, Media and NGOs. These results resemble the trends of the Global Corruption Barometer 2013. 30.2% of the respondents perceive that civil servants and government officials are the main instigators of bribery, 29% think that citizens are. As to the causes of corruption, citizens name non-compliance with the laws and other activities of government agencies as the main causes; other causes the respondents name: citizens' tolerance to corruption (27.5%), and low level of moral qualities (20.7%) failure to enforce the law (44.5%), lack of integrity in public service (39.3), lack of public control over public authorities (34.5%).

<sup>7</sup> European Research Centre for Anti-Corruption and State Building (ERCAS), "[Index of Public Integrity](http://integrity-index.org)".

<sup>8</sup> ACN Summary Report (forthcoming) based on [World Bank Doing Business 2016](http://www.doingbusiness.org) ranking.

<sup>9</sup> [World Bank Doing Business 2016](http://www.doingbusiness.org).

<sup>10</sup> Only some findings were provided to the monitoring team by government. The study was not published.

## 1.2 Impact of anti-corruption policy implementation

### **Recommendation 1 from the Third Monitoring Round report on Azerbaijan:**

- Develop a methodology and conduct, on a regular basis, surveys of corruption situation in Azerbaijan and assessments of anti-corruption efforts. Their outcomes should be widely disseminated, discussed and used in the anti-corruption policy.
- Ensure the existence of a strategic basis of anti-corruption policy taking into account the results of the assessment and the discussion and reflecting main corruption problems in different areas, priorities and measures to fight corruption in a systematic way; effectively implement, monitor and regularly review it.
- Develop common guiding principles and methodology for anti-corruption plans by state and local public institutions, promoting their own corruption risk assessment, and enforce these plans; ensure units responsible for implementation of anti-corruption plans in state and local public institutions and promote their networking under the umbrella of the competent central government anti-corruption institution.
- Analyse corruption problems at municipal level and develop measures to target them. Ensure a central institution has clearly defined mandate and takes leadership in prevention of corruption in local governments.

### **Recommendation 2 from the Third Monitoring Round report on Azerbaijan:**

- Ensure more effective and regular involvement of civil society in the development, implementation and monitoring of anti-corruption policies, research on corruption and in the work of the CCC, for example, by including a representative of the civil society as a member of the CCC.
- Set up a mechanism under the authority of CCC to carry out monitoring and evaluation of the implementation of anti-corruption policy including civil society.

Azerbaijan's anti-corruption policy has been reviewed in the framework of the previous monitoring rounds of the Istanbul Anti-Corruption Action Plan.<sup>11</sup> Aim of the Fourth Monitoring Round is to assess the impact of the policy since the previous monitoring round, its results and efficiency. This section looks into the implementation of 2012-2015 National Anti-Corruption Action Plan<sup>12</sup> and the 2012-2015 Action Plan on Open Government Partnership,<sup>13</sup> and examines the new National Action Plan for 2016-2018 on Promotion of Open Government adopted on 27 April, 2016, which includes also a component on anti-corruption. The section concludes that some impact of anti-corruption reforms can be observed. Positive developments can be seen in the process of elaboration of the policy document, the future plans for introduction of the electronic tool for monitoring are welcome, but no progress is noted in relation to the quality of the newly adopted Action Plan and its monitoring since the Third Monitoring Round. Furthermore, the section expresses strong concerns on deterioration of the environment for functioning of the civil society and urges the authorities to remedy the situation as a matter of priority.

### ***Anti-corruption policy documents***

After the expiry of the previous two action plans for 2012-2015, on anti-corruption and on open government, and National Action Plan for 2016-2018 on Promotion of Open Government (Action Plan) was adopted on 27 April, 2016 by Presidential Decree.<sup>14</sup> This is the fourth policy document addressing anti-corruption issues in Azerbaijan. According to the government, it serves as an anti-corruption action plan and open government partnership action plan at the same time. The positive feature of the Action

<sup>11</sup> IAP monitoring reports on Azerbaijan can be found here: [Review Report](#) (2004), [1<sup>st</sup> Monitoring Round Report](#) (2005), [2<sup>nd</sup> Monitoring Round Report](#) (2010), [Third Monitoring Round Report](#) (2013).

<sup>12</sup> <http://antikorrupsiya.gov.az/upload/file/NACAP-Action%20Plan-2012-2015.pdf>

<sup>13</sup> <http://antikorrupsiya.gov.az/upload/file/OGP--Action%20Plan-2012-2015.pdf>

<sup>14</sup> See the web-page of the CCC <http://www.antikorrupsiya.gov.az/view.php?lang=en&menu=0>.

Plan is its primarily preventive nature.<sup>15</sup> However, the main shortcomings of the previous action plans pointed out in the Third Monitoring Round remain in the current policy document, both in terms of substance of the Action Plan and its technical elements: strategic and evidential basis is lacking, goals are not explicitly stated in respect of corruption, measures are random, time-frames are not precise and budget, performance and outcome indicators are missing.

The Action Plan is mainly centred on e-governance and public service delivery. It includes the measures to develop e-services, increase transparency and civil society participation and digitalization of internal governance processes and some measures that target corruption directly (for example improving hotline-161, promoting conflict of interest rules and recruitment rules in local governments, raising business awareness about corruption). These measures are crucial elements of prevention of corruption in general and in the context of Azerbaijan, however, are not targeted to address corruption challenges identified in this report, for example, in the judiciary, public procurement and other areas. Additionally, the following main concerns expressed at the on-site visit by interlocutors are not addressed in the Action Plan: irregular, arbitrary inspections of companies despite the suspension of regular inspections, poor financing of hospitals, informal payments to doctors, lack of rule of law and accountability; conflict of interest, e.g. holdings of the companies are owned secretly by state official; dependence of judiciary on executive power, bribes in order to avoid environmental fines in oil industry. This list is not based on evidence. Nevertheless, it demonstrates that the government needs to pay more attention to identifying areas most vulnerable to corruption and addressing them.

The Action Plan was developed in a consultative process involving civil society, representatives of international organisations and other key stakeholders. Drafts and information about the process were posted on the web-page of the CCC. Three public discussions were held within the framework of the Working Group on Improving Legislation of the CCC.<sup>16</sup> The sessions were open to the public, and radio transmission was also organised. An EU-funded Council of Europe project<sup>17</sup> provided its expertise by preparing an opinion on the draft<sup>18</sup> versions of the action plan and supported the final public discussion in March 2016, attended by representatives of a cross-section of state and public institutions, professional associations, and the NGO sector.<sup>19</sup> Consultations were held on two separate draft action plans on anti-corruption and on open government. However, eventually only the Action Plan for 2016-2018 on Promotion of Open Government was adopted with some measures from the draft National Anti-Corruption Action Plan for 2016-2019 included in the adopted Action Plan.<sup>20</sup> Interlocutors met on-site were satisfied with the process, but disappointed with the end result which in their view was the less ambitious Action Plan than the draft versions that lacked clear indicators. However, the government reports that 30 of the 51 measures were incorporated from the Draft Anti-Corruption Action Plan to the adopted Action Plan, 19 measures were not integrated since these issues have already been addressed through several legislative documents.<sup>21</sup>

The monitoring team regrets that a number of anti-corruption measures, were eventually left out. Limited anti-corruption scope of the Action Plan also diminishes the framework for the sectoral action plans that agencies are obligated to develop based on the national policy document.<sup>22</sup>

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<sup>15</sup> Notably, Second Round Monitoring Report recommended Azerbaijan to have balanced approach in its anti-corruption policy between preventive and law enforcement measures. This approach has been also reflected in the previous anti-corruption strategy of Azerbaijan.

<sup>16</sup> <http://goo.gl/zmdUf8> ; <http://goo.gl/W5dyJQ>; <http://goo.gl/16xU1V>;

<sup>17</sup> CoE/EU Programmatic Cooperation Framework (PCF) Project “Strengthening capacities to fight and prevent corruption in Azerbaijan”; For more information see: <http://goo.gl/7Eqtv6>

<sup>18</sup> Council of Europe prepared the review of both draft action plans in 2016: Tilman Hoppe, Review of: Draft National Anti-Corruption Action Plan for 2016-2019 Draft Action Plan for 2016 2018 on Promotion of Open Government (2016).

<sup>19</sup> Commission for Combating Corruption News “Public Discussion on Action Plans on Fight against Corruption was organized”, 16 March 2016, Available at : <http://goo.gl/zmdUf8>

<sup>20</sup> Chapter 8 of the Action Plan on prevention of corruption and improvement of legislation.

<sup>21</sup> CoE Project will provide a detailed comparison of the draft and adopted action plans as Annex to the technical review mentioned above. Shortage of corruption-related measures in the action plan was noted by the Council of Europe assessment even before the merger of the 2 action plans.

<sup>22</sup> On sectoral plans see below.

As regards the *strategic basis* for the action plan, Azerbaijan's last anti-corruption strategy adopted in 2007 expired in 2011.<sup>23</sup> No new strategy has been adopted since then. The country's main policy vision document, the development concept "[Azerbaijan – 2020: Outlook for the Future](#)" mentions that an "expansion of the fight against corruption [...] will continue", but does not address the problem of corruption. Therefore, a clear vision on the goals or objectives in anti-corruption would be welcome. At the on-site the monitoring team was informed that one of the long-term goals of the open government was to complete the e-government reform and measure the results through the ASAN Index. However, no such goals have been identified for fighting corruption. The monitoring team was also told that the 2 main strategic goals of the Action Plan are: establishing an anti-corruption culture in the country and enhancing cooperation between civil society and the government. Yet, it is not clear how the implementation of the Action Plan measures will contribute to the mentioned goals.

CCC Secretariat explained that the nature of the fight against corruption in Azerbaijan has changed over the years. Corruption is not as problematic in Azerbaijan as it was before. Consequently, the Action Plan is more focused on transparency, education and awareness measures. In view of the monitoring team the shift to the preventive measures is positive and should be commended. However, this approach should be more systematic, comprehensive and backed up by evidence and data.

According to the authorities various sources were used as an evidentiary basis for the developing the Action Plan: the results of the implementation of previous anti-corruption policy documents, reports of national agencies, civil society institutions and international partners. However, the assessment of the implementation of the previous action plan was not completed at the time of the Action Plan elaboration and thus could not be used as basis for the new Action Plan.

Additionally, the government referred to various studies conducted by civil society, as sources of the Action Plan. TI Azerbaijan conducted 16 such analyses on various topics.<sup>24</sup> In 2014, the NGO Constitutional Research Foundation conducted a public opinion survey with a sample of 1200 respondents. The survey measured public opinion about the government's anti-corruption efforts and corruption perceptions. The results are not publicly available and the monitoring team was only provided with the excerpts of the study. The government indicated that the relevant recommendations have been reflected in the Action Plan.<sup>25</sup>

Information obtained from criminal investigations was mentioned as another source of the Action Plan together with the risk assessment conducted by the ACD in the sectors such as social security, banks, health, land registry and municipalities. According to the answers to the questionnaire, main risks revealed were the "selling of land plots without auctions, paying of fees for the allocation of land plots." As a result, measures on the prevention of corruption in the activities of municipalities were included in latest Action Plan<sup>26</sup> (but, mainly focused on recruitment and ethics codes).

Whereas all the mentioned attempts for evidence-based policy are positive, they have not been reflected in an analysis of corruption that would serve as the basis for the policy document. Neither have they been meaningfully addressed in the Action Plan.

Furthermore, despite the declared strong political will to fight corruption as expressed in the series of the Presidential speeches,<sup>27</sup> lack of financial planning and dedicated financial resources, a budget for the anti-corruption policy as such could be interpreted as the signal for low priority attached to anti-corruption

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<sup>23</sup> The latest strategy expired in 2011 is available at: <http://antikorrupsiya.gov.az/view.php?lang=en&menu=0>

<sup>24</sup> Government report that several comprehensive analyses were conducted by in topic of (i) reforms in notary services and current problems, (ii) problems in social pension system, (iii) problems in the field of state registration of uncertified immovable property, (iv) transparency in gas supply and etc. (answer to the question 1.5). Findings have not been provided to the monitoring team.

<sup>25</sup> Answers to the questionnaire 1.6.

<sup>26</sup> Answers to the questionnaire 1.5.

<sup>27</sup> "If we want to become a developed country, we must conduct a more serious fight against bribery. I am confident that we will win this fight". "The fight against corruption should become a nationwide mission." – Ilham Aliyev, 2013. "There is a strong political will to fight against corruption in successfully in Azerbaijan. Our country has modernized its legislative base and carried out institutional reforms within the framework of the international initiatives in the field of fighting against corruption." -- Ilham Aliyev, 2014 – quoted in [10 Years of Achievements in Fight against corruption 2005-2015](#).

measures. Nevertheless, financial resources allocated to some measures such as improving service delivery, specifically ASAN centres demonstrates the political will to reform this particular area. The government, however, stated that there has been no anti-corruption measure left out of anti-corruption efforts of Azerbaijan, due to the lack of financial resources.

To conclude, it is evident that the current policy focus is on economic reforms as reflected in the development concept cited above. As noted in the opening remarks of the Member of Parliament, at the same time the member of the CCC of the public consultations meeting “[policy documents] reflect the new economic realities in view of the devaluation of the national currency and the global decline in oil prices.”<sup>28</sup> However, the monitoring team notes that fighting corruption is an indispensable precondition for improving the business climate and economic development. A comprehensive approach to anti-corruption policy and diligent efforts are needed to achieve results.

### ***Sectoral plans***

State agencies are obligated to adopt sectoral plans in line with the national Action Plan and submit them to CCC.<sup>29</sup> Reportedly, there are over 100 such action plans developed in connection with the previous national action plan. The most sectoral plans for the new policy cycle (2016-2019) are yet to be developed yet.<sup>30</sup> The monitoring team had a chance to examine the sectoral plans provided by the government (for the Ministry of Taxes, Ministry of Justice, Ministry of Education, and Civil Service Commission)<sup>31</sup> that contain specific actions aimed at implementing the national action plan measures within the sector. For example, the action plan of the Civil Service Commission (CSC) for implementation of the 2012-2015 anti-corruption action plan, is the most elaborate among the presented sectoral plans and contains important anti-corruption measures such as: designation of Freedom of information (FOI) officers, trainings on access to information, conflict of interests, improving the merit-based recruitment process, submission of procurement plans and agreements to the procurement agency, support other institutions implementation of their planned measures, measures aimed at the increasing public trust and others. Whereas the workplan of the Ministry of Taxes for 2016 copies the national Action Plan measures that are relevant to the Ministry of Taxes. The main shortcomings of the national action plan: lack of specific measures, indicators, and the budget, are also visible in the sectoral plans. They also show the lack of methodological guidance from CCC.

In addition, the Presidential Decree prescribes that the agencies consult with the civil society in the process of development of the action plans. However, interlocutors met during the on-site visit were not aware of the sectoral action plans. Some involvement in the development of the sectoral plan for education was noted, however, recommendations were expressed for greater participation. The plans are not published on the websites of institutions or CCC.

The coordination of the sectoral action plans from the side of the CCC is weak. The interaction is limited to the phone consultations and receiving the adopted action plans. Limited methodological guidance is provided to the agencies. Risk assessments inside the agencies are not promoted and the enforcement of the sectoral plans is not monitored. The advantage of the established practice of the sectoral action plans could be better used to share experiences, learn from leading state bodies such as State Agency for Public Service and Social Innovation, ACD, MoE, and CSC. Regular thematic discussions could be convened around key sectors to review the results, share experience and push performance. Internal action plans should be based on risk assessments and supported by implementation mechanisms. Necessary coordination and monitoring should be ensured.

### ***Monitoring of implementation***

The Third Round Monitoring Report recommended setting up a mechanism under the authority of CCC to carry out monitoring and evaluation of the implementation of anti-corruption policy with the participation of civil society, however no such mechanism was set up. The government reported that the methodology

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<sup>28</sup> Minutes of the last public consultation meeting of the Working Group on Legislation Development on 14 March, 2016, provided by government.

<sup>29</sup> According to the Presidential Decree of 27 April, 2016 on the approval of the National Action Plan for 2016 - 2018 on Promotion of Open Government, state bodies have to prepare sectoral action plan until December 31, 2016.

<sup>30</sup> Ministry of Taxes has already adopted the action plan for 2016.

<sup>31</sup> The chapter on Integrity in Education discusses the sectoral plan for education in more detail.

developed by the CCC for the previous action plan will be used for the new Action Plan as well. Monitoring is limited to simple reporting by state agencies. The Secretariat of CCC collects the reports and rates compliance between 0-3, where 0 means no progress and 3 means significant progress, using various available sources. There is no interaction or regular coordination between the Secretariat and the agencies in the process of monitoring. No regular consultations are held to discuss the results of implementation.

Two interim reports were published for the implementation of the 2012-2015 open government action plan. The final report on implementation of the Anti-Corruption Action Plan 2012-2015 was published on the CCC website in July, 2016. Monitoring team had the possibility to review the interim reports as the final report is only available in Azeri language. The interim reports mainly describe the number of agencies who have implemented the measures however, no further analysis is provided as to the effectiveness, efficiency or impact.<sup>32</sup> The report on the 2012-2015 anti-corruption action plan was not prepared. There is no mechanism to guide and incentivise the state bodies to boost their performance. Civil society is not involved in the monitoring, however, their involvement is foreseen in the future.<sup>33</sup>

Monitoring process is further impeded with the lack of indicators to measure progress or the performance. Some measures of the action plan have only quantitative indicators, whereas others have in fact no indicators at all. For example, the indicator for improving the performance of 161-hotline, is “report on carried out measures and publication of information”, which is not a measurable indicator and does not express the objective it aims to achieve. Indicator for the oversight function of the Ombudsman of access to information is “information on provided resources and implemented measures”, whereas measurable indicators that would show improvements of the right to access to information in practice would instead be: number of satisfied complaints, the share of the granted requests for information vs. refusals, the frequency of proactively published information, etc.

Several NGOs carry out alternative monitoring of the implementation of action plan: TI Azerbaijan published reports on implementation of the previous OGP action plan and thematic reports on implementation. Monitoring methodology of the Open Government Initiative National Action Plan for 2012-2015 combines both quantitative and qualitative tools.<sup>34</sup> In addition, TI Azerbaijan, with financial support of United States Agency for International Development (USAID) and in partnership with Constitution Research Fund prepared the interim implementation of the 2012-2015 National Anti-corruption Action Plan.<sup>35</sup> Alternative reports for the full action plan cycle have not been produced so far.

The government reports, that the results of the alternative evaluation are taken into account when preparing their assessment and that the CCC distributes the draft evaluation reports to the civil society organisations for their feedback regularly. According to the TI National Integrity System (NIS) (2014), external evaluation by NGOs is limited, not relying on the surveys or data to measure the impact of the implemented policy, which is partly attributable to the limited resources and limitations on funding the NGOs in Azerbaijan. Interlocutors informed the monitoring team that due to regulations in relation to NGOs, some members of civil society had to discontinue their work of monitoring anti-corruption policy implementation.<sup>36</sup> NGO Constitution Research Foundation disagrees.

The Action Plan envisages the following measures to improve monitoring: software for collecting reports, appointment of anti-corruption contact points, coordination between internal security units and anti-corruption agencies, reporting to the parliament, cooperation with NGOs and conducting of surveys as main elements of monitoring. Government additionally reported about the plans to create a new online monitoring tool for evaluating results of Action Plan implementation. According to the government, this tool will enable state bodies to upload information, image or video regarding the progress of each measure envisaged in Action Plan. It will create online interactive network and environment between state bodies and CCC. These measures are welcome. At the same time, Azerbaijan is encouraged to promote mutual cooperation and networking amongst the implementing agencies. Using an electronic system for collection

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<sup>32</sup> <http://www.antikorupsiya.gov.az/view.php?lang=en&menu=49>

<sup>33</sup> Measure 11.1 of the Action Plan.

<sup>34</sup> [http://transparency.az/alac/files/OGP\\_report\\_2016\\_FINAL\\_EN.pdf](http://transparency.az/alac/files/OGP_report_2016_FINAL_EN.pdf)

<sup>35</sup> “Constitution” Research Foundation (2015) Implementation of the National Anti-Corruption Action Plan for 2012-2015, September 2013 – December 2014 available at: <http://goo.gl/CG3WMe>

<sup>36</sup> See section below.

of reports could ease the workload of the Secretariat but would not change the current method of formal interaction, unless combined with informal means of cooperation, such as visits in the state bodies, day-to-day interaction and guidance to help the agencies in the implementation.

### ***Impact of policy implementation***

The impact of policy implementation is not systematically analysed by the government. Such assessments have not been carried out in relation to the previous open government and anti-corruption action plans either. The new Action Plans lacks impact indicators too that would allow for such evaluation in the future.

The government reported about examples of analysing impact of anti-corruption measures, such as the work of Anti-Corruption Directorate in education and social and labor sector (2013) and banking sector (2014). Reportedly, in 2015, ACD conducted analyses of risks and impacts in the gas supply, education, bank sector, local self-governance. These developments are welcome and further encouraged. Azerbaijan is encouraged to use the outcome indicators for measuring impact, for example, public trust towards institutions; support for implementation of the anti-corruption reforms; perception and experience of corruption, attitudes and tolerance of citizens towards corruption and others. Impact evaluation will help improve the quality of anti-corruption policy, better target it at the newly emerging corruption risks, and demonstrate progress in combatting corruption. Practice of external evaluation of impact could be applied too. The Action Plan foresees the evaluation of effectiveness of anti-corruption measures in the future.

Overall, the measures taken by government in some isolated sectors, such as services, education and police, had positive impact on corruption over the years as detailed in section 1.1.of the report. The government also stated that the impact of implemented anti-corruption measures can be assessed with for example the decrease of complaints of citizens to the hot-line call centres and of written complaints as a result of the awareness measures. However, this might not at all be the indicator of success but instead show the decrease of trust towards the institutions and related feeling of indifference by the public.

Alternative report on implementation of the National Anti-Corruption Action Plan for 2012-2015 notes significant progress in implementing the national action plan on: improvement of the civil service legislation, institutional framework, e-services, maintaining the State Registry of Real Estate; new procedures for inspections; increased transparency and accountability in the municipality activities; and construction permits. The results of the interim monitoring show that while the average implementation rate of its components for the first monitoring period was 34%, by the end of the second monitoring report this indicator reached 71.47%. However, despite some progress the results are less visible in practice and the level of corruption is not much affected.<sup>37</sup>

### ***Recent development regarding civil society situation***

The monitoring team would like to draw attention to recent developments that have significantly affected the ability of civil society in Azerbaijan to play a role in fighting corruption.

In 2014, Azerbaijan introduced legislation that affected the operation of NGOs.<sup>38</sup> The government argues that this was aimed at increasing transparency, clarity and accountability regarding the activities of NGOs, and has inadvertently limited the operation of civil society in the country. The government enjoys wide control over the registration, operation and financing of NGOs. The Ministry of Justice has extensive powers to monitor compliance with the legislation, issue warnings for alleged breaches of law, and file a case in court to close down the NGO. The Venice Commission concluded that the new procedures for registration and obtaining grants, preventing foreign funding, unwarranted interferences into the internal autonomy of NGOs through reporting obligations and state supervision on internal organisation and functioning, have further restricted the operation of NGOs in Azerbaijan.<sup>39</sup>

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<sup>37</sup> Constitution Research Foundation (2015) Implementation of the National Anti-Corruption Action Plan for 2012-2015, September 2013 – December 2014 available at: <http://goo.gl/CG3WMe>

<sup>38</sup> The changes were introduced in the Law on Grants, Law on Non-governmental Organizations, Law on Registration of Legal Entities and State Registry and the Code on Administrative Offenses.

<sup>39</sup> European Commission for Democracy through Law (Venice Commission), "[Opinion on the Law on NonGovernmental Organisations \(Public Associations and Funds\) as Amended of the Republic of Azerbaijan.](#)" Council of Europe Venice Commission, 15 December 2014 at paras 88-93.



The NGO Coalition for “Increasing Transparency in Extractive Industries” reported on the blocking or seizing of bank accounts of the organisation and even the personal bank accounts of leaders of critical NGOs.<sup>40</sup> The government states that there are court decisions that have lifted freezing on bank accounts, criminal and tax examinations were closed.

3 NGOs applied with the latter to the OGP.<sup>41</sup> On 4 May, 2016 the OGP designated Azerbaijan ‘inactive’ using its “response policy” for the first time “due to unresolved constraints on the operating environment for Non-Governmental Organizations”.<sup>42</sup> Similarly, in 2016, the EITI downgraded Azerbaijan from a “compliant to a “candidate” pointing out that further work is needed to ensure civil society can participate in EITI in a meaningful way.

International organisations expressed strong concerns over the amendments,<sup>43</sup> unreasonable restrictions, persecutions and jailing of some of the most active NGO representatives expressing criticism towards the government,<sup>44</sup> calling upon Azerbaijan to address the issue.<sup>45</sup>

The situation in relation to the independent media deteriorated further as described in section 2.4 of the report. The media has an important role to play in fight against corruption and its role in investigative journalism should be promoted, not impeded. Allegations raised by journalists should be seriously followed up on and used as a source for detection of corruption cases by law enforcement, as discussed further in Chapter 3 in this report.

The government reports that in 2013-2015 more than 500 NGOs have been registered and in general more than 4 000 NGOs are functioning in Azerbaijan.

The monitoring team was reassured that work was ongoing to address these issues. The government reports about the enhanced cooperation with the NGOs and the increased state support. The Action Plan includes a measure to prepare proposals to develop an enabling environment for the activity of NGOs and the dedicated chapter of the development concept lists the measures such as elaboration of a national action plan on the development of civil society; new legislation to stimulate NGO activity, increase financing, involvement in the public commissions, creation of a national donor institute etc.<sup>46</sup> The government informed about the new regulations on grants adopted by the Cabinet of Ministers and a Presidential Decrees to enable more financial support to civil society institutions by central and local executive bodies. The monitoring team did not have the possibility to review these documents.

The monitoring team expresses strong concerns regarding the developments described above and urges the government to address the issue as a matter of priority, remove barriers for the effective functioning of NGOs and ensure favourable environment for meaningful participation in the fight against corruption.<sup>47</sup>

## Conclusions

Azerbaijan does not have a comprehensive evidence-based anti-corruption policy. Corruption risks and problems are not systematically analysed. The evaluation of the impact of anti-corruption measures and the efficiency of the anti-corruption programmes is not carried out. The Action Plan was developed without a full assessment of the implementation of the previous policy document. It lacks defined objectives, timeline, outcome indicators and a budget. Consultations for the development Action Plan were undermined by its quick adoption of the action plan which excluded a number of anti-corruption

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<sup>40</sup> <http://eiti-ngo-azerbaijan.org/?p=627>

<sup>41</sup> [The letter of 3 NGOs to the OGP Steering Committee](#), 2 March, 2015.

<sup>42</sup> Detailed information is available on the OGP web-page at: <http://goo.gl/Wg5anK>

<sup>43</sup> Resolution 1917(2013), The honouring of obligations and commitments by Azerbaijan, 23 January 2013.

<sup>44</sup> Nations in Transit Chapter on Azerbaijan at pg 6. European Commission for Democracy through Law (Venice Commission), “[Opinion on the Law on NonGovernmental Organisations \(Public Associations and Funds\) as Amended of the Republic of Azerbaijan.](#)” Council of Europe Venice Commission, 15 December 2014. Para 7. See also: [Statement of Open Society Foundation](#).

<sup>45</sup> European Union, Statement by the spokespersons of EU High Representative Catherine Ashton and Commissioner Štefan Füle on the enactment of amendments to the legislation on non-governmental organisations in Azerbaijan, 140212/01, 12 February 2014. Parliamentary Assembly resolution 2062 (2015) para. 8.

<sup>46</sup> Development concept “[Azerbaijan – 2020: Outlook for the Future](#)” chapter 9.

<sup>47</sup> On the defamation laws and restrictions on journalism see section 2.4 of the report.

measures foreseen in the drafts out of the adopted plan. The Action Plan fails to address fundamental corruption problems in the country: political and high level corruption, procurement, business licencing, judiciary, healthcare or extractives industries and anti-corruption policy lacks comprehensive, systemic nature. A study on perceptions of corruption among the general public was conducted in 2014 by the Constitutional Research Foundation. However, there are no regular and methodologically sound public opinion surveys on corruption in Azerbaijan. Recent work of the ACD to identify corruption problems and risks and to propose recommendations to specific agencies is commendable. These efforts must be strengthened and further used in policy development.

The practice of sectoral action plans is positive but, remains to a great extent formalistic and unused. The units responsible for implementation of anti-corruption plans in state and local public institutions are reportedly in place, but their networking has not been promoted. The sectoral approach could be better applied to share experience and replicate the achievements of the leading agencies in other sectors as well. Regular coordination, more interaction, regular thematic discussions would help achieve this purpose.

Azerbaijan is encouraged to set up a monitoring and evaluation mechanism that promotes performance by state bodies without further delay. Monitoring should extend beyond simple reporting and include meaningful interactions among the agencies and the CCC Secretariat, regular meetings to openly discuss the progress of implementation, identify the challenges, and stimulate and assist state bodies in implementation when needed. Regular feedback of civil society should be envisaged.

There is no analysis of corruption problems on the municipal level and related measures, nor has the central institution taken leadership in preventing corruption in local governments. Some NGOs confirmed that owing to their critical opinions on the anti-corruption initiatives much has improved in Azerbaijan. However, equal access to anti-corruption policy-making has not been guaranteed and some NGOs voicing criticism have been excluded. Azerbaijan should ensure meaningful and open participation of civil society in anti-corruption policy development and, implementation and monitoring. It should improve the environment for NGOs by removing barriers for registration, funding and functioning in law and in practice, and thereby address the issues Azerbaijan is facing on the international plane (EITI, OGP).

As a general conclusion, Azerbaijan should strengthen the preventive focus of its policy, build on the achievements of leading agencies and replicate them in the other sectors.

**Thus, Azerbaijan is partially compliant with recommendations 1.**

#### **New Recommendation 1**

- 1. Develop comprehensive evidence-based anti-corruption policies, with clear objectives.**
- 2. Plan and allocate budget for full implementation of anti-corruption policy.**
- 3. Promote the development of internal action plans based on risk assessments. Publish sectoral plans and implementation reports.**
- 4. Regularly monitor progress and evaluate impact of the anti-corruption policy implementation, including at the sector level, involving civil society.**
- 5. Ensure meaningful and open participation of civil society in anti-corruption policy development, implementation and monitoring.**

### 1.3 Anti-corruption public awareness and education

#### **Recommendation 2 from the Third Monitoring Round report on Azerbaijan:**

- Implement well-targeted awareness raising activities in the most corruption-prone sectors and assess their outcomes

Well-planned, structured and targeted anti-corruption awareness and education measures are critical in countries with systemic corruption, where society remains tolerant to corruption and is engaged in these practices.<sup>48</sup> Awareness raising and education can create intolerance of society to corruption, increase trust in reforms and stimulate society to engage in fighting corruption.<sup>49</sup>

The government reported about planned and targeted awareness raising activities carried out in schools, such as, primary and higher education institutions. According to the government, the CCC Secretariat and prosecutors of ACD give lectures and make presentations at universities and law enforcement schools. ACD representatives participate in TV shows, hold quarterly press conferences jointly with the CCC about the fight against corruption and the performance of ACD. ACD has produced several publications, brochures and leaflets. The CCC has published a journal “10 Years of Achievements in Fight Against Corruption”.

The government maintains that awareness raising activities are conducted based on the analysis of most corruption-prone sectors (for example, construction sector or education). However, no such analysis was made available to the monitoring team. During the on-site visit, the evaluation team learned that the main target-groups of awareness-raising are: high-school students; university students and civil servants. However, this is not evident from the list of measures in the previous action plan, implementation reports, or the awareness raising materials reviewed by the monitoring team. The government stated that each state agency has to provide anti-corruption trainings to their officials. The government also reported that representatives of civil society and the private sector regularly participate in awareness raising events.

According to the alternative reports by NGOs, awareness raising and education activities are insufficient in Azerbaijan.<sup>50</sup> TI Azerbaijan notes that a more comprehensive and targeted approach is needed, cooperation with the civil society must be broadened and businesses should be one of the target groups.<sup>51</sup>

Anti-corruption is not part of the education curriculum in Azerbaijan. The alternative monitoring report concludes that although anti-corruption education in higher and secondary education is crucial from the point of view of developing a culture against corruption, this has not been accomplished by Azerbaijan.<sup>52</sup>

#### ***Impact of anti-corruption awareness measures***

Azerbaijani authorities pointed to the construction sector as a good example of the impact of anti-corruption awareness measures, where a number of large fraud cases with massive number of victims has critically decreased as result of implemented legal and awareness measures in recent few years. However, Azerbaijan has not defined outcome indicators and does not systematically measure the impact of implemented awareness measures.

It is difficult to attribute the changes in the public perception since the Third Monitoring Round to awareness raising efforts since there is no relevant data available. Nevertheless, based on the most recent surveys it can be concluded that the government reform efforts positively changed the citizens' attitudes, trust towards institutions and perceptions of corruption. Interestingly, according to the results of the GCB 2013, 70% of Azerbaijani citizens agree that ordinary people can make a difference in the fight against corruption and 81% are willing to fight corruption themselves, which is an increase from 2010 when

<sup>48</sup> UN Guide for Anti-Corruption Policies (2003) offers useful illustration and list of various activities for targeted audiences, pages 69-77, available at: <http://goo.gl/UmZ8jn>.

<sup>49</sup> Summary Report, forthcoming

<sup>50</sup> [NGO Constitution Research Foundation](http://www.ngoconstitutionresearchfoundation.org/)

<sup>51</sup> TI National Integrity System (2014) available at: <http://goo.gl/aRWHSE>

<sup>52</sup> Constitution Research Foundation (2015) Implementation of the National Anti-Corruption Action Plan for 2012-2015, September 2013 – December 2014 available at: <http://goo.gl/CG3WMe>

68.6% of respondents stated that they could imagine themselves getting involved in fighting corruption.<sup>53</sup> According to the national survey results, as described by the government, the number of respondents, perceiving corruption as bribery decreased to 36% in 2014 compared to 46% in 2007 and the percentage of respondents describing corruption as abuse of entrusted power for private gain increased to 43% from 32%, showing better understanding of the nature of corruption by Azerbaijani citizens. By contrast, results of the same survey still show a high tolerance of corruption in society. 22% of those who have experienced bribery think that this is a convenient way to solve problems, while 29% perceive it a natural way of resolving issues.<sup>54</sup>

### ***Planned anti-corruption awareness and education measures***

The Action Plan provides for awareness raising activities to be carried out in the upcoming two years. Two types of measures are foreseen: a) those related to specific reforms: e-government portal, access to information, hotline, financial control measures, economic reforms and b) general corruption awareness with special target groups: general public, students, business and civil servants, including at the municipalities. ACD and CCC are indicated as the implementing agencies. Measures include: preparing materials for the private sector aimed at the preventing corruption; carrying out raising awareness raising on ethical rules for municipal civil servants: developing educational programs, workshops and trainings on anti-corruption and ethics for specific target groups including civil servants; including anti-corruption topics in the educational programs of higher and middle educational institutions, including conducting public lectures and seminars for students; publishing and disseminating social videos, booklets, handbooks and other awareness-raising materials on open government and the prevention of corruption. Implementation of these measures should make the public awareness efforts more targeted and efficient. However, a clear timelines, outcome indicators and a budget should be added to the planned measures.

### **Conclusions**

Awareness of various forms of corruption and trust of selected institutions has increased in Azerbaijan and citizens seem to be more open to engaging in the anti-corruption work. However, as shown by the results of the national survey, the society still remains tolerant to corruption. Awareness raising measures are financed by the state budget. However, they lack a targeted and systemic approach. There is no public relations strategy, or funds allocated to this purpose. Anti-corruption is not embedded in education, although the new Action Plan shows improvement in this regard. Azerbaijan is encouraged to allocate sufficient resources to support the measures of the Action Plan, design awareness material that is adapted for each target group and use different techniques as needed. In addition to the specific groups, the campaign should target the general public and accompany the major anti-corruption reforms. The outcome indicators should be defined and the results of awareness raising activities measured to inform the next cycle of awareness raising.

**Azerbaijan is partially compliant with the recommendation 2.**

#### **New Recommendation 2**

- 1. Allocate resources for implementation of the measures of the Action Plan on awareness and reflect the budget it in the future Action Plan.**
- 2. Implement awareness raising activities adapted for each target group.**
- 3. Target awareness raising activities to the sectors most prone to corruption.**
- 4. Define outcome indicators and measure the results of awareness raising activities to plan the next cycle of awareness raising.**

<sup>53</sup>TI Azerbaijan, Corruption Perception Index 2013, <http://transparency.az/eng/cpi2013>

<sup>54</sup> Only some findings were provided to the monitoring team by government. The study was not published.

## 1.4 Anti-corruption policy and coordination institutions

### **Recommendation 1 from the Third Monitoring Round report on Azerbaijan:**

- Ensure a central institution has clearly defined mandate and takes leadership in prevention of corruption in local governments.
- Ensure units responsible for implementation of anti-corruption plans in state and local public institutions and promote their networking under the umbrella of the competent central government anti-corruption institution.

### **Recommendation 3 from the Third Monitoring Round report on Azerbaijan:**

- Conduct an assessment of co-ordination of anti-corruption efforts in Azerbaijan, in particular the capacity of the Commission on Combating Corruption and its Secretariat.
- Take measures to ensure a more active role of the Commission on Combating Corruption in conducting its mandate, ensure the necessary degree of independence and take measures to better resource its Secretariat.

Since the last monitoring round some progress can be observed in the work of CCC as a main anti-corruption policy coordination and prevention institution. The meetings of the CCC Working Group during the Action Plan elaboration process were positive. However, CCC should be more proactive in their leadership role in the prevention of corruption in Azerbaijan. It remained understaffed and less visible. Its independence and resources have not been increased. The capacity of CCC and its Secretariat has not been assessed. No regular coordination and monitoring have taken place. Two interim monitoring reports on the previous action plan were published but these did not include an assessment of impact or evaluation of efficiency.

There are interesting positive trends in the preventive work of ACD described further below. Azerbaijan could benefit from building on the results of this work, strengthening prevention functions of ACD and using it further in anti-corruption policy development.

### ***Mandate, functions, composition, independence, participation of non-governmental stakeholders***

The two main anti-corruption bodies in Azerbaijan are the Commission on Combating Corruption responsible for anti-corruption policy and the Anti-Corruption Directorate of the Prosecutor's Office - a law enforcement agency which recently started performing some preventive functions.<sup>55</sup>

CCC was established in 2004 based on the Law on Combating Corruption (Article 4.2) as a specialized agency for the prevention of corruption. CCC has a wide mandate ranging from: coordinating anti-corruption policy development and monitoring its implementation; to assessing efficiency of the fight against corruption through research and surveys; raising awareness; collecting and monitoring asset declarations; analysing corruption related violations and proposals to public institutions; hearing reports from the heads of law enforcement and other state bodies on implementation of anti-corruption legislation; preparing recommendation and proposals to increase the efficiency of fight against corruption. However, these functions are not carried out in practice, apart from some activity to coordinate policy development.

CCC is composed of 15 members, 5 of them appointed by the President, 5 by Parliament and 5 by the Constitutional Court of the Republic of Azerbaijan.<sup>56</sup> The Chairperson of the Commission is elected by simple majority vote. Currently, the Commission is chaired by the head of the President Administration. Although CCC enjoys declarative independence by statute, there are no guarantees in the law that would ensure independence in practice. According to TI Azerbaijan, the appointments are based on political considerations rather than objective criteria. Lack of civil society participation and strong representation of

<sup>55</sup> ACD is at length discussed in the Chapter 3 of the report.

<sup>56</sup> Statute of Commission on Combating Corruption is available at: <http://goo.gl/wA4M6c>

the Government prevent it from acting independently.<sup>57</sup> The decisions of the Commission are not obligatory for the agencies concerned.

Recently, the Commission has been given the power to request information on the state registration of immovable property according to the Law of the Republic of Azerbaijan on “State registration on immovable property”.<sup>58</sup> However, this new power does not represent any meaningful improvement of its operational capacity.

Out of four working groups established under CCC<sup>59</sup> only one on *Improving Legislation* is functional. It is composed of state institutions, civil society, international organisation, independent experts and media.<sup>60</sup> This Working Group has been somewhat active during the first months of 2016 in the process of developing the Action Plan. However, the meetings are not regular.<sup>61</sup>

No progress was made towards including the NGOs in the CCC as members as recommended by the Third Monitoring Round.<sup>62</sup> Reportedly, there are various platforms created for cooperation with the NGOs. Anti-Corruption NGOs Coalition, Azerbaijan Partnership for Transparency NGO Platform established under the memorandum of NGOs with the support of the USAID,<sup>63</sup> networks of the NGOs, established based on the memorandum with the ACD and public monitoring councils in several agencies. The NGO alternative monitoring report points to some improvements in the involvement of civil society in the framework of the working groups. However, a need for deeper cooperation is also noted. According to the TI NIS (2014), the participation of civil society in anti-corruption work is mainly limited to monitoring implementation of domestic and international obligations and providing recommendations for future policy documents that are partially heard. However, NGOs are not involved in developing socially important laws.<sup>64</sup> Some NGOs note enhanced possibilities for dialogue; on the other hand, many are impeded in their work due to excessive restriction and recent practice as described above in section 1.2 of the report.

ACD has acquired some preventive functions with the recent changes in its structure. The Preventive Measures and Inquiry Department analyses the corruption situation and proposes preventive measures. Based on preliminary inquiries, communications received via hotline, analysis of the media publications, analyses of the complaints and criminal case investigations ACD issues recommendations (motions) to the state bodies. The agency in question is obliged to consider the recommendation and respond within a month. Although the recommendations are not mandatory, they often receive extensive media coverage and therefore, are taken seriously by state bodies as reported by the ACD during the on-site visit. In 2015, total 71 motions were submitted to state and other agencies, as well as officials. As a result of those motions, 169 persons were subjected to disciplinary measures. Examples of recent motions include the motion to the Ministry of Justice in respect of municipalities and Labour and Social Security and the Ministry of Education in 2014. Examples of the proposed recommendations are: regulating the specific areas, reducing the discretion, introducing the objective criteria for assessment, simplification of procedures etc. Also, the growing role of ACD in anti-corruption awareness -- another element related to the prevention of corruption -- suggests that its capacities could be further used for preventive and policy work. Anti-corruption awareness raising is a statutory function of both CCC and the ACD. In practice, most of the activities are conducted and awareness material produced by ACD in cooperation with the CCC Secretariat. The government shared a leaflet and a brochure on the mandate, functions and the results of the CCC, together with the brochure on the prevention of corruption in various sectors, prepared and published at the print house of the ACD. Answers to the questionnaire further highlight the work of ACD

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<sup>57</sup> TI Azerbaijan National Integrity System at pg. 126.

<sup>58</sup> Statute of Commission on Combating Corruption (7.2).

<sup>59</sup> Decision of the CCC dated 31 January 2005.

<sup>60</sup> Civil society organisations including TI Azerbaijan, Anti-Corruption Fund and Network of NGOs in the field of anti-corruption are represented in the Working Group on Improving Legislation.

<sup>61</sup> Monitoring team was provided with the minutes of the Working Group meeting of 14 March, 2016.

<sup>62</sup> TI Azerbaijan National Integrity System Assessment, pg. 124.

<sup>63</sup> The platform is managed by the partners: TI Azerbaijan, Economic Research Centre, Constitution Research Foundation, IAYTE and Internews. Network of NGOs consists of 24 NGOs, details available at: <http://transparency.az/alac/files/book.pdf>.

<sup>64</sup> [TI National-Integrity-System 2014](#), pages: 26-27.

in this area: methodical guidelines, recommendation, brochures and other materials are prepared and disseminated by the relevant Departments of the Directorate.

### ***Resources and funding***

The statute of the CCC provides for a permanent Secretariat. Staff members of the Secretariat, currently 3 lawyers, are civil servants. The Secretariat fulfils organizational tasks related to the arrangement of the meetings of the CCC, prepares documents for the issues to be raised in the Commission meetings and provides clerical support.<sup>65</sup> Since the Third Monitoring Round the resources of the CCC Secretariat have decreased from four to three.

The functions and capacity of the Secretariat are clearly inadequate to the mandate entrusted to the CCC. The Secretariat is insufficient to properly support policy design function alone and coordination with state agencies, not to mention conducting surveys, raising awareness, collecting data and analysing efficiency of policies. The CCC members are high level officials, not full time, who cannot carry out their functions without secretarial support. The Third Round Monitoring Report recommended to “assess the capacity of CCC and its secretariat and increase independence and resources of the CCC for effective implementation of its mandate.” The Secretariat stated that this research is underway.

Thus, if the model is maintained, the functions and capacity of the Secretariat will need to be enhanced. Secretariat needs not only increased resources but also analytical skills to properly support anti-corruption policy planning, including skills of data analysis, impact assessment methodologies and other related. Performance of the Secretariat should be measured with the number and quality of new initiatives, produced analytical work and the impact assessment. Furthermore, the pool of local experts can be developed from the state agency contact points, to support the Secretariat. Experience sharing and anti-corruption training could be organised regularly. In addition, the Secretariat needs better visibility and image among the state bodies to perform its steering role and to be in a position to provide advice and guidance to the state bodies.

### ***Coordination within the central and municipal level***

According to the Government, the Secretariat of CCC cooperates with public and other institutions including municipalities, reviews information received annually from the state agencies, analyses and publishes report on implementation of the action plan. The monitoring team is not convinced that the Secretariat with 3 staff members and limited capacities is in a position to coordinate over 100 sectoral plans and the work of the state agencies at the national and local level. The national anti-corruption action plan monitoring report by Constitution Research Fund emphasizes that there is serious need for increasing coordination efforts and oversight of implementation of action plan by the CCC.<sup>66</sup>

### ***Accountability and transparency***

According to its statute, the CCC annually reports to the President, *Milli Majlis* and the Constitutional Court of the Republic of Azerbaijan. However, no information is available on such reporting. The government noted that the CCC jointly with the ACD holds quarterly press conferences to inform the public about carried out measures. CCC representatives sometimes participate in anti-corruption events organised by NGOs. The CCC has its dedicated website which is positive; however, as mentioned previously, the website of the CCC is not up-to-date. There is no information on recent activities (the latest newsletter dates back to 2014) or reports, apart from the Action Plan development process. CCC clearly needs to improve its accountability to the state bodies and the public, regularly update its webpage and use other means to increase the level of communication with the public.

### ***Results and impact***

In practice the role of the CCC is limited. The agencies are not generally aware of its work and instead consider ACD as their main partner in fighting corruption. The only visible result of the work of the CCC since the last monitoring round is the Action Plan. CCC also published 2 monitoring reports with poor analytical quality. According to the government, in 2015 CCC also discussed the rules on admission to the

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<sup>65</sup> Available at: <http://antikorrupsiya.gov.az/view.php?lang=en&menu=27> para 16.

<sup>66</sup> <http://transparency.az/alac/files/ENG%20%20A5.pdf> at pg.119.

local government, the changes to the law on municipality and the ethics code of municipalities. However, no written record is available. The statute prescribes quarterly meetings of the CCC, however, in practice the meetings are rare. According to the Secretariat, the last meeting was held in April 2016. The secretariat representative was not informed about the next meeting date. No minutes or attendance lists are kept. The weak role of the CCC is further demonstrated by the fact that the CCC is not consulted on major decisions affecting anti-corruption in the country, such as for example, abolition of the CSC.

In the future, the performance of the CCC needs to be assessed against a combination of the following indicators: frequency of the meetings, number of the decisions made, quality of analytical material produced, guidance and coordination with the agencies, effects of its polices, visibility and trust of the population and others.

## **Conclusions**

The steps taken by the CCC since the Third Monitoring Round have only resulted in limited developments in the anti-corruption policy planning and prevention. No results could be observed in response to the recommendations of the Third Monitoring Round. The CCC facilitated adoption of the Action Plan, collected reports on implementation from state agencies and gathered the sectoral plans. The Working Group on Development of Legislation has shown some activity. However, resources of the Secretariat diminished further. The functions, resources and capacities of the Secretariat are disproportionate to the mandate of the CCC. The capacity of the CCC and the Secretariat has not been analysed.

As noted above, Azerbaijan has put a lot of emphasis on easing bureaucratic burden and creating business friendly environment to advance economic reforms. E-governance has been prioritized to the extent that the anti-corruption action plan has been subsumed into open governance action plan. Control of corruption by law enforcement has been prioritized as well, as demonstrated by the increased budget and human resources of the ACD. Against this background, the prevention of corruption does not hold the same position in the list of priorities of the government as the control of corruption or e-governance. In order to enhance preventive activities, the central body responsible for the prevention of corruption and anti-corruption policy has to be strengthened.

Azerbaijan needs a more efficient anti-corruption policy framework. Considering the growing potential of the ACD, its resources, skills, Azerbaijan could benefit from granting ACD new mandate for prevention of corruption. However, if this is considered, attention should be given to what message this would send to the society. By no means is Azerbaijan advised to narrow its anti-corruption focus on the law-enforcement and repressive policies. On the contrary, monitoring team encourages Azerbaijan to broaden its preventive approaches, strengthen them, back them up with the evidence and vigorously apply them in practice.

Azerbaijan could consider giving the CCC a new life and a fresh start by revising its membership to include institutions leading anti-corruption work and showing results in open governance efforts (such as Ministry of Education, ACD, ASAN, NGOs) and its mandate to include open governance related issues. The monitoring team would like to stress that in the context of Azerbaijan, the importance of a high level overarching supervisory body under the President of Azerbaijan, if made functional, should not be underestimated. CCC could be maintained as an overarching body to advocate for and back up anti-corruption efforts. However, it needs to start performing the entrusted functions fully. For this, it is absolutely necessary for the CCC to have proper analytical support, expertise, and advice. Also, civil society needs to be included meaningfully.

Whichever institutional setting is chosen, it is critical to provide the preventive body with the necessary capacities and resources and independence to carry out its mandate effectively and show impact.

The government reported that since the Third Monitoring Round, the CCC coordinated the consultations of state bodies and civil society institution within the framework of the OGP initiative aimed at preparation of the Action Plan. Nonetheless, the monitoring team remains concerns that all other functions of the CCC continue to be unfulfilled. Taking into account the important role of this body and to encourage further reform, the monitoring team agreed to rate the progress under this recommendation as partially compliant.



**Azerbaijan is partially compliant with recommendation 3.**

**New Recommendation 3**

- 1. Improve performance of the CCC by enhancing the statutory functions, capacity, skills, performance and visibility of the Secretariat; enhance its accountability, transparency and visibility.**
- 2. Consider revising the mandate and the composition of CCC to include open government issues.**

## Chapter 2

### PREVENTION OF CORRUPTION

#### 2.1 Integrity in the civil service

##### **Recommendation 12 from the Third Monitoring Round report on Azerbaijan:**

- Develop rules and implement transparent and merit-based recruitment of senior and high level civil servants as part of the new Civil Service Code and enhancing the capacities of the Civil Service Commission to enforce it.
- Develop rules or common principles for transparent appointments to political positions.
- Ensure a more transparent, adequate and equal salary system in the public administration, comparable between administrative bodies and competitive in relation to comparable enterprises/organisations.
- Develop a network of ethics commissioners in public administration institutions.
- Compose a practical public service ethics training course offered regularly and mandatory to public officials.
- Ensure clear and comprehensive conflict of interest and ethics rules for civil servants and other public officials and a meaningful mechanism for their implementation are in place and vigorously implemented and enforced in practice.
- Ensure the necessary legal, regulatory and institutional basis to implement a system requiring public officials to submit asset declarations and to verify them is completed and implement the asset declarations system in practice without further delay.

##### ***Summary of key actions taken since the last monitoring***

Since the Third Monitoring Round, the following main developments took place in relation to this recommendation:

- Performance assessment regulations have been adopted on 10 February, 2014, for certain categories of civil servants (3-7).<sup>67</sup>
- Draft Civil Service Code has been finalized and work on draft laws on Conflict of Interest and Political Officials continued. However, these drafts were available during the previous monitoring too.
- Salaries of civil servants have been increased by 10% by Presidential Decree in January 2016.
- Ethics training has been systematically held; agencies had to report to the CSC on training conducted annually.
- Ethics commissioners have been appointed and work in most public institutions.
- CSC has been abolished and the new agency – State Examination Centre - has been established by decree of the President on 11 April, 2016 with only some functions of CSC transferred to the Centre.

In the assessment of TI Azerbaijan, significant reforms were undertaken aimed at improving the recruitment procedure. However, the pace of the reforms has not been sufficient. Conflict of interest and protection of whistleblowers have to be regulated. The normative base has to be prepared to put into operation the system of asset declarations that is part of the legislation since 2005.<sup>68</sup>

<sup>67</sup> Highest category is 1 and the lowest is 7 under the legislation of Azerbaijan.

<sup>68</sup> TI National Integrity System (2014) available at: <http://goo.gl/aRWHSE>;

Overall, limited progress could be noted in implementing the Third Monitoring Round recommendation on civil service integrity, except for the ethics training, that have been conducted systematically and which should be commended. Nevertheless, beyond the recommendation, CSC continued to show progress and good performance in various respects: it enforced the merit-based recruitment in practice, ensured civil society participation in interview boards, including appeals procedure, facilitated the adoption of the appraisal rules and started implementation throughout the civil service. CSC also made attempts to advance the adoption of legislation on the civil service and to establish coordination with the ethics commissioners in state agencies. Therefore, the monitoring team finds it regrettable that instead of building on the experience, enhancing the capacities and impact of the CSC work, Azerbaijan has abolished the CSC, leaving its many key functions in an institutional vacuum.

### ***Civil service integrity policy***

Azerbaijan lacks a comprehensive evidence-based civil service policy. Measures for civil service reform are mostly driven by international recommendations and implemented without a clear strategic basis. The Third Round Monitoring Report refers to the Draft Public Administration and Human Resources Strategy prepared by the Civil Service Commission but no information is provided about its adoption. Officials who were met at the on-site had no information about the draft. The anti-corruption action plan, National Action Plan for Promotion of Open Government for 2016-2018, includes a few measures on civil service integrity, namely the regulation of conflict of interest in civil service and anti-corruption and ethics education for civil servants.

The Civil Service Commission conducted surveys regularly. Government reports about 69 surveys since 2007, using the web-page of the CSC. Target groups were the general public (on questions of ethical conduct by civil servants, response to complaints) as well as the civil servants themselves (on issues of satisfaction with salary, career prospects). According to the brief information provided by the government, surveys asked key questions to determine opinion of citizens on questions such as: which of the state agencies is most bureaucratic and which are most accountable? How the asset declaration can affect the fight against corruption and others. The number of respondents range from 100 to 2000 depending on the survey. No information was provided on the use of these findings in practice.

The draft Civil Service Code prepared by the Civil Service Commission was reviewed by all relevant state bodies; public hearings were held and a final version was submitted to the Cabinet. TI Azerbaijan reported that the CSC discussed the draft Civil Service Code with all relevant stakeholders, yet timelines for adoption remain unclear and there seems to be no concrete plans for moving the draft forward.

### ***Institutional framework***

In 2016, Azerbaijan abolished the Civil Service Commission and established a new agency -- State Examination Centre by Presidential Decree merging the CSC and the Student Examination Centre in one Agency.

Civil Service Commission was the body responsible for overall management and coordination of the civil service, with range of responsibilities, including overseeing the enforcement of civil service legislation, ethics trainings and developing the training strategy and co-ordinating professional training in state institutions; processing complaints of violation of the Code of Ethics. The Commission was cooperating with the state institutions to draft legislation, policies and strategies.<sup>69</sup> The CSC was assessed to have functional and institutional features for coordination, the management of civil service and considerable influence on the system. At the same time, its resources were insufficient to carry out all the functions entrusted to it.<sup>70</sup>

Newly established *State Examination Centre* (SEC) is a public legal entity responsible for recruitment to the civil service, organization of examinations with the aim of admission of students to higher education and training for state bodies, or other, including private institutions. Its predecessor – the Student Examination Centre has been successfully running tests for students, as well as first stage tests for GPOs,

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<sup>69</sup> Salvador Parrado, *Civil Service Professionalization in Armenia, Azerbaijan, Georgia, Moldova and Ukraine* (2014), OECD/SIGMA, page 47.

<sup>70</sup> Salvador Parrado, *Civil Service Professionalization in Armenia, Azerbaijan, Georgia, Moldova and Ukraine* (2014), OECD/SIGMA; [Third Monitoring Round Report](#) (2013).

local administrations, ministries, police, judges, state migration services. The Centre is governed by the Board of Directors and established with the aim to improve the selection of civil servants and admission of students. According to the government, the new Presidential Decree of 9 August, 2016 has transferred all the functions of CSC to SEC. However, the monitoring team has not had possibility to examine the Decree.

Consolidation of the two entities means that 10000 people per annum would be recruited through the State Examination Centre. Employees of CSC were transferred to the new entity.

Civil society representatives shared positive feedback about the performance of CSC in the past, raising concerns about the merger as some key functions of CSC may now be neglected. Interlocutors viewed the change as a potential drawback in civil service development. CSC was seen as a credible, clean agency with a good reputation and performance. It was also listed as one of the achievements of the recent reforms by the Government.

The rationale for this institutional change remains unclear. Some interlocutors pointed to the need for cost efficiency of public administration in line with the new approach of the government to transfer some state functions to the public law entity,<sup>71</sup> which can also exercise commercial activities and earn income. The strategic document Azerbaijan 2020 mentions that that the government aims to increase the efficiency by handing over the services to private enterprises. The monitoring team strongly recommends the proper transfer of key functions related to drafting legislation, developing and overseeing of policies, strategies and general civil service to a newly designated state agency. The same relates to the databases on civil servants that were maintained by CSC.

The leaders in public institutions have a statutory obligation to oversee the observance of the code of conduct.<sup>72</sup> According to the Government, ethics commissioners have been introduced in each public agency with responsibility to control compliance with ethical rules, give guidance on ethical issues and organise trainings when necessary, detect violations and, conflict of interest. The heads of human resources, internal security departments and secretariats are appointed as ethics commissioners, hence wearing two hats. The list of commissioners is available on the website of CSC.

Internal security units are established within the state bodies. They are responsible for oversight of observance of legislation within the institution, investigate violations, perform internal audit and monitoring within the agency. Officials at the on-site informed that these units work closely with the ACD referring cases with suspicion of corruption.<sup>73</sup> Further, the monitoring team was informed at the on-site that these units identify corruption risks, however, the obtained information is not used for policy planning. Internal security unit of the Ministry of Education has interesting practice in this regard that is discussed in the chapter 4 of the report.

The monitoring team took note of the fact that CSC organized a series of training of trainers for ethics commissioners. However, to date, no viable network of ethics commissioners has been established and State bodies' performance is not the same across the civil service. Selected agencies are clear champions, such as the Ministry of Economy and State Agency for Public Service and Social Innovations that set up a special database to track record of certified programmes of its employees, including mandatory ethics training. While some progress has been made, the network of ethics commissioners should be developed to enable peer learning, continuous capacity building as well as nurturing a culture of integrity.

### ***Professionalism in civil service***

The Civil Service Law (2000) applies to executive, legislative and judicial branches of government and to the local level. The law includes civil servants in Parliament and in the judicial administration. It also applies to the civil servants of local executive entities.<sup>74</sup> The Constitution lists the positions subject to appointment by the President. However, there is no classification/definition of political officials in the

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<sup>71</sup> New law on Public Legal Entities was adopted in 2016.

<sup>72</sup> Article 21 of the law of the Republic of Azerbaijan on Rules of Ethics Conduct of Civil Servants

<sup>73</sup> For details see section 3.2 of this report.

<sup>74</sup> The law does not apply to law enforcement, they have the separate regulations which should be developed in the light of the principles of the civil service law (including transparent recruitment, performance appraisals and other principles) article 2.3 of the civil service law.

legislation. Beyond the political appointees as provided in the Constitution, the share of discretionary appointments is high and merit-based recruitment only covers a limited number of public servants.<sup>75</sup>

According to the Government, the stability of the civil service is ensured by a career-based civil service in Azerbaijan. However, grounds for dismissal are not clearly defined; for example the Law on Civil Service does not make it clear what are the grounds of dismissal of the civil servant holding an administrative position. (Article 33.1.3). The abolition of a state agency or its reorganisation cannot serve as a ground for dismissal from the civil service and results in the reappointment of the civil servant or inclusion on a short term reserve list. The right to appeal from dismissal is another guarantee of stability. However, TI Azerbaijan notes that the 1-month period for appeal may not be sufficient.<sup>76</sup> The statistics on dismissals and complaints have not been provided. Support for Improvement in Governance and Management, a joint initiative of the OECD and the European Union (SIGMA) notes that in practice there have not been any cases of dismissal of civil servants, including senior civil servants as a result of the change of management of the state body.

According to national counterparts, attestation as the means for arbitrary promotion or dismissal was abolished. Instead, a certification programme that is valid for 5 years was introduced, hence reducing discretionary power for dismissals as the result of the “attestation” exercise. However, attestation is still applicable to prosecutors.

### ***Merit-based civil service***

Some steps have been taken to strengthen merit-based recruitment since the last round of monitoring. The Government indicates that the draft Law on Civil Service establishes a new merit-based procedure for recruitment for the 4<sup>th</sup> category of civil servants. However, in fact merit-based appointment still covers only a small group of civil servants in categories 5 to 7. Recruitment for higher category civil servants is not based on open and transparent competitions. SIGMA pointed out that discretionary appointments at the top of the civil service are far-reaching.<sup>77</sup> According to the State Statistics Committee, in 2014 Azerbaijan had 30108 civil servants (1147 is 1-3 category). Requested detailed statistics to identify the share of civil servants subject to the merit-based recruitment, appraisals system etc., have not been provided.

The competition procedure itself is transparent and well-regulated. The vacancies are duly announced on the website. There is an electronic system of recruitment with the needed guidance for candidates.<sup>78</sup> Various materials have been developed to help applicants through the recruitment process.<sup>79</sup> TI Azerbaijan noted the increased transparency of the recruitment system. Applicants can prepare for examinations by testing their knowledge with an online mock exam. Tracking the recruitment process online is also possible. Exams are automated, which decreases the risks of violations. The process is even broadcasted live. According to TI Azerbaijan, CSC invited civil society representatives to observe the process. The interview panels consist of representatives of CSC, a recruiting agency and civil society. Interviews are video-recorded and the recordings kept for one year. Successful candidates are introduced to the head of agency for appointment. Those not appointed are put on a reserve list for 2 years. Nevertheless, the decision on appointment of one of the successful candidates is still discretionary and rests upon the head of agency.

According to the government, competitive procedures are increasingly used in recruitment, e.g. the judicial employees, detectives and officials at the Anti-Corruption Directorate and the Prosecutor’s Office are now recruited through a multi-stage competition-based procedure. This practice is commendable and should be extended to the higher categories of civil servants as well. Merit-based recruitment should be applicable to all professional civil servants regardless of their rank.

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<sup>75</sup> Salvador Parrado, Civil Service Professionalization in Armenia, Azerbaijan, Georgia, Moldova and Ukraine (2014), OECD/SIGMA, at pg. 46.

<sup>76</sup> TI National Integrity System (2014) available at: <http://goo.gl/aRWHSE>; Chapter on Public Sector, at pg. 5

<sup>77</sup> Salvador Parrado, Civil Service Professionalization in Armenia, Azerbaijan, Georgia, Moldova and Ukraine (2014), OECD/SIGMA, at pg. 46.

<sup>78</sup> For details see the OECD/ACN Third Round Monitoring Report on Azerbaijan (2013) at pg. 58. And SIGMA report.

<sup>79</sup> Information is still available on the web-site of the former CSC at [www.csc.gov.az](http://www.csc.gov.az)

Civil society organizations raised concerns about the uncertainty surrounding their participation in the recruitment processes under the newly established State Examination Centre. Building on the positive example of earlier collaboration between CSC and CSOs, it is critical to maintain the constructive engagement of civil society to ensure transparency and accountability.

An Appellate Commission was established to review applicants' complaints. According to the Civil Service Commission of Azerbaijan, in 2014, the Appellate Commission received 131 complaints and found eight of them grounded; for 16 other complaints a new interview was ordered. In 2015, the Commission received 149 complaints and found three of them grounded, while for 30 other complaints it ordered a new interview.

As to the promotion, no change has taken place since the last review. Merit-based promotion applies to categories 5-7 but does not apply to higher positions. The government notes that the draft Law on Civil Service addresses the issue of merit-based promotion to higher categories as well.

The Azerbaijani Civil Service Commission developed "Rules on performance evaluation of civil servants" adopted on 10 February, 2014. According to the new regulation, the performance of civil servants is assessed at the end of each year (after serving at least 6 months in the civil service). Performance appraisal of a civil servant is conducted by the direct supervisor, who drafts the report and submits it to the head of the relevant unit for approval. The appraisal includes an interview with the civil servant regarding training needs and an individual plan for professional development. The comments of the civil servant are included in the performance appraisal form. The performance evaluation is followed by setting targets/tasks for one year. Criteria for evaluation of the performance of a civil servant are the following: professional knowledge; attitude to official duties; ability to analyse, solve problems and make decisions; creativity and initiative; work discipline; work experience, abilities for teamwork etc. The evaluation can be the basis for promotion, rotation, remuneration increase, training or demotion. The rules apply to the category 3-7 of the civil servants. The regulation provides for additional funding for agencies to implement the evaluation procedure. According to the findings of the onsite visit, quarterly reviews are held with immediate supervisors and Human Resource units.<sup>80</sup> As the next step, the individual performance assessment should be linked to the organizational targets.

No development was reported since the last monitoring round aimed at ensuring more transparent, adequate and equal salary system in the public administration. Based on the Presidential Order (2934/2008) regulating remuneration issues, the civil servants with similar responsibilities have the same salary. However, a study shows that civil servants did not consider that this goal has been achieved.<sup>81</sup> Government replies to the questionnaire state that the "share of the fixed and variable part of the total pay differs from institution to institution". Due to volatile markets and the drop in oil prices, the practice of informal "bonuses" in "envelopes" supposedly decreased. Having said that, the concerns of the previous two monitoring rounds regarding the share of bonuses and allowances ('additional salary') and the discretion in granting them still remain valid. SIGMA concluded that the remuneration system in Azerbaijan is still not fair since similar positions in different public sector organisations are differently remunerated. The granting of collective or individual rewards is not transparent. Salaries in the public sector are not competitive with the equivalent positions in the private sector. No comprehensive salary survey has been conducted to compare pay in the public sector with that of the private sector. The recent across the board increase of salary by 10%, although a positive development, does not improve the situation significantly. According to TI Azerbaijan, salary is not competitive with private sector, especially for the category 5-7 of the civil servants.

### ***Restrictions and conflicts of interests***

The previous monitoring report pointed to the need for clear and comprehensive conflict of interest and ethics rules for civil servants and an effective mechanism for their implementation. However, Azerbaijan still does not have a legally established definition of conflict of interest applicable to civil servants, only

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<sup>80</sup> Example of the Ministry of Education confirmed that the rules are enforced at the line ministry level. For details see the chapter on Integrity in Education. However, no information is available regarding their enforcement across the civil service.

<sup>81</sup> Weinmann (2013) reported in SIGMA report cited above.

some of its elements are dispersed across several legal acts. The Law on Combating Corruption contains a prohibition to work with relatives and some rules relating to gifts. The Law on Civil Service sets out limitations to hold additional paid position in other state bodies, to take part in political activities, etc. The Law on Rules of Ethical Conduct of Civil Servants has an article on the prevention of conflicts of interest. Rules to prevent conflicts of interest are also established at the level of individual public administration institutions, such as the Financial Monitoring Service, Tax Service and the Police.

According to the Government, leadership of public agencies plays a crucial role in guiding, training, consulting and monitoring effective prevention of conflict of interest situations. Senior officials of public entities are entitled to provide consultations to subordinates on ethical issues, including conflicts of interest. However, this statement raises serious doubts in the absence of a clear legislative framework definition of conflict of interest. Statistics on the enforcement of existing rules are not available. Information on practical application of existing rules has not been provided.

A draft Law on the prevention of conflict of interest in the performance of public officials has been under development for several years now.<sup>82</sup> At the time of the on-site visit it had been submitted for review by relevant state agencies. The Action Plan foresees the “Development of the mechanism for the prevention of the conflict of interests in the activity of the civil servants and officials and in this regard, preparation of manuals, guidelines on practical issues and conduct of trainings”. CCC and the Prosecutor General’s Office are the responsible agencies. There is no precise timeline for this measure -- it extends through 2019.

Post-employment restrictions are regulated under the Article 15.3 of the Law of the Republic of Azerbaijan on Rules of Ethics Conduct of Civil Servants (31 May, 2007). The civil servant cannot be recruited to the departments, organizations, enterprises or their branches he/she controlled during previous performance within the period determined by the legislation. Acceptance of gifts is statutorily regulated. There is an obligation to declare acceptance of the gift above certain threshold (55 AZN per year). In case a civil service employee needs guidance on gifts, he/she has to ask the opinion of the supervisor (Article 8, Law on Combating Corruption). In the assessment of TI the rules are stringent but not enforced. At the on-site, no instances were mentioned with regard to reporting receiving gifts in line with regulations. Now, with ethics commissioners being appointed, gifts should be also disclosed to them and statistics maintained for the reporting purposes.

### ***Asset declarations***

No development has been noted since the Third Monitoring Round. Relevant primary legislation was enacted in 2005 but is still not operational. A mechanism for verification of declarations is not yet envisaged by the law. The National Action Plan on Promotion of Open Government 2016-2018 envisages “Implementing measures on submission of financial declarations by public officials” in 2017-2018. There is no detailed information on how and when the Government will implement these measures. Notably, the Open Government Action Plan for 2012-2015 also included specific measures for putting the asset declaration system into operation. According to TI, bylaws are needed to make the implementation of these regulations possible (detailed rules, forms etc.) Officials assured the monitoring team that the only problem was the development of the necessary form for making declarations. The monitoring team finds it difficult to conclude that difficulties in preparing the declaration form could delay the implementation of the asset declaration law for 11 years. Instead, continuing delay raises questions about whether Azerbaijan has any genuine plans for implementing this measure.

### ***Code of conduct***

The legislative framework includes the Law on Rules of Ethical Conduct of Civil Servants and the various ethics code of separate public institutions and recently adopted ethics code for municipalities.<sup>83</sup> Ethics training is not mandatory in civil service in general.<sup>84</sup> However, the Civil Service Commission ensured that it was carried out regularly. The Commission approved the action plan for 2012-2015, a section of which envisages the regular educational programmes on ethics. CSC annually requested the report from state agencies on training and enforcement of ethical rules. Training was conducted by agencies

<sup>82</sup> <http://www.commission-anticorruption.gov.az/upload/file/Conflict%20of%20interests%201%20Eng.pdf>

<sup>83</sup> Adopted in April, 2015, discussed within the CCC as well available at: <http://www.e-qanun.az/framework/30145>

<sup>84</sup> However, it is mandatory in the Prosecution Service.

themselves, as well as by CSC. Information on the training was included in the annual reports of the Commission and published on the public agencies' websites. According to TI Azerbaijan, the content of these trainings and their impact is not disclosed in detail. TI Azerbaijan in NIS positively assesses the role of the CSC in supervising the enforcement of the ethics codes in the public institutions. This function to supervise enforcement of the ethics training as well as mandate for disciplinary proceedings has been affected by the abolishment of CSC. The State Examination Centre has no right to receive complaints from disciplinary act, and hence an institutional gap exists.

### ***Reporting and whistleblowing***

The Government reported that protection of whistleblowers is envisioned in the draft Law on Conflicts of Interest, which was sent to the President administration. TI Azerbaijan published the "Concept Paper on Whistleblower" with the recommendations to support the development of the relevant legislation, illustrating the need for legislation with concrete cases and practical examples and urgency of the issue and recommended to give a priority to developing and implementing such legislation.<sup>85</sup> TI Azerbaijan noted that the Government had expressed clear intention to develop such a law and the timeline for its development was till 2014. However, no results have been reported as of now.

### ***Impact of integrity policies***

Reportedly, the Civil Service Commission was using research to measure the impact of civil service policy. However, the monitoring team did not find enough evidence of this apart from the brief description of the surveys conducted so far. Progress in advancing the civil service reform can be seen in slight increase of trust towards the civil service in Azerbaijan according to the recent Global Corruption Barometer by TI as described in Section 1.1.

Since the Third Monitoring Round, the Government has made an effort to assess corruption risks and enable better government-citizen interface. Established multi-service centres (one stop shops) ASAN run in parallel to front offices of respective service providers, however processing requests through single window created a sense of competition and helped instil integrity/ethics culture. One of the findings of the onsite visit was the fact that one stop shops helped reduce information asymmetries and mitigate petty corruption for a spectrum of administrative/public services.

The monitoring team strongly recommends the Government to ensure continuity of the mandate of the former CSC, including by increasing capacity to measure the impact of reforms, and use the findings to design new measures for developing the civil service in Azerbaijan.

### **Conclusions**

Legislation that would address the recommendations from the Third Round of monitoring has been pending in draft form for an indefinite period of time. The monitoring team was informed at the on-site that drafts had been submitted to the President Administration but these are not yet in the pipeline of legislation for consideration. The monitoring team was not able to assess the feasibility of the adoption of the mentioned legislation. CSC was conducting surveys on which to base its work but the monitoring team did not have the possibility to review them as they are in Azeri language.

As a result of the recent institutional change, many functions, such as oversight of the civil service policy, ethics enforcement and training, performance appraisal and other key functions are in legal vacuum at the moment. The monitoring team expresses concerns regarding this change and urges the government to ensure the continuity of functions in the institutional framework and in practice. Ethics commissioners have been appointed in agencies, however there is no networking and uniformity across the civil service, as the functions are performed by human resource managers or heads of internal security units. Whereas the merit-based recruitment for lower category of employees deserves positive assessment, it has not been extended to higher positions. At the same time the application in practice of existing rules seems to have strengthened. Appellate Commissions receive complaints in case of violations and if complaints are grounded new competitions/interviews are held. It is important to extend these rules to higher categories to ensure in law and practice merit-based appointments for all professional civil servants regardless of their rank.

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<sup>85</sup> TI Azerbaijan (2015) [Concept Paper on WhistleBlower](#).



Azerbaijan is partially compliant with the recommendation 12, which remains valid under number 4.

#### **New recommendation 5:**

- 1. Ensure continuity of functions of the abolished CSC to maintain institutional set up for unified civil service state policy.**
- 2. Develop without further delay the necessary form for asset declaration to ensure implementation of asset declarations in practice.**
- 3. Consider establishing full time staffing positions for independent ethics commissioners with reporting obligation to the civil service oversight body.**

## **2.2 Integrity of political public officials**

### *Types of officials, including MPs, government/national level and local level*

The category of political officials is not defined in the legislation of Azerbaijan. The Constitution only lists positions appointed by the President (article 109).<sup>86</sup> CCC has drafted a law on Political Officials. However, the authorities met during the on-site had no information regarding the plans for adoption of draft law. The draft Law defines and lists political officials,<sup>87</sup> yet regulations on appointment, conflict of interest or other integrity matters are missing.

Some integrity rules and restrictions for MPs are laid down in the legislation: the Constitution, Law on Combating Corruption and the Law on Status of Members of Parliament and the Rules of Procedure of the Parliament. However, these rules are not enforced in practice.<sup>88</sup> Information about the work of the *Disciplinary Commission of the Milli Majlis* has not been provided. According to TI Azerbaijan “practically nothing is known to the general public of its work, findings or penalties imposed.”<sup>89</sup> The authorities could not comment on the integrity issues raised by the monitoring team in connection with political officials as a whole or the Members of Parliament in particular. The MP present in the session had no information about the enforcement in practice of the existing integrity rules.

Group of States against Corruption (GRECO) analysed the prevention of corruption in respect of members of parliament and adopted detailed recommendations *inter alia*, on ethics code, conflict of interest regulations, including ad hoc disclosure of conflict of interests, guidance and training on integrity issues, an asset declaration system, including proper oversight, supervision and enforcement of the accessory activities and in general enforcement of integrity rules.<sup>90</sup>

The MP who is a CCC member at the same time and who is leading the work on the code of conduct for MPs informed the monitoring team that the draft law was close to finalization and adoption was planned at the end of 2016. A draft “Law on regulations of ethical conduct of Members of the Parliament of the Republic of Azerbaijan” aims to ensure transparency, prevent conflict of interest and increase public trust to activities of MPs, ensure compliance with the regulations on ethical conduct by MPs; It includes the principles of ethical conduct, declaration of proposed benefits, gifts, and attempts to regulate the conflict

<sup>86</sup> Prime-minister; members of Cabinet of Ministers.

<sup>87</sup> Draft law includes the following definition: including Prime Minister, Chairperson of the *Milli Majlis*; Deputies of the Prime Minister and the Chairperson of the *Milli Majlis*; Heads of the central executive authorities; The Chairperson of the Supreme Majlis of the Nakhchivan Autonomous Republic; Members of the *Milli Majlis*; The Prime Minister of the Nakhchivan Autonomous Republic; Deputy heads of the central executive authorities of the Republic of Azerbaijan; Members of the Supreme Majlis (Parliament) of the Nakhchivan Autonomous Republic; Ambassadors of Extraordinary and Plenipotentiary of the Republic of Azerbaijan permanent representatives of the Republic of Azerbaijan at international organizations; Deputies of the Prime Minister of the Nakhchivan Autonomous Republic; Heads of local executives authorities; Heads of the central executive authorities of the Nakhchivan Autonomous Republic;

<sup>88</sup> TI NIS 2013, see chapter on legislator: <http://transparency.az/alac/files/LEGISLATURE.pdf>

<sup>89</sup> TI NIS 2013, see chapter on legislator: <http://transparency.az/alac/files/LEGISLATURE.pdf>

<sup>90</sup> GRECO, Fourth Round Monitoring Report on Azerbaijan.

of interest and impartiality. However, draft does not contain clear regulations of disclosure, or procedures for enforcement by the Disciplinary Commission. The work on the draft legislation is still in progress.

#### **New recommendation 6:**

- 1. Adopt without delay the legislation ensuring legal separation of political and professional public service.**
- 2. Adopt without delay the Code of Conduct for MPs.**
- 3. Provide training and guidance on ethics and conflict of interests.**
- 4. Ensure strong monitoring, enforcement and sanction mechanisms and enforce the rules in practice.**

## **2.3 Integrity in the judiciary and public prosecution service**

### **2.3.1 Judiciary**

#### ***Institutional, operational and financial independence***

Several legislative provisions are relevant to judicial independence. Article 127 of the Constitution and Article 100 of the Law on Courts and Judges (LCJ) provide that judges are independent and bound only by the Constitution and laws. Justice is administered in compliance with judicial independence without any restrictions (Article 8 LCJ). Directly or indirectly restricting, unduly influencing, threatening or interfering with court proceedings or acting in disrespect or explicit disobedience of the court is prohibited (Article 9 LCJ). Direct or indirect interference in the administration of justice is a crime (Article 286.1 CC). Judges are generally not allowed to engage in political activity or be a member of political parties; hold elected office; engage in entrepreneurship, commercial or other paid business; or receive payments other than their official wage (Articles 104-5 LCJ). Diverting cases from courts that have jurisdiction or undue withdrawal of a case from an authorised judge is not allowed (Article 15 LCJ).

Article 90 LCJ concerns court budgets. The provision provides that “[the Ministry of Justice] within the limits provided by the state budget of the Republic of Azerbaijan, shall take necessary measures to secure financing and logistical support of courts activities in due time. Before the submission of the proposals for the costs, envisaged for the financial support of courts of first instance to the relevant executive authority, the opinion of the Judicial-Legal Council should be obtained.” The Azerbaijani authorities state that first instance courts submit their budgets to the JLC. Once endorsed by the JLC, the budget is binding on the Ministry of Justice. Despite this arrangement, civil society has opined that the Ministry of Justice’s role in setting court budgets threatens judicial independence, and that court budgets are low by EU standards despite steady increases over the past decade.<sup>91</sup> Azerbaijan considers this last point irrelevant since it is not a member of the EU.

Additional provisions relevant to independence, such as those on judicial appointment, dismissal, discipline, immunity and remuneration are described below.

#### **Conclusion**

Azerbaijan’s Constitution and legislation contain provisions that set out the institutional and operational independence of the judiciary. Nevertheless, civil society has expressed concern that the Ministry of Justice’s power to manage the first instance courts’ budgets endangers judicial independence. The Azerbaijan government and the judiciary (e.g. the Judicial-Legal Council) should examine the merits of this concern and amend the current legislative and institutional framework if necessary.

#### ***Council for the Judiciary – mandate, powers, non-politicization***

<sup>91</sup> Transparency International (2014), “[National Integrity System Assessment: Azerbaijan](#)” at p. 54.

JLC plays an important role in judicial independence, appointments, evaluation and discipline. Its constituting statute states that the JLC operates according to the principles of independence, legality, collective decision-making, impartiality and objectivity (JLC Act Articles 1-5). JLC decisions are taken by majority vote. Its sessions are broadcast on national television. Minutes and decisions are available on its website. Decisions can be appealed to the Supreme Court (JLC Act Articles 17-18).

Since the Third Round Monitoring, Azerbaijan has changed slightly the process for appointing JLC members. The 15 members of the JLC include the President of the Supreme Court and one Constitutional Court judge. Seven of the remaining members are also judges. Two judges' associations<sup>92</sup> prepare a list of candidates from which two Supreme Court judges and one Nakhchivan Autonomous Republic (NAR) Supreme Court judge are selected by those Courts; and two Court of Appeal judges and two District Court judges are appointed by the JLC. The appointing body may reject the judges' associations list of candidates once. The remaining six JLC members are not judges and include the Minister of Justice and one person appointed by him/her; one person appointed by the President; a member of Parliament appointed by the *Milli Majlis*; a lawyer appointed by the Collegial Board of Bar Association of the Republic of Azerbaijan; and one prosecutor appointed by the Prosecutor General (Article 6 JLC Act).

The recent changes are commendable but some concerns remain. Most but not all judges can participate in the appointment of JLC members since the two judges associations that prepare the initial list of candidates include only 94.5% of judges in the country. They are thus not completely representative of the judiciary. It is also unclear how the judges' associations draw up the list of candidates. Furthermore, the executive continues to assert substantial influence. The Minister of Justice and his appointee make up two JLC members, and the President appoints a third. A fourth member is appointed by the *Milli Majlis*, which is dominated by the ruling party. Executive influence on the Supreme Court and Courts of Appeal, which also appoint JLC members, is discussed below.

The choice of the JLC President also raises concerns about independence. JLC members elect a President who holds a five-year term with no term limits. The JLC President has substantial powers, including casting the final vote in JLC decisions, representing the JLC, organising its work, choosing the member responsible for investigating judicial disciplinary cases etc. (Articles 21-2 and 26 JLC Act). The Minister of Justice has been the President since the JLC was established in 2005, which projects an image that the JLC is an executive-led body.

Civil society participation in the JLC is limited. The Third Round Report (p. 84) stated that civil society is not represented in the JLC. In the current evaluation, Azerbaijan states that civil society and the media are now "usually invited" and their attendance "helps the JLC". However, JLC Act Article 25.2 allows "other persons" – not necessarily civil society – to be invited to the JLC's sessions. The provision also suggests that an invitation is required; there is no right for civil society to attend.

## **Conclusion**

Azerbaijan has improved the composition of the JLC and the process for appointing its members. The authorities have also demonstrated interest in making the JLC transparent. These steps are commendable. However, the current arrangement continues to raise concerns about executive influence, whether real or perceived.

### **New Recommendation 7**

**Ensure that objective and transparent criteria apply for the selection and appointment of the Supreme Court and appellate court judges to avoid potential undue political interference.**

## ***Merit-based recruitment and promotion of judges***

<sup>92</sup> Azerbaijan stated that the two judges associations may merge into a single body in the near future.

### **Recommendation 13 from the Third Monitoring Round report on Azerbaijan:**

- Ensure that objective and transparent criteria apply for the selection and appointment of the Supreme Court and appellate court judges to avoid potential undue political interference.

Article 126(1) of the Constitution and Article 93 LCJ set out the basic qualifications for judges. Some of the requirements include holding only Azerbaijani nationality; aged 30 or above; a higher legal education; at least 5 years' working experience in the legal field; and no criminal record. Additional requirements to prevent conflicts of interest are described below.

A Judicial Selection Committee oversees the recruitment process. The JLC appoints Committee members to five-year terms. The Committee consists of 11 members including 6 judges from the Supreme Court, Court of Appeal and NAR Supreme Court, and 1 representative each from the Ministry of Justice, Prosecutor General's Office, JLC staff, bar, and academia.<sup>93</sup>

Concerns were expressed at the on-site visit about the recruitment procedure, notably the final decision for selecting successful candidates.<sup>94</sup> Entrance examinations are advertised in the media. Candidates take a two-stage written examination consisting of randomly chosen questions. The examinations are marked and "double-checked" by the Judicial Selection Committee and "invited specialists". Candidates that pass the written examination proceed to a further oral interview. International, governmental and non-governmental organisations, as well as media representatives, can observe the written and oral examinations. A candidate can also observe the interviews of other candidates. Nevertheless, several civil society representatives state that the interview and the decision-making that follows are not sufficiently transparent. Azerbaijani officials disagree.

Candidates who pass the written and oral examinations undergo one-year of paid training followed by a further examination and an interview. The JLC, based on proposals by the Judicial Selection Committee, then ranks successful candidates by their test scores and submits the list to the President for appointment.<sup>95</sup> The President may refuse to appoint the candidates proposed by the JLC but Azerbaijan states that this has never occurred.

The procedure for appointing judges to the Supreme Court and Court of Appeal has not changed since the Third Round Monitoring and hence concerns about objectivity and transparency remain. Azerbaijani officials state that vacancies for these positions are advertised. Candidates either submit an application or are nominated by the JLC. The JLC then proposes one candidate to the President who passes the proposal on to the *Milli Majlis* for formal appointment. There are no detailed rules on how the JLC chooses the candidate. Article 94 LCJ merely requires the candidate to have five years' experience as a first instance court judge. Alternatively, the candidate must have 20 years' experience as a legal practitioner, "high moral qualities" and a recommendation by the JLC. At the on-site visit, the JLC stated that it would consider the five-yearly mandatory evaluation of judges when considering a candidate. This, however, is not stipulated in legislation or the JLC's internal rules.

### **Conclusions**

The rules regarding the examination and interview process for the initial recruitment of judges contain some safeguards to ensure objectivity and transparency. Nevertheless, civil society contends that the oral interview and the decision-making which follows may also not be sufficiently transparent and impartial. Azerbaijani officials disagree with this view. However, the monitoring team believes that it would be important for the Azerbaijani authorities to engage in dialogue with civil society and address its perception and concerns on this issue.

The criteria for judicial appointments to the Supreme Court and Court of Appeal are not sufficiently objective and transparent. The applicable legislation and rules set out only basic criteria such as work experience. The JLC states that it relies on the results of mandatory judicial evaluations but this is not

<sup>93</sup> JLC Act Article 14; [Judicial Selection Committee Charter](#).

<sup>94</sup> JLC Rules 3.17 and 3.19-3.52 on the [Selection of Non-Judicial Candidates to Vacant Judicial Posts](#).

<sup>95</sup> JLC Rules 4 and 5 on the [Selection of Non-Judicial Candidates to Vacant Judicial Posts](#); Articles 15-16 and 18.1 JLC Act; Constitution Article 109(9); Third Round Report pp. 84-85.

stipulated in writing. There are no additional criteria for choosing between two candidates with equally good evaluations. Concerns about evaluations are described below. Evaluations are also not available for candidates who are not first instance judges, making the choice of these candidates even more opaque.

**New Recommendation 8:**

**Ensure that objective and transparent criteria apply to judicial appointments to the Supreme Court and Court of Appeal to avoid undue political interference.**

*Administrative positions in courts – role, powers, appointment/dismissal*

The President of Azerbaijan appoints the Presidents of the Supreme Court and NAR Supreme Court. There is no competition for the positions and consultation with the JLC or the *Milli Majlis* is not necessary. With a recommendation of the JLC, the President of Azerbaijan also appoints the presidents of all other courts, and the vice-presidents and presidents of court collegium of all other courts (Article 94 LCJ). The Presidents of all courts serve renewable five-year terms. The current Supreme Court President was initially appointed by the President of Azerbaijan in 2005 and recently reappointed in 2015. The powers of a court's president and vice-president generally include administration of the court and management of its administrative staff, including recruitment, discipline and dismissal.<sup>96</sup> The court presidents' role in judicial evaluations is discussed in the next section. As mentioned above, the President of the Supreme Court also serves on the JLC.

**Conclusions**

The Presidents of the Supreme Court and NAR Supreme Court are the highest positions within the judiciary. The President of Azerbaijan has unfettered power to appoint (and dismiss) judges to these positions; regrettably, the JLC does not play a role in these appointments. This creates a perception that the executive may influence not only these courts, but also other bodies in which these individuals participate, such as the JLC. The Azerbaijani authorities state that changes to the procedure for appointing the Presidents of the Supreme Court and NAR Supreme Court would require a constitutional amendment. Nevertheless, the monitoring team is of the opinion that Article 109(32) of the Constitution, in conjunction with Article 94 of the Law on Courts and Judges do not impede the introduction of a role of the JLC in the procedure for appointing the highest judicial positions of the state. In fact, Article 94, in conjunction with Article 109(32) prescribes the role of the JLC in the appointment of presidents of other courts.

**New Recommendation 9:**

**Amend the relevant legislation to require the Presidents of the Supreme Court and NAR Supreme Court be appointed upon the recommendation of the JLC based on objective, transparent criteria and process.**

*Secure judicial tenure*

A judge is initially appointed to a three-year probationary term and then evaluated. While previously the probation period was of five years, December 2014 amendments of the Law on Courts and Judges reduced this period to three years. If his/her evaluation is satisfactory, then the appointment becomes permanent. The JLC evaluates judges at least once every five years “to improve the administration of justice, organize training of the judges adequately, as well as, to check the aptitude of judges to proceed with their judicial duties” (JLC Act Article 13). The JLC is responsible for determining the evaluation procedure and methodology. The JLC Act (Article 13.3) states that an evaluation can rely on information “collected by the [Ministry of Justice] in the course of implementation of its functions provided by the legislation”. JLC officials state that the Ministry only provides court statistics and information in court records. An evaluation can also be based on an opinion provided by the president of the court on which a judge sits and any information in the possession of the JLC. A judge's disciplinary record is also considered.

<sup>96</sup> LCJ Article 23 (City Courts), Articles 28-29 (Serious Crimes Court), Article 30-4 (NAR Courts), Article 34 (Military Courts), Article 45 (Administrative-Economic Courts), Articles 57-58 (NAR Supreme Court), Articles 66-67 (Courts of Appeal), and Articles 83 and 84-1 (Supreme Court).

## Conclusions

A very long probation period may raise concerns with regard to the independence of the judges who might refrain from issuing the right decisions in sensitive cases before his/her permanent appointment. Azerbaijan has reduced the probationary term from five to three years. This is commendable, although in the view of the monitoring team, it is still a rather long period.

### *Ethics rules (code of conduct)/Conflict of interests/other restrictions (gifts, incompatibility, post-employment, etc.) – special rules, enforcement mechanism, sanctions, statistics*

The Constitution Article 127(II) requires judges to be impartial, fair, and to act according to facts and law. Article 99 LCJ goes further and requires judges to maintain confidentiality and judicial prestige, honour and dignity. Judges are also bound by a 2007 [Code of Ethical Conduct \(CEC\)](#) that also requires judges to be impartial and fair.

Particular provisions deal with conflict of interest. Judges cannot hold appointed or elected office. They are prohibited from participating in political activities, openly expressing political views, joining a political party or movement, or taking part in mass actions.<sup>97</sup> Judges cannot be involved in business or commercial activities. They may not receive any remuneration other than their wages and money for scientific, pedagogical and creative activities.<sup>98</sup> The CEC further prohibits judges from being influenced by family, friends, or the government (Articles 7, 10 and 17); establishing “non-procedural” relations with litigants (Article 13); and participating in any activities that negatively influence his/her independence or impartiality (Article 20). If the decision adopted by a judge touches upon his/her family interests, then the judge must recuse him/herself from the case (Article 7). Rules on disqualification and recusal from criminal proceedings are found in Articles 30 and 109 Criminal Procedure Code (CPC). Azerbaijan states that there are no post-employment restrictions on judges.

A judge cannot accept a gift, award, favour or benefit in connection with a case under his/her consideration, or any services that can affect a case’s outcome (Article 18 CEC). Article 8 of the Law on Combatting Corruption (LCC) prohibits all public officials from soliciting or accepting gifts that may influence or appear to influence the objective and impartial performance of duties. An exception is made for minor gifts or conventional hospitality under 55 AZN (approx. EUR 33) over a 12-month period. Judges also may not obtain undue privileges or advantages in the exercise of their duties while entering into or performing civil contracts (Article 8.4 LCC).

The means for enforcing these rules varies. Azerbaijan states that the CPC provides motions for the recusal of a judge to be resolved by other judges on the same panel or a higher court, depending on the circumstances. Other violations result in disciplinary proceedings before the Judicial-Legal Council. A gross infringement or multiple infringements of legislation while considering a case can result in “reproofing” of the judge or a transfer to a different post. These sanctions plus a reprimand are available for a violation of the Code of Ethics (Article 111-1 and 112 LCJ).

### *Complaints against judges, disciplinary proceedings and grounds for dismissal*

#### **Recommendation 18 from the Third Monitoring Round report on Azerbaijan:**

- Develop further the capacity of the Judicial Legal Council to consider, as a disciplinary body, allegations of misconduct of judges that can denote lack of integrity (such as interventions to other judge in relation with the decision in a case, infringement of the rules on incompatibilities of the judge’s position with commercial or political activity etc.).

The procedure for judicial disciplinary proceedings has not changed since the Third Round Report. The JLC initiates disciplinary proceedings, including after a media report or a complaint by the Ministry of Justice, presidents of appellate courts, or citizens. Proceedings may be started within one year after an alleged offence’s discovery and three years after its commission. Once proceedings are launched, the JLC appoints one of its members who is a judge as a rapporteur. The rapporteur reviews the materials that have

<sup>97</sup> Constitution Article 126(II); Articles 104-105 LCJ; Articles 22-23 CEC.

<sup>98</sup> Constitution Article 126(II); Article 104 LCJ; Article 21 CEC.

been submitted and prepares a report. The JLC decides the case after considering the report and hearing the judge who is the subject of the proceedings. If the judge is found liable, the JLC may impose sanctions ranging from a reprimand to proposing dismissal of the judge to the relevant executive body. JLC members who are not judges cannot vote in disciplinary matters. The JLC's decisions can be appealed to the Supreme Court (Third Round Report p. 84). The JLC [website](#) indicates recent disciplinary decisions but not the reasoning for the decisions.

Azerbaijan has not responded to the recommendation in the Third Round Report to improve the JLC's capacity to consider allegations of judicial misconduct. It refers only to amendments to the JLC's constituting statute, but these efforts do not address the JLC's investigative or adjudicative capacity. Disciplinary proceedings continue to rely largely on a rapporteur to examine submitted documents. In response, Azerbaijani authorities state that a specific unit within JLC handles disciplinary matters. This information was provided during the preparatory meeting before the ACN plenary discussed this draft report. The monitoring team therefore did not have an opportunity to fully assess the capacity of this unit.

Legislation sets out grounds for termination. Judges must retire at the age of 66 but 68 for Supreme Court Judges (Article 96 LCJ). Article 113 LCJ lists additional grounds for dismissal. For certain grounds such as "incompatibilities", "two or more disciplinary offences in a calendar year" and "multiple gross violations of law while reviewing a case", the JLC makes the decision to terminate. Judges can be transferred only with their consent (Article 97 LCJ).

A criminal conviction can also lead to dismissal (Article 101 LCJ). Article 128 of the Constitution sets out the procedure. If a judge is found to have committed a crime, then the President may ask the Supreme Court for an opinion within 30 days on whether the judge should be dismissed. If the Supreme Court's decision is in the affirmative, then the President may ask Parliament to dismiss the judge. Parliament's decision is by majority but by two-thirds majority if the case concerns judges of the Constitutional Court, Supreme Court or Appeal Courts.

Dismissals and disciplinary cases are relatively rare. According to statistics provided by Azerbaijan, in 2013-15 there were 41 requests for judicial disciplinary proceedings but only 2 were made by citizens. Over the same period, 8 judges were dismissed due to "disciplinary proceedings" or "performance evaluations", while 14 judges departed from the bench due to retirement, resignation or death. No judges have been dismissed due to a criminal conviction. Over the same period, 10 judges were transferred after disciplinary proceedings. JLC officials at the on-site visit added that there have not been any dismissals due to engagement in incompatible (e.g. commercial) activities or intervention on another judge's work. Azerbaijan could not provide data on the number of disciplinary cases that have been opened.

## Conclusions

Azerbaijan has not improved the JLC's capacity to consider allegations of judicial misconduct. The low number of dismissals and disciplinary cases sit uncomfortably with widely held concerns about judicial integrity.

### **New Recommendation 10:**

**Develop further the capacity of the Judicial Legal Council to consider, as a disciplinary body, allegations of misconduct of judges that can denote lack of integrity (such as interventions to other judge in relation with the decision in a case, infringement of the rules on incompatibilities of the judge's position with commercial or political activity etc.).**

### *Asset and interests disclosure - special rules, enforcement mechanism, sanctions, statistics*

Azerbaijan states that judges are supposedly required to declare their assets, income, liabilities and interests to the Commission on Combatting Corruption. Failure to do so leads to disciplinary proceedings and sanctions of "reproofing" or a reprimand. But as with asset declarations for other officials, the requirement to declare is not enforced in practice because the government has yet to agree on the format for the declaration (see Chapter on "Integrity in the civil service"). At the on-site visit, several judges stated that it would be very important to enforce this requirement *viz.* the judiciary.

## Conclusions

As judges readily acknowledged at the on-site visit, requiring judges to declare assets, income, liabilities and interests is of particular importance. Implementation of this requirement could go some ways towards reducing public concerns about judicial integrity. Given the inordinate delay in implementing the government-wide declaration system for all public officials, the JLC should implement its own declaration system for judges and make declarations publicly available.

### **New Recommendation 11:**

**Require judges to annually declare assets, income, liabilities and interests to the JLC, and make the declarations publicly available.**

### *Availability of training, advice and guidance on request, written guidelines*

#### **Recommendation 18 from the Third Monitoring Round report on Azerbaijan:**

- Develop systematic training on ethical conduct and anticorruption standards for judges, paying special attention to the methodology of the training activities. Topics like conflicts of interests, incompatibilities, requirement of financial disclosure, reactions to gifts, reporting corruption, etc. should be included in the training of judges.

The Third Round Report (p. 84) suggested that Azerbaijan put greater emphasis on systematic training on judicial ethics. Training should take a practical approach and include examples of advisable responses to concrete, practical integrity risks that judges may face. Training should also cover anti-corruption standards; prevention measures; conflicts of interests; incompatibilities; financial disclosure requirements; gift policies; and reporting corruption.

Azerbaijan has not fully implemented this recommendation. One annual training session is mandatory for judges in the first five years of their careers, after which training is optional. The Judicial Academy states that it trained 159 judges on ethics and anti-corruption in 2013-2015. One of the current training courses covers “Factors conducive to corruption in the court process and relevant preventive measures”. Other courses on “The particularities of corruption-related crimes” and “Corruption offences and related liability” concerned substantive law on corruption and not efforts to strengthen judicial integrity. The topics suggested in the recommendation were not covered. No guidelines on judicial integrity have been issued. There is no mechanism for judges to obtain advice or guidance on ethical and integrity issues.

### **New Recommendation 12:**

**Develop systematic training on ethical conduct and anticorruption standards for judges, paying special attention to the methodology of the training activities. Training should include topics such as conflict of interests, incompatible activities, financial disclosure requirements, gift policies, and reporting of corruption.**

### *Case assignment*

The Third Round Report (p. 82) described a system to randomly assign cases to judges but the system continues to be done manually at many courts. Electronic case assignment is performed only in courts with new buildings. In appellate courts, the panels of judges that hear cases are chosen by the courts’ “plenary board” that consists of the courts’ presidents, vice-presidents and chamber presidents (Articles 54, 63, 79 LCJ). Court presidents analyse a final list of case assignments at the end of each month, which is commendable. However, this analysis should further take into consideration any complaints about the random case allocation system, and should aim to identify and address any malfunctions, manipulation or vulnerabilities of the system, be it manual or electronic.

### **New Recommendation 13:**



**Implement an electronic case assignment system nationally and ensure that the monthly analysis of the case assignment system identifies and addresses vulnerabilities in the system.**

### *Fair and transparent remuneration*

Article 106 LCJ sets judges' salaries. The President of the Supreme Court is the highest paid judge. All other court presidents are paid at least 70% of the Supreme Court President's salary, and all other judges are paid at least 80% of their court presidents'. This sets a floor for judge's salaries that is roughly 2½ times the average monthly salary in 2015. Azerbaijan states that salaries increase by 15% every five years and for every research degree. Judges also receive a further monthly tax-free allowance of between 15-25% of the base salary, as well as health coverage, a pension, and life insurance.

### *Transparency of the judiciary – access to court decisions, court premises, media in the courtroom*

The Constitution Article 127(V) mandates open courts, subject to exceptions such as to protect privacy as well as state, professional and commercial secrets. A similar rule for criminal and civil proceedings is found in Article 27 of the Criminal Procedure Code and Article 10.3 of the Civil Procedure Code respectively. Azerbaijan states that there are generally no restrictions for media attendance and coverage of court hearings. The Judicial Code of Ethics (Article 14) requires judges to “obey the principle of public hearing” and respect the duty of the media to inform the public about judicial activity.

Less court information is available on the Internet than claimed. Azerbaijan states that cases scheduled for hearing are to be published on the court's notice board and [website](#). Appellate judgments are to be published within one month and “disseminated by means of electronic carriers” while those of first instance courts are to be published through means stipulated by law (Article 5 LCJ). In practice, only the hearing schedule and judgments of the Supreme Court are available on the court websites. The pages on the websites of the Courts of Appeal on judgments and cases pending do not contain any data.<sup>99</sup> The corresponding pages of the websites of district courts are “under construction” or simply not found.<sup>100</sup>

### **New Recommendation 14:**

**Ensure that all courts' websites contain up-to-date information on hearings and judgements.**

### *Impact of integrity policies in judiciary, trust and perception of corruption*

#### **Recommendation 18 from the Third Monitoring Round report on Azerbaijan:**

- Conduct an analysis on the internal causes of the perception of corruption and lack of independence of the judiciary and carry out a risk assessment and identify the needs for an anticorruption policy within the judicial system. Ensure, for that purpose, the cooperation of the Judicial Legal Council with the Commission on Combating Corruption, Anti-Corruption Department, and other relevant state institutions, as well as with representatives of the relevant civil society organizations.

The Third Monitoring Round Report (pp. 83 & 85) noted strong criticism from civil society, lawyers and international organisations about corruption and a lack of independence in the judiciary. Azerbaijani judges, however, did not agree. In their views, the publication of Supreme Court decisions and the relative youth of the judiciary were proof of judges' integrity. Negative public perception is mostly due to the dissatisfaction of losing litigants.

Little has changed since. Civil society, lawyers and international organisations continue to believe that the Azerbaijani judiciary suffers from a lack of integrity and independence, especially in sensitive cases. Reports that courts have issued politically motivated decisions in cases against prominent human rights defenders and journalists feed these concerns. There were also reports that some judges hold interests in business. Consequently, businesses and individuals are reluctant to turn to the courts for redress. On the

<sup>99</sup> See for instance the pages for the Baku Court of Appeal on [scheduled hearings](#) and [judgments](#).

<sup>100</sup> See for instance the pages for the Baku Serious Crimes Court on [scheduled hearings](#) and [judgments](#).

other hand, Azerbaijani officials reiterate that there are no problems with judicial integrity. The major challenge in the court system was the notification of litigants which would be resolved by a new “e-notification” system. No institutional corruption risk assessments have been conducted. Azerbaijan has not conducted any public opinion surveys but asserts that public confidence in the judicial system has increased because of measures to improve efficiency.

## **Conclusions**

As described above, the Azerbaijani public continues to widely believe that the judiciary lacks integrity and independence. The Azerbaijani judiciary strongly disagrees with this view and continues to dismiss its negative image as the product of complaints by losing litigants. This explanation is doubtful: every country has its share of losing litigants but many do not suffer from such negative perceptions. In any event, because of their entrenched position, Azerbaijani officials have not taken sufficient steps to seriously address the public’s concerns. This is extremely regrettable. Public confidence in the judiciary will remain very low as long as the authorities dismiss rather than address these concerns.

### **Azerbaijan is partially compliant with Recommendation 18.**

#### **New Recommendation 15:**

**Conduct an analysis on the internal causes of the perception of corruption and lack of independence of the judiciary, carry out a risk assessment, and develop an anticorruption policy for the judiciary that encompasses greater efforts to prevent, detect and sanction corruption. This process should closely involve the Judicial-Legal Council, Commission on Combating Corruption, Anti-Corruption Department, other relevant state institutions, and relevant civil society organizations.**

### **2.3.2. Prosecutors**

Previous monitoring reports did not examine prosecution service integrity to the same extent as outlined in the Fourth Round Monitoring methodology. As a result, no recommendations on this issue have been made in the Third Round.

The public prosecution service is governed by the Constitution of Azerbaijan, the 1999 Prosecutor’s Office Act (POA) and the 2001 Act on Service in the Prosecutor’s Office (POSA). According to these legal acts, the public prosecution service is a constitutional body which carries out criminal investigations, exercises criminal prosecution, oversees the application and execution of laws by inquiry and operational bodies, represents the state in court and acts as a plaintiff in civil, economic and administrative court cases and lodges appeals against court decisions. The public prosecution service of Azerbaijan is a centralised body with local and specialised prosecution offices subordinated to the Prosecutor General of Azerbaijan (PG) and is part of the judicial branch of power. The prosecution service officials include prosecutors, investigators and detectives.

#### ***Institutional, operational and financial independence, appointment and dismissal of the Prosecutor General***

Azerbaijani legislation contains numerous provisions aimed at ensuring prosecutorial independence. Pursuant to Article 36 of POA, prosecutors are independent in the exercise of their duties. Direct or indirect restriction, influence, threats or illegal interference in the lawful activities of the Prosecutor’s Office and of individual prosecutors are forbidden and entail liability (Article 7 POA).

Prosecutor General (PG) is appointed and dismissed by the President subject to endorsement by the Parliament. The tenure of appointment for PG is five years renewable without limitations. Until 2009, the PG was limited to two five-year terms. The monitoring team regrets this change in legislation. In response, the Azerbaijani authorities stated the current arrangement does not raise any concerns due to safeguards of independence in the Criminal Procedural Code. His/her deputies and chief specialised prosecutors are appointed by the President on recommendation of the PG. Territorial and specialised prosecutors are appointed by the PG with the consent of the President.

There is no Prosecutorial Council in Azerbaijan, and therefore PG does not report to any such body. PG is accountable to the Parliament and the President: by law s/he is required to regularly report to the Parliament of his office activities (Article 43 POA), as well as to the President (Article 44 POA). The reports submitted to the Parliament are (in principle) annual reports, containing general analysis of the prosecution service activities, statistics and non-case specific information. On the other hand, the reporting to the President is much more in-depth. The reports to the President are not limited in number; they can tackle any issue pertaining to the prosecution service activities and can be initiated either by the President or by the PG. According to the replies to the questionnaire, provided by Azerbaijan, the reporting to the President can also concern ongoing investigations.

According to the interlocutors met during the on-site visit, the prosecutors cannot receive instructions to prosecute or not to prosecute directly from the executive bodies.

Criminal procedure law of Azerbaijan does not provide for discretionary prosecution and the prosecutors have to take into consideration every complaint they receive. Therefore, the decision of non-prosecution or non-opening of an investigation is not based on opportunity, but on substantial reasons.

Hierarchical relations within the prosecution service are governed by the Criminal Procedure Code (CPC), the POA and the POSA. Prosecutors may only receive instructions from their superiors as well as the PG. Execution of all lawful instructions is mandatory. Senior prosecutors can overrule the decisions of their subordinates by issuing written grounded instructions. Interlocutors met during the on-site visit informed the monitoring team that in practice such instructions are often done orally.

Financial independence of the Prosecution Office is guaranteed by the allocation of resources from the state budget, which is approved at the beginning of each year by the Parliament. The general impression from the interlocutors met at the on-site, both governmental and non-governmental, is that the public prosecution service is well financed in Azerbaijan.

Additional provisions relevant to independence, such as those on prosecutorial appointment, dismissal, discipline, promotion and remuneration are described below.

## **Conclusions**

Azerbaijan's Constitution and legislation contain provisions that set out the institutional and operational independence of the prosecution service; nevertheless there are some practical issues which merit consideration.

The first issue relates to the independence of PG. While the reporting of PG to the Parliament and to the President is not a problem in itself (like any other public authority, the Prosecution Office should be accountable to the public), some concerns can still be raised with regard to the independence of the Prosecution Office, especially when it comes to the reporting on cases. This element should be seen in conjunction with the fact that PG is appointed for an unlimited number of mandates through a coordinated decision between the President and the Parliament and the same two bodies can dismiss him/her. The risk may appear when cases regarding high level corruption or other serious economic crime involving high level public officials are or need to be investigated. The reporting obligation, combined with the procedure of appointed and dismissal of PG might appear as pressure.

The second issue is connected to the corruption risks of the individual activity of the prosecutors. On the basis of the subordination principle that governs the Prosecution Office in Azerbaijan, when a decision of the prosecutor not to open a case or not to prosecute is challenged with a complaint, the superior prosecutor will look into and resolve the complaint. Decisions not to prosecute can also be the object of inspections made by the hierarchy. Since this type of decisions can, in principle, present a higher risk of corruption, it is recommendable that they make the object of hierarchical inspections and that the results of the hierarchical inspections are made public. Azerbaijani authorities state that this is being done already and they are published as part of the semi-annual and annual reports made by ACD.

### ***Merit-based recruitment and promotion of prosecutors, grounds for dismissal***

Recruitment requirements for prosecutors are defined in Articles 29 of POA and 4 of POSA. Vacancies at the entry level are announced in the media. The initial selection is overseen by the special Examination Commission composed of seven members, including prominent lawyers and academics, appointed by the

PG with the involvement of the Collegial Board. The competition comprises four stages and is followed by mandatory one-year training and half-year probation within the Prosecutor's Office.

Specific operational and other specialised candidates can also be recruited by the Examination Commission directly from other law enforcement bodies (police officers, intelligence officers) bypassing the standard recruitment procedure. Interlocutors met during the on-site explained that this happens when the need in some specific operations or other exigencies requires the swift appointment of new prosecutors and it mostly concerns operative officers. In such cases, the candidate is interviewed by the Examination Commission.

Prosecutors have the right to be promoted, following successful service in a particular grade for one to two years, on average. Applications to any vacant position are managed by the Personnel Department of the Prosecutor General's Office (PGO) that makes relevant submissions to PG, based on the performance indicators of the applicant and his/her superiors' references. Any change in position (promotion, transfer, demotion or dismissal) is formalised by written and reasoned order issued by PG.

Grounds for dismissal of the prosecutor are regulated in Article 32.3 of the POSA and seem to be in general compliance with international standards. The dismissal can be challenged in court.

Disciplinary procedures are carried out by PG and may be delegated, within certain limits, to the Military Prosecutor, the ACD prosecutor and the prosecutor of Baku. Certain procedures may bring about an internal inspection, the order and the contents of which are prescribed by the PG.

The results can be appealed to the senior prosecutor or to the court.

With the exception of *flagrante delicto* cases, prosecutors may be subject to administrative arrest, mandatory summoning, detention, interception of communication, made the subject of criminal proceedings, arrested or searched only upon endorsement of a substantiated motion of PG by the Supreme Court President.

Two units may inquire into the allegations of criminal misconduct – the Organisational-Analytical Department of the Prosecutor General's Office and the Internal Security Division of the Anti-Corruption Directorate.

As a result of internal inspections, in 2013 three officers of Prosecutor's Office, two in 2014 and seven in 2015 have been dismissed.

## **Conclusions**

General recruitment of the prosecutors in Azerbaijan follows a competition-based system, overseen by a special Examination Commission: a system including written and oral procedures. The written part of the recruitment procedure seems to be carried out in a transparent manner. However, according to the TI NIS report<sup>101</sup> and general criticism expressed by the civil society during the on-site visit, there are some concerns with regard to the oral part of the examination where the final interviews are held behind closed doors with the eligibility criteria not being clearly stated.

The monitoring team was not informed of the percentage of operational and other specialised candidates directly hired by the Examination Commission, as opposed to those hired through the standard competitive recruitment procedure. Therefore it was impossible to assess the exceptional character of this special non-transparent procedure. It was also not clear what selection criteria are being used by the Commission and whether they are transparent.

***Ethics rules (code of conduct) / Conflict of Interest / Asset declarations / Other restrictions (gifts, incompatibility, post-employment, etc.) – special rules, enforcement mechanism, sanctions, statistics***

Prosecutors in Azerbaijan are subject to two sets of rules laying down ethical principles and rules of conduct: the 2007 Act on "Rules for the ethical conduct of civil servants" and the Prosecutorial Code of Ethical Behaviour, endorsed by the Collegial Session of the Prosecutor General's Office in 2008.

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<sup>101</sup> National Integrity System Assessment Azerbaijan, TI Azerbaijan 2014, p 82.

Compliance with the Prosecutorial Code of Ethical Behaviour is meant to be supervised in an on-going manner by senior prosecutors, and the overall control over ethical rules is performed by heads of offices and superior bodies.

Ethical breaches are qualified as improper behaviour and subject to disciplinary action.

Violations of the standards of conduct may be subject to examination by the Supreme Attestation Commission, which may file a motion for instituting disciplinary proceedings directly with the PG.

Pursuant to the Article 26 of the POSA the applicable disciplinary sanctions include reproof, reprimand, severe reprimand, demotion, demotion in special rank, temporary dismissal, dismissal, and dismissal with deprivation of a special rank. A demotion in rank by one degree is also applicable for a disciplinary breach.

The following sanctions have been applied in Azerbaijan: in 2013 - 4, in 2014 - 6 and in 2015 - 13 employees have been subjected to sanctions for violation of provisions of the Prosecutorial Code of Ethical Behaviour.

Conflicts of interest for prosecutors are governed by the Law on Combatting Corruption (LCC). Prosecutors can seek oral and written advice from their superiors on ethical dilemmas and the observance of provisions on combating corruption and preventing conflicts of interest.

The Law on Approval of Rules for Submission of Financial Information by Public Officials provides that all prosecutors are to declare their assets, income, liabilities and interests. The law however is not operational.

Conflicts of interest and asset disclosure are part of a one-year mandatory training offered to candidate prosecutors and of optional in-service training. Azerbaijan authorities specifically mention that the training offered in 2015 by Scientific-Educational Centre of the Prosecutor General's Office to prosecutors covered the issue of assets disclosure.

Engagement of prosecutors in political activities and membership in political parties are prohibited; prosecutors cannot hold any elected posts or engage in entrepreneurial, commercial or other paid activities, except for academic, pedagogical or creative ones (Article 10 POA). The level and scope of engagement of prosecutors in auxiliary activity have been examined by the Prosecutor General's Office in 2015 and an internal order has been issued stating that, at present, such activity (in practice mostly of academic or pedagogical nature) cannot be carried out without an official consent from the hierarchy.

According to the legislation, there are no post-employment restrictions that would prohibit prosecutors from being recruited in the private sector after leaving the public office.

## **Conclusions**

In legislative terms, Azerbaijan has a well regulated system of ethical rules and other restrictions for prosecutors.

Some practical steps have also been commendable, including examination of prosecutors' engagement in auxiliary activities and issuance of the subsequent instruction. Nevertheless, it would be recommendable that information on all types of authorized auxiliary work be made available to all the prosecutors, so that the rules to abide by them are more predictable and transparent.

Other improvements can be made. For instance, post-employment restrictions prohibiting prosecutors from being recruited in the private sector after leaving public office would, in practice, be difficult to detect and sanction. Nevertheless, in order to increase the trust of citizens in the activities of prosecutors, former prosecutors should be temporarily prohibited from acting as a private lawyer or legal counsellor in cases which are being investigated or prosecuted by their former unit.

Asset declarations merit a separate mention. The continued dormant nature of this legal norm raises serious concerns. While including this issue in trainings is commendable and based on good intentions, its effectiveness at the moment is very limited due to the non-operation of legislation on asset disclosure in Azerbaijan with the disclosure forms not being yet adopted.

*Availability of training, advice and guidance on request, written guidelines*

Azerbaijan authorities stated that training on anti-corruption standards, ethic rules and integrity is provided to the prosecutors. They state that such training is both theoretical and practical, and is based on practical examples.

The training is organized by the Scientific-Educational Centre of the Prosecutor General's Office. In total 3 seminars on these topics were attended by 50 prosecutors in 2015. No information was provided on the number of ethical training offered during the previous two years.

## **Conclusions**

Training of prosecutors on ethics, integrity and other anti-corruption standards with a practical focus are of high importance for building up the culture of integrity among prosecutors and should be continued.

### ***Impact of integrity policies in judiciary, trust and perception of corruption***

As a general comment on the integrity of prosecutors, the civil society expressed a certain perception with regard to instances of corruption and lack of independence of the Prosecutor's Office. There is an apparent reluctance of the citizens to file complaints to the prosecution office, and a lack of trust in the independence of the prosecutors to tackle sensitive cases that are relevant for the public.

On the other hand, people have high expectations of the prosecutors of ACD in which they see a good potential. Therefore, among other measures that need to be taken in order to increase the functional independence of the prosecutors, the Prosecution Office needs to develop a better communication policy with the civil society and the media.

#### **New Recommendation 16:**

- 1. Provide safeguards in the legislation regarding the obligation of PG to report to the Parliament and to the President, so that reporting obligations do not include decisions to be taken by the prosecutors in ongoing investigations or prosecutions.**
- 2. Consider limiting the number of consecutive mandates of PG to two to preserve his/her independence, as well as of the Prosecution Office as a whole, in taking action in potentially sensitive corruption cases.**
- 3. Review, with the participation of the civil society, the recruitment process of the prosecutors, in order to ensure that the entire procedure follows the principles of transparency and uses objective and merit based criteria.**
- 4. Consider prohibiting former prosecutors from acting as a private lawyer or legal counsellor in cases which are being investigated or prosecuted by their former unit for a period of at least 2 years following the withdrawal from public service.**
- 5. Take necessary steps to make the legislation on asset disclosure operational and ensure that it is applied to prosecutors in practice.**
- 6. Continue providing training to all prosecutors on ethics and anticorruption standards that takes a practical approach and focuses on cases of concrete ethical dilemmas that prosecutors might have in their daily work.**
- 7. Develop a balanced communication policy with the relevant civil society organizations, the media and the public in order to create a discussion forum on the issues pertaining to the independence, integrity and effectiveness of the prosecutorial and judicial system and, more generally, to the effectiveness of the fight against corruption in Azerbaijan.**

## 2.4 Accountability and transparency in the public sector

### **Recommendation 13 from the Third Monitoring Round report on Azerbaijan:**

- Expand efforts to simplify administrative procedures and render more transparent and efficient delivery of public services towards conduct of business in Azerbaijan and in the most corruption-prone sectors.

### **Recommendation 15 from the Third Monitoring Round report on Azerbaijan:**

- Establish, under the authority of the Ombudsman, a working group involving non-governmental organisations and media, for monitoring, on a permanent basis, of the implementation of the Law on Access to Information. Conduct and publish periodical surveys to identify deficiencies in the Law or its improper implementation.
- Provide the Ombudsman with necessary resources in order to effectively perform its functions in the area of access to information.
- Organize a nation-wide awareness rising campaign aimed at dissemination of information on the right of access to information among different social groups.
- Take appropriate measures to decriminalise defamation and insult; introduce mechanisms avoiding improper use of civil law instruments for restricting activity of media.

### *Access to Information*

The legislative framework on freedom of information remains unchanged in Azerbaijan since the Third Round of Monitoring. The main developments, as reported by the authorities, is the designation of Freedom of Information Officers (FOI officers) in charge of access to information in central and local executive agencies; adoption of the internal rules on freedom of information by central and local executive agencies; and training on freedom of information. However, no meaningful progress can be noted towards the implementation of the above recommendation of the Third Monitoring Round.

The access to information legislation of Azerbaijan is fairly advanced.<sup>102</sup> The law on Access of Information of Azerbaijan stands in 11<sup>th</sup> place in the global right to information ranking, scoring 115 out of total 150 points<sup>103</sup> with the lowest scores in the section on appeals and sanctions. The criticism has been voiced with regard to the broad exceptions and lack of sanctions for violations.<sup>104</sup> The legislation is ambiguous on the information that can be withheld from disclosure: apart from the state secrets, there are vague categories of “confidential information” and information for “internal use”.<sup>105</sup>

However, the exercise of the right to access in practice has been of concern. Implementation shortcomings and failures include: refusals or inadequate responses to the access to information requests; need for personal contacts to receive needed information; disregarded timeframes; inconsistent interpretation of the meaning and the scope of public information throughout the agencies etc.<sup>106</sup>

One of the key critical impediments lies in the lack of clarity on which information is open to public. In the absence of clear regulations FOI officers don't have the authority to decide on the status of information in response to requests as this requires supervisory approval. Furthermore, there is no information/document management system which would require classification, storing and registration of information in the public administration on a daily basis and which would assist the FOI officers in their daily work.

<sup>102</sup> [http://www.transparency.az/alac/transpfiles/FoI%20report\\_English%20version\\_Final\\_18%20June%20.pdf](http://www.transparency.az/alac/transpfiles/FoI%20report_English%20version_Final_18%20June%20.pdf) for the review Azerbaijan, see pages: 42-58.

<sup>103</sup> [https://www.rti-rating.org/view\\_country?country\\_name=Azerbaijan](https://www.rti-rating.org/view_country?country_name=Azerbaijan)

<sup>104</sup> <https://www.article19.org/data/files/pdfs/publications/azerbaijan-freedom-of-information-report.pdf>

<sup>105</sup> Handbook on Freedom of Information in the South Caucasus Countries, report by Transparency International chapters in Armenia, Azerbaijan and Georgia, 2012 for the review Azerbaijan, see pages: 42-58. <http://goo.gl/adtQ3d>.

<sup>106</sup> <https://www.article19.org/data/files/pdfs/publications/azerbaijan-freedom-of-information-report.pdf>

To overcome these shortcomings, Azerbaijan was recommended to strengthen the oversight of the implementation of the right to access to information – the capacities of the Ombudsman.<sup>107</sup> The government reported that the Ombudsman held consultations with representatives of the respective state bodies, NGOs and mass-media in connection with its competence in the area of freedom of information. It urged the Cabinet of Ministers and the Ministry of Finance to approve human and financial resources for the creation of a new structure at the Ombudsman's Office to ensure the right of access to information, however unsuccessfully. According to the monitoring report of TI Azerbaijan, the Ombudsman elaborated the proposed structure of the future Department of Information Provision, which was approved by the Cabinet of Ministers; however, the Ministry of Finance has not made a decision on allocating the necessary budget since 2012.

The monitoring team learned at the on-site that the Ombudsman is not exercising its oversight functions in practice and is limited to receiving complaints regarding violations of the right of access to information. In 2014, twenty-one complaints were received on access to information, six of them were granted, in 2015, thirty-eight complaints received and fourteen granted. These figures are low compared to the 12000 complaints received by the Ombudsman in total in 2015. The complaints mainly concerned these areas: healthcare, social protection, education, migration, ecology, traffic police, city infrastructure, and others.

Notably, civil society organizations run free legal advice centres, which help citizens to put together information requests on the basis that those filed by NGOs have a much higher chance to be responded to than requests filed by citizens.<sup>108</sup>

As already mentioned, in view of the implementation of the previous OGP action plan commitment, Azerbaijan started to designate freedom of information officers (FOI officers) in state bodies. According to the government report that such officers are now designated in 94% of the public agencies.<sup>109</sup> However, according to the monitoring report by TI Azerbaijan, only 31.3% of all monitored central and executive authorities (in total 92 agencies have been monitored by TI) have designated such officers.<sup>110</sup>

At the same time, TI Azerbaijan points out that the press secretaries have been designated as FOI officers in most agencies, which might create confusion for citizens in the exercise of their right. Representatives of the Ministry of Education and the State Agency for Public Service and Social Innovation at the on-site confirmed that the heads of Public relations (PR) units serve as FOI officers in their respective agencies.

The monitoring team has doubts about the efficiency of this solution. An official can effectively discharge PR and FOI functions as long as he/she is explicitly designated (his/her contact details and functions should be publicly available), properly trained, and has sufficient knowledge and discretion to decide on the requests for information. This is not the case in Azerbaijan, however, in view of the limited discretion granted to the civil servants in general as confirmed at the on-site. The dual-function approach is further hampered by the lack of clarity in the legislation on what constitutes public information and the lack of an information/document management system to facilitate the FOI officers in carrying out their duties.

The rules on proactive publication partly solve this issue, as only specific categories of public information subject to mandatory publication.<sup>111</sup> However, the implementation of proactive publication of information is not systematically monitored or evaluated by the Government. No information is available on the practice of proactive publication by state agencies

In connection with the recommended nation-wide awareness raising campaign on the right of access to information, the government provided general information about the series of seminars and training held

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<sup>107</sup> The mandate of the ombudsman includes oversight of implementation of the access to information legislation since 2011.

<sup>108</sup> Handbook on Freedom of Information in the South Caucasus Countries, report by Transparency International chapters in Armenia, Azerbaijan and Georgia, 2012 for the review Azerbaijan, see pages: 42-58. <http://goo.gl/adtQ3d>.

<sup>109</sup> <http://antikorrupsiya.gov.az/upload/file/Azerbaijan%20Self-Assessment%20for%202014.pdf>

<sup>110</sup> [http://transparency.az/alac/files/OGP\\_report\\_2016\\_FINAL\\_EN.pdf](http://transparency.az/alac/files/OGP_report_2016_FINAL_EN.pdf) at pg. 29.

<sup>111</sup> Government resolution lists info mandatory for publication on the website ,e.g. name of management, contact, legislation, channel of communications, online complaint mechanism (34 categories, including information on salary rates, salary payment guidance, bonus payment policies and special benefits effective at the state authorities and municipalities).



with respective state bodies, lectures which were delivered at universities, a general campaign on human rights, art exhibitions, and essay competitions. No information was provided about awareness raising activities relating to the right to access to information.

As regards training on access to information, the government reported that according to the monitoring carried out by the CCC, 80% of the public agencies have implemented this obligation fully, 16% partly and only 4% have not. The government further reported that central executive authorities held specialized training for officers in charge of access to information. A TI Azerbaijan report notes that only 22% of the monitoring central and local executive authorities have conducted such training (however, the information about the participations, content of the training and timetable is not available).<sup>112</sup>

As to future plans, the Action Plan includes the following measures on Access to Information but with neither clear timelines nor outcome indicators: Implementing measures for strengthening oversight capacities of the Human Rights Commissioner (Ombudsman) over the exercising of obligations arising from the requirements of the Law On Access to Information; creating legal assistance mechanisms on access to information; conducting specialised training and awareness-raising activities; improving the functioning of the “161-hotline” of Anti-Corruption Directorate under the General Prosecutor ; and publishing statistical and analytical information.

According to the answers to the questionnaire, a study is being carried out on the implementation of freedom of information legislation to identify deficiencies in the existing framework. Officials met during the on-site had no information regarding such a study.

### ***ASAN centres***

The services provided by the ASAN centres<sup>113</sup> have been expanded since the last monitoring round. In 2015, two new ASAN centres were opened. In 2015, the range of services provided has been expanded to 140, including mobile service to remote areas and self-services. Public services of 9 government entities are provided in the Centres (total number of services is 232 and includes private services as well). According to the government citizen satisfaction with the performance of the State Agency is 98-99%. Annual reports of the Agency for 2013-2015 are publicly accessible. ASAN Communal Centres were launched with the Presidential Decree of 4 May 2016. In addition to this, in June 2016, the President of Azerbaijan signed a decree on the launch on ASAN Service Index to measure the quality of public service delivery.<sup>114</sup>

As one stop shops, ASAN Centres have limited administration discretion and significantly improved interface between government and citizens in providing services. The business environment has improved due to the simplification of licensing procedures, fee reduction and the ongoing expansion of ASAN, as well as the introduction of some services being offered regardless of residential registration. The services streamlined concern not only businesses, but also high risk services for citizens, such as driving licenses, passport issuance, ID cards. Furthermore, ASAN serves as an experimenting ground to suggest changes in legislation.

In 2015, the State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan, conducted an evaluation of the organization and provision of e-services by state authorities in line a view of further simplification. The monitoring team commends Azerbaijan for its work on transforming the government services and encourages them to continue.

### ***Open data***

Azerbaijan does not yet have an open data portal. Interviews during the onsite visit underscored that in the area of transparency of budgetary information or open budget initiative, there is some work done with the World Bank to boost public participation. According to TI Azerbaijan, only a few agencies publish their budgets online. Recent progress includes publishing by the Ministry of Finance of a consolidated budget, together with the Budget Guide for Citizens. Public registers of real estate property rights and land cadastre are open for public access online via an E-government portal. Information on shareholders'

<sup>112</sup> [http://transparency.az/alac/files/OGP\\_report\\_2016\\_FINAL\\_EN.pdf](http://transparency.az/alac/files/OGP_report_2016_FINAL_EN.pdf) at pg. 31.

<sup>113</sup> Unified one-stop-shop public service delivery points introduced in Azerbaijan in 2012. The website of ASAN: <http://www.asan.gov.az>

<sup>114</sup> <http://www.fox19.com/story/32326426/asan-service-index-will-measure-quality-of-public-service-delivery>

identities and the stakes they hold in companies is not accessible to the public. The government reported that the registers of documents are available online at the official website of the registry of legal documents (<http://huquqiaktlar.gov.az/>) run by the Ministry of Justice. This website provides free access to legislation, including sectoral regulatory acts and other documents.

Open data play a key role not only in ensuring transparency but also in promoting business activity. Azerbaijan is encouraged to create an online platform to publish information held by public authorities in an open data format and ensure regular publication of high-interest datasets (those related to socio-economic development such as health, education, public procurement, employment, tax, etc.) with a guaranteed right of their re-use.

### ***EITI***

Azerbaijan participates in the EITI since 2013. The national secretariat for the EITI is the State Oil Fund. Since 2013, the country marked a positive step forward by producing EITI Reports that disclose revenues from the extraction of its natural resources. Companies disclose what they have paid in taxes and other payments and the government discloses what it has received. These two sets of figures: from the government and extractive industry- are compared and reconciled.<sup>115</sup> However, Azerbaijan was downgraded to “candidate” country at the 29<sup>th</sup> EITI Board meeting following a Validation report carried out in 2015. The Board concluded that the situation for civil society in Azerbaijan was unacceptable and that EITI implementation could not take place under the current circumstances. The Board recommended several corrective actions and brought forward the schedule for Azerbaijan’s validation under the EITI Standard.<sup>116</sup> Officials met during the on-site reassured the monitoring team that Azerbaijan was taking necessary steps to address the concerns at the international level. The EITI Secretariat in consultation with stakeholders prepared a draft Activity Plan for the implementation of corrective actions. According to the government most actions are already fulfilled. The action plan is publicly available.<sup>117</sup>

### ***OGP***

Azerbaijan has been participating in Open Government Partnership since 2011. The government adopted the second OGP action plan following the guidelines for public consultations. Civil society was actively supporting the process. As described in section 1.2 above, the government carried out the public consultation to satisfy OGP criteria for the action plan’s development and adopted the Action Plan on 27 April. However, on May 4, 2016 the Steering Committee decided that Azerbaijan would regretfully be designated as inactive in OGP, due to unresolved constraints on the operating environment for NGOs.<sup>118</sup>

The government has prioritized the OGP initiative and has taken clear steps to comply with its requirements of proper process for the development of the action plan. OGP has acknowledged these positive steps. TI Azerbaijan in its report on monitoring of the OGP action plan implementation notes that key stakeholders in Azerbaijan need to join efforts to reengage with OGP in a meaningful way, including by establishing collaborative platform between the CSOs and the Government. This can be done under the umbrella of the CCC as recommended in section 1.4 of this report. However, in order to be successful, Azerbaijan must address the core issue of ensuring enabling environment for civil society participation.

### ***Defamation and civil law instruments for restricting the activity of media***

No steps have been taken to decriminalize defamation. The government reported that proposals for legislation in order to decriminalize defamation are being considered. Officials met during the onsite had no information concerning such proposals or the planned measures to address this recommendation. No information is available on the enforcement of these provisions in practice.

In assessing the draft Law on the Protection against Defamation in 2013, the Venice Commission found “it worrying that, in spite of the authorities’ repeatedly stated commitment to work towards decriminalization of defamation in cooperation with the Venice Commission, defamation is still associated

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<sup>115</sup> <https://eiti.org/news/azerbaijan-publishes-company-company-data>

<sup>116</sup> <https://eiti.org/Azerbaijan>

<sup>117</sup> Available at <http://www.eiti.az/index.php/en/senedler-2/work-plan-for-implementation-of-eiti>

<sup>118</sup> <http://www.opengovpartnership.org/sites/default/files/attachments/OGPSteeringCommitteeResolutiononAzerbaijan-2.pdf>

with excessively high criminal sanctions, including imprisonment. Its scope has been even widened to online expressions.

Furthermore, recent arrests of the media representatives detained on various charges are alarming and raise serious concerns. “A number of journalists who have investigated high level corruption have been imprisoned by the authorities over the past two years.” According to Nations in Transit 2016, as of December 2015, Azerbaijan was holding eight journalists in jail.

Azerbaijan should decriminalise all defamation and insult offences, as they have a strong chilling effect on media freedom and particularly investigative journalism and their application encourage self-censorship among the media and individual citizens. There has been no development to address the concerns of the previous monitoring round on using civil law instruments to restrict media activity.

## **Conclusions**

Azerbaijan fully complied with the recommendation regarding administrative simplification and services and has shown remarkable progress as well as impact of the reforms, which effectively tackled the petty corruption in the country and increased public trust.

Enforcement of the right to access information in Azerbaijan has not been strengthened since the last monitoring round. The deficiencies of the legislative framework have not been studied as recommended by the Third Monitoring Round. The Ombudsman has not been provided with the necessary resources in order to effectively perform its functions in the area of access to information. The government is not monitoring the implementation of proactive publication legislation; the designation of the FOI officers is not proceeding with the desirable speed.

Azerbaijan is encouraged to introduce a presumption of openness of information held by public authorities. It should provide for a proportionality test to grant access to the information unless withholding the information is justified by a legitimate interest that is greater than the right to know. To accomplish this, Azerbaijan must a) broaden the discretion of Freedom of Information Officers to take a decision on granting the access and b) introduce the information management mechanism that would allow sorting/classifying information to be readily available for disclosure. Azerbaijan is recommended to effectively monitor the implementation of the proactive publication of information and practice of access to information in public agencies, for which it needs to strengthen the institutional capacity as recommended in the Third Round.

Azerbaijan has not taken measures to decriminalise defamation and insult. There are no new developments for preventing improper use of civil law instruments for restricting media activity. The recent crackdown on the media and on independent civil society is alarming.

**Azerbaijan is fully compliant with recommendation 13 and partially compliant with recommendation 15, which remains valid under the number 17.**

### **New Recommendation 18:**

- 1. Review the legislative framework of access to information to clarify and limit the exemptions and provide for a proportionality test to grant access unless withholding the information is justified by a legitimate interest that is greater than the right to know.**
- 2. Ensure wide access to information held by public authorities by implementing a presumption of openness;**
- 3. Publishing the information on-line in open data format ensuring access to high-interest datasets.**
- 4. Effectively enforce proactive publication of information.**
- 5. Continue institutional development and expanding services under one-stop shop “Asan Service”.**
- 6. Ensure an enabling environment for investigative journalism and media reporting on corruption.**

**Recommendation 13 from the Third Monitoring Round report on Azerbaijan:**

- Expand efforts to simplify administrative procedures and render more transparent and efficient delivery of public services towards conduct of business in Azerbaijan and in the most corruption-prone sectors.

**Recommendation 15 from the Third Monitoring Round report on Azerbaijan:**

- Establish, under the authority of the Ombudsman, a working group involving non-governmental organisations and media, for monitoring, on a permanent basis, of the implementation of the Law on Access to Information. Conduct and publish periodical surveys to identify deficiencies in the Law or its improper implementation.
- Provide the Ombudsman with necessary resources in order to effectively perform its functions in the area of access to information.
- Organize a nation-wide awareness rising campaign aimed at dissemination of information on the right of access to information among different social groups.
- Take appropriate measures to decriminalise defamation and insult; introduce mechanisms avoiding improper use of civil law instruments for restricting activity of media.

## 2.5 Integrity in public procurement

**Recommendation 14 from the Third Monitoring Round report on Azerbaijan:**

- Improve the monitoring of the public procurement process and ensure effective and independent complaints mechanism.

### *New monitoring structure in public sector procurement*

Since the previous monitoring round, no significant steps have been taken to improve the monitoring of public procurement processes and to ensure that an effective and independent complaint mechanism is in operation.

The government explained that the abolition of the State Agency on Public Procurement (“Agency”) and the transfer of its responsibilities to the State Service for Antimonopoly Policy and Consumers' Rights Protection (“State Service”) (see further information on the transfer in this chapter) are aimed at ensuring that the monitoring of the public procurement process will be enhanced and that an independent complaint mechanism has now been established. However, as the State Service only became operational in spring 2016, it is too early to gauge whether the transfer of responsibilities will lead to improvements in this area.

### *Independent procurement complaints mechanism*

According to the Presidential Decree no. 888, the State Service is now responsible for the handling of complaints of companies. As only very limited information has been provided on this subject, the procedure of how complaints are handled on the executing agency level and the State Service level remains unclear.

The government representatives provided the following statistics on procurement complaints which were received and reviewed by the Agency:

- In 2013 - 8 complaints;
- In 2014 - 55 complaints;
- In 2015 – 24 complaints;
- In 2016 – 12 complaints.

It was stated that these complaints mainly concerned the procedures of the procuring organisation and the holding of auctions. The State Agency reviewed those complaints in accordance with Chapter VIII of the Law on Procurement, issued the relevant recommendations and informed plaintiffs accordingly.

In order to better understand the situation and handling of procurement complaints, the Monitoring Team had requested the government to provide more detailed statistics for the years 2013 to 2016 on how many complaints were submitted per industry sector and procurement category (goods, works and services (including consultancy services)) and in relation to the total number of contracts per sector and category and how many of these complaints were escalated to the courts. As this information was not provided, an assessment by the Monitoring Team of the adequacy of the existing procurement complaints procedure can not be provided.

### ***Debarment***

The monitoring team was unable to determine how the debarment procedure works, including the grounds for debarment, duration, appeal procedure, transparency of debarment process. Interlocuters met during the on-site visit did not provide clear explanations and appeared to be confused by the concept itself.

It was communicated to the monitoring team, however, that debarment lists are compiled and kept by each state institution which conducts procurement. They are not unified into one database or shared between state institutions. Such approach seems to largely defeat the purpose of debarment, as debarred individual or companies would still be eligible to participate in public procurement tenders, as long as they avoid bidding for tenders announced by those state entities that debarred them.

Likewise, the requested statistics on the debarment of companies for each of the years 2013 to 2015 were not provided. The only information that was made available to the monitoring team was that in the first six months of 2016 no companies or individuals have been debarred.

It would have been important to receive information on the number of companies and natural persons debarred, the grounds for debarment, any appeals against debarment decisions and any debarment decisions cancelled on appeal in order to determine whether debarment works in practice in Azerbaijan.

#### **Recommendation 14 from the Third Monitoring Round report on Azerbaijan:**

- Streamline the role and the rights of the State Procurement Agency, in the areas of control, monitoring, collection and publication of information on public procurement and e-procurement.

### ***Role and rights of the State Procurement Agency***

In January 2016, the State Agency on Public Procurement was abolished in accordance with Presidential Decree No 741, dated 15 January 2016.<sup>119</sup> The functions, duties and assets of the Agency were delegated to the State Service for Antimonopoly Policy and Consumers' Rights Protection under the Ministry of Economy. The tasks and duties of the State Service are regulated in the Presidential Decree № 888, dated 28 April 2016.<sup>120</sup>

The State Service has been established as a structural unit of the Ministry of Economy. The Director of the State Service and his/her deputies are appointed and dismissed by the Minister of Economy. The State Service reports quarterly to the Ministry on its activities. It has been reported that the financial independence of the Service is guaranteed by the allocation of funds from the state budget.

According to the new regulations, the State Service is an executive body responsible for ensuring implementation of state policy and state control in the field of public procurement. The State Service is tasked to conduct state control over observance of the legislation on public procurement (“Public Procurement Law”)<sup>121</sup> and to implement measures for efficient and effective use of state funds in public procurement to ensure that public procurement is carried out on the basis of competition and publicity, and to take measures to prevent violations of the law on public procurement.

The State Service is further tasked to be involved in the following areas:

- Drafting and implementation of state programmes and development of concepts in the area of public procurement;

<sup>119</sup> Presidential Decree No 741, dated 15 January 2016 – Abolishment of the State Agency on Public Procurement

<sup>120</sup> Presidential Decree No. 888, dated 28 April 2016 - Regulations for the Antimonopoly Policy and Consumer Rights Protection State Service under the Ministry of Economy of the Republic of Azerbaijan

<sup>121</sup> <http://tender.gov.az/new/?inc=13>

- Monitoring of compliance with the anti-trust legislation in public procurement;
- Taking measures to establish a competitive environment to ensure equal access to all suppliers to participate in procurement;
- Controlling the public procurement of goods, works and services on the basis of competition in accordance with the Public Procurement Law;
- Considering disputes, and if violations of legislation are revealed, suspending the procurement procedure and raising the matter of cancellation of the tender results with the respective procurement agency;
- Confirming decisions of a procurement agency on the rejection of tender proposals;
- Reviewing complaints of public procurement bidders and contractors, sending notifications to the plaintiff and adopting decision on complaints.

The representatives of the State Service explained that the transfer of the functions of the Agency to the State Service has been implemented in order to increase transparency and to achieve better administration in the field of public procurement through decreasing bureaucracy and benefitting from synergy effects with related areas such as consumer protection. However, during the consultations with the government representatives, it could not be clarified how this change will contribute to the mentioned purpose.

The State Service is located at Baku and has regional offices. It consists of nine divisions, one of which is tasked with “State Procurement”, and one section for international relations. According to the information provided, as of June 2016 the State Service employed 199 staff of which 27 staff deal with public procurement matters. All 27 staff working on public procurement, including the head of the State Procurement division were transferred from the Agency to the State Service, which used to employ 37 staff. Consequently, after the restructuring there are 10 fewer persons dealing with public procurement matters. This makes it questionable whether the State Service is equipped with the sufficient number and quality of human resources to fulfil its mandate on public procurement.

#### ***Law on public procurement***

The Law on Public Procurement from 2001, with its latest amendment of March 2016, remains the legal basis for public procurement activities in Azerbaijan. The Law on Public Procurement equally applies for the procurement by government agencies (budget organisations) and by state-owned enterprises.

The government representatives have advised the monitoring team that the State Service has been tasked by the Cabinet of Ministers to draft a new public procurement law. It has been agreed that a (semi-)final draft of the new law will be shared with the monitoring team by September 2016. The major changes to be introduced under the new law have currently not been determined as the input from the relevant stakeholders is still pending. However, it is expected that the publication of procurement plans and of all contract awards will be mandatory under the new law. Furthermore, the provisions on e-procurement as per the UNCITRAL model law on procurement will be integrated in the new law. The final draft of the new law is due to be finalized in October 2016.

Currently the public procurement of food products is excluded from the Law on Public Procurement and will be regulated by special rules. A relevant electronic portal will be established to provide transparency in these procurements.

#### ***Accession to WTO Government Procurement Agreement***

Currently there are no negotiations regarding the accession of Azerbaijan to the WTO Government Procurement Agreement. This issue may be considered after the Azerbaijan accedes to the WTO.

#### ***Collection and publication of information on public procurement***

Procurement plans prepared by public procurement organisations and state-owned enterprises are posted on the official website [www.tender.gov.az](http://www.tender.gov.az). Except for public procurements on defence and security-related issues of the country, information on all other public procurements and their result is posted on the website [www.tender.gov.az](http://www.tender.gov.az). However, under the current legislation the publication and updating of annual comprehensive procurement plans as well as contract awards is not mandatory. Consequently, it can be assumed that currently not all procurement plans and contract awards are being published.

#### ***E-procurement***

Currently, the electronic element in public procurement is limited to the publication of procurement notices and procurement related reports on the relevant government website. It can thus be determined that there has been no improvement in this area since the previous monitoring round.

The government representatives explained that it plans to develop a comprehensive e-procurement system once the new Public Procurement Law has been adopted. It is envisaged that the new e-procurement platform will include the whole tendering process, including the invitation to tender, tender documentation and the submission and evaluation of tenders. The roll-out of the e-procurement platform would be preceded by a comprehensive public awareness programme and training courses for procurement officers.

### ***Transparency in procurement planning***

#### **Recommendation 14 from the Third Monitoring Round report on Azerbaijan:**

- Ensure procurement and investments are timely and in a transparent manner planned by state and local institutions and increase transparency in this regards; ensure that state and local institutions develop comprehensive, annual procurement plans and define the information on public procurement they need to mandatory provide to the State Procurement Agency and publish.

As relevant up-to-date statistics on public procurement are currently not available on the government website and were also not provided in the context of the monitoring mission, a meaningful assessment of public procurement processes could not be undertaken. The following statistics for each of the years 2013 to 2015 should have been provided:

- Total value and number of public procurement (including state owned enterprises);
- Value/number of procurement from single source/non-competitive procurement;
- Number of corruption related administrative or criminal cases related to public procurement initiated/prosecuted/convicted.

The provision of this information and further facts related to public sector procurement would contribute to a more transparent system, which is currently lacking.

### ***Methodological materials, standard documents and templates related to public procurement, and training***

#### **Recommendation 14 from the Third Monitoring Round report on Azerbaijan:**

- Ensure methodological materials, standard documents and templates related to public procurement are adopted by Cabinet of Ministers decisions, or that the State Procuring Agency itself receives the right to issue corresponding, mandatory regulations as a matter of routine, and enforce them in practice.

Neither methodological materials nor standard documents or templates have been adopted by the Cabinet of Ministers since September 2013. The Agency and, since spring 2016, the State Services are not empowered to issue standard documents or guidelines without the adoption of these by the Cabinet of Ministers.

It is noted that there are no plans to update or prepare any tender documentation or guidelines prior to the adoption of the new public procurement law.

Furthermore, information on the type, number and target groups of any training courses in procurement was not available.

### ***Procurement statistics***

Most of the requested statistical data was not made available to the monitoring team. The explanation provided by Azerbaijan authorities is that with the abolishing of the State Procurement Agency, the documents regarding its performance have been archived and cannot be retrieved. This almost complete absence of procurement statistics raises serious concerns on whether detailed and relevant statistical data is kept and used by the government of Azerbaijan in order to monitor procurement processes. Furthermore, the archiving of statistical data collected by the previous agency and their unavailability

even to the staff of the replacement agency, let alone the public, indicates a considerable level of non-transparency.

### **Conclusions**

It appears that in the period 2013 to 2015, no significant improvements have been made in the area of public procurement in general and in regards to the implementation of the recommendations for procurement of the Third Round of Monitoring in particular.

There are considerable expectations by the government representatives that the new Law on Public Procurement will facilitate the required changes in the public procurement system for a more transparent and efficient procurement process.

It will be of utmost importance that any changes and improvements of the new law will be accompanied by adequate implementation guidelines and the training, professionalization and recruitment of an adequate quantity and quality of public procurement staff and institutions. This would need to be organised by the State Service in conjunction with the procuring public sector entities.

Furthermore, the full introduction of an adequate e-procurement system would be one important factor in the facilitation of a more transparent and efficient procurement system in the public sector.

**Azerbaijan is not compliant with Recommendation 14.**

#### **New Recommendation 19:**

- 1. Establish clear guidelines and responsibilities for the handling of procurement complaints.**
- 2. Establish clear guidelines and responsibilities for the handling of debarment.**
- 3. Introduce mandatory public reporting of all disclosable contract awards and their values per procurement agency, sector and procurement method.**
- 4. Develop an e-procurement platform and subsequently provide comprehensive training to public procurement officers in the handling of e-procurement.**
- 5. Develop and roll out regular and comprehensive training courses on all aspects of procurement for public sector procurement officers.**
- 6. Provide for civil society involvement in the monitoring of public procurement.**
- 7. Regularly update the standard tender documents and procurement guidelines to reflect the latest rules and regulations in public sector procurement.**
- 8. Ensure that the government procurement website is kept up to date and that all links are working.**

## **2.6 Business integrity**

#### **Recommendation 3.9 from the Second Monitoring Round report on Azerbaijan:**

- Develop and launch awareness raising programmes about risks of corruption and solutions for private sector.
- Together with private sector organisations, promote the development of self-regulation within the private sector (code of conduct, anti-corruption compliance policies).

#### ***Risk-based business integrity policy***

Since the Third Round Monitoring, one of the priorities of the Azerbaijani government has been to address a declining oil price and slowing economy. One of the main pillars of this strategy is to stimulate economic growth by improving the investment and business environment. Throughout this Fourth Round



Monitoring, representatives of the Azerbaijani public and private sectors referred to efforts to implement e-services, regulate company inspections, reduce licensing and promote corporate governance (see details below). These are undoubtedly laudable efforts that improve the business environment and also reduce the opportunity for corruption. These discrete measures, however, do not amount to an overall business integrity policy. Furthermore, without a comprehensive national assessment of business integrity risks, additional risk areas that merit attention may still be unidentified.

***Promoting business integrity, including corporate governance policies and corporate compliance programmes in the private sector***

The 2<sup>nd</sup> and Third Round Reports found that the Azerbaijani private sector was not sufficiently aware of corruption risks and business integrity. Companies said they were not under pressure to adopt rules on business ethics or anti-corruption measures.

Since the Third Round, Azerbaijan has promoted entrepreneurship and e-services. The National Fund for Entrepreneurship Support organised 56 forums attended by 4 000 entrepreneurs across the country. The fund also made 56 announcements in the media to solicit investment proposals. The Ministry of Industry held 132 training events in 2015 on 146 topics related to government e-services that were attended by over 2 600 participants. Efforts to reduce regulatory inspections and licensing were also widely acknowledged by the private sector. A Social Cooperation Council which was to be created to raise awareness and promote self-regulation in the private sector is still not operational.

Some efforts were also made to promote corporate governance. The Azerbaijan Corporate Governance Standards (ACGS) were adopted in 2011. The Ministry of Economy planned to hold eight training sessions on the ACGS in March-April 2016. Topics included “Board of Directors and Its Formation” and “Independent Directors”. The Azerbaijan Investment Company JSC assessed the corporate governance of its “investment facilities” in 2014.

Information on the beneficial ownership of companies is not publicly available and is considered as a commercial secret. The ACGS do not require corporate disclosure of beneficial owners. Article 15.9 of the Law on State Registration and State Register of Legal Entities only requires the registration of nominal shareholders. Azerbaijani officials believe that a “roadmap” on beneficial ownership disclosure would be developed by the end of 2016 as required by the EITI (see below).

Azerbaijan has not made efforts to encourage companies to adopt corporate internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption. The financial sector is one where risk assessment and risk management are obligatory; however, these are normally associated with financial risks, such as credit or market risks. Azerbaijani authorities stated that it would be good practice for most other non-financial firms to have compliance programmes. However, these firms are only required to have policies on health and safety issues which do not address corruption risks.

Business associations can play a significant role in combating corruption but the government has not engaged these associations in promoting business integrity. Officials stated that the Ministry of Economy signed a memorandum of understanding (MOU) with the National Confederation of Entrepreneurship Organisation in 2010. The Confederation, the Prime Minister and the Confederation of Trade Unions also signed a General Collective Agreement for 2016-17. There is no information on how these agreements relate to anti-corruption. Azerbaijan has not made efforts to promote collective action involving companies, business associations and governments acting in concert to fight corruption. It also has not worked with business associations to conduct any surveys or studies to measure the impact of business integrity measures.

***Anti-corruption measures in state-owned enterprises (SOEs) and small- and medium-sized enterprises (SMEs)***

There is very limited information about Azerbaijan’s state-owned enterprise (SOE) sector. Azerbaijan was requested to but did not provide statistics on the number of SOEs and their share in the national economy. The information is also not publicly available. However, Azerbaijan’s questionnaire responses suggest that there are at least over 30 SOEs. Officials at the on-site visit indicated that SOEs operate mainly utilities, transport, and in the oil and gas industry.

As with private sector companies, Azerbaijan's anti-corruption measures in SOEs relate mostly to the promotion of corporate governance policies. There are no established standards of corporate governance for SOEs. For private sector companies, Azerbaijan authorities collaborated with the International Finance Corporation of the World Bank to develop a corporate governance code based on the [G20/OECD Principles of Corporate Governance](#). However, Azerbaijani authorities have not made similar use of the [OECD Guidelines on Corporate Governance of State-Owned Enterprises](#) to establish a code for SOEs. Azerbaijan states that the President of the country appoints the chief executive officer and chairman of the board of most SOEs. The rules for selecting and evaluating candidates for other positions are the same as those for non-SOEs, though an SOE's "charter" may specify additional criteria. Remuneration levels are based on the "financial-economic state" of the entity. A total of 21 SOEs attended 8 training events in 2015 on corporate governance topics such as "Board of Directors and Its Formation" and "Remuneration Policy". Officials of the Ministry of Economy and its "subordinated structures" attended training events in 2015 on the corruption of public officials. A private company has analysed 31 SOEs that are under the State Committee on Property Issues. However, officials at the on-site visit could not explain how these analyses related to anti-corruption. Azerbaijan's questionnaire responses referred to four SOEs that published their annual reports on the Internet but the actual reports could not be found on the companies' websites.

Additional efforts concern preventing corruption in the privatisation of SOEs and not in their day-to-day operation. The State Committee on Property Issues is responsible for "state policy and regulation on real estate management and its privatisation, involving investments and conducting state registration and cadastre of real estate in the Republic of Azerbaijan."<sup>122</sup> Azerbaijan stated that websites have been set up for the Committee and two of its sub-bodies (Auction Centre on Organisation of Tenders and Real Estate Cadastre and Technical Inventory). A consulting company has prepared recommendations on privatisation of enterprises by auction. Azerbaijan did not provide details, however, of how these measures address corruption risks.

In practice, SOEs likely do not have adequate measures that specifically target anti-corruption and business integrity. Based on a survey of the websites of 11 SOEs, only one (in the oil and gas sector) has a code of ethics, anti-corruption policy and reporting rules. The annual report of another SOE (in shipping) referred to an anti-corruption policy but the policy itself is not available online. The remaining 9 companies' websites do not contain any information on their anti-corruption measures. Azerbaijani officials at the on-site visit stated that SOE employees and officers are not considered civil servants. They are therefore not subject to anti-corruption measures or the code of ethics that apply to public officials.

Activities with SMEs were also limited to promoting corporate governance. SMEs attended 11 training sessions on corporate governance held in 2015-16. Azerbaijani officials at the on-site visit stated that the main purpose of these activities was to promote entrepreneurship and to decrease taxes.

An important element of transparency in Azerbaijani SOEs operating in the extractive industries appears under threat. Azerbaijan obtained "compliant status" under the EITI in 2009. But in April 2015, Azerbaijan was downgraded to "candidate status" because of "[deep concern for the ability of civil society to engage critically in the EITI process in Azerbaijan](#)." Azerbaijani officials at the on-site visit stated that the government was addressing this concern and expected to regain its compliant status by October 2016.

### ***Simplification of business regulations and public service provisions***

The Third Round Report noted that Azerbaijan had begun promoting the use of electronic services in state authorities in 2011. ASAN Centres (State Service for Social Innovations and Service to Citizens) were created in 2012 to provide various state services through a "single window". These measures have been expanded since the Third Round Monitoring (see Chapter on "Accountability and transparency in the public sector").

A further reform is an increase in the regulation of government inspections of businesses. Since 2011, government authorities have been required to submit their annual inspection plan to the Ministry of

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<sup>122</sup> [Website](#) of the State Committee on Property Issues.

Justice, and to record actual inspections of businesses in a registry.<sup>123</sup> A July 2013 law further required the authorities to provide an inspected company with a copy of the relevant entry in the registry, and to publish the list of questions that would be asked during an inspection. Training for government officials on these requirements would be held at least twice per year. In October 2015, Azerbaijan suspended almost all government inspections in the field of entrepreneurship for two years with the exception of those concerning tax, threats to life and health, national security and economic interests.

Efforts have also been made to simplify and reduce licensing requirements. An October 2015 Presidential Decree reduced the number of activities for which a licence is required, shortened the time to obtain licences from 59 to 37, cut the fees for some licenses, decreased the number of agencies that issue licences from 23 to 4, and shortened the period for approval from 15 to 10 days.

At the on-site visit, the private sector representatives' views of these initiatives were somewhat mixed. Many were fairly positive about these reforms. Some, however, pointed out that "even if the legislation is close to perfect, the issue is implementation and enforcement" and that "challenges remain". Tax appeared to be a particularly problematic area. One participant reported being subject to inappropriate "extraordinary" tax inspections. Another was aware that some companies underwent multiple tax audits in the same year. A third referred to unjust court decisions in tax cases.

### ***Channels to report corruption and independent review***

Azerbaijani officials referred to a myriad of channels for reporting corruption and seeking redress. The hotline operated by the Anti-corruption Directorate (ACD) of the Prosecutor General's Office received 7 266 calls in 2015 alone. The vast majority of reports are referred to other government bodies for follow-up. A government Ombudsman has been established since 2001 to receive complaints. The Hotline Call Centre at the Ministry of Economy (MOE) has received 44 529 calls since its creation in September 2009 to the end of 2015, including 15 571 calls in 2015. A February 2015 Decree required other state agencies to establish similar call centres. Appeal Councils at various levels of government have been set up to receive complaints from businesses. Complaints about government decisions can also be made to the Administrative-Economic Court. The complaint procedure for public procurement decisions is considered in the chapter on "Integrity in public procurement".

As with many other matters, the issue with reporting is how effective it is in practice. The Appeal Councils do not accept complaints about corruption offences.<sup>124</sup> There is no evidence to suggest that businesses resort to the other reporting channels described above. On the contrary, the Ombudsman admits that businesses tend not to file complaints with him. The office, which is a body of the state, is not perceived to be independent. Its mandate covering primarily issues such as human rights and access to information does not invite complaints relating to government actions against business interests. The other channels also do not seem to be used by businesses. The ACD and MOE could not provide information on how many of the reports received via their hotlines were made by businesses. In any event, the figures for the MOE hotline are inflated since many of the calls were not corruption complaints but mere inquiries. Furthermore, companies do not have confidence and trust in official complaint channels or the courts (see chapter on "Integrity in the judiciary and public prosecution service"). One company said that it had resolved concerns about a particular tender by directly contacting the President and ACD Director. This is obviously not feasible for most companies. More importantly, that this company turned to such an unconventional means of redress may point to the ineffectiveness of regular reporting channels. One company said that it had resolved concerns about a particular tender by directly contacting the President and ACD Director. This is obviously not feasible for most companies and may indicate companies' lack of trust of the effectiveness of regular reporting channels.

### **Conclusions**

Since the Third Round Monitoring, one of the Azerbaijani government's principal focus has been to address the falling oil price and an increasingly challenging economic environment. This has resulted in a

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<sup>123</sup> Presidential Decrees 246 of 13.04.2010 and 383 of 15.02.2011 on "Single information registry of inspections in entrepreneurship"; Presidential Decree of 15.02.2011 on "Regulations on forms and rules of conduct of inspections implemented in entrepreneurship".

<sup>124</sup> Statute of the Appeal Council under the President of the Republic of Azerbaijan, Section 1.1.

string of measures to improve the environment for business and investment. Many of these measures have a collateral effect of reducing corruption.

However, measures that specifically aim to strengthen business integrity have been lacking. Azerbaijan has not studied business integrity risks at the national level to identify challenges that need to be addressed. Consequently, it does not have a risk-based business integrity policy in its national anti-corruption framework. No effort has been made to promote corporate internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption, such as those described in the OECD/World Bank/UNODC “[Anti-Corruption Ethics and Compliance Handbook for Business](#)”.

A further concern is the implementation of measures in practice. Azerbaijan has made commendable efforts to enact legislation and further simplify business regulations and public service provisions. While some of these efforts have borne fruit as evidenced by Azerbaijan’s improved rankings in global business and ease of doing business, implementation in other areas would appear to still be lacking. Likewise, numerous channels for complaint have been established but do not appear to be used by businesses in practice. A missed opportunity as well is the fact that Azerbaijan has not established collaborative or collective actions with the business sector which could be a major ally in combating corruption. It has not worked with business associations to conduct any surveys or studies to assess corruption risks in the business sector nor to measure the impact of business integrity measures.

**Azerbaijan is not compliant with recommendation 3.9.**

**New Recommendation 20:**

- 1. Conduct a business integrity risk analysis and develop a business integrity policy with the active engagement of the private sector.**
- 2. Work with the private sector to promote corporate internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption (including in SMEs) and conduct surveys or studies to measure the impact of these measures.**
- 3. Consider adopting a Corporate Governance Code for SOEs based on the OECD Guidelines that could also include anti-corruption controls.**
- 4. Consider the establishment of a fully independent Business Ombudsman whose mandate would be to assist companies in mediating and resolving business integrity concerns.**

## Chapter 3

# ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION

### 3.1 Criminal law against corruption

This section concerns Azerbaijan’s criminal anti-corruption laws. Following the agreed Fourth Round Monitoring methodology, the section examines the implementation of outstanding recommendations from the previous monitoring rounds and new developments since the Third Round in 2013.

#### *Criminalisation of corruption offences*

##### **Recommendations 4 and 5 from the Third Monitoring Round report on Azerbaijan:**

- Develop training curricula and organize training sessions for investigators and prosecutors with regard to detecting, investigating and prosecuting of bribery offences, when the bribe was merely offered or promised, as well as cases based on non-material benefits as an object of bribery.
- Develop training curricula and organize training sessions for investigators and prosecutors with regard to detecting, investigating and prosecuting of bribery of foreign public officials.
- Develop guidelines for investigators, prosecutors and judges on the application of the offence of bribery of foreign public officials.

The Third Round Report (pp. 28-29 and 35) found that Azerbaijan’s substantive corruption offences largely met international standards. The main outstanding issues were practice and training in cases of bribe offers and promises; non-material bribes; and bribery of foreign public officials.

In 2011, Azerbaijan amended its bribery offence to cover the “offer” and “promise” of a bribe expressly. Nevertheless, law enforcement officials preferred to pursue cases where the bribery is completed because they were easier to prove. Similarly, there were no prosecutions of cases where a non-material bribe is paid because of a perceived lesser chance of conviction. The Third Round Report accordingly recommended that Azerbaijan train law enforcement on how to detect, investigate and prove these types of cases.

Azerbaijan has only partially implemented this Third Round recommendation. Numerous training activities were held for ACD investigators and prosecutors from May to September 2015. The topics covered include the qualification of various types of corruption offences, definition of public officials, procedural rules, and analysis of cases returned by judges due to improper investigations. The training did not specifically address non-material bribes or bribes offers and promises. Azerbaijan referred to one 2015 conviction for a bribe offer but not cases of bribe promises or non-material bribes.

Some training was also provided on the offence of bribery of foreign public officials. Prosecutors attended a seminar on proactive detection in February 2014. Additional seminars and a case study for prosecutors and investigators were held between May 2015 and March 2016. At the on-site visit, some officials stated that training can be provided only after actual foreign bribery cases have surfaced. Some officials also did not fully understand the concept of foreign bribery, stating that foreign officials typically leave Azerbaijan after committing offence. In practice, bribery is mostly committed in the country of the foreign official. To date, there have not been any investigations for foreign bribery.

Azerbaijan also has not fully implemented a recommendation to provide guidance. The ACD has developed – but did not present to the evaluation team – manuals on the detection and investigation of cases of bribe offers and promises. An additional manual on non-material bribes as well as guidelines on detection, investigation and prosecution of foreign bribery are under preparation.

## Conclusions

Since the Third Round evaluation, Azerbaijan has provided substantial training to investigators and prosecutors in corruption cases. However, these efforts address to a limited degree the detection, investigation and prosecution of cases involving bribe offers, bribe promises, and non-material benefits. Investigators and prosecutors have received training on the foreign bribery offence but more may be necessary. Guidelines for investigators, prosecutors and judges on the foreign bribery offence have not been developed. Enforcement results in these cases are, at best, very limited.

**Azerbaijan is partially compliant with recommendations 4 and 5.**

### **New Recommendation 21:**

**Continue to provide training and guidelines to investigators, prosecutors and judges on cases of bribe offers, bribe promises, non-material bribes, and foreign bribery.**

## *Other offences*

### **Recommendation 11 from the Third Monitoring Round report on Azerbaijan:**

- Take the necessary measures (either by normative acts, or instructions to prosecutors, training of judges and prosecutors, disseminating relevant jurisprudence, etc) in order to clarify that criminal liability for money laundering offences should not be dependent on a conviction for the predicate offence, nor limited to predicate offence committed within Azerbaijan's jurisdiction, should go beyond self-laundering, and should consider the possibility to infer the subjective element also from objective, factual circumstances.
- Continue with the organization of joint trainings for FMS officers, investigators, prosecutors and judges in the field of money laundering and anti-corruption.

The Third Round Report briefly addressed the offence of illicit enrichment. Azerbaijan had rejected a proposal to enact such an offence because it would require Constitutional amendments. The Azerbaijani authorities have not reconsidered this matter since. Officials in the on-site visit stated that it had not enacted an illicit enrichment offence because its legal system does not allow for administrative confiscation. But as described below, administrative confiscation may be available in Azerbaijan.

Azerbaijan has not fully addressed concerns that judges (especially at the Supreme Court) narrowly interpret the money laundering offence in Article 193 of the Criminal Code (CC). The Third Round Report (p. 54) expressed concern that most money laundering prosecutions involved cases where (1) the alleged laundering was committed by the person who committed the predicate offence (i.e. self-laundering), (2) the predicate offence was committed in Azerbaijan, and (3) the predicate and money laundering offences were tried simultaneously. On its face, the offence is not limited to these situations. Since the Third Round Monitoring, Azerbaijan has not issued guidance, instructions or legislative amendments to clarify the scope of the offence. Nor has guidance been issued to ensure that the subjective elements of the offence can be inferred from objective, factual circumstances.

Slightly more effort has been made in the area of training. Judges attended a May 2014 seminar on money laundering investigations. The ACD and Financial Monitoring Service (FMS) held a conference in May 2015 that was attended by over 20 ACD officers and various prosecutors' offices. These training events do not address the concerns about the narrow interpretation of the money laundering offence, however. Additional FMS workshops on risk assessments and training for students as well as financial institutions did not address the enforcement of the money laundering offence. A November 2015 seminar on corporate liability and asset recovery was of little significance because the corporate liability regime is not yet operational (see below at p. 70).

## Conclusions

Azerbaijan has not taken necessary measures to clarify that its money laundering offence is not limited to cases of self-laundering, domestic predicates, and simultaneous trials for the predicate offence and money laundering. It also has not provided examples of actual prosecutions and convictions of such cases. Azerbaijan has provided some joint training for FMS officers, investigators, prosecutors and judges in the field of money laundering and anti-corruption.

**Azerbaijan is partially compliant with recommendation 11.**

### **New Recommendation 22:**

**Take measures (e.g. issuing normative acts or prosecutor instructions, or training judges and prosecutors) to clarify that the money laundering offence in Article 133 CC applies where (1) different persons commit the laundering and predicate offences, (2) the predicate offence is committed outside Azerbaijan, (3) the predicate and money laundering offences are tried separately, and (4) the subjective elements of the offence are inferred from objective, factual circumstances.**

## *Liability of legal persons*

### **Recommendation 4 from the Third Monitoring Round report on Azerbaijan:**

- Introduce criminal procedure provisions for the enforcement of the criminal liability of legal persons that will enable investigators and prosecutors to effectively pursue corruption cases that involve legal persons.
- Ensure autonomous nature of the corporate liability, namely that it is not dependent on investigation, prosecution or adjudication of the case against a natural person.
- Develop guidelines for investigators, prosecutors and judges on the application of both substantial and procedural rules on criminal liability of legal person.
- Organize training sessions for the above mentioned practitioners based on the legislation and the guidelines for practical application and use successful examples of application of this concept by other jurisdictions.
- Consider introducing in the legislation an exemption (defence) from liability for legal persons with effective internal controls and compliance programmes.

The Third Round Report found that Chapter 15-2 Criminal Code (CC) on liability of legal persons were largely in line with international standards. The provisions allow “criminal law measures” to be applied to a legal person for a crime committed in its favour and interests by an official authorized to represent the legal person, make decisions on its behalf, or oversee its activities. Liability also arises when these officials fail to oversee an employee who commits a crime in the legal person’s favour and interests.

Though enacted in 2012, these provisions are not operational because Azerbaijan has not set out the procedure for their application. There are thus no legislative provisions that would allow the use of investigative techniques or preventive measures against legal persons. Nor are there provisions explaining how legal persons would be notified of or represented in proceedings. Draft legislative amendments creating the procedure were submitted to the Cabinet of Ministers in January 2014 and remain there today. Azerbaijani officials at the on-site visit stated that the Cabinet is attempting to reconcile apparently divergent views of various ministries on the draft law. Troublingly, some officials at the on-site visit stated that they disagree with the entire concept of corporate liability for criminal offences. At a later session of the on-site visit, however, the Chief Executive of the Financial Markets Supervision Chamber assured the evaluation team that the procedural provisions would be in force by the end of 2016.

The Third Round Report raised some additional issues with the substantive corporate liability provisions. The language in Article 99 CC suggests that corporate proceedings and liability may not be autonomous, i.e. they may depend on proceedings and/or liability against a natural person. Azerbaijan has not amended the provisions or issued guidelines and maintains that the legislation does not pose problems. Azerbaijan also has not amended Article 99-5.3 CC which states that sanctions against legal persons may vary depending on the “circumstances characterising the legal entity, including application before criminal legal measures concerning it, either benevolent or other publicly useful activities it was involved in”. Nor has Azerbaijan introduced a corporate compliance defence or sentence mitigating factor as recommended. Azerbaijani officials believe that explicitly introducing corporate compliance into the legislation is premature because most companies do not have compliance programmes, and because the roles and responsibilities of corporate officers are poorly defined. This position is debatable, since corporate compliance already plays a role in the current legislation which allows companies to escape liability if they properly oversee their employees.

Some efforts have been made to provide guidelines and training on corporate liability. ACD has prepared a draft Prosecutor General ordinance on “guidelines of rules for prosecutors and investigators”. It has also held two seminars in 2014 and 2015 for prosecutors, investigators, financial analysts and auditors.

## **Conclusions**

Azerbaijan remains non-compliant with the core international standard of imposing corporate liability for corruption offences. The substantive corporate liability provisions enacted in 2012 are meaningless since there is no procedure for enforcing them. Protracted delay in enacting procedural provisions raises serious concerns about Azerbaijan’s ability to implement corporate liability. No steps have been taken to address the additional issues of autonomous corporate liability, sanctions, and corporate compliance sentence mitigation or defence. Efforts to provide guidelines and training are not useful so long as the substantive corporate liability provisions are not operational.

### **Azerbaijan is not compliant with recommendation 4.**

#### **New Recommendation 23:**

- 1. Introduce without delay criminal procedure provisions for the enforcement of the criminal liability of legal persons.**
- 2. Ensure that corporate liability is autonomous, namely that it is not dependent on the investigation, prosecution or conviction of a natural person.**
- 3. Provide guidelines and training to investigators, prosecutors and judges on the application of the substantial and procedural rules on criminal liability of legal persons.**
- 4. Raise the private sector’s awareness of the corporate liability provisions in the Criminal Code and the importance of internal controls and corporate compliance programmes (see also the recommendation in the section on Business Integrity).**

### *Seizure and confiscation*

#### **Recommendation 7 from the Third Monitoring Round report on Azerbaijan:**

- Continue to monitor the effectiveness of the confiscation regime.
- Continue to collect and analyse accurate statistics on what property is being confiscated, how the property is being disposed of, and the amount of proceeds of crime recovered.

Criminal Procedure Code (CPC) Chapter 32 on attachment provides for pre-trial seizure of property to “guarantee a civil party’s claim and confiscation in circumstances provided for under criminal law. A court orders attachment based on a reasoned request by the investigator and submissions by the prosecutor in charge of the case. Seizure can be ordered against a third party who obtained the property illegally or if the transfer of the property to the third person is not in good faith. Provisions in separate legislation allow the financial intelligence unit to freeze assets for up to 30 days without judicial authorisation.



The provisions in Chapter 32 CPC are not used frequently enough to seize proceeds of corruption for subsequent confiscation. Officials at the on-site visit stated that prosecutors must seek attachment to secure compensation for damage caused by an offence. There is not a similar obligation to seek attachment to secure property for eventual confiscation. The low number of actual seizures (see data below) supports this conclusion.

Azerbaijan has not addressed the management of seized assets. While bank accounts can be frozen, precious metals and stones, money, and securities are transferred to the National Bank (Article 251 CPC). Other moveable objects are sent to the investigating body or court. Non-movable property is left with its owner, holder or his/her family with a commitment not to misappropriate, damage or destroy the property. During the Third Round Monitoring, Azerbaijan was considering creating an Asset Management Office. At the on-site visit, officials stated that the State Committee on Property Affairs has a body to deal with seized assets. Further details were not provided.

Chapter 15-1 CC provides for “Special Confiscation”. Upon conviction, a court may confiscate the tools and means used to commit an offence; property received “in a criminal way”, including “income received for the account of this money or other property”; and property resulting from a transformation of property received by criminal ways. If the property to be confiscated is not available, then property of equivalent value may be seized from the convicted. Azerbaijani officials stated that confiscation is available even if the defendant dies before conviction. They added that a court may but rarely do confiscate a company’s profits derived from business obtained through corruption.

The availability of non-conviction-based confiscation is unclear. Azerbaijan stated that “currently national legislation does not regulate this issue”. However, it also states that administrative confiscation is available. Civil confiscation had also been applied in two criminal cases in 2015, netting 1.74 million AZN.

Practical challenges to confiscation identified in the Third Round Report remain. Azerbaijani officials continue to have difficulties with timely seizure before assets disappear. A related obstacle is the tracing of assets. At the on-site visit, officials described problems when assets were held under the name of a corrupt official’s relatives. ACD and other prosecutors’ offices do not have special teams of financial investigators to identify, evaluate and seize criminal assets.

Partial statistics on seizure and confiscation were provided. In 607 cases conducted by ACD in 2013-15, compensation for damage was made in 488 cases. Pre-trial seizure, however, was made in just 10 cases. Data on confiscation were not provided.

## **Conclusions**

The legal provisions allowing pre-trial seizure and confiscation are in place but problems remain with their application. Seizure is routinely applied to ensure compensation for damage caused by an offence but not to ensure confiscation of the proceeds of corruption. Difficulties with timely seizure and asset tracing remain. The profits of a company that obtains business through corruption are rarely confiscated.

**Azerbaijan is partially compliant with recommendation 7.**

### **New Recommendation 24:**

- 1. Continue to monitor the effectiveness of the seizure and confiscation regime, including by collecting and analysing accurate statistics on the type and amount of property that is seized and confiscated, and on the disposition of such property.**
- 2. Take steps to ensure that investigators, prosecutors and judges place more emphasis on seizing and confiscating the proceeds of corruption, including the assets produced or derived from corruption offences (e.g. the profits resulting from a contract obtained through corruption).**
- 3. Enhance the capacity of ACD and other prosecutors’ offices to identify, evaluate and seize corruption-related property.**
- 4. Adopt the legislation on the Asset Management Office and make the Office operational.**

## *Immunities*

### **Recommendations 6 and 17 from the Third Monitoring Round report on Azerbaijan::**

- Pursue the efforts to reduce the scope of immunity of the MPs and judges and regulate the procedure for lifting the immunity in such a manner that would not be an obstacle for the investigation and prosecution.
- Prepare and adopt the proposals on limiting the scope of immunity of judges from criminal prosecution in the context of combating corruption.

While in office, a member of parliament (MP) is immune from criminal responsibility, court-imposed disciplinary measures, and search. An MP can be arrested only if caught in the act of crime, but the body detaining him/her must then notify the Prosecutor General. Immunity extends to an MP's "house, apartment, belongings, personal and service vehicles, communication means, documents and other correspondence." An MP can refuse to testify as a witness. An MP's immunity can be lifted only by *Milli Majlis* upon the application of the Prosecutor General. The request is first referred to the Disciplinary Commission of the *Milli Majlis* for an opinion. The *Milli Majlis* then decides by majority vote within seven days of receiving the Prosecutor General's request.<sup>125</sup>

Judges are also immune but "may be called to criminal responsibility in accordance with law".<sup>126</sup> They cannot be arrested, detained, searched or examined. As with MPs, judges' immunity covers their apartment, vehicles, communications etc. Judges can be criminally prosecuted only with the permission of the Judicial-Legal Council (JLC) upon the Prosecutor General's request. The JLC decides on the request within ten days, but the period is reduced to 24 hours if a judge is caught in the act of a crime. If the JLC accepts the request, the judge is suspended and the case proceeds under the Criminal Procedure Code.<sup>127</sup> See the section on Judicial Integrity for a discussion on the dismissal of judges.

The immunity of judges and MPs significantly hinders criminal investigations. Azerbaijan confirmed that only investigative measures that do not target immune persons can be conducted, e.g. observation of a crime scene, questioning of other witnesses etc. The Third Round Report (p. 39) pointed out that this creates a Catch-22: immune individuals can be investigated only when their immunity is lifted, but lifting immunity may require evidence that can be gathered only through an investigation. Furthermore, surreptitious investigative techniques (e.g. wiretaps) could never be used since the process for lifting immunity is supposedly transparent and accessible to the public.

The obstacle that immunity poses to investigations is exacerbated by delay in the decision to lift immunity. The *Milli Majlis* and JLC have seven and ten days respectively to decide whether to lift immunity. The delay is too long and could lead to a loss of evidence. As the Third Round Report (p. 38) noted, the decision to lift immunity "should be given as quickly as possible in order not to impede the investigation".

The process for lifting immunity is also not sufficiently transparent. Azerbaijan claims that transparency is ensured because the process is defined in the Constitution and statutes; subject to parliamentary, judicial and prosecutorial supervision; and operates in open view to the public. However, the Constitutional and statutory provisions do not specify the criteria for lifting immunity or limit consideration to whether the request is abusive (i.e. *fumus persecutionis*). Azerbaijan has stated that the decision is based on whether

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<sup>125</sup> Constitution Article 90; Law on Status of Member of the *Milli Majlis*, Articles 12-13; Internal Rules of the *Milli Majlis*, Article 22.

<sup>126</sup> Members of the Judicial-Legal Council who are not judges also enjoy judicial immunity (Judicial-Legal Council Act, Article 9(2)).

<sup>127</sup> Constitution Article 126; Law on Courts and Judges Article 101.

there are sufficient grounds in the Prosecutor General’s application to lift immunity, and not on the merits of the charges.<sup>128</sup> This position, however, is not stipulated in the Constitution or statute.

Azerbaijan did not provide statistics on the lifting of immunity of judges and MPs. It stated that four requests were made and granted in 2013-15 to lift the immunity of employees of the prosecution service. Data pertaining to MPs and judges were not provided.

Reforms of this regime have been underway for some time. The 2012-2015 Anti-Corruption Action Plan had envisaged reducing judicial immunity. The Third Round Report (pp. 38-39 and 81-82) stated that Azerbaijan was working on proposals to limit immunity either to acts committed in the performance of official duties (i.e. functional immunity), or to officials who have been indicted or whose arrest is sought. The government is considering a draft amendment that would reduce the scope of immunity by excluding an MP or a prosecutor’s house, apartment, belongings, personal and service vehicles, communication means, documents and other correspondence. The draft does not address the other concerns described in this and previous monitoring reports.

### **Conclusions**

Azerbaijan has not taken steps to implement recommendations on the immunity of MPs and judges. Concerns remain about the scope of immunity, as well as the delay and lack of transparency in the lifting of immunity. Reforms of the immunity regime have been mooted for years. As in other areas such as asset declarations and corporate liability, the government has taken an inordinate amount of time to consult internally and consider proposals for reform.

**Azerbaijan is not compliant with recommendations 6 and 17.**

#### **New Recommendation 25:**

- 1. Reduce the scope of immunity of MPs and judges to ensure that immunity would not unduly impede investigations and prosecutions, such as by providing immunity only to acts committed in the performance of official duties, or only to officials who have been indicted or whose arrest is sought.**
- 2. Take steps to ensure that the decision to lift immunity is based only on whether the request is abusive (i.e. *fumus persecutionis*) and not on the merits of the allegations.**
- 3. Substantially reduce the deadline for the Milli Majlis and JLC to lift immunity.**

### *Effective regret*

#### **Recommendation 6 from the Third Monitoring Round report on Azerbaijan:**

- Further analyse application of the effective regret defence with the view of identifying the elements that can be revised in order to limit its application and incentivise the detection and discouragement of the active bribery offences.

Active bribery prosecutions are rare in Azerbaijan because of the defence of effective regret. Under Section 312 CC, a bribe-giver is exempt from liability if he/she reports the case to the relevant authorities before they discover the crime. The defence applied to domestic and foreign bribery but not other corruption offences. The 2nd Round Report concluded that the defence was the main reason for a lack of active bribery cases. During the Third Round Monitoring, Azerbaijan stated that in practice bribers were often denied this defence. Measures such as special investigative techniques have rendered effective regret a less important source for detecting corruption. That said, the Third Round Report found that active bribery prosecutions remained rare, though exact figures were unavailable.

Little has changed since the Third Round Monitoring. Data provided by Azerbaijan show that in 2013-15 the courts continued to hear far more cases of passive bribery (39) than active bribery (15). The effective

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<sup>128</sup> GRECO (2014), Fourth Evaluation Round, para. 42; GRECO (2008), Joint First and Second Compliance Report (Greco RC-I/II (2008) 4E), para. 44.

regret defence was also applied in 23 cases. A 19 July 2013 decision of the Plenary of the Constitutional Court concerns the definition of an official in the Criminal Code and not the scope of the effective regret defence *per se*. A draft law on plea bargaining has been produced but not yet adopted.

## Conclusions

Azerbaijan has not analysed the application of the effective regret defence with a view to limiting its application and increasing the prosecution of active bribery offences. The use of the defence remains high while the number of active bribery prosecutions continues to be low.

**Azerbaijan is not compliant with recommendations 6.**

### **New Recommendation 26:**

**Further analyse the application of the effective regret defence with a view to limiting its application and increasing the prosecution of active bribery offences.**

## 3.2 Procedures for investigation and prosecution of corruption offences

This section concerns Azerbaijan's procedures for investigation and prosecution of corruption offences with the focus on their practical applications. Following the agreed Fourth Round Monitoring methodology, the section examines the implementation of outstanding recommendations from the previous monitoring rounds and new developments since the Third Round in 2013.

### *Effective/proactive detection: sources of information, use of FIU reports, statistics*

The Third Round monitoring report found Azerbaijan compliant with many of the international standards in terms of having the necessary legislation in place; however, enforcement was seriously lagging behind. Several recommendations that stemmed from these findings call on Azerbaijan to increase pro-activeness of its law enforcement and prosecutors in detecting and investigating various new and complex corruption crimes. The recommendations suggest various avenues on how this can be done, including the use of analytical tools (in particular, making full use of the information in the National Corruption Database), media reports, information from MLA, referrals from tax, FIUs, auditors, etc. They also suggest building up the capacity of some of the non-law enforcement institutions to help detect more cases, in particular, that of Azerbaijan's FIU – the Financial Monitoring Service.

### **Recommendation 4.6 from the Third Monitoring Round report on Azerbaijan:**

- Facilitate the detection and investigation of newly introduced provisions and new elements of the previously existing corruption offences;
- Increase proactiveness of the law enforcement and prosecution authorities notably through an increased use of analytical tools;
- Use more actively other detection tools in addition to intelligence information gathered by law enforcement, such as media reports, information received from other jurisdictions, referrals from tax inspectors, auditors and FIUs, as well as complaints received via government websites and hotlines, as well as information from other complaint mechanisms, as a basis for launching investigations.

### **Recommendation 5.3 from the Third Monitoring Round report on Azerbaijan:**

- Increase proactiveness of the prosecution authorities in detection of foreign bribery. (Bullet point above of Recommendation 4 applies here).

### **Recommendations 9.1 and 9.3 from the Third Monitoring Round report on Azerbaijan:**

- Further develop and make full use by Anti-Corruption Department of the information contained in the National Corruption Crimes Database and other sources in order to identify most frequent typologies of corruption, most vulnerable sectors and vulnerabilities within internal regulations and/or working methods of the public agencies that have been targeted by corruption investigations.
- Further strengthen the capacity of the internal investigation, control, audit or inspection bodies within

the ministries or other public authorities to identify corruption or corruption related incidents within the institutions they control and to notify Anti-Corruption Department whenever a suspicion of a corruption offence is revealed.

As was the case in the Third Round, the potential of many sources of detection are not fully tapped. All sources of information that are listed in recommendation 4.6 can be utilized under the Criminal Procedure Code (Articles 46.2 and 137). However, according to the statistical data provided by Azerbaijan, the reports of crime submitted by individuals and legal persons, as well as law enforcement intelligence, continue to comprise the detection source for a vast majority of corruption cases (for example, cumulatively they accounted for 85% of the detected cases in 2015).

The under-use of media reports as a possible source of information was extensively discussed during the on-site visit. The interlocutors repeatedly stated that media articles and journalist investigations could not be used as a source of information in criminal investigations. Articles 205 and 206 of the CPC require the journalist to provide a witness statement to the investigator, disclose his/her source of information, and provide supporting documents. Not surprisingly, few journalists would (or could) comply with these requirements.

On the other hand, the prosecutors met during the on-site visit admitted that information from the media can be used for detective activity and that the Detection Department of the ACD regularly looks for information in the media.

The Third round monitoring report recommended that Azerbaijan look into what is being done to build up the capacity of tax officials, auditors and others to identify instances of possible corruption and refer them to proper law enforcement bodies. Azerbaijan has not provided information on steps taken to implement this recommendation.

Internal units of the Ministry of National Security and Ministry of Emergency provide the biggest numbers of referrals to ACD.

The number of referrals from the Tax authority and from auditors is very low. In 2013, the internal security department of the Ministry of Taxes referred one allegation to the Internal Security Division of the ACD. Based on that material ACD started a criminal case. In 2014, no referrals were made by the Ministry of Taxes. In 2015, two matters were referred from the Ministry of Taxes, and a criminal case was initiated based on one of them. During the first six months of 2016, two matters were received by ACD and based on one of them a criminal case was started. Azerbaijani officials explained that the lack of referrals was because of effective preventive measures taken by the Ministry of Taxes.

On the other hand, analytical work of ACD is well developed. All the information gathered in cases and the complaints received by ACD are fed into an electronic data base and used every 6 months for drafting analysis reports and submitting motions to the various Azerbaijan authorities when a certain law violation appears to be committed. The authorities are obliged to answer within one month on the corrective measures that they have taken.

## **Conclusions**

It appears that some steps have been taken namely by ACD to increase detection and be more proactive, namely through a more extensive use of analytical tools. Analytical capacities of ACD have been steadily developing and this should be continued.

However, other sources of detection continue to be underutilised. For reasons that are based on the law, the role of the media as a source of information for criminal investigations is not correctly understood or utilised in Azerbaijan. The investigative journalist's role is to make public the wrongdoings that they discover when it is in the public interest. They cannot be expected to act like a complainant and file an official report. Nor can they be required to divulge their sources, which infringe the freedom of expression. It is the role of law enforcement agencies and prosecutors to make use of the information thus revealed, to open a case if they consider the information valuable and to seek evidence.

The low number of referrals from tax authorities, FIUs, auditors also shows poor dynamics and may indicate either their limited capacity or bad communication with law enforcement. The same applies to

information originating from international cooperation – cases that could be most commonly detected would include foreign bribery and other transnational corruption crimes. The on-site visit interviews confirmed that opening a case on the domestic side of a transnational bribery affair revealed by an MLA request from another country that investigates its own citizens or companies is not practised in Azerbaijan.

As a result, enforcement actions in regards to new crimes are still very limited. Some cases have been detected, investigated and prosecuted under new corruption provisions. However, no cases of foreign bribery have been investigated or detected to date.

**Azerbaijan is partially compliant with recommendation 4 (bullet 6), not compliant with recommendation 5 (bullet 3), partially compliant with recommendation 9 (bullets 1 and 3).**

**Recommendations 11.1 and 11.2 from the Third Monitoring Round report on Azerbaijan:**

- Continue to improve the capacity of the Financial Monitoring Service to analyse financial information and detect suspicious transactions, as well as the quality and percentage of referrals it makes to the prosecution.
- Evaluate the needs to fully use or further develop the data mining and analysis of information IT software currently in place and the training needs of the persons operating it.

On 3 February, 2016 a new institution – the Financial Market Supervision Chamber – was created. The Financial Monitoring Service (former FIU) was incorporated into the newly created body.

According to the authorities, the reorganization was a positive structural measure. The new institution is said to have improved possibilities to supervise all the relevant agencies regulating the financial markets (securities market, investment funds, insurance, credit institutions and payment systems). The experts were informed that all the staff of the former FMS has been retained, some new staff was employed in the Analytical Division, salaries were increased, while only the support (accounting, etc.) divisions were reduced to improve efficiency.

**Conclusions**

It is too early to assess the effectiveness of the FIU in its new set up. Therefore this matter should continue to be followed in IAP monitoring of Azerbaijan.

**Recommendation 17.2 from the Third Monitoring Round report on Azerbaijan:**

- Take any appropriate measures, such as internal regulations, guidelines, operational methodologies for the anticorruption investigators and prosecutors and use the special investigation means allowed by the legislation in order to detect and investigate corruption allegations in the judicial sector.

Limited information was provided by Azerbaijan in regards to their work on addressing perceived corruption in the judiciary, an issue which was identified in the Third round of monitoring and resulted in a recommendation to encourage the use of special investigative means available to prosecutors under law to detect and investigate corruption allegations in the judicial sector.

Since the Third round of monitoring five cases have been opened by ACD against judges, four of which resulted in convictions, and one case was closed.

**Conclusions**

It appears that Azerbaijan did not develop any specific guidelines, operational methodologies, etc. aimed at detecting and investigating corruption in the judiciary.

**Azerbaijan is not compliant with recommendation 17 (bullet 2).**

*Access to bank, financial, commercial records – procedure, burden of proof, timeframe, obstacles; central register of bank accounts.*

**Recommendation 8 from the Third Monitoring Round report on Azerbaijan:**

- Introduce measures to ease the proceedings for the access of the prosecutors, and particularly in corruption cases, to bank, financial and commercial records.
- Consider amending the Criminal Procedure Code to allow these activities to be performed by order of a prosecutor, without authorization from a court.

The Third round monitoring report found that Azerbaijan prosecutors in practice were limited in their access to bank, financial and commercial records; with the procedures being complicated and lengthy, not allowing for effective and quick response.

Criminal Procedure Code of Azerbaijan was not amended to allow these activities to be performed by order of a prosecutor, without authorization from a court, and no other changes have been introduced into legislation in regards to access to bank financial and commercial records since the time of the Third round of monitoring. However, this Recommendation requires that Azerbaijan consider amending its legislation. To this end, Azerbaijani authorities informed the monitoring team that serious consideration was given to the possibility of such amendments. Moreover, draft legislation to implement this recommendation was developed by the ACD and extensively discussed within the government and other criminal justice bodies. In particular, Azerbaijan reported that special meetings have been held to discuss the drafts but regrettably these proposals encountered resistance and have been in the end rejected.

Investigators are still experiencing delays in obtaining bank and financial information. At present, the procedure that the prosecutors need to follow in order to get bank information is still cumbersome. The prosecutor can request a court order for getting bank information from the preliminary investigation, as soon as a case is opened. However, the motion of the prosecutor needs to show enough evidence to prove that the financial information is necessary for the investigation. The motion will be rejected if the court considers that the necessity was not proven and the disclosure of that information would violate the right to privacy. On the other hand, the confidentiality of the request for disclosure cannot be kept for more than 48 hours. The owner of the account is informed of the court hearing when the motion of the prosecutor is discussed and he/she has a right of appeal.

There is no central register of bank accounts in Azerbaijan. However, a positive step is that Azerbaijan authorities are considering to establish a centralized bank database and to amend the legislation to allow prosecutors to access bank information without a court order. These measures resulted from a national risk assessment that was conducted by the FIU and are supposed to be included in a future Action Plan.

### **Conclusions**

Measures to consider legislative changes towards implementation of this recommendation have been taken by Azerbaijan since the Third round of monitoring regrettably without translating into their adoption. The existing procedure is protecting very well the rights of privacy, but it does not appear to give enough instruments to prosecutors to early detect and investigate complex corruption cases where the money passes through a chain of intermediaries, draw the financial profile of the suspect and follow the money trail and measures to facilitate the speedy and confidential access to bank and financial information of the prosecutors investigating corruption cases.

### **Azerbaijan is largely compliant with recommendation 8.**

**Recommendation 9.2 from the Third Monitoring Round report on Azerbaijan:**

- Pursue efforts to grant the prosecutors direct and swift access to the relevant information detained by public institutions (i.e. criminal record, personal record, passports, vehicles registration, border police data, register of immovable property etc.)

Direct access to various databases kept by other public institutions, such as criminal records, personal records, passport, vehicle registration information, border police data, register of property, etc. was also

not properly provided to the prosecutors at the time of the Third round.

Direct access of ACD to the public institutions' data bases has been ensured since then, including information on land registry, criminal record, databases of the Ministry of Education, of the border police, vehicles, etc.

The Financial Market Supervision Chamber developed a website [www.disclosure.az](http://www.disclosure.az) containing a central information system (ESID) for collection and dissemination of information submitted by investment companies listed on the stock market. The information is provided free of charge.

New Law on Security Market also amended the Civil Code and allows information on commercial companies such as the name of all shareholders, the type and amount of shares to be centralized in one place, which is supposed, according to Azerbaijan authorities, to facilitate the access of the law enforcement agencies to this data, however, by court order.

## **Conclusions**

Azerbaijan has taken steps to fully implement this recommendation since the Third round of monitoring.

**Azerbaijan is fully compliant with recommendation 9 (bullet 2).**

### ***International cooperation***

This issue has been examined in the 1<sup>st</sup>, 2<sup>nd</sup> and Third round of monitoring of Azerbaijan in the context of the legislative framework. International cooperation in practice was not examined during those monitoring rounds but is the focus of the current assessment.

The Central Authority tasked with receiving MLA requests is the International Relations Department of the General Prosecutors Office. The execution of requests is then delegated to the various Prosecution Offices.

Dual criminality is required for both mutual legal assistance and extradition. The interlocutors did not provide examples of cases in which they denied assistance in MLA requests on the basis of the absence of dual criminality. However, in international practice, it is considered that rigid application of the dual criminality principle would narrow down the possibilities to efficiently cooperate in the fight against serious transnational crime, and in this case transnational corruption. Therefore, it is recommendable for the Azerbaijani authorities to provide the widest scope of assistance in the absence of dual criminality (e.g. rendering assistance that does not involve coercive actions).

The discussions during the on-site visit revealed a certain lack of experience in dealing with MLA requests. Some of the prosecutors met during the on-site visit were uncertain about the procedure to be followed when requests regarding coercive measures, like the request for bank information, are received. There appeared to be a tendency to reject requests for banking information if they, in conformity with the legislation of the requesting state, do not attach a court order. The more reasonable approach would be for the executing prosecutor to request the issuance of the order from the competent Azerbaijani court and then provide the information to the requesting state.

The practice of informally contacting requested countries when preparing MLA requests appeared to be weak. Such practice could help make sure that all the legal requirements of the requested state are met and also create a bridge of mutual understanding between the two parties before the formal sending and execution of the request. Azerbaijani judicial authorities stated that they have better cooperation with CIS countries, including informal cooperation. They expressed complaints about the slow and inefficient cooperation with the other countries in relation to which they, allegedly, use diplomatic channels. The frustration of Azerbaijani prosecutors with regard to the low rate of response to their requests might be partly due to an insufficient pro-activeness in cooperating with other jurisdictions and a lack of thorough preparation of the requests.

On the other hand, according to the Azerbaijan authorities the execution time of incoming requests is 10 days or, when the request is more complex, one month maximum. This is commendable but it sounds rather optimistic, especially for the very complex requests for bank and commercial information, searches, retrieving erased data from computers, identifying and summoning witnesses/suspects in order to be



heard, etc. Furthermore, some OECD jurisdictions have pointed out that in some foreign bribery cases the requests sent to Azerbaijan have not been swiftly answered.

Finally and perhaps most importantly the activity of international cooperation in practice is seriously hindered by absence of the ratification of some very important European treaties. The most important ones include:

- Second Protocol of the Council of Europe’s Convention on Mutual Legal Assistance in Criminal Matters, which introduces many modern and very useful instruments of cooperation (direct communication through judicial authorities; hearing by tele-video conferences; cross-border observation; joint investigation teams, etc.);
- Warsaw Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism; and
- Fourth Protocol of the Council of Europe’s Convention on Extradition.

## Conclusions

International cooperation on corruption cases in practice in Azerbaijan could benefit from several measures that are reflected in the new recommendations below.

### **New Recommendation 27:**

- 1. Amend the legal provisions and revise the practice that hinders the use by law enforcement agencies of information revealed by the media for opening criminal cases or continue with the investigations into allegations of corruption.**
- 2. Use results of the analysis of the data contained in the database in order to better prioritize ACD’s activities to ensure that the most relevant corruption allegations are being tackled.**
- 3. Take the necessary measures to facilitate the speedy and confidential access to bank and financial information of the prosecutors investigating corruption cases.**
- 4. Ratify as a matter of urgency the Second Protocol of the CoE Convention on International Judicial Cooperation, the Warsaw Convention on Money Laundering and the Fourth Protocol of the Council of Europe’s Convention on Extradition.**
- 5. Encourage the prosecutors to establish informal contact channels with foreign authorities in order to better prepare the MLA requests and the execution thereof.**
- 6. Provide training and guidelines to the prosecutors and judges on the best practices in international judicial cooperation.**

## 3.3 Enforcement of corruption offences

This section concerns Azerbaijan’s enforcement of corruption offences through examining statistical data, as well as examples of various corruption cases that have been investigated and prosecuted in Azerbaijan since the Third round of monitoring.

### *Statistics on investigation, prosecution and adjudication of corruption-related crimes*

The Third round monitoring report did not cover the issue of statistics separately and did not examine case practice in a focused manner. This section attempts to do so in accordance with the Fourth Round Monitoring Methodology.

According to the information provided by Azerbaijani authorities the number of criminal corruption cases opened by the ACD has been steadily maintained at around 300 since the Third round. The biggest

number of cases throughout 2013-2015 has been those on embezzlement of public funds, forgery and abuse of authority. Cases of active bribery have been few but do exist. Only one money laundering case has been opened in those three years, and only one case on trading in influence, both in 2015.

The discussion during the on-site visit did not reveal corruption cases in which complex investigations would be carried out in regards to business transactions, national or foreign (e.g. cases in which the bribe was paid indirectly to the bribed official through simulated commercial transactions, off shore companies, banks, cases requiring the financial profiling of the suspects, etc.)

The analytical and corruption prevention activity developed by ACD is very promising, but it is not clear how much it helps ACD to identify and further investigate complex corruption cases, systemic corruption, and high-level cases.

The statistics of cases reveal that the areas where ACD mostly investigated corruption and related offences included the private sector, the trading and banking activities, education and healthcare systems. However, during the on-site visit discussions it appeared that the number of cases concerning serious and complex corruption offences, especially those connected to public procurement contracts, commercial corruption, or high-level officials was still very low.

The number of cases sent to trial involving mid to high level public officials increased from 121 in 2013 to 143 in 2015. The number of cases against heads and deputy heads of agencies (ministers and deputy ministers) has increased from 33 criminal cases against 84 persons in 2013 to 36 cases against 95 persons.

The statistics reveal no cases regarding MPs and mayors during the last 3 years. Only one judge was investigated and convicted in 2015. Considering that the immunity rules protecting MPs and judges against criminal investigation are still strong, it is not surprising that the number of cases is so low. On the other hand, as far as corruption in judiciary is concerned, such numbers do not correspond to the public perception of corruption in the judiciary in Azerbaijan.

The cases presented to the experts tackled in general low and medium level corruption. Although several cases that regarded some high level public officials have been presented, including:

- Case A in which the head of the General Military Inspection of the Ministry of Defence was convicted for asking and receiving, together with other inspectors of the same unit, bribes amounting in the amount of 18,800 AZN from some military commanders for positive grading of the capacity of two military bases and sentenced to 8 years of imprisonment and his accomplices to 8.5 years of imprisonment. The case involved passive bribery charges. No active bribery charges were apparently brought against the military commanders who paid the bribes.
- Case B in which a judge was convicted and sentenced to 7 years' imprisonment and is currently serving his sentence for a bribe of 600,000 AZN taken for promising a businessman to provide him with a job. The charges brought against the judge were of fraud and active bribery, although the description of the facts would rather point towards trading in influence. The bribe giver filed the complaint against the judge and therefore was not prosecuted because of effective regret.
- Case C was discussed with the experts; it is still under investigation but it has enjoyed wide media coverage. The case regards the former Minister of Communication and Information Technology and it relates to bribes received for securing a public contract. The case involves a large number of suspects.
- Case D, involving accusations of money laundering, tax evasion, embezzlement and abuse of office against a company, was opened based on a referral from the internal auditor of the company.

Other cases discussed with the experts regarded the sector of corruption in education, cases in which the ACD identified several typologies and vulnerable areas, such as embezzlement of public funds by illegally hiring teachers in schools; embezzlement through fake employment of staff; bribery for passing exams; and bribery to obtain fake university diplomas.

***Statistics on criminal sanctions for corruption, including in specific sectors/areas and on high-level officials (by category of officials and offences)***

According to the information provided by Azerbaijan authorities statistics provided on the types of sanctions show that in 2013 the most widely applied sanction was imprisonment; in 2014 it was closely followed by the application of fines.

In 2015 – a significantly increased number of persons were released conditionally from serving their punishment; the number has increased from 23 individuals in 2013 to 36 individuals in 2015.

***Public access to criminal statistics, including on corruption cases***

According to the information provided by Azerbaijan authorities statistics are made publically available at the quarterly press conferences.

**New Recommendation 28:**

- 1. Concentrate the resources of ACD to investigate complex, systemic and high level corruption cases, relevant for the economic and social situation in Azerbaijan.**
- 2. Use analytical information gathered by the prevention department of ACD and the information revealed by the media and other sources in order to identify and pursue the investigation into the most relevant corruption cases and for the most vulnerable sectors.**
- 3. Provide training to prosecutors with regard to carrying out of financial investigations with exposure to international best practices; and document analysis in complex commercial corruption cases.**

### **3.4 Anti-corruption criminal justice bodies**

This section concerns Azerbaijan’s system of criminal justice bodies involved in detection, investigation, prosecution and adjudication of corruption with a focus on practical challenges. Following the agreed Four Round Monitoring methodology, the section examines the implementation of outstanding recommendation from the previous monitoring round and new developments since the Third Round in 2013. It also contains relevant new information.

***Specialised anti-corruption investigative agencies***

In Azerbaijan investigations are conducted by investigators from the public prosecution service, as well as by investigators from the Ministry of Justice, Ministry of Internal Affairs, Ministry of Taxes, Ministry of Emergency Situations, State Security Service, State Border Service, and State Customs Committee.

The Anti-Corruption Directorate with the General Prosecutor (ACD) is a specialized anti-corruption investigative body in Azerbaijan and established in 2004. It is composed of investigative prosecutors and in 2011 it obtained powers to conduct its own operative and search activities. It obtained access to public institutions databases after 2013.

In 2013 the Cabinet of Ministers of Azerbaijan increased substantially the salaries of officers of the department and improved its material maintenance. A new office building for the ACD was opened in September 2013 and is now fully utilized. The new building seems to be equipped with all necessary equipment and technical infrastructure.

In July 2014 ACD staff was increased to 140 officers and 100 administrative staff, with 4 departments and 3 divisions. ACD also has 5 in-house specialized experts in economics, finances, accounting, IT and other fields.

In 2014 its status was upgraded from department to the directorate level. ACD is headed by the Deputy Prosecutor General who reports directly to the Prosecutor General.

Institutionally it is incorporated into the system of the Prosecutor General’s office. Parliament has oversight over the activities of the ACD, as well as the Head of State. Judicial oversight is exercised through the issuing of sanctions.

The Second and Third rounds of monitoring examined but did not make recommendations on ACD's institutional placement, status, structure, competence, selection of staff, competitive and merit-based appointment of leadership, guarantees against arbitrary dismissal, budgetary autonomy, adequate salary of staff, accountability, sufficiency of human resources, budget, training, and impact and effectiveness, trust and perception.

#### ***Specialised anti-corruption prosecution bodies /units***

There is no specialised anti-corruption prosecution body or unit. Nor are there specialised prosecutors in Azerbaijan. Corruption cases are taken to court by the prosecutors from the Department of Public Prosecutions of the GPO. However, according to the information provided by Azerbaijani authorities, there is "informal" specialization, i.e., a group of prosecutors that for the most part prosecute corruption cases.

#### ***Specialisation of judges/courts in corruption cases, availability of training to judges on adjudication in corruption cases***

There are no specialised anti-corruption courts or judges in Azerbaijan. Cases are tried in the criminal courts of relevant jurisdiction.

#### **Conclusions**

Prosecution of corruption cases in Azerbaijan seems to lack continuity. Investigative prosecutors carrying out the investigation in corruption cases are employed by ACD, while trial prosecutors presenting corruption cases in court come from another Department of the General Prosecutor's Office.

Interlocutors met at the on-site visit explained that formal communication is possible and it can be done via superiors. The case can also be returned to the investigative prosecutors as incomplete and requiring additional measures. Trial prosecutors met at the on-site visit did not think that closer cooperation was necessary and said it was not really required in practice.

Moreover, it appeared that there was no regular contact and communication between the investigative prosecutor and trial prosecutor on a practical level. The only moment when the investigative prosecutor interacts with the trial prosecutor is when s/he sends the matter for indictment. Similarly, the prosecutor who takes part in the trial communicates with the investigative prosecutors only at the end of the trial, by sending the copy of the court decision in the case.

No consultation occurs when questions or procedural exceptions regarding the investigation are raised in court. The investigative prosecutor knows best the evidence and how it has been gathered, as well as the strong and the weak points of the case. However, s/he has no input or role after the indictment is drawn up.

#### **New Recommendation 29:**

**Envisage a communication channel between investigative prosecutor and trial prosecutor to better prepare the corruption cases for trial and ensure success of prosecution. For instance, this could be done by considering the possibility to establish a trial prosecutors unit within the ACD for representation of corruption-related cases in courts, or through a system of designation of trial prosecutors to the ACD.**

#### ***Internal investigative units in criminal justice bodies***

#### **Recommendation 9.3 from the Third Monitoring Round report on Azerbaijan:**

- Further strengthen the capacity of the internal investigation, control, audit or inspection bodies within the ministries or other public authorities to identify corruption or corruption related incidents within the institutions they control and to notify Anti-Corruption Department whenever a suspicion of a corruption offence is revealed.

See Chapter 3.2, sub section “*Effective/proactive detection: sources of information, use of FIU reports, statistics*” for information on this issue.

## Chapter 4

# PREVENTION AND PROSECUTION OF CORRUPTION IN EDUCATION

### 4.1 Introduction

Education is an important part of the public sector in Azerbaijan in expenditure, public employment, and use of education services by citizens. The education sector in Azerbaijan is mainly state funded and the public expenditure on education reached 2.6% of GDP in 2014 (State Statistics Committee of the Republic of Azerbaijan, 2015). A large number of Azerbaijanis participate in education as students, teachers or parents. At the beginning of the academic year 2014-2015, 1.7 million<sup>129</sup> were enrolled as students in educational institutions of different level (general to higher education and doctoral studies) and 367 thousand people were employed in education, the sector that is the third biggest employer in Azerbaijan after agriculture (1691.7 thousand people in 2014) and trade (681.9 thousand in 2014).<sup>130</sup>

Corruption negatively affects education systems by squandering limited resources available for education, limiting access, diminishing the quality and trust in education credentials and institutions. Young children and students who are in contact with corrupt behaviour early in their life learn and perpetrate the culture of corruption. High levels of spending, a complex structure of the education system involving a large number of stakeholders and a high-stake nature of education make this sector especially vulnerable to different forms of corruption. Insufficient control and supervision of the sector can create opportunities for malpractice. Moreover, the importance attributed to education - expected to offer better income and social mobility - puts education actors in a position that can be used for personal interest.<sup>131</sup> Additional factors, such as a culture of corruption in a society or organisations, vague rules and standards that are inconsistently applied, and a perceived lack of recognition of teachers or low pay can be conducive to corruption. This chapter provides a brief overview of Azerbaijan's anti-corruption policies and bodies (4.1); an assessment of prevention measures introduced by the government (4.2); and examines the impact of anti-corruption enforcement (4.3) in application to the education sector. The policy recommendations at the end of the chapter provide pointers for action to strengthen the government's efforts in the fight against corruption in education.

The purpose of this chapter is to assess the application of wider anti-corruption policies and tools in the context of one policy area: Azerbaijan's education sector. The chapter does not provide an in-depth review of the education system, corruption risks and instances of corruption in education. Nor does it assess the wider implications of integrity issues for quality, equity and access in education. These aspects of integrity in education require a separate study.

#### *Corruption prevalence*

In Azerbaijan education is viewed as a sector vulnerable to corruption. Independent researchers have pointed to a number of important integrity-related challenges in Azerbaijani's education system. According to surveys in 2007 and 2010, more than half of teachers and principals were found to collect informal payments from parents and used these to fund heating, class maintenance and repairs, extracurricular activities and presents for teachers.<sup>132</sup> Studies also show that private tutoring is also a

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<sup>129</sup> The population of Azerbaijan is 9.5 million in 2014.

<sup>130</sup> Source of the data: State Statistical Committee of the Republic of Azerbaijan

<http://www.stat.gov.az/menu/6/indexen.php>

<sup>131</sup> Transparency International (TI) (2013a), Global Corruption Report: Education, Routledge, UK.

<sup>132</sup> ESP/NEPC (2010), Drawing the Line: Parental Informal Payments for Education across Eurasia, Budapest, Education Support Program (ESP) of the Open Society Institute, [file:///C:/Users/Obvintseva\\_K/Downloads/drawing-line-20100308.pdf](file:///C:/Users/Obvintseva_K/Downloads/drawing-line-20100308.pdf); Kazimzade, E. & Rzayev F. (2007), Azerbaijan: Parental Informal Payments in Schools, Zagreb, Network of Education Policy Centers, <http://www.edupolicy.net/no-access/download-id/819/>

common practice is Azerbaijan, including private tutoring that school teachers provide to their own students, creating opportunities for conflicts of interest to arise.<sup>133</sup>

At the level of higher education, 2010-2011 survey results have shown that 70% of student respondents had experienced demands for bribes from professors/educators in preceding twelve months and that 67% of student respondents bribed their university administrators and/ or professors. The same survey provided some insights on the students' perception of corruption: 52% of student (and recent graduate) respondents consider that corruption is the most important challenge in the Azerbaijani educational system, 68% of student respondents first experienced bribery in secondary school and 27% had their first personal experience with bribery at university.<sup>134</sup>

Some positive developments in corruption perception in education are to be mentioned. The perception of corruption in education as measured by the TI Global Corruption Barometer improved from 49% in 2009 to 37% in 2013 (see section 1.1).<sup>135</sup> Higher levels of trust to education institutions are corroborated by the 2014 national survey by Constitution Research Foundation: the Ministry of Education (MoE) is ranked among the most trusted public institutions.

The prevalence of corruption in the education sector is further corroborated, in part, by the information provided by the government, but principally by civil society. The MoE has indicated that its principal corruption concern is that forged higher education diplomas are obtained abroad and presented to Azerbaijani authorities for degree recognition. They indicate that an increasing number of local and foreign businesses provide fraudulent degrees to students who did not qualify for admission to national higher education institutions. Although the Ministry did not report other dimensions of corruption in higher education, cases of corruption in universities were identified by the Anti-Corruption Directorate including embezzlement of state funds, hiring of teachers based on bribery, and fake diplomas (see section 4.3). The Ministry has noted the presence of conditions in vocational education that create a risk for corrupt practices, such as low teacher salaries, poor quality of incoming students and the inadequate material-technical base.<sup>136</sup> Additionally, the low status and low visibility of vocational education provide school management with wide scope for corrupt practice.

Civil society organisations believe that corrupt practices exist across subsectors in education. In early childhood education, they note, parents pay bribes for preschool admission. In secondary education, school principals may ignore absenteeism of students, who instead attend private tutoring, in return for bribes. In higher education admission is often transparent and test-based, but corruption persists in admission to specialised programmes that require special artistic or physical abilities, and do not employ standardized external entrance examinations.<sup>137</sup> A general lack of openness and accountability in higher education institutions is believed to create a climate conducive for integrity violations. University rectors have extensive and unchecked powers, and favoritism is widespread in university appointments. Some students are accorded preferential treatment, and in some universities more students pass exams than were enrolled in the course. Degrees are sometimes awarded solely based on bribes. Civil society organizations also argued that there is a lack of social interest in education and that parents distrust education authorities. These two factors, according to them, constitute challenges to anti-corruption policy and practice.

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<sup>133</sup> Jokic (Ed.) (2013), *Emerging from the Shadow: A Comparative Qualitative Exploration of Private Tutoring in Eurasia*, Zagreb, NEPC, <http://www.edupolicy.net/portfolio-posts/emerging-from-the-shadow-a-comparative-qualitative-exploration-of-private-tutoring-in-eurasia/>

<sup>134</sup> Sadigov (2014) Students as Initiators of Bribes, *Problems of Post-Communism*, 61:5, 46-59, available at: <http://www.tandfonline.com/doi/pdf/10.2753/PPC1075-8216610504?needAccess=true&>

<sup>135</sup> According to the results of 2013 Transparency International Global Corruption barometer, 37% of respondents in Azerbaijan consider that the national education system is corrupt/ extremely corrupt. The results of the survey show that most former USSR republics have much higher scores on this question – Russia (72), Ukraine (69), Kazakhstan (55). Only Georgia is lower (22). Japan is higher (55) than Azerbaijan, and the US is nearly the same (34). Transparency International, 2013 survey.

<sup>136</sup> Replies to the fourth round of monitoring questionnaire (Government), 19 May 2016, 12.15.

<sup>137</sup> Replies to the fourth round of monitoring questionnaire (Civil society), 19 May 2016, 12.15-12.17.

## 4.2 Sectoral anti-corruption policy and bodies

Azerbaijan's national anti-corruption policy documents address the education sector. The National Anti-Corruption Plan 2012-2015 set forth specific actions to improve the education administration system and to raise awareness, namely:

- Article 21. Improvement of the Education Administration System
  - 21.1. Increase of transparency in the examination process in education institutions;
  - 21.2. Increase of efficiency during revision of complaints in higher education institutions;
  - 21.3. Adoption of the code of ethics for teachers;
  - 21.4. Publishing of information on vacant teacher positions on the official website of the MoE and its publishing house;
  - 21.5. Organisation of examinations in a centralised and transparent way for employment of teachers;
  - 21.6. Submission of proposals for determination of liability in connection with out-of-competition recruitment of teachers;
  - 21.7 Submission of proposals in connection with an increase in teachers' salaries and social protection.
- Article 28. Anti-corruption education
  - 28.4 Envisaging educational courses on anti-corruption in curricula of higher and secondary vocational schools, extended specialization courses and education centres
  - 28.5 Organization of essay and art contests on the topic of fight against combating corruption and other intellectual contests and other type of intellectual competitions among secondary school students.

The implementation of the measures foreseen under section 21 on Improvement of the Education Administration System is assessed at 84%. According to the Constitutional Research Foundation, items 21.1, 21.2 and 21.7 were not fully implemented by the MoE at the time of the monitoring. Among concrete measures implemented by the MoE to increase the transparency in the examination process (21.1) one can cite the establishment of the Virtual Testing Centre in the Azerbaijan Medical University, the Azerbaijan Pedagogical University, Architecture University, and Medical University; the use of the Telephone Information Centre (146-Hotline service) to provide information about the examination process in educational institutions and to report irregularities in the examination process. To increase the efficiency in complaints treatment (21.2), the MoE signed Order #558 of 8 May 2014 setting the personal responsibility of Higher Education Institution Directors to organise a transparent examination process and to review complaints. The MoE adopted the code of conduct for actors of educational process and for teachers, (21.3) and publishes the information about teacher vacancies on its official web site and in the press (21.4). The centralised hiring of teachers (21.5) for general secondary education and vocational education and training (VET) was conducted for the first time in 2014-2015; 1 692 teachers were hired. NGOs could observe the competition process. The liability of heads of education institutions and bodies was determined regarding the out-of-competition recruitment of teachers (21.6) in accordance with item 5 of “the Guidelines for Identification of the Demand for Teachers in General Education Institutions and Vocational Schools under the Ministry of Education of the Republic of Azerbaijan, Distribution of Pedagogical Cadre and Their Employment”. Finally, “item 2.3.1 of the State Strategy for Development of Education in the Republic of Azerbaijan envisages establishment of a differentiated salary system competitive in the labor market” (21.7).<sup>138</sup> Regarding the progress made in the implementation of anti-

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<sup>138</sup> Constitution Research Foundation (2015) Implementation of the National Anti-Corruption Action Plan for 2012-2015, September 2013 – December 2014 available at: <http://goo.gl/CG3WMe>



corruption education, the monitoring report of Constitution Research Foundation states “No available information” to assess these items and grants 0 points out of possible 6 as the assessment grade.<sup>139</sup>

An independent monitoring report that covers the last year (2015) of the National Anti-Corruption Plan for 2012 - 2015 was not available. The government provided an account<sup>140</sup> of the measures undertaken by the MoE in line with the National Action Plan for Promotion of Open Government in 2012 - 2015 and the National Anti-Corruption Plan in 2012-2015. However, no written reports were provided on implementation of the above-mentioned plans. The MoE reports that all anti-corruption actions related to the education sector set forth in the National Anti-Corruption Plan 2012-2015 have been fully implemented. MoE representatives noted at the on-site visit that the reports on implementation of the sectoral action plans on open government and on anti-corruption are submitted to the CCC and the President biannually.

New National Action Plan for 2016 - 2018 on Promotion of Open Government<sup>141</sup> outlines the following anti-corruption measures in the education sector:

- Article 1. Improvement of Electronic Services
  - 1.5. Establishing the information system of higher education institutions, ensuring the issuance of certificates and transcripts in electronic form and processing tuition payment in electronic form;
  - 1.6. Creation electronic preschool admission service;
  - 1.7. Expanding the scope of the electronic admission to the first grade of secondary schools, lyceums and gymnasiums and to ensure the regional coverage of electronic admission.
- Article 10. Awareness and cooperation
  - 10.2. Developing educational-curriculum programs on anti-corruption and ethics for specific target groups including civil servants, conducting workshops and trainings, supporting these kinds of initiatives;
  - 10.3. Including anti-corruption topics to the educational programs of higher and middle educational institutions, conducting public lectures and seminars for students.

The MoE Deputy Head of Administration together with the Legal Department and the Internal Supervision Department prepare the Sectoral anti-corruption plans for implementation of the National Action Plan and submit them to CCC in compliance with the Presidential Order obliging the government agencies to prepare sectoral action plans for implementation of the National Action Plan.<sup>142</sup> The MoE reports that it involves civil society partners<sup>143</sup> in the development of sectoral anti-corruption action plans.<sup>144</sup> The Anticorruption NGOs Coalition facilitates the involvement of the civil society in the development of these documents.<sup>145</sup>

At the on-site visit MoE representatives stated that corruption risks are discussed in the development of the national anti-corruption plan, and that MoE data are used to identify education-specific risks. While this may suggest the use of MoE knowledge of existing risks in developing anti-corruption policy, there is no evidence that this is based on a formalised risk assessment exercise that draws upon surveys or other evidence collected by the MoE. The Ministry indicates that ad hoc memos describing corruption risks

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<sup>139</sup> Constitution Research Foundation (2015) Implementation of the National Anti-Corruption Action Plan for 2012-2015, September 2013 – December 2014, pg. 116, available at: <http://goo.gl/CG3WMe>

<sup>140</sup> The Report on the Execution of Ministry of Education Related Tasks in the National Action Plan for the Promotion of Government for 2012 – 2015 and the National Anti-Corruption Plan for 2012 – 2015, approved by the Decree # 2421 of the President of the Republic of Azerbaijan of 5 September 2012.

<sup>141</sup> For details see chapter 1, section 1.2 of the report.

<sup>142</sup> Order of the President of the Republic of Azerbaijan (September 2012) on approval of “National Action Plan for Promotion of Open Government in 2012-2015” and “National Anti-Corruption Action Plan in 2012-2015”

<sup>143</sup> The MoE specifically mentions Transparency International Azerbaijan, Assistant Centre to Modern Teaching and Education, Anti-Corruption Foundation and Constitution Studies Foundation.

<sup>144</sup> Replies to the fourth round of monitoring questionnaire (Government), 19 May 2016, 12.1.

<sup>145</sup> Replies to the fourth round of monitoring questionnaire (Civil society), 19 May 2016, 12.9.

identified by the MoE are prepared on a regular basis. However, none of these documents have been provided in response to the request of the monitoring team. Officials also indicated that the findings of the Internal Security Unit investigations and hot-line complaints analysis are used as basis for the action plan, with no further evidence was provided to this statement.

The first sectoral anti-corruption action plan<sup>146</sup> was approved by the Order #2834 of the Minister of Education on December 28, 2012, approximately four months after the adoption of the Open Government Initiative National Action Plan 2012 – 2015. The MoE’s work plan in 2012 - 2015 derives from and expands the National Anti-Corruption Plan. It introduces a range of actions both for advancing the Government’s anti-corruption agenda in education and for promoting further transparency and good governance in public institutions (i.e. the implementation of corporate governance principles). However, deficiencies of strategic planning similar to those of the national Action Plan can be observed on case of the sectoral action plan as well: such as absence of the outcome indicators, budget or clear timelines. Officials met during the on-site visit did not refer to any guidance offered from the CCC secretariat in the process of drafting the action plan, confirming the conclusion of the report that they referred to ACD as their main “ally” in fighting corruption in the education sector.

The document outlines the following actions to be undertaken in 2012 – 2015:<sup>147</sup>

#	Action	Work to be undertaken and expected results:
1.	To improve the treatment of citizens’ appeals and complaints	<ul style="list-style-type: none"> <li>● To organize a permanent reception of citizens as well as on- site reception by the heads of the relevant units and education bodies of the Ministry of Education;</li> <li>● To improve the treatment of and official reply to online appeals and complaints.</li> </ul>
2.	To improve the training and professional development of civil servants	<ul style="list-style-type: none"> <li>● To develop recommendation to improve the rules that govern the in-service training of civil servants;</li> <li>● To develop and implement anti-corruption training programmes and modules (ethics, conflict of interests, access to information, etc) by educational institutions and centres with the MoE.</li> </ul>
3.	To improve rules of ethical behaviour	<ul style="list-style-type: none"> <li>● To organize regular training courses and workshops on ethics for civil servants;</li> <li>● To submit to the CCC and to publicly disclose annual reports on public awareness activities, violations of ethical behaviour and applied disciplinary measures;</li> <li>● To establish effective mechanisms of treatment of complaints related to the violation of ethical behaviour rules;</li> <li>● To establish special ethics section (rules of ethics, ethic reports, mechanism regarding on-line complains over unethical behaviour, etc) on the official web sites of the MoE and the education management bodies.</li> </ul>
4.	To improve the management	<ul style="list-style-type: none"> <li>● To increase transparency in the examination process at</li> </ul>

<sup>146</sup> The sectoral Action Plan of the Ministry of Education related to the National Anti-Corruption Plan for 2012–2015.

<sup>147</sup> Unofficial translation of the document from Azerbaijani language provided by Batuhan Aydagul.

	in educational institutions	<p>the educational institutions;</p> <ul style="list-style-type: none"> <li>● To improve the efficiency of the complaints treatment at universities;</li> <li>● To adopt the rules of ethical behaviour of teachers;</li> <li>● To advertise teacher vacancies on the MoE web site and in the media;</li> <li>● To conduct transparent centralized exams to hire teachers for publicly announced vacancies;</li> <li>● To present proposals on the enforcement of non-competitive hiring of teachers;</li> <li>● To present proposals on the improvement of social security and increase of teacher salary.</li> </ul>
5.	To improve the application of corporate governance principles in state bodies	<ul style="list-style-type: none"> <li>● To prepare and present to the general public annual activity reports of state bodies.</li> </ul>
6.	To implement educational measures in connection with the fight against corruption	<ul style="list-style-type: none"> <li>● To organize TV and radio programmes and debates regarding the activities of the MoE and education management bodies in the area of fight against corruption;</li> <li>● To organize public awareness work in order to increase public confidence to the MoE and the education management bodies;</li> <li>● To provide training courses related to the fight against corruption at training and education centres of the higher and specialized secondary educational institutions;</li> <li>● To organize essay and art contest on the topic of fight against corruption and other intellectual competition among high school students;</li> <li>● To publish brochures, handouts and other educational materials related to the fight against corruption and their distribution among the population.</li> </ul>

The MoE reports that implementation of the sectoral anti-corruption action plan is monitored through a system of indicators that allows progress to be tracked, and that monitoring informs planning of next steps and contributes to the relevance of anti-corruption programmes. However, no MoES monitoring reports were provided to the monitoring team, so this information could not be confirmed. Further, the MoE reports that it submits to the Corruption Combatting Commission a biannual report on the implementation of the sectoral action plan. Neither sectoral monitoring reports nor the analysis of performance indicators have been provided in response to the monitoring team. Therefore, monitoring team cannot reach a conclusion about the effective use of monitoring in the sectoral anti-corruption planning. At the on-site Ministry of Education representatives noted that they assess impact in various ways: firstly, they use the information obtained through hot-lines and complaints contents; they conduct satisfaction surveys, they analyse the work of the internal security units to see the results and main challenges, in addition the Minister of Education himself visits various regions and meets with the citizen. Ministry cited the

increased number of complaints and hotline figures<sup>148</sup> to show increased trust towards the reforms and the Ministry as a whole. Officials also believed that the level of corruption in education decreased significantly however, with no specific data or evidence provided.

According to the Presidential Order on the approval of the National Action Plan for 2016 - 2018 on Promotion of Open Government, the MoE has to prepare its sectoral action plan until December 31, 2016. The monitoring team has so far received no information in reference to the process and progress towards the development of this document.

### ***Civil society participation in the sectoral anti-corruption policy***

During the OECD monitoring visit some NGOs testified that they were not fully engaged in MoE anti-corruption policy development and monitoring. There is wide scope for increasing the depth and quality of public participation in developing, implementing and monitoring of anti-corruption policy in education. Wider and more substantial opportunities for NGO participation could substantially improve the development and implementation of anti-corruption policy in Azerbaijan, as it has done, for example, in Ukraine and in other post-Soviet states. The government could leverage research capacity of independent NGOs by easing restrictions on funding. The government could also promote collaboration among NGOs, universities and international aid agencies towards the same objective. The OECD monitoring team met with several NGOs that have an extensive experience in budget analysis and assessment of integrity risks in education system. Their perspective would be of great value for the development and assessment of anti-corruption policies in education sector. Unfortunately, they had to cease their activities because of restrictive NGO climate and lack of funding.

MoE officials rightfully mentioned that MoE's most important allies in fighting corruption in education are parents. The intention to expand and increase the role and contribution of parents-teachers associations could be a good catalyst in strengthening stakeholder participation in education across the board, including but not limited to anti-corruption policy and practice particularly. The government could provide more information about plans to translate this intention into practice.

### ***Awareness of corruption***

The MoE has undertaken series of complementary efforts to increase public awareness about education through the following ways:

- Meetings of the Minister of Education with citizens in districts across the country to discuss corruption in education;
- TV and radio appearances of MoE officials and experts on anti-corruption activities of the ministry, on importance of transparency in education and on fighting corruption together;
- Regional meetings and trainings with executives of local towns and districts in nine regions on anti-corruption activities in education sector.

MoE officials stated that schools are in charge of increasing parents' awareness on corruption risks and anti-corruption efforts. Indeed, teachers constitute the backbone of awareness raising efforts in education. The MoE informs teachers through in-services training and introduced a module on anti-corruption at the level of vocational and technical schools and tertiary education. However, no specific evidence was provided to conclude that the awareness raising is systematic, targeted and planned.

National Anti-Corruption Plans of 2012 - 2015 (articles 28.4 and 28.5) and 2016 - 2018 (articles 10.2 and 10.3) assign the MoE specific tasks for increasing public awareness through various channels in general, vocational and tertiary education. The MoE reported that it has fulfilled its mandate from the previous plan,<sup>149</sup> however this statement could not be verified based on available monitoring reports.

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<sup>148</sup> See the data on hotline below.

<sup>149</sup> The Report on the Execution of Ministry of Education Related Tasks in the National Action Plan for the Promotion of Government for 2012 – 2015 and the National Anti-Corruption Plan for 2012 – 2015, approved by the Decree #2421 of the President of the Republic of Azerbaijan of 5 September 2012

## 4.3 Prevention measures

### *Integrity of staff in the sector, ethics and anti-corruption training*

Education is a complex sector that employs different types of staff: political appointees, MoE civil servants and other categories of staff, and local government are involved in the policy-making and implementation of state policies in the field of education. School and university administration, teaching staff<sup>150</sup> and technical and support staff ensure the day-to-day operations of educational institutions at different levels. The scope of this monitoring review covers only the integrity of political officials, civil servants employed by the MoE and secondary school teachers and principals. The integrity of other categories of staff in the sector – preschool, primary, and tertiary – are outside the scope of this report, but could be the focus of future reviews.

The government recognizes the existence of corrupt practices in the management of human resources in education, namely bribing and nepotism in selection, hiring and promotion, arbitrary dismissals, and violation of labor rights of employees.<sup>151</sup> The section that follows outlines the measures that the government implements to fight corruption in the human resources management.

#### *Civil servants employed by the MoE*

The Law on the Republic of Azerbaijan on Civil Service governs the selection/hiring, performance evaluation, promotion and dismissal of civil servants employed by the MoE. The statistics on the education sector civil servants by grade (from 2013 to 2016) were requested but not provided to the OECD monitoring team. Overall, the human resources management of civil servants as described by the MoE is in line with the respective legislation.

The OECD monitoring team confirmed from its interview with the MoE that civil servants are hired by the CSC, which provides a generic civil servant recruitment announcement on its web site and conducts a panel interview of shortlisted candidates. For the MoE recruitment, the panel includes experts in the relevant field, representative of MoE human resources department, CSC and NGO representatives. In 2015, 6 MoE vacancies were announced, 600 candidates applied and 5 candidates were recruited. Civil servants can be recruited without competition only in two cases. According to an amendment to the Law on Civil Service, only candidates educated within government funded State Program of Azerbaijani Youth Education Abroad for 2007-2015 can be recruited without competition. In the MoE, 19 civil servants were recruited through this path. Civil servants transferred from another public institution do not need to undergo a competition.

Public servants are assessed by their direct supervisor at the end of every calendar year based on pre-defined criteria. The performance appraisal system was used in the MoE before its official introduction in all state institutions in 2014.

The fixed salary of public servants is defined by the Law on Civil Service. Civil servants can be rewarded with a collective (set by the law) and/ or individual bonus (upon the decision of the supervisor).

The dismissal of public servants can be done on the grounds of article 33 of the law On Civil Service of Azerbaijan. According to the MoE information provided during the on-site visit, no civil servants were dismissed last year for reasons linked to integrity.

The Laws on Corruption Fighting and Ethics Rules for Public Servants define the ethics rules for public servants, including in the MoE. Within the MoE, the Deputy Head of Apparatus has also the function of ethics commissioner, who monitors the compliance with anti-corruption legislation and ethics norms by MoE public servants. Specifically, he participates in the development and monitoring of national anti-corruption strategy document and sectoral anti-corruption action plan, reviews and analyses the reports of the MoE Audit Department and prepares the recommendations on anti-corruption actions. Finally, the CSC is in charge of ethics and fight against corruption training and of supervisory monitoring of civil

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<sup>150</sup> It is worth noting that despite the public discussions in 2011, the teachers and other employees of state educational institutions do not have the status of civil servants.

<sup>151</sup> Replies to the fourth round of monitoring questionnaire (Government), 19 May 2016, 12.26.

service/ education sector employees' integrity. It also co-ordinates the issues related to the enforcement of legislation. The responsibilities of the Commission are governed by the Rules of Ethics Behaviour of the Public Servants.

### ***Teachers***

In light of malpractices in recruitment and promotion of school teachers and principals, the MoE introduced measures to curb corruption, which were included in the National Anti-Corruption Plan (measure 21.4 - 21.7). These measures cover teacher recruitment, diagnostic assessment of teachers, salary increases, and the introduction of a code of conduct and ethics training for teachers. According to the MoE's account of implementation,<sup>152</sup> the following actions have been undertaken in the area of teacher recruitment:

- Since 2011-2012, vacant teaching positions have been published on-line. In 2015 - 2016, the MoE published 3 462 positions in education institutions and vocational schools to competition on its official website (reference measure 21.4) This new practice also enabled the MoE to match vacant positions with average teaching load and consider whether vacancies were justified.
- The MoE established a computer-based centralised examination to make the recruitment process more transparent (reference measure 21.5). The MoE hired 3068 teachers in 2015, including 2016 teachers hired through the procedure.
- The MoE Order No. 712 of June 2013 introduced a penalty for non-compliance with the rules and regulations in the recruitment of teachers (reference measure 21.6).
- More than 4000 teachers (1800 in 2015) have benefitted from financial incentives introduced for young teachers in rural schools following Resolution No. 279, dated August 2014 (reference measure 21.7).

The number of candidates for teaching increased from 17,000 in 2013 to 37,000 in 2016. This may signal an increase in the attractiveness of teaching profession as a result of these measures, and others, described below.

Despite these changes in the recruitment of teachers, the NGOs that the monitoring team met stated that there were still cases of principals having substantial influence over the pre-selection and final selection of candidates, as well as cases of considerable executive interference in the final recruitment on an ad-hoc basis. They also said the dismissal of teachers is usually difficult, and teachers are usually hired for an unlimited term. The authority of school principals to maintain high professional standards within schools is highly constrained by work rules and a culture that are hostile to dismissal and, in some cases, executive interference. These combine to make the sanctioning of breaches in professional behaviour of teachers very difficult.

In addition to addressing challenges in teacher recruitment, the government has introduced new policies on teacher assessment and remuneration.<sup>153</sup> It held diagnostic assessments of skills and competencies of 56 070 teachers in 12 cities and regions across the country (Ganja, Syngayit, Shirvan, Absheron, Hajigabul, Imishli, Masalli, Khachmaz, Jalilabad, Saatli, Gubadli and Sabirabad). The diagnostic assessment was based on tests on the curriculum content and teaching methods, and its results were used to identify teachers' professional development needs and to provide in-service training. After the training, teachers were re-tested. Based on the results of these tests, the best performing teachers were assigned additional teaching hours. According to the government, the workload of the teachers who successfully passed the diagnostic assessment increased 1.5 times, and their salary doubled (to USD 275 per month). In total, about 40% of teachers received a substantial salary increase within one year. The government reports that beyond the diagnostic assessment teachers' salary is expected to double, according to the Decree of the President of Azerbaijan of 16 January 2016.

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<sup>152</sup> The Report on the Execution of Ministry of Education Related Tasks in the National Action Plan for the Promotion of Government for 2012 – 2015 and the National Anti-Corruption Plan for 2012 – 2015, approved by the Decree # 2421 of the President of the Republic of Azerbaijan of 5 September 2012.

<sup>153</sup> Order of the Minister of Education of the Republic of Azerbaijan on implementation of recruitment and displacement of teachers in institutions of general education and vocational lyceums; Regulations of implementation of diagnostic assessment of knowledge and skills of teachers working for institutions of general education.

The government also developed education-specific codes of conduct combined with an in-service training on ethics and integrity for teachers. The Code of Conduct for educators has been developed jointly by the MoE and the American Bar Association's Central and Eastern Europe Legal Initiative.<sup>154</sup> The Code of Conduct for teachers was adopted in May 2014. The Code of Conduct sets ethical norms and requirements, defines the role of the teacher and provides guidelines on the relations between teachers, parents and school administration. The ethics training was introduced as a module in the regular in-service teacher training. According to the government, every year in the last five years 15000 - 20000 teachers received the training.

### ***Principals***

The government also reports that the rules for hiring of principals were changed: a three-stage electronic process was put in place before a final selection interview, and a commission was established to hear appeals to hiring decisions. Civil society representatives positively assess the changes introduced in the recruitment of principals.

### ***Public service delivery, transparency and access to information***

ASAN centres provide services from 10 state entities and operate according to a one-stop-shop model: they provide information about all services delivered by the state entities, including education services. Many education-related processes at risk of malpractice are currently being transferred to electronic platforms. The government cites the following:

- MoE created an electronic service room,
- Recruitment of new teachers and transfer of teachers from one educational institution to another,
- Online application for State Programme of Azerbaijani Youth Education abroad for 2007-2015,
- Recognition of higher education qualifications in foreign countries,
- First application to VET schools,
- Application for accreditation in educational institutions,
- Online authentication of diplomas and education certificates,
- Enrolment of secondary school students and transfer from one school to another,
- Information on current academic achievement of secondary school students,
- Application to transfer from one VET school to another,
- Live publicly available broadcast of the examination process in the Azerbaijan State Economic University,<sup>155</sup>
- A pilot school operates in Barda where applications for students' enrolment and staff hiring are managed online.

The monitoring team requested the information on the number of users to evaluate the effective use of these services. The information provided by the government is incomplete, covering only some of the electronic services stated above, and it does not include information on the 2014-2015 use of electronic services. The MoE mentioned during the OECD monitoring mission that regular surveys are conducted to measure the users' satisfaction with the electronic services. These surveys have not been provided by the government. The monitoring is therefore unable to assess users' satisfaction with the electronic services.

**Table 4. Data on the number of users of electronic services related to education**

#	Name of the service	2014	2015	Percent Change 2014-2015
1	Submission of application and documents and providing information about the results for recruitment of teachers for secondary schools	19111	22702	19%

<sup>154</sup> Constitution Research Foundation (2015) Implementation of the National Anti-Corruption Action Plan for 2012-2015, September 2013 – December 2014 available at: <http://goo.gl/CG3WMe>

<sup>155</sup> Constitution Research Foundation (2015), "[Monitoring Report on Implementation of the National Anti-corruption Action Plan for 2012-2015](#)".

2	Submission of applications and documents on <i>The State Program of Azerbaijani Youth Education Abroad for 2007-2015</i>	3369	2590	-23%
3	Submission of applications and documents for accreditation of educational institutions	0	0	N/A
4	Submission of applications and documents for getting licenses for educational establishments	0	Abolished	N/A
5	Submission of applications and documents for admission to initial vocational education institutions	0	0	N/A
6	Online verification on recognition and determination of the equivalence (nostrification) of higher education qualification of foreign countries	514	5177	907%
7	Online authenticity verification of education documents	Was not ready	5627	N/A
8	Provision of information on current academic achievements of pupil	95933	67655	-29%

Source: Information provided by the government of the Republic of Azerbaijan.

Finally, the Law on Access to Information regulates access to information related to education. Access to information is ensured through the official website of the MoE and Education Department of Baku city, while websites of regional departments of education are under development. Citizens can also file their information requests through the following web sites and phone centres:

- MoE official website,
- Official website of the Baku city Education department,
- Websites of regional education departments (under development),
- Phone Information Centre,
- Hotline 146,
- Citizens Reception Centre,
- E-appeal of citizens,
- Education Abroad information website,
- Information about education enterprises,
- Portal about online education,
- Website on diploma recognition,
- Website on teachers' admission.

### ***Audit and control***

External public financial control in the education sector is implemented by the Chamber of Accounts and the State Financial Control Service under the Ministry of Finance. The OECD monitoring team requested the reports of the Chamber of Accounts and the State Financial Control Service on the financial-economic activity of the MoE for years 2012-2016<sup>156</sup>. The reports have not been provided by the government. The monitoring team does not therefore have sufficient information to reach conclusions about the approach and content of the external audit.

<sup>156</sup> Replies to the fourth round of monitoring questionnaire (Government), 19 May 2016, 12.31.



The Ministry of Finance is the principal public agency for financial management in the education sector. The MoE controls only one quarter of the total operational expenditure in the education sector, while local representatives of the Ministry of Finance disburse the remaining part of the budget in the regions.

Internal public financial control in the education sector is carried out by the Audit Department of the MoE established in 2013. Audit Department performs the audit, monitoring and internal public financial monitoring in the MoE<sup>157</sup>. According to the Statute of the Department, its responsibilities include internal control of MoE departments and bodies and service inspections of internal corruption cases, internal investigations on corruption cases and law violation cases<sup>158</sup>.

MoE officials confirmed that the Audit Department audits all ministry divisions, regional education departments and education institutions (except preschools). The department verifies compliance with legislation through institutional practices and informs the MoE leadership of its findings together with recommended actions. The Audit Department collects evidences about possible violations, analyses these elements and provides recommendations to the MoE on the identified risks. If this analysis identifies criminal component, the case is transferred to the ACD for further investigation. The OECD monitoring team requested internal control or audit reports that address corruption issues in education. The requested reports have not been provided by the government. The monitoring team does not therefore have sufficient information to conclude on the approach and content of the internal Audit Department. Finally, the MoE benefits from the investigations of the Audit Department in revising existing or developing new policies.

As a result of investigations carried out by the MoE Audit Department, a number of rules, regulations and recommendations were developed, namely "Rules on recruitment and replacement of secondary school and vocational lyceum teachers", "Rules on recruitment and replacement of secondary school principals", "Rules on final exams and transfer of secondary schools and vocational lyceums students from one class to another", "Rules on the electronic enrolment of first-grade students". In 2014, the Audit Department identified false documents forged by education sector employees and sent the documents for investigation to relevant authorities. It was established that 576 diplomas of education sector employees were forged, local authorities were assigned to take action in accordance with the national legislation.

The Audit Department receives the citizens who contacted the MoE hotline and uses the information received from citizens for investigations. According to the MoE, while some information received through citizens' appeals helped the MoE to identify violations and even introduce an administrative penalty for weak supervisions in some cases, other citizens' appeals were not within the MoE responsibility and were therefore sent to other relevant bodies.

Ordinary and extraordinary audits and monitoring are conducted by MoE structural units. The causes of the revealed shortcomings and violations are determined, and appropriate measures are taken in accordance with the legislation for preventing such cases in the future<sup>159</sup>.

### ***Procurement***

According to the government, procurement in education is organised according to the Law on Public Procurement. However, it notes that contracting agencies have considerable discretion over the choice of their procurement method. 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 participation of external experts is unclear, and civil society does not actively participate in the process. Information on procurement is lacking, and the Chamber of Accounts indicated that it was unable to evaluate public procurement. The names of procuring agencies and contractors, goods purchased and the prices of procurement projects are included in public information, but related documents, names of competing contractors and the reasons for successful bids are not available. Procurement and construction administration was established within the MoE in 2014 with a staff of 60 people, including technical supervisors. This administration covers all educational institutions (except for universities and preschool institutions) and collects information about their needs every six months. In January 2016 the function of procurement in education was transferred from local authorities to the central government. Schools do not directly participate in procurement.

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<sup>157</sup> Replies to the fourth round of monitoring questionnaire (Gouvernement), 19 May 2016, 12.30.

<sup>158</sup> Statute of the Internal Supervision Department of the Ministry of Education

<sup>159</sup> Replies to the fourth round of monitoring questionnaire (Gouvernement), 19 May 2016, 12.32.

The data on procurement volumes provided below illustrate some inconsistencies in the public procurement expenditures over a three-year period that may reveal difficulties to commit sufficient funding over the long-term towards strategic goals.

**Table 5. Education: procurement volumes, 2013-2015, Azerbaijani AZN**

Item	2013	2014	2015	Total
ICT	10,484,197	8,362,591	2,047,230	20,894,018
Desktop Computers and Laptops	4,487,073	3,169,551	1,651,334	9,307,958
E-Boards	4,627,016	2,136,100	0	6,763,116
Other ICT Equipments	120,000	3,056,940	395,896	3,572,836
Projectors	1,250,109	0	0	1,250,109
Furniture and other Inventory	13,043,577	17,551,414	6,631,673	37,226,664
Machinery and Equipment	5,838,283	14,921,262	11,907,825	32,667,370
Stationery and routine items	2,070,431	2,724,448	1,983,066	6,777,945
Textbooks	4,500,000	14,665,570	7,752,540	26,918,110
Other items and services	7,282,480	15,164,787	14,826,846	37,274,114
Other Items	5,833,685	12,166,753	7,655,281	25,655,718
Services	1,448,795	2,998,035	7,171,566	11,618,396
Maintenance and construction	1,147,954	7,130,625	4,989,732	13,268,311
<b>Total</b>	<b>44,366,923</b>	<b>80,520,697</b>	<b>50,138,912</b>	<b>175,026,532</b>

Source: The government of Azerbaijan

According to interlocutors, decision-making and budget allocation process in procurement remains opaque and unaccountable. This creates opportunities for misappropriation and the embezzlement of funds. One representative pointed out, for example, that schools built by the USAID (United States Agency for International Development) were half the cost of schools built using state procurement and construction processes. NGOs report that the tendering process and the quality of textbooks improved as a result of reforms. The establishment of two commissions raised the standards and transparency of the tendering process: the Textbook Approval Board to provide an independent assessment of the quality of submitted textbooks and the Tender Commission which supervises the tendering process with regard to the stipulated financial, professional and legal criteria. A number of documents requested by the OECD monitoring team for a further analysis of public procurement in education have not been provided by the government. The monitoring team is therefore not in the possession of the necessary elements to provide a further analysis of public procurement in the education sector.

#### 4.4 Enforcement and results, impact

Azerbaijan has identified several sources for detecting corruption in the education sector. The ACD of the Prosecutor General's Office maintains a hotline for the public to report corruption. Statistics on complaints relating to the education sector were not available, however. The Ministry of Education (MoE) also has a Telephone Information Centre for citizens to report information. The Centre received 19 calls in 2014, but has averaged approximately 76 calls for every 12-month period since then. Of the total 228 calls, 142 related to corruption. In addition, from 6 January to 2 March 2016 the MoE's reception centres were contacted by 3 162 individuals and "collectives", 338 of which were to file complaints. The MoE states that it also monitors printed and social media for corruption allegations. MoE forwards allegations received from these sources to ACD for investigation where appropriate.

These reports have produced some criminal prosecutions by ACD. Upon receiving a complaint, whether from the public or MoE, ACD assesses whether there is sufficient information to open a criminal investigation. In 2013-15, it opened 42 cases involving 82 suspects. However, data on the number of convictions and sanctions imposed were not provided to the monitoring team. Anecdotally, the ACD

described the conviction of a senior university professor in 2013 for taking bribes in admission examinations. In 2014, a university director was convicted of taking bribes from 991 students and requesting bribes from another 108 over an 8-year period. In 2015, the director and teachers of another university were convicted of taking bribes from 155 students in 2014-15. Another teacher was convicted taking bribes to facilitate illegal student transfers in 2014-15. The heads of a “pedagogical institution” and a university are currently being prosecuted for bribery. The head of a university who allegedly took bribes in 1996-2010 is a fugitive. The Azerbaijani authorities sought his extradition from France where he has claimed asylum.

In contrast, MoE have been less proactive in enforcement. From 2015 to March 2016, it inspected seven education departments, five school bodies, 74 secondary schools and one vocational school. As a result, an unspecified number of people were discharged or given summary punishment. Additional statistics provided after the on-site visit indicate that the MoE penalised and/or dismissed over 200 officials since 2013. However, these cases involve a failure to fulfil duties or mistakes while performing duties. They do not necessarily involve corruption.

ACD has also been active in investigating corrupt practices. Every six months, ACD analyses the complaints that it receives to identify vulnerabilities in the education sector and propose solutions. Vulnerabilities that have been identified recently include embezzlement of state funds by creating additional classes or “ghost” employees, taking bribes when hiring teachers, and teachers using fake diplomas to obtain jobs. The analyses of vulnerabilities and proposed solutions are sent to the ACD Director, the MoE and the concerned education institution. A response within one month is requested. However, there is no mechanism to ensure that the MoE or the education institution implements the ACD’s recommendations. ACD stated that the MoE is “generally good” at addressing the identified vulnerabilities but it does disagree in roughly 5-10% of the cases with the ACD’s findings and recommendations.

ACD and MoE also engage in awareness-raising efforts. ACD has raised awareness by publicizing successful convictions. It has provided parents, students and schools with books and brochures. Its prosecutors have given lectures and presentations at universities, though it is unclear whether these specifically addressed corruption in the education sector. MoE introduced and started implementing a “Code of Conduct for teachers” in 2014. It added that it uses “all available channels of information and education” to provide transparency but did not provide any details about these channels and their use.

MoE claims that its efforts have reduced corruption in educational institutions, increased citizens’ confidence in institutions and teachers, and resulted in greater efficiency and transparency. It did not provide evidence to support this statement. It has not conducted surveys or studies on the impact of its anti-corruption policy and enforcement in the education sector. Several representatives of civil society organisation with whom monitoring team met at the on-site visit stated that despite some improvements, corruption persists in the education sector. Nevertheless, the ACD has noted that the number of complaints about corruption in the education sector has decreased since 2013.

## **Conclusions**

### ***Sectoral anti-corruption policy and bodies and prevention measures***

The government of the Republic of Azerbaijan introduced wide-scale ambitious reforms to prevent and fight corruption in the education sector. However, the OECD monitoring team has not been provided with the elements that support the government’s statement on the risk-based and evidence-supported approach to the development of the anti-corruption policies in education.

The review of anti-corruption policies in the country provides supporting evidence to conclude that:

- There is political will to fight corruption and to improve the delivery of education;
- The comprehensive policy approach to teacher recruitment, assessment and remuneration has increased the number of candidates applying for teaching posts;
- Many education-related business processes have been transferred to electronic platforms.

The OECD review reveals that there is a need for more evidence to assess the impact of government's efforts. An independent and rigorous monitoring of the full term of the National Anti-Corruption Plan 2013 - 2015 was not available and should be commissioned in the near future.

There is no data monitoring the level of public experience of corruption in education. An independent and objective assessment of anti-corruption policy in education could also serve this purpose.

Monitoring of public experience of corruption in education is vital to fight corruption. As the incidence of corruption declines and trust towards education increases among parents, this could strengthen both social capital in Azerbaijan, a crucial component of well-functioning education systems, and widen the practice of ethical behaviour in the education community, also crucial for the eradication of corruption in the long run. To achieve this, the government needs to create more space for and encourage stakeholder participation in education at all levels of education. Closer links with schools will allow parents to better observe changes and contribute to the implementation of anti-corruption policy.

Two particular integrity risks that hinder public trust towards education are informal parental payments and private tutoring by school teachers. In the first instance, there is a perception gap between government officials and NGO representatives as to whether schools are adequately financed to provide quality education for all students. According to a 2007 survey, though it was illegal for schools to collect funds from parents, informal payments were made frequently.<sup>160</sup> It is important to better analyse education finance in Azerbaijan so the root cause of this challenge can be properly addressed. A study of school finance should be conducted to further analyse this issue, and its results should be used to improve the school funding.

In the second instance, independent research confirms that private tutoring, including by school teachers (considered as bearing a risk of conflict of interest), is wide spread in Azerbaijan (ESP/NEPC, 2010). The government reported on a pilot project in which classes were established in the upper secondary school to give students more time to study the subject of their choice and better prepare for entrance to higher education. This measure is expected to reduce student absenteeism caused by students taking private lessons outside of the school during schooling time. Further analysis of this challenge may be needed for the government to take well-informed evidence based actions jointly with other key stakeholders.

Both of these challenges present a strong case for the government to constantly adopt a balanced and comprehensive approach to education challenges. Anti-corruption policy in education and policies to improve quality and equity should be developed within a common framework.

Another important challenge is to create more space for stakeholder participation in schools and universities while at the same time centralizing most of the critical processes and decisions to prevent corruption. MoE officials and NGO representatives mentioned parents as the most critical ally in fighting corruption in education in Azerbaijan. Another government official reassured transparency as a critical factor. The government should transform this impressive and promising rhetoric into reality by more effectively communicating its anti-corruption efforts and their measured impact; enabling public participation in education; building and promoting collaboration opportunities with national stakeholders and international development partners; boosting national research capacity and using research more in policy-making and finally continuing towards international benchmarks of transparency.

### ***Enforcement and results/impact***

Azerbaijan has taken some enforcement action in the education sector but greater effort is needed, especially enforcement against high-level officials. Corruption in the education sector is likely widespread, based on the statements of civil society representatives and ACD at the on-site visit and the number of complaints made by citizens. The level of enforcement, however, does not correspond to this level of corruption. ACD could not provide comprehensive enforcement statistics. Some anecdotal examples were provided, but the cases do not relate to corruption by officials above the rank of university directors. MoE also could not specify the number of officials who have been sanctioned. No administrative proceedings have been opened. Azerbaijan asserts that its enforcement efforts have made an impact, but this statement is not backed up by any surveys or studies.

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<sup>160</sup> Kazimzade, E. & Rzayev F. (2007), Azerbaijan: Parental Informal Payments in Schools, Zagreb, Network of Education Policy Centers, <http://www.edupolicy.net/no-access/download-id/819/>

There is also room for improving prevention efforts. MoE needs to be much more active in conducting studies and typologies on corruption in the education sector. The government needs to create a mechanism with civil society oversight to ensure that MoE seriously and promptly considers the vulnerabilities identified and takes remedial measures.

#### **New Recommendation 30: Sectoral anti-corruption policy and bodies and prevention measures**

- 1. Introduce risk-based and evidence-supported approach to the development of anti-corruption policy in education involving a large panel of civil society stakeholders.**
- 2. Continue with the introduction of performance and impact indicators to track the progress made in the implementation of sectoral anti-corruption plans.**
- 3. Strengthen collaboration between the MoE and the State Examination Centre for continuous monitoring of education reforms and progress and ensure linkages of new evidence to both education and anti-corruption policy.**
- 4. Conduct a public expenditure review in education to assess whether public funding allocated to schools is adequate for providing quality education**
- 5. Communicate anti-corruption efforts and their measured impact, for example by providing access to relevant data and research (government, NGOs, universities)**
- 6. Review and improve existing mechanisms and platforms for a large stakeholder involvement in the design and monitoring of anti-corruption policy in education.**
- 7. Strengthen procurement policy and implementation for more clarity and transparency, including further guidelines for discretionary selection of procurement methods to encourage more use of competitive methods.**

#### **New Recommendation 31: Enforcement and results, impact**

- 1. Involve all relevant stakeholders (including ACD, MoE and civil society) to develop a comprehensive detection and enforcement strategy in the education sector.**
- 2. Strengthen parents-teachers associations to enable public participation in the enforcement of anti-corruption policy.**
- 3. Maintain and publish detailed and comprehensive statistics on the number of complaints about corruption in the education sector that are received by ACD and MoE, and on the number of investigations, prosecutions, convictions and sanctions.**
- 4. Strengthen the civil society oversight to ensure that MoE seriously and promptly considers the vulnerabilities identified and takes remedial measures.**

## ANNEX. FOURTH MONITORING ROUND RECOMMENDATIONS TO AZERBAIJAN

### CHAPTER 1: ANTI-CORRUPTION POLICY

#### **Recommendation 1: Anti-corruption Policy document**

- 1. Develop comprehensive evidence-based anti-corruption policies, with clear objectives.**
- 2. Plan and allocate budget for full implementation of anti-corruption policy.**
- 3. Promote the development of internal action plans based on risk assessments. Publish sectoral plans and implementation reports.**
- 4. Regularly monitor progress and evaluate impact of the anti-corruption policy implementation, including at the sector level, involving civil society.**
- 5. Ensure meaningful and open participation of civil society in anti-corruption policy development, implementation and monitoring.**

#### **Recommendation 2: Anti-corruption awareness raising and education**

- 1. Allocate resources for implementation of the measures of the Action Plan on awareness and reflect the budget it in the future Action Plan.**
- 2. Implement awareness raising activities adapted for each target group.**
- 3. Target awareness raising activities to the sectors most prone to corruption.**
- 4. Define outcome indicators and measure the results of awareness raising activities to plan the next cycle of awareness raising.**

#### **Recommendation 3: Anti-corruption policy coordination institution**

- 1. Improve performance of the CCC by enhancing the statutory functions, capacity, skills, performance and visibility of the Secretariat; enhance its accountability, transparency and visibility.**
- 2. Consider revising the mandate and the composition of CCC to include open government issues.**

## CHAPTER 2: PREVENTION OF CORRUPTION

### **Recommendation 4: Integrity in the civil service (valid from the Third Monitoring Round)**

1. Develop rules and implement transparent and merit-based recruitment of senior and high level civil servants as part of the new Civil Service Code and enhancing the capacities of the Civil Service Commission to enforce it.
2. Develop rules or common principles for transparent appointments to political positions.
3. Ensure a more transparent, adequate and equal salary system in the public administration, comparable between administrative bodies and competitive in relation to comparable enterprises/organisations.
4. Develop a network of ethics commissioners in public administration institutions.
5. Compose a practical public service ethics training course offered regularly and mandatory to public officials.
6. Ensure clear and comprehensive conflict of interest and ethics rules for civil servants and other public officials and a meaningful mechanism for their implementation are in place and vigorously implemented and enforced in practice.
7. Ensure the necessary legal, regulatory and institutional basis to implement a system requiring public officials to submit asset declarations and to verify them is completed and implement the asset declarations system in practice without further delay.

### **Recommendation 5: Institutional framework for civil service, asset declarations, ethics commissioners**

1. Ensure continuity of functions of the abolished CSC to maintain institutional set up for unified civil service state policy.
2. Develop without further delay the necessary form for asset declaration to ensure implementation of asset declarations in practice.
3. Consider establishing full time staffing positions for independent ethics commissioners with reporting obligation to the civil service oversight body.

### **Recommendation 6: Integrity of public political officials**

1. Adopt without delay the legislation ensuring legal separation of political and professional public service.
2. Adopt without delay the Code of Conduct for MPs.
3. Provide training and guidance on ethics and conflict of interests.
4. Ensure strong monitoring, enforcement and sanction mechanisms and enforce the rules in practice.

### **Recommendation 7: Civil society participation in the Judicial-Legal Council**

Amend the JLC Act so that representatives of civil society and academia may participate in the JLC as full members or, at a minimum, have a right to observe JLC meeting sessions.

### **Recommendation 8: Judicial appointments**

Ensure that objective and transparent criteria apply to judicial appointments to the Supreme Court and Court of Appeal to avoid undue political interference.

**Recommendation 9: Appointment of Supreme Court Presidents**

Amend the relevant legislation to require the Presidents of the Supreme Court and NAR Supreme Court be appointed upon the recommendation of the JLC based on objective, transparent criteria and process.

**Recommendation 10: Judicial disciplinary body**

Develop further the capacity of the Judicial Legal Council to consider, as a disciplinary body, allegations of judicial misconduct that denote a lack of integrity (such as interfering with another judge's decision in a case, engaging in commercial or political activity etc.).

**Recommendation 11: Asset declarations for judges**

Require judges to annually declare assets, income, liabilities and interests to the JLC, and make the declarations publicly available.

**Recommendation 12: Ethics training for judges**

Develop systematic training on ethical conduct and anticorruption standards for judges, paying special attention to the methodology of the training activities. Training should include topics such as conflict of interests, incompatible activities, financial disclosure requirements, gift policies, and reporting of corruption.

**Recommendation 13: Electronic case assignment system**

Implement an electronic case assignment system nationally and ensure that the monthly analysis of the case assignment system identifies and addresses vulnerabilities in the system.

**Recommendation 14: Transparency of judicial decisions**

Ensure that all courts' websites contain up-to-date information on hearings and judgements.

**Recommendation 15: Anti-corruption policy for the judiciary**

Conduct an analysis on the internal causes of the perception of corruption and lack of independence of the judiciary, carry out a risk assessment, and develop an anticorruption policy for the judiciary that encompasses greater efforts to prevent, detect and sanction corruption. This process should closely involve the Judicial-Legal Council, Commission on Combating Corruption, Anti-Corruption Department, other relevant state institutions, and relevant civil society organizations.

**Recommendation 16: Integrity in the public prosecution service**

1. Provide safeguards in the legislation regarding the obligation of PG to report to the Parliament and to the President, so that reporting obligations do not include decisions to be taken by the prosecutors in ongoing investigations or prosecutions.



2. Consider limiting the number of consecutive mandates of PG to two to preserve his/her independence, as well as of the Prosecution Office as a whole, in taking action in potentially sensitive corruption cases.
3. Review, with the participation of the civil society, the recruitment process of the prosecutors, in order to ensure that the entire procedure follows the principles of transparency and uses objective and merit based criteria.
4. Consider prohibiting former prosecutors from acting as a private lawyer or legal counsellor in cases which are being investigated or prosecuted by their former unit for a period of at least 2 years following the withdrawal from public service.
5. Take necessary steps to make the legislation on asset disclosure operational and ensure that it is applied to prosecutors in practice.
6. Continue providing training to all prosecutors on ethics and anticorruption standards that takes a practical approach and focuses on cases of concrete ethical dilemmas that prosecutors might have in their daily work.
7. Develop a balanced communication policy with the relevant civil society organizations, the media and the public in order to create a discussion forum on the issues pertaining to the independence, integrity and effectiveness of the prosecutorial and judicial system and, more generally, to the effectiveness of the fight against corruption in Azerbaijan.

**Recommendation 17: Access to information, defamation (valid from the Third Monitoring Round)**

1. Establish, under the authority of the Ombudsman, a working group involving non-governmental organisations and media, for monitoring, on a permanent basis, of the implementation of the Law on Access to Information. Conduct and publish periodical surveys to identify deficiencies in the Law or its improper implementation.
2. Provide the Ombudsman with necessary resources in order to effectively perform its functions in the area of access to information.
3. Organize a nation-wide awareness rising campaign aimed at dissemination of information on the right of access to information among different social groups.
4. Take appropriate measures to decriminalise defamation and insult; introduce mechanisms avoiding improper use of civil law instruments for restricting activity of media.

**Recommendation 18: Transparency in the public administration**

1. Review the legislative framework of access to information to clarify and limit the exemptions and provide for a proportionality test to grant access unless withholding the information is justified by a legitimate interest that is greater than the right to know.
2. Ensure wide access to information held by public authorities by implementing a presumption of openness;
3. Publishing the information on-line in open data format ensuring access to high-interest datasets.
4. Effectively enforce proactive publication of information.
5. Continue institutional development and expanding services under one-stop shop “Asan Service”.
6. Ensure an enabling environment for investigative journalism and media reporting on corruption.

#### **Recommendation 19: Integrity in public procurement**

- 1. Establish clear guidelines and responsibilities for the handling of procurement complaints.**
- 2. Establish clear guidelines and responsibilities for the handling of debarment.**
- 3. Introduce mandatory public reporting of all disclosable contract awards and their values per procurement agency, sector and procurement method.**
- 4. Develop an e-procurement platform and subsequently provide comprehensive training to public procurement officers in the handling of e-procurement.**
- 5. Develop and roll out regular and comprehensive training courses on all aspects of procurement for public sector procurement officers.**
- 6. Provide for civil society involvement in the monitoring of public procurement.**
- 7. Regularly update the standard tender documents and procurement guidelines to reflect the latest rules and regulations in public sector procurement.**
- 8. Ensure that the government procurement website is kept up to date and that all links are working.**

#### **Recommendation 20: Business integrity**

- 1. Conduct a business integrity risk analysis and develop a business integrity policy with the active engagement of the private sector.**
- 2. Work with the private sector to promote corporate internal controls, ethics, and compliance programmes or measures for preventing and detecting corruption (including in SMEs) and conduct surveys or studies to measure the impact of these measures.**
- 3. Consider adopting a Corporate Governance Code for SOEs based on the OECD Guidelines that could also include anti-corruption controls.**
- 4. Consider the establishment of a fully independent Business Ombudsman whose mandate would be to assist companies in mediating and resolving business integrity concerns.**

## CHAPTER 3: ENFORCEMENT OF CRIMINAL RESPONSIBILITY FOR CORRUPTION

### Recommendation 21: Trainings

Continue to provide training and guidelines to investigators, prosecutors and judges on cases of bribe offers, bribe promises, non-material bribes, and foreign bribery.

### Recommendation 22: Money laundering

Take measures (e.g. issuing normative acts or prosecutor instructions, or training judges and prosecutors) to clarify that the money laundering offence in Article 133 CC applies where (1) different persons commit the laundering and predicate offences, (2) the predicate offence is committed outside Azerbaijan, (3) the predicate and money laundering offences are tried separately, and (4) the subjective elements of the offence are inferred from objective, factual circumstances.

### Recommendation 23: Liability of legal persons

1. Introduce without delay criminal procedure provisions for the enforcement of the criminal liability of legal persons.
2. Ensure that corporate liability is autonomous, namely that it is not dependent on the investigation, prosecution or conviction of a natural person.
3. Provide guidelines and training to investigators, prosecutors and judges on the application of the substantial and procedural rules on criminal liability of legal persons.
4. Raise the private sector's awareness of the corporate liability provisions in the Criminal Code and the importance of internal controls and corporate compliance programmes (see also the recommendation in the section on Business Integrity).

### Recommendation 24: Seizure and confiscation

1. Continue to monitor the effectiveness of the seizure and confiscation regime, including by collecting and analysing accurate statistics on the type and amount of property that is seized and confiscated, and on the disposition of such property.
2. Take steps to ensure that investigators, prosecutors and judges place more emphasis on seizing and confiscating the proceeds of corruption, including the assets produced or derived from corruption offences (e.g. the profits resulting from a contract obtained through corruption).
3. Enhance the capacity of ACD and other prosecutors' offices to identify, evaluate and seize corruption-related property.
4. Adopt the legislation on the Asset Management Office and make the Office operational.

### Recommendation 25: Immunities

1. Reduce the scope of immunity of MPs and judges to ensure that immunity would not unduly impede investigations and prosecutions, such as by providing immunity only to acts committed in the performance of official duties, or only to officials who have been indicted or whose arrest is sought.
2. Take steps to ensure that the decision to lift immunity is based only on whether the

request is abusive (i.e. *fumus persecutionis*) and not on the merits of the allegations.

3. Substantially reduce the deadline for the Milli Majlis and JLC to lift immunity.

#### **Recommendation 26: Effective regret**

Further analyse the application of the effective regret defence with a view to limiting its application and increasing the prosecution of active bribery offences.

#### **Recommendation 27: Procedures for investigation and prosecution of corruption offences**

1. Amend the legal provisions and revise the practice that hinders the use by law enforcement agencies of information revealed by the media for opening criminal cases or continue with the investigations into allegations of corruption.
2. Use results of the analysis of the data contained in the database in order to better prioritize ACD's activities to ensure that the most relevant corruption allegations are being tackled.
3. Take the necessary measures to facilitate the speedy and confidential access to bank and financial information of the prosecutors investigating corruption cases.
4. Ratify as a matter of urgency the Second Protocol of the CoE Convention on International Judicial Cooperation, the Warsaw Convention on Money Laundering and the Fourth Protocol of the Council of Europe's Convention on Extradition.
5. Encourage the prosecutors to establish informal contact channels with foreign authorities in order to better prepare the MLA requests and the execution thereof.
6. Provide training and guidelines to the prosecutors and judges on the best practices in international judicial cooperation.

#### **Recommendation 28: Enforcement of corruption offences**

1. Concentrate the resources of ACD to investigate complex, systemic and high level corruption cases, relevant for the economic and social situation in Azerbaijan.
2. Use analytical information gathered by the prevention department of ACD and the information revealed by the media and other sources in order to identify and pursue the investigation into the most relevant corruption cases and for the most vulnerable sectors.
3. Provide training to prosecutors with regard to carrying out of financial investigations with exposure to international best practices; and document analysis in complex commercial corruption cases.

#### **Recommendation 29: Anti-corruption criminal justice bodies**

Envisage a communication channel between investigative prosecutor and trial prosecutor to better prepare the corruption cases for trial and ensure success of prosecution. For instance, this could be done by considering the possibility to establish a trial prosecutors unit within the ACD for representation of corruption-related cases in courts, or through a system of designation of trial prosecutors to the ACD.

## CHAPTER 4 - PREVENTION AND PROSECUTION OF CORRUPTION IN EDUCATION

### **Recommendation 30: Sectoral anti-corruption policy and bodies and prevention measures**

- 1. Introduce risk-based and evidence-supported approach to the development of anti-corruption policy in education involving a large panel of civil society stakeholders.**
- 2. Continue with the introduction of performance and impact indicators to track the progress made in the implementation of sectoral anti-corruption plans.**
- 3. Strengthen collaboration between the MoE and the State Examination Centre for continuous monitoring of education reforms and progress and ensure linkages of new evidence to both education and anti-corruption policy.**
- 4. Conduct a public expenditure review in education to assess whether public funding allocated to schools is adequate for providing quality education**
- 5. Communicate anti-corruption efforts and their measured impact, for example by providing access to relevant data and research (government, NGOs, universities)**
- 6. Review and improve existing mechanisms and platforms for a large stakeholder involvement in the design and monitoring of anti-corruption policy in education.**
- 7. Strengthen procurement policy and implementation for more clarity and transparency, including further guidelines for discretionary selection of procurement methods to encourage more use of competitive methods.**

### **Recommendation 31: Enforcement and results, impact**

- 1. Involve all relevant stakeholders (including ACD, MoE and civil society) to develop a comprehensive detection and enforcement strategy in the education sector.**
- 2. Strengthen parents-teachers associations to enable public participation in the enforcement of anti-corruption policy.**
- 3. Maintain and publish detailed and comprehensive statistics on the number of complaints about corruption in the education sector that are received by ACD and MoE, and on the number of investigations, prosecutions, convictions and sanctions.**
- 4. Strengthen the civil society oversight to ensure that MoE seriously and promptly considers the vulnerabilities identified and takes remedial measures.**

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