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**Istanbul Anti-Corruption Action Plan for  
Armenia, Azerbaijan, Georgia, Kazakhstan,  
the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine**

**Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews  
of Legal and Institutional Frameworks for the Fight against Corruption**

**KAZAKHSTAN**

**MONITORING REPORT**

Adopted at the 7<sup>th</sup> Monitoring Meeting of the Istanbul Anti-Corruption Action Plan  
on 28 September 2007 at the OECD Headquarters in Paris

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## GLOSSARY

ACN	-	Anti-Corruption Network for Eastern Europe and Central Asia (also known as Anti-Corruption Network for Transition Economies)
AFECC	-	Agency for the fight against economic and corruption crime (Financial Police)
APSA	-	Agency of the Republic of Kazakhstan on Public Service Affairs
CPI	-	Corruption Perception Index (by Transparency International)
FC&PPC	-	Financial Control and Public Procurement Committee
FIU	-	Financial Intelligence Unit
GDP	-	Gross Domestic Product
KZT	-	Kazakh Tenge (1 USD = 120 Tenge)
NGO	-	Non Governmental Organisation
OECD	-	Organisation for Economic Co-operation and Development
OSCE	-	Organization for Security and Cooperation in Europe
PEP	-	Politically Exposed Persons

## BACKGROUND

This **monitoring report** presents the assessment of the measures taken by the Kazakhstan to implement the recommendations for reforming its anti-corruption legislation and institutions received in October 2005 under the OECD Istanbul Anti-Corruption Action Plan. The report is structured along the recommendations: for each recommendation it analyses the taken measures, and assesses the implementation as fully, largely, partially or not compliant. The report is structured in three parts:

- National Anti-Corruption Policy, Institutions and Enforcement,
- Legislation and criminalisation of corruption and the related money-laundering offence,
- Transparency of the Civil Service.

The report was prepared by the team of examiners and edited by the OECD Secretariat. The **team of examiners** was led by Daniel Thelesklaf (Financial Integrity Network, Switzerland), and comprised Olena Smirnova (Ministry of Justice, Ukraine), Elnur Musayev (General Prosecution Service, Azerbaijan), Jolita Vasiliauskaite (Special Investigation Service, Lithuania), and Christopher E. Krafchak (American Bar Association / Rule of Law Initiative in Kazakhstan, USA). The OECD Secretariat was represented by Olga Savran (Anti-Corruption Division).

The report was prepared on the basis of the answers to the Questionnaire provided by Kazakhstan in March 2007 and the information gathered during the **on-site visit** to Astana and Almaty on 21-25 May 2007. During the visit, the team of examiners had meetings with several government and public institutions involved in the fight against corruption, which were organised by the Kazakh authorities. Examiners participated to a panel with foreign missions and representatives of international organisations and international financial institutions, which was hosted by the OSCE. Finally, examiners also participated in the meeting with non-governmental organisations and business representatives, organised by the Forum of Entrepreneurs of Kazakhstan, (a list of meetings is set out in Annex I).

The draft of the monitoring report was presented for discussion at **the meeting of the Istanbul Anti-Corruption Action Plan**, which took place on 26-28 September 2007 at the OECD Headquarters in Paris. The discussion took place in a form of bilateral consultations between the team of experts and the official delegation of Kazakhstan led by the Agency for the Fight against Economic and Corruption Crime (Financial Police), and at the plenary session, which brought together all the countries and organisations participating in the Istanbul Action Plan, including the non-governmental organisations. The final version of the report was adopted on 28 September 2007.

### **Box 1: The Istanbul Anti-Corruption Action Plan**

The Anti-Corruption Action Plan for Azerbaijan, Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, the Russian Federation, Tajikistan and Ukraine was endorsed in the framework of the Anti-Corruption Network (ACN) in September 2003, in Istanbul. The ACN Secretariat, based at the OECD Anti-Corruption Division, provides support for the implementation of the Action Plan. An Advisory Group provides guidance on the implementation of the Action Plan.

The implementation of the Istanbul Action Plan includes several phases: review of legal and institutional framework for fighting corruption; implementation of the recommendations endorsed during the reviews; and monitoring progress in implementing the recommendations.

In September 2003 the Advisory Group endorsed the Terms of Reference for the reviews of legal and institutional frameworks for fighting corruption in the Action Plan countries based on self-assessments reports prepared by their governments. The reviews of Armenia, Azerbaijan, Georgia, Kazakhstan, the Kyrgyz Republic, Tajikistan and Ukraine have been completed in 2004-2005. The review of the Russian Federation has not been completed yet. The recommendations are made public.

In May 2005 the Advisory Group endorsed the Terms of Reference for the monitoring of implementation of recommendations. The objective of the monitoring is to assess progress achieved by each country in implementing its recommendations. It does not aim to amend endorsed recommendations or to formulate additional ones, but to assess how the measures taken by the country comply with the recommendations. The monitoring consists of: (i) regular *progress updates* by countries; and (ii) *country examinations* by peers. In the framework of *progress updates*, countries are invited to submit their written updates about the national actions to implement the recommendations, which were taken since the previous meeting of the Istanbul Action Plan, approximately twice a year.

In the framework of *country examinations*, which are organised at least once for each country, the governments are invited to provide answers to a detailed questionnaire. A team of monitoring experts from other ACN countries visits the examined country and holds meetings with the public authorities involved in the fight against corruption, civil society and business representatives, foreign and international missions based in the countries, in order to form an objective opinion about progress made. The team of experts prepares its draft monitoring report, including ratings for each recommendation. The draft report is provided to the monitored country for comments. Next draft, which takes account of these comments, is presented to the meeting of the Istanbul Action Plan for discussion and adoption. Upon the adoptions monitoring reports are made public.

First round of *country examinations* is under way. It has examined Tajikistan, Georgia and Azerbaijan at the meeting of the Istanbul Action Plan in June 2006, and Ukraine and Armenia in December 2006, and Kyrgyzstan and Kazakhstan in September 2007.

For more information, please consult the following websites: [www.oecd.org/corruption/acn](http://www.oecd.org/corruption/acn).

## MAIN FINDINGS

Kazakhstan is enjoying rapid economic growth fuelled by significant oil revenues. The world experience shows that the oil sector is the area of high risk of corruption. Besides, economic transition also creates multiple opportunities for corruption. Therefore, Kazakhstan must be prepared to face this challenge if it is to attain its goal of becoming one of the most competitive economies of the world, as declared by its President. But so far many anti-corruption efforts remain declarative, and strong and systemic actions to prevent and prosecute corrupt are yet to be developed and introduced.

### **National Anti-Corruption Policy, Institutions and Enforcement**

The political intention of the Kazakhstan state leaders to fight corruption is shown in the number of political statements and legislative acts. In his address on 1 March 2006 concerning Kazakhstan's strategy of joining the world's 50 most competitive countries, the President of Kazakhstan stated that corruption was a threat to national security and social stability and defined the fight against corruption as one of the national priorities. At the end of the State Programme for the Fight against Corruption and the Action Plan for 2001-2005, a new State Anti-Corruption Program for 2006-2010 was approved by the Decree of the President on 23 December 2005. The Action Plan for the implementation of the new State Anti-Corruption Program was approved by Resolution of the Government on 9 February 2006.

To ensure effectiveness of anti-corruption programmes and action plans they must be based on sound analysis of the patterns of corruption in the society, which allows comparison between public institutions and provides the basis for the identification of priorities for action. The new State Anti-Corruption Programme of Kazakhstan refers to a number of general drawbacks of the anti-corruption policy implementation, and proposes anti-corruption measures for selected institutions. However, it does not contain any detailed analysis or references to the studies of patterns or public perception of corruption in the country. An Information and Analytical Department was established at the Agency for the Fight against Economic and Corruptive Crime (Financial Police) with the responsibility to analyse economic criminality and its social conditions, and to develop proposals for practical solutions. It is important to ensure that the Analytical Department of the Financial Police, together with other bodies, provides sound analytical base for further implementation, monitoring and update of Anti-Corruption Programme and Action Plan, as described above.

The executive branch of power has established a mechanism for monitoring and reporting about the implementation of the State Anti-Corruption Programme. The state authorities responsible for the implementation of measures foreseen by the Programme, submit their reports to the Agency for the fight against economic and corruption crime (Financial Police). The Financial Police summarises this information and subsequently submits it bi-annually by 10 January and 10 July to the Government of Kazakhstan for consideration at its extended sessions. The overall control over the Programme implementation is carried out by the Presidential Administration. The authorities reports that the implementation of the Action Plan for 2006-2010 is going smoothly, and there is no information about any failures to fulfil the plan.

While the governmental monitoring mechanism seems clear, there is no clear mechanism for the monitoring from the side of the civil society. Expert Council established by the authorities under the Financial Policy provides one mechanism for several NGOs to participate in the discussions related to the State Anti-Corruption Programme. But this mechanism appears insufficient to facilitate critical feedback and open dialogue with the civil society and business in order to ensure an objective assessment of the achievements and problems in the implementation of this Programme.

The public authorities, primarily the Financial Police, have implemented multiple activities to inform the public about their anti-corruption efforts. Most of these efforts included news conferences, briefings for media and interview of public officials with journalists, and often aimed to demonstrate anti-corruption efforts of the authorities by information about specific cases where corruption crimes were detected. However, these activities fall short of a structured and coordinated awareness raising campaign, which should aim to educate the public about the risks and negative impact of corruption for the society, and provide citizens with practical advice on how to prevent and fight corruption and about their rights in their interaction with public institutions. If the authorities of Kazakhstan wish to succeed in changing wide spread traditions of paying off for services, public awareness rating and training campaigns should be less formalistic, but more practical, substantive and systemic,

Kazakhstan has demonstrated significant progress in setting up a specialised body for the fight against corruption –Agency for the Fight against Economic and Corruption crime (Financial Police). According to the information received considerable funds are allocated annually from the republican budget for purposes of strengthening the material and technical basis of financial police bodies. The specialized anti-corruption investigations department had been established in the Financial Police, with the total of 47 staff members. The comparative statistics for the first 4 months of the years 2006 and 2007 shows an increase of the bribery cases investigations, especially for bribe giving and soliciting of a bribe.

Although this specialized anticorruption law enforcement agency had been created, there is no specialization of prosecutors in corruption. According to the Kazakh authorities, they have considered the possibility of such specialisation, but decided that it was not needed, because of the role of the Prosecution service is to supervise all bodies who conduct investigative and search activities, inquiry and pre-trial investigation in order to ensure that they observe the law. However, this argument remained questionable, as anti-corruption specialisation is one of the main international standards and a growing trend globally, and in the countries with legal and law-enforcement systems similar to the Kazak systems.

Another weak point of the Law Enforcement agencies is the absence of uniform corruption-specific training of law enforcement staff and prosecutors on a regular, rolling and permanent basis with regard to detecting and investigating corruption offences and to establish specialised training for those directly involved in the fight against corruption. Such training should be included in the curriculum of newly recruited staff as well as be part of in-service training. At the same time it is worth to mark that public officials undergo corruption-specific training at advanced training courses of the Academy of Public Administration and at Regional Education Centre.

### **Legislation and criminalisation of corruption**

Within the framework of the State Anti-Corruption Programme, Kazakhstan is expected to join a number of international conventions on the fight against corruption and economic crime, such as the Criminal Law Convention against Corruption (Strasbourg, 27 January 1999), and the Convention on Laundering, Detection, Seizure and Confiscation of Crime Proceeds (Strasbourg, 8 November 1990). Most notably, the Kazakh authorities have accepted the recommendation of the OECD/ACN Istanbul Anti-corruption Action Plan, which urged Kazakhstan to ratify the UN Convention against Corruption. But till

now there are no indications or concrete plans when and how Kazakhstan wants join these international instruments.

The Law on Introduction of Amendments and Additions to Some Legal Acts of the Republic of Kazakhstan on Improvement of the Fights against Corruption adopted in July 2007 introduces some changes which bring the country closer to the implementation of international standards. The new Law expands the notion of the public official for the purposes of corruption offences by including public official of foreign states and international organisations. The Law provides for stronger sanctions for active bribery, although not yet equal to the punishment for passive bribery. It further introduces provisions related to promise and offer of a bribe; however it does not appear to reflect international standards fully, and it remains to be seen if they are effectively used in practice. The Law introduces liability of the person assisting bribers and corrupt official in the transaction of the bribe, in this way aiming to address bribery through intermediaries. The Law also introduces disciplinary liability for receiving gifts as well as administrative liability for corruption related violations.

The provisions of the Criminal Procedure Code for confiscation of proceeds and instrumentalities of corruption offences have been reviewed in the course of elaboration of the above Law, and define the confiscation as mandatory extraction of the whole or part of the property of the convicted. The new Law further expands the circle of the confiscation to include “the property of the person convicted for corruption offences according to law, the property acquired illegally or bought at the by the means acquired illegally shall also be confiscated”. However, it is not clear whether it allows the law enforcement agencies to confiscate the instrumentalities and object of the corruption. No supporting statistical data on confiscation was provided to demonstrate actual practice.

Nevertheless, the above Law falls short of full implementation of the Istanbul Action Plan recommendations, and does not ensure full compliance with international standards. The law has provided no major contribution to the harmonization and clarification of relationship between various statutes and even among the norms of the Criminal Code. Clear criteria for separating the administrative offence from the criminal offences for corruption, supported by judicial practice, are still missing. The “definition of the public officials” remains inconsistent across various legal acts, including the Criminal Code, the Law on Anti-Corruption Efforts, the Law on Civil Service and the Code of Administrative Offences. Furthermore, the definition of illegal benefits as provided by the Criminal Code remains to be narrower than the Law on Anti-Corruption Efforts, which in itself cannot serve as a ground for criminal prosecution.

A number of deficiencies, which were identified in the Kazakh legislation during the review of 2005, remain unaddressed. The criminal legislation of Kazakhstan also does not recognise the bribery for the benefit of third parties. Receiving of the advantage by the relative of the public official, or funding by the political party in exchange for action/inaction by the public official, that are apparent examples of the bribery for the benefit of third parties are likely to be qualified as an abuse of public office that provides for less strict punishment.

The criminal legislation does not envisage criminal responsibility for legal entities for participation in the offences, including corruption offences.

It appears that immunities granted to members of parliament, Chairman and members of the Constitutional Court, judges and the Prosecutor General are absolute, and not functional, and can be lifted by the Parliament. There were no objective criteria, rules or guidelines applicable to a decision to lift the immunity and the considerations to lift immunities would therefore appear to be political. However, the Criminal Procedure Code provides legal ground for enforcing criminal prosecution and arrest of the person enjoying immunity in cases of receiving of a bribe without the permission of the Parliament. According to

the Kazakh authorities, application of special investigative methods in respect of persons enjoying immunity is sanctioned by the Prosecutor General and does not constitute a hurdle for detection of corruption. Statistical data confirmed that 24 judges and one member of the regional parliament were convicted for corruption during 2005-2007.

In this context, it should be noted that the Republic of Kazakhstan is undergoing a major administrative reform, envisaging changes in the various aspects of the division of powers, status of the public officials and judicial process. The newly adopted Amendments to the Constitution replaces the old system where the arrest warrant were granted by the prosecutor, and removes this power to the exclusive competence of the court, which follows international standards.

In the area of anti-money laundering legislation, Kazakhstan should make the necessary amendments to Article 183 of the Criminal Code to bring it in line with the provisions of the Vienna and Palermo Conventions. In particular it is necessary to criminalize the concealment, ownership and acquisition of illegally gained income. Kazakhstan has not yet established a Financial Intelligence Unit.

### **Transparency of the Civil Service and Financial Control Issues**

The recruitment system of administrative public officials is regulated at length by numerous laws, regulation and other acts. It provides for competitive selection of candidates for vacant posts. The selection of the candidates is carried out by the individual state authorities directly. The external control executed by the authorised body – the Agency on Public Service Affairs – over the process of hiring of administrative public officials is foreseen at all stages. However, the criteria for evaluating candidates to the public posts are not well defined. The transparency of the final decision about selection and hiring is not well ensured. The recruitment of political public officials does not involve competition; political public officials are appointed to their posts. The exception for political public officials increases the risk for nepotism, favouritism and corruption. Representatives of NGOs and international organizations, raise doubts on the transparency and integrity of the system of hiring of public officials.

The attestation of public officials can be a useful tool for assessing the qualifications of the employees of public bodies, and to identify areas where further training and capacity building is needed in order to improve their professionalism. The attestation of administrative state officials and law enforcement officers in Kazakhstan is regulated at length in multiple rules and official documents. However, it does not fulfil one of its main tasks – to serve as the mean to identify the need for the training of state officials. It would be important to develop the attestation procedures further, and to instruct the attestation commissions to develop proposal on further training and development needs for each examined staff member, which should later be supported by relevant training programmes. As the political state officials in Republic of Kazakhstan do not undergo any attestation, it is not ensured that they meet the requirements of the position they occupy and unequal treatment of political and administrative state officials is introduced in such way.

The norms of ethics and conduct of public officials of Kazakhstan are regulated by the Code of Honour of the State Officials (Public Servants' Official Ethics Regulations) in general and by separate ethic codes applicable for the particular public servants in their professional activity developed by the some state and local authorities. These ethic codes encompass the basic duties and responsibilities of public servants as well as the norms of their conduct. However, there is a lack of *practical* guidelines and of regular training for state officials on corruption, conflict of interests, ethical norms, sanctions for non-reporting about corruption. More generally, there is need to promote less formalistic and more practical anti-corruption training for public officials at all levels, and for the law-enforcement officials.

The income and assets declarations of public officials are the subject of the normal checks performed by the tax service. No peculiar control is executed over the income and assets declarations of public officials in order to reveal and prevent potential conflict of interests or corruption. It is not clear if the information provided in the income and assets declarations is sufficient for the execution of control over the conflict of interests, but it appears that there were no cases when such conflict of interest or indications of corruption were ever revealed in the declarations. Information contained in income and assets declarations of public officials is not open to the public or to the media, and thus cannot be questioned or verified by them either.

Public procurement is one of the areas with very high risk of corruption. Transparency of procedure and control over their correct implementation are among the most obvious methods for reducing corruption in this field. During the on-site visit to Kazakhstan, some representatives of businesses confirmed that they face multiple problems related to access to information about public procurement. A new law on Public Procurement was adopted by the Kazakh Parliament in July 2007, and will enter into force in January 2008. It contains a number of provisions which aim to improve the transparency and access to information about the forthcoming procurement and about the decisions on the completed tenders. The Financial Control and Public Procurement Committee (FC&PPC) under the Ministry of Finance is responsible for the control over the public procurement contracts. The Audit Committee is responsible for external audit, internal audit units in individual public agencies – where such units exist - are responsible for internal control over public procurement carried out by their institutions. However, it appears that not all the bodies who carry out public procurement are subject to the above regulations and controls. More importantly, there is little awareness about risk of corruption and about practical methods for prevention and detection of corruption in public procurement. The FC&PPC and Audit Committee must take on a more active role, in order to ensure the sufficient and efficient internal and external control over the execution of the public procurement contracts, including stronger control and supervision of the relevant activity of internal audit units by the means of developing model rules and methodologies, expert advice, training, etc.

While the recommendation calls on Kazakhstan to consider developing its Audit Committee into an independent institution accountable to the Parliament, the Kazakh authorities argued that the Audit Committee already enjoys full independence and meets all international standards, including the Lima declaration and INTOSAI auditing standards. It should be noted, that at present the Audit Committee is directly subordinate to the President of Kazakhstan. In May 2007 new procedure for the nomination of the members of the Audit Committee has been introduced which strengthens the role of the Parliament. The human resources of the Audit Committee remain insufficient: it currently employs 70 people, including 40 auditors. Considering that from 32 audits performed by the Committee in 2006, 21 of them detected indicators of corruption, strengthening this institution is an important step in the fight against corruption. Finally, there is some confusion between powers and functions of external and internal audit in Kazakhstan; the competencies of various agencies are not clearly defined, which leads to overlaps and inefficiency.

Kazakhstan reports a significant number of measures in the sphere of tax and customs authorities in order to increase transparency and to prevent corruption. But according to the civil society representatives, the tax and customs authorities remain among the most corrupt and inefficient public service providers. One reason for that is the lack of systematic approach in the anticorruption policy for tax and custom authorities of Republic of Kazakhstan.

There is no sufficient control over the financing of political parties, candidates and election campaigns. The control over the financing of political parties is exercised by the tax authorities on the same basis as the control over the financial reports of other taxpayers-legal persons. There is no specific control in order to prevent undue influence of state and local authorities on the politics. The control over

the election funding exercised by the Central Committee for the Elections of Republic of Kazakhstan and territorial election commissions encompass only the analysis if the budget funds transferred for the elections were spent for the purposes justified as the elections costs by the legislation of Kazakhstan. There is no control on the accuracy of data on campaign finance provided in the reports of political parties and candidates, nor on the legality of the collection and use of these funds. Public accountability of the bodies, responsible for controlling the financing of political parties, candidates and elections campaigns is not ensured either. New provisions were introduced in July 2007, which will oblige the Central Elections Committee to post information about election funds on their web site, which may improve public accountability.

Access to information is guaranteed; however, the procedure for accessing that right continues to be defined by a decree rather than a clear legal regime with right of appeal. Although the system as it stands is an improvement over previous procedures, the ability of the public to obtain information from government bodies appears more subject to the interpretations of individual civil servants than a universal standard presuming the right to information.

## INTRODUCTION



### **Economic and social situation<sup>1</sup>**

Kazakhstan covers an area of 2.7 million square kilometres and is the ninth largest country of the world. It has a population of 15 million. The GNP amounts to 52.6 billion USD (USD 8500 per capita in 2006), and the economy grew by 10.6% in 2006. Main areas in this growth were the financial and the construction sectors. Oil, gas, and mineral exports are key to Kazakhstan's economic success. Since 1993, Kazakhstan's extractive industries have attracted \$30.7 billion in foreign investment, which represents almost 76% of the total foreign direct investment in Kazakhstan for that period. Kazakhstan has significant deposits of coal, iron ore, copper, zinc, uranium, and gold. Starting in 2004, the Government of Kazakhstan increased its take of oil deals by increasing taxation of new oil projects.

The majority of Kazakhstanis are ethnic Kazakh; other ethnic groups include Russian, Ukrainian, Uzbek, German, and Uigur. Religions are Sunni Muslim, Russian Orthodox, Protestant, and other. Kazakhstan is a bilingual country. The Kazakh language has the status of the "state" language, while Russian is declared the "official" language.

### **Political structure**

Kazakhstan is a constitutional republic with a strong presidency. It is divided into 14 oblasts and the two municipal districts of Almaty and Astana. Each is headed by an akim (provincial governor) appointed by the president. Municipal akims are appointed by oblast akims. The Government of Kazakhstan transferred its capital from Almaty to Astana on 10 June, 1998.

Kazakhstan has a bicameral Parliament, comprised of a lower house (the Mazhilis) and upper house (the Senate). Single mandate districts popularly elect 67 seats in the Mazhilis; there also are 10 members elected by party-list vote. The Senate has 39 members. Two senators are selected by each of the elected assemblies (Maslikhats) of Kazakhstan's 16 principal administrative divisions (14 regions, or oblasts, plus the cities of Astana and Almaty). The president appoints the remaining seven senators. Mazhilis deputies and the government both have the right of legislative initiative, though the government proposes most

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<sup>1</sup> Sources: EBRD Country Factsheet 2006, Transparency International Corruption Perception Indices, US Department of State Background Notes February 2007

legislation considered by the Parliament. Election to the lower house of Parliament will be held later in 2007.

### **Trends in corruption**

With a score of 2.6 Kazakhstan ranks on position 111 of 163 countries in the 2006 Transparency International Corruption perception index. This is the same score as in 2005 and only slightly better than in the previous year. Surveys show that corruption is widely seen as a serious problem in Kazakhstan, mainly in the area of public spending.

On 2 May 2007, Switzerland, the United States, Kazakhstan, and the World Bank agreed that funds blocked in Switzerland are to be transferred to Kazakhstan. The funds in question originate from a huge corruption case involving Kazakh individuals and an American businessman in the context of oil concessions in Kazakhstan. About USD 84 million were blocked in Switzerland as a consequence of a request by the United States for international judicial cooperation in criminal matters. The funds will be used for the benefit of needy children in Kazakhstan.

## IMPLEMENTATION OF RECOMMENDATIONS

### NATIONAL ANTI-CORRUPTION POLICY AND INSTITUTIONS

#### *Recommendation 1*

***At the end of the State Programme for the Fight against Corruption for 2001 – 2005 and the Action Plan conduct a comprehensive in-depth evaluation of its implementation and impact; elaborate a new program for the next five-year term. The new Program and Action Plan should build on the lessons learned from the current Programme, an analysis of the patterns of corruption in the country and should identify and address sectors vulnerable to corruption. It should propose focused anti-corruption measures or plans for selected institutions have a balanced approach of repressive and preventive measures and should be drafted in consultation with main stakeholders active in relevant areas (Civil Society, Business environment representatives, etc.). Ensure that the adopted programme and action plan is widely disseminated within the civil service and among general public.***

At the end of the State Programme for the Fight against Corruption and the Action Plan for 2001–2005, the new Program for the Fight against Corruption and Action Plan for the years 2006-2010 had been developed and approved by the Decree of the President on 23 December, 2005 and the Resolution of the Government on 9 February, 2006. The Program and the Action Plan were published in the newspapers and the information about them was disseminated by mass media within the civil service and general public.

The new State Anti-Corruption Programme proposed anti-corruption measures for selected institutions and contains approaches of repressive and preventive measures. It consists of 7 articles. Article 3 is devoted to the analysis of the corruption situation in the country and is divided into two parts. The first part describes achievements in fighting corruption, and the second addresses sectors vulnerable to corruption. The previous Programme recognised that the effectiveness of the anticorruption policy in the field of legislation and public service was low and that the fight against corruption did not produce any results in the highest levels of the public service. It also identified a lack of interaction with civil society and the mass media, and ineffective international cooperation. The new Programme identifies the same weaknesses in the anticorruption policy, but provides no analytical information about the patterns of corruption and no references to the studies and research on the changes in the corruption perception level.

It is also worth underlining that the new Programme and Action Plan do not provide for research to measure the level of corruption perceived by the public, to measure the effectiveness of the anti-corruption actions. The Plan only states that it is necessary to develop “some measures” to involve representatives of NGOs and civil society in the realisation of the anti-corruption strategy and policy.

According to the information provided by the Kazakh authorities, “Transparency Kazakhstan” took an active part in the development of the new anti-corruption programme. Also, those NGOs, which are the members of Expert Councils and represent approximately 20 different NGOs participated in the discussion on and development of the draft of the new Programme. However, not all the key civil society representatives were involved in the assessment of the previous Programme and the development of the new one.

Government activities to involve civil society include quarterly media plans and schedules of media appearances, hot-lines, Open Doors days, seminars and roundtables, placement of trust lines in the media, organisation of briefings and news conferences on the most crucial questions, informing the public of the measures taken to resist corruption, improve the anti-corruption law, and enhance the image of law enforcement bodies. Information concerning the results of the measures taken in the anti-corruption sphere is published on the web-site of the Agency. However, civil society representatives stated that they had no access to the comparative statistics on the results of the measures taken against corruption and there is only sporadic information about results of the investigations of corruption cases, especially with regard to high-level officials.

The cooperation between the government and civil society seems to be limited and is organized mainly in the form of conducting conferences, round-tables, etc; publishing information on the web-sites and in the form of activity of Expert Councils, which are acting in different ministries and state bodies.

The statutes and the members of the respective Expert Council are approved by the respective minister, or the head of the Agency. There is no wide-spread information about how to become the member of that Expert Council or when the meetings of the members of the expert council are planned.

**Kazakhstan is largely compliant with this recommendation.**

#### *Recommendation 2*

***Design a institutional monitoring and reporting mechanism for the Programme, possibly building on the existing Presidential Commission, and ensure transparency and unrestricted participation in the monitoring process of the Civil Society in general and of associations with experience in the area of anti-corruption, as well as the private sector / business community.***

The Government created an institutional monitoring and reporting mechanism for the State Anti-Corruption Programme. The Agency for the Fight against Economic and Corruption Crime (Financial Police) contribute to the co-ordination of development and implementation of the Program for 2006-2010. The state authorities responsible for the implementation of measures within the Programme submit reports on the pace of their work to the Agency, which summarises received information on the Programme implementation and subsequently submits it twice a year - by 10 January and 10 July - to the Government for consideration at its extended sessions. Overall control over the Programme implementation is carried out by the Presidential Administration.

The authorities report that the fulfilment of the Action Plan for 2006-2010 is ongoing smoothly. There is no information about any violations of the timeframes to fulfil all the actions prescribed by the plan.

While the governmental monitoring mechanism seems clear, there is no clear mechanism for the monitoring from the side of the civil society. There is no information and there are no examples that witness active participation of civil society in the monitoring process. It is unclear how mass media, associations with experience in the area of anti-corruption or the private sector or business communities can influence the process of monitoring of Action Plan implementation. Representatives of civil society can only request information from the relevant ministries or state bodies. There is no mechanism for verifying the veracity of that information and there is no opportunity for providing feedback.

The only oversight mechanism which has been created consists of an annual discussion at the Expert Council Meeting (November/December) on the fulfilment of the Programme and Action Plan. The

information about the measures fulfilled during the reporting period is published on the Agency and the governmental web-sites.

**Kazakhstan is partially compliant with this recommendation.**

***Recommendation 3***

***Monitor the activities of the Disciplinary Councils with the view to improve their overall performance.***

The Disciplinary Councils of the Agency for Civil Service Affairs (DCs) have a specific role in the fight against corruption. The DCs were previously under the responsibility of the local authorities. At the end of 2005, the DCs were transferred under the responsibility of the Civil Service Agency to increase the effectiveness of their activities. In addition, representatives of political parties and civil society were included as members of the DCs.

It is notable that to decrease the potential of corruption in the DCs, in May 2007 a rotation of the Chairmen of the DCs was conducted in 13 regions out of 16.

In October 2005, the Chairman of the Agency approved quarterly reporting to monitor the activities of the DCs. Thus since 1 January 2007 the DCs have been obliged every three months to provide the General Prosecutor's office and the Agency with the new statistics, the form of which was approved by the joint order of the Prosecutor General and the Chairman of the Agency. No less than twice a year the Board of the Agency considers the results of the DCs activities and makes mandatory recommendations for improvements.

In accordance with the Action Plan for the Implementation of the State Anti-corruption Programme for 2006-2010, twice a year the Agency presents the results of monitoring the activities of DCs to the Government and to the Presidential Administration

Public councils were established as a monitoring mechanism for the public. The task of these councils is to inform citizens about the decisions of the DCs and their activities and to provide the public with an opportunity to provide feedback and recommendations. The chairs of the public councils are elected from their members.

The foregoing measures have increased the effectiveness of the activities of the DCs. But at the same time, according to the available statistics on their activities, they are mainly concentrating on corruption involving low level public officials and do not consider cases involving high ranking officials. In 2006, 158 political civil servants were subject to disciplinary proceedings based on the recommendation of DCs, in comparison with 1185 administrative civil servants. Only 23 disciplinary cases were considered in respect of law enforcement agencies. Out of 1 539 recommendations made by the DCs in 2006, only 8 decisions were appealed. No information was provided on methodological recommendations based on analytical reviews concerning the improvements of DC activity issued by the Agency which were disseminated within the DCs.

**Kazakhstan is largely compliant with this recommendation.**

#### **Recommendation 4**

***Further strengthen human and material resources and capacities of the Agency of the Republic of Kazakhstan for the Fight against Economic and Corruption Crime and ensure that within the Agency in addition to specialized anti-corruption investigators adequate additional personnel have expertise in financial control matters.***

Kazakhstan attained certain successes in setting up a specialized body for the fight against a corruption – the Agency for the Fight against economic and corruption crime (Financial Police).

According to the information received from the authorities, considerable funds are allocated annually from the republican budget in order to strengthen material and technical capacity of the Financial Police bodies. The national budget provides this funding in the framework of the Programme of Agency of Ensuring the Activity of the Authorised Body for the Fight against Economic and Corruptive Crime, specifically, the sub-programme of material and technical support of the public authorities.

For the year 2005 the budget of the Agency was KZT 4.6 billion and in 2006 – KZT 5.1 billion, and in 2007 – KZT 6.7 billion. The figures show a systematic increase of the budget funding for this Agency. Additional funding is provided for conducting operational law enforcement activities (special investigative methods, special operations, etc, involvement of the auditors, financial experts).

Within the Financial Police, a unit for detecting financial crime and corruption has been organized. The unit is staffed with officials with university degrees in economics and with experience in the financial and banking sector. In 2005, out of a total of 47 personnel, there were five officers with higher level economic education, in 2006 there were nine, and in 2007 there were twelve. Seven officers have higher level education in law and economics. In 2005, 38 officers had experience in the audit system and three in banking. In 2006, 43 officers had experience in the audit system and seven in banking. Currently in 2007, practically every officer has experience in all these areas.

**Kazakhstan is fully compliant with this recommendation.**

#### **Recommendation 5**

***Ensure that prosecutors dealing with corruption cases have adequate specialised knowledge in anti-corruption prosecution. Consider introducing a specialisation of prosecutors bringing corruption cases in courts.***

According to the information provided by the authorities, specialisation of prosecutors presenting corruption-related criminal cases in courts cannot be introduced at present due to the shortage of public prosecutors. However, there is a traditional practice of involving prosecutors with rich experience and a high professional level in handling such cases.

According to the information provided by the Kazakh authorities, the possibility of introducing an anti-corruption specialisation for prosecutors was considered, but it was decided that no such specialisation would be introduced because it was felt that the qualification of all prosecutors should be similar. The main function of the prosecutor is to supervise all bodies that conduct investigative and search activities, inquiry and pre-trial investigation and to ensure they observe the law.

Nevertheless, there is a certain degree of specialization of prosecutors. There are 31 special prosecutors who oversee law enforcement activity and investigate certain criminal cases, involving persons who enjoy immunity from investigation and prosecution (including for corruption offences).

Further anti-corruption specialisation for prosecutors is therefore necessary.

Each year approximately 300 prosecutors receive in-service training; among them nearly 56 receive specialized anti-corruption training in the Institute of the Prosecutor General. Also for the in-service training, practical courses are organized in the regional divisions of the Prosecution Service.

**Kazakhstan is largely compliant with this recommendation.**

#### ***Recommendation 6***

***Increase analytical capacities of the relevant law enforcement agencies and ensure more efficient statistical monitoring of corruption and corruption-related offences in all spheres of the Civil Service, the Police, the Public Prosecutor's Offices, and the Courts on the basis of a harmonized methodology, which would enable comparisons among institutions. Review and revise the cooperation procedures among various institutions involved in preventing and fighting corruption with a view to increase the efficiency of their activity, subject to proper checks and balances and due regards to human rights standards.***

The comprehensive statistic data on corruption and corruption-related offences in all spheres is compiled by the Committee on Legal Statistics and Specialised Records in the General Prosecutor's Office.

All Law enforcement agencies have analytical departments. It is worth noting that within the Financial Police, Information and Analytical Department has also been established and the number of officers in the Department had been increased from 25 to 38. The main function of this Department is conducting in-depth analysis of the crime situation in various economic spheres, examining social areas which may pose a threat to economic security of the country, and developing the options of managerial and practical solutions aimed at raising the performance efficiency of the financial police. The Analytical Department prepared 30 analytical surveys during the year 2007 which were used to raise the performance efficiency of the financial police.

According to the information provided by the Kazakh authorities, to increase the analytical capacities of the public authorities, a review of effectiveness of laws, bylaws and regulations has been conducted to establish whether they contain provisions creating conditions for corruptive offences. The review has revealed 230 laws and regulations, including 35 Government resolutions, 41 departmental orders and 154 resolutions and decisions of the local public authorities containing provisions that create conditions for corruptive offences or do not comply with effective law of the Republic of Kazakhstan.

However, no information is available about the increase of capabilities of the analytical departments in other law enforcement agencies for developing a harmonized methodology to conduct statistical monitoring of corruption and corruption-related offences in the civil service, police, public prosecutor's offices, and the courts.

The law enforcement agencies are coordinated by the Coordination Council of the Heads of Law Enforcement Agencies, which is chaired by the Prosecutor General. That Coordination Council meets once every three months. The Council adopts recommendations on the coordination of the law enforcement

agencies. The usual practice is to organize joint investigation teams (in 2006, six were organised and in 2007, 24 were organised).

In order to improve the coordination of those agencies, completion of the State Program on the Creation of Electronic Government is planned for 2005-2007. The program includes the creation of a joint telecommunication system for the law enforcement agencies, which would provide the different agencies with quick and free access to the databases.

**Kazakhstan is partially compliant with this recommendation.**

***Recommendation 7***

***Consider devising and implementing corruption-specific joint trainings for law enforcement (Agency), prosecutors, judges and other relevant officials.***

Public officials undergo corruption-specific training at advanced training courses of the Academy of Public Administration under the President and at Regional Education Centres. There is an intention to create an elite national school of administration on the basis of the Academy of Public Administration with the participation of foreign partners.

The primary law enforcement agencies engaged in the investigation of corruption have specialised structures and specialised personnel to deal with the detection and investigation of corruption, and there are separate in-service training courses for police officers, prosecutors and judges in the sphere of the fight against corruption. Besides, joint conferences of law enforcement agencies are organised from time to time. However, there is a need the law enforcement staff and prosecutors to be provided uniform training on a regular, rolling and permanent basis with regard to detecting and investigating corruption offences and to establish specialised training for those directly involved in the fight against corruption. Such training should be included in the curriculum of newly recruited staff as well as be part of in-service training.

According to the information received no joint training courses are conducted and curriculum for such training is not designed.

**Kazakhstan is non compliant with this recommendation.**

***Recommendation 8***

***Continue to conduct and publish further surveys and relevant research, based on transparent, internationally comparable methodology, to obtain more precise information about the scale of corruption in the country, and in order to ascertain the true extent to which this phenomenon affects specific institutions, such as the police, judiciary, public procurement, tax and custom services, education, health system, etc.***

It is reported that the Financial Police is undertaking a survey of the Criminal Code to reduce problems with the enforcement of corruption related laws. The Financial Police also conducted and published two additional surveys on corruption since 2005. The Financial Police reports that it has developed criteria for calculating the level of corruption in public institutions or “corruption level index” which combined the “index of corruption penetration”, “index of counteractions against corruption” and “index of perception of corruption”. It is not clear, however, if those indexes have been used to date. In addition they do not appear to have been designed to generate information about specific sectors and institutions.

Under a tender in the amount of 6 million Tenge launched by the Agency for Public Service Affairs (APSA), a Kazakhstan NGO, the “Sange Research Centre” undertook to survey the incidence and public’s perceived level of corruption among 34 institutions of government and sectors of society, including the police, the Customs Agency, education organs, healthcare, courts, prosecutors, transportation, tax organs, utilities and public services, and Financial Police. The 137 page survey compiles and analyzes data on a variety of corruption indices including the average size of bribes. The data is aggregated in several ways including by city, oblast and region. It is reported that 500 copies of this report were printed and that as of September 2007, approximately 200 copies have been distributed.

The APSA has also cooperated with UNDP on anti-corruption projects although APSA was not leading the project implementation.

It is reported that the monitoring of the national anti-corruption action plan will be undertaken by NGO Transparency Kazakhstan although it is unclear what if anything the group has undertaken to this point.

**Kazakhstan is partially with this recommendation.**

#### *Recommendation 9*

***Continue to conduct awareness raising campaigns and organize training for the relevant public associations, state officials and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.***

In 2006, according to the information provided by the Financial Police, it organised 8 news conferences and 5 briefings for mass media and claims that the activities of the Financial Police have been covered by the mass media approximately 4,500 times. In addition, Financial Police reports that 15 appearances and publications related to APSA activities to prevent corruptive offences among public officials were covered by the mass media. For instance, in 2006, the periodical press published the appearances of APSA Chairman: a survey interview for the international business journal for investors, *Kazakhstan* (July 2006), an analytic article “Rotation of Political Public Servants – and Efficient Anti-Corruption Measure” in the newspaper *Komsomolskaya Pravda in Kazakhstan* (June 2006), an exclusive interview for the newspaper *Express K* on results of the study of the anti-corruption strategy of Malaysia and the possibility of its application in Kazakhstan (November 2006).

The Kazakh authorities report that there has been a large amount of press coverage of the activities of various agencies. The Financial Police states that it made 901 reports to the mass media during 2007 concerning issues such as exposing corruption, misdeeds and crimes, and to explain the legal aspects of anti-corruption legislation. Despite the impressive volume, there is no evidence that these media events were conducted in a coordinated manner designed to effectively raise public awareness or that this is part of an organized “information campaign.”

It is reported that new textbooks concerning corruption were approved for use and a “learning aid” entitled “Principals of Counteraction to Corruption” has been in use since 2004. Anti-corruption efforts in compulsory and higher education are keys to the fight against corruption in the long-term. There was, however, little evidence of specific training for relevant public associations, state officials and the private

sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public.

The Financial Police has carried out certain anti-corruption educational activities. Specifically, it worked closely with NGO Transparency Kazakhstan and Association of Entrepreneurs “Atakent” to conduct a short series of roundtables in 2006. The roundtables were conducted in March and October, 2006. The Financial Police has also cooperated with international organizations such as OSCE and the UNODC in conferences, seminars and research. It is also reported that in each region councils have been created to look into certain corruption more specifically, but it is unclear what results have been obtained.

The recommendation, however, is quite specific in its terms and calls for the implementation of “*awareness raising campaigns*” and trainings “*about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and on the rights of citizens in their interaction with public institutions.*” No data was provided that would support characterisation of the existence of a campaign to inform the public about the extent of corruption or a significant number of trainings for persons from civil society, government and private sector about the methods that can be used to fight corruption or how to effectively interact with public institutions to avoid corrupt practices.

**Kazakhstan is partially compliant with this recommendation.**

#### *Recommendation 10*

***Ratify the UN Convention against Corruption.***

The Republic of Kazakhstan has not yet joined the UN Convention against Corruption. The country will be able to join the Convention only after harmonising its national legislation with its provisions, specifically, after the adoption of the Draft Law “On Countering the Legalisation (Laundering) of Crime Proceeds and the Financing of Terrorism,” which is currently being considered by the Parliament. Within the framework of the Programme, Kazakhstan is expected to join a number of international conventions on the fight against corruption and economic crime, such as the Criminal Law Convention against Corruption (Strasbourg, 27 January 1999), and the Convention on Laundering, Detection, Seizure and Confiscation of Crime Proceeds (Strasbourg, 8 November 1990).

The Kazakh authorities reported that the draft “Law on Ratification of the UN Convention against Corruption” was submitted to Parliament for consideration. It is expected that the UN Convention will be ratified by the end of 2007.

**Kazakhstan is non compliant with this recommendation.**

### **LEGISLATION AND CRIMINALISATION OF CORRUPTION**

#### *Recommendation 11*

***Review the current system of disciplinary, administrative and criminal corruption offences, harmonise and clarify relationships between violations of the CC and other relevant legislation (i.e. Law No. 267-1 “On Anticorruption Efforts”).***

The Law on Introduction of Amendments and Additions to Some Legal Acts of the Republic of Kazakhstan on Improvement of the Fights against Corruption adopted in 2007 has been elaborated in the course of review of the disciplinary, administrative and criminal corruption offences. Along with the

disciplinary liability for receiving low-value gifts, this statute provides for administrative liability through introducing Article 533-1 of the Code of Administrative Proceedings (Receiving of illegal material gain by persons authorised to perform public functions, or the ones equated to these persons). In addition, the punishment for active bribery has been made stricter, and therefore is now more comparable to the punishment for passive bribery.

The fore-mentioned law has contributed somewhat to the harmonization and clarification of the relationship between various statutes. Still even in the text of the norms of the Criminal Code there are contradictions. Although the amendments introduce the classification of perpetrators for the bribe-giving offence in Article 312 similar to the classification used in the Article 311 (bribe-receiving), the elements of bribery are not specified in the former (Article 312). The Kazakh authorities claimed that the Decision of the Plenary Session of the Supreme Court of the Republic of Kazakhstan dated 22 December 1995, and amended on 20 December 1999, defines the object of a bribe as money; securities; material values, that rendered for free, but should be paid for; benefits granting proprietary rights, etc”, and that this Decision was obligatory for the qualification of the offence. Nevertheless this decision of the Supreme Court is not binding, and under article 9 of the Criminal Code “only the publicly dangerous act ...prohibited by this Criminal Code shall be recognized as a crime”.

Although the explanatory part of the Recommendations mentions “Definition of the public officials”, various statutes provide different notions of what may be summarised in one term as subject (perpetrator) of corruption offence, whether of disciplinary, administrative or criminal nature. The notion of “public official”, per se, is a constituent part of the subject of the corruption criminal offences specified in Part 13 of the Criminal Code. Thus the perpetrator of the corruption criminal offences, including abuse of power and bribery (active and passive), could be (1) persons authorised to perform public functions, persons equated to them; (2) public officials and (3) persons holding major state post. The last two notions are not mentioned in the Law on Anti-Corruption Efforts of 1998 as subjects (perpetrators) of the corruption offences. Nevertheless, Article 6 obliges the specialized agencies “...to forward data on all cases of revealing of corruption-related crimes committed by persons holding major state posts...”. In addition, the Law on Civil Service of 1999 provides legal basis for the disciplinary liability for corruption offences. Article 7 of this Law classifies public officials into two categories: political and administrative public officials. Further, the Code of Administrative Offences, which provides legal basis for administrative liability recognises the notion of “public officials” that partly encompasses the definition of “public official” and “persons equated to those authorised to perform public functions” in the Criminal Code. These multiple and contradicting definitions do not provide a clear guidance for determining the type of liability in the cases that do not clearly fall under criminal jurisdiction. The Kazakh authorities however claimed that the law enforcement agencies face no problems in this regard.

The newly introduced Article 533-1 of the Code of the Administrative Offences, reproduced as follows, has been introduced to ensure liability for receiving illegal gifts when the behaviour of a public official falls short of criminal, thus filling the pre-existing gap:

*‘1.Receiving by persons authorised to perform public functions, persons equated to them directly or through intermediary of the illegal material benefit, gifts, advantages or services for actions (inactions) in favour of the persons rendering these, if such actions are within the official authorities of the persons authorised to perform public functions, persons equated to them, if there are not features of the criminal offences in such behaviour, shall be punished...*

*2. The same actions provided by section one committed repeatedly within one year after administrative punishment, shall be punished ...’*

The standard by which the action is considered not to contain the features of the criminal offence is contained in Section 2 of the Note to Article 311 of the criminal Code that states:

*‘Shall the persons authorised to perform public functions, persons equated to them get **for the first time**, the property, right to property or other proprietary advantage as a gift without the advance conspiracy for earlier committed legal actions (inactions) that has the value of no more than two-month calculative indicators, s/he will be released from criminal liability by virtue of the petty significance and be brought to disciplinary or administrative liability’.*

The application of the second section of Article 533-1 of the Administrative Code and the second section of the note to Article 311 of the Criminal Code could overlap where a person receives an illegal gift of two months calculative indicator value more than once.

Furthermore, the definition of bribery in Article 311 of the Criminal Code remains narrower than Art. 13 (Corruption Offences Involving Unlawful Receipt of Benefits and Advantages) of the Law No. 267-1, dated 2 July 1998, “On Anticorruption”. The latter lists benefits and advantages including the following: accepting any remuneration in the form of money, services and in any other forms from entities; accepting gifts or services in connection with performance of public duties, acceptance of invitations to travel abroad for tourist or medical and recreation or other purposes; and enjoying extralegal advantages when receiving loans, credits, purchasing securities, immovable or any other property (including where given to a family member of the official). Since the provision of such benefits does not seem to be covered by the Criminal Code, they may not serve as a ground for criminal prosecution. No practical information has been provided to rebut this presumption.

**Kazakhstan is partially compliant with this recommendation.**

#### ***Recommendation 12***

***Amend the incrimination of active and passive bribery in the CC to meet the international standards by ensuring:***

- the active and passive bribery of foreign and international public officials is fully criminalized, either - through expanding the definition of a public official or by introducing separate criminal offences;***
- the solicitation, promise and offering of a bribe, both in public and private sector, is criminalized;***
- the subject of a bribery, both in public and private sector, covers undue advantages, which include material as well as non-material benefit;***
- bribery for the benefit of third parties is criminalized.***

Subject to the newly adopted Law, the list of the corruption offences in Section 5 of the Note to Article 307 of the Criminal Code has been expanded. The developments in this area include the expansion of the definition of the public official for the purposes of corruption offences by including “public officials of foreign states and international organizations”. Thus the bribery of foreign public officials and of public international organisations now constitutes a criminal offence in Kazakhstan.

Corruption in the private sector is covered by Article 231 of the Criminal Code (Commercial Bribing). This provision criminalises the “passing of money, securities or other property” to the official of the commercial or other organization for illegal actions.

As specified above the incriminations of active and passive bribery in the Criminal Code has been subject to alteration that has contributed to ensuring the compliance of the legislation with international standards to a certain extent.

Bribery through intermediaries is addressed in Article 311. In addition, Article 313 of the Criminal Code (bribe mediation) provides for the liability of the persons assisting bribers and corrupted officials in the execution of bribery transactions.

The text of the newly adopted Act does not introduce provisions on promising and offering a bribe as complete offences. During the course of the monitoring mission, the experts were informed about discussions on this issue and the opinion of the Kazakh legal community that such provisions would lead to substantial difficulties in practice. In addition, the recommendation is not addressed by the Article 24 of the Criminal Code on the preparation and attempt to commit a crime.

The current legislation (Article 24), which mentions conspiracy as a feature of preparation for a crime, does not seem to recognise any implied or explicit indication to the recipient that they are invited to act (or to refrain from acting) in anticipation or as a consequence of a bribe as a criminal behaviour. However the criminalization of promising and offering a bribe allows adjudication and conviction of criminal behaviour of active bribery at all stages from promise to delivery. Resolution of the Plenary Board of the Supreme Court of the Republic of Kazakhstan No.9 of the 22nd December 1995 states in Section 3 that the liability for bribery occurs irrespective of the time of actual receiving of a bribe by the public official, whether prior or after the action/inaction. This judicial interpretation covers partly “the promise of a bribe” which is understood by the international community as an agreement between the briber and the bribe-taker to grant the undue advantage in the future, even after the public official has acted or has refrained from acting in the exercise of his duties.

The current legislation falls short of the international standards of defining of bribe as an undue advantage. Article 311 defines bribe as “money, securities, other property, right to property and material advantages”, whereas according to international standards the bribe constitutes an undue advantage, which may be pecuniary and non-pecuniary, tangible or intangible. Criminalization of any illegal act that leads to “Placement of a public official in a better position”, such as granting of a post, a career prospect or a political position are not covered. The Resolution of the Plenary Board of the Supreme Court of the Republic of Kazakhstan No.9 of the 22nd December 1995 clarifies that the object of the bribe could be money, securities, material values without compensation, and advantages granting right to property.

The criminal legislation of Kazakhstan also does not recognise the crime of bribery for the benefit of third parties. Receiving of the advantage by the relative of the public official, or funding by the political party in exchange for action/inaction by the public official, that are apparent examples of the bribery for the benefit of third parties are likely to be qualified as an abuse of public office that notably provides for less strict punishment.

**Kazakhstan is partially compliant with this recommendation.**

### *Recommendation 13*

*Ensure that the offence of money laundering is criminalized in line with the international instruments and that definitions from the CC and Law on Combating Money Laundering and Financing of Terrorism are harmonised. Consider amending the Criminal Procedure Code, the CC and the draft “Law on Fight against Money Laundering and Financing of Terrorism” to ensure that the definition of proceeds of crime, which are subject to confiscation, includes i) property into which proceeds of crime*

***have been transformed or converted; ii) property with which proceeds of crime have been intermingled; iii) income derived from i) and ii), as well as from proceeds of crime.***

The offence of money laundering in Article 193 of the Criminal Code covers the performance of financial transactions and other operations involving funds or other property, with knowledge of their illegal origin, as well as the use of such assets for the purpose of engaging in entrepreneurial or any other economic activities. The definition of the money laundering crime does not explicitly include, among other things, concealment of the nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime, as provided for by the Vienna and Palermo Conventions. The criminal provision of Article 193 has not been amended since the assessment, and it is not harmonised with the definition of money laundering in the draft “*Law on Fight against Money Laundering and Financing of Terrorism*”. There has been no conviction for money laundering so far.

Kazakhstan uses a broad approach in defining the scope of predicate offences, including corruption related offences. As defined by Article 193 of the Criminal Code money or any other assets acquired by illegal means constitute the object of laundering. This means that predicate crimes for money laundering are not only all the crimes under the Criminal Code but any other actions contradicting the laws of Kazakhstan. However, criminal liability for money laundering does not extend to legal persons.

Kazakhstan should make the necessary amendments to Article 183 of the Criminal Code to bring it in line with the provisions of the Vienna and Palermo Conventions. In particular it is necessary to criminalise the concealment, ownership and acquisition of illegally gained income. Special provisions should be introduced into the legislation ensuring civil and administrative liability of legal entities for money laundering.

It is not mandatory to confiscate the proceeds of the laundering operation. There is also an excuse for criminal responsibility when somebody voluntarily reports about money laundering operations he has conducted that is doubtful.

Article 51 of the new Law introduces, *inter alia*, the following provision on confiscation: “Apart from confiscation of the property of the person convicted for corruption offences according to law, the property acquired illegally or bought by the means acquired illegally shall also be confiscated”. The definition of the proceeds of crime for the purpose of confiscation seems to include property into which proceeds of crime have been transformed or converted and income derived from proceeds of crime. However point ii) of this recommendation concerning the property with which proceeds of crime have been intermingled still seems not to be addressed.

**Kazakhstan is partially compliant with this recommendation.**

#### ***Recommendation 14***

***Adopt clear, simple and transparent rules for the lifting of immunity or reduce the scope of immunity to ensure that it is restricted in applications to acts committed in the performance of official duties.***

According to the Constitution of the Republic of Kazakhstan, Members of Parliament, the Chairman and judges of the Constitutional Court, other judges and the General Prosecutor enjoy immunity from investigation and prosecution during the term of their office. The legislation provided in the course of the monitoring does not suggest that these immunities are only applicable to acts carried out in the performance of official duties (“functional immunities”).

According to Article 496 of the Code of Criminal Proceedings, in order to obtain consent to the imposition of criminal responsibility, arrest or detention of a Member of Parliament, the Prosecutor General of the Republic of Kazakhstan makes a presentation to the Senate or Mazhilis of the Parliament of the Republic of Kazakhstan. The presentation is made before presenting accusations to the deputy, issuing sanctions for arrest, or deciding the issue of the need of compulsory escort of the deputy to a criminal prosecution authority. There are no objective criteria, rules or guidelines applicable to a decision to lift the immunity of a Member of Parliament; thus there would appear to be some scope for the consideration of political factors in making such a decision.

However, according to Articles 496-499 of the Criminal Procedure Code, the criminal prosecution body is entitled to enforce criminal prosecution and arrest the person enjoying immunity from criminal prosecution, without receiving permission if he or she is caught in the course of committing the crime or if such a person commits a grave or especially grave crime. According to Article 10 of the Criminal Code, a grave crime is one punished by imprisonment from five to twelve years under the Criminal Code. Public officials enjoying immunity fall under the definition of ‘*public official*’ under Article 311, which provides for the punishment up to 7 years imprisonment. According to the legal doctrine of Kazakhstan, this is sufficient to classify such type of crime as grave, even if actual punishment for particular crime could result in a conviction for considerably less period of time. Therefore the existing legislation allows the application of Articles 496-499 in cases of receiving of bribe by a person enjoying immunity.

The authorities have produced the statistical information on the criminal prosecution and conviction of judges. Thirteen judges were convicted in 2005, eight judges were convicted in 2006 and three in 2007. Criminal Cases have been initiated in respect of seventeen judges. Also Member of Regional Parliament was convicted for bribing public official.

The authorities have also provided sufficient information to the effect that the application of special investigation methods (SIMs), in respect of persons enjoying immunity, does not constitute an obstacle to the detection of corruption. The Prosecutor General permits the application of these measures in such cases.

**Kazakhstan is largely compliant with this recommendation.**

#### ***Recommendation 15***

***Recognising that the responsibility of legal persons for corruption offences is an international standard included in all international legal instruments on corruption, Kazakhstan should, with the assistance of organisations that have experience in implementing the liability of legal persons (such as the OECD, the Council of Europe, and the United Nations), consider how to introduce into its legal system efficient and effective liability of legal persons for corruption.***

The criminal legislation does not envisage the criminal responsibility of legal entities, including for corruption offences. The Code on Administrative Offences (Art. 534) has a provision, which states that “giving of illegal material benefits, gifts or services by legal persons to public officials, in case these actions do not contain the elements of a criminal offence, is punished by fine, and if repeated within a year, is punished by seizing the activity of the legal person”. However, the Code of Administrative Offences does not address the liability of legal persons for the corruption offences.

The Kazakh authorities provided materials showing that efforts were made to launch the necessary legislative processes for introducing this form of liability. However, the draft of the relevant law initiated by the Ministry of Justice was rejected during the preliminary hearings in the Committees of the Parliament.

**Kazakhstan is partially compliant with this recommendation.**

***Recommendation 16***

***Review the provisions of the Criminal Procedure Code to ensure that the procedure to identify, trace, seize and confiscate proceeds and instrumentalities of corruption offences are efficient and operational. Subject to proper checks and balances and standard of fair trial consider introducing legislation which would require a convicted offender to prove the lawful origin of alleged proceeds of crime.***

The provisions of the Criminal Procedure Code to ensure that the procedure to confiscate proceeds and instrumentalities of corruption offences have been reviewed in the course of elaboration of the Law on Introduction of Amendments and Additions to Some Legal Acts of the Republic of Kazakhstan on Improvement of the Fights against Corruption 2007.

Article 51 defines the confiscation as mandatory extraction of the whole or part of the property of the convicted. Although it may seem that the law does not provide for confiscation of the bribe, the authorities claimed that in practice the bribe is always seized and confiscated. The new Law further expands the scope of confiscation, introducing Article 51, which states that: “apart from confiscation of the property of the person convicted for corruption offences according to law, the property acquired illegally, or bought using the means acquired illegally shall also be confiscated”. This provision is intended to allow the law enforcement agencies to confiscate the instrumentalities of corruption.

The specified Law also introduces amendments to the Criminal Execution Code by introducing Part 2 to the Article 58. It states: “Apart from confiscation of the property of the convicted persons in order specified in law, the property acquired illegally or bought by the means acquired illegally and further transferred to the ownership of other persons”. This general formulation has a potential risk of colliding with other legislation securing the sanctity of property, as it seems to overlap with the civil-procedure rule. The application of such a provision requires special attention in order to avoid abuses of bona fide third parties.

A requirement for a convicted offender to prove the lawful origin of alleged proceeds of crime was included in the draft law on amendments to legislation in relation to fight against corruption, but was rejected during the preparatory consultations.

**Kazakhstan is largely compliant with this recommendation.**

***Recommendation 17***

***Consider amending the Criminal Procedure Code to introduce a procedure of judicial appeal of a decision on extradition.***

As mentioned above, at the time of monitoring Kazakhstan was undergoing a major administrative reform, envisaging changes in the various aspects of the division of powers, status of the public officials and judicial process. Subject to the newly adopted Law on the Amendments to the Constitution of the Republic of Kazakhstan No. 254-III dated 01.05.2007, Part 2 of the Constitution (Person and Citizen) Article 16 has been amended. The previous provision allowed for the arrest warrant to be granted alternatively by the prosecutor or a judge. Subject to the amendment, this alternative has been eliminated and now it is within the exclusive competence of the court to issue arrest warrants. Although the law states that this amendment will be effective upon passing the relevant legislation, it is apparent that this process is

not appealable. However, to the extent that this issue concerns the fight against corruption, this recommendation may be considered as fully implemented.

**Kazakhstan is fully compliant with this recommendation.**

## TRANSPARENCY OF CIVIL SERVICE AND FINANCIAL CONTROL ISSUES

### *Recommendation 18*

***Improve the mechanisms of attestation of state officials, ensure regular assessment of performance and professional skills of state officials in order to determine the needs for improving the qualification of the officials (training), the possibility of promotion or the need for rotation, as well as to verify that the official meets the requirements of the post occupied.***

The attestation of state officials and law enforcement officers is exercised in order to ensure regular assessment of performance and professional skills of state officials as well as to verify that the official meets the requirements of the post occupied.

In order to improve the attestation procedures some amendments were introduced to the relevant legislation in 2005. The Rules of Testing Administrative State Officials subject to attestation and the Programme of Testing Administrative State Officials subject to attestation has been approved by the order of the Chairman of the Agency of Public Service Affairs (APSA) on 19 May 2005. The standard forms of attestation documents – the attestation sheet and performance report of a state official subject to attestation – were approved by the order of the APSA Chairman on 22 June 2005.

The attestation of administrative public officials consists of two parts – (1) testing of the administrative state officials on logical thinking and knowledge of legislation, and (2) interview of Attestation Commission. The procedure of testing on the logical thinking and legislative knowledge is regulated at length by the relevant rules approved by the order of APSA Chairman on 19 May 2005. The procedures of the formation of database of tests questions and the method of tests composition are not foreseen by these rules; it is therefore difficult to assess the transparency of the testing procedure.

The methodological recommendations on the attestation of administrative public officials elaborated by the APSA foresee some recommendations and provide some examples on the assessment of professional skills, performance and personal characteristics of administrative public officials. These recommendations and examples contains such terms as “satisfactory” or “not satisfactory”, “fully” or “not fully”, “often” or “not often enough”, etc. However, these recommendations do not provide clear and unambiguous criteria for the evaluation, for instance, when the knowledge about a particular programme of legal act could be seen as “satisfactory” or “not satisfactory”. Hence these provisions cannot be seen as efficient enough to prevent the partiality in assessing individual officials.

According to the new provisions, each member of attestation commission has to complete the assessment sheet of a state official. The APSA claims that members of attestation commission are obliged to reason the assessments. However, it appears that there is no sufficient space for such reasoning in the adopted assessment sheet.

The Rules of Attestation of Administrative State Officials, adopted by the Presidential Decree No. 327 of 21 January 2000, in Paragraph 25, foresee four possible decisions of an Attestation Commission: (1) the state official meets the requirements of the post occupied and is recommended to be included into the reserve for the promotion, (2) the state official meets the requirements of the post occupied, (3) the state

official should repeat the attestation, (4) the state official does not meet the requirements of the post occupied. Thus the Attestation Commission does not have an option to decide that the official requires training, retraining or rotation, as this decision is not foreseen by the Rules. It is worth noting that Paragraph 4 of the Methodological Recommendations on the attestation of administrative public officials foresees a decision about the need for training, improvement of qualification and professional skills as optional. However, the rules on attestation of administrative state officials not ensure one of the main tasks of the attestation – to serve as the means to identify training and rotation needs.

The attestation of law enforcement officers is conducted in accordance with the Presidential Decree No. 1612 of 8 July 2005 on Approval of a Model Provision on the Attestation of Law Enforcement Officers and in-house regulations of the law enforcement agencies issued in keeping with this Decree. The decision about the need for training or retraining and rotation of law enforcement officers is not foreseen among the possible decisions of the attestation commission in the aforementioned decree either.

According to the Model Provision mentioned in the above paragraph, the attestation commission is constituted by the order of the head of authority on the grounds of proposal of the personnel department. According to the model provision on the attestation of law enforcement officers, the minimum number of the members of the Attestation Commission is five; its decisions are valid if two thirds of the attestation commission members participate in the meeting. The Model Provisions further foresee the decisive vote of the chairman in the case of split voting. Hence the chairman of attestation commission has the possibility to determine the decision of attestation commission only with the backing of one member of the attestation commission.

The political state officials in Kazakhstan do not undergo any attestation. The possibility to introduce the rating system for state and local authorities was mentioned in the Address of President on Administration Reform on 1 September 2006. The representatives of the APSA assume that some links between the rating obtained by the state or local authority and the subsequent decisions on the career of the head of authority could be established. But no substantial efforts or actions to introduce the attestation of political state officials generally were reported.

Rotation of state officials was introduced on 8 July 2005 by the amendments and additions to the Law on Public Service. Article 18-1 of the Law provide legal basis for the rotation of political state officials only. Rotation of political state officials should be exercised under the rules approved by the President on the ground of proposal of authorised authority. No information on such rules was provided to decide on the efficiency of rotation system. No rotation is foreseen for the administrative state officials. Only insignificant and random facts of rotation can be observed in some law enforcement authorities.

To sum up, it should be noted that no major changes have been introduced in the system of attestation since the review of Kazakhstan in October 2005 to address this recommendation. The list of possible decisions of the attestation commission of public officials and law enforcement officers should be supplemented by the decisions about the need for training/retraining or rotation. Criteria for assessment of officials need further clarification. To ensure the equal treatment of all state officials – administrative and political – and to verify that all state officials meet the requirements of their posts, the attestation of political state officials should be introduced as well. The possibility to introduce the rotation of administrative state officials and law enforcement officials should be considered, especially in the areas particularly vulnerable to corruption.

**Kazakhstan is partially compliant with this recommendation.**

### **Recommendation 19**

***Improve the system of hiring and promotion of public officials by increasing the value of criteria for assessing personal merits, which can be objectively verified, and by limiting as much as possible possibilities of arbitrary decisions; ensure stricter criteria for hiring staff by public institutions and local authorities in order to minimise the risk of corruption.***

A list of restrictions for access to posts in the public service is stipulated by Article 10 of the Law on Public Service (e.g. persons with criminal record, persons previously brought to disciplinary and administrative account for committing corruptive offences, etc.). This list was extended in July 2007, by the Law on Introduction of Amendments and Additions to Some Legal Acts of the Republic of Kazakhstan on Improvements in the Anti-Corruption Sphere. According to the amendments, a person dismissed from work for the commission of a corruptive offence cannot be admitted to the public service. In addition, the commission of a corruptive offence constitutes grounds for the termination of employment of a political public servant.

The candidates to the positions of public officials should meet the qualification requirements established by the Standard Qualification Requirements to categories of administrative state officials approved by order of the APSA Chairman on 23 January 2004. Amendments and additions were introduced to this regulation on 10 February 2006 by the Order of the APSA Chairman aiming at the recruitment to public service of highly skilled professionals.

The development of a system of performance evaluation of state officials, standards of public service provision, improvement of the legislation on administrative procedures and other measures are envisaged within the frameworks of the administrative reform underway (resolution of Government of the Republic of Kazakhstan of 15 January 2007). But no information regarding any tangible changes of the system of promotion of public officials was provided.

The staff to the administrative public service positions are hired on a competitive basis, except cases stipulated by the Law on Public Service (from the personnel reserve, through transfer procedures, as well as the right of out-of-competition hiring of deputies of the Parliament, deputies of maslikhats, political state officials, judges who have terminated their office). The exceptions to the regulations provide for a higher risk of nepotism and arbitrary decision when hiring public officials.

The candidates to the positions of public officials are selected directly by the state authorities. The Rules of Holding the Competitions to the Vacant Positions of Administrative Public Officials were approved by the order of the APSA Chairman on 24 November 1999. The last amendments on the aforementioned rules were introduced back in 2003.

The procedures for competitions for administrative public officials are described at length by the aforementioned rules. The external control executed by the authorised body (APSA) over the competitions is foreseen at the different stages of the process of competition—announcement about the competition, holding the competition and the decision of the commission regarding the competition. The Methodological Recommendations on “Holding the Interview under the Competition for the Position of Public Officials” were approved by order of the APSA Chairman on 3 February 2000. As a result, a person may only be hired for a state position following vetting procedures.

The Rules of Testing Administrative State Officials subject to attestation, the Programme of Testing Administrative State Officials subject to attestation approved by the order of the APSA Chairman on 19 May 2005 also foresees the rules on the process of testing the candidates to the position of public official.

Aim of testing is to assess the knowledge of candidates on the relevant legislation of Kazakhstan as well as the logical thinking. Also the model requirements for particular public positions are introduced by order of the APSA Chairman on 23 January 2004. But it is also not clear what criteria are applied in order to select the candidates to the position of public official after the testing results are known and who and how determines the comparative weight of the information on the candidates obtained by different ways. No evidence on the efforts to improve the system of hiring of public officials by increasing the value of criteria for assessing personal merits, which can be objectively verified, and by limiting as much as possible possibilities of arbitrary decisions can be observed.

The obligation of the state authorities to make public the results of competitions to the public service positions was reported during the meeting with the representatives of the APSA. Though if the information about the results of competition is made public only by notice in the premises of state or local authority, as it was noted by the APSA, it does not ensure enough publicity and opportunity for public control. Though there is not enough information to decide how this obligation is kept and how much transparency it ensures.

Despite the numerous regulations on the hiring of public officials, there is some uncertainty regarding the impartiality and fairness of the procedure. Representatives of civil society noted that hiring of public officials as highly partial and corrupt. Implementation of relevant regulations is not regarded as transparent and impartial.

No competition takes place in the case of political public officials getting a position in public service. The intention to reduce the number of political state officials was mentioned in the Address of President on Administration Reform on 1 September 2006, although no evidence on that can be seen yet; no contemplations to introduce the competition when hiring political public officials can be noticed at present.

Point 25 of the “Rules of Administrative State Officials’ Attestation” introduces an assessment of whether the state official meets the requirements of his or her post and whether he or she merits a promotion. The same criteria that are foreseen for the Attestation of Administrative State Officials Procedure (the order of APSA chairman on June 22 2005 No. 02-01-02/81) apply for the promotion procedure. In the absence of further information, the criteria for selection for promotion are unclear.

Although the legal and institutional system for hiring administrative public officials is more developed, improvements are still needed, especially regarding implementation, to ensure the transparency of procedures and to make certain that only the most qualified persons are hired. According to public opinion, individuals having ties with high-level public officials are more likely to obtain high positions in state service.

To ensure transparency of the system of hiring public officials, the possibility to introduce the centralised hiring procedure should be considered.

To eliminate the risk of favouritism and arbitrary decision when hiring public officials the exceptions stipulated by the Law on Public Service on the hiring to the administrative public service without the competition should be modified if not revoked. The competition when hiring the political public officials should be introduced also in order to ensure that only the candidates best meeting the requirement of the state post applied to are hired.

**Kazakhstan is partially compliant with this recommendation.**

## ***Recommendation 20***

***Prepare and broadly disseminate comprehensive practical guidelines for state officials about corruption, conflict of interests, ethical norms, sanctions for non-reporting about corruption; consider introducing regular training at work place for state officials on the above issues.***

The norms of ethics and conduct of public officials of Kazakhstan are regulated by the Code of Honour of the State Officials (Public Servants' Official Ethics Regulations) approved by the Presidential Decree No. 1567 of 3 May 2005. The Code of Honour of State Officials that have overruled the Rules of Public Servants' Official Ethics approved by the Presidential Decree of the Republic of Kazakhstan of 21 January 2000, encompass the basic duties and responsibilities of public servants, the norms of conduct of public servants in their relations with citizens and legal entities, some norms for the public servants who have subordinates, the norms on the expression of the views in publicity and the norms of conduct of public servant in the case of their unsound accusations in illegal activity, in acting as a lobbyist or in corruption.

The current Code of Honour cannot be qualified as the practical guidelines for state officials about corruption, conflict of interests, ethical norms, sanctions for non-reporting about corruption. No practical guidelines for state officials on the corruption, conflict of interests, ethical norms, sanctions for non-reporting about corruption, etc. issues and corresponding training were provided.

Some state authorities have elaborated their own ethic codes on the basis of the Code of Honour of State Officials (e.g. the Ethic Code of Professional Ethics of Tax Inspectors approved by the order of Chairman of Tax Committee). The ethics codes analysed usually contain general norms of ethical conduct for state officials, specific norms on communication with the public and internally, and basic principles for management. They also contain the same weaknesses as the Honour Code of State Officials, including an absence of clear rules on their implementation (e.g. the information on the implementing bodies, procedures of implementation, and the level of sanctions available for violations of the standards).

Some public authorities, including customs officials and prosecutors in the Prosecutor's General Office, report being subject to ethics regulations and procedures that apply where there are suspicions of corruptive practises. But the scope of their application is not clear, including to whom they apply, as well as their effectiveness in practice, due to the unavailability of relevant statistical information.

Corruption-specific training is conducted within the frameworks of various programmes of public servants' training and retraining by the Academy for Public Governance under the President and the regional public servants' training centres. The course in Anti-Corruption Legislation in the Republic of Kazakhstan and Foreign Countries is obligatory within the retraining programmes of public servants appointed to senior positions, as well as persons enrolled to public service for the first time.

There were a number of training events for public servants held in 2006 by the aforementioned Academy and regional centres for recurring and advanced training on anticorruption matters. However, the content of these training programmes and particular training courses is not known. Therefore, it is impossible to say if corruption, conflicts of interests, ethical norms, sanctions for non-reporting about corruption, etc. issues are presented in these training courses at more theoretical or practical level with some adaptation to the particular audience.

To ensure the overall awareness of public sector on the corruption, conflict of interests, ethical norms, sanctions for non-reporting about corruption, etc. issues and the actions and procedures should be taken in such cases, the state level initiative to devise relevant model comprehensive practical guidelines and

implement it should be taken. Training on the relevant issues when entering the public service for the first time and regular retraining when working in public service should be made obligatory.

It is important that the content of the training programme would cover not only theoretical and legal issues but also practical elements. Special training courses for state and local authorities as well as particular public officials whose activity is more vulnerable for corruption should be devised and implemented. The obligation for every state and local authority to have a budget line for anticorruption and ethical training and regular retraining of its employees should be imposed. To make training of state officials on the norms of ethics and anticorruption matters more efficient, the possibility to train the trainers representing all state and local authorities of Kazakhstan should be considered. To ensure an efficient implementation of general norms and rules of ethics and conduct, these norms and rules have to be readjusted to the specific need of the particular state or local authority.

**Kazakhstan is non compliant with this recommendation.**

***Recommendation 21***

***Improve the system of checking of declarations of assets and income by state officials, by adding to the declaration information necessary for controlling the conflict of interest.***

The Rules of Filling Declarations of Income Tax of Private Persons were approved by orders of the Chairman of the Tax Committee of the Finance Ministry (Tax Committee) on 12 and 13 December 2006. The rules provide some provisions on filling the declaration (not very detailed and comprehensive though) and the form of declaration “210.00”.

The task of declarations of income-tax of private persons is to collect the information on the income of private persons in order to control the correctness and fairness of the income-tax paid. The numerous list of income that is not taxable by the income-tax is foreseen in the Article 144 of Tax Code. This also encompasses much of information that is essential for controlling over the conflict of interest. The payoffs of banks and other financial institutions on their deposits, income obtained during the transactions of stock, government and other securities, value of property obtain in the form of gift or inheritance from the other natural person, etc., are not taxable according the provisions of Tax Code. As the information required in the declarations of income-tax of private persons does not cover all income and property of private persons, there is no possibility to establish the efficient control over the conflict of interest.

However, it should be noted that regulations concerning the receipt of gifts in the Law against Corruption have been strengthened. The declaration of income and assets must contain information on assets, thus facilitating the detection of illegal proceeds such as bribes. In some areas (e.g. in the Accounting Committee, Financial Control Committee and Public Procurement Committee), the staff is required to confirm in writing that they do not have a conflict of interest with the business or public entities that they audit.

The system for verifying declarations of assets and income focuses on whether the amount of tax paid is correct and fair. No specific control over the declarations of assets and income of public officials in order to detect and prevent conflicts of interest is exercised at this time. No particular criteria have been developed to identify and apply increased due diligence to the asset position of public officials who, because of the nature of their activity or functions, are more vulnerable to corruption or conflicts of interest. Procedures have not been introduced for detecting illegal proceeds in public officials’ asset declarations, or for reporting such proceeds if they are detected. Sanctions for illegal enrichment are also not foreseen. Only the administrative responsibility for incorrect or incomplete information provided in the declaration of assets and income is foreseen by article 532 of Administrative Code of Kazakhstan.

Decree of Tax Committee of 25 December 2006 has approved the Methodological Recommendations for Conducting Taxpayers' Tax Audits. The aim of these methodological recommendations was to unify the assessment and decisions made on the basis of tax audits. The evidence on the methodological recommendations was not provided to analyse its content and deeper to assess its anti-corruption impact.

The steps to develop the integrated database containing the relevant information are taken by the Tax Committee. The Tax Committee plans to finish the development of this database in 2008. Integrated database would enable to increase the efficiency of control over the declaration of assets and income and also, from the point of view of the Tax Committee, would capacitate the introduction of system of checking the declarations of assets and income of public officials.

According to the article 518 of Tax Code all information received by the Tax Agency about the taxpayer presents service secret except the registration number of taxpayer, amounts of tax and other obligatory payments paid to the state budget (except the natural persons), and information rendered for the national and foreign or international law enforcement bodies and courts with the reference to the Kazakh legislations or international agreements. No declarations of assets and income of any public officials are made public in Kazakhstan.

**Kazakhstan is non compliant with this recommendation.**

#### ***Recommendation 22***

***Improve internal control in state bodies and local authorities, in doing so pay special attention to the activities of those public officials, whose activities are particularly vulnerable to corruption, in order to prevent the conflict of interest of public officials.***

In accordance with article 6 of the Law on the Fight against Corruption, all state authorities and officials must engage in the fight against corruption within the frameworks of their competence. The heads of the state authorities, organisations, bodies of local self-government ensure the enforcement of this Law within their powers and the application of disciplinary measures stipulated by it, attracting for this purpose the human resource, control, legal, and other services. The examples of efforts to improve the system of internal control the Agency for the Fight against Economic and Corruption Crime (Financial Police) and extension of powers of disciplinary qualification of chamber of judges operating in Supreme Court and regional courts were provided. The chairmen of the local courts were also authorised to ensure anti-corruption activities and legal ethics. Each judge must counteract to any corruptive phenomena. In order to step up preventive measures, the Supreme Court introduced the practice of considering the responsibility of heads of the courts whose judges committed corruptive offences. Number of other anti-corruption measures in court system was reported, although it is not clear if or when and how most of it was implemented.

To prevent corruptive phenomena among judges and workers of the legal system, the Supreme Court and regional courts have formed an internal security service in 2005-2006. The operation of internal security departments was also reported as the corruption prevention measure in most state authorities. There are some doubts on the efficiency of the activity of these departments as it is not clear if in all authorities reporting having departments of internal security enough independence of such departments is ensured by making it subordinated directly to the head of authority. Also its is not clear if the functions, responsibilities and procedures of operation of internal security departments in all state and local authorities are regulated at length enough to ensure impartiality and prevention of misuse of powers provided.

Some actions of Ministry of Interior and custom authorities in order to improve the internal security system were also reported as the result of implementation of relevant recommendation. No information on any centralised overall initiatives on the improvement of internal control system was provided. The formation and implementation of internal control measures are seen as only internal issue that should be developed by the head of authority himself.

No efforts to establish the efficient system for the management and prevention of the conflict of interests of public officials can be noticed in Kazakhstan recently (see recommendation 21). The information about private interests of public officials is not routinely and systematically collected. As the information required in the declarations of income-tax of private persons does not cover all income and property of private persons, there is no possibility to establish the efficient control over the conflict of interest. No centralised control over the potential conflict of interests of public officials is ensured at the state level either.

Some state bodies (the Customs Control Committee of the Finance Ministry, the Financial Police, the Prosecutor's General Office, for instance) report the availability of home regulations on the actions that should be undertaken by the public officials of this body in the case the suspicions the colleague is corrupt or faces the conflict of interests. No more evidence on such regulations and its' implementation were provided.

There is no firm evidence on any analysis that was conducted to identify the activities of state and local authorities or the activities of public officials that are particular vulnerable to corruption. Not all state and local authorities have internal audit units. Internal auditors are not required proactively to assess the activity from the anti-corruption point of view. No evidence on external analysis and evaluation of anti-corruption efforts of state and local authorities conducted recently could be noticed in Kazakhstan.

On purpose to improve the internal control in state bodies and local authorities, the possibility to introduce the obligatory corruption risk assessment in all state bodies and local authorities that would be done every 5, for example, years following the methodology developed by the competent body. As the outcome of such analysis the corruption prevention programme should be worked out in each state and local authority.

**Kazakhstan is partially compliant with this recommendation.**

### ***Recommendation 23***

***Improve legal regulation, which establish prohibitions and limitations, as well as responsibilities for preventing of conflict of interest for state officials, in order to prevent that the private or material interests of any state official, his/her relatives or business partners can affect his/her performance in the public interests; in order to promote transparency of state officials activities and their accountability to the society, and to promote the trust of the society to the activities of state officials.***

There has been some progress in introducing mechanisms to prevent conflicts of interest, although progress on enforcement is unclear. At the time of the survey, a competitive system for public service has been introduced including a requirement of attestation by public officials every three years. The APSA reports that there are plans underway for public hearings on cases involving conflict of interest.

Two positive steps in achieving transparency, accountability and trust in the civil service are the "Law on Administrative Procedures", adopted on 21 July 2007, and Resolutions No.558 & 559 (30 June 2007) of the Government of Kazakhstan, which require all agencies to adopt new criteria for services to be provided

by civil servants, thereby increasing their accountability. However, as these standards have not yet been established, it is not possible to assess their effectiveness.

To raise public awareness the APSA reports it has advertised on bus stations, and reports receiving over 6,000 complaints that resulted in the prosecution of 1,500 public servants although it is unclear if those statistics are limited to conflict of interest situations.

Civil society actors interviewed reported that in practice conflict of interest prohibitions are not enforced uniformly, if at all.

**Kazakhstan is partially compliant with this recommendation.**

***Recommendation 24***

***Review and further specify provisions of the Law on the Fight against Corruption related to the receipt of gifts, improve the control of implementation of these provisions.***

Pursuant to Article 13 covering “Corruption Offences Involving Unlawful Receipt of Benefits and Advantages” of the Law on the Fight against Corruption, it is prohibited for a public official to receive benefits and advantages or accept any remuneration in the form of money, services and in any other forms from entities or from physical persons for performance of their public duties or similar functions, or accepting gifts or services in connection with performance of the public duties, or similar functions, from subordinates, except for accepting little small gifts or souvenirs as a token of attention or appreciation. Article 13 goes on to cover inappropriate travel, extralegal advantage in commercial ventures and benefits funnelled to family members of the public official.

On 21 July 2007, the “Law on the Changing and Additions to Some Acts of the Republic of Kazakhstan” amended Articles 12 and 13 to provide additional restrictions on the receipt of gifts by subordinates. These amendments are compatible with corresponding provisions on gifts in the Criminal Code.

No information was provided about the system to control the implementation of the above provisions. Further efforts are needed to ensure that the legal provisions on gifts are fully implemented.

**Kazakhstan is fully compliant with this recommendation.**

***Recommendation 25***

***Harmonise the provisions of the Administrative Code with the Law on the Fight against Corruption.***

**This recommendation is not applicable:** it was not clear, from the review, where the inconsistencies were identified.

***Recommendation 26***

***Review provisions of the Administrative Code, which establish administrative responsibility for false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional disinformation.***

Pursuant to the Administrative Code of Kazakhstan Article 536 prohibits knowingly giving false information as o a corruption offence. Such an offence is punishable by a fine in the amount from one hundred to two hundred monthly calculation indices or an administrative arrest for up to thirty days. Article 536 states the offence as follows in its entirety: “The communication to a body involved in the struggle against corruption of knowingly false information as to an offence of corruption.”

The recommendation calls for review of the provision with the intent of refining the code to better define the elements of the offence. There is no evidence of such a review taking place or being envisaged.

The Forum of Entrepreneurs expressed concern over the potential for this Article to be abused; however, it is reported that no cases have been brought under Article 536 in the past two years.

Given that no cases have arisen, it is also unclear to what extent Article 536 is consistent with Article 17 of the “Law on the Fight against Corruption providing for the Liability of Persons who Communicated Knowingly False Information as to the Fact of a Corruption Offence”, which provides for the punishment of public servants “by application of disciplinary sanctions, including by dismissal.”

**Kazakhstan is not compliant with this recommendation.**

#### ***Recommendation 27***

***Introduce in the rules and procedures a common procedure for the natural and legal persons which would allow receiving information from the state and local authorities; provide for a possibility to appeal the refusal to provide such information to these bodies without sufficient grounds.***

There is an existing Presidential Decree concerning access to information which provides a basic scheme to be followed by the public when requesting information from state agencies and local authorities. Government bodies, however, seem only vaguely aware of the decree and continue to overlay, or rely entirely on, their internal rules and guidelines in making decisions on granting requests for information. The method of appeal is even less known and reportedly rarely used.

In practice, NGOs report that while there has been some improvement in this area, responses to requests for information are often confusing and answers are often vague the information provided is often not responsive or the objected to by the state body. Some NGOs felt that in order to effectively request information they needed a lawyer to handle their request.

At the time of the monitoring mission, the Ministry of Justice reported that it was unaware of any pending draft law specifically on access to information. It is reported that in June 2007, the “Law on Administrative Procedures” created additional web-based mechanisms for the delivery of information to citizens, including through “interactive questions.” This is a positive step, although the law has not been in force long enough to judge its effectiveness, and the lack of internet access by much of the Kazakh population limits the availability of the information.

Article 16 of the “Law on Administrative Procedures” provides an appeal procedure, including the opportunity to appeal a denial of a request for information to the courts within a reasonable time-frame. The law, however, does not establish a standard for approval or denial of a request, so the grounds for determination of “sufficient grounds” for denial are unclear.

In practice, the current legal and regulatory regime does not constitute an effective or efficient set of common rules and procedures for obtaining information from the state and local authorities. Nor are there

plans to introduce a specific law on access to information which would provide a set of common rules and procedures.

**Kazakhstan is partially compliant with this recommendation.**

***Recommendation 28***

***Ensure the right of non-governmental (public) associations to take part in the elaboration of normative acts; regularly involve representatives of non-governmental organisations in other projects related to the prevention and combating corruption, which are important for the society.***

The authorities in Kazakhstan have created several opportunities for the participation of civil society in research, public awareness and monitoring of corruption activities. The AFECC reported that they consulted NGOs Atakent and Transparency Kazakhstan in preparing the anticorruption national plan. In addition, it is reported that NGO “Transparency Kazakhstan” has been included as a member of an expert group monitoring progress of the action plan on anti-corruption. The “Law on Entrepreneurship” provides that legislation related to entrepreneurs shall be sent to the Entrepreneur’s Association for comment.

The APSA also oversees the granting of projects to public associations for research into the prevalence of corruption.

It is, however, not established that public associations have more than ad hoc opportunity for input into the elaboration of new or reformed laws regarding anti-corruption. There is no evidence of a coordinated, consistent effort to ensure that public associations are consulted and their input considered in efforts to draft new laws or reform existing laws. For instance, this is illustrated by the fact that Transparency Kazakhstan is undertaking a project funded by the European Commission to facilitate Kazakhstan’s accession to the UNCAC. No similar effort, or other long-term program supported by the Kazakhstan government has been reported.

**Kazakhstan is partially compliant with this recommendation.**

***Recommendation 29***

***Ensure that all information about public procurement, except for state secret information, is open to the public, in order to reduce opportunities for violations in this field. Consider carefully both components of the public procurement that might be subject of the controls and audits when searching for corruptive acts, i.e. the contract and the procedure. Ensure that legal and institutional framework provides for strict examination of the contract files, controlling of entire procurement process as well as reviewing reliability and effectiveness of internal control system.***

In order to ensure transparency of public procurement procedures, and minimize corruptive offences, in July 2007, the Parliament of the Republic of Kazakhstan adopted a new edition of the “Law of the Republic of Kazakhstan on Public Procurement”, which will enter into force on 1 January 2008. In addition to ensuring the timely implementation of measures and disbursement of budgetary funds, and the transparency of public procurement and decision-making procedures, the new edition of the Law includes provisions on the following:

1. Requirement to publish the competition announcement both in the official *Public Procurement Bulletin* and on the Customer’s website (hereinafter – the website). At the same time, the website should contain the text of the approved competition documentation.

2. Requirement to publish on the website the texts of all protocols and decisions taken by the Competition Commission at each stage of the competition. Under the previous law, only the information on decisions taken at the last stage of the competition (i.e. the competition results) was published. Under the new Law, the texts of all protocols should be published (at the first stage – the bid opening protocol, at the second stage – the bid consideration protocol, at the last stage – the protocol of the competition results).

The relevant public procurement authorities state that the provisions of the new law will increase their ability to prevent, detect and respond to violations of the rules on public procurement.

The principle of openness of activity related to public procurement is foreseen in Article 6 of the current “Law on Public Procurement”. The contracting authorities are obliged to publish the information on the target and completed bids in the periodical press and to provide the authorised body with the same information as well. The authorised body is obliged to publish regularly the information on public procurement (*i. e.*, information on target and completed bids) in the periodical information publication and (or) place it in the public telecommunication networks (internet or others).

The Committee for Financial Control and Public Procurement of the Ministry of Finance (FC & PPC) explains that the supplier of the services for producing and distributing the *Bulletin* is annually selected by an authorised body through open tender procedures. Not less than 30,500 copies of the *Bulletin* are circulated at least five times a week, and 29,500 copies are distributed through the free sales network (kiosks), including copies in regional centres, and in the cities of Astana and Almaty. The service supplier also ensures the sale of the *Bulletin* through open subscription. The service supplier must have announcement acceptance offices in all regional centres of Kazakhstan and the cities of Astana, Almaty and Semipalatinsk, equipped with telephone and facsimile communications, and computers with Internet access for e-mail transmission. In addition, all information on public procurement is placed on the website of the authorised body (FC & PPC).

The obligation to publish information on planned and completed bids on the official websites of the procuring state and local authorities and other organizations is not foreseen in the current “Law on Public Procurement”. It should be also noted that the web connection of the official websites of the most state and local authorities are not efficient enough to support the satisfactory quality of the application of these websites.

Some representatives of the private sector state that the methods for making information about public procurement available to the public are insufficient and inefficient.

The representatives of FC & PPC the authorised body on public procurement claims that the information about the completed tenders and the companies that won the contract is made public by the contracting authorities immediately after the completion of procurement. However, the practice of making this information public by posting paper announcements inside the premises of relevant authorities on their information boards is rather limited in accessibility.

According to the Article 28 of Law, contracting authorities are responsible for the control over the implementation of public procurement contracts. The FC & PPC according to the Law and statute of the FC & PPC fulfil the control over the efficiency of internal control over the implementation of public procurement contracts of contracting authorities. As not all the authorities and other organizations that according the regulations are obliged to follow the legislations on public procurement when procuring have the internal audit units directly subordinated to the head of authority or organization, the institutional framework of public procurement control cannot be considered as sufficient.

The FC & PPC executes control of public procurement contracts as part of the internal financial control system. The external control over the public procurement is exercised by the Audit Committee for Control over the Republican Budget Execution (Audit Committee). The regular and intense cooperation with law enforcement bodies reporting the corruptive violations revealed during the inspections as reported by the FC&PPC is commendable and should be maintained and developed.

The collaboration of FC & PPC and the Supreme Court in working out the common positions on the violations of the legislation most frequently encountered in the practice of the authorized body and, therefore, during the consideration of this category of cases by courts also should be mentioned as the positive initiative in public procurement area.

It is important to strengthen control over the public procurement system. Internal audit units of procuring public institutions can play an important role in this respect. Such internal audit units, directly subordinated to the head of the public institution, should be established in all institutions authorised to carry out public procurement. The model methodology envisioning the main principles and methods of internal control over the both components of public procurement – procedures and contracts – developed by the relevant state bodies for the internal auditors of state and local authorities alongside with the relevant training would be desirable. To strengthen the external control over the public procurement, the human and other resources of Audit Committee should be developed to capacitate it efficiently to exercise its task in the control over the public procurement.

**Kazakhstan is partially compliant with this recommendation.**

#### ***Recommendation 30***

***Address corruption risks that are inherent in the organizational environment with appropriate internal control systems and identify the processes, controls and measures needed to mitigate those risks. Strengthen control environment and established such information system that can assist monitoring activities and financial reporting process throughout all public sector entities. Require internal auditors to conduct proactive auditing to search for corruption offences. Ask an independent external auditor to assist management by providing an evaluation of the entity's process for identifying, assessing, and responding to the corruption risks. Ensure coordinative functioning of financial control and auditing bodies to facilitate revealing of corruption offences, and increase accountability for anti-corruption responsibilities and duties.***

The Committee for Financial Control and Public Procurement of the Ministry of Finance (FC&PPC) notes that the “Financial Control” information system has been functional since 2005. The aforementioned information system is designed to centralise information about the control actions carried out by various branches of the FC&PPC. The Audit Committee has its own information system. At present, a new unified information system is being established, which will bring the above two systems together.

The FC & PPC also aims to improve quality of the institutional system of internal control. A “hot line” was introduced to obtain the opinion of the persons concerned about the activity of the FC & PPC and to provide them with the opportunity to report on the violations and misconduct of inspectors. The information on the inspections conducted in the sphere of financial control and violations detected are made public by the press service of Ministry of Finance.

In order to improve cooperation between the control bodies, the FC & PPC submits plans and reports of control actions to the Audit Committee for analysis, and to carry out joint control actions.

The actions at the level of state or local authorities aiming to improve the internal control system especially by the general actions is lacking in Kazakhstan. No information about the external or internal corruption risk assessment conducted in the state and local authorities was provided. In addition, no information was provided on the external evaluation of state bodies made by auditors to assess the entities' processes for identifying, assessing, and responding to corruption risks.

Internal audit is more concentrated on financial control in the RK. Internal auditors are required to search proactively for corruption offences. However, there is no systematic assessment of audit procedures at the state and local levels.

Article 141 of the Budget Code defines the activity of bodies of internal control. The point 2 of article 141 says that the service of internal control is accountable for the head of central state authority. This distorts the primary mission of the service of internal control, i.e., to assist the head of state or local authority ensuring the sound and efficient performance of state or local authority. Points 5 of article 141 of Budget Code determines the functions and the rights of the internal control bodies, which are identical with the functions of the internal financial control bodies. As a result, the functions of these two bodies overlap. The Kazakh authorities need to consider establishing an internal audit function for all state and local authorities, which would be accountable to the heads of these authorities (these authorities in turn would remain under the authority of the competent central state authority. The function of the audit would be to assist the heads of these state and local authorities in ensuring the sound and efficient performance of their duties.

The Budget Code provides for a possibility to employ external experts and auditors for the state authorities executing external and internal financial control. However, the law does not provide for a mechanism to review recommendations of such external experts and auditors. Therefore, their role in the execution of financial state control can be more harmful than useful as it may create the risk of intentional or unintentional undue influence.

To minimise the corruption risk the possibility to introduce (obligatory) corruption risk assessment for state and local authorities conducted regularly with the assistance of competent body and applying the outcome to develop the anticorruption programme should be considered. The corruption risk assessment can be introduced as the function of internal audit. The methodology for the corruption risk assessment should be developed by competent body or local and foreign experts aiming to assist state and local authorities when evaluating the corruption risk inherent in their activity.

**Kazakhstan is partially compliant with this recommendation.**

### ***Recommendation 31***

***Review current status and position of the Audit Committee and consider possibilities to develop it into an independent institution subordinated to the Parliament, in accordance with the Lima declaration and INTOSAI auditing standards.***

In accordance with the Statute of the Audit Committee for Control over the Republican Budget Execution (Audit Committee) approved by the Presidential Decree on 5 August 2002, and as confirmed by the Budget Code 2004, the Audit Committee is the supreme body of state financial control exercising external control over the Republican budget and is directly accountable to the President. No amendments to the Statute of the Audit Committee were introduced during the assessment period.

According to the Constitutional amendments of May 2007, a new procedure was introduced, according to which the Chairmen of the two chambers of the Kazakh Parliament each proposes three

candidates for membership in the Audit Chamber. Two other candidates of the eight member Audit Chamber are appointed by the President. The Parliament approves the final list of the Audit Chamber members. The Chair of the Audit Committee is appointed by the President for a term of five years.

The representatives of the Audit Committee claims that the activity of the Audit Committee is planned and reasoned in accordance with the INTOSAI auditing standards, standards of Court of Auditors of European Union and other international level standards and recommendations. The Audit Committee carries out audits of state programmes. However, the object of the audit appears too broad to ensure efficiency. There is no procedure and clear criteria for the selection of audit object, which is necessary in order to focus the audit activities and to ensure efficient use of available resources.

According to the Audit Committee, various types of audit are performed as defined by the Budget Code, including the financial and the effectiveness audit. Some doubts about the performance audit remains because the activity audit is not foreseen as the part of authority of Audit Committee in the Budget Code. The provision of the Budget Code concerning the control over the efficiency, usefulness and purposefulness of use of budget funds is comparable to audit of activity. However it cannot be fully qualified as audit of activity as it is presented as a form of *financial* control. As a result, there is no division of tasks and specialisation among auditors conducting financial and activity audits, which limits the capacity and efficiency of state audit. The audits conducted by the Audit Committee per year consist from the audits planned by the Audit Committee and audits initiated by the members of Parliament. The practice that the members of Parliament can influence the activity of Audit Committee is faulty from the anticorruption point of view as this power in some cases (before the elections for instance) be can used on purpose to dispose some member of government (minister). The maximum independence when planning and exercising audits should be ensured for the Audit Committee limiting the role of members of Parliament in this area only as the deliberative by providing the information that was got as the result of the contacts with the electors. The institution of ombudsmen at the parliament should be employed to provide the possibility for the citizens and members of parliament to complain on the inefficient use of budget funds and other matters. The issues presented in the complains can be analysed, summarised by ombudsmen and introduced for Audit Committee as the recommendatory material used as setting the yearly plans of audit.

The level of human resources of the Audit Committee are reported as increasing but still remain insufficient to ensure efficient external control over the execution of the budget and efficiency of the activity of state and local authorities. The total number of employees of the Audit Committee is 70 people; 40 of this number are auditors. Considering that from 32-32 audits performed during 2006 approximately 21 corrupted violations were revealed (*i. e.*, 65 percent) it is clear that expanding the capabilities of the Audit Committee is one of the essential objectives of the fight against corruption. The right to use services of private audit companies is foreseen by the point 23 of the article 138 of Budget Code though this does not eliminate the need to strengthen the human resources of Audit Committee.

There is some confusion between the powers and functions of external and internal audit in RK. The competencies are not clearly and strictly differentiated hence some overlapping and intertwining still remains. The Budget Code of RK provides the definition of powers of state and local authorities executing external and internal financial control that is too broad, covering also relevant functions, rights of these authorities, hence misleading and confusing. The definitions of particular functions of external and internal financial control authorities are too vague. It is not clear what does it mean to “*participate* in the execution of financial control”, for instance. It is not unclear at what scope and powers, in what way, etc. this participation should be. The powers and functions of external and internal audit should be clearly and strictly differentiated and defined to ensure the efficient functioning of state audit system.

**Kazakhstan is partially compliant with this recommendation.**

### **Recommendation 32**

***Devise and adopt a strategy for the tax and custom services which stresses the importance of corruption prevention and proclaims corruption as a serious violation of working responsibilities leading to obligatory termination of employment. Establish and maintain effective internal control in customs that belongs to a highly vulnerable area with respect to corruption.***

The Tax Committee is one of the public institutions responsible for the implementation of the State Programme for the Fight against Corruption and of the National Programme on the Combating the Shadow Economy. The Tax Committee is currently elaborating its Development Strategy for 2007-2011. The Strategy will aim to improve the quality of the tax service by, *inter alia*, by simplifying the tax system and procedures. Although some of these measures might indirectly assist in preventing and detecting corruption, the Strategy will not aim to specifically address anti-corruption.

The tax authorities are working toward increased openness for the business community and other tax payers. The Tax Committee reports the active movement in the sphere of public relations: the dissemination of information about the rights and obligations of taxpayers, other information on the tax payment in the form of booklets and the back side of officials documents of tax service, broadening the possibilities for the taxpayers to report the misconduct of tax inspectors or submit other complains as well as to get the consultation on the problematic matters, cooperation with NGO with the task to disseminate relevant information among the tax payers, extensive use of the mass communication, etc. Also some actions are taken in order to improve the qualification and the quality of conduct of tax inspectors.

The Tax Committee is implementing the rating system of its territorial branches based on 10 basic areas of the activity of tax inspectors that contains 117 criteria at the present. The rating system was developed by Tax Committee in the cooperation with the territorial branches and was put to the test as pilot project in 2006. The rating system of central body, i. e., Tax Committee, was developed also and is to be implemented shortly.

The Customs Control Committee notes two relevant ongoing programmes – the Programme of Fighting Abuses within the System of the Customs Administration and the Programme of Improving Educational Work for the Customs Personnel – that are under the implementation presently as well as the Action Plan for the Implementation of the State Programme for the Fight against Corruption as the components of the activity of customs service preventing the offences and fighting the corruption.

The Customs Control Committee also notes a number of actions taken to ensure the transparency of the customs activity: setting up the consultative councils, which includes representatives of public and business associations, international organizations, law enforcement and other state authorities, hotline numbers, which can be used to report facts of abuse by the customs officials, have been published by mass media and number of other anticorruption measures. Also the efforts to improve the legislation and procedures of customs have been noted. The NGO reports the custom service as efficient in providing the information required.

The rating system of activity of custom authorities was approved by the order of Chairman of Customs Control Committee on 6 January 2006. The criteria to assess the fight against corruption in custom authorities are foreseen in part 5 of aforementioned order. The criteria cover only the prosecution of corruption, internal and external actions investigating the corruption crimes but no corruption prevention related criteria are foreseen as part rating system.

The amendments to the Regulations on the Subordination of Internal Security Departments of Territorial Customs Administrations were approved by the order of the Chairman of the Customs Control

Committee on 27 March 2007. The internal security departments are now directly subordinated to ensure their independence. Also measures were introduced to strengthen the internal controls in the Custom Service. The regular cooperation of the internal security departments of the Customs Service with the other law enforcement bodies is ensured by the “common” orders of the chairmen of the relevant bodies. However, no information was provided on the internal control system of the Customs Service to allow for the assessment of its effectiveness.

The representatives of the Customs Control Committee also claim the existence of practical guidance in the form of internal regulations on the procedures and actions that should be undertaken by the officer of custom service in the case the suspicion on the corruption or conflict of interest of colleague occur.

The numerous lists of initiatives combating and preventing corruption as well as increasing transparency and efficiency of activity of tax and custom services that are incorporated in the different national programmes were presented as evidence on the implementation of recommendation as well. To decide on the sufficiency and efficiency of these initiatives is not possible because the more detailed information regarding the reasoning of the initiatives and their implementation – time, funding, monitoring and control system, criteria for the evaluation of implementation, for instance – were not provided.

To ensure the efficiency of anticorruption policy and its implementation in tax and customs services, a more systematic approach is needed. The elaboration of anticorruption strategy should encompass the basic elements of strategic planning: analysis of current situation, showing the problems and strengths, the vision, strategic aim, aims and tasks, criteria for the assessment of results, the implementation of strategy and accountability, implementation plan or programmes for implementation of strategy containing the bodies responsible for implementation, term of implementation, funding demand and sources of funding.

**Kazakhstan is largely compliant with this recommendation.**

### ***Recommendation 33***

***Strengthen internal control system to assure effective detection and prevention of money laundering. Make external auditors liable to check if their clients are obliged to any provision resulted from the draft law referring money laundering and to examine if there are any risks involved in money laundering. Impose audit companies to define in their internal acts procedures relating suspicious transactions and identification of entities they enter into business relationship, and ask them to keep adequate records. In cooperation with professional associations of auditors develop a list of indicators of suspicious transactions, and ensure their dissemination to the auditors, which can help identifying business events and circumstances that may indicate money laundering activities.***

Kazakhstan developed a draft Law on Fight against Money Laundering and Financing of Terrorism some time ago. The Law was discussed in Parliament in 2005, but has not yet been adopted. The delay is due to the legislation on capital and property amnesty that allows for legalisation of such assets for a certain period of time. The authorities confirm that the anti-money laundering (AML) law shall enter into force shortly, and the decision where to locate the Financial Intelligence Unit (FIU) is expected very soon. For a long time now, the establishment of a sound anti money-laundering regime has been put on hold and there is no system to prevent money laundering despite the fact that the financial market is rapidly growing in Kazakhstan. These shortcomings question the reputation of the Kazakh financial market. Kazakhstan is scheduled to undergo an EAG Mutual Evaluation in 2nd quarter of 2009.

The draft law also covers auditor organisations as subjects of financial monitoring. However, it is not clear if only the (professional) organisations are covered or all auditors and accountants as required by the

international standard. Since the draft Law has not been adopted, no list of indicators have been developed and the internal auditors have no specific task in detecting and reporting suspicious transactions

**Kazakhstan is not compliant with this recommendation.**

**Recommendation 34**

*Ensure maximum public accountability (including to the civil society) of the bodies, responsible for controlling the financing of political parties, candidates and elections campaigns, in order to avoid a possibility to discriminate selected parties and candidates and to ensure transparency in financing and expenditures of election funds. Devise and adopt an appropriate legal and institutional framework under which political parties and election funding will be subject of strict controls by an independent audit institution. Annual financial reports of political parties should be examined before publishing. A full audit of reports on election campaigns of all political parties who have the right to claim compensation of financial expenses should be performed before public funds are given from the state budget. The control body should be obliged to verify the accuracy of data on campaign finance provided in the reports, the legality of the way these funds were collected and used and accuracy of the amount claimed for reimbursement. Improve regulation of party financing from private sources; step up the control of party financing in order to prevent and combat the influence of individuals or separate public groups on the policy of the state and local government authorities. Ensure transparency of financing political parties – from the point of view of incomes and expenses, in order to ensure that each natural or legal body can receive information about donors and the amounts donated by them.*

A declaration of corporate income tax (form 130.00) that the political parties have to submit to the tax administrations was approved by order of the Tax Committee of the Finance Ministry on 13 January 2006. The said declaration is intended for the disclosure of incomes gained as compensation on deposits, grants, admission and membership contributions, condominium participants' contributions, charity donations, donated property, free contributions and donations, i. e. the disclosure of information on taxable objects and objects of corporate income tax.

On 18 June 2007, the Law on Amendments Improvements of Administrative Procedures was adopted requiring various organisations to publish information about their statutory activities. Pursuant to this Law, the Central Election Commission has added sections ("Resolutions of the Republic of Kazakhstan CCE", "Bodies of Authority," "Parties," "To Electors," "Press Centre") to its web site homepage to simplify access to information resources (including the regulatory legal acts of the Central Commission for Elections). Information about election funds will be posted on this site, and an analysis of this information will be added as soon as it is available. This makes the activity of Central Committee for Elections more transparent and increases its public accountability. Consideration is being given to introducing the obligation on the members of elections commissions and the Central Committee for Elections to declare their income and assets before and after the relevant elections.

The sources of elections funds are regulated by the Constitutional Law on the Elections. In accordance with legislation in force during the on-site visit of the country, political parties did not have a right to claim the compensation of financial expenses on election campaign. The recent amendments to the Constitution abolished the previous regulation which did not allow budget financing for the political parties.

The funding of political parties is the subject of tax service control. According to the part 5 of the article 18 of the Law on Political Parties of 15 July 2002, the annual financial reports of political parties are the object of publication in the printed media. There is no term determined in what the financial reports

of political parties have to be published. So it is not possible to find out how publication of the financial reports of political parties corresponds with the audit of these reports performed by the tax authority.

No information was provided indicating whether financial reports of all political parties are examined annually, how the financial reports for the examination are selected, the terms of reference for the examination, or whether and how the results are made public. The annual financial reports of political parties appear to be under the same control procedures as the financial reports of all other remaining legal persons.

The control over elections funding is executed by the Central Committee for Elections and other relevant election commissions and bank institutions. Even without a more comprehensive assessment of the current situation – which is due to insufficient information – it is possible to recognize the poor effectiveness in the area of the control over the political parties and campaigns financing. The human resources of the Central Committee for the Elections are insufficient to ensure the sound control over the financing of elections. Only five public officials of the Central Committee for the Elections are responsible for the political parties financing control, besides they have other functions.

According the article 36 (3) of the Constitutional Law on Elections, specialists from the state authorities can be involved in exercising control on the presentation of relevant election commissions in accordance with their competence. There is no solid evidence that this possibility is sufficiently employed though.

The reports provided by banks on the operation of election funds accounts and the documents on the transfers of the funds for the elections from the state budget are used for the control over the elections funding. On the ground of the information provided by relevant bodies, it can be concluded that the control over the elections funding focuses presently on the justifications of expenditures of elections funds. The efficient control on the accuracy of data on campaign finance provided in the reports of political parties and candidates, the legality of the way these funds were collected and used is not ensured as well as the control over the conflict of interests is not ensured.

The Central Committee for the Elections reported only one violation revealed in 2004 that was committed by the territorial election commission (the misuse of the election funds). But no data on the violations of the regulations on the elections committed by the candidates and political parties revealed by the controlling bodies were provided.

A candidate or a political party must provide to a relevant election commission, not later than five days after the establishment of the election results, a report on the utilisation of resources of the election funds. The reports of the candidates or political parties on the use of the election funds are the subjects for the publication only in mass media but no on the webpage of Central Committee for the Elections. There is no obligation to fulfil the audit of these reports by the independent expert audit body before the submission these reports to a relevant election commission.

The violation by a candidate or a political party nominating a party list of the regulations prescribed by article 34 of the Constitutional Law on Elections, as well as procedures for election fund expenditure established by the Central Commission for Elections entails the cancellation of the decision on the registration of the candidate or the party list, and after elections *until* the registration of the candidate as the President, a Parliamentary deputy, a deputy of a *maslikhat*, a member of a local self-government body – the invalidation of elections on a relevant territory or district. As the specification that the invalidation of elections on a relevant territory or district is applicable only *until* the registration of the candidate as the President, a Parliamentary deputy, a deputy of a *maslikhat*, a member of a local self-government body in the case the violation of the legislations on elections is revealed, the term of the control over the election

funding have to correspond with term of the registration of the candidate as the President, a Parliamentary deputy, a deputy of a *maslikhat*, a member of a local self-government body, *i. e.*, the control over the election funding reports should be completed before the registration.

At the present no terms are set for the execution of control over the election funding. Considering the scarce human resources of the Central Committee for the Elections and, most likely, of the other election commission meant for the execution of this control and the fact that some kind of elections are held every year, it is obvious that the control over the election financing is not efficient enough to ensure that the candidates or a political parties that have violated the procedures for election fund expenditures will be prevented from taking the position in the state and local authorities.

The Law on the Election establishes only the limits on the total amount of the donations of private sources in the cases of funding of elections and political parties. No limits are applied on the single donation in order to prevent and combat the influence of individuals or separate public groups on the policy of the state and local government authorities.

The information on the donations for the political parties and its sources is the subject for the publication in the printed media according to the article 18 of the Law on Political Parties of 15 July 2002. The public information does not cover the values of donations made by the particular persons, *i.e.*, only the total amount of private donations and the lists of donors are published. The information on the donations for the political parties is not provided on the official website of the Central Committee for Elections at this time.

The aim to increase the authority of political parties was declared in the Address of the President on 2030 Strategy. Considering that it is clear that the impotence of the control over the financing of political parties and campaigns will increase significantly. The actions to improve efficiency of this control should be taken promptly.

**Kazakhstan is partially compliant with this recommendation.**

## CONCLUSIONS

Recommendation	Compliant (fulfilled)	Largely compliant (minor shortcomings, large majority fulfilled)	Partially compliant (some substantive action)	Non- compliant (major shortcomings)
<b>National Anti-Corruption Policy and Institutions</b>				
1. New anti-corruption programme		+		
2. Monitoring of anti-corruption programme			+	
3. Monitoring of disciplinary councils		+		
4. Strengthen capacity of Financial Police	+			
5. Specialisation of prosecutors in corruption		+		
6. Analytical capacity, statistical monitoring and inter-agency cooperation			+	
7. Corruption specific joint training for law-enforcement, prosecutors and judges				+
8. Surveys on scale and patterns of corruption			+	
9. Awareness raising and training			+	
10. Ratification of UNCAC				+
<b>Legislation and criminalisation of corruption</b>				
11. Harmonisation of Anti Corruption Law and Criminal Code			+	
12. International standards on offences			+	
13. Money Laundering			+	
14. Immunity		+		
15. Responsibility of legal persons			+	
16. Confiscation		+		
17. Extradition	+			
<b>Transparency of Civil Service</b>				
18. Attestation of officials to improve skills			+	
19. Recruitment and promotion in civil service			+	
20. Practical guide on corruption and ethics				+
21. Declaration of assets				+
22. Internal control in bodies with high risk			+	
23. Conflict of interest regulations			+	
24. Regulations on gifts	+			
25. Harmonisation of Admin Code and Law against Corruption	Not applicable			
26. Admin Code provisions on false information				+
27. Access to information			+	
28. Cooperation with NGOs			+	
29. Transparency of public procurement system			+	
30. Internal and external proactive audit			+	
31. Status of Audit Committee			+	
32. Anti-corruption strategy in tax and customs bodies		+		
33. Money Laundering and FIU				+
34. Political party financing			+	

## **ANNEX I: LIST OF PARTICIPANTS TO THE ON-SITE VISIT**

### Leader of the team of examiners:

Mr. Daniel Thelesklaf, Financial Integrity Network, Switzerland

### Team of examiners:

- Ms. Olena Smirnova, Ministry of Justice of Ukraine
- Mr. Elnur Musayev, Prosecution Service of Azerbaijan
- Ms. Jolita Vasiliauskaite, Special Investigation Service (STT) of Lithuania
- Mr. Christopher Krafchak, American Bar Association, Rule of Law Initiative, Kazakhstan, USA

### Secretariat:

Ms. Olga Savran, Anti-Corruption Division, OECD

### Government bodies, other public bodies:

- Financial police (AFECC)
- Presidential Administration
- Ministry of Justice
- Prosecutor General's Office
- Parliament
- Supreme Court
- Audit Committee for the control of the budget execution
- Tax Committee of the Ministry of Finance
- Financial Control and Public Procurement committee (FC&PPC) of the Ministry of Finance
- Central Committee for Elections
- Customs Committee of the Ministry of Finance
- Public Service Affairs Agency (APSA)
- Ministry of Interior (Police department responsible for fighting corruption)

Non-governmental organisations:

- Association of Kazakh Entrepreneurs
- Association of Family Doctors of Kazakhstan
- Almaty Association of Entrepreneurs
- Forum of Kazakh Entrepreneurs
- Association of Entrepreneurs of the Health Sector
- Independent Association of Entrepreneurs
- Public Association for the Protection of Consumer Rights Kadal
- Transparency Kazakhstan
- Soros Foundation, Kazakhstan
- Kazakh-European Foundation for legal research and innovative technologies

International and foreign organisations:

- OSCE
- UNDP
- Eurasia Foundation
- European Commission
- USAID
- Japan
- The Netherlands

## **ANNEX II: EXCERPTS FROM RELEVANT LEGISLATION**

List of Annexes

**available on request**