

Overall Score:

60 - Weak

Legal Framework Score:

86 - Strong

Actual Implementation Score:

34 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The law on the NGOs allows citizens to form civil society organizations as long as they do not violate legislation. Nowadays, there are several anti-corruption NGO coalitions in Azerbaijan. The state-run Anti-Corruption Commission also participates in one of the coalitions. Overall, there are no limitations on citizens to forming CSOs focused on anti-corruption or good governance.

References:

The Law on Non-Governmental (Public Unions and Foundations) Organizations, 2000.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

According to the legislation that regulates NGOs activities, CSOs are free to accept funding and grants from foreign and domestic sources. According to the article four of the law on grants, depending on their activities, the CSOs must submit a copy of the grant contract to the relevant executive agencies, e.g. the Ministry of Justice, the State Committee on Religious Affairs or the Ministry of Economic Development.

References:

The Law on Grants, 1998 Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

According to the legislation that regulates CSOs activities, the CSOs are required to disclose their sources of funding to the relevant state institutions.

References:

The Law on Grants, 1998 Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Even though there are no direct barriers to the new or old anti-corruption/good governance CSOs, in practice they have problems accessing state and municipal information.

References:

Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

It mainly depends on the individual CSO's director's political background and public reputation. Recently, however, some anti-corruption coalitions were actively engaged in the political and legislative policy-making process.

References:

Interview with leading NGO Directors.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

There is no information about any anti-corruption/good governance CSOs being shut down by the government for their work on corruption-related issues during the study period. However, the media outlets, which have regular and critical articles about corruption, have had some pressure.

References:

Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

There have been no reports in the past year about imprisonment of any civil society activists working on corruption issues.

References:

Interview with leading NGO Representatives.

YES: A YES score is earned if there were no CSO activists imprisoned related to work covering corruption.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the p

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

Comments:

During the study year, no civil society activists working on corruption issues were physically harmed.

References:

Interview with leading NGO Representatives.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

Comments:

In the past year, no civil society activists working on corruption issues were killed.

References:

Interview with leading NGO Representatives.

YES: A YES score is earned if there were no documented cases of CSO activists being killed related to a corruption case in the specific study period.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

According to the Constitution of Republic of Azerbaijan (Article 58) and the Labor Code (Article 19), citizens have a right to establish trade unions. The law on trade unions regulates the rights and activities of the trade unions. In law, at least seven citizens or workers must initiate creation of the trade union.

References:

The Constitution of Republic of Azerbaijan, 1995 / The Labor Code, 1999 / The Law on Trade Unions, 1994.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | **50** | 25 | 0

Comments:

In practice, citizens are able to organize trade unions. The leading trade union is the Azerbaijan Trade Union Confederation (ATUC) which has approximately 1.5 million members, including 26 labor federations in various industrial sectors. There were no reports of government discrimination against unions. However, there were several cases of discrimination against unions by foreign companies operating in Azerbaijan. Most foreign oil companies do not allow union membership.

References:

Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League / The U.S. Human Rights Report-2005.

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

Comments:

Unlike the beginning and middle of 1990s, there has been a great development in the protection of the media and free speech in Azerbaijan. Both the media and government have made positive steps to develop and protect these rights.

References:

Constitution of the Republic of Azerbaijan, 1995 / The Law on Mass Media, 1999.

YES: A YES score is earned if freedom of the press is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

According to the Constitution, freedom of the media must be ensured. State censorship of the media, including print media, is forbidden. In addition, Article 1 of the Law on Mass Media indicates that freedom of the media is guaranteed in the Republic of Azerbaijan.

References:

Constitution of the Republic of Azerbaijan, 1995 / The Law on Mass Media, 1999.

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a

NO score.

6. Are citizens able to form media entities?

63

6a. In practice, the government does not create barriers to form a media entity.

100 | 75 | **50** | 25 | 0

Comments:

In practice, there are no problems associated with registering newspaper or print media outlets with the Ministry of Justice. The Article 14 of the Law on Mass Media regulates the registration process and seven days prior to the publication of the newspaper you can inform the Ministry of Justice. However, registering electronic media (TV and radio) is problematic. In order to get license for electronic media you must have permission from the government. Otherwise, in practice, it is impossible to register. The barriers could be offering well-paid jobs, artificial impediments, bribes or intimidation to the founders.

References:

The Law on Mass Media, 1999 / The Law on TV and Radio Broadcast, 2002/ Interview with media representatives

100: Media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system.

75:

50: Formation of media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. Division of broadcast bandwidth is widely viewed to be used as a political tool.

6b. In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

According to the Article 18.5 of the Law on TV and Radio Broadcast the refusal letter on issuing the license will be in a written format and has to indicate the reasons for rejection. The person can appeal to the court within 30 days once received the refusal letter. Article 23 of the same law also defines revoke of the licensing. Again this can be appeal to the court on a civil base. However in practice, some electronic media have problems of extension of their license period which is a political issue rather than registration matter.

References:

The Law on TV and Radio Broadcasting / Interview with Alasgar Mammadli, a media expert and lawyer

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied media license. A YES score is also earned if no license is necessary.

NO: A NO score is earned if there is no appeal process for media licenses.

6c. In practice, where necessary, citizens can obtain a media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Article 19 of the Law on TV and Radio Broadcasting allows maximum 75 days after the announcement of competition to obtain a license. However, it is a formality. You can not set up an electronic media unless you have agreed" with the president's office.

References:

Interview with Media representatives

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

It is a formality to pay state duties. Article 17 of the Law TV and Radio Broadcasting defines the list of documents that must be submitted in order to obtain the license. The state registration fee is more than US\$100. It is expected that the registration fee will be increased substantially.

References:

Interview with Media representatives

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are the media able to report on corruption?

75

7a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES

NO

Comments:

There is no legal restriction that limits reporting the truth about public figures. However, many criminal suits against journalist were brought based on the provisions of Article 147 and 148 of the criminal code. No journalists were brought to charges under the Article 323. Articles 147, 148 and 323 of the criminal code prohibit the dissemination of information that in some way damages the honor and dignity of a person or, in the case of Article 323, the president of the Republic of Azerbaijan. Article 147.1 (Blackmail) states that the slander of a person, which consists of the distribution of obviously false information that discredit the honor and dignity, or undermine his reputation in a public statement, publicly or in mass media products, will be punished by a fine of up to 500 nominal financial units, by up to 240 hours of public works, by corrective works for up to one year or by up to six months of imprisonment. Article 147.2 doubles the work and imprisonment sanctions if the slander is connected to an accusation of serious criminal wrongdoing. Article 148 (Insult) provides that the dissemination of insults will also be punished by a fine, by public works, by corrective works or by imprisonment. The severity of these sanctions is the same as for Article 147 except that the fine can range from between 300 and 1000 nominal financial units. Insult is defined as the deliberate humiliation of honor and dignity of a person, expressed in the indecent form in the public statement, publicly or in mass media. Finally, Article 323(1) states: Disgrace or humiliation of honor and dignity of the President of the Republic of Azerbaijan in public statement, publish shown product or mass media shall be punished by fine of five hundred up to one thousand of nominal financial unit, or corrective works for term up to two years, or imprisonment on same term. Article 323(2) increases the period of imprisonment to between two and five years where the statement contains an accusation of serious or especially serious criminal wrongdoing. However the article can NOT apply if there is criticism to the presidents activity and his/her policy issues.

References:

Criminal Code of Azerbaijan, 2000.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

7b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

In general, the TV and Radio Broadcasting Council calls for self-censorship on corruption-related stories. However, it does not have strong effect. It also depends on the political slant of the newspaper editors and owners of the electronic media. Sometimes newspapers and the TV news media are used by certain government officials and businessmen to criticize or blackmail each other about corruption.

References:

Interview with Media Council member

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

7c. In practice, there is no prior government restraint on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There are restraints on publishing corruption-related stories, which are closely connected to the interests of the owners of the electronic and print media.

References:

Interview with Media Council member

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. In countries where illiteracy is higher, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material.

8. Are the media credible sources of information?

56

8a. In law, media companies are required to disclose their ownership.

YES | NO

Comments:

According to the Law on Mass Media, print media ownership must be disclosed publicly. However, it is difficult to obtain information about the owners of the electronic media, particularly about private TV channels.

References:

Interview with Alasgar Mammadli, a media expert and lawyer

YES: A YES score is earned if media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

8b. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

This depends on the newspapers. There are some national newspapers that always try to stay professional in their reporting, but you cannot say this about all journalists and editors.

References:

Interview with Media Council members

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

8c. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

In the last parliamentary elections in 2005, the ruling party and pro-government independent candidates had better access to TV and radio stations than opposition and other independent candidates. Most importantly, even though Azerbaijan election system is majoritarian, the election code gives more privileges to the election blocks (party blocks) than independent candidates. This causes both legal and technical problems for independent candidates. In addition, very expensive air time also limited many party and independent candidates in their use of electronic media. Instead, they used print media.

References:

“Report on Azerbaijan Election Code: Problems of Implementation,” Ilqar Mammadov and Dadash Alishov.

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

8d. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | **25** | 0

Comments:

It depends on the political circumstances. If the party or candidate supports the government’s policy or criticizes an opposition party or leader, they can have access to state-owned media outlets.

References:

Interview with journalists

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

9. Are journalists safe when investigating corruption?

33

9a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

Comments:

As mentioned above, many criminal cases were brought against journalists based on the Article 147 and 148 of the criminal code. In many cases, the journalists or newspapers received financial penalties rather than being imprisoned. In some cases, the courts dismissed the claims of certain government officials against journalists. During the study year, Samir Adgozelli, a journalist from the Boyuk Millet newspaper, and Shahin Agabeyli, editor of the Milli Yol newspaper, were charged under Article 147 and 148 of the criminal code and detained. Mirza Sakit Zahidov, a journalist from the Azadliq newspaper, was accused with illegal use of narcotics and was arrested.

References:

Interview with Media Council Members

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

During the study year, two cases of physical pressure were severely criticized by local and international media. In March, Fikret Huseynli, a journalist with the Azadliq newspaper, and in May, Baheddin Haziyevev, chief editor of the Bizim Yol newspaper, were beaten and tortured by unknown people. Criminal investigations were launched, but there have been no results so far.

References:

Monitoring Report of RUH Defense Committee of Azerbaijani Journalists

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

9c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

During the study year, no journalists investigating corruption have been killed.

References:

Interview with Media Council Members

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

65
I-3. Public Access to Information

10. Do citizens have a legal right of access to information?

100

10a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The freedom of information is ensured by Article 50 of the Constitution of the Azerbaijan Republic, which was adopted in November 1995. According to Article 50, everyone is free to seek, obtain, transfer, prepare and distribute information. A new law of the Azerbaijan Republic on obtaining information was adopted in 2005. The new law defines mechanisms of obtaining information from the state and municipality institutions, deadlines for appeals, rules of appeals, types of information, etc.

References:

Constitution of the Republic of Azerbaijan, 1995 / The Law of Azerbaijan Republic on Obtaining the Information, 2005.

YES: A YES score is earned if there is a formal right to access any government documents. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request. There should be a formal process for requesting this information.

NO: A NO score is earned if there is no such right.

10b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

According to the law on obtaining information, if the information keeper rejects or ignores time frame for execution of the information inquiry, the citizen has a right of appeal to the courts or national ombudsman on information.

References:

The Law of Azerbaijan Republic on Obtaining the Information, 2005.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests.

NO: A NO score is earned if there is no such formal process.

10c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The law on obtaining information defines the institutional mechanisms and time frame for how citizen can request government records. However, both criminal and administrative infringements codes do not have concrete and serious penalties if the laws on obtaining information are violated.

References:

The Citizens Labor Rights Protection League Report on Results of Monitoring on Obtaining Information in Azerbaijan Republic-Legislation and Practice, 2006. <http://www.clrpl.org/Report%20on%20results%20of%20monitoring.pdf>

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

11. Is the right of access to information effective?

10

11a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, it is difficult for citizens, CSOs and media representatives to obtain information from state and municipal institutions. In other words, inquires about information are not responded to, not fully responded to or not responded to within the time frame as defined in the law.

References:

Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

11b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to the Article 26, (payment for obtaining information) of the law on obtaining information, the payment cannot exceed the total sum of the preparation and submission fees of the information. However, there is no any entity in the state institution charged with collecting this payment. No payment is needed to access public information.

References:

Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

11c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens are unable to access information within a reasonable time period.

References:

Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

11d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In practice, depending on the circumstances, citizens can resolve appeals to information requests at a reasonable cost.

References:

Interview with Sahib Mammadov, Director of the Citizens Labor Rights Protection League

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

11e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

In many cases, the government is reluctant to give reasons for denying an information request. In addition, according to the law on obtaining information, a national ombudsman on information should be established, but there has been a delay in the implementation of the law.

References:

The Citizens' Labor Rights Protection League: Report on Results of Monitoring on Obtaining Information in Azerbaijan Republic-Legislation and Practice, 2006. <http://www.clrpl.org/Report%20on%20results%20of%20monitoring.pdf>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

II-1. ⁶⁵Voting & Citizen Participation

12. Is there a legal framework guaranteeing the right to vote?

100

12a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

According to the Constitution of the Republic of Azerbaijan, citizens of the Azerbaijan have the right to elect and be elected to government bodies, and to participate in referendums. Article 12 of the election code implies that every citizen of the Republic of Azerbaijan, who has reached the age of 18 by the day of parliamentary, presidential and municipal elections and referendum (including the same day) has the right to elect, to vote in referendum, to observe elections (referendum process), to participate in pre-election and pre-referendum campaigns and to participate in actions related to the election and referendum.

References:

Article 56 of the Constitution of the Republic of Azerbaijan, 1995 / Article 12 of the Election Code, 2003.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of that country. A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

12b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

According to the Constitution, elections of the Milli Majlis members shall be held every five years on the first Sunday of November. The president of the Azerbaijan Republic shall appoint elections to the Milli Majlis of the Azerbaijan Republic. The president of the Azerbaijan Republic shall be elected for a term of five years via universal, direct and equal elections by free, individual and secret ballot. In addition, Article 211.1 and 211.2 of the election code set forth that the term of office for municipal positions shall be five years. The term of office of municipal positions commence on the voting day, and end on the day of first meeting of newly elected government. Article 145 of election code specifies the conduct of elections to the Milli Majlis. Articles 177 of election code apply to the conduct of presidential elections.

References:

Articles 101 and 84 of the Constitution of the Republic of Azerbaijan / Articles 211.1-211.2, 145 and 177 of the Election Code of the Republic of Azerbaijan.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

13. Can all citizens exercise their right to vote?

83

13a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

According to the Constitution and election code, except for people whose incapacity has been determined by the court, every citizen of the Republic of Azerbaijan, who has attained the age of 18, can exercise his/her right to vote. In practice, all adult citizens can vote. However, in previous elections there were some cases in which some constituencies were excluded from the voters list.

References:

Article 56 of the Constitution of the Republic of Azerbaijan, 1995 / Interview with former parliamentary and municipality candidates

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

13b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Article 99.7 of the election code sets forth that the chairpersons of the election commissions shall bear the responsibility for the submission and storage of ballot papers. In practice, particularly in the last parliamentary elections in 2005, however, there were

wide-spread reports that certain local executive officials obtained and distributed ballots with votes already marked to their friends a day before the election and on election day.

References:

Interview with former candidates / Article 99 of the Election Code.

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

13c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

In practice, elections are held according to a regular schedule.

References:

Interview with the Central Election Commission (CEC) official.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

14. Are citizens able to participate equally in the political process?

50

14a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

According to the Article 54 (“Right to Participate in Political Life of Society and State”) citizens of the Azerbaijan Republic shall have the right to participate without hindrance in the political life of the society and the state. The law on political parties identifies the process and requirements to form political parties.

References:

Article 54 of the Constitution of the Republic of Azerbaijan, 1995 / Law on Political Parties, 1992.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

14b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

According to the Article 55 (“Right to Participate in the State Governing”), citizens of the Azerbaijan Republic shall have the right to participate in the government. They can implement this right directly or via their representatives. Citizens shall have the right to serve in government bodies. Representatives to government bodies shall be appointed by the citizens of the Azerbaijan Republic. The Constitution and election code also define certain legal requirements for people who want to run for political office.

References:

Constitution of the Republic of Azerbaijan, 1995 / Election Code, 2003.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

14c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

In practice, all citizens are able to form political parties. However, there are still some problems registering political parties, which

are mainly are political reasons.

References:

Interview with political party members and lawyers

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

14d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

In general, all citizens can run for political office. In practice, this depends on the type of election and the political circumstances. Citizens can be rejected when registering as a candidate or candidate may be offered money or intimidated to withdraw his or her candidacy.

References:

Interview with former parliamentary and municipal candidates

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing do may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

14e. In practice, an opposition party is represented in the legislature.

Comments:

The Parliament has 125 seats. The opposition has more than 10 seats in the Parliament. However it is doubtful whether some of them are real opposition or just a marionette of the government.

References:

Interview with journalists and politicians

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

15. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

The Central Election Commission (CEC) is the permanent election monitoring agency. In Azerbaijan, the structure of election commission is as follows: Central Election Commission, Constituency Election Commission and Precinct Election Commission (Con.ECs and PECs). Their duties are regulated by the election code. Election commissions are responsible for the preparation and conduct of all elections in the Republic of Azerbaijan. Election commissions are independent bodies. The Central Election Commission consists of 18 members. The members of the CEC are elected by the Milli Majlis (Parliament). Six members of the CEC must represent the political party that nominated them, deputies of which constitute the majority in the Milli Majlis. Six members must represent the non-partisan (independent) deputies that nominate them and six members must represent the other political parties that nominated them, deputies of which obtained minority in the Milli Majlis. The Constituency Election Commissions consists of nine members, who are appointed by Central Election Commission and Con.EC. Compositions are formed in the same order as Central Election Commission. Precinct Election Commissions consist of six members and PEC compositions are formed in the same order as Con.ECs.

References:

Article 24, 29,30,35,36 of the Election Code.

YES: A YES score is earned if there is an agency or set of agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no agency or set of agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police.

16. Is the election monitoring agency effective?

55

16a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The Central Election Commission is an independent body that acts independently from other state and local government bodies. In law, election commissions and members of the commissions are protected from political interference.

References:

Election Code, 2003.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies being contested in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no election monitoring agency.

16b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

While the formal criteria of the Central Election Commission's independence (as specified in the law) is observed, the political bargaining over the seats in the CEC is very strong among ruling and opposition parties. The president's office totally controls the CEC. The formation and candidacy to the CEC membership, except opposition (sometimes even oppositions nominee) has to be agreed with the Presidents Office.

References:

Interview with former CEC members

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

16c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Commission has a full-time professional staff. The constituency chairman and the secretary also receive salaries for the preparation of the elections and voters list.

References:

Interview with CEC official / Article 27 and 33 of the Election Code, 2003.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

16d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

It depends. In the 2005 parliamentary elections, the CEC made progressive steps on reporting about the election process and on publishing the results of the elections. The results of the elections were available on the CEC's Web. site. <http://www.cec.gov.az/>

<http://www.infocenter.gov.az> However, some key elements regarding the transparency of the elections were not included in the reports, and it is impossible to obtain them from the CEC.

References:

Interview with CEC officials and former parliamentary and municipal candidates.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

16e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

According to the election code, if the infringement described in the complaint can be considered a criminal action according to the criminal code of the Republic of Azerbaijan, the Central Election Commission can apply to the relevant public prosecutors. Implementation of this provision of the law is purely under the judgment of the CEC. Sometimes the CEC is reluctant to punish election officials.

References:

Article 112.4 of the Election Code, 2003.

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

17. Are elections systems transparent and effective?

17a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

This is very controversial issue from legal and practical perspective. According to the election code, the permanent voter list for a precinct is kept by the Central Election Commission. Permanent voter lists (citizens who have the right to participate in a referendum) are approved by the Precinct Election Commission in conformity with the format defined by the Central Election Commission until 30th of May of each year. The list must be accurate at least 35 days prior to the election day. After this period, and including the election day, a voter can be added to the list only upon a court decision. The Precinct Election Commission shall submit the voter lists for public display at least 65 days prior to the election day. Voter lists shall be posted on the relevant Web site of Central Election Commission. On the eve of the 2005 parliamentary election, President Ilham Aliyev signed into law 58 amendments adopted by the parliament. One of them caused particularly strong criticism by opposition and independent candidates, as well as of the Council of Europe. As a result of the July amendments, Article 48 was amended to require that only names of residents be placed on the public list of voters posted 65 days prior to elections. The original language of Article 48.1 was amended to say: In this case, numbers of the citizens apartments and houses should NOT be indicated. This seriously impedes the parties, candidates and voters ability to control and contribute to the accuracy of the lists. In practice, during the last parliamentary election, in rural and Internally Displaced Persons (IDP) constituencies, where large groups of families vote in a coherent and predictable way, some constituency chairmen excluded every fifth or fourth family member in order to promote a particular candidate. Local executive officials use the month between the beginning of the initial campaign (60 days before the vote) and the deadline for compilation of the voter lists (35 days before the vote) for identification of supporters of the undesirable candidate. In the IDP situation, this was particularly damaging to the fairness of the elections, because IDPs need to travel long distances within the country to ensure their inclusion on the voter lists, while permanent residents could do the same with less time and money. Similar problems, though on a lower scale, were experienced even in the capital city and other urban areas. Note: As Armenia keeps several provinces of Azerbaijan under military occupation, a significant number of voters in the country are classified as internally displaced persons (IDPs). They were forced to leave their homes by the occupying troops, and currently are scattered throughout the country. There are more than 311,000 IDP voters. This makes approximately 6-7 percent of the total voters of the country. Special IDP precincts are located all over Azerbaijan. The formation of the IDP precincts, the registration of IDP voters and organization of their voting represents a considerable challenge for the election administration. The election code does not make any special provisions for the IDPs, neither favoring, nor discriminating in comparison with the rest 116 constituencies.

References:

Report on Azerbaijan Election Code: problems of implementation-Authors: Ilqar Mammadov and Dadash Alishov

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

17b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

Voters, candidates, political parties and political party blocs can appeal to the courts against the decisions adopted by election commissions. According to legislation, such contests can be settled through the judicial system.

References:

Article 114 of the Election Code, 2003.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

17c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

A lack of clear appeal mechanisms regarding the decisions of the election commissions was one of the major problems in 2005 parliamentary elections. The CEC approved a regulation on the appeal mechanisms two or three days prior to election day. The judicial system is dependent on the executive branch, so it is naive to expect fair court decisions on election violations.

References:

Interview with lawyers and former parliamentary candidates.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

17d. In practice, the military and security forces remain neutral during elections.

Comments:

Military and security forces remain neutral during the elections, but the police carry the responsibility for ensuring security outside of the precinct. In practice, the military precincts are totally under control of the executive branch. Voting is mostly falsified in the Army.

References:

“Azerbaijan Election Code: Problems of Implementation,” Ilqar Mammadov and Dadash Alishov.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

17e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

According to the election code, domestic and international observers are allowed to observe all election procedures. Political parties, political party blocs and candidates can appoint observers for election commissions. International and domestic observers shall have equal rights and responsibilities.

References:

Article 40,41,42,43 of the Election Code, 2003

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

17f. In practice, election observers are able to effectively monitor elections.

Comments:

On election day, observers can enter the precinct at any time. After the end of the voting, they can get one copy of the final protocol. In many cases, election observers are able to effectively monitor the elections. It also depends how well-trained and experienced the observers are. The local election commissions are more concerned about international observers rather than local ones. There are still problems in many precincts with distinguishing the marks on the ballot papers during the vote count.

References:

"Azerbaijan Election Code: Problems of Implementation," Ilqar Mammadov and Dadash Alishov.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

71 II-3. Political Financing

18. Are there regulations governing political financing?

100

18a. In law, there are regulations governing private contributions to political parties.

YES | NO

Comments:

The law on political parties was adopted in June 1992, and has had many amendments since then. The fourth article of the law regulates the financial and property matters of the parties. During the election period, all financial matters related to elections are regulated by the election code. According to the Article 19 of the law on political parties, parties shall have the right to receive donations. The following cannot donate to political parties: state agencies, charities, religious organizations and trade unions. Political parties may not receive donations given with the purpose of gaining economic or political benefits. The amount of donations given to political parties must be included in the financial account, along with the name of the donor, his or her address and the amount of the donation.

References:

Law on Political Parties, 1992 / Election Code, 2003.

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

18b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

Comments:

According to the Article 156.2.4 and 156.4.3 of the election code, there are financial limits on corporate donations to candidates and political parties. The law also defines separate limits for presidential and municipal elections, as well as referendums.

References:

The Election Code, 2003.

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

18d. In law, there are limits on total political party expenditures.

YES | NO

Comments:

Except during election campaigns, there are no limits on total party expenditures.

References:

Election Code, 2003 / The Law on Political Parties, 1992.

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

18e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

Comments:

According to the election code, individuals must disclosure donations to political candidates and parties.

References:

Election Code, 2003.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

18f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

During the election campaign period, election commissions monitor the finances of the candidates. According to the law on political parties, tax authorities annually audit parties' financial reports. However, there is no independent auditing of the finances of political parties and candidates.

References:

Election Code, 2003 / The Law on Political Parties, 1992

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

19. Are the regulations governing political financing effective?

17

19a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

In practice, there are problems with individual donations to pro-government candidates and political parties. The government frequently instructs certain wealthy individuals or companies to finance pro-government candidates or the ruling party's activities. There are also problems for individuals who finance the opposition parties and independent candidates. The government harasses, puts pressure on the individuals who finance opposition parties and candidates.

References:

Interview with politicians and journalists

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

Comments:

There are cases in which the government instructs certain companies to support some politicians or parties in their campaign for office. There are also many cases in which the government closed companies or arrested owners for supporting opposition parties or certain candidates.

References:

Interview with politicians and journalists

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

19c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

Comments:

Except for the election campaigns, there is no limit on total party expenditures. However, during the election period the major problem is ignorance and a lack of enforcement of the law by the ruling party. Certain candidates make immense financial expenditures.

References:

Interview with politicians and journalists

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or

accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

19d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | **25** | 0

Comments:

According to the law, tax authorities, and during the election period the Central Election Commission, monitor candidates' and political parties' expenditures. However, initiating investigation on the political financing must be agreed upon by the government.

References:

Interview with politicians and journalists.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

19e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

Comments:

This completely depends on the government's political interest. Such action can be implemented only by certain state agencies.

References:

Interview with politicians and journalists

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

19f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | **25** | 0

Comments:

According to the law on political parties, parties must submit an annual financial report to the Tax Ministry. During an election period, the election commissions monitor candidates' financial expenditures and donations. However, in practice, some parties' and candidates' spending during an election campaign is much greater than what is officially permitted or declared.

References:

Interview with politicians

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

20. Can citizens access records related to political financing?

25

20a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

In an election period, candidates must disclose data relating to their financial support and expenditures within a reasonable time period. In non-election periods, parties are reluctant to disclose data relating to financial support.

References:

Interview with politicians and journalists.

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

20b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Access to financial records of political parties is hindered by the unwillingness of political parties to comply with disclosure requirements, as well as the lack of enforcement mechanisms. The time factor is not relevant in this case.

References:

Interview with politicians.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

20c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no such practice.

References:

Interview with politicians.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁴⁴Executive Accountability

21. In law, can citizens sue the government for infringement of their civil rights?

100

21. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Civil rights are protected by the Constitution and any violations can be challenged through the courts. According to the law on complaining to court on decisions and actions violating rights and freedoms of citizens, every person who believes that their rights and freedoms have been violated by a decision or action of a state body or local self-governing authority, enterprise, department, organization, public union or official, has the right to appeal to a superior body or directly to the court. The appeal to a superior body is to be reviewed within one month or 15 days.. In May 2006 amendments to this law were entered into force. These amendments provide for a special procedure for complaints by citizens who allege corrupt conduct by persons employed in the public service. The amendments stipulate that investigations into these complaints are to be conducted by the relevant internal inspection services within 20 days of receiving the complaint.

References:

Interview with State Anti-Corruption Commission Expert / Article 60 and 130 of the Constitution of the Republic of Azerbaijan/ The law on complaining to court on decisions and (in) actions violating rights and freedoms of citizens,1999 / On the procedure for consideration of applications from citizens, 1997.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

22. Can the chief executive be held accountable for his/her actions?

63

22a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

Comments:

In practice, depending on the issue, the chief executive sporadically gives reasons for his policy decisions.

References:

Interview with journalists.

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

22b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The judiciary can review the actions of the executive.

References:

The Constitution of the Republic of Azerbaijan, 1995 /Civil Procedure Code, 2000 / The law on complaining to court on decisions and (in) actions violating rights and freedoms of citizens,1999 / On the procedure for consideration of applications from citizens, 1997.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

22c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the judiciary relies on instructions from the executive to review the actions of the executive branch.

References:

Interview with lawyers

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

22d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature.

References:

Interview with lawyers.

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

23. Is the executive leadership subject to criminal proceedings?

100

23a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES

NO

Comments:

According to the Article 106 of the Constitution the president of the Azerbaijan Republic has the right of immunity. The honor and dignity of the president of the Azerbaijan Republic is protected by law. Article 107 ("Removing from position of president of the Azerbaijan Republic") of the Constitution indicates: When a grave crime has been committed by the president of the Azerbaijan Republic the issue concerning the removal of the president of the Azerbaijan Republic from his/her position can be put forward before the Milli Mejlis (Parliament) of the Azerbaijan Republic on the initiative of the Constitutional Court of the Azerbaijan Republic on the basis of the conclusion drawn by the Supreme Court of the Azerbaijan Republic within 30 days. The president of the Azerbaijan Republic can be removed from office on the basis of the resolution passed by the majority of 95 votes of the deputies. This resolution shall be signed by the Constitutional Court of the Azerbaijan Republic. If within one week the Constitutional Court of the Azerbaijan Republic does not come out in favor of signing this resolution, the resolution shall not come into effect. The resolution on the removal of the president from office shall be passed within two months from the day of the Constitutional Court addressing the Milli Mejlis of the Azerbaijan Republic. If within this term the mentioned resolution is not passed the accusation shall be turned down. The Constitution of the Republic of Azerbaijan regulates immunity of the prime minister as well. However, the prime-minster does not have the same privileges as the president. The immunity of the prime minister can be stopped only by the president on the basis of the representation of the general prosecutor of the Azerbaijan Republic.

References:

Article 106,107, 123 of the Constitution of the Republic of Azerbaijan.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

23b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

There is no regulation in Azerbaijani legislation that gives ministerial-level officials any special immunity from prosecution.

References:

Interview with lawyers.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

24. Are there regulations governing conflicts of interest by the executive branch?

50

24a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

Comments:

Article 3 of the law on “Approval of Procedures for Submission of Financial Information by Public Officials” dictates the list of officials, including president, prime minister and chairman of the Parliament, who must submit the financial information to the Commission on Combating of Corruption under the State Council on Management of Civil Service. The report is annual.

References:

The law on Approval of Procedures for Submission of Financial Information by Public Officials, 2005.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

24b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

Article 3 of the law on “Approval of Procedures for Submission of Financial Information by Public Officials” dictates the list of officials, including ministerial-level officials who must submit financial information to the Commission on Combating of Corruption under the State Council on Management of Civil Service. The report is annual.

References:

The law on Approval of Procedures for Submission of Financial Information by Public Officials, 2005.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

24c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

According to Article 8 of the “Law on Combating Corruption,” in cases where gifts received by an official in connection with performing of his or her service duties cost more than US\$50, they shall be considered as belonging to the state authority or municipal body in which that official is performing his or her service duties. If a gift given to an official is meant for his or her personal use, that official may obtain the gift by paying the difference in its price to the state authority or municipal body. In entering into civil contracts with physical and legal persons, officials shall be prohibited from obtaining any privileges or advantages relating to their service activity.

References:

The Law on Combating Corruption, 2004.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

24d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

According to Article 7 of “Law on Combating Corruption,” the control over submission of financial information must be implemented by the Commission on Combating of Corruption under the State Council on Management of Civil Service. Control over submission of financial information by elected officials of state authorities of the Azerbaijan Republic must be implemented in accordance with provisions of the Elections Code of the Azerbaijan Republic. However, there is no independent auditing.

References:

The Law on Combating Corruption, 2004.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

24e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

The draft laws on conflict of interest and code ethics are considering heads of state entering the private sector after leaving the government.

References:

Interview with MP.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

24f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are some restrictions on former state employees (for instance, law-enforcement officials) regarding certain types of employment for certain periods, but in practice they are not effective.

References:

Interview with journalists.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

24g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

The regulations governing gifts and hospitality offered to members of the executive branch are not effective. In many cases, it happens as a kickback for a favor.

References:

Interview with journalists and lawyers.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

24h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

In practice, executive branch's asset disclosures are not audited. There is no such practice in Azerbaijan so far.

References:

Interview with journalists and lawyers.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

25. Can citizens access the asset disclosure records of the heads of state and government?

0

25a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

The law does not demand that the head of state make information about his or her financial status available for public information on a regular base. The law on "Approval of Procedures for Submission of Financial Information by Public Officials" requires annual reporting to the Anti-Corruption Committee. The law is not enforced so far. However, the election code requires presidential candidates to submit asset disclosure to the Central Election Commission in a package with a formal application for registration as a candidate for the election race.

References:

The Election Code, 2003 / The Law of Azerbaijan Republic on Obtaining the Information, 2005.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

25b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Such requests by citizens are not known to take place in Azerbaijan. However, the asset disclosure records of the presidential candidates are submitted to the Central Election Commission.

References:

Interview with journalists and lawyers.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Public access to asset disclosure records of the head of state is free of charge, if it is available from the CEC. However, such a practice is not known of in Azerbaijan.

References:

Interview with journalists and lawyers.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

26. In practice, is the ruling party distinct from the state?

0

26. In practice, is the ruling party distinct from the state?

100 | 75 | 50 | 25 | 0

Comments:

In practice, the ruling party is not distinct from the state. In many cases, state officials are encouraged to be a member of the ruling party in order to be promoted.

References:

Interview with politicians

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

27. Can members of the legislature be held accountable for their actions?

33

27a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

According to the Constitution, the Constitutional Court can rule on the decisions made by the Milli Mejlis (Parliament) in order to determine whether they conform to the Constitution or not.

References:

The Constitution of the Republic of Azerbaijan, 1995 // <http://www.constitutional-court-az.org>.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

27b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

It is possible but it depends on political interest of the executive authority.

References:

Interview with lawyers and MPs.

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

27c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

MPs are immune from the prosecution while in office. In general, members of parliament are held accountable for the criminal and administrative violations, according to the criminal legislation. However, MPs enjoy immunity during their term in office. MPs cannot be held liable for their actions, voting and statements made in Parliament. Except for cases in which a member of the Parliament is caught in flagrante delicto, MPs cannot be prosecuted, arrested, searched, nor may any administrative sanctions be imposed upon them by a court (Article 90 of the Constitution). The immunity of an MP may be lifted by a decision of the Parliament by simple majority based on application of the prosecutor general. If an MP is arrested after having been caught in the act of a crime, the prosecutor general must be immediately notified. If caught in flagrante delicto they enjoy no immunity.

References:

The Constitution of the Republic of Azerbaijan, 1995.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

28. Are there regulations governing conflicts of interest by members of the national legislature?

29

28a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

According to the law on combating corruption, MPs shall submit their relevant financial information to the authority identified by the Milli Mejlis of the Azerbaijan Republic.

References:

The Law on Combating Corruption, 2004.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

28b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

National legislators are not considered part of the government, it is an independent body. There is no restriction on entering the private sector after leaving the government.

References:

The Law on Status of MPs, 1996.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

28c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

The law on status of the MPs generally regulates responsibilities and ethical behaviors of the MPs. It is anticipated that draft laws on conflict of interest and code of ethics will cover this issue. Article 8 (Restrictions related to gifting) of the law on combating corruption also applies to MPs.

References:

The Law on Status of MPs, 1996 / The Law on Combating Corruption, 2004.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

28d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

According to the law on combating corruption, MPs must submit their reports to the authority identified by the Parliament. In this case, it is a Financial Commission of the Parliament. However, there is no independent auditing of the asset disclosure forms of members of the national legislature.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

28e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

In this stage, this is not applicable for Azerbaijan. There are no regulations restricting post-government private sector employment for national legislators. However, it is expected that the draft laws on conflict of interest and code of ethics will cover this issue.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

28f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the regulations governing gifts and hospitality offered to national legislators are not effective.

References:

Interview with journalists, politicians and lawyers.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

28g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | **0**

Comments:

This is not applicable for Azerbaijan. In practice, national legislative branch asset disclosures are not audited.

References:

Interview with politicians and lawyers.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

29. Can citizens access the asset disclosure records of members of the national legislature?

0

29a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

Theoretically, citizens can request the asset disclosure records of the MPs. However, there is no regulation that requires public access to the asset disclosure records of members of the national legislature. Most likely, the request would be rejected based on the intrusion into the private life of the MPs.

References:

Interview with politicians and lawyers.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

29b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Interview with lawyers.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

29c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Interview with lawyers.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30. Can citizens access legislative processes and documents?

33

30a. In law, citizens can access records of legislative processes and documents.

YES | NO

Comments:

Articles 50 and 57 of the Constitution regulate citizens' rights to request and access information. The law on obtaining information defines the appeal mechanisms and time frames. In addition, the law on internal regulation of the Milli Mejlis (Parliament) indicates that open meetings records are publicly available for media and short reports are regularly published in the printed media.

References:

Constitution of the Republic of Azerbaijan, 1995 / The Law on Obtaining Information, 2005 / The Law on Internal Regulation of the Milli Mejlis (Parliament), 1996.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

30b. In practice, citizens can access these records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

Except for reports published in the newspapers, the citizens can not access these records.

References:

Interview with lawyers and journalists.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access these records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Access to the records, when available, is free of charge.

References:

Interview with lawyers and journalists.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24
III-3. Judicial Accountability

31. Are judges appointed fairly?

83

31a. In practice, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

Recruitment of judges, as regulated by the law on court and judges (as amended in 2005), takes place on the basis of a written and oral examination, evaluation by a judge selection committee (11-member committee of judges and legal experts established by the Judicial Legal Council). After a long training period and much consideration, the Judicial Legal Council will recommend candidates to the president. The Judicial-Legal Council is a self-governing public entity composed of 15 members. Its duties are to ensure the organization and operation of the court system, to arrange for the selection of candidates to judicial posts, to decide on the transfer and promotion of judges, to evaluate the work of judges, as well as other issues relating to courts and judges. Judges are appointed until their retirement at the age of 65. They can only be removed from office by a simple majority decision from the Parliament, or with a majority of 83 votes in the case of judges of the Constitutional, Supreme and Appeals Courts.

References:

The Law on Court and judges, 1997.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight.

31b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 126 of the Constitution, judges must be citizens of the Azerbaijan Republic, not younger than 30, having voting right, higher juridical education and at least five-years experience practicing law. Judges may not occupy any other posts. They may not be involved in business, commercial and other payable activities, except scientific, pedagogical and creative activities. They may not be involved in political activities or join political parties. They cannot may receive any other income, besides their wages and money for scientific, pedagogical and creative activities.

References:

Constitution of Azerbaijan, 1995.

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

31c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

The judges of courts of first instance are appointed by presidential decree, the judges of the Supreme Court and Courts of Appeal are appointed by Parliament, upon a recommendation by the President.

References:

The Constitution of Azerbaijan, 1995.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

32. Can members of the judiciary be held accountable for their actions?

21

32a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

The law on courts and judges call judges to consider all aspects of the each particular case, but judges are free to give reasons for their decisions.

References:

The Law on Court and Judges, 1997.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

32b. In practice, members of the national-level judiciary give reasons for their decisions.

Comments:

In practice, judges can both give clear reasons for their decisions or leave their decisions unclear.

References:

Interview with lawyers.

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

32c. In law, there is an ombudsman (or equivalent agency or mechanism) for the national-level judicial system.

YES | NO

Comments:

The Judicial Legal Council has the authority to institute disciplinary procedures against a judge, as recommended by the chairman of the Supreme Court, the chairman of the Court of Appeal, the chairman of the Supreme Court of the Nakhchivan Autonomous Republic or by the minister of Justice. According to Article 112 of the law on court and judges the Judicial Legal Council can reprimand a judge or propose to the relevant executive body (the president) that the judge be transferred to a different post, demoted or dismissed from his/her post. Appeals can be made against disciplinary measures.

References:

The Law on Courts and Judges, 1997.

YES: A YES score is earned if there is a ombudsman or equivalent mechanism for the judicial system. A judicial ombudsman is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a judicial ombudsman.

32d. In law, the judicial ombudsman (or equivalent agency or mechanism) is protected from political interference.

YES | NO

Comments:

According to the law on the Judicial Legal Council, the Council is an independent body and protected from political interference. However the Judicial Legal Council is under total control of the minister of Justice.

References:

The Law on Judicial-Legal Council, 2004 / Interview with lawyers.

YES: A YES score is earned if there are formal rules establishing that the judicial ombudsman is operationally independent from political interference by the executive, legislative or judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial ombudsman. A NO score is given if the judicial ombudsman function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

32e. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 112 of the law on courts and judges, people can apply directly to the Judicial Legal Council to initiate disciplinary proceedings if they have information about the involvement of a judge in corruption. In practice, initiating the investigation is purely up to the minister who chairs the Council.

References:

The Law on Courts and Judges, 1997/ Interview with lawyers.

100: The ombudsman aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The ombudsman is fair in its application of this power.

75:

50: The ombudsman will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The ombudsman, though limited in effectiveness, is still fair in its application of power.

25:

0: The ombudsman rarely investigates on its own or cooperates in other agencies' investigations, or the ombudsman is partisan in its application of this power.

32f. In practice, when necessary, the judicial ombudsman (or equivalent agency or mechanism) imposes penalties on offenders.

Comments:

If a judge is found to be involved in corruption, the Judicial Legal Council can reprimand him/her, or propose to have him/her transferred or demoted. Again, imposing this penalty is up to the minister who chairs the Council.

References:

The Law on Courts and Judges, 1997/ Interview with lawyers.

100: When rules violations are discovered, the ombudsman is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The ombudsman enforces rules, but is limited in its effectiveness. The ombudsman may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The ombudsman does not effectively penalize offenders. The ombudsman may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The ombudsman may be partisan in its application of power.

III-4. Budget Processes

33. Can the legislature provide input to the national budget?

67

33a. In law, the legislature can amend the budget.

YES | NO

Comments:

According to the Article 95, (issues solved by Milli Mejlis), the Milli Mejlis (Parliament) has the authority to ratify the state fiscal budget recommended by the president and exercising control over its use. The Milli Mejlis can amend the budget when it is necessary.

References:

Constitution of the Republic of Azerbaijan, 1995 / The Law on State Budget, 2002 / Interview with Sabit Bagirov, a leading expert in the country.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can approve, but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

33b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Parliament approves all budget related expenditures. According to the law on state budget, the annual budget period begins on the 1st of January and ends the 31st of December. The Ministry of Economic Development starts to prepare the budget 11 months prior to the new budget year. In addition, according to the law, the draft law on the state budget must be forwarded no later than October 15 for discussion and approval by the Milli Mejlis. The draft of the state budget is adopted in the Milli Mejlis no later than December 20 of the current year.

References:

The Law State Budget, 2002 / Interview with Sabit Bagirov, a leading expert in the country.

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

33c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

34. Can citizens access the national budgetary process?

8

34a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Only the Milli Mejlis conducts debates on the national budget. Because of the limited number of opposition seats, the debates are weak.

References:

Interview with leading experts.

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

34b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

In practice, citizens provide no input at the budget hearings.

References:

Interview with Sabit Bagirov, a leading expert in the country.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

34c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

According to the law on obtaining information, citizens can access public information (itemized budget allocations are also considered to be public information). However, the law is new and so far such kind of specific inquiries have not been recorded by CSOs.

References:

Interview with Sabit Bagirov, a leading expert in the country.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

35. In law, is there a separate legislative committee which provides oversight of public funds?

100

35. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

The legislature has a special commission on the budget. The commission reviews quarterly and annual budget reports. According to the Article 20, (report on state budget execution) of the budget law, annual reports on budget execution must be submitted to the legislature no later than May 15. According to the Article 21 of the law, the legislature and its accounting chamber, exercise control over the use of the state budget. Nevertheless, considering limited personnel and other sources, the chamber manages to cover only 10 percent of budget expenditures. Along with the accounting chamber, the Ministry of Finance also has a special department.

References:

Interview with Sabit Bagirov, a leading expert in the country.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists. A NO score is earned if there is a body executing this function but it is not under the direction of the legislature.

36. Is the legislative committee overseeing the expenditure of public funds effective?

13

36a. In practice, department heads regularly submit reports to this committee.

100 | 75 | **50** | 25 | 0

Comments:

The department heads submit reports to the commission members. Though, in many cases the reports lack important details.

References:

Interview with Sabit Bagirov, a leading expert in the country.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

36b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

There are a limited number of opposition seats in the Parliament. Therefore, the opposition is not capable of being a real opponent.

References:

Interview with Sabit Bagirov, a leading expert in the country.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

36c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In reality, the Commission is under control of the government.

References:

Interview with Sabit Bagirov, a leading expert in the country.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

36d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Neither the Commission nor the Parliament has the power to do this. This depends on the executive.

References:

Interview with Sabit Bagirov, a leading expert in the country.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

44
IV-1. Civil Service Regulations

37. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

37a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The law on civil service regulates relations between the state and civil servants..The law on civil service and the law on

combating corruption require an impartial, independent and fairly managed civil service. An ethics code for civil servants is expected to be passed by the Parliament.

References:

The Law on Civil Service, 2000 / The Law on Combating Corruption, 2004.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

37b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

Comments:

According to the Article 7.1 of the law on combating corruption, the next of kin of an official may not hold any office under his or her direct subordination, except for the elective offices and other cases provided for in the legislation. Persons who violate the requirements of Article 7.1 shall, within 30 days of the finding of that violation, be transferred. When this is not possible, either of the persons concerned will be dismissed from his or her office. The persons dismissed from their office may hold office in other bodies, institutions, enterprises or organizations. It is anticipated that the new laws on conflict of interest the new and code of ethics for civil servants will broadly cover these issues.

References:

The Law on Combating Corruption, 2004.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

37c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Civil servants may appeal in administrative way or to the appropriate court based on the requirements of the civil procedural code.

References:

Civil Procedure Code, 2000.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

37d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

Comments:

The criminal code considers bribery a crime and, depending on the legal circumstances, sentences can be for several years. In addition, according to Article 27 of the law on civil service, person shall be ineligible for civil service in the following cases: if there is a court decision that he/she has no legal capabilities or has limited legal capabilities; if the court has deprived him/her of right to hold a civil position for certain period of time.

References:

Criminal Code, 2000 / The Law on Combating Corruption, 2004.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

38. Is the law governing the administration and civil service effective?

28

38a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In practice, civil servants are not protected from political interference. Civil servants, particularly senior officials, are forced to be members of the ruling party.

References:

Interview with some senior civil servants.

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

38b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In many cases, civil servants are appointed based on a personal relationship, network, regional factors, political interests and bribery.

References:

Interview with some senior civil servants.

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

38c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

Comments:

There are many cases in which high-ranking officials sons, daughters or close relatives are in high governmental positions.

References:

Interview with journalists and civil servants.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

38d. In practice, civil servants have clear job descriptions.

100 | 75 | **50** | 25 | 0

Comments:

Civil servants do not always have clear job descriptions. Sometimes supervisors ask them to do the jobs that are not related to their positions.

References:

Interview with journalists and civil servants.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

38e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | **75** | 50 | 25 | 0

Comments:

In practice, civil servant bonuses constitute only a small fraction of their total pay. However, it depends on the decisions of their supervisors and where the civil servants work.

References:

Interview with some senior civil servants.

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

38f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The government does not publish civil servants' positions along with the number of positions actually filled.

References:

Interview with civil servants and journalists.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

38g. In practice, the independent redress mechanism for the civil service is effective.

Comments:

In practice, if a senior official or minister is dismissed from their position, most likely, it will be a waste of time and energy to seek redress in the courts.

References:

Interview with lawyers and civil servants.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

38h. In practice, in the past year, the government has paid civil servants on time.

Comments:

In practice, the government agencies pay civil servants on time.

References:

Interview with Sahib Mammedov, Citizens Labor Rights Protection League.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

38i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

In practice, if civil servants have connections and political contacts in the government, they can be forgiven” in order to gain a new position. Also, there are a limited number of cases in which civil servants have been convicted of corruption.

References:

Interview with civil servants.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

39. Are there regulations addressing conflicts of interest for civil servants?

33

39a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

Comments:

The law on combating corruption and civil servants regulates the general aspects of this issue. However, the new draft laws on a code of ethics and conflicts of interest will broadly cover this matter.

References:

An analytical review of the draft laws on Conflict of Interest Law for Civil Servants” and “Code of Ethics for Civil Servants,” American Bar Association, 2006.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

39b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

There are no restrictions on civil servants entering the private sector after leaving the government. However, the new draft laws on the code of ethics and conflicts of interest will cover this issue.

References:

An analytical review of the draft law on Conflict of Interest Law for Civil Servants and Code of Ethics for Civil Servants, American Bar Association, 2006.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

39c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

Comments:

According to the Article 8 (restrictions related to gifting) of the law on combating corruption, in cases, where gifts are received by an official in connection with performing his or her official duties cost more than US\$50, they are considered to belong to the state authority or municipal body in which that official works. If a gift given to an official is envisaged for his or her personal use, that official may obtain the gift by paying the difference of its price to the state authority or municipal body in which that official works. When entering into civil contracts, officials are prohibited from obtaining any privileges or advantages relating to their service activity.

References:

The Law on Combating Corruption, 2004.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

39d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Interview with lawyers.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no control mechanism and, in many cases, civil servants do not report gifts or hospitalities that they are offered.

References:

Interview with lawyers.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

39f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

Comments:

In practice, this is not implemented.

References:

Interview with lawyers and civil servants.

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

40. Can citizens access the asset disclosure records of senior civil servants?

0

40a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The law on procedures of declaration of financial information by public officials demands asset disclosure records by senior civil servants. However, there is no implementation mechanism of this law. Except during the election period, and if the civil servants are registered as candidates, the citizens cannot access the asset disclosure records of senior civil servants.

References:

Interview with lawyers.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

40b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Interview with lawyers.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

40c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This is not applicable.

References:

Interview with lawyers.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

41. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

41a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is no special law covering whistle-blowing and there are no special procedures to cover this issue. However, draft laws on conflict of interest and a code of ethics for civil servants are considering whistle-blower measures for civil servants. According to the Azerbaijani criminal legislation, anonymous reports are not allowable evidence in court hearings. Citizens of Azerbaijan, and therefore also civil servants, are obliged to report known, imminent or committed serious crimes, which include all corruption offenses.

References:

An analytical review of the draft law on Conflict of Interest Law for Civil Servants and Code of Ethics for Civil Servants, American Bar Association, 2006 / Criminal Code, 2000.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

41b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

In practice, the government does not have whistle-blower protection measures and there is no witness protection program in Azerbaijan. However, some government officials, such as the police, are required, on the basis of Article 62 of the disciplinary statute of the Ministry of Internal Affairs, to report to their direct superiors, or if need be to their higher superiors, violations of the law that they come across in exercising their duties.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

41c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is no law covering the private sector.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

41d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | **0**

Comments:

People who report about these issues are treated like a rat. Usually the management, and even other colleagues, try to get rid of the person.

References:

Interview with journalists and civil servants.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

42. Is there an effective internal mechanism (i.e. phone hotline, e-mail address, local office) where civil servants can report corruption?

19

42a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Many state agencies, such as the Ministry of Internal Affairs and the Ministry of Tax and Customs have emails and hot-lines where people can report corruption. There have also been internal investigation units in several ministries.

References:

Interview with government officials.

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

42b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | **25** | 0

Comments:

Regular funding comes from the state budget. However, funding is not issue in this case. The issue is the interest of the ministry to fight corruption.

References:

Interview with government officials.

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

42c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

References:

Interview with government officials.

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

42d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

Comments:

Not applicable.

References:

Interview with government officials.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

9 IV-3. Procurement

43. Is the public procurement process effective?

80

43a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

The law of the Republic of Azerbaijan on public procurements regulates this matter. Article 12 on cases of falsification at public procurements; Article 13 on conflict of interests at public procurements; Article 38 on Tender commission liability; Article 39 on prohibition of negotiations with contractors of the law is addressing conflict of interest for public procurement officials.

References:

The Law of the Republic of Azerbaijan on Public Procurements, 2001.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private gain for public procurement officials.

NO: A NO score is earned if no such rules exist.

43b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

According to the Article 4 of the law on public procurement, the State Agency on Procurement must take part in governing public procurements in the Republic of Azerbaijan. It must work out rules, instructions and other documents on public procurements and submit them to the appropriate executive authorities for approval. It must provide procurement agencies with methodical and organizational assistance while conducting public procurements, give recommendations, set up professional level improvement courses, hold seminars and conferences and prepare relevant study materials.

References:

The Law of the Republic of Azerbaijan on Public Procurements, 2001.

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, or voluntary.

43c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | **0**

Comments:

In practice, procurement and tendering are some of the least transparent areas of government.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

43d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Law on Combating Corruption” and “Procedures on Declaration of Financial-Related Information by Public Officials demands public officials submit annual reports about property and financial income to the Commission Combating Corruption under the State Council. However, there is no mechanism to implement the law. It is anticipated that a special regulation to implement the law will be adopted this year.

References:

Law on Combating Corruption, 2004 / Law on Procedures on Declaration of Financia- related Information by Public Officials,” 2005.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

43e. In law, major procurements require competitive bidding.

YES | NO

Comments:

The law requires competitive bidding for major procurements.

References:

The Law of the Republic of Azerbaijan on Public Procurements, 2001.

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

43f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

Comments:

In law, there are formal requirements that limit the extent of sole sourcing.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

43g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

Comments:

In law, unsuccessful bidders can instigate an official review of procurement decisions, the Articles of 55; 56; 57; 58 and 59 of the law on public procurement regulate this procedure.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

43h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

In law, unsuccessful bidders can challenge procurement decisions in a court of law. Article 60 of the law on public procurement regulates this issue.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

43i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

The State Agency on Public Procurement has the right to prohibit companies that have violated procurement regulations to participate in future procurement bids.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

43j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

Comments:

There are no records of court decisions against such companies and none were banned from participating in future procurement bids.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

44. Can citizens access the public procurement process?

63

44a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

According to the law on public procurement, all resident and non-resident legal persons or groups of legal persons, are entitled to take part in public procurement procedures held in the Republic of Azerbaijan.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if procurement rules are, by law, open to the public.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

44b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

Comments:

Several articles in the law on public procurement regulate this process.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

44c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, citizens can access public procurement regulations within five banking days, through the media. However, some ministries are not interested in giving citizens access to public procurement regulations.

References:

Interview with local businessmen.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If public procurement regulations are available, they are usually for free.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

44e. In practice, major public procurements are widely advertised.

100 | 75 | 50 | 25 | 0

Comments:

Even though some major public procurements are advertised in the media, some state bodies such as Ministry of the Transportation or the State Oil Company hide major public procurements.

References:

Interview with local businessmen.

100: There is a formal process of advertising public procurements. This may include a government Web site, newspaper advertising, or other official announcements. All major procurements are advertised in this way.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

44f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

Comments:

They are usually announced via the media. However, some ministries are not interested in announcing the results of the major public procurement bids.

References:

Interview with local businessmen.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

45. Is the privatization process effective?

33

45a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

According to Article 9.1. of the law on privatization of state-owned property (2001), during the privatization of state-owned property the following can act as buyers: 9.1.1. Citizens of the Azerbaijan Republic, foreigners and stateless persons; 9.1.2. All legal entities registered in Azerbaijan Republic with exception of those indicated in paragraph 9.2 of this article; 9.1.3. Foreign legal entities. According to Article 9.2., the following cannot act as buyers during the privatization state-owned property: 9.2.1. Legal entities if more than 20 percent of their stocks or of a share in the registered capital belong to the state; 9.2.2. Bodies of the executive power; 9.2.3. Municipalities. 9.3. Local investors have unlimited right to participate in all forms and methods of privatization of the state-owned property.

References:

Interview with Qubad Ibadoglu, Director of the Economical Research Center.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

45b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

There is no law specifically addressing the conflicts of interest of government officials involved in privatization. However, the law on civil service has general provisions about restrictions of certain type of activities. In many cases, the law is violated by senior government officials who have interests in privatizing certain property or land.

References:

Interview with Qubad Ibadoglu, Director of the Economical Research Center.

YES: A YES score is earned if there are formal regulations defining and regulating conflicts of interest for government officials involved in privatization.

NO: A NO score is earned if there are no such formal regulations.

45c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

Comments:

There is no conflict of interest law. The law is drafted and expected to be adopted by Parliament.

References:

An analytical review of the draft laws on Conflict of Interest Law for Civil Servants and Code of Ethics for Civil Servants, American Bar Association, 2006.

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

46. Can citizens access the terms and conditions of privatization bids?

75

46a. In law, citizens can access the terms and conditions of privatization bids.

YES | NO

Comments:

According to Article 25 of the law on privatization of state property, an announcement of the privatization of state-owned property must be placed in the official media at least 30 days before the announced day of selling of the property.

References:

The Law on Privatization of State Property, 2000.

YES: A YES score is earned if there is a formal process of publishing the details of privatization bids that makes information available to all citizens.

NO: A NO score is earned if there is no formal publication process, or if any citizens are excluded by law from accessing this information.

46b. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

According to the Article 25.3 of the Law on Privatization of State Property, information on privatization of the state-owned enterprises shall be published in the media within 15 days. The content of information on results of privatization of the state-owned property shall be included to the State Program.

References:

The Law on Privatization of the State Property, 2000.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

46c. In practice, citizens can access the terms and conditions of privatization bids within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Except announcements in the newspapers, citizens have difficulties accessing the terms and conditions of privatization bids.

References:

Interview with Qubad Ibadoglu, Director of the Economical Research Center.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

46d. In practice, citizens can access the terms and conditions of privatization bids at a reasonable cost.

100 | 75 | **50** | 25 | 0

Comments:

If the information is available, it is free of charge.

References:

Interview with Qubad Ibadoglu, Director of the Economical Research Center.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁷³National Ombudsman

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

47. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

In the law, there is a national ombudsman institution.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001 / <http://www.ombudsman.gov.az>.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

48. Is the national ombudsman effective?

59

48a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

According to Article 5 of the law on the ombudsman, the commissioner shall be independent and obey only the Constitution and laws of the Republic of Azerbaijan. The independence of the commissioner shall be ensured by the following: 5.2.1 He or she shall not be replaced, while in office; 5.2.2 He or she shall enjoy immunities; 5.2.3 It shall be inadmissible to interfere with his of her activities by any governmental or municipal body or official; 5.2.4 He or she shall be provided with financial and social guarantees. 5.3 Declaration of a state of emergency or martial law shall not cease or restrict the activities of commissioner.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

48b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is new for Azerbaijan. The ombudswomen was elected by Parliament in 2002, on the recommendation of the

president's office. She is heavily influenced by the president's office.

References:

Interview with Human Rights Activists.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

48c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The inviolability of the commissioner may be terminated only by a decision of the Milli Mejiis, taken by an 83-vote majority following a motion of the prosecutor general.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001.

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

48d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the ombudswoman has a full-time staff.

References:

<http://www.ombudsman.gov.az>.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

48e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

Because the ombudswoman is not independent, in practice agency appointments do not really support the independence of the agency.

References:

Interview with Human Rights Experts at the Academy of Science of Azerbaijan.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

48f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The ombudswoman receives regular funding from the state budget.

References:

Interview with Human Rights Experts at the Academy of Science of Azerbaijan.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

48g. In practice, the agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

According to Article 14 (annual report of the commissioner) of the law, no later than two months after the end of each year, the commissioner must submit to the president, and to the Milli Mejiis, an annual report on the protection of human rights in the country. However, the reports do not have any genuine impact on the protection of the human rights in the country.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

48h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, the national ombudswoman can initiate investigation.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001.

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

48i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

It depends on who the offenders are, as well as the political inclinations of the ombudswoman.

References:

Interview with Human Rights Experts at the Academy of Science of Azerbaijan.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

48j. In practice, the government acts on the findings of the agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

It depends on the ombudswoman's determination, if the government agencies will act on the findings.

References:

Interview with Human Rights Activists.

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

48k. In practice, the agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Articles 10, 12 and 13 of the law regulate this matter. In general, applications must be reviewed within 30 days.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

49. Can citizens access the reports of the ombudsman?

100

49a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

According to Article 14 of the law, the annual report must be submitted to the Cabinet of Ministers, the Constitutional Court, the Supreme Court and the Prosecutor-General. The report must be published in the newspaper Azerbaijan” and in the journal “Compilation of Legislative Acts of the Republic of Azerbaijan”.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

49b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The annual reports published in the newspaper. However, some parts are available on Ombudswoman’s website.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001/ <http://www.ombudsman.gov.az>.

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

They are available for free and are open for public use.

References:

Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan, 2001/ <http://www.ombudsman.gov.az>.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

50. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

There is an Auditors Chamber and it is actively regulated by the law on audit service.

References:

The Law on Audit Service, 1994.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

51. Is the supreme audit institution effective?

50

51a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The law on audit service and regulations and normative acts of the Auditors Chamber protect the supreme audit institution and independent audits from political interference.

References:

Interview with a member of the Auditors Chamber.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

51b. In practice, the head of the agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Parliament approves and dismisses the chairman and deputy chairman of the Auditors Chamber. However, the executive branch has influence on the appointment and dismissal of the chairman of the Auditors Chamber.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

51c. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a professional, full-time staff.

References:

Interview with a member of the Auditors Chamber.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

51d. In practice, agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

In practice, agency appointments do not support the independence of the agency, because the agency is not independent. In reality, the Auditors Chamber is heavily influenced by the Ministry of Finance and the Ministry of Taxes.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

51e. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the agency receives regular funding from the state budget. It also receives fees for issuing licenses to independent auditors.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

51f. In practice, the agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

In practice, because the agency is heavily influenced by the executive branch, the reports of the Auditors Chamber have never been shared publicly.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

51g. In practice, the government acts on the findings of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The findings of the agency are dependent on the decisions of the executive branch rather than the Auditors Chamber.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

51h. In practice, the supreme audit institution is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

In theory, the Auditors Chamber can initiate its own investigations, but in practice the investigations depend on the executive branch, particularly, the Ministry of Finance and the Ministry of Taxes.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

52. Can citizens access reports of the supreme audit institution?

33

52a. In law, citizens can access reports of the agency.

YES | NO

Comments:

Citizens can request the reports of the agency. Nevertheless, there are no cases of citizens attempting to access the audit reports.

References:

Interview with a member of the Audit Chamber / <http://www.audit.gov.az/index.php>.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

52b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Not applicable.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If the report is published, it is free of charge.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

61

V-3. Taxes and Customs

53. In law, is there a national tax collection agency?

53. In law, is there a national tax collection agency?

YES | NO

Comments:

There is a Ministry of Taxes, which acts as a national tax collection agency.

References:

<http://www.taxes.gov.az>.

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

54. Is the tax collection agency effective?

100

54a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a professional, full-time staff.

References:

<http://www.taxes.gov.az>.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

54b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency receives regular funding from the state budget.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

55. In practice, are tax laws enforced uniformly and without discrimination?

50

55. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Unlike previous years, there have been no serious problems for small taxpayers. However, tax officers and taxpayers can always bargain if there is certain type of small tax violation. The higher taxpayers also must negotiate a certain amount of money quarterly or monthly to pay tax authorities in order to reduce their company's production in the tax reports.

References:

Interview with businessmen.

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

56. In law, is there a national customs and excise agency?

100

56. In law, is there a national customs and excise agency?

YES | NO

Comments:

There is a Customs Committee that also acts as an excise agency.

References:

<http://www.az-customs.net/az>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

57. Is the customs and excise agency effective?

100

57a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a professional, full-time staff.

References:

<http://www.az-customs.net/az>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

57b. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The agency annually receives regular funding from the state budget.

References:

Interview with Qubad Ibadogly, Director of the Economical Research Center.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

58. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Not necessarily, because it depends on contacts in the government and money. If a bribe is paid, the case is closed.

References:

Interview with former Customs officials.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. Financial Sector Regulation

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

100

59. In law, is there a financial regulatory agency overseeing publicly listed companies?

YES | NO

Comments:

The State Securities Committee of Azerbaijan is a financial regulatory agency that oversees publicly listed companies.

References:

Interview with Inqilab Ahmadov, Director of the Public Finance Monitoring Center.

YES: A YES score is earned if there is an agency tasked with overseeing publicly listed companies in the public interest and ensuring that disclosure rules are met.

NO: A NO score is earned if this function is spread over several agencies or does not exist.

60. Is the financial regulatory agency effective?

70

60a. In law, the financial regulatory agency is protected from political interference.

YES | NO

Comments:

The chairman is appointed by the president. The chairman is not really protected from political interference, neither legally, nor practically.

References:

Interview with Inqilab Ahmadov, Director of the Public Finance Monitoring Center.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

60b. In practice, the agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The agency has a professional and full-time staff.

References:

Interview with employee of the State Security Committee of Azerbaijan.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

60c. In practice, the agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The State Securities Committee receives regular funding from the state budget.

References:

Interview with employee of the State Security Committee of Azerbaijan.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

60d. In practice, when necessary, the financial regulatory agency independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the financial regulatory agency can independently initiate investigations.

References:

Interview with Inqilab Ahmadov, Director of the Public Finance Monitoring Center.

100: When irregularities are discovered, the agency is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

60e. In practice, when necessary, the financial regulatory agency imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

When necessary, the commission imposes penalties on offenders.

References:

Interview with Inqilab Ahmadov, Director of the Public Finance Monitoring Center.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partis

61. Can citizens access the financial records of publicly listed companies?

46

61a. In law, citizens can access the financial records of publicly listed companies.

YES | NO

Comments:

Citizens can access the financial reports.

References:

Interview with Sabit Bagirov, a leading expert.

YES: A YES score is earned if the financial information of all publicly traded companies is required by law to be public.

NO: A NO score is earned if any category of publicly- owned or publicly-traded company is exempt from this rule, or no such rules exist.

61b. In practice, the financial records of publicly listed companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the financial records of publicly listed companies are randomly updated.

References:

Interview with Inqilab Ahmadov, Director of the Public Finance Monitoring Center.

100: Publicly traded companies always disclose financial data, which is generally accurate and up to date.

75:

50: Publicly traded companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value to investors.

61c. In practice, the financial records of publicly listed companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of some publicly listed companies are audited. However, in the coming years some major publicly listed companies will be audited.

References:

Interview with leading economists.

100: Financial records of all public companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of public companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: Publicly traded companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

61d. In practice, citizens can access the records of disciplinary decisions imposed by the government on publicly-listed companies.

100 | 75 | 50 | 25 | 0

Comments:

In practice, it depends on the circumstances, whether citizens can access these records publicly.

References:

Interview with leading economists.

100: These records are freely available to all citizens through a formal official process.

75:

50: These records are available to all citizens, with some exceptions.

25:

0: These records are generally not available through official processes.

61e. In practice, citizens can access the financial records of publicly listed companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Records of the companies are available within a reasonable time period.

References:

Interview with Inqilab Ahmadov, Director of the Public Finance Monitoring Center.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

61f. In practice, citizens can access the financial records of publicly listed companies at a reasonable cost.

Comments:

If records are available, they are free of charge.

References:

Interview with Inqilab Ahmadov, Director of the Public Finance Monitoring Center.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

72 V-5. Business Licensing and Regulation

62. Are business licenses available to all citizens?

75

62a. In law, anyone may apply for a business license.

YES | NO

Comments:

According to the law "On the Entrepreneurship Activity" subjects of such activity can be Azerbaijani citizens, citizens of other states, persons without citizenship who are not restricted by law in their competency and capacity. Restrictions can apply to some kinds of business activities, which are established by relevant laws.

References:

The Law on Entrepreneurship activities, 1992.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required.

62b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

In the event that a person is denied a license, he or she may appeal to the licensing body. The denial of the state registration can also be challenged in court.

References:

Article 11 of the Law on Entrepreneurship activities, 1992.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

62c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, the relevant executive agency has to make a decision on issuing or rejecting a license within 15 days after receiving the written request. However, in practice there are some artificial impediments for businessmen, such as bribes.

References:

The Law on Entrepreneurship activities, 1992 / Interview with businessmen.

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months.

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

62d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In the law and regulations, citizens are required to pay state duties for obtaining a license. The price depends on the type of license and activity. However, citizens can be required to pay a bribe as well.

References:

Interview with businessmen.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

63. Do businesses receive equitable regulatory treatment from the government?

63

63a. In law, basic business regulatory requirements for meeting health, safety, and environmental standards are transparent and publicly available.

YES | NO

Comments:

Basic business regulatory requirements are transparent and publicly available.

References:

Interview with businessmen.

YES: A YES score is earned if basic regulatory requirements for meeting health, safety, and environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

63b. In practice, business inspections by the government are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Depending on the type of the license and activity, the relevant executive agency conducts an inspection. In many cases, inspectors and businessmen negotiate monthly or quarterly bribes for favorable treatment.

References:

Interview with businessmen.

100: Business inspections by the government (i.e. health, safety, or environmental inspections) are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government (i.e. health, safety, or environmental inspections) are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections (i.e. health, safety, or environmental inspections) are routinely carried out by the government in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ⁶⁵Anti-Corruption Law

64. Is there legislation criminalizing corruption?

89

64a. In law, attempted corruption is illegal.

YES | NO

Comments:

The criminal code of Azerbaijan criminalized corruption. Chapter 33 of the code, criminalized corruption offenses and offenses against public service interests, as well as, other commercial and non-commercial organizations. In law, any attempted corruption is illegal. According to the Article 9 of the law on combating corruption, the request or receipt by an official, directly or indirectly, of material and other values, privileges or advantages, for himself or herself or for third persons, or the acceptance of an offer or a promise of such material as other values, privileges or advantages, for acting or refraining from acting in the exercise of his or her service duties or powers.

References:

Law on Combating Corruption, 2004 / Criminal Code, 2000.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

64b. In law, extortion is illegal.

YES | NO

Comments:

Extortion is illegal, according to the Criminal Code.

References:

Criminal Code, 2000.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

64c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

Comments:

According to the Article 312 of the criminal code, giving a bribe (active bribery) is illegal. In addition, Article 9.2.2. of the law on combating corruption defines active bribery as an offense related corruption.

References:

The Law on Combating Corruption, 2004 / Criminal Code, 2000.

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

Comments:

According to the Criminal Code, receiving a bribe is illegal. Article 311.1 (passive bribery) of the code defines receiving a bribe as requesting or receiving by official person directly or indirectly, personally or by intermediary of third persons, any material and other values, privileges or advantages for himself or third persons, for any act (inaction), as well as general patronage or indifference, in the exercise of his (or her) official functions. This shall be punished by four to eight years in prison with deprivation of the right to hold certain positions and be engaged in certain activities for up to three years with confiscation of property. In addition, the Law on Combating Corruption also identifies passive corruption as an offense.

References:

Criminal Code, 2000 / The Law on Combating Corruption, 2004.

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

64e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Bribing a foreign official while in domestic territory is illegal. Azerbaijan also signed the Criminal Law Convention on Corruption (1999) with some reservations.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

64f. In law, using public resources for private gain is illegal.

YES | NO

Comments:

According to the criminal code and law on combating corruption, using public resources for private gain is illegal. However, the term "public resources" is not defined, and there is currently no conflicts of interest law that governs the conduct of government workers. An ethics code, which would place some limitations on this matter, is pending before parliament.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

According to the Article 284 of the criminal code, using confidential state information for private gain is illegal.

References:

Criminal Code, 2000.

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

64h. In law, money laundering is illegal.

YES | NO

Comments:

According to criminal legislation, money laundering is illegal.

References:

Criminal Code, 2000.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

64i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

In the criminal legislation, conspiracy to commit a crime (i.e. organized crime) is illegal.

References:

Criminal Code, 2000.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

65. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The Commission on Combating Corruption under the State Council on Management of the Civil Service was established according to the Anti-Corruption Act of 2004. It acts as a specialized agency in the field of preventing corruption. The Commission is governed by the Constitution of the Republic of Azerbaijan, international treaties to which it is a party, acts of the Republic of Azerbaijan and other statutory instruments, as well as, this statute. The Commission is composed of and operated by 15 members who are appointed as follows: five members by the President of the Republic of Azerbaijan; five members by Milli Mejlis (Parliament); and five members by the Court of the Republic of Azerbaijan. The Commission sets its activities in cooperation with legislative, executive and judicial powers and regularly informs them on the state of the struggle against corruption. In 2004, within the General Prosecutor's Office, the Department on Combating Corruption was established as an investigative body.

References:

The Statute of the Commission on Combating Corruption under the State Council on Management of the Civil Service.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

66. Is the anti-corruption agency effective?

44

66a. In law, the agency (or agencies) is protected from political interference.

YES | NO

Comments:

In law, the commission is protected from political interference.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

66b. In practice, the agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Because members of the Commission on Combating Corruption are mainly law-enforcement officials and many of them represent the executive branch of the government, it would be naive to expect independence from the members of the Commission. Besides, all members are heavily influenced by the president's office.

References:

Interview with lawyers, politicians and journalist.

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

66c. In practice, the head of the agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

According to the statute on the Commission on Combating Corruption under the State Council, the chairperson of the Commission organizes and manages the activity of the Commission. Members of the Commission elect the chairperson by a simple majority of the votes. In practice, the chairman (also chief of the president's apparatus) is a politically powerful person and only the president can influence him. Appointment of the chief of the Department Combating on Corruption within the General Prosecutors Office has to be approved by the President.

References:

Interview with lawyers, politicians and journalists.

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

66d. In practice, appointments to the agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In general, appointments to the State Commission and Department on combating corruption are based on professional criteria.

The high-level public officials who were appointed to the Commission represent the major agencies involved with anti-corruption activities. A Permanent Secretariat is attached to Commission. The chair and members of the Secretariat are appointed by the Commission. The Secretariat fulfills organizational tasks related to arrangement of the meetings of the Commission, prepares documents for the issues to be raised in the Commission meetings and provides clerical support. The Secretariat is a public institution and its members are public servants.

References:

Interview with lawyers, politicians and journalists.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

66e. In practice, the agency (or agencies) has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

Comments:

Based on my contact with the staff of the Secretariat, it has a limited but well-educated, professional staff. The Department on Combating Corruption within the Prosecutors Office also has a professional and full-time staff.

References:

Authors interview with Secretariat and Department member.

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

66f. In practice, the agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Commission and Department on Combating Corruption are financed by the state budget.

References:

The Statute of the Commission on Combating Corruption under the State Council on Management of the Civil Service.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

66g. In practice, the agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Commission prepares an annual report and presents it to the president, Parliament and Constitutional Court.

References:

The Statute of the Commission on Combating Corruption under the State Council on Management of the Civil Service.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

66h. In practice, the agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The Commission and Department on Combating Corruption, within the Prosecutor's Office, have sufficient powers to carry out their mandates.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

66i. In practice, when necessary, the agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Criminal legislation regulates this matter. The Department on Combating Corruption under the General Prosecutor's Office is a specialized investigation agency.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

67. Can citizens access the anti-corruption agency?

25

67a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is difficult to comment on this. There is no public information available about how many complaints were received by the Commission and the Department on Combating Corruption.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

67b. In practice, citizens can complain to the agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

According to the law, citizens have a right to appeal all state agencies, but in practice there is no public confidence about activities of the Commission or Department on Combating Corruption.

References:

Interview with lawyers, politicians and journalists.

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

56
VI-3. Rule of Law

68. Is there an appeals mechanism for challenging criminal judgments?

83

68a. In law, there is a general right of appeal.

YES | NO

Comments:

The general right of appeal is regulated by several legislative acts, such as Articles 57, 60 and 65 of the Constitution.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

68b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law identifies the time frame for the appeal process, which varies on a case by case basis.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

68c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no official requirement to pay for appeals.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

69. In practice, do judgments in the criminal system follow written law?

0

69. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

In practice, judgments in criminal cases are often based on bribes and political influence, not on written law.

References:

Interview with defense lawyers and journalists.

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

70. In practice, are judicial decisions enforced by the state?

50

70. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

Judicial decisions are generally enforced by the state. Nevertheless, there are difficulties involved with the enforcement of decisions in civil and economical cases.

References:

Interview with defense lawyers and journalists.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

71. Is the judiciary able to act independently?

50

71a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

In law, there are formal rules establishing the independence of the judiciary from the executive and legislative branches.

References:

Interview with defense lawyers and journalists.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

71b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In law, national-level judges are protected from political interference. In practice, however, judges are heavily influenced by the executive agencies.

References:

Interview with defense lawyers and judges.

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

71c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | **NO**

Comments:

There is no transparent or objective system for distributing cases to national-level judges. In practice, the chairmen of the courts decide how to distribute the cases to judges. They often receive bribes from judges in exchange for the good cases.

References:

Interview with defense lawyers and judges.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

71d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

The judges are protected from removal without relevant justification. The law on courts and judges and the Judicial-Legal Council regulates this issue.

References:

The Law on Courts and Judges, 1997/ The Law on Judicial-Legal Council 2004.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

72. Are judges safe when adjudicating corruption cases?

72a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

During the study period, no judges were physically harmed because of adjudicating corruption cases.

References:

Interview with officials of the Ministry of Justice.

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

72b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

During the study period, no judges have been killed because of adjudicating corruption cases.

References:

Interview with officials of the Ministry of Justice.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

73. Do citizens have equal access to the justice system?

73a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

In practice, judicial decisions are not affected by racial or ethnic bias.

References:

Interview with journalists and lawyers.

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

73b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

In practice, women have full access to the judicial system.

References:

Interview with journalists and lawyers.

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence.

73c. In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the state provides legal counsel for defendants in criminal cases who cannot afford it.

References:

Constitution of the Republic of Azerbaijan, 1995.

100: State-provided legal aid is basic, but well trained and effective in representing the rights of indigent defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some indigent defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most indigent defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

73d. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

The legal system is fairly an affordable option for middle class citizens seeking to redress grievances in Azerbaijan.

References:

Interview with journalists and lawyers.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

73e. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

Comments:

The legal system is fairly an affordable option for small retail businesses seeking to redress grievances in Azerbaijan.

References:

Interview with journalists and lawyers.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

73f. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | **75** | 50 | 25 | 0

Comments:

The courtrooms are fairly accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

References:

Interview with officials of the Ministry of Justice.

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

74. Is the law enforcement agency (i.e. the police) effective?

50

74a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

In practice, appointments to the law-enforcement agency mainly depends on political, familial connections and money, rather than professional criteria.

References:

Interview with lawyers and journalists.

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

74b. In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the agency (or agencies) has a budget sufficient to carry out its mandate.

References:

Interview with law-enforcement officials.

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

74c. In practice, the agency is protected from political interference.

100 | 75 | 50 | **25** | 0

Comments:

In practice, the law-enforcement agencies are rarely protected from political interference.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

75. Can law enforcement officials be held accountable for their actions?

58

75a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

In law, there is an independent mechanism for citizens to complain about police action.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions.

NO: A NO score is earned if there is no such mechanism.

75b. In practice, the independent reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the complaints are usually left without any resolution or are ignored by the relevant executive agencies.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

75c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

According to the Article 215 of the criminal procedural code, the Prosecutor's Office investigates cases in which law-enforcement officials are involved in corruption.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity is separate from the regular police department.

NO: A NO score is earned if no such agency/entity exists.

75d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The Department on Combating Corruption under the General Prosecutor's Office has the right to independently initiate investigations, but in practice any investigation must be approved by the general prosecutor and subsequently with the President's Office.

References:

Interview with lawyers.

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

75e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

According to the Article 25 of the Constitution all citizens are equal to the Law and Court. Law enforcement officials are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

75f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | **50** | 25 | 0

Comments:

In practice, law enforcement officials are not immune from criminal proceedings.

References:

Interview with Alimammed Nuriyev, Coordinator of the National NGOs Anti-Corruption Network.

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.
