

Overall Score:

**64 - Weak**

Legal Framework Score:

**88 - Strong**

Actual Implementation Score:

**40 - Very Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>66</sup>Civil Society Organizations

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### 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:**

There are no legal limitations for citizens to form CSOs focused on anti-corruption or good governance. Under Article 58 of the Constitution, everyone has the right to establish any union. Under the Constitution, the only restrictions on the freedom of association apply to activity of unions intended to bring about the forcible overthrow of legal state power over the whole territory of the Republic of Azerbaijan or a part thereof.

The Law on Non-Governmental Organizations (Public Unions and Funds) does not specifically address forming CSOs on anti-corruption or good governance. However, Article 22.1 of the Law generally stipulates that NGOs may carry out any activities not prohibited by the law or their charters.

**References:**

- 1.The Constitution of the Republic of Azerbaijan
- 2.The Law of the Republic of Azerbaijan on Non-Governmental Organizations (Public Unions and Funds)  
<http://www.e-qanun.az>
- 3.Azerbaijan Legal Database

**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:**

Under the legislation, CSOs are free to accept funding from any foreign or domestic sources. The law does not specifically focus on anti-corruption or good governance. Article 24 of the Law on Non-Governmental Organizations (Public Unions and Funds) generally defines that CSOs may accept any funding which is not prohibited by law.

**References:**

- 1.The Law on Non-Governmental Organizations (Public Unions and Funds)
- 2.The Law on Grant  
<http://www.e-qanun.az>

**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:**

Article 5 of the Law on Grants requires CSOs to register all grants with the Ministry of Justice. Furthermore, the Ministry should provide general information to public on mass media regarding grants not less than once a year. In addition, according to Article 29 of the Law on Non-Governmental Organizations (Public Unions and Funds), CSOs shall maintain accounting in accordance with the legislation. Information about amount and structure of an NGO's income, as well as information about its property, expenses, number of staff, and salaries, shall not be a state or commercial secret. Funds shall be obliged to publish annual reports about their use of property. In this regard, citizens have the right to get information about the sources of funding through information requests since it is not confidential information by law.

**References:**

- 1.The Law on Grants
- 2.The Law on Non-Governmental Organizations (Public Unions and Funds)  
<http://www.e-qanun.az>

**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.

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

25

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:**

The registration of CSOs continues to be problematic in Azerbaijan. According to the 2008 NGO Sustainability Index published by USAID, the number of registered NGOs in Azerbaijan is approximately 3,100, of which 276 were registered in 2008. However, in practice there are many NGOs that operate without registration since they face registration difficulties. In other words, the Ministry of Justice does not tend to register independent anti-corruption/good governance CSOs. For instance, the registration documents of the Legal Advocacy Center were continuously returned starting from December 2007, and it has still not been registered. The continuous delays in registration of CSOs have also led to adoption of five judgments by the European Court of Human Rights in respect to Azerbaijan. The Strasbourg Court held that the significant delays as well as repeated failure of the Ministry of Justice to respond within the statutory time-limits to the requests of the applicants were found to violate Article 11 (freedom of association) of the European Convention on Human Rights and, accordingly, the government of Azerbaijan was fined. The judgment of the European Court of Dec. 19, 2008, describes about CSO named Azerbaijan Lawyers Forum where the group of lawyer applicants could not get their NGO registered for 6 years and the European Court found it breach of freedom of association. Put another way, it has become common to register CSOs after the involvement of the European Court on Human Rights.

**References:**

- 1) The Parliamentary Assembly of the Council of Europe, Report on the Functioning of Democratic Institutions in Azerbaijan, June 6, 2008 <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 2) Interview with Intigam Aliyev, president of the Legal Education Society, August 2009
- 3) 2008 NGO Sustainability Index for Azerbaijan, USAID [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2008/azerbaijan.pdf](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2008/azerbaijan.pdf)
- 4) European Court of Human Rights, Freedom of Association cases on Azerbaijan <http://www.echr.coe.int>

**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:**

In practice, the government increased pressure on CSOs in different ways. In fact the government mostly collaborates with pro-government CSOs, such as Azerbaijan Young Lawyers Union. There also some pressures from the government puts on international organizations, requesting them not to collaborate with certain independent CSOs that criticize the government's policy. For instance, the Legal Education Society could not win some projects where the government was also a party and reasoned it by pressure to international organizations.

**References:**

- 1) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008 [http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 2) Interview with Leyla Madatova, lawyer/NGO activist, August 2009
- 3) 2008 NGO Sustainability Index for Azerbaijan, USAID [http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2008/azerbaijan.pdf](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2008/azerbaijan.pdf)

**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:**

The Election Monitoring Center, a local NGO, was shut down by the government in 2008 for their criticizing work regarding elections. The Ministry of Justice filed a lawsuit to the court seeking deregistration and dissolution of the Election Monitoring

Center due to alleged technical flaws in its registration documents. The court granted the claim and the Center was closed. Later, the Appellate Court and the Supreme Court also upheld the trial court's ruling. According to Intigam Aliyev, a lawyer of the Center, currently this case is being prepared for the European Court of Human Rights.

**References:**

- 1) Information by the Legal Education Society  
<http://www.monitoring.az/index.php?lngs=aze&cats=1&ids=1124>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb, 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) 2008 NGO Sustainability Index for Azerbaijan, USAID  
[http://www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex/2008/azerbaijan.pdf](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex/2008/azerbaijan.pdf)

**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. YES is a positive score.

**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.

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

67

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

YES | NO

**Comments:**

It happens from time to time that civil society activists are illegally arrested and then released. As to imprisonment, it did not happen during the study period.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Interview with Leyla Madatova, NGO activist/lawyer, September 2009

**YES:** A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

**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 person 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. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

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

YES | NO

**Comments:**

In practice, in the past year many civil society activists working on corruption issues have been physically harmed. They usually were journalists or NGO activists who criticized the government in different ways. According to the 2008 Report of the Media Rights Institute, in 2008, 44 cases of physical harming or assaulting occurred against journalists.

**References:**

- 1) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25,

2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>  
3) Media Rights Institute, Annual Report on the Legal Situation of Azerbaijani Media  
<http://www.mediarights.az/index.php?lngs=aze&id=203>

**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. YES is a positive score.

**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:**

No civil society activists working on corruption have been killed.

**References:**

- 1) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://azadliqradiosu.az>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

**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.

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#### 4. Can citizens organize into trade unions?

63

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

YES | NO

**Comments:**

Under Article 58 of the Constitution, everyone has a right to establish a trade union. Article 3 of the Law on Trade Unions stipulates that employees, pensioners, students have the right to organize into trade unions voluntarily without any permission beforehand. There should be at least seven persons in order to establish a trade union. The law only prohibits organizing into trade unions for people who are serving in the military in Azerbaijan.

**References:**

1. The Constitution of Azerbaijan
2. The Law on Trade Unions  
<http://www.e-ganun.az>

**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:**

Like NGOs, there are also some challenges with regard to establishing trade unions. In practice, trade unions do not play any significant role in the public life of the country. Despite this being a constitutional right, employers generally do not allow their employees to organize into trade unions. This is especially problematic in foreign oil companies.

**References:**

- 1) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) Azerbaijan Trade Unions Confederation  
<http://www.ahik.org>
- 3) Interview with Sahib Mammadov, labor law expert, September 2009

**100:** Trade unions are common and are an important part of 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.

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## I-2. Media

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### 5. Are media and free speech protected?

100

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

YES | NO

**Comments:**

Under Article 50.2 of the Constitution, freedom of mass media is guaranteed. State censorship in mass media is prohibited. Furthermore, Article 1 of the Law on Mass Media ensures freedom of media in Azerbaijan. According to this provision, freedom of media is based on the guarantee by the state of the citizens' right to legally seek, acquire, prepare, transfer, produce, and distribute information. Moreover, under Article 2 of the Law on Television and Radio Broadcasting, television and radio broadcasting is free.

**References:**

- The Constitution of the Republic of Azerbaijan;  
The Law on Mass Media;  
The Law on Television and Radio Broadcasting  
<http://www.e-qanun.az>

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

**NO:** A NO score is earned if any specific publication relating to government affairs 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:**

Under Article 47 of the Constitution, everyone's freedom of speech is guaranteed. According to the provision, nobody should be forced to express or renounce his or her thoughts and convictions. Provoking racial, national, religious and social discord and animosity is prohibited. However, it should be noted that Articles 147 and 148 of the Criminal Code respectively criminalize slander and insult. Besides, under Article 323 of the Criminal Code, defamation of the president of Azerbaijan is also criminally punished (maximum punishment: five years of imprisonment). This does not apply to critical speeches about the president's activity.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Criminal Code  
<http://www.e-ganun.az>

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including to 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.

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## 6. Are citizens able to form print media entities?

100

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

100 | 75 | 50 | 25 | 0

**Comments:**

Since no print license is necessary, in practice, the government does not create barriers to form a print media entity. According to reports, there are about 2,470 newspapers and journals published in Azerbaijan. However, the majority of independent and opposition newspapers continued to have serious problems with paying salaries, taxes as well as court fines because of the high number of defamation suits. The government also prohibited some state libraries from subscribing to opposition newspapers. In addition, their difficult economic situation limits their circulation and geographic outreach. All these factors negatively affect the operation of print media entities, even though there is no license needed to form them.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008 <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008 [http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan <http://www.azadliqradiosu.az>

**100:** Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of print 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.

**25:**

**0:** Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

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

YES | NO

**Comments:**

Under Article 14 of the Law on Mass Media, no print license is necessary. However, in order to form a print media entity, a natural or legal person should file an official application to the Ministry of Justice seven days prior to publication of the respective print media. Followings should be stated in the application:

- a) title, purpose, periodicity, and legal address of print media;
- b) name and surname of the founder of print media or editor-in-chief, if available;
- c) registered charter of the print media if the founder is a legal entity.

In other words, it is a kind of notification. However, under the same Article, in case the print media product is distributed without an official application or information provided in the application is inaccurate, the Ministry of Justice shall bring a lawsuit before the court seeking for liquidation.

No appeal mechanism is needed since no license is needed. Therefore, the Law on Mass Media is silent about it. However, Article 60 of the Constitution provides the right to go to court against the decisions, actions (inactions) of public officials.

**References:**

The Law on Mass Media;  
The Constitution of the Republic of Azerbaijan  
<http://www.e-ganun.az>

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

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

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

100 | 75 | 50 | 25 | 0

**Comments:**

Since by law no print license is required, it is only needed to file an official application to the Ministry of Justice seven days prior to the publication of the print media entity.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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 print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

No print media license and state fee are required to form a print media entity.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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 citizens able to form broadcast (radio and TV) media entities?

38

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, it is nearly impossible to form a broadcast media entity. Issuance of TV-Radio licenses is a purely political decision, rather than legal. The National Television and Radio Council (NTRC), the body responsible for issuing broadcast media licenses, is not an independent body since all its members are actually appointed by the president of Azerbaijan, who is also empowered to issue instructions to the NRTC. It should also be noted that NRTC is directly funded from the state budget, which allows direct political pressure by the government. According to the NRTC, 47 TV and Radio broadcasting companies operate in Azerbaijan, specifically seven national and 12 regional TV channels. However, in practice, all of them adhered to a pro-government line in their news coverage.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Broadcast 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. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of broadcast 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:** Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | NO

**Comments:**

Under Article 14 of the Law on Television and Radio Broadcasting, a broadcast media license is necessary and the body responsible for issuing the license is the National Television and Radio Council. According to Article 18.5, rejection decisions shall be in writing and reasoned. The applicant may appeal to the administrative body and/or court within one month from receiving the rejection letter.

The procedure for appealing to the administrative body is governed by the Law on Administrative Proceeding which will be effective as soon as the Code on Administrative Procedure Code is adopted by the Parliament. The procedure for lodging a complaint with a court is governed by the Code of Civil Procedure. Under Article 296 of the Code, an interested party may start a proceeding regarding decisions and actions (inactions) of public bodies. Based on Article 299, an appeal shall be considered by the district court within one month of its arrival. The court shall hear the case as to matters of facts and law in bench trial. Both parties may appeal this decision to the Appellate Court and the Supreme Court.

**References:**

The Law on Television and Radio Broadcasting;  
The Code of Civil Procedure  
<http://www.e-ganun.az>

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

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

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Issuance of TV and Radio licenses by the National Television and Radio Council is a purely political decision rather than legal. Therefore, in practice, timing is not an important issue. Under Article 19 of the Law on Television and Radio Broadcasting, it takes maximum 75 days to get a license. But this provision does not make any sense in practice.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the Presidential Decree on Issuance of Licenses for Specific Sectors, the state fee is 11,000 Azeri manat (US\$ 13,000). Issuance of TV-Radio licenses by the National Television and Radio Council is a purely political decision rather than legal. Therefore, in practice, the state fee is not such an important issue. It should be stated that this is not such a big financial burden for an applicant who aims to form a TV or Radio entity.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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.

## 8. Can citizens freely use the Internet?

75

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, internet access is free of government control and influence. In capital Baku no serious significant problem with internet access is observed. However, international reports state that there were some restrictions on the internet in Nakhchivan, an Autonomous Republic of Azerbaijan, where residents claimed that they were not able to view opposition websites. Furthermore, it was reported that two websites of an independent NGO, Election Monitoring Center, was not accessible in Azerbaijan during 2008, despite the fact that the sites were accessible from abroad. In February 2009, a famous website covering all political issues, <http://www.day.az>, was closed under the pressure of the government and later it was restored but with a new management and less critical voice.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

**75:**

**50:** Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

**25:**

**0:** Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

**Comments:**

In some cases, the government restricts political speeches by its citizens on-line, since in recent years the internet is becoming more powerful. It is mainly accomplished with defamation suits against journalists or intimidation against the persons posting political content.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

**75:**

**50:** In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

**25:**

**0:** The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

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## 9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

**Comments:**

The Law on Mass Media does not prohibit reporting of accurate news even if it damages the reputation of a public figure. It should also be noted that according to Article 46.2 of the Code of Criminal Procedure, information reported by the mass media is enough ground to initiate a criminal case.

**References:**

The Law on Mass Media;  
The Code of Criminal Procedure; Criminal Code  
<http://www.e-qanun.az>

**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.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

The situation differs from electronic media to print media. There is a high-level of self-censorship on TV for corruption-related stories since all TV stations are under strong control of the government. Independent and opposition newspapers periodically report corruption related stories. Therefore, public officials use defamation suits to prevent publishing these stories. Under the Criminal Code, defamation can be punished by up to three-years imprisonment. In 2008, Azerbaijan was criticized by the international community for having the highest number of imprisoned journalists among all members of the OSCE. However, authorities consider that defamation suits are linked to lack of professionalism and ethics of the journalists. On Dec. 30, 2008, the National Television-Radio Council stopped broadcasting Radio Liberty, Voice of America, and BBC on national television and FM frequencies, that regularly aired corruption related stories. Thus, the public's access to unbiased news was significantly reduced. In February 2009, a famous website covering all political issues, including corruption related stories (<http://www.day.az>), was also closed under the pressure of the government and later it was restored but with a new management and less critical voice.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

From 1998, government censorship over media outlets was officially banned. However, in practice, since all TV stations are under the strong control of the government, prior government censorship practically exists on TV. However, there is no censorship regarding print media entities; they publish what they want and therefore public officials use defamation suits against print media journalists to prevent them from publishing corruption related stories. In this regard, there is always a fear of punishment either in electronic or print media.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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. This score is appropriate if in countries where illiteracy is high, 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. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

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## 10. Are the media credible sources of information?

30

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

**Comments:**

Under Article 28 of the Law on Mass Media, print media entities should publish some information, including information about the founder (co-founder) on each publication. Publication of products of print media entities without stating information about their founders or stating deliberate inaccurate information is prohibited.

**References:**

The Law on Mass Media  
<http://www.e-ganun.az>

**YES:** A YES score is earned if print media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

**Comments:**

Under Article 28 of the Law on Television and Radio Broadcasting, a broadcaster should announce its name and other information (calling code, emblem, etc) at least four times a day. But as it is seen, other information" is not explicitly defined.

**References:**

The Law on Television and Radio Broadcasting  
<http://www.e-ganun.az>

**YES:** A YES score is earned if broadcast media companies are required by law to publicly 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 types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, journalists and editors rarely adhere to strict, professional practices in their reporting. Since all TV stations are under the strong control of the government, TV journalists provide favorable and unbalanced news in their reporting. As to newspapers, there are several independent newspapers where editors and journalists try to adhere to professional standards. It should also be noted that FM frequencies of foreign radio stations such as Radio Liberty, Voice of America, and BBC were stopped by the decision of the National Television-Radio Council on Dec. 30, 2008. Thus, the public's access to unbiased news and professional journalistic reporting was significantly reduced.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

**Comments:**

The most recent election was the 2008 Presidential elections, when political parties or independent candidates did not receive fair media coverage. In Azerbaijan, more than 80 percent of the population receives news from television, thus TV channels play an important role in forming public opinion. Reports of Azerbaijani media generally neglected to offer the opposition any significant airtime and opportunities to challenge the political opinions of the current ruling party.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

**Comments:**

Since all TV stations (not only the state-owned ones, but also the private ones) are under the strong control of the government, the government uses state-owned media outlets to routinely discriminate against opposition candidates and parties.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

**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.

## 11. Are journalists safe when investigating corruption?

33

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | **NO**

### Comments:

During 2008, several journalists were imprisoned. According to the Annual Report of the Media Rights Institute, during 2008 more than 102 court decisions were delivered regarding media activity. For instance, Ganimat Zahidov, editor-in-chief of the famous opposition newspaper "Azadliq" newspaper, was imprisoned for alleged hooliganism and deliberate health injury and sentenced to four years in jail. Two journalists, an editor-in-chief and a reporter of "Xural" newspaper, were also conditionally imprisoned and fined for alleged defamation. In addition, Mushfiq Huseynov, the head of department of "Bizim Yol" newspaper, was sentenced to five years in jail for alleged bribery. Generally, in the 2008 reports, Azerbaijan was considered among the countries with the highest number of imprisoned journalists.

### References:

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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

**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. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

### Comments:

According to the 2008 Report of the Media Rights Institute, in 2008, 44 cases of physical harming or assaulting incidents occurred against journalists. For instance, on June 14, 2008, Emin Huseynov, the chair of the Institute for Reporters' Freedom and Safety, was hospitalized after being beaten by the police while covering the police break-up of a public meeting.

### References:

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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. A YES score is positive.

**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.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

**Comments:**

No journalists investigating corruption have been killed since March 2006, when Elmar Huseynov, the editor-in-chief of the Monitor Magazine, who had criticized the government for corruption, was gunned down in front of his apartment.

**References:**

- 1) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 4) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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. A YES score is positive.

**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.

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61  
I-3. Public Access to Information

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

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

**Comments:**

Article 50 of the Constitution ensures freedom of information. Article 29 of the Law on Access to Information stipulates that citizens have the right to access government information and basic government records. State bodies should provide this information unless it is restricted. Article 10 of the Law on Freedom of Information states the list of restricted information.

**References:**

- The Constitution of the Republic of Azerbaijan;  
The Law on Freedom of Information;  
The Law on Access to Information  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. 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.

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

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

**Comments:**

Under Article 12 of the Law on Freedom of Information, there is a formal process of appeal for rejected information requests to the higher body, or the Commissioner on Information matters, or to the court.

**References:**

The Law on Freedom of Information  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

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

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

**Comments:**

There is no centralized institution available through which citizens can request government records. However, Under Article 30 of the Law on Freedom of Information, public information should be disclosed on the Internet, in media, official publications, libraries, public information centers, and other available public places. Furthermore, under paragraphs 10-16 of the Plan of Action on Implementation of the National Strategy for Increasing Transparency and Combating Corruption for 2007-2011, specific departments within agencies that are in charge of access to information should be improved, hot-lines should be established, all public information and reports should be available on the internet, and internet services should be provided to the public, etc.

**References:**

Public Relations departments within governmental agencies or hot-lines/electronic request system;  
The Law on Freedom of Information  
<http://www.e-ganun.az>;  
The Plan of Action on Implementation of the National Strategy for Increasing Transparency and Combating Corruption (2007-2011)  
<http://www.commission-anticorruption.gov.az>

**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.

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### 13. Is the right of access to information effective?

46

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the fact that the law generally requires seven working days to respond to citizens' requests, in practice this provision is

not always implemented. If the request is sent from a well-known local or international organization, a reasonable time requirement is more likely to be respected. In other cases it can take more than a month to get a response, or there can be no response at all.

According to the survey held by the Media Rights Institute, from January 2008 to April 2009, 359 information requests were sent to different agencies. 109 were answered whereas 250 were not answered at all. It should be noted that 63 out of 109 granted information requests were answered within seven days, while other 46 ones were answered after seven days.

It is worth noting that many ministries established hot-line services where citizens can either call or write. For instance, the State Social Protection Fund's hot-line number is 190, the State Customs Committee's hot-line number is 192, the State Committee on Property Issues' hot-line number is 193, Ministry of Taxes' hot-line number is 195, the Ministry of Economic Development's hot-line number is 195-2, etc. By calling these hot-lines, citizens can get direct and quick answers to their questions. Besides, the majority of agencies created an online application system or placed contact information on their websites.

#### References:

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Media Rights Institute, Report on Freedom of information, May 15, 2009  
<http://www.mediarights.az/index.php?lngs=aze&id=218>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 5) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 6) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009

**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.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

#### Comments:

Under Article 26 of the Law on Access to Information, public records are free to all citizens. Furthermore, records are free in case the requester reads the information, or rewrites it by hands or copies it by using his/her own technical means, or in other cases where no technical help is provided to him/her. The list of records which is available to the public for payment should be defined. However, this provision is not implemented yet because an Information Ombudsman has not been appointed.

It is worth noting that many ministries established hot-line services where citizens can either call or write. For instance, the State Social Protection Fund's hot-line number is 190, the State Customs Committee's hot-line number is 192, the State Committee on Property Issues' hot-line number is 193, Ministry of Taxes' hot-line number is 195, the Ministry of Economic Development's hot-line number is 195-2, etc. By calling these hot-lines, citizens can get direct and quick answers to their questions. Besides, the majority of agencies created an online application system or placed contact information on their websites, which are free.

#### References:

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Media Rights Institute, Report on Freedom of information, May 15, 2009  
<http://www.mediarights.az/index.php?lngs=aze&id=218>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 5) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 6) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009

**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.

13c. In practice, responses to information requests are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought. For instance, according to the Survey held by the Media Rights Institute, from January 2008 to April 2009, 359 information requests were sent to different agencies. 109 were answered, whereas 250 were not answered at all. It should be noted that 52 out of 109 granted information requests were of high quality, whereas 52 were partially answered. The studies show that by calling hot-lines one can get more accurate and complete information.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Media Rights Institute, Report on Freedom of information, May 15, 2009  
<http://www.mediarights.az/index.php?lngs=aze&id=218>
- 6) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009

**100:** Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

**75:**

**50:** Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

**25:**

**0:** The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Under Article 12 of the Law on Freedom of Information, there is a formal process of appeal for rejected information requests to the higher body, or the Commissioner on Information matters, or to the court. Under Article 57.1 of the Law on Obtaining Information, the Commissioner on Information Matters (Information Ombudsman) should have been established in Azerbaijan within six months from the date the Law became effective, i.e. Sept. 30, 2005. Although about 4 years have passed, the Commissioner has not been appointed yet. Therefore, there is no centralized agency yet. Appeals to the higher body are available; however, in practice, it is not an effective mechanism. Thus only through courts can citizens get decisions within a reasonable time period.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Media Rights Institute, Report on Freedom of information, May 15, 2009  
<http://www.mediarights.az/index.php?lngs=aze&id=218>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 5) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 6) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009

**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.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Rejected information requests can be appealed to a higher body, or the Commissioner on Information matters, or to the court. Appeals to a higher body and the Commissioner are free by law. However, there is no implementing mechanism and therefore, in these cases, citizens appeal directly to courts. Under Article 57.1 of the Law on Obtaining Information, the Commissioner on Information Matters (Information Ombudsman) should have been established in Azerbaijan within 6 months from the date the Law became effective, i.e. Sept. 30, 2005. Although about 4 years passed, the Commissioner has not been appointed yet. Therefore, there is no centralized agency yet, and in this regard efficiency cannot be evaluated. As to courts, state fees and legal council fees are generally considered an affordable option to middle class citizens seeking to challenge a denied or unsatisfactory access to information request.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Media Rights Institute, Report on Freedom of information, May 15, 2009  
<http://www.mediarights.az/index.php?lngs=aze&id=218>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 5) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 6) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009

**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.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**Comments:**

The government does not regularly give reasons for denying an information request to the requester or the reasons given may be vague or difficult to obtain. For instance, according to the survey held by the Media Rights Institute, from January 2008 to April 2009, 359 information requests were sent to different agencies. 109 were answered whereas 250 were not answered at all. No reasons were given for denying information requests.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Media Rights Institute, Report on Freedom of information, May 15, 2009  
<http://www.mediarights.az/index.php?lngs=aze&id=218>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 5) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 6) Interview with Zeynal Mammadli, Professor at Baku State University, Journalism Department/media expert, September 2009

**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.

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## Category II. Elections

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### II-1. <sup>63</sup> Voting & Citizen Participation

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

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

**YES** | NO

**Comments:**

Under Article 56 of the Constitution, citizens of the Azerbaijan Republic have the right to elect and be elected to state bodies and also to take part in referendum. Furthermore, Articles 3 and 4 of the Election Code respectively ensure universal and equal adult suffrage to all citizens.

**References:**

The Constitution of the Republic of Azerbaijan;  
Election Code  
<http://www.e-ganun.az>

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). 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.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

**Comments:**

Under Article 7.1 of the Election Code, holding parliamentary, presidential, and municipal elections at intervals stated in the Constitution as well as in the Election Code are mandatory. Under Article 84 of the Constitution, elections for each calling of the Parliament (Milli Majlis) take place every 5 years on the first Sunday of November. Under Article 178.1 of the Election Code, presidential elections are held every 5 years on the third week of October, on Wednesday. Under Article 211 of the Election Code, municipal elections take place every 5 years.

**References:**

The Constitution of the Republic of Azerbaijan;  
Election Code  
<http://www.e-qanun.az>

**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.

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15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, voting is mainly a matter of active citizenship. However, in previous elections, there were also serious problems with voters' list. A significant number of people who had not been included on the voters' list were not able to vote and they were required to include their names onto the list through courts. This did not allow many people to vote both in the 2003 Presidential elections and the 2005 Parliamentary elections. However, in the 2008 Presidential elections, the procedure was simplified and no court decision was needed. It was enough to fill a specific form and to show the place of residence, unless one did not find his or her name on the list on election day. This allowed the inclusion of 224,000 citizens on voters' lists and enabled actual voting.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadiqradiosu.az>

**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.

15b. In practice, ballots are secret or equivalently protected.

**Comments:**

In practice, ballots are not secret and are routinely tampered with during transport and counting process. According to reports, just like in previous elections, the 2008 Presidential election was marred with manipulation of ballots, significant procedural shortcomings in vote counting, group voting, voting of one person for several times, etc.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

15c. In practice, elections are held according to a regular schedule.

**Comments:**

Elections are always held according to a regular schedule prescribed by law. Specifically, the recent Presidential election was held on Oct. 15, 2008, according to a regular schedule.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

16a. In law, all citizens have a right to form political parties.

YES | NO

**Comments:**

Under Article 58 of the Constitution, everyone has the right to associate with others, and, particularly, the right to form a political party. Under Article 4 of the Law on Political Parties, a political party should have at least 1,000 members in order to get registered by the Ministry of Justice.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Political Parties  
<http://www.e-qanun.az>

**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.

16b. In law, all citizens have a right to run for political office.

YES | NO

**Comments:**

Under Article 55 of the Constitution, every person has a right to run for political office.

**References:**

The Constitution of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**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.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, citizens can form political parties. However, some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. There are more than 50 parties in Azerbaijan. However in fact, the ruling party called New Azerbaijan Party controls everything. According to its website, it has about 492,012 members and 64 out of the 125 members of the Parliament belong to that party. It is reported that teachers, professors, civil servants are sometimes obliged to join the New Azerbaijan Party to keep their work or not have problems. Opposition parties such as Musavat, Azerbaijan National Front, Azerbaijan Democratic Party, Azerbaijan Liberal Democratic Party are regularly suppressed by the government by different means, such as taking their offices, harassing their members, hacking their websites, discrediting their leaders or members. According to the 2008 Country Report of the US State Department, since 2006 opposition parties have had serious difficulties with renting office space, with some parties operating out of their leaders' apartments, reportedly because landlords were afraid to rent office space to them due to official pressure. In this regard, even if there is no legal barrier to form a political party, in practice it is discouraged because of strong pressure.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRS), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally all citizens can run for political office. However, some barriers, such as registration or harassment problems may occur. Although there is some free air time for each candidate, the costs of running a political campaign are significant and result in dissuading some candidates from running for office.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRS), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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 so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent 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.

16e. In practice, an opposition party is represented in the legislature.

**Comments:**

Last Parliamentary election in Azerbaijan was held on Nov. 6, 2005. According to the Central Election Commission, the ruling party won 63 out of the 125 seats, independent candidates garnered 42 seats, while the opposition won 10 seats in total. It should be noted that in 2002 Referendum in Azerbaijan, the proportional system was removed, and since that time elections have been based only on majority system. The majority of independent candidates elected were also pro-government.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

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## II-2. Election Integrity

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### 18. Is the election monitoring agency effective?

55

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

**Comments:**

Under Article 18.3 of the Election Code, the Central Election Commission has a status of state body which acts permanently. Article 24 of the Election Code says that the Central Election Commission has 18 members, elected by Parliament. Six members of the Commission are from different political parties that have a majority in Parliament. Six members are independent, and another six members are from political parties that have a minority representation.

**References:**

The Election Code  
<http://www.e-qanun.az>

**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting 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 domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the Central Election Commission appointments do not support the independence of the agency. An advisory body of the Council of Europe- Venice Commission's recommendation about eliminating the dominance of government representatives in the Central Election Commission has not been enacted. Thus, the composition of the Commission continues to remain unbalanced.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the Central Election Commission has a full-time staff, though professionalism can be relative.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the OSCE/ODIHR final report on the Oct. 15, 2008, Presidential Election, in a positive move the Central Election Commission started posting precinct-level election results on its website (<http://www.cec.gov.az>) shortly before 2 a.m. on October 16 and continued updating them throughout election night and the following days. The Commission published the final election results on Oct. 19, 2008, within the legal deadline. The Constitutional Court confirmed the final results on October 22, and the inauguration of the president took place on Oct. 24, 2008.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/sgp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The Central Election Commission in fact is not an independent body and executes the directions of the government. Under Article 116 of the Election Code, the Central Election Commission, constituency election commissions, as well as precinct election commissions may apply to court for issuing an administrative protocol and penalizing offenders. However, in practice, it is a highly political decision.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/sgp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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.

## 19. Are elections systems transparent and effective?

58

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

### Comments:

Voter registration system has always been one of the problematic areas of elections in Azerbaijan. Especially in previous elections, there were critical problems with voters' list. Double voting and ghost" voting by non-existent voters were common. A significant number of people who had not been included on voters' list were not able to vote, and they were required to include their names on the list through courts. This did not allow many people to vote both in the 2003 Presidential elections and the 2005 Parliamentary elections. However, in the 2008 Presidential elections, the procedure was simplified and no court decision was needed. A simple request accompanied by a proof of residence can now induce the correction on the voters' list. This allowed the inclusion of 224,000 citizens on voters' list and their actual voting in the 2008 Presidential election. However, voter registration is still a problem and is used as a means to falsify elections.

### References:

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRS), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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.

19b. In law, election results can be contested through the judicial system.

YES | NO

### Comments:

Under Article 112.3 of the Election Code, election results can be contested through the judicial system. Furthermore, under Articles 290-292 of the Code of Civil Procedure, election complaints should be considered by appellate courts within three days. If the complaint is made on election day or after this day, the appellate court should immediately consider it. The decision of the appellate court can be appealed to the Supreme Court within three days and the Supreme Court should consider it within three days. If the complaint is made on election day or after this day, the Supreme Court should immediately consider it.

**References:**

The Election Code;  
 The Code of Civil Procedure Code  
<http://www.e-ganun.az>

**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.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

Although election complaints can be appealed through the judicial system, in fact it is practically impossible to restore justice through national courts since courts are not independent in politically motivated cases. Therefore, in practice, candidates tend to apply to national courts in order to finally apply to the European Court of Human Rights. After exhausting domestic remedies, many applications by independent candidates as well as opposition members were sent to the European Court after the 2005 Parliamentary elections by arguing violation of Protocol 1, Article 3 of the European Convention — the right to free election in the choice of the legislature. According to Intigam Aliyev, representative of many applicants before the European Court, as of today 19 applications are under communications between the government of Azerbaijan and the Strasbourg-based Court.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRS), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/sgp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**Comments:**

All elections showed that the military and security forces have been active players in politics and overly supported the government. According to the OSCE/ODIHR final report on the 2008 Presidential election, despite the fact that legally military officers were supposed to vote in precinct election commissions, in fact they continued to vote in military units where they served. The Report stated that some 78,000 voters voted in 99 polling stations identified as being located within military units. The average turnout was 96.85 percent, compared to an overall turnout of 75.64 percent. In these polling stations, the current president received 97.84 percent of the valid votes, as compared to 88.73 percent countrywide. There were nine polling stations in military units where all valid votes were cast for the incumbent, compared to 41 polling stations with such a result among the more than 5,000 regular polling stations.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>
- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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 overly 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.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

**Comments:**

Under Articles 40-44 of the Election Code, local and international election observers registered at the Central Election Commission are allowed to monitor elections.

**References:**

- The Election Code  
<http://www.e-qanun.az>

**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.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

**Comments:**

Election observers generally have access to polling sites, counting stations, and voters, but they encounter some informal restrictions. According to the OSCE/ODIHR final report on the 2008 October Presidential election, election observers were generally able to monitor elections. However, some problems occurred. For instance, one of the local election-monitoring NGOs, Election Monitoring Center, had its registration annulled by the Ministry of Justice because of alleged inaccuracy of registration documents, and thus this NGO was not able to monitor the presidential election. It should also be noted that during all elections it was accepted that not all observers do their work professionally. They walk from one polling station to another and do not stay until the final stage when the ballots are counted.

**References:**

- 1) OSCE/ODIHR Election Observation Mission Final Report on the Oct. 15, 2008, Presidential Election in Azerbaijan; Dec. 15, 2008  
[http://www.osce.org/documents/odihr/2008/12/35699\\_en.pdf](http://www.osce.org/documents/odihr/2008/12/35699_en.pdf)
- 2) Congressional Research Service (CRC), Azerbaijan's October 2008 Presidential Election: Outcome and Implications, by Jim Nichol, Oct. 27, 2008  
<http://www.fas.org/spp/crs/row/RS22977.pdf>

- 3) Reports by the Central Election Commission  
<http://www.cec.gov.az>  
4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

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

100

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

YES | NO

### Comments:

The Central Election Commission is the election monitoring agency that ensures preparation and conduct of parliamentary, presidential, municipal elections as well as referendum. Articles 24-28 of the Election Code regulate its legal status and operation.

### References:

The Central Election Commission  
<http://www.cec.gov.az>  
The Election Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

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

**NO:** A NO score is earned if no domestic agency or set of domestic agencies/entities exists 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, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

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## 71 II-3. Political Financing

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### 20. Are there regulations governing the financing of political parties?

50

20a. In law, there are limits on individual donations to political parties.

YES | NO

**Comments:**

Generally, there are no limits on individual donations to political parties. The limit only applies to the election period. Under Article 19 of the Law on Political Parties, political parties have the right to receive donations. The Law does not specify any limits. However, the Law prohibits any donations from state authorities, trade unions, public movements, charity or religious organizations. Furthermore, the Law clearly states that parties cannot receive donations which are given to obtain economical or political benefits. The amount of donations should be included in financial reports along with other details. However, under Article 156.4.3 of the Election Code, during the Parliamentary elections, individual donations to political parties' election funds cannot exceed 3,000 Azerbaijani manat (US\$3,730).

**References:**

The Law on Political Parties;  
The Election Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also 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 in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | NO

**Comments:**

Generally, there are no limits on corporate donations to political parties. The limit only applies to the election period. Under Article 19 of the Law on Political Parties, political parties have the right to receive donations. The Law does not specify any limits. However, the Law prohibits any donations from state authorities, trade unions, public movements, charity or religious organizations. Furthermore, the Law clearly states that parties cannot receive donations which are given to obtain economical or political benefits. The amount of donations should be included in the financial reports along with other details. However, under Article 156.4.3 of the Election Code, during Parliamentary elections corporate donations to political parties' election funds cannot exceed 50,000 Azerbaijani manat (AZN) (US\$62,243).

**References:**

The Election Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

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

20c. In law, there are limits on total political party expenditures.

YES | NO

**Comments:**

Neither the Election Code nor the Law on Political Parties define any limits on total political party expenditures during election campaigns.

**References:**

The Election Code of the Republic of Azerbaijan;  
The Law on Political Parties of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

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

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

**Comments:**

Under Article 19 of the Law on Political Parties, the amount of donations to political parties should be included in the financial reports and the name (surname), address, and the amount of donation should be stated. Under Article 95.1 of the Election Code, the copies of the financial reports should be published by the relevant election commissions within five days of their submission.

**References:**

The Election Code of the Republic of Azerbaijan;  
The Law on Political Parties of the Republic of Azerbaijan  
<http://www.e-ganun.az>

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

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

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | NO

**Comments:**

Under Article 97.1 of the Election Code, the so-called supervisory-control service within election commissions shall be established in order to ensure the control of party finances and expenditures. Under Article 18 of the Law on Political Parties, state tax agencies also exercise control on sources of income, the amount of donation of political parties as well as payment of taxes under the tax legislation.

**References:**

The Election Code of the Republic of Azerbaijan;  
The Law on Political Parties of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | NO

**Comments:**

Under Article 97.1 of the Election Code, the so-called supervisory-control service under the Central Election Commission and constituency election commissions shall be established in order to ensure control of party finances and expenditures. Under

Article 18 of the Law on Political Parties, state tax agencies also exercise control on sources of income, the amount of donation of political parties as well as payment of taxes under the tax legislation.

**References:**

Supervisory-Control Service of the Central Election Commission and constituency election commissions as well as Tax agencies;  
The Election Code of the Republic of Azerbaijan;  
The Law on Political Parties of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

**NO:** A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

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## 21. Are there regulations governing the financing of individual political candidates?

100

21a. In law, there are limits on individual donations to political candidates.

YES | NO

**Comments:**

Under Article 156.2.4 of the Election Code, during the Parliamentary elections, individual donations to political candidates' election funds cannot exceed 3,000 Azerbaijani manat (US\$3,734). Furthermore, under Article 191.2.3 of the Election Code, during Presidential elections individual donations to presidential candidates' election funds cannot exceed 3,000 AZN. Thus, 3,000 manat is the unique fee for individual donations. It is worth noting that under Article 191.1, the maximum limit of the election fund of the presidential candidate is 10 million AZN (US\$12.5 million).

**References:**

The Election Code of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also 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 candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | NO

**Comments:**

Under Article 156.2.4 of the Election Code, during the Parliamentary elections, corporate donations to political candidates' election funds cannot exceed 50,000 AZN manat (US\$62,243). Furthermore, under Article 191.2.3 of the Election Code, during Presidential elections corporate donations to presidential candidates' election funds cannot exceed 50,000 AZN. Thus, 50,000 manat is the unique fee for corporate donations.

**References:**

The Election Code of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

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

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | NO

**Comments:**

Under Article 95.1 of the Election Code, the copies of the financial reports should be published by the relevant election commissions within five days of their submission.

**References:**

The Election Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

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

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

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | NO

**Comments:**

Under Article 97.1 of the Election Code, the so-called supervisory-control service at the Central Election Commission as well as the constituency election commissions shall be established in order to ensure the control of finances and expenditures of political candidates.

**References:**

The Election Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. 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 an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

**Comments:**

Under Article 97.1 of the Election Code, the so-called supervisory-control service at the Central Election Commission as well as constituency election commissions shall be established in order to ensure the control of finances and expenditures of political candidates.

**References:**

Central Election Commission as well as constituency election commissions;  
The Election Code of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

**NO:** A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

## 22. Are the regulations governing the political financing of parties effective?

21

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the officer of the Central Election Commission, during elections special election funds are created in the International Bank of Azerbaijan in the name of individual candidates or political parties, and if the donation exceeds the limit the Bank should not accept it. Individual candidates or political parties submit their financial reports to the Central Election Commission.

According to an opposition party representative, there are huge problems with making donations to opposition parties. Individual or corporate donations to opposition parties are controlled and individuals or legal entities which make donations to them are harassed in different ways. As a result, only the ruling party enjoys donations, especially from big companies.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which individuals can indirectly support 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 party; unregulated loans to 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 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.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the officer of the Central Election Commission, during elections special election funds are created in the International Bank of Azerbaijan in the name of individual candidates or political parties, and if the donation exceeds the limit the

Bank should not accept it. Individual candidates or political parties submit their financial reports to the Central Election Commission.

According to an opposition party representative, there are huge problems with making donations to opposition parties. Individual or corporate donations to opposition parties are controlled and individuals or legal entities which make donations to them are harassed in different ways. As a result, only the ruling party enjoys donations, especially from big companies.

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5) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a 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 political party. However, exceptions and loopholes exist through which companies can indirectly support 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 party; unregulated loans to 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 political parties 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.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no limit for expenditures.

**References:**

1) Reports by the Central Election Commission

<http://www.cec.gov.az>

2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009

3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009

4) Interview with an officer of Musavat Party, an opposition party, September 2009

5) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**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.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The Central Election Commission is in fact dependent on the political leadership. In this regard, it does not initiate any independent investigation unless there is no political order. The Commission is reluctant to cooperate with other agencies in politically sensitive cases.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The Central Election Commission is in fact dependent on the political leadership. In this regard, it does not initiate any independent investigation unless there is no political order. According to the officer of the Commission, there was no case about imposing penalties to offenders.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

**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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

During parliamentary elections, contributions to political parties are audited by the Central Election Commission. As to other cases, according to Article 21 of the Law on Political Parties, parties should prepare financial reports. However, there is no requirement for political parties about disclosure except to tax authorities. Therefore, in practice, political parties do not usually disclose data relating to their financial support and expenditures. In practice, auditing other than during election periods happens rarely and is biased.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party 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 may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party 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.

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## 23. Are the regulations governing the political financing of individual candidates effective?

25

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the officer of the Central Election Commission, during elections special election funds are created in the International Bank of Azerbaijan in the name of individual candidates or political parties, and if the donation exceeds the limit the Bank should not accept it. Individual candidates or political parties submit their financial reports to the Central Election Commission.

According to an opposition party representative, there are huge problems with making donations to opposition parties. Individual or corporate donations to opposition parties are controlled and individuals or legal entities which make donations to them are harassed in different ways. As a result, only the ruling party enjoys donations, especially from big companies.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. 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 particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates 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; unregulated loans to candidates (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 particular political candidate 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.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the officer of the Central Election Commission, during elections special election funds are created in the International Bank of Azerbaijan in the name of individual candidates or political parties, and if the donation exceeds the limit the Bank should not accept it. Individual candidates or political parties submit their financial reports to the Central Election Commission.

According to an opposition party representative, there are huge problems with making donations to opposition parties. Individual or corporate donations to opposition parties are controlled and individuals or legal entities which make donations to them are harassed in different ways. As a result, only the ruling party enjoys donations, especially from big companies.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. 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 an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates 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; unregulated loans to candidates (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 individual candidates 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.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009

5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

**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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

During elections, the finances of individual candidates' campaigns are audited by the Central Election Commission. However, in practice, the auditing is not impartial.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

**75:**

**50:** The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

**25:**

**0:** The finances of individual candidates' campaigns 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.

## 24. Can citizens access records related to the financing of political parties?

25

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

According to the representatives of political parties, in Azerbaijan parties usually operate with membership dues. It should be noted that the Law on Political Parties prohibits the government's donations and therefore disclosure of financial reports is not prescribed by Law. According to Article 21 of the Law on Political Parties, the parties should prepare accounting documents. However, there is no requirement about disclosure except to tax authorities. Therefore, in practice, political parties do not usually disclose data relating to their financial support and expenditures and therefore, timeliness cannot be evaluated. In 2008, the ruling New Azerbaijan Party presented its financial report and after it, the Party continuously requested opposition parties to also publish their reports. It should be noted that some discussions are currently underway about amending the Law on Political Parties and establishing government's donation to all parties, as well as a mandatory requirement for parties to disclose their financial reports to public. According to opposition parties, if the government starts making donations to opposition parties, they will publish financial reports since now they have nothing to declare because of financial difficulties (<http://www.sherg.az/2009/02/06/get=14579>).

### References:

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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

**75:**

**50:** Political parties 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 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.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

According to Article 21 of the Law on Political Parties, parties should prepare financial reports. However, there is no requirement about disclosure except to tax authorities. Therefore, in practice, political parties do not usually disclose data relating to their financial support and expenditures. Accordingly, citizens do not have access to the financial records and in this regard timeliness cannot be evaluated.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

According to Article 21 of the Law on Political Parties, parties should prepare financial reports. However, there is no requirement about disclosure, except to tax authorities. Therefore, in practice, political parties do not usually disclose data relating to their financial support and expenditures. Accordingly, citizens do not have access to the financial records, and in this regard cost issues cannot be evaluated.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

According to Article 21 of the Law on Political Parties, parties should prepare financial reports. However, there is no requirement about disclosure, except to tax authorities. Therefore, in practice, political parties do not usually disclose data relating to their financial support and expenditures. Accordingly, citizens do not have access to the financial records, and in this regard quality issues cannot be evaluated.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

## 25. Can citizens access records related to the financing of individual candidates' campaigns?

31

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

According to an officer of the Central Election Commission, individual political candidates submit data relating to financial support and expenditures to the Central Election Commission within a reasonable time.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Individual candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Individual 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:** Individual 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.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

According to an officer of the Central Election Commission, individual political candidates submit data relating to financial support and expenditures to the Central Election Commission. However, studies show that the Commission does not publish this

information as it is required by the Election Code. Accordingly, citizens cannot access the records, and in this regard, timeliness cannot be evaluated.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

According to an officer of the Central Election Commission, individual political candidates submit data relating to financial support and expenditures to the Central Election Commission. However, studies show that the Commission does not publish this information as it is required by the Election Code. Accordingly, citizens cannot access the records, and in this regard cost issues cannot be evaluated.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

According to an officer of the Central Election Commission, individual political candidates submit data relating to financial support and expenditures to the Central Election Commission. However, studies show that the Commission does not publish this

information as it is required by the Election Code. Accordingly, citizens cannot access the records, and in this regard quality issues cannot be evaluated.

**References:**

- 1) Reports by the Central Election Commission  
<http://www.cec.gov.az>
- 2) Interview with Fuad Agayev, an advocate, former member of the Central Election Commission, September 2009
- 3) Interview with an officer of New Azerbaijan Party, the ruling party, September 2009
- 4) Interview with an officer of Musavat Party, an opposition party, September 2009
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

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Category III. Government Accountability

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III-1. ~~50~~ Executive Accountability

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

50

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the chief executive and other ministers issue directives and decisions behind the scenes and rarely provide a rationale for their decisions publicly. They rarely take critical questions from journalists or opposition parties. The government and government-run media routinely censor such sessions. Journalists of independent or opposition newspapers who cover these issues may face threats and persecutions.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan, B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008,  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

**Comments:**

Article 60 of the Constitution broadly ensures everyone's right to go to court against the decisions, actions (or inactions) of the public agencies. Furthermore, under Article 296 of the Code of Civil Procedure, any interested party may start a proceeding regarding decisions and actions (inactions) of the executive. Article 25.2 of relevant Code stipulates that judicial review of agency decisions is implemented by courts of general jurisdiction — in other words, district courts as first instance courts in a special proceeding so called special claim. Under Article 6 of the Law on Complaining to Courts against Decisions and Actions (Inactions), Violating Rights and Liberties of Citizens, the judiciary can pass judgments on the legality of actions taken by the executive.

However, under Article 130 of the Constitution, the constitutionality of actions taken by the executive can be considered only by the Constitutional Court of the Republic of Azerbaijan.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Complaining to Courts against Decisions and Actions (Inactions), Violating Rights and Liberties of Citizens;  
The Code of Civil Procedure  
<http://www.e-ganun.az>

**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).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

**Comments:**

Under Azerbaijani legislation, the legality of executive actions can be reviewed by ordinary courts while the constitutionality of executive actions can be reviewed by the Constitutional Court. In practice, courts do not tend to pass judgments on executive abuses. However, it sometimes happens, unless it is a politically sensitive case, but enforcement of the favorable decision may still remain problematic.

As to reviewing the constitutionality of executive actions, according to the statistics provided by the Constitutional Court there are only a handful cases when the Constitutional Court has reviewed the executive actions. A study shows that in practice the Constitutional Court mostly reviews the constitutionality of judiciary and legislative acts, not the executive acts.

**References:**

- 1) Website of the Constitutional Court of Azerbaijan  
<http://www.constcourt.gov.az>
- 2) Interview with Sevinj Aliyeva, advocate, September 2009,
- 3) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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. It does not need to rely upon the executive to initiate a constitutional or legal review.

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.

27d. 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:

Under Article 113 of the Constitution, establishing general procedures, the president of the Republic of Azerbaijan issues decrees; as per all other questions, he issues orders. If not specified otherwise in decrees and orders, they become effective from the day of their publication. It should also be noted that laws after being passed by legislature shall be signed by the president with his decree. Since in Azerbaijan most Parliament members are ruling party representatives as well as pro-government independents" (there are only 10 opposition members out of 125 members), the legislature never goes against the will of the president and in this regard there is no need for the president to struggle with the Parliament. Generally, new policies are implemented by legislature acts, and executive acts are usually issued to implement and to provide more practical provisions for the legislative acts. For instance, executive acts may define which agency is responsible for the implementation of the law and provide other implementing norms.

#### References:

- 1) Interview with Sevinj Aliyeva, advocate, September 2009,
- 2) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008, <http://www.coe.int/greco>
- 3) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan <http://www.azadliqradiosu.az>

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.

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## 28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

#### Comments:

Under Article 107 of the Constitution, the head of state can be prosecuted for crimes committed. Under this provision, if the president of the Republic of Azerbaijan commits grave crimes, the question of removal of the president from his/her post can be submitted to the Parliament (Milli Majlis) at the initiative of the Constitutional Court based on the opinion of the Supreme Court presented within 30 days. The president may be dismissed from his/her post by the decision of the Parliament taken by 95 out of 125 votes. This decision shall be signed by the chairman of the Constitutional Court. If the Constitutional Court fails to sign the

decision within one week, it shall not come into force. The decision of removal of the president from his/her office must be taken within two months from the date of application of Constitutional Court to Parliament. In case of failure, the criminal charge against the president is considered rejected.

Under Article 123 of the Constitution, the prime minister may be arrested if he/she is caught while committing crime. In this case, the relevant body should immediately inform the General Prosecutor of the Republic of Azerbaijan about it. Immunity of the prime minister may be lifted only by the president of the Republic of Azerbaijan based on application of the General Prosecutor. As it is seen, in respect to the head of government, there is some control of the executive branch on lifting immunity.

**References:**

The Constitution of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**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.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

**Comments:**

Articles 107 and 123 of the Constitution regulate immunity and immunity-lifting procedure for the president and the prime minister of the Republic of Azerbaijan respectively. The Constitution does not specifically talk about ministerial-level officials. In this regard, ministerial-level officials can be prosecuted for crimes they commit on general grounds without any specific procedure.

**References:**

The Constitution of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**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.

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

38

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

**Comments:**

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that among others, the president and the prime minister shall file asset disclosure forms to the Commission on Combating Corruption.

**References:**

The Law on Combating Corruption;  
The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-ganun.az>

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

**Comments:**

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that among others, ministerial-level officials are required to file an asset disclosure form to the Commission on Combating Corruption.

**References:**

The Law on Combating Corruption;  
The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-ganun.az>

**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.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**Comments:**

Under Article 14 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not demand or accept any gifts for himself/ herself or other persons which may influence or appear to influence the impartial performance of his/her duties, or may be or appear to be reward relating to his/her duties or might create an impression of such influence, or are given as reward for performance of his/her duties, or might create an impression of such reward. This rule shall not apply to cases of awarding minor gifts in regard to hospitality and with a value not over the amount described in the Law on Combating Corruption. In addition, Article 8 of the Law on Combating Corruption stipulates that public officials may not solicit or accept multiple gifts from any natural or legal persons during any 12 month period where the aggregate value of the gifts exceeds 55 Azeri manats (US\$65). Gifts received above this limit shall be considered as belonging to the public authority or municipal body in which that official is performing his/her service duties. Under the Law, if a civil servant is not able to decide whether to take or refuse the gift, or benefit from the hospitality or not, he/she shall get his/her direct supervisor's opinion about it.

**References:**

The Law on Rules of Ethics Conduct of Civil Servants;  
The Law on Combating Corruption  
<http://www.e-ganun.az>

**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.

29d. 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:**

Article 5 of the Law on Combating Corruption and Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials state that among others, ministers and heads of state and government should file regular asset disclosure forms to the Commission on Combating Corruption. However, the legislation does not define an independent auditing of the executive branch asset disclosure forms. Under Article 8 of the latter Law, the Commission itself controls the accuracy of the information submitted.

**References:**

The Law on Combating Corruption;  
The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-ganun.az>

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**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.

29e. 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 Law on Combating Corruption does not address this issue. However, the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under the consideration in Parliament, may regulate restrictions for heads of state/ government and ministers to take positions in the private sector after leaving the government.

**References:**

The Law on Combating Corruption  
<http://www.e-ganun.az>

**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. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

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

29f. 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:**

Since there is no formal restriction for post-government private sector employment, efficiency cannot be evaluated. It should be noted that, in fact, the majority of senior officials have illegal private businesses even while they are in the office, and they keep them after leaving the government.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008

<http://www.coe.int/greco>

4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>

5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases 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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice the regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced.

**References:**

1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan

B. Michael, Linacre College, N. Mishyna, Odessa National Law Academy

<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>

2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>

3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008

<http://www.coe.int/greco>

4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>

5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. 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.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not yet been implemented.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

**Comments:**

Under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and therefore citizens cannot access the asset disclosure records of the heads of state and government. The Law says that responsible entrusted authorities shall ensure the privacy of those records. They may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court in case of corruption related offenses.

**References:**

The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**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.

30b. 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:**

Despite the formal requirements, in practice asset disclosure provisions have not been implemented yet. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and, accordingly, citizens cannot access them. Therefore, timeliness cannot be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

30c. 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:**

Despite the formal requirements, in practice asset disclosure provisions have not been implemented yet. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and, accordingly, citizens cannot access them. Cost matters cannot therefore be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not been implemented yet. But it should be noted that even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information and, accordingly, citizens cannot access them. Quality issues cannot therefore be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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

100

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

YES | NO

**Comments:**

Under Article 60 of the Constitution, judicial protection of the rights and liberties is guaranteed and everyone may sue the government for infringement of their civil rights.

**References:**

The Constitution of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**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.

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## 31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

**Comments:**

The government bureaucracy is an extension of the ruling party. There are almost no boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B. Michael, Linacre College, N. Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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 the 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 bureaucracy 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.

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## III-2. Legislative Accountability

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

83

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

**Comments:**

Under Article 130 of the Constitution, as well as the Law on the Constitutional Court, the Constitutional Court can review the constitutionality of the laws passed by the legislature.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on the Constitutional Court  
<http://www.e-qanun.az>

**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).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, when necessary, the judiciary reviews the laws passed by the legislature. Under Article 130 of the Constitution, as well as the Law on the Constitutional Court, the Constitutional Court is in charge of reviewing the constitutionality of the laws passed by the legislature. According to the statistics of the Constitutional Court, in 2008 the Constitutional Court issued 14 decisions, of which seven were about review of laws passed by the legislature, while another seven were about review of constitutionality of lower courts' decisions. However, it is worth noting that the Constitutional Court is unwilling to take on politically sensitive issues.

**References:**

- 1) Website of the Constitutional Court of Azerbaijan  
<http://www.constcourt.gov.az>
- 2) Interview with Sevinj Aliyeva, advocate, September 2009
- 3) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan,  
<http://www.azadliqradiosu.az>

**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.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

**Comments:**

Under Article 90 of the Constitution, members of the national legislature can be subject to criminal proceedings. According to this provision, each parliamentarian has a personal immunity during the time in office, however, when caught red-handed, he/she can be subject to criminal proceedings. In this case, the relevant body who has arrested the parliamentarian must immediately inform the General Prosecutor of the Republic of Azerbaijan. The immunity of the member of the legislature can only be lifted by the decision of the Parliament on the basis of the opinion of the General Prosecutor. As it is seen, the legislative branch itself also has some control in terms of immunity-lifting process.

**References:**

The Constitution of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**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. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

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

29

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

**Comments:**

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.2 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that members of the Parliament shall file asset disclosure forms to the special body, defined by the Parliament.

**References:**

The Law on Combating Corruption;  
The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**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.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

**Comments:**

The Law on Combating Corruption does not address this issue. However, the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under the consideration in Parliament, may regulate restrictions for national legislators to take positions in the private sector after leaving the government.

**References:**

The Law on Combating Corruption  
<http://www.e-qanun.az>

**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.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

**Comments:**

Under Article 8 of the Law on Combating Corruption, no public official (which also covers members of the national legislature), shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service duties, or may be or appear to be reward relating to his/her duties. This does not include, with the condition of not influencing the objectivity of the service duties, minor gifts and use of conventional hospitality. The Law stipulates that public officials may not solicit or accept multiple gifts from any natural or legal persons during

any 12 month period where the aggregate value of the gifts exceeds 55 Azeri manats (US\$65). Gifts received above this limit shall be considered as belonging to the public authority where that respective official is performing his/her service duties.

**References:**

The Law on Combating Corruption  
<http://www.e-qanun.az>

**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.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

**Comments:**

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.2 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that members of the Parliament shall file asset disclosure forms to the special body, defined by the Parliament. However, the legislation does not define an independent auditing of the asset disclosure forms of members of the national legislature. Under Article 8 of the latter Law, the responsible body in charge of accepting asset disclosure forms itself controls the accuracy of the information submitted. No more impartial third party auditing is established by Law.

**References:**

The Law on Combating Corruption;  
The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**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.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

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

**Comments:**

Since there is no formal restriction for post-government private sector employment, efficiency cannot be evaluated. It should be noted that, in fact, the majority of national legislators have private business even while they are in the office and they keep them after leaving their posts.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases 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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice the regulations governing gifts and hospitality to national legislatures are routinely ignored and unenforced, since there is no implementation mechanism.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/ris/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced. 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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not been implemented yet.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>

3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008

<http://www.coe.int/greco>

4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>

5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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:** 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.

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

0

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

#### Comments:

Under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and therefore citizens cannot access the asset disclosure records of members of the national legislature. The Law says that responsible entrusted authorities shall ensure the privacy of those records. They may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court in case of corruption related offenses.

#### References:

The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**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.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

#### Comments:

Despite the formal requirements, in practice asset disclosure provisions have not been implemented yet. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and, accordingly, citizens cannot access them. Therefore, timeliness cannot be evaluated either.

#### References:

1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>  
2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>

- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not been implemented yet. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and, accordingly, citizens cannot access them. Cost issues cannot therefore be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
 B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not been implemented yet. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and, accordingly, citizens cannot access them. Quality issues cannot therefore be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

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### 35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

**Comments:**

Articles 50 and 57 of the Constitution ensures citizens' right to access to information. Specifically, based on Articles 37.1.16 as well as 29.1.11, records and transcripts of open sessions of the Parliament and adopted legal acts should be publicly available.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Access to Information  
<http://www.e-qanun.az>

**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 are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the Law on Access to Information, records and transcripts of open sessions of Parliament and adopted legal acts should be publicly available. It should be noted that all laws and draft laws and transcripts are posted the website of the Parliament, <http://www.meclis.gov.az>. Furthermore, citizens can send online information requests and ask about Parliament's activity, and they are answered within seven working days. Furthermore, Parliament's sessions are aired on AZTV, the state-funded TV channel, while the daily official newspaper, Azerbaijan, publishes records of legislative processes and documents. However, some delays may be experienced regarding politically-sensitive information.

**References:**

- 1) Website of the Parliament (Milli Majlis) of the Republic of Azerbaijan  
<http://www.meclis.gov.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Interview with Sevinj Aliyeva, an advocate, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, citizens can generally access records of legislative processes and documents free of charge. It should be noted that all laws and draft laws and transcripts are posted the website of the Parliament, <http://www.meclis.gov.az>. Furthermore, citizens can send online information requests and ask about Parliament's activity, and they are answered within seven working days. Furthermore, Parliament's sessions are aired on AZTV, the state-funded TV channel, while the daily official newspaper, "Azerbaijan", publishes records of legislative processes and documents. It costs about 30 cent to access publish records of legislative processes and documents.

**References:**

- 1) Website of the Parliament (Milli Majlis) of the Republic of Azerbaijan  
<http://www.meclis.gov.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Interview with Sevinj Aliyeva, an advocate, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

**Comments:**

Article 126 of the Constitution regulates the general requirements for judges, such as to be a citizen of Azerbaijan; to be no younger than 30 years; to have a complete legal education; to have more than a 5-year legal experience.

Based on Article 93-3 of the Law on Courts and Judges, the selection procedure of the judges in Azerbaijan includes the following stages: 1) written test; 2) oral interview; 3) special training; 4) proposal by the Judicial Council; 5) appointment by the president of Azerbaijan or Parliament.

Under Article 109 (9) of the Constitution, the final stage — appointment of judges — is held merely by the president in respect of the judges of the first instance court for 5 years without any approval by the Parliament. As to the judges of superior courts, the Constitution defines that the president gives proposals to Parliament for appointing the judges of the Constitutional Court, Supreme Court, Appellate Courts, and then Parliament appoints them.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Courts and Judges  
<http://www.e-ganun.az>

**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. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, generally speaking professional criteria are partly followed in selecting national-level judges. As prescribed by legislation, the selection process for national-level judges includes the following: written exam, oral interview, special training, proposal by the Judicial Council, and final appointment by the president of Azerbaijan or Parliament. The problem is that the Judicial Council, the body in charge of organizing exams, is currently chaired by the minister of Justice, which raises some concerns in terms of separation of powers. Furthermore, the fact that as a final stage the president appoints judges of the district courts on his own, and gives nominations to Parliament for judges of appellate courts, the Supreme Court, and the Constitutional Court, easily leads to a practice where judges do not perform their work independently of the executive power. During 2008, judiciary exams resulted in the selection of 102 national-level judges. Despite minor deficiencies, international organizations reported that the examinations generally complied with international standards. The written stage of the exam was evaluated fair, however there were some continuous complaints about corruption in the oral interviews. Besides, studies show that in practice a candidate who has an opposition past or criticized the government by different means has no chance to become a judge. Generally speaking, it is publicly accepted that there are some cases where candidates became judges based only on their professional criteria without any external means.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 3) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 5) Interview with legal professionals, advocates, law professors, September 2009

**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.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

**Comments:**

Based on Article 93-3 of the Law on Courts and Judges, the selection procedure of the judges in Azerbaijan includes the following stages: 1) written test; 2) oral interview; 3) special training; 4) proposal by the Judicial Council; 5) appointment by the President of Azerbaijan or Parliament.

The responsible body which is in charge of organizing judiciary exams is the Judicial Council. Under Article 4 of the Law on Judicial Council, it is stated as an independent body from the executive, legislative, and judiciary. The Council establishes the Selection Committee of Judges in order to select candidates for a judge position. The results of the test and interview are evaluated by the Selection Committee of Judges. The applicants who have succeeded in these exams are automatically admitted to perform a long-term training period. At the end of this training, each applicant is evaluated by the Committee based on a grading system. Finally, the applicants are listed in a row according to their grades. The results of this evaluation are submitted to the Judicial Council. The Council proposes the appointment of the successful candidates to the president of Azerbaijan, according to the number of vacancies.

Under Article 109 (9) of the Constitution, the final stage-appointment of judges is held merely by the president in respect of the judges of the first instance court for 5 years without any approval by the Parliament. As to the judges of superior courts, the Constitution defines that the president gives proposals to Parliament for appointing the judges of the Constitutional Court, Supreme Court, Appellate Courts, and then Parliament appoints them.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Courts and Judges;  
The Law on Judicial Council  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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

75

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

**Comments:**

Under Article 129.3 of the Constitution, court decisions should be reasoned and based on evidences. Under Article 100 of the Law on Courts and Judges, court decisions should be based on the free inner conviction of judges and outcomes of court investigation. Article 349 of the Code of Criminal Procedure and Article 217 of the Code of Civil Procedure provide that judges should reason their decisions.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Courts and Judges;  
The Code of Criminal Procedure;

**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).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, judges give reasons for their decisions, however, in practice this requirement is not always followed. There are many court decisions which are not reasoned or partly reasoned. This is especially more common for decisions on pre-trial detention of the accused.

It should be noted that according to the Report on implementation of the National Strategy 2007-2011, by the Commission on Combating Corruption, the majority of courts created websites and, for instance, the decisions of the appellate courts and the Supreme Court are currently published, under the requirement of the National Strategy. This requirement made a significant impact on delivering more reasoned decisions by the national-level judges, since now they are published on the website and judges feel more responsibility.

**References:**

- 1) Interview with Leyla Madatova, lawyer, August 2009
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

**Comments:**

Under Article 93-1 of the Law on Courts and Judges and Article 11.0.11 of the Law on Judicial Council, the Judicial Council is a disciplinary agency for the national level judicial system. Judges can be held liable only with the decision of the Judicial Council.

**References:**

- Judicial Council  
<http://www.judicialcouncil.gov.az>;  
The Law on Courts and Judges;  
The Law on Judicial Council  
<http://www.e-qanun.az>

**YES:** A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

**Comments:**

Under Article 4 of the Law on Judicial Council, the Judicial Council is an independent body that acts on a permanent basis and is not dependent on the legislative, executive, and judicial branches of the government or local governments as well as natural persons and legal entities. Under Article 6 of the relevant Law, the Judicial Council has 15 members: judges, members of executive, legislative authorities, prosecutor's office, and representatives of the Bar Association. In reality, almost all members of the Judicial Council are known as government-minded people, which makes a negative impact on its real independence. Article 26.1 states that the president of the Judicial Council is elected by its members with a simple majority of votes. It should be noted that despite the fact that formally the Judicial Council is stated as an independent body, the minister of Justice is the president of the Judicial Council that leads to interference by the executive branch.

**References:**

The Law on Judicial Council  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the Law on Courts and Judges and the Law on Judicial Council, individual and legal entities have the right to apply directly to the Judicial Council with alleged judicial corruption. The Council was mandated with the power to initiate proceedings against judges accused of corruption. According to the Report on Implementation by the Commission on Combating Corruption, during 2008 disciplinary proceedings were started against 22 judges, of whom 10 were reprimanded, three were transferred to other courts by the Judicial Legal Council and one was dismissed. However, the Judiciary Council is not willing to initiate investigations in high profile cases and it derives from its dependence on the executive.

**References:**

- 1) Interview with Leyla Madatova, lawyer, August 2009
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the Report on Implementation by the Commission on Combating Corruption, during 2008 disciplinary proceedings were started against 22 judges, of whom 10 were reprimanded, three were transferred to other courts by the Judicial Legal Council and one was dismissed. However, it should be noted that since the executive exercises strong control over the Judicial Council, the latter is not willing to penalize offenders in politically motivated cases.

**References:**

- 1) Interview with Leyla Madatova, lawyer, August 2009
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) 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 judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

29

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

**Comments:**

Under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that among others, judges shall file asset disclosure forms to the Commission on Combating Corruption.

**References:**

The Law on Combating Corruption;

**YES:** A YES score is earned if all members of the national-level judiciary 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 national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

**Comments:**

Under Article 8 of the Law on Combating Corruption, no public official (including members of the national level judiciary) shall request or accept for himself/herself or other persons any gift which may influence or appear to influence the objectivity and impartiality with which he/she carries out his/her service duties, or may be or appear to be reward relating to his/her duties. This does not include, with the condition of not influencing the objectivity of the service duties, minor gifts and use of conventional hospitality. The Law stipulates that public officials may not solicit or accept multiple gifts from any natural or legal persons during any twelve month period where the aggregate value of the gifts exceeds 55 Azeri manats (US\$65). Gifts received above this limit shall be considered as belonging to the public authority where that official is performing his/her service duties.

**References:**

The Law on Combating Corruption  
<http://www.e-qanun.az>

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

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

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

**Comments:**

Article 5 of the Law on Combating Corruption and Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials state that among others, judges should file regular asset disclosure forms to the Commission on Combating Corruption. However, the legislation does not define an independent auditing of the asset disclosure forms of the national-level judiciary. Under Article 8 of the latter Law, the Commission itself controls the accuracy of the information submitted.

**References:**

The Law on Combating Corruption;  
The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary 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 national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

**Comments:**

The Law on Combating Corruption does not address this issue. However, the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under consideration in Parliament, may regulate restrictions for judges to take positions in the private sector after leaving the government.

**References:**

The Law on Combating Corruption  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there are regulations restricting national-level judges' 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.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Since there is no formal restriction for post-government private sector employment, efficiency cannot be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges 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 cases, judges 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. Judges 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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice the regulations governing gifts and hospitality to national-level judges are routinely ignored and unenforced since there is no implementation mechanism.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges 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 are rarely or never enforced. Judges 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not yet been implemented.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** National-level judiciary 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:** The regulations are rarely or never enforced. Judges 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.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

**Comments:**

Under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by public officials are considered confidential private life information, and therefore citizens cannot access the asset disclosure records of judges. The Law says that responsible entrusted authorities shall ensure the privacy of those records. They may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court in case of corruption related offenses.

**References:**

The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**YES:** A YES score is earned if members of the national-level judiciary 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-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not yet been implemented. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by all officials, including judges, are considered confidential private life information, and, accordingly, citizens cannot access them. Therefore, timeliness cannot be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not yet been implemented. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by all officials, including judges, are considered confidential private life information, and, accordingly, citizens cannot access them. Therefore, cost issues cannot be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

**Comments:**

Despite the formal requirements, in practice asset disclosure provisions have not yet been implemented. Even if they are implemented, they will not be publicly accessible, because under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by all officials, including judges, are considered confidential private life information, and, accordingly, citizens cannot access them. Therefore, quality issues cannot be evaluated.

**References:**

- 1) Anti-Corruption Law: Lessons for Former Soviet Countries from Azerbaijan  
B.Michael, Linacre College, N.Mishyna, Odessa National Law Academy  
<http://europeandcis.undp.org/anticorruption/show/05769F98-F203-1EE9-BEDCFD1D8A92825D>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009 <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

### III-4. Budget Processes

#### 40. Can the legislature provide input to the national budget?

67

40a. In law, the legislature can amend the budget.

YES | NO

**Comments:**

Under Article 95 of the Constitution, the Parliament based on recommendation of the president of Azerbaijan approves the national budget and controls its execution. Article 13 of the Law on Budget System states that the draft law on upcoming year's budget shall be submitted to Parliament for discussions no later than October 15 of the instant year and under Article 15.3 the Parliament shall approve it by December 20. Article 14 also stipulates that the draft law should be published in the media within 10 days from its submission to Parliament. Until approval of the budget as well as after its approval, the Parliament may amend it, if necessary.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Budget System  
<http://www.e-ganun.az>

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

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, all significant public expenditures require legislative approval. Specifically, there is one general number stated in each expenditure part without going into specific details. Specific budget details (how to divide the money approved by the Parliament) are determined later by the relevant ministries and the Cabinet of Ministers. The Parliament also approves the Reserve Fund of the President based on needs.

However, it should be noted that there are also extra-budget expenditures that are funded by the State Oil Fund which are not approved by the Parliament, but rather determined by the President. In other words, yearly budget of the State Oil Fund is not included in the state budget and merely approved by the decree of the President. According to this decree, the expenditures of the State Oil Fund are directed to funding of different projects, to name but a few, implementation of state programs, construction works, etc.

**References:**

- 1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan  
<http://www.internationalbudget.org>
- 2) Interview with Hafiz Babali, journalist on economic issues, September 2009
- 3) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009
- 4) Reports by the Ministry of Finance  
[www.maliyye.gov.az](http://www.maliyye.gov.az)
- 5) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
[www.azadliqradiosu.az](http://www.azadliqradiosu.az)

**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.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal requirement about the possibility of making amendments to the draft law on budget submitted by the government, in practice the legislature operates minor changes or input on the draft law.

**References:**

1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan

<http://www.internationalbudget.org>

2) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009

3) Reports by the Ministry of Finance

<http://www.maliyye.gov.az>

4) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**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.

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#### 41. Can citizens access the national budgetary process?

25

41a. 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:**

Generally, budget negotiations in Parliament are closed to the public. According to Gubad Ibadoglu, an economist-expert, his organization Economic Research Center files every year an official application to Parliament to get an to the budget discussions. However, there has not been any answer. It is stated in the Report of Open Budget Index-2008 of International Budget Partnership, the Azerbaijan provides minimal information to the public by scoring 37 percent out of 100. In practice, the Parliament discussions on budget do not take much time and Parliament usually operates only minor changes and input to the draft law on budget, submitted by the government.

**References:**

1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan

<http://www.internationalbudget.org>

2) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009

3) Reports by the Ministry of Finance

<http://www.maliyye.gov.az>

4) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**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.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, budget negotiations in Parliament are closed to the public. According to Gubad Ibadoglu, an economist-expert, his organization Economic Research Center files every year an official application to Parliament to get an to the budget discussions. However, there has not been any answer. It is stated in the Report of Open Budget Index-2008 of International Budget Partnership, the Azerbaijan provides minimal information to the public by scoring 37 percent out of 100. In practice, the Parliament discussions on budget do not take much time and Parliament usually operates only minor changes and input to the draft law on budget, submitted by the government.

However, recently, the Parliament publishes all draft laws on its website (<http://www.meclis.gov.az>). Without evaluating its effectiveness, it should be noted that citizens can go to the website and provide some input to the draft laws posted online. But it is matter of active citizenship as well as political will how far these inputs are followed by Parliament.

**References:**

1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan

<http://www.internationalbudget.org>

2) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009

3) Reports by the Ministry of Finance

<http://www.maliyye.gov.az>

4) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**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.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

**Comments:**

The draft law on the budget is posted on the website of the Parliament (<http://www.meclis.gov.az>) as well as published in an official newspaper, Azerbaijan. According to Gubad Ibadoglu, an economist-expert of the Economic Research Center, citizens do not have access to itemized allocations.

**References:**

- 1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan <http://www.internationalbudget.org>
- 2) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009
- 3) Reports by the Ministry of Finance <http://www.maliyye.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan <http://www.azadliqradiosu.az>

**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.

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

42

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, all state authorities submit formal reports on expenses to the Chamber of Accounts.

**References:**

- 1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan <http://www.internationalbudget.org>
- 2) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009
- 3) Reports by the Ministry of Finance <http://www.maliyye.gov.az> and the Chamber of Accounts <http://www.ach.gov.az>
- 4) Interview with a formal employee of the Chamber of Accounts, September 2009

**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.

43b. 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:**

Under the Law on Chamber of Accounts and Internal Charter of the Parliament, the Chamber of Accounts is composed of seven members which are president, deputy president, and five audits. The speaker of the Parliament nominates them and at least 63

members of the Parliament should vote for them.

The last Parliamentary election in Azerbaijan was held on Nov. 6, 2005. According to the Central Election Commission, the ruling party won 63 out of the 125 seats, independent candidates garnered 42 seats, while the opposition won 10 seats in total. It should be noted that in the 2002 Referendum in Azerbaijan, the proportional system was removed and from that time elections have been based only on the majority system. However, the majority of the independent candidates elected were also pro-government. In this regard, appointed members to the Chamber are usually pro-government.

**References:**

- 1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan  
<http://www.internationalbudget.org>
- 2) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009
- 3) Reports by the Ministry of Finance  
<http://www.maliyye.gov.az>  
and the Chamber of Accounts  
<http://www.ach.gov.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

**Comments:**

The Chamber of Accounts generally investigates financial irregularities. However, it is not aggressive in politically sensitive cases. According to the former employee of the Chamber, if there is a political pressure, the Chamber gives up its investigation even if there are alleged financial irregularities. It should be noted that annual reports on operation of the Chamber of Accounts are posted on its website, <http://www.ach.gov.az>.

**References:**

- 1) International Budget Partnership Open Budget Index-2008 Azerbaijan and Open Budget Questionnaire-Azerbaijan  
<http://www.internationalbudget.org>
- 2) Interview with Gubad Ibadoglu, an economist-expert of the Economic Research Center, September 2009
- 3) Reports by the Ministry of Finance  
<http://www.maliyye.gov.az>  
and the Chamber of Accounts  
<http://www.ach.gov.az>
- 4) Interview with a formal employee of the Chamber of Accounts, September 2009

**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.

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

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

YES | NO

**Comments:**

Under the legislation, the Chamber of Accounts is the legislative committee that provides control over the implementation of the national budget and reports to Parliament.

**References:**

Article 92 of the Constitution of the Republic of Azerbaijan;

The Law on Budget System;

The Law on Chamber of Accounts

<http://www.e-qanun.az>;

The Chamber of Accounts

<http://www.ach.gov.az>

**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 within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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Category IV. Administration and Civil Service

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IV-1. <sup>62</sup> Civil Service Regulations

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

50

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

**Comments:**

The Law on Civil Service and The Law on Combating Corruption establish specific formal rules on impartial, independent, and fairly managed civil service.

**References:**

The Law on Civil Service;

The Law on Combating Corruption

<http://www.e-qanun.az>

**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.

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44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

**Comments:**

The above-mentioned laws, especially the Law on Combating Corruption, stipulate regulations to prevent nepotism, cronyism, and patronage within the civil service. It should be noted that this applies to all civil servants since the subjects of the corruption offenses are widely defined by Article 2 of the Law on Combating Corruption.

**References:**

The Law on Civil Service;  
The Law of the Republic of Azerbaijan on Combating Corruption;  
The Law on Rules of Ethics Conduct of Civil Servants  
<http://www.e-qanun.az>

**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.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

**Comments:**

Under Article 5 of the Law on Civil Service, the Council on Civil Service Management is a special mechanism that controls the implementation of the Law on Civil Service, in particularly adjudicates complaints brought by civil servants. However, the Council is not independent in practice. There is also an appeal mechanism available to the Ombudsman and/or to the administrative body or to courts.

**References:**

The Council on Civil Service Management;  
The Law on Civil Service  
<http://www.e-qanun.az>

**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. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

**Comments:**

Under the Criminal Code, there are certain corruption crimes which in addition to imprisonment also define the punishment as prohibition of holding a certain position." However ,under Article 46.1 of the Criminal Code, the maximum period for prohibition is 5 years, so it is not a lifetime ban.

Furthermore, under Article 27.2.2 of the Law on Civil Service, if a person has an unpaid or unremoved conviction, he or she cannot apply to government jobs. Under Article 83 of the Criminal Code, depending on the gravity of the crime, a certain time period should pass in order for a person to be considered without conviction; otherwise, a convicted person should apply for the removal of conviction ahead of time. Only after this, a person can apply to government jobs. The law does not specifically talk

about corruption crimes. Thus, civil servants convicted of corruption may work for the government after being considered without conviction. Put another way, the ban is not a lifetime ban.

**References:**

The Law on Civil Service;  
The Criminal Code  
<http://www.e-ganun.az>

**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 or if the ban is not a lifetime ban.

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#### 45. Is the law governing the administration and civil service effective?

47

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

Civil servants are mainly influenced by political or personal matters. They cannot go against the interests of the ruling party. Despite the fact that the right to go to court is a constitutional right, in practice civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

Minor improvements in the civil service appointment process are becoming visible. Currently, the centralized body — the Commission on Civil Service Matters — started holding recruitment for most civil service jobs through competitive exams, consisting of a written exam and an oral interview.

According to the 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, during 2008 the Commission on Civil Service Matters appointed 350 out of 4,406 applicants for civil service jobs through competitive exams. Public opinion regarding these exams is that the written exams are held fairly, whereas oral interviews are usually subjective. In other words, a handful of candidates can get civil service jobs according to professional criteria. However, individuals appointed to senior positions often have conflicts of interests due to personal loyalties, family connections or other biases. Applicants who have opposition links cannot get governmental jobs even if they meet all criteria.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

45c. 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:**

Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants. However, as a result of implementation of civil service recruitment exams by the centralized body — Commission on Civil Service— the situation has improved a little bit .

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

**Comments:**

Civil servants usually have clear job descriptions.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility 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.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite some salary increase in civil service, generally salaries are considered low and insufficient for normal life standards. In practice, civil servant bonuses are generally a small percentage of the total take-home pay for most civil servants, although exceptions exist where some civil servants' bonuses represent a significant part of the total pay. Some ministries pay so called envelope salaries" to their employees in addition to official salaries.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

45f. 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:**

Generally the Commission on Civil Service Matters, the centralized body responsible for civil service recruitment, publicly advertises vacancies and furthermore, based on exam results, publishes a list of civil servant positions and positions filled on its website (<http://www.dqmk.az>).

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

**Comments:**

It usually depends on the nature of the problem. For instance, if a high official is removed from his/her position as a result of a political decision, the independent redress mechanism — which is the Council on Civil Service Management or a higher administrative body or a court — is not effective since it relies on unofficial approval from the political leadership.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, the government has paid civil servants on time.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**Comments:**

Civil servants convicted of corruption are generally not prohibited from future government employment if the conviction period is cooled off under the Criminal Code or the time period for the punishment of prohibition for holding a certain position" has passed. However, in practice, informal blacklisting may take place, which does not allow a person to get a government position although there is no legal obstacle.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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. Some bans are only temporary.

**25:**

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

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

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

**Comments:**

Under Article 5 of the Law on Combating Corruption, officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 18 of the Law on Civil Service defines that a civil servants shall submit annual asset disclosure forms to their employers. Moreover, Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials also lists officials who should file asset disclosure forms to the Commission on Combating Corruption.

**References:**

The Law on Combating Corruption;  
The Law on Civil Service;  
The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**YES:** A YES score is earned if senior members of the civil service 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 senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

**Comments:**

Under Article 11.3 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not allow influence of his or her private interests or interests of stakeholders on fulfillment of other service duties and create conditions for such influence. Under Article 15 of the same Law, a civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for private interests. In case of a contradiction between the service duties and the private interests of a civil servant, he/she under the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including the future period. It should also be noted that the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under Parliament's consideration, may also regulate it.

**References:**

The Law on Rules of Ethics Conduct of Civil Servants  
<http://www.e-qanun.az>

**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.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

**Comments:**

Under Article 15 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall fulfill everything prescribed by law in order to prevent conflicts of interests. Specifically, Article 15.3 states that after leaving the government for the period prescribed by law, a civil servant cannot work at the organization or their branches which were under his/ her supervision. Moreover, the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under Parliament's consideration, may regulate restrictions for civil servants entering the private sector after leaving the government.

**References:**

The Law on Rules of Ethics Conduct of Civil Servants

<http://www.e-ganun.az>

**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.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

**Comments:**

Under Article 14 of the Law on Rules of Ethics Conduct of Civil Servants, civil servants shall not demand or accept any gifts for himself/ herself or other persons, which may influence or appear to influence the impartial performance of his/her duties, or may be or appear to be a reward relating to his/her duties, or might create an impression of such influence, or are given as rewards for performance of his/her duties, or might create an impression of such a reward. This rule shall not apply to cases of awarding minor gifts in regard to hospitality and with a value not over the amount described in the Law on Combating Corruption. In addition, Article 8 of the Law on Combating Corruption stipulates that officials may not solicit or accept multiple gifts from any natural or legal persons during any 12 month period, where the aggregate value of the gifts exceeds 55 Azeri manats (US\$65). Gifts received above this limit shall be considered as belonging to the public authority or municipal body in which that official is performing his/her service duties. Under the Law, if a civil servant is not able to decide whether to take or refuse the gift, or benefit from the hospitality or not, he/she shall get his/her direct supervisor's opinion about it.

**References:**

The Law on Rules of Ethics Conduct of Civil Servants;

The Law on Combating Corruption

<http://www.e-ganun.az>

**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.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

**Comments:**

Under Article 5 of the Law on Combating Corruption, officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 18 of the Law on Civil Service defines that civil servants shall submit annual asset disclosure forms to their employers. Moreover, Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials also lists officials who should file asset disclosure forms to the Commission on Combating Corruption.

However, the legislation does not define an independent auditing of the civil servants' asset disclosure forms. Under Article 8 of the latter Law, the Commission or the employer agency themselves control the accuracy of the information submitted.

**References:**

The Law on Combating Corruption;

The Law on Approval of the Rules on Filing Financial Data by Public Officials

<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service 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 civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the regulations restricting post-government private sector employment for civil servants are not effective. 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 not enforced.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases 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<sup>100</sup> 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.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The regulations governing gifts and hospitality to the civil service are not effective. Put another way, civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions. This practice is especially widespread on occasions such as birthdays and holidays, and control mechanisms are not effective.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced. 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.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the requirements for civil service recusal from policy decisions affecting personal interests are not effective. Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

The Law on Approval of the Rules on Filing Financial Data by Public Officials has not been implemented yet. Even if it is implemented, since the law does not define an independent auditing mechanism civil service asset disclosures will not be audited in practice.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**100:** Civil service asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Civil service 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: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

### Comments:

Under Article 9 of the Law on Approval of the Rules on Filing Financial Data by Public Officials, asset disclosure records submitted by civil servants are considered confidential private life information and therefore citizens cannot access the asset disclosure records of senior civil servants. The Law says that responsible entrusted authorities shall ensure the privacy of those records and they may be requested by the Commission on Combating Corruption based on the decision of the General Prosecutor or the court, in case of corruption related offenses.

### References:

The Law on Approval of the Rules on Filing Financial Data by Public Officials  
<http://www.e-qanun.az>

**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.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

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

### Comments:

The Law on Approval of the Rules on Filing Financial Data by Public Officials has not been implemented yet. Even if it is implemented, since by law the asset disclosure records are considered confidential private life information, citizens will not have access to these records. Therefore, time is not a relevant issue.

### References:

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The Law on Approval of the Rules on Filing Financial Data by Public Officials has not yet been implemented. Even if it is implemented, since by law the asset disclosure records are considered confidential private life information, citizens will not have access to these records. Therefore, the cost issue is not relevant.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**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.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

It should be noted that the Law on Approval of the Rules on Filing Financial Data by Public Officials has not yet been implemented. Even if it is implemented, since by law the asset disclosure records are considered confidential private life information, citizens will not have access to these records. Therefore, the quality issue is not relevant.

**References:**

- 1) Newspaper materials and articles on Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, 2008  
<http://www.coe.int/greco>
- 4) Interview with a former employee of the Ministry of Economic Development, September 2009

**100:** The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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## IV-2. Whistle-blowing Measures

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

0

48a. 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:**

The legislation in force is silent about reporting cases of corruption for civil servants. There is also no legal statute for public sector whistleblowers. In other words, no specific protection is provided to civil servants reporting corruption cases other than general security measures for witness protection prescribed by the Law on State Protection of Persons Participating in Criminal Proceedings.

However, the draft Law on Prevention of Conflict of Interests in the Activities of Public Officials, which is now under consideration in Parliament, specifically regulates this issue. For instance, it is stated in Article 23.4 of the draft Law that every public official shall have the obligation to report directly and without undue delay to the direct superior or to the enforcement agency any information concerning conduct which he/she reasonably knows to involve a violation of this Law and related laws. The draft Law further determines that the intentional failure of a public official to make this required report shall constitute a cause for disciplinary penalty. Furthermore, Article 23.6 of the draft Law enables the management to take any appropriate action to protect the official and reverse any act of retaliation against him/her.

**References:**

The Law on State Protection of Persons Participating in Criminal Proceedings  
<http://www.e-ganun.az>

**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.

48b. 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, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are not protected from recrimination or other negative consequences, as there are no laws on whistle-blower protections for individuals who lodge complaints about corruption. Therefore, public sector whistleblowers generally face negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment. However, the draft Law on Prevention of Conflict of Interests in the Activities of Public Officials, which is now under consideration in Parliament, specifically regulates this issue.

**References:**

- 1) GRECO (Group of States against Corruption) Evaluation Report on Azerbaijan, June 19-23, 2006  
<http://www.coe.int/greco>
- 2) GRECO Compliance Report on Azerbaijan, Oct. 10, 2008  
<http://www.coe.int/greco>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

48c. 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:**

The legislation in force is silent about reporting cases of corruption. There is also no legal statute for private sector whistleblowers other than general security measures for witness protection prescribed by the Law on State Protection of Persons Participating in Criminal Proceedings.

**References:**

The Law on State Protection of Persons Participating in Criminal Proceedings  
<http://www.e-ganun.az>

**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.

48d. 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:**

In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are not protected from recrimination or other negative consequences. There is also no legal statute for private sector whistleblowers other than general security measures for witness protection prescribed by the Law on State Protection of Persons Participating in Criminal Proceedings.

**References:**

- 1) GRECO (Group of States against Corruption) Evaluation Report on Azerbaijan, June 19-23, 2006  
<http://www.coe.int/greco>
- 2) GRECO Compliance Report on Azerbaijan, Oct. 10, 2008  
<http://www.coe.int/greco>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

63

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Commission on Combating Corruption has a permanent secretariat, which is a public body and has staff sufficient to fulfill its basic mandate.

**References:**

- 1) GRECO (Group of States against Corruption) Evaluation Report on Azerbaijan, June 19-23, 2006  
<http://www.coe.int/t/greco>
- 2) GRECO Compliance Report on Azerbaijan, Oct. 10, 2008  
<http://www.coe.int/t/greco>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 4) Interview with an officer of the Commission for Combating Corruption, September 2009

**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.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The Commission on Combating Corruption receives regular funding from the state budget.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, complaints to the Commission for Combating Corruption are resolved according to the Law on the Procedure for Consideration of Applications from Citizens, to be reviewed within one month, or 15 days if no additional review or inspection is needed, unless shorter periods are provided for in legislation. However, it should be noted that since there is high political dependency from the executive, the Commission is unwilling to take on politically powerful offenders and to do something without the top approval.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Under Article 7.8 of the Charter of the Commission on Combating Corruption, if there are complaints of corruption offenses, the Commission shall send materials to the relevant authorities for consideration. The Commission itself does not investigate but it cooperates with other investigative bodies such as the Department on Combating Corruption under the General Prosecutor's Office, the Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs, etc. It should be noted that since there is high political dependency, the Commission is unwilling to take on politically powerful offenders and to do something without the top approval.

**References:**

- 1) GRECO (Group of States against Corruption) Evaluation Report on Azerbaijan, June 19-23, 2006  
<http://www.coe.int/greco>
- 2) GRECO Compliance Report on Azerbaijan, Oct. 10, 2008  
<http://www.coe.int/greco>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

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49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

**Comments:**

The legislation is silent about specific internal mechanisms for reporting corruption cases for civil servants. However, civil servants like other citizens may apply to the specialized body in the area of prevention corruption, which is the Commission on Combating Corruption. It should also be noted that the majority of agencies have websites, hot-lines and emails, where they can be contacted.

**References:**

The Commission on Combating Corruption  
<http://www.commission-anticorruption.gov.az>;  
The Statute of the Commission on Combating Corruption  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

**NO:** A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

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54  
IV-3. Procurement

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51. Is the public procurement process effective?

85

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

**Comments:**

Article 13 of the Law on Public Procurement regulates conflicts of interests for public procurement officials. According to it, public procurement officials, their relatives and dependents do not have the right to participate in the procurement. Furthermore, under Article 11.3 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not allow influence of his/her private interests or interests of stakeholders on fulfillment of other service duties and create conditions for such influence. Under Article 15 of the same Law, a civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for private interests. In case of a contradiction between the service duties and the private interests of a civil servant, he/she under the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including future period. Moreover, the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under the consideration in Parliament, specifically regulates conflicts of interests.

**References:**

The Law on Public Procurement  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

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

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

**Comments:**

Under Article 4.1.4 of the Law on Public Procurement, the Agency on Public Procurement shall organize professional development courses, seminars, and conferences as well as prepare educational materials for its officials.

**References:**

The Law on Public Procurement  
<http://www.e-ganun.az>

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, conflict of interest regulations are generally not enforced. There is no transparent mechanism to control it and, as a result, relatives or people close to procurement officials regularly participate in procurement processes.

**References:**

- 1) Reports by the State Agency On Procurement of the Republic of Azerbaijan  
<http://www.tender.gov.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

**Comments:**

Under Article 4.1.2 of the Law on Public Procurement, the Public Procurement Agency shall supervise the legality of procurement of goods (works and services) on competitive basis at the account of state funds and performance of contracts, consider disputes, suspend procurement procedures for up to seven banking days in case of revealing breach of law, and, if necessary raise the matter of cancellation of tender results.

Furthermore, under Article 5 of the Law on Combating Corruption, public officials should file regular asset disclosure forms, illustrating sources, types, and amount of income, stock holdings, taxable properties, and other assets. Article 3.1 of the Law on Approval of the Rules on Filing Financial Data by Public Officials stipulates that public officials are required to file an asset disclosure form to the Commission on Combating Corruption.

**References:**

State Agency on Procurement

<http://www.tender.gov.az>;

The Law on Public Procurement;

The Law on Combating Corruption;

The Law on Approval of the Rules on Filing Financial Data by Public Officials

<http://www.e-qanun.az>

**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.

51e. In law, major procurements require competitive bidding.

YES | NO

**Comments:**

Under the Law on Public Procurement, major procurements require competitive bidding. Article 11.1 states that if the number of submitted tender proposals to take part at the tender is less than three, the procurement agency shall refuse to continue the tender and shall publish relevant information in the press, where announcements about tenders must be published within five banking days.

**References:**

The Law on Public Procurement

<http://www.e-qanun.az>

**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).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

**Comments:**

Under Article 45 of the Law on Public Procurement, strict formal requirements limit the extent of sole sourcing. All negotiations should be secret and information cannot be disclosed without consent.

**References:**

The Law on Public Procurement

<http://www.e-qanun.az>

**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.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

**Comments:**

Under Article 56-59 of the Law on Public Procurement, unsuccessful bidders can instigate an official review of procurement decisions.

**References:**

The Law on Public Procurement  
<http://www.e-ganun.az>

**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.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

**Comments:**

Under Article 60 of the Law on Public Procurement, unsuccessful bidders can challenge procurement decisions in courts.

**References:**

The Law on Public Procurement  
<http://www.e-ganun.az>

**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.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

**Comments:**

It can be inferred from the wording of Article 4 of the Law on Public Procurement that the State Agency on Public Procurement has the right to prohibit companies guilty of major violations of procurement regulations from participating in future procurement bids. It is also stated in the National Strategy on Increasing Transparency and Combating Corruption, 2007-2011, that the mechanism to prevent convicted companies from doing business with the government should be established.

**References:**

The Law on Public Procurement  
<http://www.e-ganun.az>  
National Strategy on Increasing Transparency and Combating Corruption, 2007-2011  
[http://www.commission-anticorruption.gov.az/en/index.php?option=com\\_frontpage&Itemid=61](http://www.commission-anticorruption.gov.az/en/index.php?option=com_frontpage&Itemid=61)

**YES:** A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

51j. 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:**

According to paragraph 39 of the National Strategy on Increasing Transparency and Combating Corruption 2007-2011, the mechanism should be established which will prohibit physical and legal persons, being guilty of major violations of procurement regulations, to participate in future procurement bids for a certain period. Under paragraph 42 of the 2008 Report of the Commission for Combating Corruption on Implementation of the mentioned National Strategy, preparation of the mechanism is currently underway.

**References:**

- 1) Reports by the State Agency On Procurement of the Republic of Azerbaijan  
<http://www.tender.gov.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

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## 52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

**Comments:**

Under Article 5.3 of the Law on Public Procurement, public procurement rules should be available under the procedure prescribed by law. Furthermore, citizens can access public procurement regulations either through the website of the State Agency on Public Procurement or the official newspaper.

**References:**

The Law on Public Procurement  
<http://www.e-qanun.az>

State Agency on Public Procurement  
<http://www.tender.gov.az>

**YES:** A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

**Comments:**

Under Article 5.3 of the Law on Public Procurement, information on procurement contract, concluded as a result of tender, shall be published within five working days in the press entity where the announcement about the tender was published.

**References:**

The Law on Public Procurement  
<http://www.e-ganun.az>

**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.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the 2008 Report of the State Agency on Public Procurement, public procurement regulations are posted online on the website of the State Agency on Public Procurement (see <http://tender.gov.az/hesabatlar/Hesabat2008.html>). As it is seen from the web site, all rules and regulations that govern the procurement process are available on [www.tender.gov.az/LawAz.html](http://www.tender.gov.az/LawAz.html)

It should also be noted that, according to paragraph 42 of the 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy 2007-2011, the Agency on Public Procurement is currently working on preparing the electronic procurement competition as well.

The rules and regulations are publicly accessible even if details of the results of the tender are not always available after the procurement has been completed.

**References:**

- 1) Reports by the State Agency On Procurement of the Republic of Azerbaijan  
<http://www.tender.gov.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Interview with Hafiz Babali, Turan Information Agency, Journalist on economic issues, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
[www.azadliqradiosu.az](http://www.azadliqradiosu.az)

**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. These records are defined here as the rules governing the competitive procurement process.

**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.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the 2008 Report of the State Agency on Public Procurement, public procurement regulations are posted on the website of the State Agency on Public Procurement in Azerbaijani, English, and Russian (see <http://tender.gov.az/hesabatlar/Hesabat2008.html>). As it is seen from the web site, all rules and regulations that govern the procurement process are available on [www.tender.gov.az/LawAz.html](http://www.tender.gov.az/LawAz.html). So, it is free of charge.

**References:**

- 1) Reports by the State Agency On Procurement of the Republic of Azerbaijan  
<http://www.tender.gov.az>
- 2) Interview with Hafiz Babali, Turan Information Agency, journalist on economic issues, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
[www.azadliqradiosu.az](http://www.azadliqradiosu.az)

**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. These records are defined here as the rules governing the competitive procurement process.

**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.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the 2008 Report of the State Agency on Public Procurement, major public procurements are posted on the website of the State Agency on Public Procurement (see <http://tender.gov.az/hesabatlar/Hesabat2008.html>) It should also be noted that according to paragraph 42 of the 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy 2007-2011, the Agency on Public Procurement is currently working on preparing the electronic procurement competition as well.

**References:**

- 1) Reports by the State Agency On Procurement of the Republic of Azerbaijan  
<http://www.tender.gov.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**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. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**

Public procurement bids are usually announced on official newspapers as well as posted on the web site of the State Agency on Public Procurement (see the link: <http://www.tender.gov.az/formaz.php>). Yearly procurement outcomes are also published as a report on the web site. For instance, according to the 2008 Report of the State Agency on Procurement, in 2008, 8,839 procurements were implemented by state-owned companies. The Report is available at <http://tender.gov.az/hesabatlar/Hesabat2008.html>

However, it should be noted that although the Agency disclosed general report on state purchases and stated general numbers, but information about which companies participated in which tender, essence of terms and names of victorious companies are not disclosed. Tender on majority of investment projects realized on the basis of state budget has not held and contractors are defined on the basis of mysterious decisions. Many problems in this sphere happen especially in the Ministry of Transport, Ministry of Labor and Social Protection of Population, Ministry of Education, and State Oil Company. The relevant bodies such as Chamber of Accounts, the Ministry of Finance as well as the State Agency on Public Procurement close their eyes to all this. As a result, citizens cannot access the results of major procurement bids. They can only see the announcement; as to outcomes it is usually not available to public.

**References:**

- 1) Reports by the State Agency On Procurement of the Republic of Azerbaijan <http://www.tender.gov.az>
- 2) Interview with Hafiz Babali, Turan Information Agency, journalist on economic issues, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan [www.azadliqradiosu.az](http://www.azadliqradiosu.az)

**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.

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#### IV-4. Privatization

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53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

**Comments:**

Under the Law on Privatization of State Property, all businesses are eligible to compete for privatized state assets.

**References:**

The Law on Privatization of State Property  
<http://www.e-ganun.az>

**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.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

**Comments:**

The Law on Privatization of State Property does not specifically address this issue. However, under Article 11.3 of the Law on Rules of Ethics Conduct of Civil Servants, a civil servant shall not allow influence of his/her private interests or interests of stakeholders on fulfillment of other service duties and create conditions for such influence. Under Article 15 of the same Law, a civil servant shall not allow conflict of interests while performing his/her service duties and shall not illegally use his/her service authorities for private interests. In case of contradiction between service duties and private interests of a civil servant, he/she under the legislation must give information on the character and volume of the conflict of interests when recruited to civil service, also including future period.

Furthermore, the Draft Law on Prevention of Conflict of Interests in the Activity of Public Officials, which is now under consideration in Parliament, specifically regulates conflicts of interests for privatization officers.

**References:**

The Law on Privatization of State Property;  
The Law on Rules of Ethics Conduct of Civil Servants  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

**NO:** A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, conflict of interest regulations are not implemented in practice.

**References:**

- 1) Reports by the State Committee on Property Issues of the Republic of Azerbaijan  
<http://www.emdk.gov.az>  
<http://www.auksion.az>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

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## 54. Can citizens access the terms and conditions of privatization bids?

85

54a. In law, citizens can access privatization regulations.

YES | NO

**Comments:**

Under Article 25.1 of the Law on Privatization of State Property, information on privatization of state-owned property should be published in the official media 30 days prior to selling that property.

**References:**

The Law on Privatization of State Property

<http://www.e-ganun.az>

**YES:** A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

**NO:** A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, there is a formal process of advertising privatizations. According to the 2008 Report of the Commission for Combating Corruption, all major procurements are advertised 30 days prior to the selling process in the "Mulkiyyet" (Property) newspaper, posted on the website of the State Committee on Property Issues as well as on <http://www.auksion.az>. Outcomes of privatization are also posted online as well as published. It is also worth noting that the Committee has a hot-line service (telephone number: 193) as well as an online application system where citizens can obtain information on privatization issues.

**References:**

1) Reports by the State Committee on Property Issues of the Republic of Azerbaijan

<http://www.emdk.gov.az>

<http://www.auksion.az>

2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>

3) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**100:** There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

**Comments:**

Under Article 25.3 of the Law on Privatization of State Property, information on results of the privatization process should be published in the media within 15 days.

**References:**

The Law on Privatization of State Property

<http://www.e-qanun.az>

**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.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Since all major procurements are advertised 30 days prior to the selling process in the Mulkiyyet" (Property) newspaper, posted on the website of the State Committee on Property Issues as well as on <http://www.auksion.az>, citizens can generally access them. Rules and regulations are also available on the Azerbaijan Legal Database, at <http://www.e-qanun.az>. It is also worth noting that the Committee has a hot-line service (telephone number:193) as well as an online application system where citizens can obtain information on privatization issues.

**References:**

1) Reports by the State Committee on Property Issues of the Republic of Azerbaijan

<http://www.emdk.gov.az>

<http://www.auksion.az>

2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>

3) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**100:** Records (defined here as the rules governing the competitive privatization process) 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.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Since all major procurements are advertised 30 days prior to the selling process in the Mulkiyyet" (Property) newspaper, posted on the website of the State Committee on Property Issues as well as on <http://www.auksion.az>, citizens can generally access them. Rules and regulations are also available on the Azerbaijan Legal Database, at <http://www.e-qanun.az> and are accessible free of charge.

**References:**

1) Reports by the State Committee on Property Issues of the Republic of Azerbaijan

<http://www.emdk.gov.az>

<http://www.auksion.az>

2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption

<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>

3) Newspaper materials and articles of the Radio Liberty-Azerbaijan

<http://www.azadliqradiosu.az>

**100:** Records (defined here as the rules governing the competitive privatization process) 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.

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## Category V. Oversight and Regulation

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### V-1. <sup>75</sup>National Ombudsman

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#### 56. Is the national ombudsman effective?

64

56a. In law, the ombudsman is protected from political interference.

YES | NO

**Comments:**

Under Article 2.1. of the Constitutional Law, the commissioner is elected for 7 years by the Parliament (Milli Meclis) from the three candidates nominated by the president. 83 out of 125 votes are required for election. Under Article 5, the commissioner is independent and obeys only the Constitution and laws of Azerbaijan. The independence of the commissioner shall be ensured by the following four legal guarantees:

- a) the commissioner shall not be replaced, while in office;
- b) the commissioner shall enjoy immunities;
- c) It shall be inadmissible to interfere with the commissioner's activities by any public authority, municipality or officials;
- d) the commissioner shall enjoy financial and social guarantees.

Article 53 states that declaration of a state of emergency or martial law shall not cease or restrict the activities of the commissioner.

**References:**

The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman)  
<http://www.e-ganun.az>

**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.

56b. In practice, the ombudsman is protected from political interference.

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

**Comments:**

Despite the formal guarantees, in practice the Ombudsman generally is not protected from political interference. Sometimes the Ombudsman tries to make critical statements; however, the Ombudsman is in fact powerless to compel the government to reveal

politically sensitive information. According to the US State Department 2008 Country Report on Azerbaijan, local Human Rights NGOs and activists criticized the Ombudsman's work as ineffective and generally regarded the Ombudsman as not independent of the government. However, it is worth noting that in comparison with other local institutions, the Ombudsman makes some attempts to be seen independent, for instance, holds regular meetings with political prisoners, imprisoned journalists, and bloggers.

**References:**

- 1) Reports by Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
[www.azadliqradiosu.az](http://www.azadliqradiosu.az)

**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.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally speaking, the ombudsman is protected from removal without relevant justification. Under Article 2.1. of the Constitutional Law, the ombudsman is elected for 7 years by the Parliament (83 out of 125 votes) from the three candidates nominated by the president and cannot be replaced while in the office. Under Article 7 of the relevant Law, the ombudsman shall be removed before expiry of his/her term of office by a decision of the Parliament, taken by 83 out of 125 votes on its own initiative or following a recommendation of the president of Azerbaijan, where (1) Requirements for the ombudsman have been violated and (2) the ombudsman has completely lost his/her capacity to perform his or her duties.

Current Ombudsman Elmira Suleymanova is the first ombudsman in Azerbaijan and in this regard there is no practice of removal. However, taking into account general political practice, the ombudsman can be removed at the will of the political leadership.

**References:**

- 1) Reports by Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman office has a professional and full-time staff composed of 70 persons.

**References:**

- 1) Reports by Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009

**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.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

Under Article 18 of the Constitutional Law on Ombudsman, the ombudsman appoints and dismisses his/her staff. It should be mentioned that no competitive centralized exams have been held until now. Although the Ombudsman has a quite professional staff, in practice strong executive control on the Ombudsman does not allow for independence.

**References:**

- 1) Reports by Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the Ombudsman office receives regular funding from the state budget.

**References:**

- 1) Reports by Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) Interview with an Ombudsman officer, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the Ombudsman makes publicly available reports. Not later than two months after ending the year, the Ombudsman submits the annual report to the president of Azerbaijan and also presents this report before Parliament. The annual report is sent to the Cabinet of Ministers, the Constitutional Court, the Supreme Court, and the General Prosecutor's Office and at the same time it is published in the official newspaper Azerbaijan" and "Legislation Database of the Republic of Azerbaijan." Annual reports are also available to the public through the website of the Ombudsman's office, <http://www.ombudsman.gov.az>.

**References:**

- 1) Reports by Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) Interview with an Ombudsman officer, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman usually cooperates with other investigative agencies such as the Ministry of Internal Affairs, General Prosecutor's Office, etc. However, under Article 12 of the Constitutional Law on Ombudsman, the Ombudsman with the consent of the person whose human rights have been violated, may carry out investigations on his/her own initiative in cases of special public importance, or in cases where the interests of persons who are not capable to vindicate their rights themselves are affected. Where, during an investigation, any violations other than those mentioned in the complaint are revealed, the

Ombudsman shall carry out relevant investigation provided that this is within his/her competence; if not, he/she shall refer the materials to a relevant government body.

In this regard, it is stated in the 2008 annual report that the Ombudsman initiated investigations on police violence, illegal constructions, and detention of journalists and applied to the relevant bodies regarding this issue and requested effective investigation in these cases.

#### References:

- 1) Website of the Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

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

#### Comments:

The Ombudsman does not impose penalties on its own. It cooperates with other agencies in imposing penalties as opposed to doing so on its own. Under Article 13 of the Constitutional Law on Ombudsman, as a result of investigation if the Ombudsman finds a violation of the rights and freedoms of an applicant, he/she may take the following measures:

- 1) demand from the governmental or municipal body, whose decision or act (omission) violated the human rights and freedoms, to remedy those violations. The appropriate bodies and officials shall, within 10 days, submit to the Commissioner written information of the measures taken in respect of those violations. Where such information is not submitted or the appropriate body fails to comply with the demands of the Commissioner, the latter may apply to the superior authorities.
- 2) in cases where certain conduct appears to be a criminal offense, apply to relevant bodies;
- 3) apply to the subjects entitled to file additional cassation complaints;
- 4) submit proposals to relevant bodies on instituting disciplinary proceedings against the officials whose decision or act (omission) violated human rights and freedoms;
- 5) inform mass media of the results of the investigation conducted in respect of human rights violations;
- 6) in cases where violations of human rights take on special public importance, if the means available at the disposal of the Commissioner are not sufficient for remedying those violations, apply to the president of Azerbaijan, or hold a speech before the Parliament of Azerbaijan;
- 7) apply to a court of justice with a view to the protection of the rights and freedoms violated by decision or act (omission) of a government or municipal body, or an official,
- 8) apply to the Constitutional Court in cases where the rights and freedoms of a person are violated by legislative acts in force.

As it is stated in 2008 annual report, the Ombudsman initiated investigations on police violence, illegal constructions, and detention of journalists and applied to the relevant bodies regarding this issue and requested effective investigation in these cases.

#### References:

- 1) Reports of the Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

Although the Ombudsman reports usually cover important issues, they are often given superficial attention. In other words, Ombudsman's reports do not lead to policy changes. For instance, according to the 2008 Report of the Ombudsman, since its operation from 2002, the Ombudsman received 42,260 applications, of which 8,600 were made in 2008. 37,5 percent of the admissible applications during 2003-2008 were granted and 43,3 percent of them were granted and solved in 2008. However, since there is no political will, very few media campaigns were led to highlight the main aspects of this report and to keep it in public eye.

**References:**

- 1) Reports of the Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Although there are some exceptions, in practice the Ombudsman generally acts on citizen complaints within a reasonable time period. Under Article 10 of the Constitutional Law on Ombudsman, in case of refusing to pursue the complaint because of inadmissibility reasons, the Ombudsman shall, within 10 days, submit a motivated answer to an applicant. Under Article 12, complaints shall be investigated during 30 days. If additional investigation or materials are required, this term may be extended to another 30 days. With the consent of an applicant, if it is necessary to conduct an additional investigation, it may still be re-prolonged. Under Article 13, the Ombudsman shall, within 5 days, submit written information to an applicant on the measures taken in respect of his/her complaint and results of the investigation.

**References:**

- 1) Reports of the Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) 7 years of Ombudsman-Opinions  
[http://www.mediaforum.az/articles.php?article\\_id=20090204030358223&page=05\)=az&eu=0](http://www.mediaforum.az/articles.php?article_id=20090204030358223&page=05)=az&eu=0)
- 3) Interview with an Ombudsman officer, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

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.

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## 57. Can citizens access the reports of the ombudsman?

100

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

### Comments:

Under Article 14.5 of the Constitutional Law, annual reports of the Ombudsman are published in the official newspaper "Azerbaijan" and "Legislation Database of the Republic of Azerbaijan." Furthermore, all annual reports are published on the website of the Commissioner, <http://www.ombudsman.gov.az>.

### References:

The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman)  
<http://www.e-qanun.az>

**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.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

The Ombudsman reports are published in the official newspaper "Azerbaijan" and "Legislation Database of the Republic of Azerbaijan." Annual reports are also posted on the website of the Ombudsman office, <http://www.ombudsman.gov.az>.

### References:

- 1) Website of the Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) Interview with an Ombudsman officer, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.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.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Ombudsman reports are published in the official newspaper "Azerbaijan" and "Legislation Database of the Republic of Azerbaijan." Annual reports are also posted on the website of the Ombudsman office, <http://www.ombudsman.gov.az>, and can be downloaded free of charge.

**References:**

- 1) Website of the Ombudsman Office  
<http://www.ombudsman.gov.az>
- 2) Interview with an Ombudsman officer, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.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.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

**Comments:**

Under Azerbaijani legislation, there are two Commissioners: Human Rights Commissioner and Commissioner on Information matters. Under Article 1 of the Constitutional Law on the Commissioner for Human Rights (Ombudsman), the Commissioner is established in order to restore human rights and liberties violated by officers of public authorities and municipalities. The first Ombudsman was elected on July 2, 2002.

In addition, under Article 57.1 of the Law on Obtaining Information, the Commissioner on Information matters should have been established in Azerbaijan within six months from the period the Law became effective, i.e. Sept. 30, 2005. Although about 4 years have passed, the Commissioner has not been appointed yet.

**References:**

The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman);  
The Law on Obtaining Information  
<http://www.e-qanun>

**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.

## V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

53

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

**Comments:**

According to par. 1 of the Charter on the Chamber of Auditors, the Chamber is an independent financial institution.

**References:**

The Charter on the Chamber of Auditors  
<http://www.audit.gov.az/?menu=174>

**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.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

There is a contradiction in the legislation regarding this matter. According to Article 9 of the Law on Auditor Service, the director of the Chamber of Auditors is appointed under Article 109.32 of the Constitution, which means that the director is appointed by the president of Azerbaijan. However, under Article 9 of the Charter on Chamber of Auditors, the director of the Chamber is appointed by Parliament. According to the officer of the Chamber, the current director was appointed by Parliament and has served from 1996 up to now, which means that he has served an indefinite term.

It should be noted that the legislation is silent about the director's removal and terms of office. In this regard, the director of the agency can be removed at the will of the political leadership.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) The Law on Auditor Service; The Charter on Chamber of Auditors  
<http://www.e-ganun.az>
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Chamber of Auditors has sufficient staff to fulfill its basic mandate. According to the 2007 Report of the Chamber, the agency has 67 employees.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.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.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the officer of the Chamber of Auditors, the Chamber has a cooperation contract with the Azerbaijan State Economy University. Based on this contract, every year five-six graduates with honors are appointed to the Chamber of Auditors.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the officer of the Chamber of Auditors, since the legislation defines it as an independent financial institution, the Chamber does not receive any funding from the budget. Under Article 19 of the Charter on the Chamber of Auditors, the Chamber's financial sources are generated from holding exams; issuing of licenses; membership dues by independent auditors and auditor organizations; service contract fees; incomes from publication of newspapers and journals regarding audit service, and other sources not prohibited by law. According to the 2007 Report of the Chamber, there was no problem with funding.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

According to par. 26 of the Charter on Chamber of Auditors, the agency submits reports to the tax and statistics authorities regarding its operation. Besides, the Chamber's reports are posted on its website, <http://www.audit.gov.az> and published in the journal Economy and Audit." It should be noted that only the 2007 report of the Chamber of Accounts is currently available online. According the officer of the Chamber, every year the Chamber of Accounts submits its annual report to the Presidential Apparatus and it also publishes it.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the formal independence, in fact the Chamber of Auditors is dependent of the political leadership. As a result, audit reports are often given superficial attention and they do not lead to policy changes. According to the officer, the Chamber submits its yearly report to the Presidential Apparatus and that is all.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Under Article 15 of the Law on Auditors Service, in case of violations of audit rules by auditors or audit organizations, the Chamber of Auditors can annul the audit license. According to the officer of the Chamber, in this case the Chamber sends a notification letter to the tax authorities and Social Protection Fund. It should be noted that despite the formal independence, in fact the Chamber of Auditors is highly dependent of the will of political leadership. Generally, the Chamber must rely on approval from the executive before initiating investigations.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

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## 60. Can citizens access reports of the supreme audit institution?

75

60a. In law, citizens can access reports of the audit agency.

YES | NO

**Comments:**

The Law on Audit Service is silent about the accessibility of its reports. However, citizens can request them under the freedom of information laws. Besides, in practice, they are posted on the website of the Chamber of Accounts, <http://www.audit.gov.az> and/or published in the official journal Economy and Audit."

**References:**

The Law of the Republic of Azerbaijan on Audit Service  
<http://www.e-ganun.az>

**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.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The Chamber of Auditor's reports are posted on its website <http://www.audit.gov.az> free of charge and also published in the journal, Economy and Audit." It should be noted that only the 2007 Report of the Chamber of Accounts is currently available online.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The Chamber of Auditor's reports are posted on its website, <http://www.audit.gov.az> and also published in the journal, Economy and Audit." It should be noted that only the 2007 Report of the Chamber of Accounts is currently available online. It is free of charge.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009

**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.

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58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

**Comments:**

The Chamber of Auditors is a specific agency that covers the entire public sector. The Law on Audit Service regulates its operation.

**References:**

Chamber of Auditors  
<http://www.audit.gov.az>;  
The Law on Audit Service  
<http://www.e-qanun.az>

**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.

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76  
V-3. Taxes and Customs

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62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ministry of Taxes has sufficient staff to fulfill its basic mandate. According to the officer of the Ministry, currently the Ministry of Taxes and its departments has 1,919 employees, 252 of whom work in the central office.

**References:**

1)The Ministry of Taxes

<http://www.taxes.gov.az>

2) Interview with an officer of the hot-line service (195) of the Ministry of Taxes, September 2009

**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.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the tax agency receives regular funding from the state budget. Furthermore, according to Article 22.2 of the Tax Code, in order to ensure social protection of tax employees, the extra-budget fund is created, which is generated from no more than 5 percent of the financial sanctions held by tax employees and included in the state budget.

**References:**

1)The Ministry of Taxes

<http://www.taxes.gov.az>

2) Interview with an officer of the hot-line service (195) of the Ministry of Taxes, September 2009

**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.

---

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

The Customs Committee has sufficient staff to fulfill its basic mandate.

**References:**

- 1)The Customs Committee of the Republic of Azerbaijan  
<http://www.customs.gov.az>
- 2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.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.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The Customs Committee receives regular funding from the state budget.

**References:**

- 1)The Customs Committee of the Republic of Azerbaijan  
<http://www.customs.gov.az>
- 2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

---

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

**Comments:**

The Ministry of Taxes is a national agency formally mandated to collect taxes.

**References:**

- The Ministry of Taxes  
<http://www.taxes.gov.az>;  
The Tax Code  
<http://www.e-qanun.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.

---

### 63. In practice, are tax laws enforced uniformly and without discrimination?

25

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax officers regularly demand bribe from business owners. Despite some measures and success stories such as the computerization of tax declarations, training on internal inspections and on the Code of Ethics of Tax Officers, the creation of hot-lines, etc., it is considered as one of the most corrupted areas in Azerbaijan.

However, the Ministry of Taxes has a comprehensive website. It also has an active hot-line service where citizens can call and ask different questions on tax issues as well as complain about illegal actions and inactions of tax officers. In other words, it is also matter of active citizenship — how well they know their rights and fight corruption.

**References:**

- 1) Interview with a group of lawyers and business owners, September 2009
- 2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://azadliqradiosu.az>

**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.

---

### 64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

**Comments:**

The Customs Committee is a national agency formally mandated to collect excises and inspect customs.

**References:**

- The Customs Committee of the Republic of Azerbaijan  
<http://www.customs.gov.az>;  
The Custom Code of the Republic of Azerbaijan  
<http://www.e-ganun.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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

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. Despite some measures and success stories, it is considered one of the most corrupted areas in Azerbaijan.

**References:**

- 1) The Customs Committee of the Republic of Azerbaijan  
<http://www.customs.gov.az>
- 2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

45

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

**Comments:**

All agencies that are responsible for different aspects of state-owned companies, such as the State Committee on Property Issues; the Ministry of Taxes; the Ministry of Finance; the State Committee on Securities; the State Social Protection Fund, are considered as governmental agencies — in other words, central executive authorities.

**References:**

- 1) Reports by the State Committee on Property Issues

- <http://www.emdk.gov.az>  
 2) Reports by the Ministry of Taxes  
<http://www.taxes.gov.az>  
 3) Reports by the Ministry of Finance  
<http://www.maliyye.gov.az>  
 4) Reports by the State Committee on Securities  
<http://www.scs.gov.az>  
 5) Reports by the State Social Protection Fund  
<http://www.sspf.gov.az>  
 6) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**YES:** A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational 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, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

All agencies that are responsible for different aspects of state-owned companies such as the State Committee on Property Issues; the Ministry of Taxes; the Ministry of Finance; the State Committee on Securities; the State Social Protection Fund have sufficient staff to fulfill their basic mandates. Recruitment to these agencies is held by the centralized agency, the Civil Service Commission under the president of the Republic of Azerbaijan.

**References:**

- 1) Reports by the State Committee on Property Issues  
<http://www.emdk.gov.az>
- 2) Reports by the Ministry of Taxes  
<http://www.taxes.gov.az>
- 3) Reports by the Ministry of Finance  
<http://www.maliyye.gov.az>
- 4) Reports by the State Committee on Securities  
<http://www.scs.gov.az>
- 5) Reports by the State Social Protection Fund  
<http://www.sspf.gov.az>
- 6) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 7) Reports by the Civil Service Commission under the President of the Republic of Azerbaijan  
<http://www.dqmk.az>

**100:** The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

All agencies that are responsible for different aspects of state-owned companies such as the State Committee on Property Issues; the Ministry of Taxes; the Ministry of Finance; the State Committee on Securities; the State Social Protection Fund, receive regular funding from the state budget.

**References:**

- 1) Reports by the State Committee on Property Issues  
<http://www.emdk.gov.az>
- 2) Reports by the Ministry of Taxes  
<http://www.taxes.gov.az>
- 3) Reports by the Ministry of Finance  
<http://www.maliyye.gov.az>
- 4) Reports by the State Committee on Securities  
<http://www.scs.gov.az>
- 5) Reports by the State Social Protection Fund  
<http://www.sspf.gov.az>
- 6) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** The agency, series of agencies, or equivalent mechanism 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, series of agencies, or equivalent mechanism 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.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

All these agencies are dependent on the political leadership in initiating investigations, especially in high profile cases.

**References:**

- 1) Reports by the State Committee on Property Issues  
<http://www.emdk.gov.az>
- 2) Reports by the Ministry of Taxes  
<http://www.taxes.gov.az>
- 3) Reports by the Ministry of Finance  
<http://www.maliyye.gov.az>
- 4) Reports by the State Committee on Securities  
<http://www.scs.gov.az>
- 5) Reports by the State Social Protection Fund  
<http://www.sspf.gov.az>
- 6) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 7) Reports by the Civil Service Commission under the President of the Republic of Azerbaijan  
<http://www.dqmk.az>

**100:** When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

**Comments:**

Since agencies that are responsible for different aspects of state-owned companies, such as the State Committee on Property Issues; the Ministry of Taxes; the Ministry of Finance; the State Committee on Securities; the State Social Protection Fund, are considered governmental agencies, imposing penalties on offenders is mainly a political decision rather than legal, especially in politically-sensitive cases.

**References:**

- 1) Reports by the State Committee on Property Issues  
<http://www.emdk.gov.az>
- 2) Reports by the Ministry of Taxes  
<http://www.taxes.gov.az>
- 3) Reports by the Ministry of Finance  
<http://www.maliyye.gov.az>
- 4) Reports by the State Committee on Securities  
<http://www.scs.gov.az>
- 5) Reports by the State Social Protection Fund  
<http://www.sspf.gov.az>
- 6) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 7) Reports by the Civil Service Commission under the President of the Republic of Azerbaijan  
<http://www.dqmk.az>

**100:** When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

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

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

---

## 69. Can citizens access the financial records of state-owned companies?

50

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

**Comments:**

Under Article 29 of the Law on Access to Information, financial reports are considered public information and are publicly accessible through information requests.

**References:**

The Law on Access to Information  
<http://www.e-qanun.az>

**YES:** A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

**Comments:**

Under Article 29 of the Law on Access to Information, financial reports are considered public information and are publicly accessible through information requests. However, in practice, they are generally not accessible.

**References:**

- 1) Interview with an officer of the hot-line service (number 195) of the State Committee on Property Issues, 2009;
- 2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

**75:**

**50:** State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

**25:**

**0:** Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the financial records of state-owned companies are audited according to national legislation. As to international standards, the process is underway. According to the officer of the Chamber of Auditors, this process is going to start from 2010 and currently the preparation process is underway, insomuch as holding trainings and studying international standards. It is worth noting that under par. 46 of the 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption, studying the process of international accounting standards has already started and the relevant documents were translated into Azerbaijani and posted on the website of the Ministry of Finance, <http://www.maliyye.gov.az>.

**References:**

- 1) Reports by the Chamber of Auditors  
<http://www.audit.gov.az>
- 2) Interview with an officer of the Chamber of Auditors, September 2009
- 3) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>

**100:** Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of state-owned 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:** State-owned 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.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

**Comments:**

Under Article 29 of the Law on Access to Information, financial reports are considered public information and are publicly accessible during seven working days through information requests. However, in practice, it may not work properly since some state-owned companies may be reluctant to answer information requests.

**References:**

- 1) Newspaper materials and articles of the Radio Liberty-Azerbaijan <http://www.azadliqradiosu.az>
- 2) Interview with Sevinj Aliyeva, an advocate, September 2009

**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.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

**Comments:**

Under Article 29 of the Law on Access to Information, financial reports are considered public information and are publicly accessible free of charge during seven working days through information requests. However, in practice, it may not work properly since some state-owned companies may be reluctant to answer information requests.

**References:**

- 1) Newspaper materials and articles of the Radio Liberty-Azerbaijan <http://www.azadliqradiosu.az>
- 2) Interview with Sevinj Aliyeva, an advocate, September 2009

**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.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

**Comments:**

It should be noted that there is no centralized agency which oversees state-owned companies as a whole. However, there are specialized agencies which are responsible for different aspects of state-owned companies. For instance, the State Committee on Property Issues deals with privatization of state-owned companies; the Ministry of Taxes deals with taxation of state-owned companies; the Ministry of Finance deals with financial issues of state-owned companies; the State Committee on Securities deals with securities of state-owned companies; the State Social Protection Fund deals with social protection issues.

**References:**

- 1) The State Committee on Property Issues  
<http://www.emdk.gov.az>
- 2) The Ministry of Taxes  
<http://www.taxes.gov.az>
- 3) The Ministry of Finance  
<http://www.maliyye.gov.az>
- 4) The State Committee on Securities  
<http://www.scs.gov.az>
- 5) The State Social Protection Fund  
<http://www.sspf.gov.az>

**YES:** A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

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65  
V-5. Business Licensing and Regulation

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70. Are business licenses available to all citizens?

81

70a. In law, anyone may apply for a business license.

YES | NO

**Comments:**

Article 10 of the Law on Entrepreneurship Activity regulates the state registration of the entrepreneurship activity. Entrepreneurship activity may be exercised individually or by creating a legal entity. Under Article 33 of the Tax Code, any individual may apply to the tax agency for a business license in order to do private business and the agency opens a tax account for the individual entrepreneur within five days. Article 7-1 of the Law on State Registration of Legal Entities stipulates that a business license for establishing commercial organizations should be issued within no more than three days by tax authorities. It is worth noting that as of Jan. 1, 2008, registration of commercial organizations is done according to the one stop shop" principle with a unified procedure centralized and implemented under the responsibility of the Ministry of Taxes. Under the new system, now it takes only three days and one procedure to get registration after the required documents have been submitted. As it is stated in 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy, before the introduction of this system, business owners needed 30 days and had to go through 15 legal procedures to register a business.

**References:**

- The Law on Entrepreneurship Activity;  
The Law on State Registration of Legal Entities;  
The Tax Code of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**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

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

**Comments:**

Under Article 11.5 of the Law on State Registration of Legal Entities, an applicant may go to the superior agency or court for appealing a rejected license. Furthermore, under Article 15.1.9 of the Tax Code, the applicant may appeal against the action (inaction) of the tax authority to the administrative body and/or to court.

**References:**

Superior Administrative Agency and/or courts;  
The Law on Entrepreneurship Activity;  
The Law on State Registration of Legal Entities;  
The Tax Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**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.

70c. 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:**

As from Jan. 1, 2008, the introduction of a one stop shop" system for state registration of business organizations has become an efficient step in reducing corruption in starting a business. Under the new system, now it takes only three days and one procedure to get registration after the required documents have been submitted. According to the 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy, before the introduction of this system business owners needed 30 days and had to go through 15 legal procedures to register a business.

Reduction of obstacles for business registration has resulted in a sharp increase in the number of companies registered in Azerbaijan. From January 2008 to June 2008, 24,000 new business entities, including 2,000 companies, have been registered, representing a 30 percent increase. According to the World Bank's Doing Business 2009 Report, Azerbaijan has been the world's leading reformer of business regulations with improvements in seven of the 10 areas studied by the report

See

<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/AZERBAIJANEXTN/0,,contentMDK:21914314~menuPK:50003484~pagePK:2865>

**References:**

- 1) World Bank's Doing Business Report on Azerbaijan  
<http://www.doingbusiness.org>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, Oct. 10, 2008  
<http://www.coe.int/greco>
- 4) Interview with a group of lawyers, September 2009

**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.

70d. 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 Azerbaijan, there are about 57 activities that require licensing under the Presidential Decree on Granting Special License to Defined Activities. Some of them are expensive, for example license price for banking service is 22,000 AZN (1 AZN is equal to USD 1.20), for insurance service is 22,000 AZN, for tourism service is 5,500 AZN. Study shows that there are also some areas where license is not expensive, but bribe is required for receiving it, for example taxi service, medical service as well as construction works. The Decree states that auditor service is 2200 manat, post service is 2500 manat (decree is available at [http://www.scs.gov.az/files/law/law\\_408925464\\_7439.pdf](http://www.scs.gov.az/files/law/law_408925464_7439.pdf))

Furthermore, it is worth noting that opening commercial organizations usually meet the reasonable cost requirements in practice. Under Article 20.3 of the Law on State Fee, generally, the state fee for the registration of commercial organizations is 11 AZN which should be paid to the notary. The receipt should be submitted to the Tax Ministry along with other registration documents. According to the interview with a group of lawyers dealing with registration issues, after the establishment of the one stop shop" system in Azerbaijan, the registration takes three working days and costs 11 AZN, as stated in Law. No additional fee is needed unless the notary may ask an extra "state fee". But it is a matter of active citizenship. In other words, different licensing has different regulation and implementation practice.

**References:**

- 1) World Bank's Doing Business Report on Azerbaijan  
<http://www.doingbusiness.org>
- 2) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 3) GRECO (Group of States against Corruption) Compliance Report on Azerbaijan, Oct. 10, 2008  
<http://www.coe.int/greco>
- 4) Interview with a group of lawyers, September 2009

**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.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

**Comments:**

Public health standards are generally in place in various laws of different nature and they are publicly available.

**References:**

Legislation of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

**Comments:**

Public environmental standards are generally in place in various laws of different nature and they are publicly available.

**References:**

Legislation of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if basic regulatory requirements for meeting public 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.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

**Comments:**

Public safety standards are generally in place in various laws of different nature and they are publicly available.

**References:**

Legislation of the Republic of Azerbaijan  
<http://www.e-ganun.az>

**YES:** A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

---

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

**References:**

1) Interview with a group of business owners, September 2009  
2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Business inspections by the government to ensure that public health standards are being met 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 to ensure public health standards are met 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 to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

**References:**

- 1) Interview with a group of business owners, September 2009
- 2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Business inspections by the government to ensure that public environmental standards are being met 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 to ensure public environmental standards are met 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 to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

**References:**

- 1) Interview with a group of business owners, September 2009
- 2) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**100:** Business inspections by the government to ensure that public safety standards are being met 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 to ensure public safety standards are met 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 to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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## Category VI. Anti-Corruption and Rule of Law

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### VI-1. <sup>69</sup>Anti-Corruption Law

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73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

**YES** | NO

**Comments:**

Chapter 33 of the Criminal Code criminalizes corruption crimes. Based on Article 27.3 of the Criminal Code, criminal liability for attempted crimes shall be defined in accordance with articles setting liability for completed crimes by referring to Article 28 of the Criminal Code, which regulates attempted crimes. Accordingly, attempted corruption is illegal.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

**YES** | NO

**Comments:**

Extortion is illegal under Articles 308 (abuse of official power) and 309 (exceeding official power) of the Criminal Code. The maximum punishment is eight years imprisonment.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**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.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

**Comments:**

Under Article 312 of the Criminal Code, offering a bribe (active bribery) is illegal. The maximum punishment is eight years imprisonment. The reservation of the Article states that the person giving a bribe shall not be held criminally liable if the presentation of the bribe took place as a result of threats by the official concerned or if the person has voluntarily informed the appropriate state body about a presentation of a bribe.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

**Comments:**

Under Article 311 of the Criminal Code, receiving a bribe (passive bribery) is illegal. The maximum punishment is 12 years imprisonment.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

**Comments:**

There is no separate Article on bribing a foreign official, so it falls under Articles 312 (giving a bribe) of the Criminal Code on common grounds.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

**Comments:**

There is no separate Article on using public resources for private gain, so it falls under Articles 308 (abuse of official power) and 309 (exceeding official power) of the Criminal Code. The maximum punishment is eight years imprisonment.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**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.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

**Comments:**

Using confidential information for private gain is illegal under Article 284 of the Criminal Code, which criminalizes disclosure of state secrets. The maximum punishment is seven years imprisonment. In addition, it can also fall under Articles 308 (abuse of official power) and 309 (exceeding official power) of the Criminal Code. The maximum punishment is eight years imprisonment.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**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.

73h. In law, money laundering is illegal.

YES | NO

**Comments:**

Under Article 193-1 of the Criminal Code, money laundering is illegal. The maximum punishment is 12 years imprisonment.

**References:**

Criminal Code of the Republic of Azerbaijan  
<http://www.e-qanun.az>

**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.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

**Comments:**

Under Article 218 of the Criminal Code, organized crime is illegal. The maximum punishment is 15 years imprisonment.

**References:**

Criminal Code of the Republic of Azerbaijan

<http://www.e-ganun.az>

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

---

75. Is the anti-corruption agency effective?

56

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

**Comments:**

The Commission on Combating Corruption as a specialized separate agency on combating corruption functions with the structure composed of 15 members. Five members of the Commission are appointed by the president of Republic of Azerbaijan, five by the Parliament (Milli Majlis), and five by Constitutional Court of the Republic of Azerbaijan Republic. It should be noted that despite the fact that it is a separate body, all 15 members of the Commission are high ranking officials.

**References:**

Statute on the Commission on Combating Corruption

<http://www.commission-anticorruption.gov.az>

**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.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, the Commission on Combating Corruption is not protected from political interference. In other words, it is commonly

influenced by political incentives. In practice, the Commission cannot compel the government to reveal sensitive information. The Commission is led by the head of the Presidential Administration and is composed equally of presidential, parliamentary, and Constitutional Court appointees who favor the ruling party. Besides, it lacks the participation of civil society. In other words, the government's strong presence in the Commission does not allow it to act independently.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

Currently, the director of the Commission for Combating Corruption is the head of the Presidential Administration who is appointed by the president of Azerbaijan. He can also be removed at the will of political leadership.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

**Comments:**

Appointments to the Commission on Combating Corruption are based on political considerations rather than professional criteria. The Commission functions with the structure composed of 15 members. Five members of the Commission are appointed by the president of Republic of Azerbaijan, five by the Parliament (Milli Majlis), and five by Constitutional Court of the Republic of Azerbaijan Republic. It should be noted that despite the fact that it is a separate body, all 15 members of the Commission are high ranking officials. Currently, the director of the Commission is the head of the Presidential Administration, who is directly appointed by the president. Furthermore, the Commission has a permanent Secretariat, which is a public body and has a full-time staff. Appointment procedure is not transparent either.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

**Comments:**

The Commission on Combating Corruption has a permanent Secretariat, which is a public body and generally has quite qualified full-time staff, sufficient to fulfill its basic mandate. The political nature of appointments to the agency does not exempt professionalism requirements. So, generally, staff should be professional (educated, qualified, etc.) but it should still follow the instructions of political leadership.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

The Commission on Combating Corruption receives regular funding from the state budget.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, the Commission on Combating Corruption makes annual reports and submits them to the president, Parliament, and the Constitutional Court. All reports of the Commission are available to the public on its website, <http://www.commission-anticorruption.gov.az>.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

Although under the Charter, the Commission on Combating Corruption has sufficient powers to carry out its mandate, in practice the problem is with its political dependence on the government. Put another way, if there is no top approval, the Commission keeps silent.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Under Article 7.8 of the Charter of the Commission on Combating Corruption, if there are complaints of corruption offenses, the Commission shall send materials to the relevant authorities for consideration. The Commission itself does not investigate but it cooperates with other investigative bodies such as the Department on Combating Corruption under the General Prosecutor's Office, the Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs, etc. It should be noted that since there is high political dependency, the Commission is unwilling to take on politically powerful offenders and to do something without the top approval.

**References:**

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

## 76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

According to the officer of the Commission for Combating Corruption, complaints to the Commission for Combating Corruption are generally resolved according to the Law on the Procedure for Consideration of Applications from Citizens. They should be reviewed within one month, or 15 days if no additional review or inspection is needed, unless shorter periods are provided for in legislation. However, in practice, some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

### References:

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

### Comments:

It usually depends on the nature of the complaint. Whistleblowers are sometimes able to come forward without negative consequences if the complaint is about professors, doctors or low-level civil servants. But in other cases, especially if the complaint is about high ranking officials, whistleblowers are punished for disclosing information, either through official or unofficial means.

### References:

- 1) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 2) Freedom House, Nations in Transitions, Report on Azerbaijan, 2008  
[http://www.freedomhouse.hu/images/fdh\\_galleries/NIT2008/NT-Azerbaijan-final.pdf](http://www.freedomhouse.hu/images/fdh_galleries/NIT2008/NT-Azerbaijan-final.pdf)
- 3) Interview with an officer of the Commission for Combating Corruption, September 2009
- 4) Newspaper materials and articles of the Radio Liberty-Azerbaijan  
<http://www.azadliqradiosu.az>

**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.

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74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

**Comments:**

Under Article 4.2 of the Law on Combating Corruption, a specialized body in the area of preventing corruption is the Commission on Combating Corruption. Under Article 5 of the Statute of the Commission, the duties of the Commission include participating in formation of state policy on combating corruption, coordination of the work of state bodies and other entities on this area, analyzing efficiency and situation of struggle against corruption, supervising execution of the State Program on combating corruption, gathering, analyzing and summarizing the information on corruption law violations, making recommendations to the relevant state authorities and realization of cooperation with the state and other types of entities for combating corruption. Furthermore, the Presidential Decree on the Implementation of the Law on Combating Corruption was issued on March 13, 2004. Under this Decree, the Department of Combating Corruption under the General Prosecutor's Office was established, which is mainly in charge of investigating and prosecuting all corruption crimes. Moreover, in May 2005, the Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs was established. The Unit is in charge of holding preliminary investigative measures on corruption crimes in close cooperation with the Department of Combating Corruption under the General Prosecutor's Office.

**References:**

The Commission on Combating Corruption  
<http://www.commission-anticorruption.gov.az>;  
The Law on Combating Corruption;  
The Decree of the President of the Republic of Azerbaijan on implementation of the Law on Combating Corruption;  
The Statute of the Commission on Combating Corruption  
<http://www.e-qanun.az>;  
See also <http://www.genprosecutor.gov.az>; <http://www.mia.gov.az>

**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.

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64  
VI-3. Rule of Law

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77. Is there an appeals mechanism for challenging criminal judgments?

75

77a. In law, there is a general right of appeal.

YES | NO

**Comments:**

Under Article 65 of the Constitution, every convicted person has a right to appeal for reconsideration of the judgment and also for pardon and mitigation of the sentence. Under Article 35 of the Code of Criminal Procedure, participants in a criminal case have a right to appeal to the superior court. Restriction of the convicted person's right to appeal is inadmissible.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Code of Criminal Procedure  
<http://www.e-ganun.az>

**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.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, appeals are resolved within a reasonable time while some backlog may be expected, mostly in criminal cases. Politically sensitive cases may take longer time. It should be noted that for criminal cases the Criminal Procedure Code does not define a certain time period. As to civil cases, the legislation provides definite time periods for hearings in district courts, appellate courts, and the Supreme Court.

**References:**

1) Interview with Adil Ismayilov, an attorney, September 2009  
2) Interview with Aynur Jafarova, National Coordinator of OSCE Trial Monitoring Project in Azerbaijan, September 2009

**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.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, citizens can use the appeals mechanism at a reasonable cost, which mainly includes the state fees and attorney fees. It should be noted that generally no state fee is needed in criminal cases. Legal representation fees vary from attorney to attorney.

**References:**

1) Interview with Alibaba Rzayev, an attorney, September 2009  
2) Interview with Aynur Jafarova, National Coordinator of OSCE Trial Monitoring Project in Azerbaijan, September 2009

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

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## 78. In practice, do judgments in the criminal system follow written law?

25

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

### Comments:

Corruption remains the main problem in the judiciary. In other words, judgments in the criminal system are often decided by factors other than written law, especially in high profile cases. It does not mean that it applies to all cases.

### References:

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**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.

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## 79. In practice, are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

**Comments:**

Judicial decisions in criminal cases are generally enforced by the state. There are some problems with enforcement of decisions in civil cases. It was also recognized by the judgment of the European Court of Human Rights in the case of Tarverdiyev v. Azerbaijan (Case # 33343/03 (July 26, 2007), <http://www.echr.coe.int>). The case concerns a violation of the applicant's right to a fair trial in terms of the failure to enforce a favorable judgment. The European Court found a violation of Article 6 by reasoning that non-execution of the judgment constitutes a gross violation of the right to a fair trial, and therefore in its judgment established the government's obligation to take appropriate measures to remedy the applicant's individual situation. The Court noted that whether such measures would involve reinstating the applicant in an equivalent job at an equivalent institution or, in case of impossibility to do so, granting him reasonable compensation for non-enforcement, or a combination of these and other measures, is a decision that falls to the respondent State. The Court, however, emphasizes that any measures adopted must be compatible with the conclusions set out in the Court's judgment.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**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.

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## 80. Is the judiciary able to act independently?

56

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

**Comments:**

Under Article 127 of the Constitution, judges are dependent only on the Constitution and laws. Judges shall act impartially, fairly, based on the equality of the parties, facts, and law. Direct and indirect restriction of the court proceeding, illegal influence, threat and interference due to any reason are not allowed. Article 8 of the Law on Courts and Judges as well as Article 25 of the Code of Criminal Procedure also stipulate the principle of independence of judges in criminal proceedings.

Article 100 of the Law on Courts and Judges more specifically describes the principle of independence of judges, which includes the following guarantees: depoliticizing of judges during their terms of office; inalterability and immunity; restrictions on appointment, liability, and termination of their office; independent nature of the judiciary; regulation by law; prohibition of any restrictions and interferences in court proceedings by any party; ensuring personal safety of the judges; financial and social safeguards.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Courts and Judges;  
The Code of Criminal Procedure  
<http://www.e-ganun.az>

**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 includes 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.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, national-level judges are not protected from political interference. Judges are commonly influenced by politics and personal biases or incentives especially in the alleged politically-motivated high profile cases. The fact that at the end the president of Azerbaijan appoints the Supreme Court, appellate court and Constitutional Court judges subject to parliamentary confirmation and lower court judges without parliamentary confirmation leads to a strong influence of the executive over the judiciary.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**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.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

**Comments:**

According to the Law on Courts and Judges, the president of a court is in charge of distributing cases taking into account the volume and number of the case (Articles 22, 28, 30-4, 34, 39, 45, 57, 66, 83, 84). Thus, the case assignment system is under the discretion of the president of the court in all three court tiers: district courts, appellate courts as well as the Supreme Court. However, there are some discussions on moving to a blind assignment system.

**References:**

The Law on Courts and Judges  
<http://www.e-qanun.az>

**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.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**Comments:**

Article 128 of the Constitution regulates the immunity of judges. Under this provision, judges are immune. A judge may be held criminally liable only in accordance with the law. Judges' authority may be stopped only based on reasons and rules envisaged by the law. In case judges commit a crime, the president of the Republic of Azerbaijan, based on the opinion of the Supreme Court, may bring the issue in Parliament (Milli Majlis) with the initiative to dismiss judges from their posts. Respective opinions of the Supreme Court must be presented to the president of Azerbaijan within 30 days after his request. The decision about the dismissal of judges of the Constitutional Court, Supreme Court and Economic Court is taken by Parliament with 83 votes, whereas the decision about the dismissal of other judges is taken by Parliament with 63 votes out of 125 votes. Furthermore, Article 101 of the Law on Courts and Judges also regulates the immunity of judges.

**References:**

The Constitution of the Republic of Azerbaijan;  
The Law on Courts and Judges  
<http://www.e-qanun.az>

**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.

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## 81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

**Comments:**

In the last year, no judges have been physically harmed because of adjudicating corruption cases.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
[http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR\\_C\\_AZE\\_CO\\_3.doc](http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR_C_AZE_CO_3.doc)
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**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. YES is a positive score.

**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.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

**Comments:**

In the last year, no judges have been killed because of adjudicating corruption cases.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**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. YES is a positive score.

**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.

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## 82. Do citizens have equal access to the justice system?

71

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, judicial decisions are not affected by racial or ethnic bias.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**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.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, women generally 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.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**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. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

**Comments:**

Article 61 of the Constitution provides that everyone has the right to a high quality legal assistance. In cases prescribed by law, legal aid should be rendered free, at the expense of the government. Article 19.4.4 of the Code of Criminal Procedure and Article 20 of the Law on Advocates and Advocate Activity also ensure legal counsel in criminal cases for defendants (and also for accused persons) who cannot afford it.

**References:**

- The Constitution of the Republic of Azerbaijan;  
The Code of Criminal Procedure;  
The Law on Advocates and Advocate Activity  
<http://www.e-ganun.az>

**YES:** A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

**NO:** A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

**Comments:**

Indigenous' right to free legal representation is a constitutional right that applies both to criminal and civil cases. However, the implementation of this right in practice is far below the standards. One of the primary reasons for that is the low payment to attorneys for their work that leads to incompetent representation. Under Article 19.3 and 20.1 of the Law on Advocates and Advocate Activity, the amount and procedure for rendering pro-bono legal aid to indigenous people is determined by the executive body. Pursuant to the decision of the Cabinet of Ministers on Amount of Payments Paid to Attorneys, Interpreters, Specialists, and Experts, currently the per hour pay of public advocates is about US\$1. This means that if an attorney works non-stop eight hours a day, his/her monthly salary will be about US\$176 USD (8\*22=176). For comparison, it should be noted that the government pays salaries of about US\$1,760 per month (depending on experience, rank, title, this could be more) to a public prosecutor. Accordingly, as we see, the per hour pay of prosecutors is US\$10 (1760:22:8=10). In this regard, the difference in remuneration between public attorneys and public prosecutors is ten-fold. This, in fact, constitutes a clear violation of the principle of equality of arms and leads to unprofessional representation and flaws of state-provided legal aid.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**100:** State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished 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 impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, citizens earning the median yearly income can afford to bring a legal suit unless corruption is not an issue. Officially, legal suit fees mainly include the state fees, court fees, and attorney fees. It should be noted that generally no state fee is needed in criminal cases. Legal representation fees vary from attorney to attorney. In practice, it usually ranges between US\$50-5,000.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

**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. Attorney fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, a typical small retail business can afford to bring a legal suit unless corruption is not an issue. Officially, legal suit fees mainly include the state fees, court fees, and attorney fees. It should be noted that generally no state fee is needed in criminal cases. Legal representation fees vary from attorney to attorney. In practice, it usually ranges between US\$50-5,000.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) US State Department Bureau of Democracy, Human Rights, and Labor, 2008 Human Rights Report on Azerbaijan, Feb. 25, 2009  
<http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119068.htm>
- 3) Council of Europe Parliamentary Assembly Report on The Functioning of Democratic Institutions in Azerbaijan, June 6, 2008  
<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc08/EDOC11627.htm>
- 4) 2008 Report of the Commission for Combating Corruption on Implementation of the National Strategy (2007-2011) for Increasing Transparency and Combating Corruption  
<http://www.commission-anticorruption.gov.az/upload/file/annual%20NAP%20report%202008.pdf>
- 5) Materials of Legal Education Society  
<http://www.monitoring.az>
- 6) Interview with Alibaba Rzayev, an attorney, September 2009

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

**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. Attorney fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location. Until recently, the jurisdiction of the Appellate Court located in capital Baku used to apply to the whole territory of Azerbaijan and it was very difficult for people who lived in regions. However, on Jan. 19, 2006, the president promulgated the decree on modernization of the justice system, which among other things, provided for the establishment of five regional Appellate Courts in regions. Thus, currently, there are six appellate courts in Azerbaijan, one in capital Baku and five in the big regions.

However, an apparent shortage of lawyers exists, especially outside the capital Baku. For instance, according to the deputy chairman of the Collegium of Attorneys, there is no lawyer in the south regions of Astara and Lerik. In case of emergency, the Collegium invites attorneys from nearby regions. For example in Nakhchivan (population 300,000 people), there are only three attorneys, of whom two in fact live and practice in capital Baku.

**References:**

- 1) Concluding observations of the Human Rights Committee on Azerbaijan, Aug. 13, 2009  
<http://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR.C.AZE.CO.3.doc>
- 2) Materials of Legal Education Society  
<http://www.monitoring.az>
- 3) Interview of Farhad Najafov, the Deputy Chairman of the Collegium of Attorneys to the Radio Liberty, Program Context"  
<http://www.azadliq.org/content/article/1379911>
- 4) Interview with Alibaba Rzayev, an attorney, September 2009

**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.

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## VI-4. Law Enforcement

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83. Is the law enforcement agency (i.e. the police) effective?

33

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

Appointments to police and prosecution bodies are lately held through competitive exams, which consists of a written test and oral interview. It is publicly accepted that despite the fact that the written portion of the exams is held fairly, interviews are held in a highly subjective manner. As a result, only a handful of applicants are selected according to professional criteria.

**References:**

- 1) Materials of Legal Education Society  
<http://www.monitoring.az>
- 2) Interview with Alibaba Rzayev, an advocate, September 2009
- 3) Materials on Radio Liberty's website  
<http://www.azadliqradiosu.az>

**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.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

Agencies such as the Ministry of Internal Affairs or the General Prosecutor's Office have a sufficient budget to fulfill their basic mandate.

**References:**

- 1) Materials of Legal Education Society  
<http://www.monitoring.az>
- 2) Interview with Alibaba Rzayev, an advocate, September 2009
- 3) Materials on Radio Liberty's website  
<http://www.azadliqradiosu.az>

**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.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

The investigative and enforcement work of agencies such as the Ministry of Internal Affairs or General Prosecutor's Office is commonly influenced by political actors or the government, especially in high profile cases.

**References:**

- 1) Materials of Legal Education Society  
<http://www.monitoring.az>
- 2) Interview with Alibaba Rzayev, an advocate, September 2009
- 3) Materials on Radio Liberty's website  
<http://www.azadliqradiosu.az>

**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.

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84. Can law enforcement officials be held accountable for their actions?

63

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

**Comments:**

Under the Law on Police, citizens may apply to the Ministry of Internal Affairs under administrative procedure about police actions. Furthermore, under the Law on Ombudsman, citizens may apply to the Ombudsman. If there are allegations about corruption offenses, citizens may apply to the Anti-Corruption Committee. Finally, citizens may complain in court about police actions or inactions.

**References:**

Ministry of Internal Affairs, Ombudsman, Anti-Corruption Committee;  
The Law on Police;  
The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman)  
<http://www.e-ganun.az>

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

**NO:** A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Under the legislation, citizens may apply to the Ministry of Internal Affairs under administrative procedure about police actions; to the Ombudsman; and in case of alleged corruption incidents, to the Anti-Corruption Committee. Statistics show that out of the three mechanisms, the Ombudsman follows the reasonable time requirement better than the others. However, all three bodies are dependent on political will, especially in high profile cases.

**References:**

1) Materials of Legal Education Society  
<http://www.monitoring.az>  
2) Interview with Alibaba Rzayev, an advocate, September 2009  
3) Materials on Radio Liberty's website  
<http://www.azadliqradiosu.az>

**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.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

**Comments:**

Under the legislation, the Department for Combating Corruption under the General Prosecutor's Office and the Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs work closely together to investigate and prosecute corruption committed by law enforcement officials.

**References:**

Department for Combating Corruption under the General Prosecutor's Office  
<http://www.genprosecutor.gov.az>,  
Unit for Special Investigation Measures on Corruption Crimes under the Ministry of Internal Affairs  
<http://www.mia.gov.az>

**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 may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

**NO:** A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**Comments:**

In practice, agencies may start investigations but do not complete them, or are unwilling to take on politically powerful offenders.

**References:**

- 1) Materials of Legal Education Society  
<http://www.monitoring.az>
- 2) Interview with Alibaba Rzayev, an advocate, September 2009
- 3) Materials on Radio Liberty's website  
<http://www.azadliqradiosu.az>

**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.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

**Comments:**

Under Article 33 of the Law on Police, police officers are accountable for their actions under the legislation and can be investigated and prosecuted for their actions.

**References:**

The Law on Police  
<http://www.e-qanun.az>

**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.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**Comments:**

Despite the fact that legally law enforcement officials are not immune from criminal proceedings and are accountable for their actions, in practice they usually have informal protection. For instance, after the 2005 Parliamentary elections, during demonstrations 14 journalists were beaten up by police officers while fulfilling their professional duties. In his later meeting with a group of police academy graduates, the president of Azerbaijan publicly stated that he would always support the police and no policeman would be punished for beating up journalists. This speech was criticized by independent local and international organizations in terms of the president's assurance of complete impunity and ignorance of the principle of separation of powers. See [http://www.rsf.org/article.php3?id\\_article=22770](http://www.rsf.org/article.php3?id_article=22770).

**References:**

- 1) Materials of Legal Education Society  
<http://www.monitoring.az>
- 2) Interview with Alibaba Rzayev, an advocate, September 2009
- 3) Materials on Radio Liberty's website  
<http://www.azadliqradiosu.az>

**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.