ANTI-CORRUPTION LAW: LESSONS FOR FORMER SOVIET COUNTRIES FROM AZERBAIJAN

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Abstract

This article discusses the problems with the legal framework regulating anti-corruption work in Azerbaijan and other Former Soviet countries. These problems revolve around the excessive reliance on legislative strategies and action plans which can not be translated into ministry-level rule-making (regulation), the insufficient delegation of anti-corruption rule-making authority to executive agencies, and uncoordinated revisions to the criminal, civil and administrative codes. Advice given by donors -- particularly the OECD Network for Transition Economies -- exacerbates these problems. In order to provide a more solid basis for the current anti-corruption legal framework in Azerbaijan (and former Soviet countries like Azerbaijan), anti-corruption commissions (or other similar anti-corruption policymaking bodies) should choose which legislative strategy to follow (namely the Eastern European or Western European Model as discussed in this paper). In implementing National Anti-Corruption Action Plans, the Executive Office of the President (or parliamentary advisory body in countries with a parliamentary system of government) should divide existing national anti-corruption action plans into four categories, namely: a) directives (needing no further clarification), binding recommendations (requiring further drafting), legislative proposals (being developed into separate legislation), or repealed recommendations (based on a lack of specificity or relevance for an anti-corruption programme).

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I. Introduction

Since the mid-1990s, the international donor organisations have been unsuccessfully trying to provide technical assistance to Eastern European -- and particularly Former Soviet Union -- governments to help them write "better" laws aimed at fighting corruption.[1] Much of this support has focused on helping Former Soviet countries develop national strategies -- adopted by the national parliament or the president (depending on the type of national government) -- which are accompanied by national-level anti-corruption action plans.[2] This review will argue that -- as well as being mostly ineffectual -- much of this international assistance provides poor legal advice. If Former Soviet countries want to develop an effective anti-corruption legal framework, at both the legislative and regulatory levels, they must develop an appropriate set of legislative acts and executive agency-level regulations, using both positive and negative examples from other countries (which this review provides).[3] This brief review article also provides concrete article-by-article recommendations for a number of former Soviet countries seeking to revise the existing anti-corruption laws in force.[4]

Azerbaijan's anti-corruption legal framework (like that of many former Soviet countries) suffers from an excessive reliance on legislative strategies and action plans which can not be translated into ministry-level rule-making (regulation), the insufficient

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[1] Franklin Steves and Alan Russo, *Anti-Corruption Programmes in Post-Communist Transition Countries and Changes in Business Environment*, EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT WORKING PAPER No. 85 (October 2003). Tellingly, the Steves and Russo study econometrically evaluates the correlation between the development of national anti-corruption action plans and reductions in the incidence of measured corruption. *See also* James H. Anderson and Cheryl Williamson Gray, ANTICORRUPTION IN TRANSITION 3: WHO IS SUCCEEDING… AND WHY? (2006).

[2] Azerbaijan has a presidential form of government, in contrast to semi-presidential systems of Russia and Ukraine and the parliamentary forms in most EU countries. According to the Azeri 1995 Constitution, article 109 provides the president with the authority to legislate (and not simply the obligation to execute the parliamentary will as in a parliamentary form of government).

[3] Such laws should not be legal transplants (which are sometimes direct copies of laws from other countries), *see* William Ewald, *Comparative Jurisprudence: The Logic of Legal Transplants*, AMER. J. COMP. L. 489, (Autumn, 1995). Instead, most of these laws should be drafted according to certain principles, including the inclusion of greater detailed coverage of the circumstances covered by the law, references to other national legislation, and particularly the delegation of authority to the agency (or agencies) best able to engaging in delegated legislation.

[4] As such this paper's primary purpose is to provide examples (for better or worse) of legal reasoning from a range of countries and not to provide an assessment of Azeri or other anti-corruption law. For recent updates on anti-corruption legal reform in Azerbaijan, *see* INFORMATION OF THE COMMISSION ON COMBATING CORRUPTION UNDER THE CIVIL SERVICE MANAGEMENT BOARD OF THE REPUBLIC OF AZERBAIJAN ON RESULTS OF IMPLEMENTATION OF THE STATE PROGRAM ON COMBATING CORRUPTION (for years 2004-2006), *available at*: http://www.antikorrupsiya.gov.az/eng/img/State%20Program%20Implementation%20Report_eng.pdf. At variance with the admonitions provided by the Bluebook, internet links are always provided to sources when available in order to encourage the reader to consult the references cited in this paper.

delegation of anti-corruption rule-making authority to executive agencies, and uncoordinated revisions to the criminal, civil and administrative codes. Advice given by donors -- particularly the OECD Network for Transition Economies -- exacerbates these problems. Section II provides an analysis of several issues regarding Azerbaijan's anti-corruption legislative framework, particularly discussing the internal consistency of the four key laws which from the backbone of the national framework. The section will also discuss the executive's ability to implement these laws and omitted legal issues which will reduce the ultimate effectiveness of these laws. An outline regulatory impact assessment is provided to illustrate how such an assessment can be incorporated in future law (or rule) making decisions. Section III reviews and critiques the two laws governing the Azeri institutional framework for fighting corruption -- namely the law establishing the Azeri Anti-Corruption Commission and the law establishing the Department for Combating Corruption (DCC). Section IV discusses the types of legislative amendments required in order for Azerbaijan to implement the two Council of Europe conventions against corruption and the UN Convention Against Corruption. Section V argues that the current anti-corruption programme design based on a national (presidential) strategy and national action plan provides a poor legal foundation for reducing corruption. The section provides a simple strategy for converting the abstract National Action Plan into a more legally solid corpus of administrative law. The section also provides an outline cost-benefit analysis (in order to illustrate how such an analysis may be incorporated in such action-planning). Section VI shows that donor assistance often encourages the legal problems inherent in Azerbaijan's (and other Former Soviet) anti-corruption legal framework. The OECD's Anti-Corruption Network for Transition Economies represents a particularly egregious example of poor legal analysis and advice. The final section provides concluding observations.

II. Salient Issues in the Azeri Anti-Corruption Law

The 1994 Azeri Anti-Corruption Law, like many similar laws in the Former Soviet Union, is a short-law (13 articles), covering a large range of issues briefly.[5] In contrast to anti-corruption laws from many other countries, the law does not provide introductory articles providing definitions; and the internal logic of the law is difficult to follow. Articles 1-4 briefly present general provisions (individuals subject to the law, applicability and institutions responsible for enforcing the law).[6] Articles 5 and 6 establish the basis for asset declaration, Article 7 addresses nepotism, article 8 addresses gift-giving, article 9 provides an inventory of offences covered by the law and article 10 provides brief procedures for dealing with corruption cases. Article 11 establishes that physical and legal persons shall pay fines in cases of non-criminal involvement in corruption. Article 12 establishes the confiscation of proceeds from corruption; and article 13 provides a basis of nullifying laws passed as the result of corruption. In brief,

[5] Law of the Republic of Azerbaijan on Combating Corruption, (adopted by Parliament on 13 January 2004), [hereinafter Azeri Anti-Corruption Law], *available at*: http://www.antikorrupsiya.gov.az/eng/law_13.html,

[6] *id.*

the Azeri Anti-Corruption Law is a hodge-podge of differing legal concepts put into one document.[7]

a) asset declaration

The Azeri Anti-Corruption Law's establishment of a legislative mandate for asset declaration from a wide range of Azeri public officials, represents one example of problems with the Law's internal logic.[8] The Law mandates that Azeri public officials (both politicians and civil servants across the public sector) shall submit information about various aspects of their financial situation "within the procedure laid down by the legislation."[9] The "officials" presumably refer to the wide range of individuals cited in article 2 (referring to practically everyone who acts "within the color of the law," to borrow a term from the US legal tradition).[10] Yet, as the law does not provide preliminary definitions for terms used (unlike many of the laws in the region), the officials referred to in article 5 are unclear.[11] The Azeri Anti-corruption Law -- regrettably -- also refers to other legislation ("within the procedure laid down by the legislation") without clear citations to the relevant laws.[12]

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[7] Azeribaijan is not unique in passing such laws. The draft 2001 Russian anti-corruption law incorporated many of the same elements (though in a more expanded format). *See* About the Fight Against Corruption, Duma Bill (tabled on 8 February 2001), [hereinafter Russian Anti-Corruption Bill], *available at:* http://www.transparency.org.ru/CENTER/DOC/bill_cor_iluhin.doc . Unlike the current Azeri Law, the Russian Anti-Corruption Bill (which was eventually not adopted) at least provided references to other more detailed laws or sections of the Russian Criminal Code when relevant. While such a "legal hodge-podge" may represent poor drafting skills, it may also reflect the lack of any generally accepted underlying theory about fighting corruption. *See* Diana Schmidt, *Anti-corruption: What Do We Know? Research on Preventing Corruption in the Post-communist World*, POL. STUD. REV. 202 (2007).

[8] Azeri Anti-Corruption Law, art. 5.

[9] *id.* art. 5.1

[10] These include "persons elected or appointed to the State bodies" (art. 2.1.1), "persons who represent the State bodies" (art. 2.1.2)..."persons who exercise management or administrative functions in appropriate structural units of the State bodies, in State-owned institutions, enterprises and organizations as well as in enterprises in which the control package of shares is owned by the State" (art. 2.1.4), "persons elected to municipal bodies" (art. 2.1.6), "persons who exercise management or administrative functions in municipal bodies" (2.1.7), or "persons who exercise management or administrative functions in non-State entities discharging the powers of State authorities in cases provided for by law" (art. 2.1.8). As shown below, the Law -- in its quest to spread the seemingly transparency-increasing asset declaration as far as possible across the Azeri public sector -- will probably represent a heavy administrative burden, *see infra* note 44.

[11] *cf.* Prevention of Corruption Law of the Republic of Lithuania, No. IX-904 (28th May 2002), [hereinafter Lithuanian Anti-Corruption Law], *available at*: http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018130.pdf (art. 2 of that law defines the terms used in the law much more clearly than laws such as the Azeri Anti-Corruption Law and other anti-corruption laws in the Former Soviet Union). *Cf also* On Anticorruption Efforts, Law No. 267-1 (adopted on 2 July 1998 and most recently amended by Law No. 552-II on 11 May 2004)[hereinafter Kazakh Anti-Corruption Law], *available at:* http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019167.pdf. As discussed, below the Anti-Corruption Law relies on a slightly more specific list of covered public officials as outlined in arts. 2 and 3of the Azeri Asset Declaration Law, *see infra* note 13.

[12] *Cf.* Kazakh Anti-Corruption Law art. 4(1), "This Law shall apply over the entire territory...refer to Letter No. YuD-2-1-13/3147 of the Ministry for Public Revenue of the Republic of Kazakhstan Regarding the Issues of Submitting a Declaration (4 April 2002)." The Russian Anti-Corruption Bill also provides references to other relevant laws in some cases (*eg.* art I.1.3. citing "institutions implementing electoral law

Lack of references to other existing legislation has resulted in confusion stemming from the circular nature of references between laws. Article 5.1 of the Azeri Anti-Corruption Law notes that many of its provisions will be implemented "within the procedure laid down by the legislation." Presumably as part of the legislation referred to by Article 5.1, Article 1 of the 2005 Law on Approval of Procedures for Submission of Financial Information by Public Officials notes that "these Procedures define the form of the financial information stipulated under Article 5.1 of the Law of the Azerbaijan Republic 'On struggle against corruption'."[13] Yet, with regards to the information which asset declarations should contain, article 5.1 of the Azeri Asset Declaration Law refers to 5.1 of the Azeri Anti-Corruption Law, noting "5.1. Statement shall contain the information stipulated under Article 5.1 of the Law of the Azerbaijan Republic "On struggle against corruption."[14]

The Anti-Corruption Law also fails to provide the legal or institutional principle by which it splits up the competence for collecting and monitoring asset declarations. Specifically, the Azeri Anti-Corruption Law makes reference to Azeri Anti-Corruption Commission Law which establishes the competence for the Commission to monitor asset declarations.[15] However, article 3.4 of the Asset Declaration Law stipulates that local government officials shall "submit their financial information to relevant executive authorities, and persons implementing administrative and supervisory authorities in the local self-management authority." The Asset Declaration Law also provides that members of the Milli Majlis should provide their returns to an appointed auditor in the Parliament and public officials of the Nakhichevan Autonomous Republic shall similarly provide their asset declarations "to the authority identified by the Supreme Mejlis of the Nakhichevan Autonomous Republic."[16] Presumably, the splitting of the Anti-Corruption Commission's authority to collect and audit asset declarations stems from a interpretation of article 124 of the 1995 Constitution, delegating authority to local government bodies and article 134 providing special administrative status to the

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or the work of the Electoral Commission (point a, section 2, article 141 of the Russian Criminal Code). In the case of the Lithuanian Anti-Corruption Law, the law is relatively self-contained (thus requiring few references to other legislation).

[13] On Approval of Procedures for Submission of Financial Information by Public Officials, Law of the Azerbaijan Republic (August 14, 2005), [hereinafter Azeri Asset Declaration Law], *available at:* http://www.antikorrupsiya.gov.az/eng/img/law%20on%20financial%20declarations.pdf

[14] The Azeri Anti-Corruption Law requires the officials (*see* supra 5), to provide:

> 5.1.1. yearly, on their income, indicating the source, type and amount thereof;
> 5.1.2. on their property being a tax base;
> 5.1.3. on their deposits in banks, securities and other financial means;
> 5.1.4. on their participation in the activity of companies, funds and other economic entities as a shareholder or founder, on their property share in such enterprises;
> 5.1.5. on their debt exceeding five thousand times the *nominal financial unit* ;
> 5.1.6. on their other obligations of financial and property character exceeding a thousand times the *nominal financial unit* [italics in original].

[15] Statute of the Commission on Combating Corruption under the State Council on Management of the Civil Service (2 June 2005). Sec. 1(II) provides the Commission with the competency to "supervise the submission process of the financial declarations envisaged in Section 5.1 of the law on 'Combating Corruption' of the Republic of Azerbaijan".

[16] *id.* art 3.2 - 3.4.

Nakhichevan Autonomous Republic. If such an interpretation of Azeribaijan's organic law forms the basis for such a splitting of competencies, the Azeri Asset Declaration Law fails to provide sufficient oversight by the Azeri Anti-Corruption Commission of these other entities.[17]

The law also omits important concepts which have become internal best practice in monitoring asset declarations. The most important omission revolves around the definition of "control" used in auditing asset declarations.[18] Article 7 of the Azeri Asset Declaration Law requires that "control over submission of financial information shall be implemented by receiving authority." However, such control is often interpreted as rule-based control (checking each declaration to the extent possible) instead of using the preferred risk-based approach to law enforcement.[19] At a minimum, the law should provide for declarations to be sorted into high, medium and low risk categories and these declarations should be audited based on the principle of stratified random sampling.[20]

b) gift-giving

The Azeri Anti-Corruption's Law's treatment of gift-giving makes practical enforcement impossible.[21] The Law requires that gifts costing "more than fifty nominal financial units" be surrendered to the Azeri State.[22] Thus, Azeri civil servants are allowed to receive gifts costing $3,500 before they need to surrender them to the State -- a threshold which is excessive for a country with a GDP per capita of $7,500 per year. The Azeri Anti-Corruption Law does not define a gift (as differentiated from corrupt consideration), nor does the Law set limits on the frequency or number of individuals

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[17] Such oversight could consist of authority regulate these other entities, and specifically the authority to create standards and codes of oversight and the authority to audit in cases where the Commission believes the delegated agency has failed to provide sufficient oversight. As will be argued below, the institutional design of the Azeri Anti-Corruption Commission, under the current Anti-Corruption Commission Law, makes the institution too weak to provide such an oversight role.

[18] Azeri Asset Declaration Law, art. 7.

[19] Azeribaijan is not alone in instituting such an abstract regime of "control" over asset declarations. The Moldovan Law on Asset Declarations also fails to define control and provides an extremely vague procedure for controlling asset declarations under Article 10. *See* Moldova Law on the declaration of incomes and control of incomes and assets of state officials, judges, prosecutors, public officials and some persons holding management positions, No. 1264-XV (19 July 2002), *available at:* http://www.transparency.md/Laws/1264-02_en.pdf. More helpfully, the Moldovan Asset Declaration Law provides an annex for use in filing asset declarations.

[20] Other issues are overlooked in the Law, including the requirement to provide asset declarations for close relatives of the public official who is obliged to submit the asset declaration. For an analysis of Poland's asset declaration scheme, *see* Paula Anna Borowska, Piotr Sitniewski and Patrycja Joanna Suwaj, DECLARATIONS OF INCOME AND ASSETS: POLISH INSTRUMENTS ASSESSMENT, *available at*: http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN027519.pdf

[21] Azeri Anti-Corruption Law, art. 8.

[22] Like many former Soviet countries, fines and other financial thresholds in Azerbaijan set in law are anchored to the minimum wage. In Azeri legislation, one nominal financial unit refers to a minimum monthly wage, which on January 2008 was 60 manats Azerbaijan (or roughly $70).

from whom a public official can accept gifts -- making the restriction on accepting gifts rarely binding.[23]

Even if Azeri law clearly distinguished between gifts and corrupt consideration, the Azeri Anti-Corruption Law does not refer to mechanisms by which gifts can be monitored; or the procedure for the confiscation of these gifts. The Law fails to vest authority for monitoring the receipt of gifts in any executive agency (particularly the Azeri Anti-Corruption Commission). Assuming a summary presidential decree vested authority in the Anti-Corruption Committee (or the Anti-Corruption Department under the General Prosecutor's Office as discussed below) to investigate gifts, no procedure for seizing these gifts is in place. Presumably, such gifts -- if the relevant authority were to find them as corrupt consideration -- could be confiscated using the same procedures foreseen in article 12 of the Azeri Anti-Corruption Law. However, as no legal crime or administrative offence has been committed by the civil servant accepting the gift, a confiscation order against a gift whose value exceeds the legally defined threshold (or a gift presumed to be corrupt consideration), would be difficult to obtain given the current Criminal Code, Civil Code and Administrative Code.[24]

Most worrying -- and unique among such anti-corruption laws -- the Azeri Anti-Corruption Law allows the public official to purchase (presumably from the state who is presumably the nominal owner) the gift for "for his or her personal use."[25] Unfortunately, the scheme fails to establish a valuation method for such gifts; and the Law does not assign responsibility to a particular agency for arranging for the purchase of the gift.[26] As such, gifts could be transferred at a lower than market price, leading once again to theh payment of corrupt consideration (with the benefit accruing to the civil servant being equal to the difference between the gift's market price and the transfer price paid by the civil servant).

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[23] In theory, a gift would be any consideration paid to a civil servant not falling into the extensive list of activities defined by art 9.2 of the Azeri Anti-Corruption Law. However, given the exhaustive nature of the list, few cases of gift-giving could fall outside of this list. For one possible legal test of a gift (as opposed to corrupt consideration), *see* Bryane Michael and Mariya Polner, *Drafting Implementing Regulations for International Anti-Corruption Conventions,* QUEEN ELIZABETH HOUSE WORKING PAPER NO. 150, (2007), *available at*: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=995978

[24] Such a case represents an interesting case in legal theory. Under article 8 of the Azeri Anti-Corruption Law, a gift may be physically transferred to a public official; however, the legal property rights vested in the gift automatically fall to the Azeri State at the time of transfer. Because the state is already the nominal owner of the asset (gifted to the civil servant), no confiscation order would be required -- and the civil servant would be required to relinquish possession over the gift or face charges of embezzlement. However, because property rights in the gift are not clearly vested in any *particular* government agency, *de facto* control over the gift may endow the civil servant with *de jure* rights over the gift (particularly if an enforcement regime is not in place). Given the lack of legal materials in English, I can not resort to jurisprudential tradition in order to establish theoretical rights over the gift.

[25] Azeri Anti-Corruption Law, art. 8. *See* supra 24 for a qualification to the Azeri state's ownership claim in the gift.

[26] Such a scheme is unique among most developed countries. The Azeri Parliament (Milli Majlis) should either remove the ability of the civil servant to purchase the gift for his or her own use, or it should set up a scheme to administer the purchase of such gifts (though it is difficult to imagine both how grateful public service users find the income to give such expensive gifts or how civil servants save enough of their official salary to purchase the gift).

c) enforcement/punishment

The Azeri Anti-Corruption Law provides virtually no clear and effective punishment for corruption. Individuals who fail to provide asset declarations are subject to "disciplinary responsibility" (and the Law provides no further definition of such responsibility).[27] Separately, the Law notes that "offences related to corruption shall give rise to disciplinary, civil, administrative or criminal responsibility as provided for in the legislation."[28] Yet, articles covering corruption or bribery could not be found in each of these respective codes.[29] As such, the Azeri Anti-Corruption Law could usefully provide a section which defines clearly whether particular cases of corruption are treated as disciplinary offences (and handled by the executive agency in question), administrative offences, civil offences or criminal offences -- using objective criteria such as the value of bribes paid, the harm imposed on third-parties, or another criteria.[30]

As discussed below, the Azeri Anti-Corruption Law fails to delegate authority to executive agencies which these agencies need to protect themselves from the increased liability concomitant with Azerbaijan's ratification of the international anti-corruption conventions. For example, under the Council of Europe Civil Law Convention, private parties may (and should) sue the Azerbaijan government for if it "fail[s] to take reasonable steps to prevent the act of corruption."[31] Clearly, article 4 of the Council of Europe Convention paves the way for distributing criminal and financial liability for corruption between numerous physical and legal persons. For example, if the managers of the Customs Service do not take effective action against corruption in their service, they can be held liable by their organisation, by the sub-ordinates and by third-parties.[32] Given the increased liability of the government agency implied by the Council of Europe Civil Law Convention, the Azeri An Anti-Corruption Law (and other anti-corruption laws in

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[27] Azeri Anti-Corruption Law, art. 6.3.
[28] *id.* art. 10.1.
[29] Civil Code of Azerbaijan (2004), *available at*: http://www.cis-legal-reform.org/civil-code/azerbaijan/civil-code-azerbaijan-general-part.ru.html. Criminal Code of Azerbaijan, *available at*: http://www.legislationline.org/upload/legislations/50/79/4b3ff87c005675cfd74058077132.htm. I could not find the Administrative Code online and disciplinary procedures are presumably provided (if at all) in executive decrees by the head of each Service.
[30] If the Azeri Criminal Code, Civil Code, the Administrative Code, and the relevant Codes governing the disciplinary procedures applicable in executive agencies already define clearly tests for liability for corruption offences applicable in each code, then the Anti-Corruption Law could usefully summarise these criteria and provide references to the relevant Codes. Such a reference would add transparency to the current legal framework governing jurisdiction over the investigation and prosecution of corruption offences in Azeri law. This being said, no anti-corruption law in place nor any international convention treating corruption issues provides such a clear criteria for establishing jurisdiction in corruption cases.
[31] Civil Law Convention on Corruption, 4 November 1999, ETS 174, *available at:* http://conventions.coe.int/treaty/en/Treaties/Html/174.htm , art. 4.i. Such a suit could be brought for contributory negligence in case the plaintiff suffers a financial loss as a result of bribe-seeking by the public officials working in a government agency. Naturally, the public official who solicited the bribe would face criminal or other charges.
[32] For a more comprehensive discussion the means by which liability for damages arising from cases of corruption can be distributed among participants, accomplices, superiours and the government agency (which can have a legal obligation to rescue the public service user), *see* Michael, *supra* note 23.

the former Soviet Union) could usefully define the predicates for service-liability and possible judicial remedies.[33]

d) conflict of interest

The Azeri Anti-Corruption Law's treatment of conflict of interest in the Azeri public sector is entirely inadequate. According to the Azeri Anti-Corruption Law, "acts or inaction of an official shall be considered as offences conducive to corruption" -- including holding private sector job while holding a civil service job, providing assistance to private individuals for personal gain or other actions which are commonly treated in conflict of interest legislation.[34] The cryptically phrased remedy for engaging in activities which potentially represent a conflict of interest entail, "civil, administrative or criminal responsibility, instituting of legal proceedings against that official...carried out in accordance with relevant legislation of the Republic of Azerbaijan."[35]

The Draft Conflict of Interest Law should ostensibly provide much greater definition to the legal framework governing civil servant conflict of interest (and provides a model for writing better legislation).[36] For example, under the Azeri Anti-Corruption Law, "in the course of performing his or her service duties (powers), to hold any lucrative office or to engage in any lucrative activity, except for the scientific, pedagogical and creative activity" results automatically in the ambiguous punishments previously cited.[37] Under the Draft Conflict of Interest Law, the civil servant involved "shall transfer his/her managerial or supervisory functions arising from his property share in the entrepreneurship (business) entity to a different legal or natural person."[38] The Draft Law provides much more detail than the Azeri Anti-Corruption Law; describing the procedures to follow if infractions occur and defining in much more detail the circumstances which constitute a situation in which a conflict of interest might arise in municipal government (article 13), restrictions after ceasing duty (article 16), and restrictions on the use of private government information (article 17) -- to list only a few examples. When the Bill becomes Law, it should replace section 9.3 (as well as the gauchely written section 7 dealing with nepotism).[39]

e) regulatory impact assessment of the Anti-Corruption Law

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[33] Other types of administrative law are instructive in this area. For a comparative analysis, see FRANK JOHNSON GOODNOW, COMPARATIVE ADMINISTRATIVE LAW: AN ANALYSIS OF THE ADMINISTRATIVE SYSTEMS (2000).
[34] Azeri Anti-Corruption Law, art. 9.3.
[35] *id.*, art. 10.2.
[36] The Law of the Azerbaijan Republic On the Prevention of Conflicts of Interest in the Activities of Public Officials [hereinafter Draft Conflict of Interest Law], *available at*: http://www.antikorrupsiya.gov.az/eng/img/Conflict%20of%20interests%201%20Eng.pdf
[37] *id.*, art. 9.3.1.
[38] Draft Conflict of Interest Law, art. 9.
[39] The drafting quality of Azeri Acts varies considerably between Acts and the Draft Conflict of Interest Law may be taken as a better example of such drafting. Given the wide range of donor financed technical assistance missions to Azerbaijan, these differences in drafting style and quality partly reflect differences in the skills of legal consultants who assist the Azeri government.

The Azeri Anti-Corruption Law is too expensive for the Azeri executive to implement.[40] Using data from a recent household survey conducted by Transparency International in Azerbaijan, an economic estimate of the value of bribes paid hovers around $980 million.[41] Of this $980 million, very rudimentary economic calculations place the value of petty corruption at roughly $715 million, mostly payments to health and education services.[42] Using these same economic techniques, corruption in the oil sector generates roughly another $265 million.[43] Reasonable funding of the Azeri Anti-Corruption Law, assuming Azeri law enforcement agencies effectively apply a risk-management approach to tackling corruption, would cost approximately $25 million. Of this $25 million expenditure, roughly 95% of the Law's cost ($22 million) derives from the administrative costs of administering the asset declaration scheme defined under articles 5 and 6.[44] Safeguarding against nepotism would cost the Azeri treasury another $400,000.[45] The cost of enforcement, under Article 10, would be the other expensive part of the Law. Under conservative assumptions, the cost of enforcing the Azeri Anti-

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[40] Analysts point out that increased oil revenue should provide amble resources for government programmes. These daft arguments ignore the basic economic logic of government regulation -- namely that any public policy's social return (the marginal increase in "social welfare" in which justice serves as a component) should exceed the policy's financial and opportunity cost. See Arvind K. Jain, *Corruption: A Review*, 15 J. ECON. SURVEYS 71 (2001).

[41] This total estimate represents the sum of bribes involved in petty corruption and bribe payments related to the oil sector (see below). For methodology used to arrive at this economic estimate, *see* Bryane Michael and Mariya Polner, *Fighting Corruption on the Transdnistrian Border: Lessons from Failed and Successful Anti-Corruption Programmes*, UNIVERSITY OF PARIS WORKING PAPER 49.

[42] *See* Transparency International, *Country Corruption Assessment: Public Opinion Survey in Azerbaijan, available at:* http://www.alac-az.org/transpfiles/25.pdf . According to household survey data, roughly 60% of all survey respondents have paid bribes. According to Diagram 28, 28% of respondents who paid bribes paid between 10,000 and 100,000 old *manats* (and other proportions and sums are given in the report). The total estimate of petty corruption was obtained by multiplying the total proportion of Azeri citizens between the ages of 18-65 multipled by the proportion of those paying bribes and taking the weighted sum of bribe payments across social stata defined in Diagram 28. Diagram 29 shows the proportion of survey respondents extorted to pay bribes for various government services.

[43] This estimate assumes a fixed "bribe tax" of 5% paid on oil-related services. *See* REPORT ON CORRUPTION IN AZERBAIJAN OIL INDUSTRY PREPARED FOR EBRD & IFC INVESTIGATION ARMS, *available at*: http://www.bicusa.org/Legacy/BTC_corruption_claim_COIWRP.pdf. A bribe-tax of 5% represents a conservation estimate as World Bank data show Azerbaijan has the highest bribe-tax rate in the region. *See* Business Environment and Enterprise Performance Survey (as summarised at http://www.worldbank.org/html/prddr/trans/novdec99/ebrdwbsurvey.htm)

[44] According to World Bank sources, the Azeri central government and sub-national government (excluding doctors and teachers) employ roughly 500,000 politicians and civil servants. Of those half-a-million public officials, the Azeri Anti-Corruption Law imposes a requirement to file asset declarations on roughly 200,000 of them. Simple processing of each asset declaration (checking to see if they are filled in correctly, record keeping and so forth) would impose a small cost. The larger cost consists of the opportunity cost to each declarant (in the cost of forgone work or leisure time, cost of collecting and checking records) which would cost about $100 per declaration. Thus, the article 5 obligation establishing the asset declaration scheme (as it presently stands) would cost about $20 million in direct and indirect costs. Under article 6 (establishing control over asset declarations), 1,000 declarations represents a conservative estimate of the number of declarations which could and should be randomly checked (less than 1%). Each declaration would cost about $2,000 for a cursory audit (checking receipts at random, following up on suspicious transactions, amortisation of the accounting software and so forth) for a cost of $2 million.

[45] Assuming that the 500,000 public officials received basic oversight (by nominating an internal agency-level ombudsman to check up on potential nepotism, the printing of information flyers and so forth), such that the cost per person was only $2 per person, the cost of implementing article 7 would be $400,000.

Corruption Law -- actually investigating and prosecuting corrupt civil servants -- would be roughly $2.5 million.[46]

According to very rudimentary economic analysis, the implementation of the Azeri Anti-Corruption Law would only reduce the value of corruption in Azerbaijan by $7 million.[47] Yet, even such an estimate of the potential reduction in corruption from the Azeri Anti-Corruption Law represents an optimistic estimate. In order to a positive return to accrue to enforcement of the Law, all of the following conditions occur. First, the Anti-Corruption Commission must collect and categorise asset declarations (most likely constructing a large database in order to allow investigators to sample from cases and conduct outlier analysis on groups of data). Second, the Commission must take time to select cases for audit and turn over cases (mostly likely to the DCC) for investigation. Third, unexplained wealth must be traced to a predicate corruption offence (which must be proven "beyond a reasonable doubt.")[48] Fourth, illicit gains and assets obtained from corrupt transactions must be recovered (and/or the bribery which led to the accumulation of those assets must be halted). Each of these conditions (particularly the fourth condition) is extremely unlikely in Azerbaijan at present.[49]

f) avoiding the legal muddle of the Anti-Corruption Law

Azerbaijan has two strategies for fixing the current legislative-related problems with the anti-corruption framework: either by strengthening the role of the anti-corruption law (the Eastern European Model) or splitting up the current law into the various codes (the Western European Model). In the Eastern European Model, the Azeri authorities would significantly lengthen the anti-corruption law, provide implementing instructions and delegate regulatory (rule-making) authority to the Anti-Corruption Commission and the DCC. The Law would incorporate the current Azeri Anti-Corruption Law, the Azeri Anti-Corruption Commission Law, the Draft Asset Declaration Law, and include more comprehensive chapters defining the procedures used in implementing of the two Council of Europe Conventions and the UN Convention (as discussed below). Incorporating such

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[46] Such an estimate assumes that only 800 individuals are investigated for corruption -- though the survey data cited about (*see supra* note 42) notes that the number of civil servants actually likely to participate in corruption is much higher. The cost of conducting each investigation would be $3,000 (consisting of the prosecutors' time and Prosecutor Department materials as well as costs of trying cases or remanding them for disciplinary action when only weak evidence is collected). The total cost per year of investigating and prosecuting cases under article 10 totals at least roughly $2.5 million.

[47] This estimate requires the construction of a elasticity of corruption with respect to anti-corruption expenditure. Given that data for changes in corruption are difficult and costly to collect, a simple rule-of-thumb estimate for the marginal change of the incidence of bribery with respect to the marginal change in anti-corruption expenditure can be made in order to obtain a ball-park figure. If the Azeri Anti-Corruption Law succeeds in reducing the value of bribery and petty corruption by 1% (though vigorous investigation and successful prosecution), then such a 1% decrease in the value of petty corruption ($715 million) represents roughly a $7 million decrease in corruption. For methodology, *see* supra 41.

[48] In theory, the Azeri authorities could also prosecute the individual for illicit gains (as defined in art. 20 of the UN Convention Against Corruption which Azerbaijan has ratified, *see infra* note 91). In practice, Azeri law does not provide procedures for the prosecution of unexplained wealth, making a prosecution under the article likely to fail.

[49] While the Azeri Anti-Corruption Law (as it present stands) is not economically viable, many of the modifications proposed in this paper should help increase the Law's rate of social return.

legislation into one statute would eliminate the existing overlaps and often conflicting competences assigned in the current legislation. Lithuania and Latvia are proceeding quickly along this path; whereas Moldova, Ukraine and Russia are (haltingly) going down this legislative path.[50]

In contrast, a number of countries are electing to follow the Western European Model. In most of the Western European countries (and in the USA and Canada), anti-corruption provisions are placed in various parts of the criminal and civil code (or the United States Code in the case of the USA and in various Acts in the UK). The UK, until recently, has (famously) relied on its Public Bodies Corrupt Practices Act from 1889! The United States hasn't even really defined legally corruption![51] Instead, various restrictions prohibit the accepting of tips and interference with trade. As Professor Henning notes, "Although it holds itself out as an example for other nations to follow, the United States does not have a coherent set of domestic anti-corruption laws. Instead, one can best describe the federal law as a hodgepodge."[52] The implicit strategy, which emerged in US law (much like former Soviet law), punished corruption as one instance of a misuse of public power.[53]

If Azerbaijan were to follow this ostensibly Western European Model, the President would repeal the current anti-corruption law, place the current criminal definitions of corruption in the Criminal Code, strengthen the articles in the Administrative Code and the Civil Code, and pass detailed legislation (in separate bills) on asset disclosure and the other areas required by the previously mentioned international conventions against corruption. Croatia and Turkey are two examples of countries following this path.[54] However, even the traditional Western European Model countries are starting to consolidate their legislative framework into a unified anti-corruption law. For example, the French parliament passed an anti-corruption law (modified in February 2007).[55] The UK has centralised many of its anti-corruption legal provisions (as well

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[50] The anti-corruption laws in both Lithuania and Latvia have already undergone several revisions aimed at expanding the areas covered by these laws. Moldova been in the process of revising its anti-corruption law for a number of years (not yet having successfully passed a more modern version). The Russian Duma has rejected several draft anti-corruption laws after the first reading. Ukraine, the slowest country in the group, has yet to propose a revised anti-corruption law to the Verhovna Rada (the Ukrainian parliament).

[51] *See* Peter J. Henning, *Public Corruption: a Comparative Analysis of International Corruption Conventions and United States Law*, ARIZONA J. INT'L & COMP. L. 793 (forthcoming), *available at*: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=298089 ("Congress has not defined a crime of public corruption, nor established the extent to which the federal power should be applied to the corrupt acts of state and local officials", at 799).

[52] *id.* at 798.

[53] William A. Clark & Philip H. Jos, *Comparative Anti-Corruption Policy: the American, Soviet and Russian Cases*, 23 INT'L J. PUB. ADMIN. 101 (2000).

[54] Güne Okuyucu Ergün, *Anti-Corruption Legislation in Turkish Law*, GERMAN L. J. 8 (1 September 2007). For an overview of the anti-corruption provisions in the various parts of Croatia's legal system, *see* http://www.spai-rslo.org/en/article.php?pid=94

[55] Law Related to the Prevention of Corruption and the Transparency of Economic Life and Public Procedures, Law 93-122, published in the Official Journal (29 January 1993), *available at*: http://www.legifrance.gouv.fr/WAspad/VisuNav?cidNav=5336&indiceNav=1&tableNav=CONSOLIDE&ligneDebNav=1

fulfilled its OECD and other convention obligations) under the Anti-terrorism, Crime and Security Act of 2001.[56]

III. Legal Weaknesses in the Institutional Anti-Corruption Legal Framework

a) legal issues related to the Anti-Corruption Commission

The Azeri Anti-Corruption Commission has no real legal authority.[57] According to the Azeri Anti-Corruption Law, "the functions of a specialized body in the field of prevention of corruption shall be discharged by the Commission on Combating Corruption (hereinafter "the Commission") under the Council on Public Service Management."[58] However, under the Azeri Anti-Corruption Commission Law, the body only has the power to request information from state agencies and to make recommendations.[59] Enforcement of the Commissions' recommendations presumably depends upon the commitment by the Commission's 15 representatives -- five appointed by the President, five by the Milli Mejlis (Parliament), and five by the Court -- to implement these recommendations in their respective agencies.

The Commission (and its Secretariat) will clearly be unable to fulfill the obligation to oversee income declarations.[60] According to the Azeri Anti-Corruption Law (article 5) and the Azeri Anti-Corruption Commission Law (chapter 9), the Azeri Anti-Corruption Commission collects asset declarations from a very exhaustive list of government officials. However, neither the Azeri Anti-Corruption Law, the Anti-Corruption Commission Law nor the Asset Declaration Law set forth the procedure by which the Anti-Corruption Commission assesses the asset declarations sent to (presumably) the Commission's Secretariat. These laws also do not outline the type of oversight Commission members place on received asset declarations.[61]

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[56] Chap. 24, *available at*: http://www.england-legislation.hmso.gov.uk/acts/acts2001/ukpga_20010024_en_1 . For an excellent example of legal analysis applied to the UK law (which may be instructive to the Former Soviet countries already looking to revise their anti-corruption laws), see OONAGH GAY, THE ANTI-TERRORISM, CRIME AND SECURITY BILL, PART XII: ANTI-CORRUPTION LEGISLATION, BILL NO 49 OF 2001-2, 15 NOVEMBER 2001, *available at*: http://www.parliament.uk/commons/lib/research/rp2001/rp01-092.pdf

[57] The Azeri Anti-Corruption Commission fulfils Azerbaijan's article 6 commitment under the UN Convention Against Corruption to create a specialised agency responsible for the preventive aspects of fighting corruption. Such prevention consists of co-ordinating policy (art. 6.1.a), advertising campaigns (art. 6.1.b) and training programmes (art. 6.1.c). The definition of the Commission as an anti-corruption think-tank may reflect the lack of a legal or social science theory (or even definition!) of "preventive measures" often espoused in anti-corruption programmes.

[58] Azeri Anti-Corruption Law, art. 4.2. The Council on Public Service Management website does not provide regulations or links to legislation which define the Council's supervisory responsibilities over the Anti-Corruption Commission.

[59] Azeri Anti-Corruption Committee Law, sec. III.

[60] The Anti-Corruption Commission Law, in sec. IV, authorises the creation of a Secretariat to conduct the day-to-day work of the Commission. The Law does not define the number of civil servants to serve in the Commission's Secretariat nor its responsibilities.

[61] At a minimum, the legislation should mandate that the Commission adopt a risk-based approach to the audit of financial returns; placing them in high, medium and low risk groups based on risk profiling and then randomly sampling from each group of returns.

The legal and theoretical rationale for the existence of the Anti-Corruption Commission are highly questionable. As Professor Heilbrunn notes, "a commission must be independent from interference by the political leadership" -- a condition not existing the Azeri legislation.[62] The Draft Asset Declaration Law, for example, delegates part of the Commission's competencies to other bodies and abstains from providing the Commission with oversight authority. The most notable example concerns asset declarations (though other examples are provided below) -- whereas the asset declarations must be submitted by parliamentarians to an audit body in the parliament and local government officials must submit their asset declarations to their respective local governments.[63] Even in the sphere of public education, Azeri legislation tasks both the Commission and the DCC (as discussed below) with public education as well as every other public agency![64] The Law provides vague definition for the work of the Secretariat and the Commission, without providing delegated authority to establish specific operating mechanisms.

The composition of the Anti-Corruption Committee raises questions about the Commission's ability to engage in pro-active reform. Figure 1 shows the names and titles of each of the Committee's members. As shown, the executive plays a superlative role in the Commission. Besides the 5 appointees for the executive, several members of parliament are closely aligned with the president, and most of the court officials rely on the president for their appointment.

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[62] JOHN R. HEILBRUNN, ANTI-CORRUPTION COMMISSIONS PANACEA OR REAL MEDICINE TO FIGHT CORRUPTION? 15 (2004). *Available at*: http://siteresources.worldbank.org/WBI/Resources/wbi37234Heilbrunn.pdf . The requirement for a anti-corruption co-ordinating body became part of the folk remedies which were made popular in the 1990s (making its way into the UN Convention Against Corruption). For more, *see* Schmidt. *supra* note 7 or Bryane Michael, *The Rise of the Anti-Corruption Industry*, POL. J. LGPC 17, available at: http://lgi.osi.hu/publications/2004/254/LGB_spring_2004.pdf.

[63] Azeri Asset Declaration Law, art. 3.4 ("relevant executive authorities, and persons implementing administrative and supervisory authorities in the local self-management authority shall submit the information to the respective self-management authority.")

[64] The Azeri Anti-Corruption Law, in art. 4.1, abstractly notes "all State bodies and officials shall, within their powers, carry out the fight against corruption." Azeri legislation fails to define the content or teaching method involved in the "education" called for in the Azeri Anti-Corruption Commission Law respectively. One possible reason for such legal ambiguity may stem from the lack of an accepted "anti-corruption" curriculum or educational institution best able to deliver such education. *See* BRYANE MICHAEL, ANTI-CORRUPTION TRAINING PROGRAMMES IN CENTRAL AND EASTERN EUROPE (2005).

Figure 1: Azerbaijan Anti-Corruption Commission Appointees

Presidental Appointees	
Ramiz Mehdiyev	Commission's chairman, Head of President's Executive Office
Ramil Usubov	Minister of İnternal Affairs
Shahin Aliyev	Head of Department of Legislation and Legal Expertise of the President's Executive Office
Fuad Aleskerov	Head of Department of Work with Law Enforcement bodies of the President's Executive Office
Eldar Mahmudov	Minister of National Security
Parliamentary Appointees	
Ziyafet Asgerov	Deputy chairman of Parliament
Ali Ahmedov	Member of Parliament, Executive Secretary of New Azerbaijan Party
Latif Huseynov	Head of Department of Legislation and State Building Department
Ali Huseynov	Member of Parliament
Bakhtiyar Aliyev	Member of Parliament
Constitutional Court Appointees	
Farhad Abdullayev	Chairman of Constitutional court
Ramiz Rzayev	Chairman of the Supreme court
Zakir Qaralov	General Prosecutor
Fikret Mamedov	Head of Judicial-Legal Council, Minister of Justice
vacant	vacant

Source: Azeri Anti-Corruption Commission, http://www.antikorrupsiya.gov.az/eng/about_3.html

Most tragically, the Anti-Corruption Commission Law does not define performance indicators which can be used to assess the Commission's viability and establish its political and/or administrative legitimacy.[65] In many countries, particularly in South-East Europe, implementing legislation (or at least project documents which establish the operational basis) for similar anti-corruption commissions include performance indicators.[66] Such performance indicators may include simple project outputs (such as the number of civil servants trained in anti-corruption measures) or more usefully consist of outcomes (such as the reduction in the value of bribes during the reporting period). Such performance indicators also prevent the unfocused assessment typified by the recent Anti-Corruption Commission progress report.[67] Because of the lack of performance indicators, the Anti-Corruption Commission progress report represents an ad-hoc collection of news-bits reporting on the status of project implementation.[68]

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[65] For an in-depth discussion of such measurement (albeit in an African context), *see* Patrick Meagher, *Anti-Corruption Agencies: Rhetoric Versus Reality*, 8 J. POL. REFORM 69 (2005).
See also DE SPEVILLE, *see infra* note 66.

[66] See BERTRAND DE SPEVILLE, ISSUES AND PRACTICAL IMPLEMENTATION OF A NATIONAL ANTI-CORRUPTION PROGRAMME: METHODS OF MEASURING ITS PROGRESS, *available at:* http://www.coe.int/t/e/legal_affairs/legal_co%2Doperation/combating_economic_crime/3_technical_cooperation/paco/paco%2Dimpact/PC-TP(2004)50.pdf

[67] *See supra* note 4.

[68] Cf *(find report from Europe).* Such performance indicators would also help to focus donor assessments such as the OECD Anti-Corruption Network evaluation of Azerbaijan (see below).

b) General Prosecutor's Office

In 1994, a presidential decree established the Department on Combating Corruption (DCC) under the General Prosecutor's Office. The DCC is a "specialized agency conducting primary investigation in respect of corruption related criminal offenses and reports to General Prosecutor's Office."[69] The DCC has independence neither from the General Prosecutor's Office nor from the government.[70] At present, the DCC has mostly an investigative mandate, investigating in corruption cases likely to involve a criminal prosecution.[71]

In several cases, the competencies of the DCC overlap with the Azeri Anti-Corruption Commission, particularly in cases of analytical studies, public education and international co-operation. Regarding analytical studies, in article 5.5 of the DCC Law, the DCC "studies the state of the struggle against corruption, collects data on corruption related offenses, analyses, summarizes relevant data and prepares proposals and recommendations to increase efficiency of the struggle against corruption." Yet chapter II of the Azeri Anti-Corruption Commission Law requires the Commission to "analyze the state and efficiency of the fight against corruption." Public education also represents an area of overlap. Article 5.11 of the DCC Law mandates the DCC to "implement[s] prophylactic and enlightenment measures on the area of combating corruption and ensure[s] openness its activities." The Azeri Anti-Corruption Commission Law, in chapter III authorises the Commission "to take measures for organization of public awareness in the area of combating corruption and conduction of public surveys." Finally in area of international co-operation, article 7.7 of the DCC Law authorises the DCC to "cooperate[s] with authorities and law enforcement bodies of other countries engaged in the fight against corruption, take[s] measures to improve international cooperation in the sphere of struggle against corruption, stud[y] international experience in the sphere of struggle against corruption and make[s] proposals on more efficient measures to be taken in this direction." However, the Azeri Anti-Corruption Commission Law (chapter III) authorises the Commission "to take part in international cooperation for increasing the efficiency and organization of the struggle against corruption."

In many cases, the legislation establishes guidelines which are too general and abstract for effective implementation. In the main, the duties set in articles 5-7 of the

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[69] Law on the Department on Combating Corruption under the General Prosecutor's Office of the Republic of Azerbaijan, October 28, 2004, [hereinafter DCC Law], *available at*: http://www.commission-anticorruption.gov.az/eng/law_4.html , art. 2.

[70] *cf.* Republic of Lithuania Law on the Special Investigative Service, No.VIII-1649, [hereinafter Lithuanian SIS Law], May 2, 2000, art. 16, *available at*: http://www.stt.lt/en/files/stt_law.pdf (which guarantees the independence of the SIS's staff during investigations). Such independence would be difficult to establish in Azerbaijan due to the unfortunate location of the DCC in the General Prosecutor's Office. According to article 133 of the Azeri 1995 Constitution, the President appoints and oversees the General Prosecutor's Office.

[71] DCC Law, art. 5.

DCC Law are standard to any law enforcement agency.[72] In contrast, the statutes authorising the activity of similar departments in other countries provide greater detail. For example, the Croatian Anti-Corruption Office Law explicitly notes that the Office should conduct investigations according to the Criminal Procedures Code.[73] Article 21 cites instances when the Office has the competency to investigate in cases where other crimes are related to the case.[74] Most similarly institutionally to the DCC, the Romanian Anti-Corruption Directorate Law also provides much more detail related to its operating procedures and competencies.[75] These examples from other countries will provide useful models when the DCC Law is revised.

The other area to be established in the Azeri anti-corruption legal framework consists of the division of labour between the Prosecutor's Office and internal affairs offices in Azeri executive agencies. The first line of defense against corruption should be internal affairs offices (often called internal security offices in several former Soviet countries) within the executive agencies. According to the Azeri 1997 Customs Code, an internal security department currently functions -- albeit without much direction from law.[76] The Azeri DCC Law does not make reference to these departments or the role that the DCC can play in assisting these departments with staff training and/or investigations. Clearly, the internal affairs departments can (and should) collect data about the performance of the public officials working within the executive agency and use statistical methods to identify high-risk individuals or suspicious activity. Internal affairs departments should also have the competence to collect evidence in suspected corruption cases where *prima facie* evidence suggests that the case would involve disciplinary or administrative sanctions (namely in non-criminal cases). Indeed, a single presidental decree defining the function of internal affairs departments in the Azeri executive may

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[72] *id.* Reprinting article 5, [the] Department carries out the following main duties in the field of prevention and combating corruption:

> 5.1. analyses and investigates received information in connection with corruption related criminal offenses;
>
> 5.2. starts criminal cases and conducts primary investigation in connection with corruption related criminal offenses;
>
> 5.3. takes measures to organize detective-search activities in order to prevent, reveal and disclose corruption related criminal offenses and supervises the execution of laws by the subjects of the detective-search activities on this field;
>
> ...
>
> 5.6 ensures implementation of necessary measures during preliminary investigation of the corruption related offences, including organization of protection measures for witnesses, victims, accused persons and other persons who involved in the criminal proceedings of such cases;
>
> 5.7. regularly informs the President of the Republic of Azerbaijan and the Commission on Combating Corruption under the State Council on Management of Civil Service on the measures implemented in the area of the combating corruption through General Prosecutor;

[73] *cf.* The Law on The Office for the Suppression Of Corruption and Organised Crime (March 2005), art. 15, [hereinafter Croatian Anti-Corruption Office Law], *available at*: http://www.spai-rslo.org/en/filedownload.php?did=607

[74] *id.*, art. 21.

[75] The Government Emergency Ordinance regarding the National Anticorruption Directorate, no. 43 (April the 4th 2002), *available at*:http://www.pna.ro/oug_2002_43.jsp

[76] Customs Code of the Azerbaijan Republic, No. 311-IQ (June 10, 1997), *available at*: http://www.az-customs.net/en/1296.htm

save the time and labour of defining the role of such departments in the various legal codes governing each executive agency.[77]

IV. Slippage between the National Legislation and Ratified International Anti-Corruption Conventions

Azeri law only nominally adopts the Council of Europe Civil Law Convention Against Corruption, the Council of Europe's (CoE) Criminal Law Convention Against Corruption and the United Nations (UN) Convention against Corruption. At present, ratification of these conventions consists of three presidential decrees (one for each convention) indicating that the Azerbaijan government ratifies these conventions.[78] However, effective ratification will require implementing legislation (preferably which delegates regulatory powers to executive agencies) which operationalise the requirements of these three conventions. As noted above, such a process of inchoate adoption has already started through specific articles in the Azei Anti-Corruption Law (and other laws). For example, article 12 of the Azeri Anti-Corruption Law pertaining to the confiscation of the proceeds from corruption clearly addresses the same subject as article 31 of the UN Convention against Corruption. However, much more legislative work needs to be done.

a) the Two CoE Anti-Corruption Conventions

At a basic level, the Azeri Anti-Corruption Law translates into Azeri law the main provisions outlined in the articles 2-12 of the Council of Europe's Criminal Law Convention on Corruption. The Anti-Corruption Law establishes criminal liability for the active and passive bribery of the list of individuals named in the CoE Criminal Law Convention.[79] The inchoate offences of offering a bribe or suggesting a corrupt transaction (addressed in article 2 of the CoE Criminal Law Convention as "passive corruption") are covered by article 9.2.1-9.2.3 of the Azeri Anti-Corruption Law. However, the Azeri Anti-Corruption Law does not specifically mention many of the various types of individuals covered in the CoE Convention, namely foreign public officials (art. 5), members of foreign public assemblies (art. 6), officials of international organisations (art. 9) and members of international parliamentary assemblies (art. 10). It is questionable how much more coverage these articles from the CoE Convention provide though, as article 1 of the Azeri Anti-Corruption Law defines corruption as the "illicit obtaining by an official of material and other values, privileges or advantages, by using for that purpose his or her position." As the Law does not provide a list of individuals

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[77] This being said, I do not know of a country in which the function of internal affairs departments are defined in a single piece of legislation.

[78] For example, the Law of the Republic of Azerbaijan On the approval of the Civil Law Convention on Corruption, No. 571-IIQ, (December 30, 2003), *available at*: http://www.antikorrupsiya.gov.az/eng/law_12.html (the law consists of two small articles, namely:

1. To confirm the "Civil Law Convention on Corruption" approved in Strasbourg on November 04, 1999 with relevant statement (the context of statement is attached)
2 . This Law comes into force from the date of issue.)

[79] Criminal Law Convention on Corruption, 27 Jan. 1999, ETS 173 [hereinafter CoE Criminal Law Convention].

from whom corrupt consideration is illegal, the Law clearly prohibits such consideration irregardless of the source.[80]

The issue of *respondeat superiour* -- as addressed in article 18 of the CoE Criminal Law Convention -- represents a legal principle which the Azeri authorities will need to spend a large amount of time transposing into national legislation. As noted previously, the international conventions both provide a larger range of remedies and impose a greater degree of liability for corruption offences. Like many crimes, corruption often involves elements of contributory negligence, conspiracy, and complicity by third-parties (who may be both physical and legal persons). Given the number of potential parties to a corruption offence (and thus the increased number of plaintiffs and defendants who can be named as joinder to a case outside of the two physical persons who gave and received the bribe), Azeri lawmakers will need to develop a set of principles aimed at assigning criminal liability in these cases.[81]

Another challenge for the Azeri lawmakers (and for lawmakers in most former Soviet countries) will be to set punishments which are "effective, proportionate and dissuasive."[82] In an OECD country context (where the level of corruption is relatively low and coercion from government officials which would necessitate participation in corrupt transactions is also low), a couple of years of prison time serves as an effective, proportionate and dissuasive measure. However, in a country where 60% of the population admit to engaging in corruption (and over 60% of survey respondents report being coerced by state officials in the health sector), the existing punishments set in the Azeri Criminal Code fail to be effective, proportionate or dissuasive.[83] Indeed, Azeribaijan (like most countries) will certainly grapple with the balancing act of providing for duress as an effective defense against criminal liability while simultaneously providing punishments which dissuade even mostly unwilling participants in corrupt acts.[84]

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[80] Presumably the CoE Criminal Law convention provides these many definitions for corruption involving various types of foreign nationals (and representatives of international agencies) in order to ensure that signatory countries would have jurisdiction over foreign nationals (and representatives of international agencies). However, the problem of jurisdiction remains many international organisations and/or foreign courts would probably deny standing given the wide-spread perception of corruption in the Azeri court system. *See* Michael, *supra* note 23 for a discussion of forum selection in international corruption cases.

[81] Unfortunately, legal models from other countries will provide only weak role-models due to the wide variation in the way different national legal traditions assign potential criminal and non-criminal responsibility in such cases. To take a simple example, in French administrative law, the French state has a "duty to rescue" victims of corruption -- imposing a greater administrative obligation (and correspondingly greater damages for non assistance) to prevent corruption and to provide assistance to victims than Italian or even UK administrative law. In UK administrative law, though, the reversal of the burden of proof for corruption cases (such that the burden falls on UK government officials to show that accusations of participation in corruption are unfounded instead of the accusers) provides an effective legal approach to tackling corruption.

[82] CoE Criminal Law Convention, art. 19.

[83] *See supra* note 42.

[84] *See* Michael at *supra* note 23 for the theoretical underpinnings of a legal test which may be used to assign criminal responsibility in such cases as well as a theory of assigning effective, proportionate, and dissuasive remedies in these cases.

In some cases, increased reliance on the criminalisation of corruption may militate against the establishment of the effective remedies envisioned in the CoE Criminal Law Convention. Criminal cases in most countries (and Azerbaijan is no exception) are time-consuming and expensive. Rarely can a prosecutor obtain a sufficient amount of evidence to prove "beyond a reasonable doubt" that the defendant engaged in corruption. Given the expense and increased difficulty of proving criminal cases, such a focus on criminalisation -- and the concomitant strengthening of the DCC -- may discourage resources and attention from flowing to Azeri civil courts and to internal security departments. As such, greater legal work on disciplinary and civil sanctions may serve the interest of criminalisation much better than criminalisation in itself.

The CoE Civil Law Convention provides the legal basis for strengthen these civil remedies.[85] In the main, the CoE Civil Law Convention allows for a party "who [has] suffered damage as a result of corruption to have the right to initiate an action in order to obtain full compensation for such damage....including compensation [covering] material damage, loss of profits and non-pecuniary loss."[86] Unlike the CoE Criminal Law Convention, the CoE Civil Law Convention should be -- when civil courts function efficiently and cost-effectively -- self-enforcing. Namely, the damages victims of corruption can claim in court should provide a positive incentive for them to bring corruption to the authorities.[87]

The "non-pecuniary loss" which courts should be directed to award, as envisioned under article 3.2 of the CoE Civil Law Convention, represents one of the most interesting aspects of potential reform to anti-corruption legislation in the former Soviet region. Such awards should not only be "effective, proportionate and dissuasive" (as in criminal cases), they should also be "socially optimal." Namely, damages awarded in corruption cases should not only promote distributive justice (by returning the money to the victim of corruption). Damages should also compensate for any social costs or harms imposed by the parties to corruption, providing a remedy for welfare losses to third-parties.[88] Unfortunately, the calculation of welfare loss represents a relatively under-researched area of applied public economics -- militating against the development of an objective standard which judges could use to award damages (particularly when large classes of victims of corruption are involved).

The CoE Civil Law Convention also establishes the obligation to protect whistleblowers -- representing another potentially very effective remedy against corruption in the civil courts. According to article 9, "each Party shall provide in its internal law for appropriate protection against any unjustified sanction for employees who have reasonable grounds to suspect corruption and who report in good faith their suspicion to responsible persons or authorities." In order to implement article 9, Azeri

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[85] Civil Law Convention on Corruption, 4 November 1999, ETS 174, *available at:* http://conventions.coe.int/treaty/en/Treaties/Html/174.htm

[86] *id.* art 3.1 and art 3.2.

[87] For a fuller description of such an approach to lawmaking, s*ee e.g.*, A. Mitchell Polinsky and Steven Shavell, *Corruption and optimal law enforcement*, J. PUBLIC ECON. (2001).

[88] For a method of calculating such social welfare costs, *see* Michael, *supra* note 23.

lawmakers should pass a whistle-blower protection act which establishes an official contact person (or Ombudsman) in each executive agency, establishes expedited procedures for claiming damages from retaliation against whistle-blowing and, to the extent allowed by law, establishes *qui tam* rewards.[89]

b) UN Anti-Corruption Convention

Azerbaijan has already established a number of laws which fulfill (at least in part) its ratification of the UN Convention Against Corruption.[90] The Anti-Corruption Commission previously referred to addresses Azerbaijan's article 5 and 6 commitments to create an anti-corruption agency (or agencies) responsible for co-ordinating work on anti-corruption. Azerbaijan has also established a Code of Conduct for Civil Servants, which addresses its article 8 commitment under the UN Convention.[91] The Law on Public Procurement corresponds to Azerbaijan's article 9 commitment to reform its procedures for tendering and administering public procurement.[92] The Freedom of Information Law partly fulfils Azerbaijan's article 10 commitment under the UN Convention to increase public sector transparency.[93]

In some cases, the UN Convention's ambiguity makes practical implementation difficult or impossible.[94] Article 7.1, for example, requires that Azerbaijan "endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials...that are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude." Clearly, such abstract wording makes the design of subsidiary legislation or executive level regulation practically impossible.[95] Article 11

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[89] A *qui tam* reward pays to the whistle-blower a percentage of the value of the government's financial gain from the whistle-blowers complaint. The establishment of *qui tam* rewards represents an exciting and controversial area of anti-corruption law. For more on qui tam legal mechanisms and awards, *see* Robert Cooter & Nuno Garoupa, *The Virtuous Circle of Distrust: A Mechanism to Deter Bribes and Other Cooperative Crimes*, BERKELEY LAW & ECONOMICS WORKING PAPERS (2001).

[90] UN Convention Against Corruption, 31 October 2003, resolution A/RES/58/4, *available at:* http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf

[91] *See* Law of The Republic of Azerbaijan on Rules of Ethical Conduct Of Civil Servants (May 31, 2007), *available at:* http://www.antikorrupsiya.gov.az/eng/img/Code%20of%20Ethics%20for%20Civil%20Servants%202007%20-%20ENG.pdf

[92] In contrast with several other Azeri laws reviewed in this brief, this law is well-drafted and the drafting style could serve as a template. *See* The Law of the Republic of Azerbaijan on Public Procurements, N 245-IIQ, (27 December 2001), *available at:* http://www.tender.gov.az/ProcurLawEnglish001.html

[93] *See* Law of the Republic of Azerbaijan on Right To Obtain Information, *available at*: http://www.commission-anticorruption.gov.az/eng/img/Law_on_right_to_obtain_information_done.pdf

[94] Such ambiguity reflects, in part, the difficulties of negotiating a convention acceptable to large number of sovereign states who take part in the negotiation process. In this light, the inclusion of these relatively abstract principles in the UN Convention may represent strategic political compromises which establish international legal principles which will serve as a precedent for future treaties or UN Conventions.

[95] In any case, these issues may be better dealt with in a civil service, rather than anti-corruption, context. For an assessment of the ambiguity of each of the UN Convention's articles, *see* Bryane Michael, *What Does the UN Convention on Corruption Teach Us About International Regulatory Harmonisation?*, *available at*: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=512082 . The Azeri Civil Service Law does deal with these issues (albeit at the same level of ambiguity as the UN Convention and without

represents another example, encouraging the Azeri (and other UN member) authorities, "bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary."[96] Again, the article is so abstract as to render any meaningful lawmaking difficult if not impossible.[97]

The confiscation of proceeds from corruption represents one of the newest and most exciting areas of anti-corruption lawmaking. Given the need to pressing need to allow government to confiscate these proceeds, three conventions require signatories to adopt measures aimed at confiscating illicit gains. The CoE Criminal Law Convention notes (in very general terms) that countries, such as Azeribaijan, shall establish legislative remedies for the confiscation of proceeds from corruption.[98] The UN Anti-Corruption Convention further establishes the principle of confiscation.[99] In its most developed form, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism provides relatively specific guidance.[100] According to this Convention, article 3 provides that corruption comprises a crime covered by the Convention (listed as item *h* in the list of covered crimes in the Convention's appendix). Article 6 details how confiscated funds are managed, while articles 17-19 describe in detail how international requests for information are to be written down and formatted. Azeri authorities will certainly require implementing legislation, specifying how searches, seizures, and confiscations are to be conducted -- probably as part of a broader bill dealing with money laundering.[101]

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delegating the needed authority to the executive agencies to operationalise these broad obligations), *see* Law of the Republic of Azerbaijan On Civil Service, Law No. 926 –I, September 1, 2001, *available at*: http://www.antikorrupsiya.gov.az/eng/img/Law_Civil_Service.az.pdf

[96] *id.* at 8.

[97] In this case, the strategy would be to delegate authority to the judiciary (namely the Constitutional Court and Ministry of Justice) in order to develop executive regulations corresponding to the requirements of Article 11. The National Anti-Corruption Action Plan

[98] art. 23.2 ("each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized.")

[99] UN Convention, art 31. Most controversially is article 31.8, which encourages signatories to "consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation."

[100] Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Products from Crime (ETS No. 141), *available at*: http://conventions.coe.int/Treaty/en/Treaties/Html/198.htm

[101] Since 9/11, a wave of money laundering legislation aimed at fighting the financial of terrorism has been introduced around the world. Azerbaijan has so far taken a piece-meal approach to adopting such legislation, adding provisions to its banking law instead of adopting a new statute aimed at fighting money laundering. For a list of current money laundering laws in the Former Soviet Union, see FIGHTING MONEY LAUNDERING AND TERRORISM FINANCE, *available at*: http://www.ebrd.com/pubs/legal/lit061c.pdf . The implementation of the article 31 of the UN Convention will pose particular constitutional problems in Azerbaijan as Article 29 of the 1995 Constitution of Azerbaijan ensures -- in clear and direct language -- that "total confiscation of the property is not permitted."

V. The (Non)Legal Basis of the National Anti-Corruption Strategy and Action Plan

As noted previously, a major weakness in the current legislative framework stems from the insufficient delegation of regulatory authority to Azeri executive agencies -- placing excessive burden on the Millis Majlis or the President to approve of a wide variety of changes in the anti-corruption legal framework.[102] The Azeri Anti-Corruption Law (and the other laws reviewed in this brief) provides for almost no delegated regulatory (rule-making) authority -- preventing Azeri executive agencies from effectively implementing national legislation and helping the government comply with the obligations imposed by its ratification of the international anti-corruption conventions. Arguably, however, delegated authority for rule-making (regulation) derives from the National Anti-Corruption Strategy and National Anti-Corruption Action Plan.

a) Legal Basis for the Anti-Corruption Strategy

Despite its genesis as a Presidential Decree, the National Anti-Corruption Strategy provides little legal authority for secondary legislation or lawmaking.[103] The National Strategy -- similar to these strategies in other Former Soviet countries -- represents a vague declaration of principles with few concrete activities proposed or time-frames for implementation. The general policy directions included in the Strategy include work toward: rule of law and respect for human and citizen's rights and freedoms, provision of access to information, control over the functioning of state authorities, prevention of corruption and responsibility for corruption related violations, and awareness raising and cooperation in combating corruption.[104]

A simple one part test may be devised to assess whether the National Strategy serves as a basis for further legislation or delegated rule-making. Namely, does the National Strategy provide the President, Milli Mejlis or Azeri executive agencies with a clear mandate for passing subsidiary or supporting legislation (or executive orders and decisions in the case of executive agencies) based on the Strategy? Given the National Strategy's abstract and vague wording, lawmakers would have difficulty referring to the National Strategy as a source of authority in law or rule-making. For example, article III.2 of the National Strategy stipulates that "the state authorities shall take measures for defining precise decision-making procedures, and improving the work and rules for consideration of the applications and complaints." Suppose that Azeri executive agency

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[102] Such an approach is not unique to Azerbaijan and in part explains the relatively slow pace of anti-corruption legal reform across the former Soviet Union.

[103] *National Strategy on Increasing Transparency and Combating Corruption*, Presidential Decree 28 July (2007)[hereinafter National Strategy], *available at*: http://www.antikorrupsiya.gov.az/eng/img/AC%20National%20Strategy%20Preamble%20-%20English%20Translation.doc. Because Azerbaijan has a presidential form of government, the Presidential Decree provides a legislative basis for the country's anti-corruption policy (in contrast to a parliamentary form of government in which such a decree would simply implement a law passed by parliament).

[104] *Cf.* The National Anti-Corruption Strategy of Georgia 2005, *available at*: http://nsc.gov.ge/download/pdf/ANTICOR_STATEGY_Eng.pdf (which provides much more detail than the Azeri plan).

(such as customs) asks the Ministry of Finance for additional funding in order to conduct an organisational review as part of its article III.2 obligations. Or suppose that the Azeri branch of Transparency International applied for a writ of mandamus, seeking an administrative order for the conduct of such an organisational review relying on article III.2? No reasonable person would expect either of these actions to succeed.

A cynic would argue that the National Strategy serves a political rather than legislative purpose. If the National Strategy had been intended to provide a legal basis for further law-making, the Strategy would provide clearer direction to the Parliament and the executive agencies under the President. Even the choice to pass the National Strategy as a Presidential Decree instead of as a Parliamentary Act could be interpreted as a deliberate choice to use the promulgation of the National Strategy in order to score political capital for the President.[105] Most government policy strategies are developed at the ministerial level and comprise (often unpublicised) working documents within the ministry. Defenders of presidential promulgation of the National Strategy might (erroneously) point to such a strategy as a sign of high level "political will" -- as some authors have claimed that such strategies should be endorsed by the president as a sign of such political will.[106] Kpundeh provides a simple test of political will -- namely that a National Anti-Corruption Strategy should be credible, well-resourced, and have a constituency for reform.[107] The Strategy fails on credibility test because of the Strategy's lack of specificity and the inclusion of many non-directly corruption related issues in the Strategy.[108] The Strategy provides for no direct and credible funding mechanism.[109] The Strategy moreover, has few constituents -- as most ministers and state officials benefit greatly from corruption and few rewards are in place for ministers who demonstrate reductions in corruption in their ministries.

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[105] The Azeri constitution provides little guidance as to which branch of government should promulgate an anti-corruption law. On the one hand, articles 94 and 95 of the 1995 Constitution of Azerbaijan establishes competencies in the parliament for legislation on matters of general policy. On the other hand, article 109 gives the President the competency to sign and issue laws.

[106] *See, e.g.* Michael Johnston and Sahr J. Kpundeh, *Building a Clean Machine: Anti-Corruption Coalitions and Sustainable Reform*, WORLD BANK POLICY RESEARCH WORKING PAPER 3466, (December 2004)

[107] Sahr J. Kpundeh, *Political Will in Fighting Corruption*, OSCE/OECD CONFERENCE ON NATIONAL AND INTERNATIONAL APPROACHES TO IMPROVING INTEGRITY AND TRANSPARENCY IN GOVERNMENT (July 1998).

[108] *See* Michael, *supra* note 95 which discusses a methodology of measuring the specificity and relevance of the sections of an anti-corruption policy. The implementation of the scheme proposed in this brief for passing various elements of the National Strategy into administrative law would qualify as a credible show of political will under the Kpundeh test.

[109] Article 11 of the National Strategy stipulates that "the measures indicated in the Strategic Plan are funded from the state budget and other sources not prohibited by the legislation. Every year during the preparation of the draft of the state budget State authorities provide the relevant entities with their proposals on the allocation of funds necessary for the implementation of measures set forth in the National Strategy...With the aim of supporting the activities stipulated in the National Strategy, state authorities will be able to use consultative, methodical, technical and other assistance from international partners." In effect, Azeri executive agencies only have the right to request funds, not a guarantee of receiving these funds. A parlimanent act (or presidential degree) setting aside a pre-defined amount in the next budget year would ensure the funding of the National Strategy (and thus provide a credible show of political will).

b) Legal Basis of the Anti-Corruption Action Plan

The National Anti-Corruption Action Plan, however, could arguably provide the authority to executive agencies required for delegated rule-making.[110] The Action Plan consists of 202 bullet point activities which are assigned to various agencies (or combinations of agencies) for implementation.[111] Activity 49 represents an example from the Action Plan, directing the "Cabinet of Ministers, other relevant agencies" to work on the "improvement work of state bodies in issuing licenses and ensuring transparency." Activity 49 comprises of two sub-activities: "a) preparation of recommendations for simplification of terms and conditions of license issuing process and b) preparation of recommendations for transition of consent functions (registration, granting licenses, approvals, certificates, etc) to electronic system."[112]

Again, a simple test can be used in order to assess whether the Action Plans qualifies as a legally-binding executive order which authorises subsidiary regulation (rulemaking) by Azeri executive agencies. Namely, does the Action Plan *reliably delegate authority* to act on the Action Plan? Logically, Action Plan items would fall into one of four cases:

Cases such delegated authority can be clearly relied upon - for simple items such as analytical studies, such a devolution of authority may be assumed and relied upon. For example, point 58 of the Action Plan requires the "preparation of annual plan by central executive bodies and its submission to the Commission on Combating Corruption." The Azeri Anti-Corruption Commission may reasonable rely on the submission of these annual plans, citing point 58 as part of its right to receive this information (as well as its right to request and obtain information as part of the right created in section III of the Azeri Anti-Corruption Commission Law). Moreover, given the new Freedom of Information Law, an Azeri citizen may rely on reading these plans (if they exist).

Cases where authority can be delegated but not be clearly relied upon - for items where authority is unlike to be disputed. Activity 3 assigns the Executive Office of the President with the "preparation of the draft law on legal persons' liability." Though neither the National Strategy nor the Action Plan itself outline the legal principles by which the draft law on legal persons' liability is to be drafted, nor the consultation mechanism (as part of due process), nor the procedure by which the law

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[110] *Action Plan for the Implementation of the National Strategy on Increasing Transparency and Combating Corruption* (2007-2011) [hereinafter Action Plan], *available at*: http://www.commission-anticorruption.gov.az/eng/img/AC%20Action%20Plan%20-%20English%20Translation.doc

[111] The sheer number of Action Plan points implies that the Plan could benefit from greater focus, or at least a explicitly defined sequencing of activities. Unfortunately, officials in former Soviet countries (and their foreign advisors) from the "more is better" school of action-planning have elected for large action plans. For example, the Kazakhstan Anti-Corruption Action Plan has 62 action points, see http://www.transparencykazakhstan.org/UserFiles/file/32a.pdf

[112] Action Plan, activity 49.

is to be drafted.[113] Because the Action Plan is silent on the procedure to be followed, can complete authority be assumed to be delegated to the Office? An expert from the President's Executive Office can be assigned to work on the draft without much difficulty.

Cases where delegated authority can not be relied upon - for more complicated activities, the delegation of authority is less clear. Activity 7 calls for the "elimination of the duplications in the activity of government agencies, as well as providing legislative and other proposals with the purpose of the increasing efficiency of the government agencies." Such an activity would require changes to the organic law covering many of the executive agencies.[114]

In other cases, the subject of executive rule-making can not rely on a right conferred by the Action Plan. For example, point 56 of the Action Plan obliges executive agencies to adopt working procedures for "increasing role of civil society institutions in implementation of the National Strategy." Yet, as previously noted, no NGO could reasonably approach an executive agency and, based on a request to participate in policy decisions related to anti-corruption issues on the strength of point 56, expect such a request to be granted. Moreover, no Azeri executive agency appears to have developed an internal regulation outlining the criteria by which accredited NGOs may participate in agency-level anti-corruption programmes or the procedures required for such participation.

Cases where no delegated authority can be presumed to exist - for many activities in the action plan, the activity clearly falls outside the scope of an anti-corruption policy (and also often suffers from being phrased using very abstract language). For example, the activity 34 directing the court sector for "increasing payments of advocates for the state provided *[sic]* legal assistance." This activity only marginally impacts on corruption and should be addressed in another law and/or action plan because either the resulting legislation would only focus on anti-corruption aspects (ignoring other policy considerations) or would violate a basic principle of legislation that similar policies are addressed in the same law or legal code. These points should be repealed, pending further policy analysis and potentially political discussion.

For Action Plan points for which authority to any particular executive agency can be reliably delegated, they should be rewritten as separate legislative bills, as

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[113] The 1995 Constitution of Azerbaijan, art. 149 appears to give executive agencies and municipal governments regulatory authority as long as normative acts passed by these bodies do not contradict the Constitution, Presidential Decrees or Parliamentary Acts ("(6) Acts of central bodies of executive power should not contradict the Constitution, laws of the Azerbaijan Republic, decrees of the President of the Azerbaijan Republic, decrees of Cabinet of Ministers of the Azerbaijan Republic.
(7) Normative-legal acts improving legal situation of physical persons and legal entities, eliminating or mitigating their legal responsibility have reverse power. Other normative-legal acts have no reverse power.")

[114] Because the President has wide-reaching competencies (as defined in article 109 of the 1995 Constitution of Azerbaijan), the President does in this case have the authority to implement these changes without the consent of the Parliament.

administrative orders, or simply repealed (pending further discussion as part of other state policies). Such a procedure would add credibility to the Action Plan, increase the likelihood that activities covered in the Action Plan would be implemented, and ensure that activities envisioned in the Action Plan can be compared with activities covered in other parts of Azerbaijan's administrative law.[115]

c) Turning the Action Plan into Administrative Law

Any government transforms broad policy declarations into concrete action though its constantly developing corpus of administrative law. The process of drafting legislation and agency-level regulation creates working procedures and precedents which serve for future rule-making. In order to turn the National Action Plan into codified administrative law, the Executive Office of the President should divide the Action Plan into four parts and revise each activity envisioned in the plan as:

Directives - these Action Plan activities are simple, specific and require no further clarification (either of principles nor of specific implementation measures). Action Plan point 1 represents an obvious example of such activites which can be translated directly as directives (or decisions in cases where specific agencies or targets of regulation are concerned).[116]

Binding recommendations - these are activities which should be expanded into a proper administrative order (either promulgated by the President or by heads of agencies). They should reference authority granted by previous parliamentary acts or executive decrees and define specific methods of implementation. They may be consolidated into a single multi-chapter administrative act or regulation.[117] Examples of points to include are Action Plan item 43[118] and item 11.[119]

Legislative proposals - these Action Plan activities require a more detailed enumeration of the legal principles and other legislation in force which affect the activity. They also are like to require more carefully defined rights and obligations governing the agency's work. These could be written as separate laws to be passed by either the Parliament or

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[115] Such a process would also help develop badly needed legal drafting skills which help Azerbaijan create a coherent base of administrative law applicable to other areas of state policy.

[116] Action Plan, point 1, ("conducting general assessment for compliance with conventions and preparation of the final reports")

[117] *See* Law of Romania On Certain Steps for Assuring Transparency in Performing High Official Positions, Public and Business Positions, for Prevention and Sanctioning the Corruption, *available at:* http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN012620.pdf for an example of this strategy (as applied at the legislative rather than regulatory level).

[118] "Preparation of the proposals to the draft law on prevention of the legalization of the illegally obtained funds or other property and the financing of terrorism"

[119] "Assessment of the efficiency of measures undertaken in the area of combating corruption" (a regulation would probably need to address the criteria by which such efficiency is measured and delegate competencies to the relevant agency -- as both the Azeri Anti-Corruption Commission and the DCC have the mandate to conduct such studies).

President (depending on their constitutionally granted competencies). Examples of Action Plan points include point 7,[120] point 9,[121] and point 18.[122]

Repealed recommendations - these comprise a large number of the Action Plan points (113 out of 202 Action Plan points). These activities should be repealed on two grounds: a) they are too vague to serve as a basis for rule-making, and/or b) they fall outside the scope of an anti-corruption policy and would be more usefully discussed as part of other state policies. Appendix I identifies items in both of these categories.

d) Regulatory impact analysis of the Action Plan

The Azeri Action Plan should cost the state approximately $1.2 million to implement, requiring roughly 7 international experts in various fields, 14 national experts, 9 project managers and 5 part-time administrative assistants (see Appendix I for calculations).[123] Of the 202 Action Plan items, 30 could not be costed because they are ambiguous or confusingly phrased and 84 were not costed because they comprised activities which do not belong in an anti-corruption programme (such as improvement of the land registry!).[124] However, as the Action Plan points target training and legislative rewriting, instead of harder-hitting investigation and prosecution, no immediate social returns can be assumed to accrue from the Action Plan. The increasingly onerous and low impact requirements imposed by donors represents part of the reason for this low rate of return.

VI. Flawed Donor-Financed Assessments: The Case of the OECD Anti-Corruption Network for Transition Economies' Assessment

Part of the apparent difficulty the Azeri authorities have in adopting legal reform in the area of anti-corruption stems from the either abstract or poor advice given by donor organisations. The OECD Network for Transition Economies (hereinafter "OECD Network") in particular provides recommendations which the Azeri authorities erroneously rely upon. Unlike Council of Europe recommendations (to be discussed later), the recommendations provided by assessment missions sent by the OECD impose no legal obligations on the Azeri authorities (as Azeribaijan has not signed any legally binding agreement with the OECD giving these recommendations the legal status of a

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[120] "Elimination of the duplications in the activity of government agencies, as well as providing legislative and other proposals with the purpose of the increasing efficiency of the government agencies"
[121] "Conduct of relevant training for civil servants and judges after the adoption of the Administrative Procedures Code" (the relevant regulation would provide a list of topics, training schedule, method of examination and other useful information).
[122] "provision of the monitoring agencies for the prevention of the conflict of interests with the necessary material and technical resources" (this will probably be addressed in a conflict-of-interest legislation).
[123] In contrast to the regulatory analysis above (pertaining to the Azeri Anti-Corruption Law), the estimates in this section pertain mostly to the administrative provisions (analysis, training, and expert legal opinions) called for by the Action Plan.
[124] A lack of specificity and relevance in anti-corruption action plans represents a problem for such action plans world-wide.

convention or treaty).[125] The 2004 Monitoring Report represents the most egregious problem with the advice provided by the OECD (and thus is used in this paper as an example).[126]

a) abstract language

The recommendations provided by the OECD Network use abstract language, making compliance with the recommendations difficult. Recommendation 1 provides an example of such abstract language; admonishing the national authorities to "speed up efforts to adopt a comprehensive Anti-Corruption Program... envisage effective monitoring and reporting mechanisms... [and] ensure that the adopted strategy is widely disseminated within the civil service and among general public."[127] In each of these cases, the recommendation provides no concrete timelines, refers to no specific institutions and offers no detailed methods of implementation.[128]

Such abstract language allows the assessors to rely on Azerbaijan's planned activities (however abstract those, in turn, might be). In support of recommendation 1, the OECD Network report's authors notes that Azerbaijan has "created a legal framework, improv[ed] the performance of public agencies, law enforcement bodies and courts, implement[ed] concrete socioeconomic measures, awareness rais[ed] among the population, upgrad[ed] the professional level of public servants, and develop[ed] cooperation."[129] As if the Azeri authorities simply copied the content of the assessment,

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[125] See Bryane Michael & Donald Bowser, *Improving the OECD's Istanbul Anti-Corruption Action Plan*, paper presented at the 3rd Annual NUPI Conference in Oslo, *available at*: http://ideas.repec.org/p/cis/cei000/006.html
The Anti-Corruption Network for Transition Economies has been heavily (though privately) criticised by donors and officials in participating member states.

[126] AZERBAIJAN MONITORING REPORT, [hereinafter OECD Monitoring report], (2004), *available at:* http://www.antikorrupsiya.gov.az/eng/img/Azerbaijan%20monitoring.pdf

[127] *id.* at 2.

[128] All the OECD financed assessments suffer from such abstract language. For example, in the Ukrainian assessment, recommendation 2 advises the Ukrainian authorities that "more attention should be devoted to the prevention of corruption and to identifying and eliminating systemic regulative or organisational gaps that create corruption-prone environments." The evaluation of Ukraine's compliance with the recommendation urges that "drafting capacity needs to be improved" without providing the Ukrainian authorities any more specific guidance. *See* MONITORING OF NATIONAL ACTIONS TO IMPLEMENT RECOMMENDATIONS ENDORSED DURING THE REVIEWS OF LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE FIGHT AGAINST CORRUPTION UKRAINE: UPDATE ABOUT ACTIONS TO IMPLEMENT THE RECOMMENDATIONS TAKEN DURING DECEMBER 2006-SEPTEMBER 2007, *available at:* http://www.oecd.org/dataoecd/63/11/39527019.doc

[129] OECD Monitoring Report at 2. Such abstract assessment of country compliance with OECD Network recommendations run through all the OECD Network assessments. For example, in the Armenian assessment report, Recommendation 2 encourages the Armenian authorities to "upgrade statistical monitoring and reporting of corruption." The report finds "the overall impression was that in practice there is still a lack of comprehensive and accessible statistics about corruption offences in Armenia and that the current system of reporting does not provide detailed information about types and trends of corruption-related crimes." No reasons for the assessment were provided, nor were pro-active steps for reform. *See* MONITORING OF NATIONAL ACTIONS TO IMPLEMENT RECOMMENDATIONS ENDORSED DURING THE REVIEWS OF LEGAL AND INSTITUTIONAL FRAMEWORKS FOR THE FIGHT AGAINST CORRUPTION, ARMENIA: MONITORING REPORT, ADOPTED AT THE 6TH MONITORING MEETING OF THE ISTANBUL ANTI-

the Azeri Anti-Corruption Commission Law -- in section II -- provides (using the same abstract language) that the agency shall "participate in the formation of the state policy on corruption and coordinate the activity of public institutions in this area, analyze the state and efficiency of the fight against corruption...[and] cooperate with public and other institutions in the field of combating corruption."

b) quality of proof used in the report

The author of the OECD Network evaluation does not define what constitutes proof of reform, a problem which affects all the OECD Network assessments. For example, in Recommendation 2, the Azeri authorities are admonished to "ensure involvement and participation of civil society in general."[130] As proof of work on recommendation 2, the author notes that "representatives of the governmental staff, parliament, and law enforcement bodies make regular appearances in the press and other mass media."[131] The use of information fails as proof of compliance with the recommendation on three counts. First, such "proof" fails to address the stated criteria. The "involvement and participation" (as called for in the recommendation) generally requires a two-way form of communication. Politician appearances in the mass media fail establish a two-way link. Second, proof should have one, clear interpretation. While the report's author construes these public appearances as proof of ensuring the involvement of Azeri civil society, a reasonable observer may suspect that these media appearances could be building political capital for Azeri politicians. Third, proof can be agreed by all parties. In this case, persistent complaints about exclusion by civil society cast the proof cited by the OECD Network report into doubt.[132]

In cases where low-quality proof is used, the report could usefully assess the quality of such evidence. For example, recommendation 24 urges the Azeri authorities to "revise the access to information legislation to determine more precisely procedures and mechanisms for access to information." The OECD Network Report notes that in compliance with this requirement, a draft law "On Freedom of Information" has been elaborated jointly with the experts of the Council of Europe. In cases like this (and the examples given above), the author should *critically* assess the quality of the evidence he or she provides. Opinions from the Council of Europe's experts or knowledgeable third-party sources provide an obvious double-check on the quality of such proof.

c) lack of concrete recommendations

The evaluation fails to provide expert analysis of the legal issues involved in each recommendation -- offering hardly constructive criticism. Recommendation 17 represents

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CORRUPTION ACTION PLAN, [hereinafter Armenia Monitoring Report], (13 December 2006), *available at:* http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN018017.pdf

[130] OECD Monitoring Report at 2.

[131] *id.*

[132] *See, e.g.* SABIT BAGIROV, ANTI-CORRUPTION EFFORTS IN AZERBAIJAN, *available at*: http://www.alac-az.org/transpfiles/pub5.doc (Bagirov is pessimistic about the government's resolve in fighting corruption and notes the limited impact which the NGO community has been able to make).

the most obvious case where the report fails to offer pro-active advice on a negative finding. The recommendation urges the Azeri government to "screen the system for the control of assets of public officials to detect any possible loopholes and develop proposals to eliminate such loopholes." Proof of implementation consists of the finding that a "draft law has been elaborated and submitted to the national parliament for discussion and approval, concerning the presentation of financial information. Effective law envisages the imposition of administrative and disciplinary measures for untimely presentation of relevant information."[133] The report's author clearly missed the problems with vesting competency for asset declarations with the Azeri Anti-Corruption Commission which were discussed earlier. The author argues that "loopholes" exist without either making specific reference to such loopholes, or offering advice from OECD member countries about how such loopholes were eliminated.

d) assessment flaws

The primary assessment flaw consists of using government officials from other countries without in-depth experience in a former Soviet context. According to the OECD Network report on the assessment for Azerbaijan, the assessment team consisted of a Norwegian justice/police officer, a member of a Latvian NGO, prosecutors from Russia and Tajikistan, a Slovenian official from the anti-corruption office, and a compliance officer from a Swiss consulting firm.[134] While such a diverse collection of assessors brings a wide-range of experience to the assessment exercise, none of these individuals probably has the incentive to extend their analysis beyond the information they collect in the interviews they conduct in their short assessment business trips.

In many cases, the assessment provides incorrect assessments of the Azeri government's work. For example, recommendation 10 urges the Azeri authorities to "take steps to make the actual period of limitation for corruption cases longer and consider increasing the punishment for active bribery." As proof of commitment to the recommendation, the author notes that "the State Program envisages the tightening of sanctions for corruptive offences."[135] However, they author does not describe the punishments in place, make an argument for increasing punishments, and ignores the fact that Azerbaijan has ratified the CoE Civil Law Convention (which sets the statute of limitations at 3 years in civil cases).

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[133] OECD Monitoring Report at 6. The other OECD reports reflect similar weaknesses. In its evaluation of Armenia, the team finds that "the overall impression was that in practice there is still a lack of comprehensive and accessible statistics about corruption offences in Armenia" without any reference to a criteria which would constitute such a comprehensive statistics programme, see Armenia Monitoring Report.

[134] LEGALAND INSTITUTIONAL FRAMEWORKS FOR FIGHTING CORRUPTION SECOND REVIEW MEETING, *Available at*: http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019117.pdf. Michael and Bowser (*supra* note 125) cite flaws in other OECD Network assessments which use officials from countries such as Tajikistan to evaluate other countries on the grounds that Tajik public sector organisations do not represent anti-corruption best practice. These authors also highlight the encroachment on national sovereignty concomitant with the pressure exerted by public officials from OECD member states under OECD Network programmes.

[135] OECD Monitoring Report at 5.

Another example consists of Recommendation 14, admonishing the Azeri authorities to "recognis[e] ... the responsibility of legal persons for corruption offences" and notes that "the legislation of the Azerbaijani Republic envisages civil and administrative responsibility of legal persons.[136] However as previously noted, any suit against the state relies upon the general provisions in place for civil law disputes against the government (and is not regulated by special-purpose anti-corruption legislation). The author also relies on the Azeri Anti-Corruption Law which notes that participants in corruption may be subject to "disciplinary, civil, administrative or criminal responsibility as provided for in the legislation." However, on my reading (albeit in English), the Administrative Code does not contain articles related to punishments for corruption.

e) the Council of Europe assessment as best practice

If the OECD report represents bad assessment practice, the Council of Europe Assessment provides an example of good practice -- an example of assessment which both the Azeri authorities and the OECD could learn from.[137] First, the report provides (in paragraphs 5-20) reference to specific legislation, providing quotes in support of the observations made. Second, pro-active and concrete recommendations are made in paragraphs 21 and 22. Third, the report provides comprehensive analysis of the various institutions responsible for implementing the Azeri Anti-Corruption law, including the public prosecutor's office (paragraphs 24-33), the police (paragraphs 34-37), and the judiciary (paragraphs 39-44). The report looks into the major issues discussed by the two Council of Europe anti-corruption conventions, objectively describes the situation and provides specific recommendations.

VII. Conclusions

As shown in this article, many of the problems inherent in the Azeri legal framework against corruption are endemic in other former Soviet countries. These problems revolve around the excessive reliance on legislative strategies and action plans which can not be translated into agency-level rule-making, the insufficient delegation of anti-corruption rule-making authority to executive agencies, and insufficient use of the criminal, civil and administrative codes. Advice given by donors -- such as the OECD Network for Transition Economies -- either exacerbates these problems (by giving false credibility to Azeri and other government reform programmes) or by providing abstract advice which government authorities can not use operationally.

In order to provide a more solid basis for the current anti-corruption legal framework in Azerbaijan (and former Soviet countries like Azerbaijan), the authorities should choose which legislative strategy to follow (namely the Eastern European or Western European Model as discussed in this paper). In implementing the Azeri Action Plan in particular (and similar action plans in Central Asia, the Caucuses and to some

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[136] *id.*

[137] JOINT FIRST AND SECOND EVALUATION ROUNDS: EVALUATION REPORT ON AZERBAIJAN, Greco Eval I-II Rep 5E, (23 June 2006), *available at*: http://www.antikorrupsiya.gov.az/eng/img/Greco%20Eval%20I-II%20Rep%20_2005_%205E%20Final%20Azerbaijan.pdf

extent the Baltics), the Executive Office of the President should divide the 202 Action Plan points into four categories: a) directives (needing no further clarification), binding recommendations (requiring the drafting of more detailed administrative orders), legislative proposals (being developed into separate legislation), or repealed recommendations (based on a lack of specificity or relevance for an anti-corruption programme).

Appendix I: Costing of the Azeri Anti-Corruption Action Plan

Activities to be undertaken and expected outcomes	**Rate per day**	**Number of days**	**Number of People**	**Total expense**		**Too abstract**	**Not anti-corruption**
- conducting general assessment for compliance with conventions and preparation of the final reports	100	30	1	3000			
- preparation of the draft normative legal acts for the compliance of the legislation	0	0	0	0		1	
- Preparation of the draft law on legal persons' liability	100	90	1	9000			
- Preparation of the draft law on conflict of interests in the activity of civil servants and other public officials	100	90	1	9000			
- Preparation of the proposals to the draft law on prevention of the legalization of the illegally obtained funds	100	30	1	3000			
- Preparation of the legislative proposal on protection of the whistle-blowers on corruption cases	100	120	1	12000			
- Undertaking relevant measures to approve declaration form on financial disclosure of public officials	0	0	0	0		1	
- Preparation of the proposals for improvement of the legislation aimed at developing monitoring mechanisms in	100	240	1	24000			
- Adoption of the Code of Competition	0	0	0	0		1	
- Adoption of the Administrative Procedural Code	0	0	0	0		1	
- assessment of the normative legal acts in force as well as normative legal acts	0	0	0	0		1	
- preparation of the amendments and changes to the normative legal acts for regulation of the legal relations not	0	0	0	0		1	
- inclusion of the anti-corruption measures into the draft to-be-adopted state programs	0	0	0	0		1	
- regular update of the electronic database	20	30	1	600			
- keeping electronic database constantly operational	20	2	1	40			
- making electronic database open to the public	0	0	0	0			
- conduct of the public hearings with the participation of the civil society institutions, private sector	60	30	1	1800			
- promotion of the draft law proposals from civil society institutions, private sector representatives, media	60	240	1	14400			
- assessment and consideration of the proposals and conclusions in the legislation area	100	45	1	4500			
- learning international experience	60	240	1	14400			
- investigating possibility of lobbying activity in the context of the national legislation	60	30	1	1800			
- preparation of the final document on this issue	100	60	1	6000			
- Conduct of expertise of Charters of government agencies and of other normative legal acts regulating their	100	60	1	6000			
- Elimination of the duplications in the activity of government agencies, as well as providing legislative and	0	0	0	0		1	
- Clear identification of authorities of the government officials in the charters of agencies which are part of state	100	220	2	44000			
- Prevention of the implementation of both regulatory and commercial functions by the same agency	100	220	1	22000			
- Preparation of the proposals on improving rules for processing of applications, references and complaints	220	5	1	1100			
- Conduct of the efficient investigation of the references and complaints	100	220	1	22000			

- Organization of the receipt of the references and complaints through e-mail	20	90	1	1800			
- Undertaking measures to develop institutional mechanisms for the enforcement of the Administrative	0	0	0	0		1	
- Conduct of relevant training for civil servants and judges after the adoption of the Administrative Procedures	100	100	1	10000			
- Improving rules and forms for access to information	100	45	1	4500			
- Improving activity of units in charge of accessing to information	100	45	1	4500			
- Conduct of training in this area	100	12	1	1200			
- Preparation of proposals related to the activity of the institute of information ombudsman	100	30	1	3000			
- Acquiring information on causes, characteristics and level of a corruption as a whole and sectoral corruption	100	180	1	18000			
- Assessment of the efficiency of measures undertaken in the area of combating corruption	100	55	1	5500			
- Identification of new anti-corruption measures based upon the results	100	5	1	500			
- Inclusion in reports of issues related to acceptance and other issues related to service, budget, references and	0	0	0	0			1
- Publishing annual reports and disclosing them to public	0	0	0	0			1
- Development of the sample guidelines by the Commission on Combating Corruption for the preparation report	0	0	0	0			1
- Creation of opportunities for individuals to file complaints directly to internal monitoring bodies	100	30	1	3000			
- Rapid consideration and processing of the references by the internal monitoring bodies within short period of	0	0	0	0		1	
- Informing law enforcement agencies about the corruption related crimes discovered by the internal	0	0	0	0		1	1
- Provision of internal monitoring bodies with material and technical resources, specialized human resources	220	15	1	3300			
- Regular update of information on the web pages	20	30	30	18000			
- Placing information required by the law “on access to information” on web pages	20	1	1	20			
- Using web pages as service tool for the population	100	200	3	60000			
- Ensuring that information on fees, tariffs, taxes and information on payments for other rendered services is	60	90	1	5400			
- reducing cash collection of the fees, taxes, or other payments	220	60	1	13200			
- ensuring that payment of salaries, pensions, social benefits and other social payments are done through plastic	220	120	3	79200			
- conducting measures in the area of increasing transparency and learning advanced anti-corruption	0	0	0	0		1	
- establishment of the hotlines in government agencies and informing the public about those hotlines	220	15	1	3300			
- establishment of the system of operational response to the information received through hotlines	100	60	1	6000			
- investigating decisions affecting public interests	60	220	1	13200			
- organization of the information dissemination campaigns on activity of government agencies to increase public trust into government agencies	60	60	1	3600			
- provision of transparent and competition based hiring policies at the municipality apparatus	100	120	1	12000			

- organization of the anti-corruption training courses and seminars for the staff of the municipalities	100	90	1	9000			
- strengthening administrative control over the municipalities' acitivity	0	0	0	0		1	
- conduct of training in the area of implementation of legislation on prevention of conflict of interests	60	30	1	1800			
- development of the efficient monitoring mechanisms for the prevention of the conflict of interests	220	20	1	4400			
- provision of the monitoring agencies for the prevention of the conflict of interests with the necessary material and technical resources	0	0	0	0		1	
- developing sectoral codes of ethics	60	15	1	900			
- identifying responsibility for the violation of the code of ethics	0	0	0	0		1	
- organization of trainings on issues related to code of ethics	60	15	1	900			
- increasing opportunities to file complaints on non-ethical conduct of the civil servants	100	5	1	500			
- informing public about the code of ethics	60	30	1	1800			
- conduct of recruitment in all areas of civil service transparently and based on competition	0	0	0	0			1
- development of the necessary monitoring mechanism in this area	0	0	0	0			1
- providing the public with the information on terms of hiring for the civil service	0	0	0	0			1
- gradual increase of salaries of civil servants, strengthening their social welfare	0	0	0	0			1
- conducting systematic merit-based increase in salaries	0	0	0	0			1
- increasing the image of civil service	0	0	0	0			1
- attraction of the specialized cadres to civil service	0	0	0	0			1
- identification the needs for increasing the proficiency of the civil servants and organization of the trainings for	0	0	0	0			1
- improving activity of the educational institutions and centers at the government agencies	0	0	0	0			1
- learning international experience	0	0	0	0			1
- organization of the joint trainings for the personnel of the government agencies	0	0	0	0			1
- organization of the anti-corruption education programs and trainings (code of ethics, conflict of interest, freedom of information, etc)	100	30	1	3000			
- adoption of the evaluation guidelines and enforcement of the system	0	0	0	0			1
- consideration of the results of evaluation in civil servants' promotion	0	0	0	0			1
- identification of the areas where rotation system will be applied and enforcing the principle of rotation	220	30	1	6600			
- Organization of the professional trainings for the staff of the Secretariat of the Commission and members of the Working Groups	220	30	1	6600			
- Engagement of the representatives of the civil society institutions, private sector, mass-media and academia	60	90	1	5400			

- Strengthening relations with international partners and participation in the international initiatives	100	30	1	3000			
- Conduct of surveys and monitoring, analyzing the results and undertaking appropriate measures	100	220	1	22000			
- Preparing proposals on strengthening the material-technical resources of the Secretariat of the Commission on Combating Corruption	100	30	1	3000			
- Preparing proposals on improving the activity of the Commission	100	30	1	3000			
- Ensuring the Department is provided with full staff	0	0	0	0		1	
- Engaging personnel of the Anti-Corruption Department to the specialized trainings in the area of	60	90	1	5400			
- Ensuring the Department has a new building and strengthening its logistics	0	0	0	0			1
- Undertaking measures for the efficient organization of the mutual cooperation among the agencies	0	0	0	0		1	
- Ensuring efficient information and experience sharing among the agencies with the use of the new	220	60	1	13200			
- Establishment of the single database of the corruption related crimes	220	30	1	6600			
- Specialization of the relevant employees in the detection, investigation and prosecution of the corruption related crimes	60	90	1	5400			
- Conduct of criminal prosecution of corruption related crimes by specialized employees	60	220	20	264000			
- Organization of education and training courses on criminal prosecution of the corruption related crimes and on newly adopted legislation in this area	60	15	1	900			
- Establishment working groups consisting of the staff of the training centers of the law enforcement agencies, s	60	15	5	4500			
- Learning and applying international experience in the area of prosecution of corruption related crimes	60	3	2	360			
- Wider use of operational-investigation measures in the detection of the corruption related crimes	220	10	1	2200			
- Strengthening cooperation among the subject of the operational investigation activity and conduct of joint trainings	0	0	0	0		1	
- Preparing proposal on improving the efficiency of the operational investigation measures in combating corruption	220	5	1	1100			
- Learning agreements on cooperation with the criminal prosecution agencies	0	0	0	0		1	
- Improving protection of the witnesses and persons cooperating with the agencies conducting criminal persecution of corruption related crimes	220	60	1	13200			
- Placing court decisions on the web pages and regular update of the information	20	90	1	1800			
- Reconsideration of the grounds for involving judges to administrative liability	100	5	1	500			
- Learning international experience	0	0	0	0		1	
- Preparation of the relevant draft normative legal acts	100	90	1	9000			
- Increasing monitoring of the enforcement of the court decisions by the same judges who took those	100	5	1	500			
- Elimination of the existing shortcomings	0	0	0	0		1	
- Punishing employees responsible for shortcomings during the enforcement of the court decisions	0	0	0	0		1	
- Preparing draft changes to the legislation in connection with enforcement of court decisions	0	0	0	0		1	

- Improving material-technical resources of the Collegiums of Advocate	0	0	0	0			1
- Increasing payments of advocates for the state provided legal assistance	0	0	0	0			1
- Adoption of the code of ethics of the advocates	0	0	0	0			1
- Development and strengthening of the protection system of the entrepreneurs' investment activity	0	0	0	0			1
- Increasing opportunities to benefit from credits for entrepreneurs	0	0	0	0			1
- Prevention of the illegal intervention by government agencies into the activity of entrepreneurship subjects	0	0	0	0			1
- Identifying problems of entrepreneurs arising as a result of the relations with the government agencies and undertaking measures for their solution	0	0	0	0			1
- Studying and analyzing reports on Azerbaijan developed by international organizations in the economic	0	0	0	0			1
- Ensuring the equal right participation of all parties in the privatization process	0	0	0	0			1
- Preparation of proposals on improving procedures for the conduct of the state auctions	0	0	0	0			1
- Undertaking measures to prevent conflict of interests in the privatization process	0	0	0	0			1
- Improving provision of information about the privatization process	0	0	0	0			1
- Increasing transparency in the selection of the independents advisors (experts) to be engaged for the organization of the privatization process	0	0	0	0			1
- Preparation of the proposals on concretization of the authorities of the agencies conducting financial monitoring	0	0	0	0			1
- Identification of the justified normative for budget expenditures in all spheres	0	0	0	0			1
- Preparation of proposals on legislation regulating budget system and on improving budget content	0	0	0	0			1
- Preparation of proposals on development and execution of the local budget, as well as on monitoring	0	0	0	0			1
- Increasing monitoring of the financial agencies over the payments under the state procurement contracts	0	0	0	0			1
- Development of the mechanism limiting future participation in state procurement of legal persons and	0	0	0	0			1
- Undertaking appropriate measures for the immediate consideration of the complaints to protect rights of plaintiffs participating in the state procurement contests	0	0	0	0			1
- Informing law enforcement agencies about the discovered fact of corruption in state procurement	0	0	0	0			1
- Preparation of proposals for the assessment of the efficiency of the condition of state procurement and of the	0	0	0	0			1
- Using Internet services for the wider attraction of the participants to the state procurement contests and	0	0	0	0			1
- Undertaking measures to organize electronic state procurement	0	0	0	0			1
- Preparation of the information brochures on state procurement	0	0	0	0			1
- To increase level of proficiency of the experts engaged in organization and conduct of the electronic state	0	0	0	0			1

- Increasing responsibility of the tender commissions in the organization and conduct of tender procedures	0	0	0	0			1
- Preparation of proposals on simplification of rules and periods for the registration of the estate property rights,	0	0	0	0			1
- Ensuring the possibility to acquire information and documents from the state registry through Internet network	0	0	0	0			1
- Provision of the cooperation and information sharing among the agencies combating money laundering	0	0	0	0			1
- Improving mechanisms for registration and recording of the financial operations	0	0	0	0			1
- Undertaking measures to increase volume of non-cash payments among the actors of civil circulation	0	0	0	0			1
- Instructing relevant employees of the government agencies on measures against money laundering	0	0	0	0			1
- Informing financial institutions and relevant government agencies on international standards and organization of trainings for them	0	0	0	0			1
- Undertaking measures for the implementation of Financial Activity Task Force (FATF)	0	0	0	0			1
- Preparation of manuals and recommendations regulating activity of the internal audit service in accordance with international standards	220	220	2	96800			
- Complying the monitoring system over the auditors' activity with the international standards	100	220	1	22000			
- Preparation of the normative legal acts on increasing the auditors' responsibility	0	0	0	0			1
- Improving normative legal database regulating activity of the internal audit service	0	0	0	0			1
- Ensuring transparency in accountancy and financial reports of commercial subjects	0	0	0	0		1	
- Preparation of recommendations for simplification of terms and conditions of license issuing process	220	220	3	145200			
- Preparation of recommendations for transition of consent functions (registration, granting licenses, approvals, certificates, etc) to electronic system	220	220	1	48400			
- Computerization of selection process of tax audit	0	0	0	0			1
- Application of automation system for formalization of tax control and results	0	0	0	0			1
- Preparation of standard indicators system and software program for implementation of cameral and mobile tax inspections	0	0	0	0			1
- Improving complaint mechanism against decisions of tax bodies	0	0	0	0			1
- Organization of control over implementation decisions made by tax bodies	0	0	0	0			1
- Taking actions to prevent cases of evasion by entities which are subject to compulsory audit according to legislation	0	0	0	0			1
- Creating access to information on budget accounts through internet for taxpayers	0	0	0	0			1

- Creating access to taxpayer's information via Internet which is not considered a commercial secret	0	0	0	0			1
- Presenting electronic submission of tax declarations through Internet	0	0	0	0			1
- Taking actions to adapt the work of tax bodies to the International Monetary Fund's code on the best practices on transparency in taxes	0	0	0	0			1
- Creating information service on customs tariffs and fees in customs offices	0	0	0	0			1
- Posting information on customs tariffs and fees on a webpage	0	0	0	0			1
- Transition to non-cash payment system for customs transactions	0	0	0	0			1
- Improving complaint mechanism against decisions of customs bodies	0	0	0	0			1
- Organization of effective control over implementation of decisions made by customs bodies	0	0	0	0			1
- Accelerating commodity turnover on the customs border and creation of favorable conditions for entrepreneurial entities	0	0	0	0			1
- Preparation of recommendation for improvement of legislation on compulsory insurance	0	0	0	0			1
- Determination of institutional mechanisms for implementation of compulsory insurance	0	0	0	0			1
- Application of compulsory insurance	0	0	0	0			1
- Preparation of recommendations on doctors' status	0	0	0	0			1
- Implementation of doctors' recruitment based on transparency and competition	0	0	0	0			1
- Adoption of rules of behavioral ethics for doctors	0	0	0	0			1
- Raise of doctor's salaries and strengthening of social security	0	0	0	0			1
- Improving mechanism of conducting examinations, ensuring transparency and strengthening public monitoring	0	0	0	0			1
- Increasing efficiency of complaints resolution mechanism in educational institutions	0	0	0	0			1
- Preparation of recommendations on teachers' status	0	0	0	0			1
- Implementation of teachers' recruitment based on transparency and competition	0	0	0	0			1
- Adoption of rules of code of ethics for for teachers	0	0	0	0			1
- Raise of teachers' salaries and strengthening social security	0	0	0	0			1
- Conducting workshops, conferences and seminars, public hearings	60	50	1	3000			
- Preparation of educational publications, films, drawings and other aids	60	50	1	3000			
- Conducting interviews and discussions with government officials by mass media	0	0	0	0		1	
- Inclusion of training courses on anti-corruption struggle into curricula of higher and special education	60	50	1	3000			
- Involvement of NGOs, private businesses and other stakeholders in the implementation of the National Strategy	60	30	1	1800			

- Implementation of courses and trainings to increase professionalism, ethics and responsibilities of journalists	60	30	1	1800			
- Supporting initiatives of civil society institutions related to the implementation of the National Strategy	60	30	1	1800			
- Cooperation with international and regional organizations and participation in various international	0	0	0	0		1	
- Continuing cooperation with international organizations and corresponding bodies of foreign countries	0	0	0	0		1	
- Involving technical assistance and consulting of international partners in support for corresponding actions considered in the Action Plan	0	0	0	0		1	
- Taking appropriate actions with a purpose of implementing recommendations in the field of combating	0	0	0	0		1	
- Taking appropriate actions to implement recommendations in the field of combating corruption prepared by Transparency International	0	0	0	0		1	
- Preparation of annual plan by central executive bodies and its submission to the Commission on Combating Corruption	60	30	1	1800			
- Submitting information on the implementation status of the National Strategy by the central and local executive	60	5	60	18000			
- Submitting information on the implementation status of the National Strategy by other agencies responsible for	60	5	5	1500			
- Assessment of implementation status of the National Strategy actions conducted by Commission on Combating	60	10	1	600			
- Conduct of monitoring process with a purpose of inspection of implementation status of the National	60	5	5	1500			
- Preparation of annual report on combating corruption Commission on Combating Corruption	60	30	1	1800			
- Providing information on actions implemented in the field of combating corruption within the annual reports of	60	1	5	300			
Totals				**$ 1,220,720.00**		**30**	**84**