

# AZERBAIJAN

**Universal Periodic Review – Third cycle**  
**30<sup>th</sup> session of the UPR Working Group (April-May 2018)**

## **Submission on “Corruption and Human Rights in Azerbaijan”**

**Presented by:**

- **Election Monitoring and Democracy Studies Center (EMDS)**
- **Economic Research Center (ERC)**
- **Public Association for Assistance to Free Economy (PAAFE)**
- **Centre for Civil and Political Rights (CCPR-Centre)**

**October 2017**

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session of the UPR Working Group

## Presentation of the structures

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### 1. Election Monitoring and Democracy Studies Center (EMDS)

The Election Monitoring and Democracy Studies Center (EMDS) is a non-governmental organization working to hold free and fair elections, as well as development of civil society and democracy in Azerbaijan. EMDS was established by founders and members of Election Monitoring Center (EMC), the registration of which was annulled in 2008.

Within international election observation missions of the European Network of Election Monitoring Organizations (ENEMO), European Platform for Democratic Elections (EPDE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), members of EMDS have observed presidential, parliamentary elections and referenda held in Albania, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Russia, Spain, Turkey and Ukraine.

Besides, EMDS (previously as EMC) has implemented programs on civil education and political rights (such electoral rights, right of appeal, freedom of peaceful assembly and freedom of association), citizen participation in public policy, increasing accountability of local and central administrative bodies, as well as protection of political rights.

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### 2. Economic Research Center (ERC)

Economic Research Centre (ERC) is a policy research oriented think tank established in 1999. The Center conducts regular research on macro-economic policy, including conceptual definitions, calculation, and modeling of alternative macro-economic indicators. Moreover, ERC contributes to analyses of public finance management policy (PFMP), particularly the process of good governance and budget transparency at national and local level. The Center also researches assessing financial efficiency and outcomes of social programs, specifically in the field of health and education, as well as household-level budget analyses. Furthermore, ERC designs and implements capacity building programs for local civil society organizations (CSOs).

ERC aims at improving various social and economic policies of the government through policy research and design of policy recommendations. ERC's vision is an effective and sustainable civic engagement in all levels of public administration and, thus, greater access for citizens to relevant information through enhanced interactions between the government and civil society.

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### 3. Public Association for Assistance to Free Economy (PAAFE)

The Public Association for Assistance to Free Economy (PAAFE) was founded in 2004 and is a non-governmental organization with a mission to ensure economic freedom and good governance. PAAFE has four main programs: free trade, transparency and accountability, property rights and economic diversification.

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### 4. Centre for Civil and Political Rights (CCPR-Centre)

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The Centre for Civil and Political Rights (CCPR-Centre) works to promote the participation of NGOs in the work of the Human Rights Committee. By raising awareness, strengthening the capacity of the NGOs and providing technical and legal support at all stages of the reporting process and the individual complaint procedure. One of the CCPR-Centre's priorities is promoting the use of the Human Rights Committee's follow-up procedure.

The CCPR-Centre also aims at ensuring that the work of the Human Rights Committee is fully taken into account in the framework of the Universal Periodic Review (UPR) established by the Human Rights Council. The CCPR-Centre targets national and regional NGOs, as well as thematic NGOs whose mandates relate to the ICCPR.

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## Introduction

It is now widely admitted **corruption negatively impacts the enjoyment of the fundamental human rights** (civil and political rights as well as economic social and cultural rights). It not only has a negative impact on the States that are not in position to implement the treaty based human rights obligations but it also directly affects the population of such countries. This concern was raised several times by the various UN Treaty Bodies in charge of the monitoring the main human rights treaties.

Moreover in the context of the **Sustainable Development Goal 16** “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, the 2030 Agenda for development refers to concrete actions to fight against corruption, namely “significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime to corruption”.

**Corruption in Azerbaijan is endemic and systematic:** it is present in all levels and aspects of the society. According to the Transparency International's Corruption Perceptions Index 2016, Azerbaijan ranks at 123 out of 176 countries included in the index.<sup>1</sup> Worldwide Governance Indicators of World Bank suggests that Azerbaijan ranks at 18 out of 100 in the control of corruption.<sup>2</sup> This report focuses on corruption in public administration, public service delivery and the independence of the judiciary.

Corruption in **public administration** under the form of bribes is widespread in Azerbaijan. Transparency International's 2016 Global Corruption Barometer (GCB) reveals that 38% of Azerbaijanis paid a bribe in the 12 months prior to the survey in order to obtain a public service. Moreover, companies interviewed for the World Bank's 2013 Enterprise Survey corroborate the high bribery rates in the country. While only 16% of companies report having paid a bribe, over 40% stated that they are expected to bribe to secure government contracts or obtain construction permits.<sup>3</sup> According to the Bertelsmann Transformation Index's Azerbaijan Country Report, political institutions are closely linked to oligarchic

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<sup>1</sup> For more information, see <https://www.transparency.org/country/AZE> (accessed 3 October 2017).

<sup>2</sup> For more information, see <http://info.worldbank.org/governance/wgi/#reports> (accessed 3 October 2017).

<sup>3</sup> For more information, see [https://www.transparency.org/files/content/corruptionqas/Country\\_Profile\\_Azerbaijan\\_2017.pdf](https://www.transparency.org/files/content/corruptionqas/Country_Profile_Azerbaijan_2017.pdf) (accessed 3 October 2017).

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structures and the ruling family. Members of Parliament are often protected people and relatives of oligarchs, and the civil service suffers from endemic clientelism and nepotism.<sup>4</sup>

**Corruption in public service delivery** has created problems regarding the availability of basic services in education, health and social protection. The monthly minimum wage in Azerbaijan was 116 Manat (approximately \$ 68) in 2016. The average monthly salary was 499.8 Manat (\$ 294), which demonstrates a big gap.

In 2017, the officially approved minimum subsistence level was 164.5 Manat for the able-bodied population (labour force), 130.2 Manat for pensioners and 136.6 Manat for children. However, according alternative calculations by experts of the ERC, the minimum cost of living was 253.4 Manat for the able-bodied population, 199.9 Manat for pensioners and 259.9 Manat for children, which is much higher than the minimum wage of 116 Manat. This was calculated on the basis of the cost of living, food, non-food and services included in the minimum consumer basket, approved by the Cabinet of Ministers.

This current wage system is one of the causes for corruption in abovementioned public sectors. Dropped oil prices on the world market as well as the reduction of the state budget and the increased deficit of the state budget are factors that have made it difficult to change the unfair salary system. The depreciation of the national currency and the rise in prices since 2015 have worsened the issue. As a result, the correlation between the unfair salary system and corruption is increasing in Azerbaijan.

Azerbaijan has a bad track record regarding the **independence of the judiciary**. According to the Transparency International report of 2013<sup>5</sup>, Azerbaijani judges are the most corrupt of Eastern Europe. This was again highlighted by a report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe<sup>6</sup> (PACE) issued in 2016, pointing at the high levels of corruption within Azerbaijani courts. This in combination with the lack of budgetary autonomy of the judiciary is a threat to the independence of the judges.

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<sup>4</sup> For more information, see [https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI\\_2016\\_Azerbaijan.pdf](https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Azerbaijan.pdf) (accessed 3 October 2017).

<sup>5</sup> Report available on <https://www.transparency.org/cpi2013/results#myAnchor1> (accessed 3 October 2017).

<sup>6</sup> Report available on [http://website-pace.net/en\\_GB/web/as-jur/main](http://website-pace.net/en_GB/web/as-jur/main) (accessed 2 October 2017).

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## Methodology

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In order to collect information to include in this report from the joining NGOs, the CCPR-Centre organized a workshop with Civil Society Organizations (CSO) on how to better address the issue of corruption in the context of the UN Treaty Bodies and the UPR of Azerbaijan.

Activities in relation to the workshop included a country analysis of previous UN Treaty Bodies and UPR recommendations, discussions on implementation, participation in advocacy meetings and working groups on the key issues of corruption in Azerbaijan. This workshop allowed the participants to prepare countries' briefing notes on the issue of corruption, leading to this report that is to be submitted to the Working Group of the Human Rights Council prior to the UPR of Azerbaijan.

The objective of this report is to ensure that the recommendations of the UN Treaty Bodies and the previous UPR recommendations to Azerbaijan are strengthened during the third UPR cycle and implemented afterwards.

## Evaluation of the situation since the last UPR

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During the previous **UPR** review of Azerbaijan, four countries made recommendations on corruption<sup>7</sup>. Turkey recommended to enhance the transparency and efficiency of the State Agency for Public Services and Social Innovations (ASAN) and to continue its efforts to fight corruption. Serbia recommended to continue implementing measures to combat corruption. Austria recommended to cooperate with civil society to monitor the implementation of the anti-corruption legislation. Finally, Angola recommended to strengthen international cooperation in the fight against corruption.

However, since the last UPR of Azerbaijan took place, the cooperation between international organizations and the Azerbaijani government regarding corruption has weakened. Moreover, Azerbaijan withdrew from one of the global transparency initiatives, the Extractive Industry Transparency Initiative (EITI). Also, the international organization on Open Government Partnership (OGP) considers Azerbaijan as an inactive member.

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<sup>7</sup> Report of the Working Group on the Universal Periodic Review, Azerbaijan, UN Doc. A/HRC/24/13, 5 July 2013, available on [https://www.upr-info.org/sites/default/files/document/azerbaijan/session\\_16\\_-\\_april\\_2013/ahrc2413e.pdf](https://www.upr-info.org/sites/default/files/document/azerbaijan/session_16_-_april_2013/ahrc2413e.pdf) (accessed 4 October 2017).

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Regarding ASAN, more measures to enhance its transparency and efficiency are needed, including to guarantee its access to people from remote areas (see next chapters).

Additionally, three UN Treaty Bodies made recommendations to Azerbaijan concerning public service delivery. In 2013, the UN Committee on Migrant Workers (**CMW**) was concerned about migrant workers and their families becoming victims of corruption due to officials extorting money for services that are normally free of charge<sup>8</sup>. The Committee recommended to raise awareness among migrant workers and their families as to which services are free. Azerbaijan has established the Azerbaijani Service and Assessment Network (ASAN) to improve the free access to services. However, nothing has been done to raise awareness on its use and benefits. Moreover, there is another problem regarding migrants and corruption: officials are sometimes bribed to accelerate the process of foreigner's registration.

Also in 2013, the UN Committee on Economic, Social and Cultural Rights (**CESCR**) was concerned about access to health services in rural and urban areas. It is also concerned about the lack of medical coverage for all, corruption in the health care system through payments of non-official fees<sup>9</sup>. These problems continue until today.

In 2012, Azerbaijan was reviewed by the UN Committee on the Rights of the Child (**CRC**). The Committee was concerned about several issues related to corruption. Firstly, the severity and pervasiveness of corruption in municipal authorities, health care and education

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<sup>8</sup> UN Committee on Migrant Workers, *Concluding Observations on Azerbaijan*, UN Doc. CMW/C/AZE/CO/2, 27 May 2013, §18 et 19 : « The Committee is concerned about information received that migrant workers and members of their families allegedly often become victims of corruption and that certain officials are reportedly involved in extorting money for some services that are normally free of charge. The Committee recommends that the State party take immediate measures to address any instances of corruption and inquire into allegations of corruption by some officials who are allegedly involved in extorting money or receiving bribes. The Committee also recommends that the State party conduct information campaigns with a view to encouraging migrant workers and members of their families who claim to be victims of corruption to report the corruption, and raise awareness among migrant workers and their families as to which services are free of charge. »

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding Observations on Azerbaijan*, UN Doc. E/C.12/AZE/CO/3, 5 June 2013 §16 : « The Committee remains concerned about the inequalities in the enjoyment of the right to health in rural and urban areas and the absence of guaranteed medical coverage for all. The Committee is also concerned about the reports received on corruption in the health sector system and the practice of payments of non-official fees. The Committee notes with concern the limited access to sexual and reproductive health services , in particular in rural and remote areas and the lack of monitoring in the provision of mental health services (art. 12). The Committee calls on the State party to intensify its efforts to guarantee health services to all. The Committee recommends that the State party take measures to guarantee access to sexual and reproductive health services, in particular in rural and remote areas, including to refugees, asylum seekers, IDPs and stateless persons. The Committee recommends that the State party take necessary measures to fight against corruption in the health sector so that non-official fees are not collected from patients. The Committee also recommends that the State party monitor mental health centres and services to ensure compliance with the established international standards. »

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professionals<sup>10</sup>. The Committee recommended, among others, to install an anti-corruption hotline, strengthen the laws and mechanisms to monitor corruption. None of the recommendations that Azerbaijan received are implemented today. Secondly, the CRC was also concerned about corruption in birth registration<sup>11</sup>. This has improved in urban areas, but is still problematic in remote areas. A third concern of the CRC was the access to health care<sup>12</sup>. The recommendation to increase the necessary human, technical and financial resources to expeditiously improve the availability and quality of primary health care is still relevant today. Fourthly, the CRC was concerned about corruption in education, leading to

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<sup>10</sup> UN Committee on the Rights of the Child, *Concluding Observations on Azerbaijan*, UN Doc. CRC/C/AZE/CO/3-4, 12 March 2012, §19-20 : « 19. The Committee notes as positive the State party's efforts to combat corruption, including the adoption of a law to combat corruption in 2004 and the establishment of a national strategy. However, the Committee remains gravely concerned at the severity and pervasiveness of corruption among, inter alia, municipal authorities, as well as health-care and education professionals in the State party, which constitute a serious obstacle to the effective use of the State party's resources and the implementation of the Convention. Furthermore, the Committee is concerned that current sanctions against perpetrators of corruption are not commensurate with the seriousness of the offences. The Committee urges the State party to expeditiously further strengthen its mechanisms to transparently monitor corruption at all levels and sectors, and improve the awareness of and accessibility to safe channels for reporting it. The Committee recommends that in the context of corruption in the areas of birth registration, health care and education, the State party consider measures for ensuring that information on its anti-corruption hotline is clearly visible at places where persons may seek such services. The Committee also recommends that the State party consider further strengthening its enforcement laws and mechanisms with a view to ensuring the prompt punishment of perpetrators of corruption with commensurate sanctions. »

<sup>11</sup> UN Committee on the Rights of the Child, *Concluding Observations on Azerbaijan*, UN Doc. CRC/C/AZE/CO/3-4, 12 March 2012, §38-39 : « The Committee is concerned about the significant proportion of births that remain unregistered, both among newborn infants as well as persons currently under the age of 18. The Committee is particularly concerned about the situation of children born to parents in situations of socio-economic marginalization and/or living in remote regions, as well as to mothers who have been subject to underage marriage and are consequently often not officially registered as married. Furthermore, it is concerned at the prevalence of corruption in the birth registration process and the resulting inadequacy and inconsistency in the provision of registration services in the State party, particularly in its rural and outlying territories. The Committee recommends that the State party undertake all necessary measures to ensure the availability of universal birth registration for all children regardless of the circumstance of birth, and/or the marital and/or migration status of the child's parent(s). It also recommends that the State party consider taking specific measures to facilitate birth registration for children of underage mothers and/or mothers in rural areas. Furthermore, the Committee also recommends that the State party take specific measures, including legislative measures, to combat corruption among authorities responsible for the provision of birth certificates. »

<sup>12</sup> UN Committee on the Rights of the Child, *Concluding Observations on Azerbaijan*, UN Doc. CRC/C/AZE/CO/3-4, 12 March 2012, §58-59 : « The Committee is gravely concerned at the high child mortality rate, particularly among children in rural areas and economically marginalized situations in the State party. The Committee notes with concern that pervasive corruption among health-care professionals, with the widespread expectation of so-called informal payments, is obstructing access to health care. Furthermore, the Committee is concerned that notwithstanding the economic progress in the State party, the provision of primary health care remains inadequate. The Committee urges the State party to allocate all necessary human, technical and financial resources to expeditiously improve the availability and quality of primary health care. In doing so, the State party is further urged to ensure that such health-care services are equitably accessible, particularly to children living in rural areas and socio-economically challenged situations. The Committee also recommends that the State party undertake a comprehensive study on the specific causes of child mortality, taking its findings into consideration when implementing measures to reduce and prevent such mortality. »

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large proportions of children not attending school and bad quality of education<sup>13</sup>. The recommendations to increase the resources to education, strengthen the training of teachers, increase their salaries and examine the root causes of children not attending school, remain very relevant today and should be implemented.

During the review of Azerbaijan in 2016, the **UN Human Rights Committee** expressed its concern on the continued lack of judicial independence from the executive branch, including prosecuting authorities<sup>14</sup>. It was in particular concerned about the Judicial Legal

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<sup>13</sup> UN Committee on the Rights of the Child, *Concluding Observations on Azerbaijan*, UN Doc. CRC/C/AZE/CO/3-4, 12 March 2012, §64-65: « While appreciating the measures taken by the State party to make preschool education mandatory from the age of 5, the Committee is concerned at: (a) The inadequacy of financial resources allocated to education, particularly with regard to early childhood care and preschool education, which constitute a low percentage of the State party's funding for education and which result in a large proportion of children below the age of 5 not receiving early childhood care and/or preschool education; (b) The inadequacy of teacher training and the negative impact on the quality of education in the State party's schools; (c) The salary levels for teachers in the State party being markedly low in relation to its available resources, discouraging the best qualified candidates from considering becoming teachers and obstructing the eradication of corruption among teachers; (d) The relatively high number of children, estimated to be about 8 to 10 per cent, who do not attend schools. The Committee recommends that the State party: (a) Increase its human, technical and financial resources allocated to providing early childhood care and preschool education, with a view to improving its coverage and quality, thus effectively implementing the State party's policy on universal preschool education; (b) Revise and strengthen the teacher-training and qualification process, including by considering seeking assistance from the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Children's Fund (UNICEF) and international experts; (c) Consider increasing the salaries of teachers with a view to, inter alia, improving the quality of education, attracting the best qualified persons to the profession and contributing to the eradication of corruption among teachers; and establish a reporting and sanctions mechanism that is readily and safely accessible to all child students to address cases of corruption in the education system; (d) Examine and address the root causes leading to children not attending school and ensure that all children complete basic education. »

<sup>14</sup> UN Human Rights Committee, *Concluding Observations on Azerbaijan*, UN Doc. CCPR/C/AZE/CO/4, 16 November 2016, §26-27: « The Committee, while acknowledging the steps taken to reform the judiciary, remains concerned about the continued lack of judicial independence from the executive branch, including prosecuting authorities. In particular, it is concerned that: (a) the Judicial- Legal Council, which has been granted extensive powers in matters related to the appointment, promotion and disciplining of judges, is susceptible to undue interference by the executive branch; and (b) allegations of corruption within the judiciary continue to be reported. The Committee is also concerned about the number of disciplinary proceedings that have been instituted against judges in recent years and regrets the lack of information on safeguards in place to ensure that judges cannot be sanctioned for minor infractions or for a controversial interpretation of the law (arts. 2 and 14). The Committee reiterates its previous recommendations (see CCPR/C/AZE/CO/3, para. 12). The State party should take all measures necessary to safeguard, in law and in practice, judicial independence. In particular, it should: (a) Ensure that the Judicial-Legal Council is fully independent from the executive branch and operates with full transparency and, to that end, ensure that decisions affecting the personal independence of judges are not influenced by political considerations; (b) Ensure that decisions related to the selection, disciplining, evaluation and permanent appointment of judges after probation are based on objective criteria explicitly provided for by law; (c) Step up efforts to effectively prosecute and punish perpetrators of corruption, and ensure that the subject of fighting corruption is part of the training curriculum for judges; (d) Ensure that an independent body is responsible for judicial discipline and that sufficient safeguards are in place to prevent disciplinary actions being taken against judges for minor infractions or for a controversial interpretation of the law. »

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Council, the body responsible for the appointment, promotion and disciplining of judges and the undue interference of the executive branch. Allegations of corruption within the judiciary continue to be reported. The Committee recommended for the Judicial Legal Council to operate with full transparency and to be fully independent from the executive branch. It also recommended to ensure that decisions related to the selection, disciplining, evaluation and permanent appointment of judges after probation are based on objective criteria explicitly provided for by law. Further, Azerbaijan should prosecute and punish perpetrators and ensure that fighting corruption is part of the training curriculum for judges. Lastly, an independent body should be responsible for judicial discipline and sufficient safeguards should be in place to prevent the sanctioning of judges for doing their job. These recommendations have not been implemented and should be addressed during the UPR process.

### **Legal and institutional framework on the national level**

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Regarding the issue of **public administration**, many changes were made in recent years that worsened the situation. For example, in September 2016, President Ilham Aliyev consolidated his authoritarian rule through a controversial constitutional referendum. The 29 constitutional amendments – rushed through in the absence of parliamentary debate or public consultation – further expanded the powers of the executive while weakening accountability mechanisms and fundamental rights even further.<sup>15</sup> As a result of the referendum, the first lady Mehriban Aliyeva was appointed the first vice-president of Azerbaijan in February 2017. Also, on April 27, 2016 the government of Azerbaijan adopted National Action Plan for 2016-2018 on Promotion of Open Government, a main policy document addressing anti-corruption measures. However, this Plan is less ambitious than the previous policy document (see next chapter).

Regarding the issue of **public service delivery**, in 2013, Azerbaijan established ASAN, the Azerbaijan Service and Assessment Network. Most public services are provided by ASAN, including issuing residence permits, driving licenses, ID cards, child birth registration, etc. In total, more than 230 services are provided by ASAN. The Service uses the ‘single space’ approach, meaning that citizens can benefit from various public and private services through one center in one building at the same time. There is less interaction with local officials, eliminating the possibility of corruption. Within a short time, ASAN has achieved to ensure that professional public services uphold the highest standards of efficiency, competence and integrity.

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<sup>15</sup> For more information, see <https://freedomhouse.org/report/nations-transit/2017/azerbaijan> (accessed 3 October 2017).

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However, ASAN only exists in the big cities. In remote and hard-to-reach areas that do not have ASAN, the previous system is still in place. This means that citizens in those areas still have to go to the police department and the registration of acts of civil status where informal payments are necessary to access services. This system requires more interaction with local officials, providing more opportunities for bribes and corruption.

Regarding **the judiciary**, Azerbaijan's Constitution guarantees judicial independence, according to which judges are bound only by Azerbaijan's constitution and legislation. However, in practice, there are strong links between the judiciary and the government. The selection of judges, for instance, is administered by the Judicial Legal Council, but the majority of its members is appointed by the government. Moreover, the Council is presided over by the Minister of Justice. These elements give the government significant control over the entire judiciary. Additionally, the judges of the Constitutional Court are not directly selected by a purely judicial, independent and impartial body, but by the President of the Republic. Furthermore, the Azerbaijani law and the legal culture of the judiciary and prosecution enable the executive branch to use the justice system to systematically persecute journalists, human rights activists and political leaders.

### **Negative impact of corruption on the enjoyment of Human Rights**

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#### **1) Corruption in public administration**

As mentioned before, the National Action Plan for 2016-2018 on Promotion of Open Government is less ambitious than the previous policy. 59 responsibilities on a total of 10 directions were added to the new National Action Plan, while the previous National Action Plan included 162 responsibilities on 37 directions. The number of both directions and responsibilities dropped by three times and the timeframes were reduced from 3 to 2 years. Additionally, the responsibilities are simply listed without explication and the purposes are very vague. Also, the document does not have clear anti-corruption goals and is not based on facts.

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In September 2015, the Minister of National Security, Eldar Mahmudov, was fired. Afterwards, seven high-level officials of the ministry were arrested by the police.<sup>16</sup> According to the witness' testimonies, dozens of high-level officials systematically paid great amounts of bribes to the officials of the ministries, including the former Minister of Communication and High Technology, Ali Abbasov; a former head of Aztelekom, a State-owned Telecommunication company, Mammad Mamadov, and a former head of Baku Metroliten, a State-owned Subway company, Taghi Ahmadov<sup>17</sup>. Hence, the corruption case in the state-owned International Bank of Azerbaijan has a link with the case of the Ministry of National Security.

However, courts and law enforcement bodies are not able to investigate most of the corruption cases. According to the Panama Papers and OCCRP, the family members of the President, the Vice-president Mehriban Aliyeva and the Minister of Taxes Fazil Mammadov, and many other government officials have a huge amount of assets offshore and are involved in money laundering schemes across the world.<sup>18</sup> A recent investigation of OCCRP suggests that the first deputy of the prime minister Yagub Eyyubov, and his son and the ambassador of Azerbaijan to Council of Europe Emin Eyyubov, a deputy chief of the Anti-Corruption General Directorate with the Prosecutor General, Ali Nagiyev, and a member of parliament Javanshir Feyziyev, are involved in the laundromat for an amount of 2.5 million EUR. Moreover, many European politicians including a former Italian MP Luca Volonte, a former German MP Eduard Lintner and a Bulgarian politician and a member of the Board Directors of EBRD Kalin Mitrev were paid from the laundromat to hold favorable speeches and support the country and its oppressive regime, having negative impact in the respect of human rights of the people in Azerbaijan.<sup>19</sup>

### 2) Corruption and the lack of transparency in education

There are several issues related to the widespread corruption in the education system. **Azerbaijan's public spending on education is very low.** According to calculations of the ERC,

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<sup>16</sup> For more information, see <http://www.reuters.com/article/us-azerbaijan-ministry-arrests/azerbaijan-arrests-seven-security-ministry-officials-before-election-idUSKCN0SE11V20151020> (accessed 3 October 2017).

<sup>17</sup> For more information, see <https://www.azadliq.org/a/tagi-ehmedov-akif-covdarov-metropoliten-korrupsiya/28612697.html> (accessed 4 October 2017) and <http://strateq.az/aqapali-movzu/114758/m%C9%99h%C9%99mm%C9%99d-m%C9%99mm%C9%99dov-h%C9%99r-ay-bas-muhasibim-apatat-r%C9%99hb%C9%99rin%C9%99-500-min-apatirdi.html> (accessed 3 October 2017).

<sup>18</sup> For more information, see <https://www.occrp.org/en/panamapapers/persons/ilhamaliyev> (accessed 3 October 2017).

<sup>19</sup> For more information, see <https://www.occrp.org/en/azerbaijanilaundromat/the-influence-machine> (accessed 3 October 2017).

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it was about 2.9% and 3.0% of the GDP in 2015 and 2016 respectively. Even though the percentage on education expenditure in 2017 is 1,3% higher than in 2016, the budget for education decreased in absolute figures. The main cause of this rise in relative figures is the reduction of the total expenditure<sup>20</sup>.

Insufficient public expenditures on education translate into **inadequate salaries for teachers**. The average monthly salary for employees in the education system was 307 Manat (\$ 108,6) in 2016. These low salaries for teachers and faculties make them disinterested in the quality of the education and lead to corruption. Teachers are inclined to accept bribes in order to pay for their costs. A common public tutoring phenomenon is for example that teachers ask additional payment for the materials they are supposed to teach them in class. As a result, the quality of public education deteriorates. Another consequence of the low salaries, is that most of the students of state universities, especially of the Medical University, pay bribes for good grades.

Low public expenditures on education also create problems regarding the **access to education services**. As public spending on education declines, families must supplement educational expenses themselves, a burden that is greatest for low income and poor families. According to a World Bank report<sup>21</sup>, the richest 20% of the population consistently spends nearly 40% of their private spending on education, while the poorest 20% spends only approximately 10% on education.

Lastly, there is a **lack of transparency and accountability** in the education system. An example of this is the sale of school uniforms for too high prices by school managers, a practice that happens regularly in Azerbaijan.

### 3) Access to basic health services

Access to basic health services is problematic in Azerbaijan for several reasons. Firstly, the country has failed to establish an **insurance system**. Secondly, the failure of the education system and drug monopolies make it **impossible for Azerbaijanis to receive even basic**

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<sup>20</sup> In 2017, education expenditure will constitute 11,2% of total expenditure, which is 1,3 percentage points higher in comparison with 2016. The main cause of the increase in the share is the reduction of total expenditure. Hence, the education expenditure in 2017 will amount to 1,14 billion US dollars or 1,86 billion Manat. The main expenditure growth is observed in the general education expenditure. 52.8% or total education expenditure or 0.6 billion US dollars (0,98 billion Manat) overall are allocated to general education, meaning the public schools. Higher education expenditure, meaning the budget for state universities, continues to decline. At present, higher education institutions shift to self-financing scheme; hence, only 0.2% of total education expenditure or 23 million US dollars (37.5 million Manat) will be allocated to higher education.

<sup>21</sup> Report available on <https://data.worldbank.org/indicator/SE.XPD.TOTL.GB.ZS> (accessed 3 October 2017).

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**medical services in the country.** Many Azerbaijani citizens travel to Iran since health care services there are far more affordable than in their own country. Moreover, the Iranian government and private clinics try to attract more Azerbaijanis by providing special promotion packages. According to the Iranian embassy in Baku, every year 800,000 citizens out of a population of ten million Azerbaijanis travel to Iran for healthcare. Thirdly, the Soviet style health care management that is in place today is corrupt. **Salaries of employees in the health sector are too low, encouraging them to take on bribes.** According to calculations of the ERC, the share of public health expenditure in the GDP in 2015 and 2016 was about 1.3% and 1.2 %, respectively. The expenditure for 2017 is projected to be 0.2% higher in comparison with 2016, reaching 4.7 percent of the total expenditure. However, the allocations have declined both in national currency terms (6.6% less) and US dollar terms (11.2%). Out of the budget resources to be spent on healthcare per year, 47,1% is assigned for hospitals, 15% for polyclinics, 37,1% for research, and development, etc. services. 70 per cent of the budget was spent on equipment, clinics and the construction of new hospitals, while only 30 per cent went towards paying the salaries of medical personnel. The average monthly salary for health services employees was 214,8 Manat (126,3 US dollars) in 2016. The average salary ranges between 130 - 300 Manat (76 to 177 US dollars), depending on qualifications. At health facilities, (medical) personnel pays bribes to get a job, and then takes bribes from patients to give them treatment. In the mean time, they keep paying bribes to keep their job. These issues cause mistrust in the health care system of the country.

### **4) Inclusion and exclusion in the social protection system, poor implementation of targeted social assistance (TSA) program**

**Salaries are also too low in the social protection and social assistance sector.** According to calculations of the ERC, social protection and social assistance expenditure was about 3.4% and 3.3% of the GDP in 2015 and 2016, respectively. The average monthly salary for social services employees was 214,8 Manat (126,3 US dollars) in 2016. Moreover, the social inspectorate lacks sufficient human and financial resources to effectively enforce the TSA state program. Overall, social protection and social assistance expenditure will constitute 12.8 % of the total expenditure of the state budget. **Low salaries and the lack of resources are factors that increase the risk of corruption** during the implementation phase of the TSA state program.

**Targeted social assistance** provided for low-income families, is not distributed based on objective criteria. It increases from year to year but the social welfare field lacks transparency. Families are required to do additional payments if they want to enjoy the TSA

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benefits. The amount varies for different regions of Azerbaijan. Families who are not entitled to the benefits can receive them anyway if they pay bribes. This common practice creates exclusion problems for the allocation of the TSA to families in poverty, and inclusion problems for families who are not entitled to the TSA.

In practice, three requirements create problems:

- If a family possesses a vehicle, they are not eligible for TSA. However, almost every family has a car in Azerbaijan nowadays and they bribe social inspectors to lie about the vehicle.
- Families are not eligible for TSA if their average monthly utility and communication costs per capita exceed 10% of the country's approved subsistence minimum. This is a very strict limitation of 15.5 Manat (9 US dollars). Again, inspectors are bribed to avoid this limitation.
- Calculation of earnings on land property also creates problems. Families who own land are obliged to register as taxpayers and make contributions to the pension fund, even if their land is not used for any economic activities. Again, families bribe the officials in order to enjoy the TSA anyway.

### **5) Independence of the judiciary**

The independence of the judiciary in Azerbaijan has been a longstanding concern of many institutions. In 2015, for example, the Parliamentary Assembly of the Council of Europe on the Functioning of Democratic Institutions in Azerbaijan condemned the lack of independence of the judiciary in Azerbaijan<sup>22</sup>: '(...) the executive branch is alleged to continue to exert undue influence. Dubiously motivated criminal prosecutions and disproportionate sentences remain a concern. Fairness of trials, equality of arms and respect for the presumption of innocence are other major concerns'.

Since 2005, the self-governance functions of the judiciary have been implemented by the Judicial Legal Council (JLC), a body responsible for ensuring the organization of the judicial system and the independence of the judges. The JLC appoints and promotes judges, evaluates their performance and administers disciplinary proceedings. It consists of 15 members and is heavily infiltrated by the executive branch. This raises concern if the JLC can fulfill its tasks in an objective, fair and unbiased manner. The Minister of Justice, for example, presides the JLC, and the appointment process of its members is kept secret.

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<sup>22</sup> Report available on <http://website-pace.net/documents/19887/3258251/20170907-Azerbaijaninstitutions-EN.pdf/1e6f0d15-1836-428b-a0c9-7f41ac8ece87> (accessed 3 October 2017).

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Generally, budgetary autonomy of the judiciary plays an important role in how justices respond to internal and external pressure. In Azerbaijan, salaries for judges are fixed and financed from the state budget. The President of the Supreme Court receives a monthly salary of 2,070 Manat (approx. \$1218) and the monthly salary of the Presidents of the Courts of Appeal is \$975. Court's presidents receive \$852, deputy presidents \$658 and all other judges \$590. For every five years in office or holding a research degree, justices receive an additional salary increment of 15 percent of their monthly salary, on condition that the surplus does not exceed 45 percent in total. In addition, the remuneration system provides “extra encouragements” for excellent performance or a “substantial contribution to improving justice as a result of their activities”, which are either valuable gifts or honorary titles (such as diplomas and badges).

According to Transparency International, the public conceives the Azerbaijani judiciary as corrupt and, in some cases, extremely corrupt<sup>23</sup>. In this context, in its report issued in 2016, Freedom House condemns the low salaries of Azerbaijan's judiciary “which feed into widespread corruption once judges are employed”<sup>24</sup>.

In view of politically sensitive cases, such as cases involving HRDs, judicial independence is ignored in Azerbaijan and judges are enormously responsive to political authorities. Generally, one can say that a criminal trial against a HRD can be regarded as a foregone conclusion that appears to be a “real” trial but has none of its substance. Judges align themselves with the motions of prosecutors and issue judgments which strongly resemble the prosecution's written submissions and approve trial transcripts that bear no resemblance to the actual course of proceedings.

In the case of Ilgar Mammadov, leader of the REAL opposition movement, the European Court of Human Rights (ECHR) stated that “[i]n all their decisions in the present case, the domestic courts limited themselves to copying the prosecution's written submissions and using short, vague and stereotyped formula for rejecting the applicant's complaints as unsubstantiated. In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution's requests and they cannot be considered to have conducted a genuine review of the “lawfulness” of the applicant's detention”.

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<sup>23</sup> For more information, see <https://www.transparency.org/country/AZE> (accessed 3 October 2017).

<sup>24</sup> For more information, see <https://freedomhouse.org/country/azerbaijan> (accessed 3 October 2017).

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Domestic courts repeatedly reject motions for requests of change of preventive measure of pre-trial detention with home arrest in most cases, arguing that the accused may abscond from the investigation or obstruct it, without any reasonable justification. The analysis of statistics shows that the conviction rate in criminal cases is very high in Azerbaijan, especially that the majority of indictments brought by the prosecution succeeded, as the accused was found guilty. In 2013 and 2014, respectively 87 percent and 85 percent of indictments led to a conviction. The high conviction rate in criminal cases undermines the integrity of the judiciary, indicating that judges are subservient to the prosecution. Courts do not assess the evidence brought by the prosecution and do not take into account the rights to a fair trial of the accused sufficiently.

### Recommendations

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#### 1) Corruption in public administration

- Develop comprehensive evidence-based anti-corruption policies, with clear objectives and goals. These policies should have clear, detailed and measurable action plans with concrete time-tables and budgets. Also, the government should periodically monitor those action plans and evaluate through midterm reports. Moreover, independent civil society organizations should be involved in all cycles of this process.
- Develop merit-based recruitments for the appointments to political positions and high-level civil servants.
- Improve the mandate, capacity and independence of the anti-corruption authorities, including the Commission on Combating Corruption and the Anti-Corruption General Directorate with the Prosecutor General.
- Investigate all corruption and money laundry cases raised by international organizations and media, including the Panama Papers and the bribe scandals with European politicians.
- Implement the recommendation of the Fourth Round of Monitoring of the Istanbul Anti-Corruption Action Plan of OECD.<sup>25</sup>

#### 2) Corruption and the lack of transparency in education

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<sup>25</sup> Report available on <http://www.oecd.org/corruption/anti-bribery/Azerbaijan-Round-4-Monitoring-Report-ENG.pdf> (accessed on 3 October 2017).

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- Organize vocational training for teachers regularly.
- Increase the salary for teachers in public schools through an increase of the budget for education.
- Regulate a fixed price for school uniforms
- Increase parent participation in school management and the decision-making process
- Enhance the transparency and accountability of the education budget and the school management system.

### **3) Access to basic health services**

- The government should commence the implementation of a countrywide mandatory insurance for children and the elderly.
- Human resources policies and recruitment should be developed on the basis of competition and objective criteria.
- Vocational training for medical personnel should be organized regularly.
- Increase the salary for medical personnel in state hospitals and clinics through a rise in the health budget.
- Enhance the transparency and accountability of the health budget and the health management system.

### **4) Inclusion and exclusion in the social protection system, poor implementation of targeted social assistance (TSA) program**

- Implement ‘E-service’ of the application, review, reception and any decisions on TSA to limit the number of interactions with local authorities.
- Organize vocational training for social inspectors regularly.
- Increase the salary for social service employees through a rise in the social protection budget.
- Enhance the transparency and accountability of the social protection budget and its management system.
- Organize better trainings for journalists to enable them to do trustworthy investigations on the TSA state program.
- Increase the public participation in the design, implementation and monitoring of the TSA state program.
- Simplify the rules on TSA and remove the requirements related to car and land property, utility and communication costs.

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### 5) Independence of the judiciary

- Ensure that the Judicial Legal Council (JLC) is fully independent from the executive branch to guarantee a transparent, objective and competence-based system for appointment of judges.
- Ensure that decisions affecting the independence of judges are not influenced by political considerations. The role of the JLC in the appointment of all categories of judges and court presidents should be increased.
- Reduce the five-year probation period for judges and ensure that decisions related to the selection, disciplining, evaluation and permanent appointment of judges after probation are based on clear, transparent and objective criteria explicitly provided for by law.
- Establish a format for asset disclosure by judges as a matter of priority and lift the confidentiality of asset disclosure by judges and their relatives.
- Step up efforts to effectively prosecute and punish perpetrators of corruption, and ensure that the subject of fighting corruption is part of the training curriculum for judges.
- All senior vacancies in the Prosecutor's Office should be publicly advertised. Access to these vacancies should be guaranteed based on clear, objective and transparent criteria. Also, suitable candidates for senior positions should be evaluated by a body of which the majority is unrelated to the executive.
- Guarantee that judges are free from undue internal or external pressure or influence and decisions are taken only on the basis of the Constitution and legislation and not on the basis of instructions given by superior judges.
- Establish an independent body responsible for judicial discipline and guarantee sufficient safeguards against interference by external and internal factors, and to prevent disciplinary actions being taken against judges for minor infractions or for a controversial interpretation of the law.
- Adopt rules to regulate the withdrawal of judges based on clear, objective and transparent criteria, in order to guarantee the independence of the judiciary.