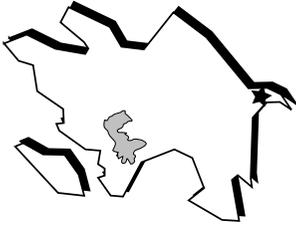


# AZERBAIJAN



**Capital:**

*Baku*

**Population:**

*7,830,764*

**GDP:**

*\$28.61 billion*

**GNI per capita:**

*\$710*

**Scores:**

**Civil Liberties:** *3.74*

**Rule of Law:** *2.92*

**Anticorruption and Transparency:** *1.57*

**Accountability and Public Voice:** *2.63*

*(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)*

*by Christopher Walker*

## EXECUTIVE SUMMARY

At the time of the writing of this report, questions concerning the health of President Heydar Aliyev, and his capacity to participate in important presidential elections in October 2003, dominated the political landscape in Azerbaijan (see Editor's Note). Aliyev, the country's leader for most of the last three decades, sits atop what is officially described as a presidential republic. Over the course of his rule, however, an effective monopolization of power within the executive branch of government has taken form, relegating other crucial actors in the Azerbaijani system, including the judiciary and parliament, to secondary and often subservient roles. Whether Azerbaijan's leadership can facilitate a reversal of this monopolization of power and information will be crucial to the country's ability to fulfill the promise of its abundant natural energy and its aspirations to regional leadership over the longer term.

Access to information is among the Azerbaijan's most pressing challenges. Independent and opposition media operate at severe disadvantages,

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both during and outside election cycles. More generally, civic groups' and average citizens' access to information is inadequate, often resulting in vast information gaps between the elite and the bulk of society.

The authorities' tight grip on power and information and the lack of meaningful competition within governance structures, in turn, create an environment enabling rampant and pervasive corruption, from which virtually no sector of Azerbaijani society is immune. Elections conducted since the early 1990s have been marred by serious allegations of widespread fraud, and opposition parties have at times chosen to boycott these exercises. A generally hostile relationship between the regime and the political opposition tends to maximize polemics and minimize mature policy debate, which is thin across the political spectrum.

Despite making good progress in improving portions of the country's legal framework, Azerbaijani authorities still contend with considerable gaps in implementation and enforcement. Successful reform steps tend to result from pressure applied on the government by external international bodies rather than from within society, reflecting the general lack of internal political will to advance reforms. For example, the Council of Europe, to which Azerbaijan was admitted in 2001, has exhorted the regime to comply fully with the requirements of membership in that organization. The new unified election code is acknowledged by observers as being in basic conformance with international standards. Similarly, the country's Media Law is from a *de jure* standpoint in accordance with international democratic standards. Institutional, legal, and administrative reform is of utmost priority. However, serious deficiencies in the application and administration of law raise questions about the depth of the authorities' political commitment on these and other issues.

No single issue dominates political life in Azerbaijan as does the ongoing territorial dispute with Armenia over Nagorno-Karabakh. Some 20 percent of Azerbaijan's territory remains occupied, and Azerbaijani society still wrestles with the political and security challenges—and the human suffering—that accompany this unresolved issue.

Much of Azerbaijan's promise derives from its considerable natural energy wealth, which could propel the country to a new level of prosperity and democratic development. However, Azerbaijan's oil and gas reserves could become a development "curse" if revenues are coupled with weak or inadequate governance structures, a lack of transparency in government functions, and an underdeveloped civil society. In such a case, the country's energy wealth could well inhibit, rather than increase, its growth and development.<sup>1</sup>

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*Editor's Note*

The contentious October 2003 balloting in Azerbaijan resulted in the election of Ilham Aliyev and in considerable post-election violence. As with polls conducted in Azerbaijan over the course of the 1990s, this time around the elections fell well short of meeting international standards. The balloting was accompanied by reports of serious irregularities, including inaccurate voter lists leading to the denial of eligible voters' right to vote, electoral fraud, and various forms of voter intimidation. There were also serious irregularities in vote-counting and tabulation. International monitors termed the election less than free and fair, citing those serious flaws. Observers from the Institute for Democracy in Eastern Europe (IDEE), which represented nearly a third of the observer mission operating under the OSCE/ODHIR, dissented from the findings of the preliminary joint report of the OSCE/ODIHR and the parliamentary assemblies of the Council of Europe and OSCE on the election. The final OSCE/ODIHR report, issued November 13, was highly critical of the election process and went so far as to state that "Overall, the presidential election was a missed opportunity for a credible democratic process." The report went on to state that the Central Election Commission's lack of transparency was so poor that "the final, crucial phase of tabulation was carried out in secret, leaving the OSCE/ODIHR unable independently to judge its accuracy or honesty." While the extent of the electoral fraud is impossible to judge, a stronger showing by the opposition could have altered the nature of power relations in this authoritarian state, opening up the crucial prospect for a future rotation of power. Thus, while international observers acknowledged the new unified election code as being in basic conformance with international standards, the code could not prevent collusion by state electoral authorities in the falsification of election results and serious electoral fraud. Despite its contentious and flawed nature, this election does offer an opportunity for the new leadership to steer a more constructive governance course. Many Azerbaijanis hold out hope that the 42-year-old Ilham Aliyev will be able to make the personnel and policy changes essential to this pivotal country's successful modernization and democratization. However, in a system dominated by a relatively tight circle of influential interests, no one should underestimate the challenge of achieving meaningful reform.

*CIVIL LIBERTIES – 3.74*

Civil liberties in Azerbaijan must be viewed through the lens of unchecked concentration of executive power. With a presidential election looming and the stakes much higher than before, reports of extra-legal actions, such as detentions, taken by the regime against political oppo-

nents in the weeks leading up to election day increased significantly. Similarly, reports of suppression of gatherings and rallies held by opposition parties rose. During non-election periods, arbitrary arrest and extra-legal detentions are less frequent and systematic in nature. Nonetheless, the 48-hour deadline for the police to bring charges against an accused person is observed unevenly from region to region.

As part of the new criminal code adopted in 2000, the government prohibits acts of torture and makes such violations punishable by up to 10 years in prison. The government of Azerbaijan adopted the definition of torture that is contained in the UN Convention on Torture. However, according to the Azerbaijani Center Against Torture, which uses information collected from alleged victims and their family members, there were some 80 incidents of torture over the course of 2002. Azerbaijani authorities dispute such figures.

Local nongovernmental organizations (NGOs) working in the field of human rights estimate the total number of political prisoners in the country to be between 200 and 700. The Azerbaijani delegation to the Parliamentary Assembly of the Council of Europe, led by Prime Minister Ilham Aliyev as of September 2003, has denied there are any political prisoners in Azerbaijan. Estimates of the number of such prisoners vary and are inconsistent as to the definition of a political prisoner. A number of these individuals were convicted of alleged participation in armed efforts to overthrow the government. In a monitoring report issued in September 2003, the Council of Europe's Committee of Ministers referenced the issue of political prisoners.<sup>2</sup> Specifically, the retrials of the three cases of Isgender Hamidov, a former minister of internal affairs; Rahim Haziiev, a former minister of defense; and Alikram Humbatov, who was convicted in 1995 for attempting to establish a separatist Talysh Republic in southeastern Azerbaijan, have been cited by NGOs and other observers as not conforming to Article 6 of the European Convention on Human Rights.

Azerbaijan's constitution provides for equality between men and women. (Article 25), and in recent years a number of decrees relating to women's participation and rights in society, at least on paper, represent positive contributions to the implementation of these rights. Nevertheless, the country's key geographical location and rampant corruption contribute to a human trafficking problem that the authorities have only recently acknowledged. Azerbaijan's Criminal Code was amended in September 2001. While it does not expressly prohibit trafficking in persons, it incorporates numerous changes that reflect the country's attempt to follow international counter-trafficking initiatives. Trafficking in women from Azerbaijan is mainly oriented toward the United Arab Emirates and Tur-

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key. Azerbaijan is also believed to serve as a transit point for women from Russia and Central Asia, who are trafficked to other countries. International organizations have encouraged the Azerbaijani authorities to develop a counter-trafficking legal system effective in prosecuting traffickers and protecting their victims.<sup>3</sup>

Although the constitution provides for the right to form trade unions, independent unions in Azerbaijan are weak and kept in check by the government. Under the 1994 Act on Trade Unions, seven persons or more may form a trade union and adopt its rules. The act also provides for the right of trade unions to conclude collective agreements. A 1996 law provides for collective bargaining agreements to set wages in state enterprises. Most industries are still state-owned and are run by government-appointed boards and directors who set wages. An effective system of collective bargaining between unions and enterprise management has yet to be established and unions rarely participate in determining wage levels.<sup>4</sup> However, labor laws do favor employees, reflecting Azerbaijan's Soviet heritage. The pool of skilled labor has shrunk due to the education system's decline and the emigration of well-qualified minorities, which can make finding adequately trained workers difficult.

Under the constitution, each person has the right to choose and change his or her own religious affiliation and belief, including atheism, to join or form the religious group of his or her choice, and to practice his or her religion. The Law on Religion expressly prohibits the government from interfering in the religious activities of any individual or group; however, there are exceptions, including cases in which the activity of a religious group "threatens public order and stability."

The constitution provides that persons of all faiths may choose and practice their religion without restriction; still, there are some abuses and limitations. A number of legal provisions enable the government to regulate religious groups, including a requirement in the Law on Religion that religious organizations be registered by the government. The Committee for Work with Religious Associations (SCWRA), which replaced the department of religious affairs in June 2001, assumed responsibility for the registration of religious groups from the ministry of justice. Registration enables a religious organization to maintain a bank account, rent property, and generally act as a legal entity. Lack of registration makes it difficult, but not impossible, for a religious group to function. The process is burdensome, and there are frequent delays in obtaining registration. Religious groups are permitted to appeal registration denials to the courts. Unregistered groups are more vulnerable to attacks and closures by local authorities.<sup>5</sup> Azerbaijan, a secular Muslim land located in a volatile region, must contend with the

specter of a number of extremist groups, including Jeyshullah (Army of Allah), that have operated within the country since independence and that shape the authorities' posture on the issue of religion.

The nongovernmental sector in Azerbaijan faces considerable obstacles. Some 1,400 NGOs are registered in Azerbaijan, of which approximately 450 are active. The most serious issue for development of the NGO sector is the inability of the vast number of initiative groups to register as NGOs with the ministry of justice.<sup>6</sup> Registration of organizations, including spin-offs of Western organizations, is highly selective and burdensome. The NGO culture tends to reflect the society's broader top-down organizational culture. NGOs also have largely been unable to escape the effects of Azerbaijan's highly polarized political atmosphere, such that mutual suspicion permeates the government-civic society relationship. More broadly, there is a troubling lack of awareness and understanding of the role of civil society among the Azerbaijani population, to the extent that fully 68 percent of those questioned in a 2002 IFES public opinion survey were not aware of what an NGO is.<sup>7</sup>

### *Recommendations*

While Azerbaijani citizens enjoy a considerable degree of personal freedom in day-to-day life, the authorities must ease the profound institutional control that cuts across all sectors of Azerbaijani society. A major step in this regard would be support for a more resilient civil society, from both the Azerbaijani authorities and the international donor community, with a goal of broader and more meaningful political participation to give the population a stronger sense of ownership in the country's governance. Toward this end, the government should facilitate and encourage smoother registration and compliance procedures for NGOs. The authorities should also make needed amendments to national legislation with respect to counter-trafficking measures, particularly in devising aggressive state policies against trafficking and eliminating contradictions between the constitution and the criminal code, which impede implementation of international treaties at the national level.

### **RULE OF LAW – 2.92**

Azerbaijan's constitution provides for an independent judiciary. However, in practice serious impediments to judicial independence exist, including a lack of professionalism in the courts at all levels of the Azerbaijani judicial system. The poor condition of the judiciary, in turn, has an impact on nearly all sectors of Azerbaijani society, as satisfactory recourse in courts of law is generally unavailable to the country's citizens.

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The judicial system is plagued by a vast number of problems, among them profound levels of corruption, lack of infrastructure, and inadequate administrative capacity. Bribery of judges is believed to be commonplace, despite the fact that pay was raised in 2001 for all judges. As is the case in other sectors, the executive branch of government exercises significant influence on judicial decision making, thereby seriously compromising the integrity and independence of the legal system. The president appoints Supreme Court and Constitutional Court judges, who are subject to confirmation by parliament. He also directly appoints lower level judges.

The Council of Europe has taken the lead in publicly pressing for reform of the Azerbaijani legal system. The Council of Europe's Committee of Ministers cited the slow progress of reforming the judicial appointment process in its Monitoring Report issued in September 2003.<sup>8</sup> The Azerbaijani government examination system for judges, adopted in 2000, has so far not shown meaningful impact on the quality of judicial decision making and administration. Azerbaijan has also established a judicial training center, but it has not met the expectations of independent observers of the legal sector. The Law of Azerbaijan Republic About Advocates and Advocates' Activities, which mandates the creation of a new bar association, was adopted in 1999 but has not been implemented. Azerbaijan has no formal accreditation process for attorneys. Law faculties, as with most other segments of the education establishment, confront serious corruption. In 2002, the Azerbaijani Supreme Court adopted a judicial ethics code, but it has not taken root and to date has had no discernible impact.

In the sphere of criminal law, the Soviet legacy still looms large, whereby investigations are structured more to obtain confessions than to gather and analyze evidence. The new criminal procedure code, adopted in 2000 at the urging of the Council of Europe, calls for, among other things, jury trials in cases of certain serious crimes. To date, jury trials have not been implemented. One of the tasks of the Collegium, an association of attorneys over which the authorities maintain *de facto* control, is to represent criminal defendants. Collegium attorneys are reported to expect bribes regularly from criminal defendants who seek representation. The government appoints prosecutors—who are often subject to political direction and control—to offices at the district, municipal, and national levels. Officials and other actors associated with the ruling authorities are rarely, if ever, prosecuted for abuses of power.

Article 25 of the constitution asserts the principle of equality of all persons before the law and courts. In practice, however, those with close ties to the regime and the ruling party have considerable advantages. While the right to property is also enshrined in the constitution, protections are frequently not upheld within the legal system.

Civil control of police, security services, and the military is recognized in legislation and the constitution. However, due to the high concentration of power in the executive, as a practical matter security forces and the military are considered to be under civil control to the extent that they obey the president. The only check on presidential power in this context is the Constitutional Court, which, at least theoretically, can challenge the president. However, presidential appointment of the membership of the Constitutional Court limits such a check in practice.

Over time, Azerbaijan's participation in NATO's Partnership for Peace program should have a salutary impact on the development of the armed forces in a number of important respects, including the enhancement of civil control of the military. In the broader context of security, Azerbaijan has committed troops to the global counterterrorism effort in Afghanistan, as well as in Iraq.

### *Recommendations*

The judicial selection process should be reformed in accordance with the requirements of Azerbaijan's membership in the Council of Europe. To ensure that the selection of judges is transparent and independent in practice, the process should include the meaningful participation of an independent advisory board, which would make recommendations on candidates for the bench. The creation of an independent, self-governing bar association, as envisioned in legislation passed in 1999, would be an important step forward for Azerbaijani lawyers and, more broadly, would have a positive impact on other needed reforms within the context of the legal system. Steps to enhance judicial independence and transparency are crucial. Toward this end, resources should be devoted to increased staffing and to case-tracking systems that would make information available for public records.

### **ANTICORRUPTION AND TRANSPARENCY – 1.57**

Apart from the settlement of the Nagorno-Karabakh conflict and the need for wide-ranging democratization, the most urgent priority for Azerbaijan is to improve its business environment through the implementation of meaningful anticorruption efforts, greater transparency measures, and good governance. At present, high levels of corruption pervade Azerbaijani society, driven by the prevailing notion among many officials that state institutions are designed to confer privileges on individuals or special groups rather than meet broader societal needs. Transparency International's 2003 corruption perceptions index ranked Azerbaijan 124th out of 133 countries. All other CIS countries rank better

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than Azerbaijan. On December 29, 2001, a draft Law on Corruption, which includes a full range of important anticorruption measures, made it only as far as its first reading in the Milli Majlis (parliament).

Bureaucratic opacity and the highly centralized nature of the Azerbaijani governing system contribute to societal apathy and resignation. International organizations have undertaken anticorruption campaigns of different sorts, but they face an uphill battle in a country where bribe-taking is the norm and relatively little energy is expended at the official level to address the problem in a determined and meaningful fashion. The lack of transparency creates an enabling environment for graft and corruption at all levels of the bureaucracy, hindering social and economic development. A lack of transparency also results from state control of media and the absence of a significant opposition group in the parliament, which does not possess the capacity for oversight of the executive branch.

The system of higher education suffers from widespread corruption; bribes are commonplace for receiving good grades. In the 1990s, a single exam and computerized audit system were introduced to screen university applicants for a bachelor's degree, which has reduced corruption at this phase of the admissions process. However, admission at the master's level, which does not include an audit process, reportedly requires bribes on the order of US\$2,000. Private universities, which appear to permit significantly less corruption, hold some promise for breaking the corruption mold, but these new institutions (of which there are now more than a dozen) are not likely to shake the prevailing behavior in the education sphere in the short term.

Confusion permeates the business landscape, as many Azerbaijani laws become effective on the date of their adoption. Thus, no time is made available for the laws to be read and understood by those who must comply with their requirements. Many firms then find themselves in violation of new laws, a state of affairs that invites bribes and corruption. Similarly, late issuance of the rules and regulations through which laws are implemented further confuses the process of compliance. Such rules and regulations often are not published or distributed.<sup>9</sup>

A Soviet legacy of deep state control of the economy contributes to considerable involvement of the state in economic affairs. Personal interests of public officials are intertwined with their duties as public officeholders to a substantial degree, and cronyism is rampant. Indeed, the inculcation of a respect for and understanding of the public interest is one of the elements most lacking in Azerbaijani political culture.

With corruption plaguing official structures and political culture and the judiciary providing inadequate recourse, those who would consider

reporting cases of bribery and corruption have little security. Officials are rarely held accountable for involvement in corrupt practices, and cases of corruption reported in the media typically draw no response from law-enforcement bodies or the public officials who allegedly have engaged in such practices.

Efforts at public financial disclosure have also fallen short. The election code requires that all candidates for public office provide the central election commission with financial declarations. According to the law, incomplete disclosure can result in candidates being barred from taking part in elections. In practice, however, such disclosure tends to be incomplete and enforcement of the law's provisions weak.

Adequate public access to official information is a serious problem, contributing to a legal and regulatory environment that is nontransparent. It should be noted that in certain cases officials themselves also have difficulty gaining access to information. For example, regional administrative and judicial bodies may not receive relevant regulations promulgated by federal authorities in Baku.

To manage the expected increase in oil revenues better, the government established the State Oil Fund in November 1999. The international financing community has expressed concerns over the lack of parliamentary oversight of the fund. Some of these concerns were allayed with the decision in 2001 to include oil-fund expenditures in the national budget. This decision included the adoption of satisfactory regulation for the management, spending, and financial scrutiny of the oil fund with regular reporting and annual financial audits by reputable international auditing teams. State oil-fund transparency is widely regarded to be greater than state budget transparency, owing largely to the influence of international institutions in the development of the oil-fund structure.

A presidential decree in 1999 established the Azerbaijani Accounting Chamber, which began functioning in December 2001. This chamber has the authority to audit all government bodies, including all budgetary and extra-budgetary organizations and funds, and must publicly report its findings.<sup>10</sup> However, in the view of independent observers this body has not established its independence from the executive and to date has not met expectations.

Timely and comprehensive information concerning the budget process is generally difficult to obtain in Azerbaijan. Opposition and independent newspapers report on corruption, but the scope of such reporting is typically so circumscribed that details of corrupt practices, including the names of officials engaged in alleged illegal activity, tend not to be reported. There also tends to be less reporting on corruption in the regions.

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Embezzlement and kickbacks are features of the process of awarding government contracts. Kickbacks on certain tenders are reported to be in the range of 20 percent to 30 percent. In September 2003, unnamed top-level Azerbaijani officials were cited in the indictment of a Swiss lawyer, Hans Bodmer, issued by a U.S. federal court in New York City.<sup>11</sup> Citizens do have a right to obtain information concerning government conduct, but in reality acquiring such information tends to be extremely difficult.

### *Recommendations*

The pervasiveness of official corruption demands urgent action. Toward this end, the government should make a priority of passing the Draft Law on Corruption, which has languished for two years since its first reading in parliament in December 2001, and ensure that its provisions are implemented once in force. To bring greater integrity to the election process, candidates for public office should comply with the letter and the spirit of the election code's provisions requiring financial declarations, and there should be swift and certain consequences for noncompliance.

### *ACCOUNTABILITY AND PUBLIC VOICE – 2.63*

At the time of the writing of this report, questions relating to the health of President Heydar Aliyev, his ability to take part in the presidential election scheduled for October 2003, and the simultaneous family candidature of President Aliyev and his son and Prime Minister, Ilham Aliyev, dominated the political landscape in Azerbaijan. President Aliyev, the country's leader for most of the last three decades, sits atop what is officially described as a presidential republic. The new constitution of Azerbaijan was adopted in November 1995 through a flawed referendum, and indeed all of the elections conducted since Aliyev came to power have been flawed.

As in previous election cycles, the executive dominance of political life has been clearly evident during the 2003 election campaign. The regime put the entire governmental machinery in gear in advance of the election; state-run television and other channels controlled by forces aligned with the ruling New Azerbaijan Party (YAP) broadcast campaign programming supportive of the president and his son. Across the country, posters displaying images of father and son appear in the windows of shop fronts, on billboards, and in state-dominated media outlets, leaving little doubt as to which forces possess control of state resources. Independent and opposition media operate at severe disadvantages, both during and outside election campaigns. Moreover, opposition parties have not always been

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able to campaign freely, and their members are sometimes subjected to violence or aggression. In the weeks leading up to election day in October 2003, reports of mistreatment of opposition forces increased.

The new unified election code, which came into effect in June 2003, is regarded by experts as a strong step in the right direction, bringing this area of the law into closer conformance with international standards. Commenting on the election framework in advance of the October 2003 elections, Andreas Gross, head of the Parliamentary Assembly of the Council of Europe Special Mission to Azerbaijan, stated that “the amended Electoral Law accommodated several recommendations of the Council of Europe and, while not yet perfect, would provide a satisfactory framework for good elections if applied in good faith.”<sup>12</sup> As in other crucial sectors where improvement in the legislative framework has been adopted, the test for the authorities with respect to the new election law will be whether it is adhered to in both letter and spirit.

Women are not well represented in the upper levels of Azerbaijani government. At the national level, 11 of 124 members of parliament are women. No women hold cabinet positions, although four women do hold the position of deputy minister, including the deputy speaker of the parliament (Fatma Abdullazadeh).

The glaringly weak civic sector is a lost opportunity for creating more space for constructive discussion of public policy issues. There are few, if any, independent policy institutes or think tanks active in Azerbaijan capable of contributing to policy formulation and discussion. Most of the local, active (non-service-providing) NGOs fall into opposition or ruling-power camps and are prone to polemics. Observers agree that public education is sorely needed on the benefits to society at large of a developed, independent civic sector.

Azerbaijani law prohibits civic organizations from engaging in political activity. The governing legislation in this area is crafted in imprecise language, affording the authorities wide latitude for interpretation, creating uncertainty among NGOs about the rights they enjoy, and making the latter vulnerable to threats of prosecution. Moreover, any NGO that has received foreign financial support is barred from taking part as an observer in elections, effectively limiting meaningful and sorely needed monitoring capacity. Civic groups can testify and comment on pending government policy or legislation, but such activity is far too infrequent and rarely results in meaningful influence on public policy. Recent positive examples of comment by civic groups include testimony on the unified election code, anti-corruption measures, and the 2002 referendum.

The Law on Mass Media in Azerbaijan affords many de jure protections and guarantees, but in practice news organizations not aligned with ruling

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forces face significant obstacles. Broadcast media are under the control of the regime or interests associated closely with it. In October 2002, the Law on Television and Radio Broadcasting came into effect, setting forth the legal, economic, and organizational basis for private broadcasters. A key component of this law, the formation of a new state institution—the National Television and Radio Council—has been criticized because its membership is determined by the president. The print media that are independent—newspapers such as *Zerkalo* and *Echo*—survive in large measure on grants from foreign assistance organizations. These independent newspapers have relatively small circulations, numbering several thousand copies daily. Opposition media, which are aligned with political parties and are inclined toward polemics, are kept off-balance by the authorities through a mix of manipulation and harassment. During the 2003 election campaign period, a substantial increase was reported in incidents of police harassment of journalists, including allegations of intimidation, equipment confiscation, and even physical abuse. While official censorship of the media in Azerbaijan was abolished in 1998, self-censorship and other indirect forms of censorship and pressure on media remain. Moreover, reporters often have a difficult time obtaining information from official sources in a timely and complete fashion.

A decree on state secrets approved in August 2002, which is vaguely crafted and open to broad interpretation by the authorities, has contributed to the obstacles facing journalists. Under Article 7 of this decree, if it is unclear whether information is classified as a state secret, editors must appeal to the interdepartmental commission for the protection of state secrets. If the commission rules that such information is indeed a state secret, editors must not allow it to be made public.

There is a reasonably sound legal framework relating to the media. A number of improvements to the law were contained in a presidential decree issued in December 2001, which, among other things, abolished the system of media registration, removed prohibitions on advertisement and financing, and voided legislation that had permitted executive authorities to close media enterprises. But the regulatory environment and enforcement mechanisms that should bring these and other elements of the legal code into practice are weak. International bodies, including the Council of Europe and the OSCE, have criticized the authorities for not living up to their commitments concerning protection of press freedom. Under pressure from the Council of Europe, the government has jailed fewer journalists since Azerbaijan became a member of that body. At the same time, fines assessed under the criminal code based on suits for insults and defamation against public officials are common, suggesting that the au-

thorities, while no longer resorting to formal censorship of independent and opposition media, now rely on the courts as a tool to exercise such control. Large fines have been assessed against newspapers not linked to the regime. Independent and opposition news organizations cannot afford such fines, which often run into thousands of U.S. dollars. The authorities have tended not to enforce such fines (for example, by not exercising their right to seize equipment or bank accounts), which suggests that they retain court judgments and hold them in reserve as another potential tool against media that behave in a disobedient manner. Official involvement in economic life also renders advertisers in opposition and independent media vulnerable to external political pressure.

### *Recommendations*

The government must engage in meaningful consultation with the civic sector in a more open political space, especially if it hopes to achieve a much-desired position of regional leadership. Election observers' monitoring practices should be brought into line with Council of Europe standards. Toward this end, the government should remove the ban on election monitoring for local NGOs that receive financial support from international sources. The government should take steps to bring fairness to the composition of the Central Election Commission (CEC), which now disproportionately weights its membership toward the ruling YAP party. Measures should be taken to reform television and radio licensing procedures and render them more transparent, including the formation of a board not appointed or otherwise controlled by the president to oversee such licensing. The state should also ensure that public television and radio meet appropriate standards of programming independence under the direction of a politically diverse board of eminent persons from the broad political spectrum, including opposition figures. Under such governance, state broadcasting should ensure the public's access to balanced and unbiased information.

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### **Notes**

<sup>1</sup> Interim Report on Azerbaijan and Georgia (Washington, D.C.: BP, Caspian Development Advisory Panel, August 2003), 3.

<sup>2</sup> Third Progress Report (Strasbourg: Council of Europe, Committee of Ministers, 850 Meeting, 3 September 2003), 2.4 Monitoring Group [GT-SUIVI-AGO].

<sup>3</sup> Azerbaijan (Geneva and Baku: International Organization for Migration, 2003), <http://www.iom.int> and <http://www.un-az.org/iom>.

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<sup>4</sup> *Azerbaijan: Annual Survey of Trade Union Rights (2003)* (Brussels: International Confederation of Free Trade Unions, 2003).

<sup>5</sup> *Azerbaijan*, International Religious Freedom Reports (Washington, D.C.: U.S. State Dept., Bureau of Democracy, Human Rights, and Labor, 7 October 2002), <http://www.state.gov/g/drl/rls/irf/2002/13922.htm>.

<sup>6</sup> 2001 NGO Sustainability Index for Central and Eastern Europe and Eurasia (U.S. Agency for International Development, Bureau of Europe and Eurasia, Office of Democracy and Governance, March 2002), <http://www.dec.org/search/dexs/index.cfm?fuseaction=docs&title=NGO%20Sustainability%20Index>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Third Progress Report (Council of Europe).

<sup>9</sup> "Strategy for Azerbaijan" (London: European Bank for Reconstruction and Development [EBRD], 17 December 2002), 84.

<sup>10</sup> "Diagnostic Study of Accounting and Auditing Practices in Azerbaijan" (Manila: Asian Development Bank, 2002), 25.

<sup>11</sup> Kara Scannell, "Swiss Lawyer Faces Charges in Bribery Case," *The Wall Street Journal*, 15 September 2003.

<sup>12</sup> Comments, Baku, 16 September 2003.

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