



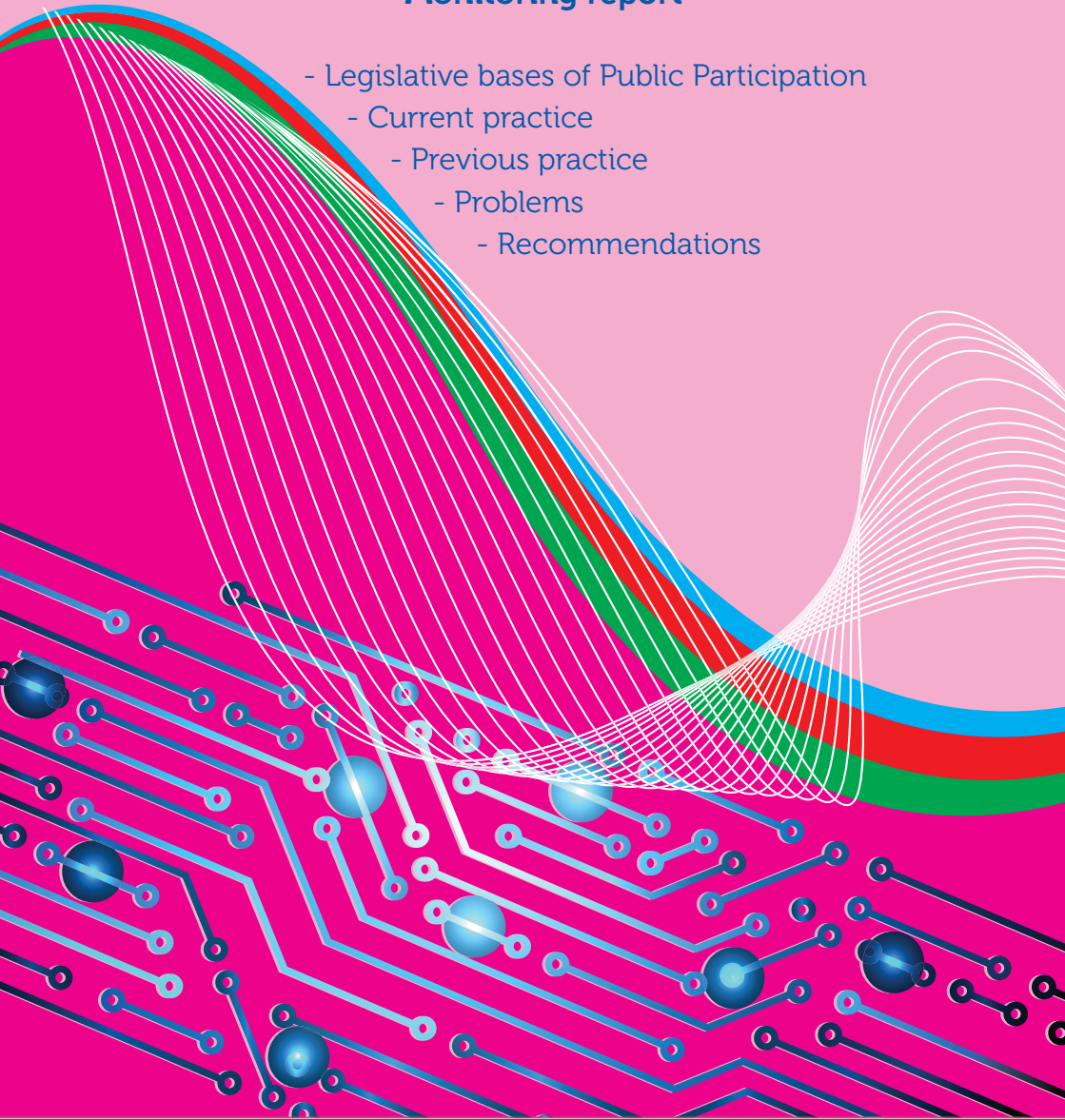
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# PUBLIC PARTICIPATION

The legislation and the practice of its application  
Monitoring report

- Legislative bases of Public Participation
- Current practice
- Previous practice
- Problems
- Recommendations





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PARTNERSHIP  
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- Problems
- Recommendations

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## OVERVIEW

This report provides the analysis of the legal bases and the existing situation of the participation of citizens of the Republic of Azerbaijan and civil society institutions representing them in the social and political life of the country.

The civil society has participated in the social and political processes in this way or another after gaining independence of Azerbaijan.

The provision 54.1 of the Constitution of the Republic of Azerbaijan specifies that, “*Citizens of the Republic of Azerbaijan shall have the right to participate without hindrance in the political life of the society and the state<sup>1</sup>*”.

In addition to the Constitution, there are a number of provisions in various legislative acts providing for the directly and indirect participation of citizens in decision-making. However, legal bases defining frameworks, regulations, forms and mechanisms for the participation of Azerbaijani citizens and institutions that represent them in decision making and governance and for the implementation of public control functions of the civil society were established in recent years.

The Law of the Republic of Azerbaijan on “Public Participation” and other regulatory and legal acts adopted to ensure the application this Law define legal bases for the participation of the public and civil society institutions in the adoption and implementation of decisions.

Nevertheless, significant problems have emerged during the application of this law and failure to remove those problems

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<sup>1</sup><http://e-qanun.gov.az/framework/897>

reduces the effectiveness of public participation and sometimes renders it to a formal process.

The analysis has identified the following key issues:

- The majority of central and local executive authorities are not interested in the participation of the civil society in the preparation and implementation of decisions adopted by them, therefore they do not make use of any public participation form specified in the legislation, including the public council mechanism;
- Many state bodies ensure the application of public participation quite formally, but in fact civil society representatives do not participate in decision making and this participation is ceremonial (by inviting them only in events);
- The presence of state bodies that apply the public participation mechanisms both formally and actually shows that the application of the public participation process in real terms requires a political will in parallel to legal bases, thus the “lower” (instances) are simply not interested in and impede this process.

## METHODOLOGY

The main purpose of the monitoring of the existing Public Councils and other public participation mechanisms is to study the real status of the participation of citizens and institutions that represent them in the process of decision making of central and local executive authorities in the country, to determine gaps and contradictions in the legislation and defects in practice, to define policy options for the removal of problems and to draft recommendations.

According to the Law on “Public Participation”, public participation should cover local self-government bodies, as well. Moreover, the monitoring did not cover local self-government bodies taking into account that municipalities have no activity in accordance with the requirements of this law due to objective reasons. Since block associations of municipalities are considered civil society organizations, the report is going to introduce some statements on block associations.

During the monitoring, the objects of study included the status of application of the existing Public Councils and other 4 forms of public participation, legal and practical problems related with their application, legal and practical reasons that give rise to those problems. The public participation indicators were implemented on the basis of, but not limited to the following criteria. The key directions of the study included:

- Scope (Percentage and quantity indicator);
- Establishment practices;
- Performance in practice;
- The level of compliance with selection procedures;



- Gender equality;
- Civil society representation spectrum;
- Indicators of activeness and participation in decision making;

The main tools used in monitoring were:

- Information requests;
- Collection of data on the existing Public Councils;
- Analysis of the legislation and the practice of its application;
- Unstructured interviews with experts;

This report has been developed through the summarizing of data collected by the application of those tools.

## LEGAL BASES OF PUBLIC PARTICIPATION

### Constitutional bases of Public Participation

A number of articles of the Constitution of the Republic of Azerbaijan provide for the right to participate in the social and political life of the country, including state management, and ways realization of this right. Citizens participate in state management directly and through representatives elected in accordance with the Constitution. Those right and rules are specified with the articles 1, 2, 50, 54, 55, 57, 58, 94, 96 and 130 of the Constitution.

According to the article 58 of the Constitution of the Republic of Azerbaijan, everybody has the right to establish any association, political party, trade unions and other social union or to join any existing association.

The legal bases of the participation of civil society institutions in decision making and the implementation of public control over the activity of state and self-government bodies are reflected on the relevant legislative acts. The Law on Non-governmental organizations (social unions and foundations) provides:

*A non-governmental organization is entitled to come up with proposals on the improvement of regulatory and legal acts in the manner specified with the laws of the Republic of Azerbaijan and its Charter<sup>2</sup>*

The participation of trade unions that defend the rights of employed people is defined by the Law on “Trade Unions”. The article 10 of the Law provides that, *“Trade unions are entitled to*

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<sup>2</sup><http://e-qanun.az/framework/511>

*participate in the preparation of legislation acts on labor, social and economic issues.*

*The draft laws on labor, social and economic rights shall be considered through the discussion of opinions of the national associations of trade unions.*

*The national associations of trade unions are entitled to apply to and file a complaint before relevant legislative, executive and judicial bodies regarding legislative acts, decisions and orders of state bodies that violate the interests of employees and the rights of trade unions.*

*State and local self-government bodies shall notify relevant trade unions prior to the adoption of regulatory acts relating to the labor, social and economic rights and interests of employees.*

*The national association of trade unions shall participate in the preparation of normative acts regulating the rules for the application of the legislation on labor and socio-economic issues in the cases specified with law<sup>3</sup>”.*

Other legislative acts also include provisions defining the legal bases, forms and procedures of public participation.

Various levels of public participation are available in the country.

**The joint decision making** and **the joint action** models, the highest level of public participation, were applied in recent years.

Nevertheless, the legislation includes provisions that reduce the effect of public participation, make it more formalistic and lack real mechanisms, as well. At the same time, there are many problems in the application of public participation in real terms.

Public participation is considered in a number of international regulations joined by Azerbaijan. The convention (Aarhus) on

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<sup>3</sup><http://e-qanun.gov.az/framework/8987>

access to information, public participation in decision-making and access to justice in environmental matters provides for public participation in processes related to environmental issues.

The convention is not only an environmental protection mechanism, but also a tool for the development of democracy. It also addresses the following:

- Provides more extensive opportunities for public representatives to get access to environmental information available at state bodies, which increases transparency and accountability of the latter;
- Enables people to express their opinions and concerns regarding environmental issues and persons responsible for decision making to draft reports with this respect;
- Enables the public to know the procedures for defining cases that violate the right to get information on environmental and to participate in decision making, and sometimes to file a lawsuit on cases of violation of the environmental legislation in a broad range<sup>4</sup>.

## **Law on Public Participation**

Another legislative act creating legal bases for public participation is the Law of the Republic of Azerbaijan on “Public Participation”, the Decree of the President of the Republic of Azerbaijan on the application of this law, as well as the regulation and the rules No. 171 and 172 approved by the Cabinet of Ministers in 2014. *“This law regulates relations arising in*

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<sup>4</sup><http://eco.gov.az/az/683-orxus-konvensiyasi-haqqinda-umumi-melumat>

*connection with the involvement of citizens of the Republic of Azerbaijan in the implementation of state management in accordance with the paragraph 1 of the Section I of the article 94 of the Constitution of the Republic of Azerbaijan<sup>5</sup>”*

According to this law, public participation covers:

- Participation in various areas of state and public life, the preparation and implementation of the state policy and the adoption of national and local decisions;
- Participation in public control over the activity of central and local executive authorities, local self-government bodies;
- Participation of civil society institutions in the process of consultations of state and local self-government bodies with the public and in the study of public opinion.

The law considers the following forms of public participation:

**Public Councils** under central and local executive authorities, local self-government bodies;

**Public discussions** during the adoption of decisions of public important;

**Public hearings** on draft legal acts and different issues of state and public life;

**Study of public opinion;**

**Public discussion** of draft legal acts;

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<sup>5</sup><http://e-qanun.gov.az/framework/26879>

**Written consultations** on the study of opinions of civil society institutions on draft legal acts.

Public participation is defined in the Law on “Public Participation” as:

*“public participation – the participation of citizens and civil society institutions in the preparation and implementation of the state policy in different areas of state and public life, the adoption of decisions at national and local levels, the organization of public control over the activity of central executive authorities defined by the relevant executive power body (hereinafter – central executive authorities), local executive authorities and local self-government bodies in the forms specified with this Law, consultation of state and local self-government bodies with the public and consideration of public opinions<sup>6</sup>”*

The law also identifies civil society actors represented in Public Councils, including *“non-governmental organizations (social unions and foundations), mass media, trade unions, citizens’ initiative groups and block associations of municipalities<sup>7</sup>”*.

One of the types of public participation specified in the Law is a continuously operating institution. Others are applicable in necessary cases. Continuously operating public participation type is public councils established under central and local executive authorities.

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<sup>6</sup><http://e-qanun.gov.az/framework/26879>

<sup>7</sup> See:<http://e-qanun.gov.az/framework/26879>

**“Public Council** – *an advisory body established under central and local executive authorities, local self-government bodies to realize the goals considered in this law*<sup>8</sup>”.

Other forms of public participation are:

**“Public discussion** – *a meeting organized with the participation of authorized representatives of relevant state and local self-government bodies, representatives of civil society institutions, individual citizens, specialists and experts to draft proposals of different groups of people on relevant issues during the adoption of decisions of public importance*<sup>9</sup>”

**“Public hearing** – *a meeting organized with the participation of authorized representatives of relevant state and local self-government bodies, representatives of civil society institutions, individual citizens, specialists and experts to conduct consultations with the public on various issues of state and public life and to raise awareness of citizens*<sup>10</sup>”

**“Study of public opinions** – *conduction of sociological surveys and other similar activities to study opinions of different groups of people on various issues of state and public life*<sup>11</sup>”

**“Public discussion of draft legal acts** – *examining, analysis and assessment of draft legal acts with the participation of persons who attended the preparation of those draft acts, as well as civil society institutions, individual citizens, experts and specialists*<sup>12</sup>”

**“Written consultation** – *request of central and local executive authorities, local self-government bodies to civil society*

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<sup>8</sup>See:<http://e-qanun.gov.az/framework/26879>

<sup>9</sup>See:<http://e-qanun.gov.az/framework/26879>

<sup>10</sup>See:<http://e-qanun.gov.az/framework/26879>

<sup>11</sup>See:<http://e-qanun.gov.az/framework/26879>

<sup>12</sup>See:<http://e-qanun.gov.az/framework/26879>

*institutions for their opinions on draft legal acts, and analysis, summarizing and assessment of opinions, comments and suggestions submitted in writing<sup>13</sup>.*

The law defines general procedures for the establishment and activity of public councils, as well as basics for the applications of other forms of public participation.

The President of the Republic of Azerbaijan signed a Decree on the “**Application of the Law No. 816-IVQ of the Republic of Azerbaijan dated November 22, 2013**” regarding the application of this law.

The Cabinet of Ministers has approved the “**Regulations on the election of a Public Council by civil society institutions<sup>14</sup>**”. The Regulations define procedures for elections to public councils.

The Cabinet of Ministers also approved the “**Rules for conduction of public hearings and public discussions on draft legal acts prepared by central and local executive authorities, local self-government bodies<sup>15</sup>**”. According to the Rules, “*Public hearings and public discussions on draft legal acts of central and local executive authorities, local self-government bodies can be initiated by those central and local executive authorities, local self-government bodies, civil society institutions, public councils and individual citizens<sup>16</sup>*”

The Rules also provide that, “*Public hearings and public discussions on draft legal acts of central and local executive*

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<sup>13</sup>See:<http://e-qanun.gov.az/framework/26879>

<sup>14</sup><http://e-qanun.gov.az/framework/27803>

<sup>15</sup><http://e-qanun.gov.az/framework/27804>

<sup>16</sup>See: <http://e-qanun.gov.az/framework/27804>



*authorities, local self-government bodies can be initiated by those central and local executive authorities, local self-government bodies, civil society institutions, public councils and individual citizens<sup>17</sup>”*

The Rules also provide that, *“Public hearings and public discussions on draft legal acts of central and local executive authorities, local self-government bodies shall be organized by relevant structural units that prepare those drafts with the participation of legal services of central and local executive authorities<sup>18</sup>”*.

Central and local executive authorities shall implement certain activities to organize public hearings and public discussions on draft legal acts prepared by them.

Central and local executive authorities shall allocate a special section on their websites and ensure a link to the "e-government" portal<sup>19</sup>. Moreover, a central executive body shall post draft regulatory and legal acts on the special section of its official website and the "e-government" portal immediately upon submission for approval<sup>20</sup>

The Rules specify that, a local executive body shall post draft acts of regulatory character on the special section of its official website immediately upon submission for approval<sup>21</sup>.

In case 60 days are defined for submission of opinions, comments and suggestions of civil society institutions, individual citizens,

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<sup>17</sup>See: <http://e-qanun.gov.az/framework/27804>

<sup>18</sup>See: <http://e-qanun.gov.az/framework/27804>

<sup>19</sup>See: <http://e-qanun.gov.az/framework/27804>

<sup>20</sup>See: <http://e-qanun.gov.az/framework/27804>

<sup>21</sup>See: <http://e-qanun.gov.az/framework/27804>

specialists and expert, and 3 months or less are defined for preparation of regulatory and legal acts by a superior executive body, central and local executive authorities shall ensure post of a regulatory and legal act on the official website of those organizations within 10 days<sup>22</sup>.

According to the Rules, central and local executive authorities shall keep opinions, comments and suggestions of civil society institutions, individual citizens, specialists and expert on their regulatory and legal acts on the special section of their official websites and ensure other users' access to those opinions, comments and suggestions<sup>23</sup>

Central and local executive authorities shall inform the public about the outcomes of the review of opinions, comments and suggestions on draft acts, and post the updated text of a draft act on the website of those organizations if amendments are made taking those opinions, comments and suggestions into account<sup>24</sup>.

The Rules specify that state and local self-government bodies are provided an official notification on the address of the website of a public hearing and a public discussion, date and time, duration to inform authorized representatives of those bodies<sup>25</sup>.

The procedures for conduction of public hearings and discussions are:

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<sup>22</sup>See: <http://e-qanun.gov.az/framework/27804>

<sup>23</sup>See: <http://e-qanun.gov.az/framework/27804>

<sup>24</sup>See: <http://e-qanun.gov.az/framework/27804>

<sup>25</sup><http://e-qanun.gov.az/framework/27804>

*A public hearing and a public discussion can be carried out in the form of a meeting with the decision of a state body organizing the public hearing and the public discussion upon suggestion of related bodies, civil society institutions and individual citizens or with its own initiative. In this case, the state body that organizes the public hearing and the public discussion shall post information on the date and time, duration, place, rules and periods for disclosure of outcomes on its official website. In such a meeting, the state body that organizes the public hearing and discussion shall send official invitations reflecting the date and place of the meeting to ensure the participation of authorized representatives of relevant state and local self-government bodies, specialists and experts<sup>26</sup>*

According to the rules, public hearings and public discussions shall involve experts and specialists with good expertise in this field<sup>27</sup>.

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<sup>26</sup>See:<http://e-qanun.gov.az/framework/27804>

<sup>27</sup>See:<http://e-qanun.gov.az/framework/27804>

## **PUBLIC PARTICIPATION PRACTICE**

### **Current practice**

Various forms of public participation had been available in the country until the adoption of the Law on “Public Participation”. This participation encompassed a variety of spectra from cooperation to partnership and joint participation at different levels.

Since 2006, a “Public Committee that ensures public participation in reformation of inmates and conduction of public control over the activity of penitentiary institutions” under the “Procedures for public participation in reformation of inmates and conduction of institutions enforcing the sentence” approved by the order 4-T dated April 25, 2006 of the Minister of Justice of the Republic of Azerbaijan and officially registered on April 27, 2006” (in short: Public Committee on Penitentiary Service under the Minister of Justice) has started functioning. Those procedures were approved in a new edition on December 29, 2009.

Those procedures were adjusted to the requirements of the Law on “Public Participation” under the decision of the Board of the Ministry of Justice dated August 27, 2014.

The competences, activity directions and rules (as well as objectives) of the Public Committee under the Minister of Justice have been reflected in the Rules on the activity of the Committee in line with the Law on “Public Participation”.

To carry out public control over penitentiary institutions, the Public Committee is granted the following competences:

- becoming familiar with detention conditions, material, medical and sanitary provision at penitentiary institutions, engagement of prisoners in labor, their training, general education, vocational education and training;
- attending public events held at penitentiary institutions, having meetings with staff and inmates;
- holding reception of prisoners at penitentiary institutions, receiving their applications on the violation of their rights and freedoms and sending those applications to relevant organizations through managements of penitentiary institutions;
- interviewing prisoners privately in conditions where penitentiary institution representative can see, but not hear them;
- having access to relevant regulatory and legal acts, as well as court decisions (sentences) on prisoners if necessary;
- applying to penitentiary institution managements regarding the rights and freedoms of prisoners detained at penitentiary institutions;

The Rules were amended in connection with enforcement of the Law on “Public Participation”. Currently, the committee is named as Public Committee under the Minister of Justice and performs public control and public participation functions in all activity directions of the ministry.

According to the amendments to the Rules *“The Committee members can be involved in activities implemented in other areas*

*of judicial activity to strengthen mutual relations with civil society.*<sup>28</sup>”

The most effective competence granted to the Public Committee is to visit any penitentiary institution any time and without any notification. As a result of those visits, penitentiary institutions have improved their conditions and even in some cases directors of some penitentiary institutions were dismissed from their positions upon the reports of committee members. Practically, Public Committee members inform the Ministry of Justice about facts on the violation of prisoner rights and all necessary measures are taken to remove problems within a month. We hope that executive authorities allow public council members visiting relevant institutions and monitoring their activity during the application of procedures for implementation of the Law on Public Participation<sup>29</sup>.

A Public Council was established in a slightly different format under the Ministry of Labor and Social Protection of the Population in 2011.

The composition of the council was a bit complex in accordance with its charter, i.e. consisted of representatives of the ministry, those of the ombudsman and NGOs. Key directions of the council’s activity:

Review of and recommendations on

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<sup>28</sup><http://e-qanun.gov.az/framework/28373>

<sup>29</sup> Summary on public participation mechanisms in Azerbaijan. International Center for Non-Commercial Law (ICNL). Author: PhD in law Parvana Bayramova. Baku 2014

Social assistance and social benefits issues;  
Social service issues;  
Medical and social rehabilitation issues;  
Social protection of the jobless and jobseekers and protection of labor rights of employees.

The following activities are considered in the “National Action Plan for Promotion of Open Government for the years 2012-2015” approved by the Decree No. 2421 of the President of the Republic of Azerbaijan dated September 05, 2012:

Involvement of civil society representatives in the process of preparation of draft laws of public importance by state bodies, conduction of public hearings;

Establishment of relevant councils or partnership networks by state bodies serving the population in order to improve partnership with civil society institutions.

Permanent Public Councils have been established under a number of Central Executive Authorities in accordance with the activities considered in the “National Action Plan for Promotion of Open Government for the years 2012-2015.” Such councils are functioning under the State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan, the Civil Service Commission under the President of the Republic of Azerbaijan and other organizations.

The Council of State Support to Non-governmental Organizations under the President of the Republic of Azerbaijan can be considered as the highest level of public participation in

Azerbaijan, the activity of which is regulated by other regulatory and legal acts.

8 out of 11 members of the Council of State Support are NGO representatives. The Concept of state support to non-governmental organizations of the Republic of Azerbaijan<sup>30</sup> approved by the Decree No. 2288 the President of the Republic of Azerbaijan dated July 27, 2007 laid the foundation for an excellent mechanism for joint action and decision making between the civil society and state officials. The Council of State Support to Non-governmental Organizations under the President of the Republic of Azerbaijan (hereinafter council) was established and the Regulations of the council were approved by the Decree No. 674 the President of the Republic of Azerbaijan dated December 13, 2007 regarding the implementation of the goals and objectives set in the concept<sup>31</sup>. Specific rights and responsibilities, as well as functions are specified in the Regulations of the Council to take necessary measures in the direction of NGO development in the country. One of the most important points in the establishment of the Council is a decision-making body operating under the Council on a collegial basis. The Council that functions in a collegial manner consists of 11 members from NGOs and state bodies. 8 members have been nominated by NGOs in different directions, while 3 members represent state bodies. Adoption of all decisions related with the fulfillment of the functions of the Council in a collegial manner aims at ensuring transparency, democracy and accountability in the development of the NGO sector.

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<sup>30</sup><http://e-qanun.az/framework/14307>

<sup>31</sup><http://e-qanun.az/framework/14307>



As part of its functions, the Council drafts proposals on the development of civil society, improvement of relations between NGOs and their activity, and submit to the President of the Republic of Azerbaijan, conducts analysis in this field and compiles reports, implements activities to study public opinions, provides assistance to NGOs in consultative, information, methodical, organization and technical, financial and other forms and prepared proposals in this field, as well as involves NGOs in the implementation of programs and projects of state and public importance, implements various development programs in relation with improvement of their professional capacities<sup>32</sup>.

Furthermore, 3 members of the Supervisory Board of the State Fund for the Support of Mass Media Development under the President of the Republic of Azerbaijan established by relevant Decrees of the government head are NGO representatives. 4 out of 9 members of the Supervisory Board of the Youth Foundation under the President of the Republic of Azerbaijan are NGO representatives. NGO representatives are also represented in the composition of the Supervisory Board of the Social Fund for Development of IDPs of the Republic of Azerbaijan, the State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons, as well as the National Commission for UNESCO under the President of the Republic of Azerbaijan, the Commission on Pardon Issues under the President of the Republic of Azerbaijan, the Council for Entrepreneurs and the Heraldic Council.

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<sup>32</sup><http://cssn.gov.az/news.php?id=1998&lang=az>

## Dialogue platforms

There are various dialogue platforms and working groups on human rights, anti-corruption combat, increasing transparency and open government formation where civil society and government representatives work together. They are also *ad hoc* or permanent establishments that ensure public participation.

Below we can see organizations collaborating with governmental representatives as a dialogue platform:

- “Joint Working Group for human rights” consisting of representatives of 3 branches of the government and human rights defenders (NGO representatives). The group has been established with a joint initiative of the Government of Azerbaijan and the Council of Europe and has been functional since 2005;
- Government-civil society platform on the Promotion of Open Government – 10 state bodies (including the Presidential Administration) and all interested NGOs are represented in the platform;
- Information and cooperation network of organizations fighting against corruption. The network includes the Commission on Combating Corruption in line with NGOs. It has signed a memorandum of joint action with a number of state agencies (including the Anticorruption Directorate with the Prosecutor General of the Republic of Azerbaijan);
- Commission on premature release of prisoners – consists of representatives of the Ministry of Justice and NGOs.

## **Public Participation in the law-making process**

One of the most effective forms of Public Participation is participation of civil society in law-making processes. There is practice in this field in Azerbaijan.

The following draft laws were developed by NGOs in recent years.

Those draft laws were on:

1. Voluntary Action – adopted by the Milli Majlis (Parliament) in 2009. A Decree has been signed by the President of the Republic of Azerbaijan in relation with the application of this law.
2. Public Participation – adopted in 2013. A Decree has been signed by the President of the Republic of Azerbaijan in relation with the application of this law.
3. Social Orders – the draft law has been submitted to the Milli Majlis.
4. Professional Organizations – the draft law has been submitted to the Milli Majlis.

The Council of State Support to Non-governmental Organizations under the auspices of the President of the Republic of Azerbaijan has achieved amendments to a number of legislative acts upon suggestions and requests from civil society.

Those amendments include the cancellation of mandatory audit of NGOs.

The Council has signed a memorandum of cooperation with the Milli Majlis. NGOs are taking part in various working groups created under the Milli Majlis to contribute to the preparation of draft laws. Public Councils that have been created under central executive authorities and consist of NGO representatives take

active part in the preparation of normative legal acts in different fields.

## PROBLEMS RELATED WITH PUBLIC PARTICIPATION

### Review of the existing councils

State bodies had had the *right*, but had not been *obliged* to create public councils and carry out public consultations prior to the adoption of the Law on Public Participation. The Ministry of Justice, the Ministry of Labor and Social Protection of the Population, the Ministry of Ecology and Natural Resources and the Ministry of Education have realized the right to establish a public council. If a new law is implemented properly, ministries and state agencies will have a chance to conduct consultations with citizens, increase transparency of their activity and involve citizens in decision-making processes more closely<sup>33</sup>.

As mentioned above, public councils (committees, etc.) that are one of the most effective forms of public participation and function on a permanent basis had been established even before the adoption of the Law on “Public Participation,” i.e. some state bodies had already created such councils on a voluntary basis before this law made obligatory for central and local executive authorities to create this public participation form.

The monitoring discovered that all functioning public councils had been established and functional prior to the adoption of the law except for those under one central executive authority and a few local executive authorities. After the adoption of the law, the activity of public councils that had been functioning based on normative legal acts and other documents approved by central

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<sup>33</sup> Material on Public Councils. International Center for Non-Commercial Law (ICNL). Author: PhD in law Parvana Bayramova. Baku 2014

executive authorities was conformed to the Law on “Public Participation.”<sup>34</sup>

The total number of organizations obliged (according to the law) to established Public Councils is 1888. Out of them, 36 are Central Executive Authorities, 86 are Local Executive Authorities and 1766 are local self-government bodies. Since none of local self-government bodies have established such councils and this is related with both objective and subjective reasons, the monitoring report has covered only central and local executive authorities.

Public councils are functional in 5 central executive authorities in this way or another, whereas only a few local executive authorities have public councils.

To what extend the establishment and activity of public councils is compliant with the legislation and is effective?

Observations on this question are reflected in the next section.

The Law on “Public Participation” imposes certain obligations on central and local executive authorities, as well as municipalities regarding the establishment and activity of public councils. The obligations specified by the Law and the “Regulations on the selection of a Public Council by civil society institutions” approved by the Decision No. 171 of the Cabinet of Ministers are as follows:

- Arranging elections for a Public Council (consisting of 5-15 members) in accordance with the Law on “Public Participation” and the “Regulations on the selection of a Public Council by civil society institutions” approved by the Decision No. 171 of the Cabinet of Ministers. On this

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<sup>34</sup><http://e-qanun.gov.az/framework/28373>

purpose, a central and a local executive authority, a local self-government body shall release an announcement on nomination of candidates for a public council, a starting date and a deadline for their registration on their websites and by other means. The term for nomination and registration of candidates shall not be less than twenty working days;

- Solving issues related with technical (at the funds of a central and a local executive authority, a local self-government body) and information provision of a public council;
- Creating conditions for independent activity if a public council;
- Taking into account opinions and suggestions of a public council, justifying the reasons why such suggestions are not considered;
- Providing members of a Public Council with special cards;

The objectives set in the “**National Action Plan for Promotion of Open Government for the years 2016-2018**” approved by the Decree of the President of the Republic of Azerbaijan dated April 27, 2016 are:

- Expansion of public participation;
- Organizing, strengthening and ensuring sustainability of the activity of public councils;
- Creation of separate sections and regular update of data on the official web resources regarding the composition and activity of public councils.

As mentioned before, public councils have been established under more than 14% of central executive authorities. This figure is under 4% in local executive authorities. As for municipalities, no public councils have been established yet. The main reasons for such small numbers will be described in the next chapters.

- Have functional Public Councils been established in full compliance with law?
- Have competitiveness and transparent elections been ensured in the formation of those Councils?
- Does the process of re-election is carried out after the expiry of terms of office of those Councils?
- Do state bodies completely fulfill their obligations assumed under law in the formation of Public Councils?
- Has a special section been created on the official websites of state bodies under which Public Council are operating?
- Do the Public Councils draft and publish annual reports?
- Do the Public Councils have their own websites or pages at social networks?
- Are the existing Public Councils able to function independently?

Observations were conducted and information was collected based on these questions and in accordance with the defined methodology during the monitoring.

Below, one can find a brief review of the status of the existing Public Councils.



## **Public Council under the Ministry of Justice**

The Public Council that has been functioning under the Ministry of Justice for over 10 years and consists of NGO leaders and representatives dealing with human rights protection is a striking sample of an establishment complying with the above criteria.

The Public Commission functioning under the Ministry of Justice (as named in its statute) had been regulated by the “Procedures for public participation in reformation of inmates and conduction of institutions enforcing the sentence” before the adoption of the Law on “Public Participation”, and currently the above procedures are acting as a regulatory document in parallel to this Law.

The composition of the Public Council is elected by the Election Commission created in accordance with the provision 3.2 of the Procedures. According to the Procedures, “*the Public Council is elected by the Election Commission that consists of representatives of relevant state bodies and non-governmental organizations and approved by the decision of the Board of the Ministry of Justice*”<sup>35</sup>.

According to the Procedures, a competition is announced prior to elections to the Public Council consisting of not more than 11 members. The latest competition was announced on May 26, 2015<sup>36</sup>.

The requirements for participation in the competition are reflected in the Procedures. Thus, the public is informed about

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<sup>35</sup><http://www.publiccommittee-az.org/haqqimizda/qaydalar/>

<sup>36</sup>[http://justice.gov.az/view\\_full.php?id=715](http://justice.gov.az/view_full.php?id=715)

requirements and transparency is ensured with this respect. The composition has been re-elected for 9 times within 10 years. Though ex-members have the right to be re-elected to the Council, over 60% of members have changed or re-elected.

Organizational issues are reviewed following the formation of a new composition of the Public, and then a meeting is held with the minister of justice<sup>37</sup>. The minister provides cards to new members.

The Ministry of Justice does not provide any financial support for activity of the Public Council (as it contradicts the procedures); however the main building of the ministry is available for meetings of the Council. In this sense, the ministry fulfills its obligations regarding the organization of activity of the council.

The Public Council is absolutely free to form its bodies, hold meetings, visit penitentiary institutions, provide legal and psychological assistance to prisoners at those institutions and to participate in the process of reformation of inmates. Each member of the Public Council has the right to enter penitentiary institutions any time without advance notification, to visit any place, to have confidential conversations with prisoners and to study conditions for their detention, access to medicine, labor, personal hygiene issues, cases of mistreatment and torture, and the Penitentiary Service is prohibited to create obstacles in the above.

Visits can take place with full staff and at least two members. After visit, a report prepared in a special form is submitted to the minister of justice in a closed envelope. The ministry provides

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<sup>37</sup>[http://justice.gov.az/view\\_full.php?id=724](http://justice.gov.az/view_full.php?id=724)

members of the Public Council with written and oral information on the questions raised in the report within a month after submission of the report. If the questions have not been solved, the reasons are explained.

Each member of the Public Council submits an individual report to the election commissions when its term of office expires. At the same time, the Public Council coordinator submits an overall report<sup>38</sup>.

Various reports on penitentiary institutions prepared by NGOs that are members of the Public Council are submitted to the ministry, as well<sup>39</sup>.

A meeting of the Public Council is held with the participation of the election commission, representatives of the Ministry of Justice, public representatives and mass media to conclude the activity of the council upon expiry of its term of office<sup>40</sup>.

There is a separate section on the Public Council on the official website of the Ministry of Justice<sup>41</sup>. Information is posted on the official website of the ministry about all activities of the Public Council<sup>42</sup>.

Members of the Public Council are represented in working groups and commissions created by the ministry. Members of the Public Council are absolutely represented in the commission on premature release of prisoners<sup>43</sup>.

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<sup>38</sup><http://publiccommittee-az.org/wp-content/uploads/2016/04/%C4%B0K-yekun-hesabat2011-son.pdf>

<sup>39</sup>[http://www.publiccommittee-az.org/wp-content/uploads/2016/04/Ceza-cekme-muessiselerinde-hessas-grupa-dax%C4%B1-olan-Hesabat\\_az.pdf](http://www.publiccommittee-az.org/wp-content/uploads/2016/04/Ceza-cekme-muessiselerinde-hessas-grupa-dax%C4%B1-olan-Hesabat_az.pdf)

<sup>40</sup>[http://justice.gov.az/view\\_full.php?id=717](http://justice.gov.az/view_full.php?id=717)

<sup>41</sup><http://www.justice.gov.az/ictimai.php>

<sup>42</sup>[http://justice.gov.az/view\\_search.php](http://justice.gov.az/view_search.php)

<sup>43</sup>[http://justice.gov.az/view\\_full.php?id=860](http://justice.gov.az/view_full.php?id=860)

Members of the Public Council are participating in activities of the Ministry of Justice in other areas. It conducts public control over test and interview phases of exams for recruitment in judicial bodies and the fulfillment of execution, registration and appeal work. Members of the Public Council take part and make speech in the board meetings and other important activities of the ministry<sup>44</sup>.

The Public Council has its own webpage<sup>45</sup>. The Council's reports are posted on its website and that of the Ministry of Justice.

According to the practice of action of the Public Council, visits to penitentiary institutions and participation in reformation processes at those institutions are free and realized without advance agreement. However, participation in activity of the ministry is realized upon an invitation or a pre-determined schedule as a rule. Anyway, members of the Public Council are able to freely implement any action relating to activity of the ministry. Visits and other activities of the Public Council are realized by the initiative of one or more members of the council.

### **Public Council under the Ministry of Labor and Social Protection of the Population**

As mentioned in this report, a Public Council was established under the Public Council under the Ministry of Labor and Social Protection of the Population in 2011. Since the Law on "Public Participation" had not been adopted at that time, the Public Council was formed under the rules approved by the Ministry of

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<sup>44</sup>[http://justice.gov.az/view\\_full.php?id=879](http://justice.gov.az/view_full.php?id=879)

<sup>45</sup><http://www.publiccommittee-az.org/>

Labor and Social Protection of the Population and consisted of representatives of the human rights commissioner, the ministry and NGOs. To ensure the application of the Law on “Public Participation,” the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan has established an election commission in accordance with the requirements of the law, announced a competition for the submission of candidates, and the Public Council was formed with 15 members on September 28, 2015<sup>46</sup>.

The Ministry of Labor and Social Protection of the Population followed all formalities specified in the legislation for establishment of a public council. As an exception, a representative of the human rights commissioner was included in the composition. According to the Law on “Public Participation,” *“A public council is elected by civil society institutions in a composition of 5-15 members in compliance with the statute determined by a relevant executive authority taking into account the requirements set in this Law. Every citizen of the Republic of Azerbaijan aged 16 may become a member of a public council”*<sup>47</sup>”

As can be seen, there is no exception in the Law.

The Public Council forms its bodies. A special section has been created and banner has been placed on the homepage on the official website of the Ministry of Labor and Social Protection of the Population. The website reflects the list of members of the Public Council and general information on the council<sup>48</sup>. The website also contains information on activities, including

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<sup>46</sup><http://www.mlsp.gov.az/az/pages/174>

<sup>47</sup><http://e-qanun.gov.az/framework/26879>

<sup>48</sup><http://www.mlsp.gov.az/az/pages/174>

meetings of the public council<sup>49</sup>. Activity of the Public Council covers all directions of activity of the ministry.

### **Public Council under the Ministry of Youth and Sport**

Public Council on work with youths has been operating under the board of the ministry since 1994. Activities of the public council include resolution of problems concerning youth, defining new development trends of youth in a globalized society, study and assessment of public opinion on work with youth, including coordination of activities of youth organizations, social unions, foundations, youth organizations of political parties, etc<sup>50</sup>.

Later, this establishment was named as “Public Council on work with Youths functioning under the Ministry of Youth and Sport”<sup>51</sup>.

A separate section has been created for the Public Council on the official website of the ministry. Information is posted on the website about activities of the Public Council. The website does not contain information on the alignment of the Public Council with requirements of the Law on “Public Participation” and re-election of members. Reviewing the information on activities of the Public Council, one can understand that the established has not been formed in compliance with the applicable law and it does not function under the legislation.

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<sup>49</sup><http://www.mlsp.gov.az/az/pages/567>

<sup>50</sup><http://www.mys.gov.az/news/20090129095143694.html>

<sup>51</sup><http://www.mys.gov.az/news/20120209034132937.html>

The non-governmental organization of each youngster is represented in the Public Council only by the leader of that organization. If necessary, an authorized representative can represent the organization based on a recommendation approved by the organization leader's signature and the organization's seal; Members of the Public Council do not get salaries, fees, compensations and other payments;

The bodies of the Public Council are: meetings of the Public Council, chairman of the Public Council, two deputies of the chairman of the Public Council in two directions, specialized commissions of the Public Council and the secretary of the Public Council.

Temporary and permanent expert and working groups may be created under the Public Council.

Chairman of the Public Council had been appointed from management of the ministry by 2012. A civil society representative has been appointed as a chairman of the Public Council since 01.02.2012. Currently, more than 250 youth organizations are member of the Public Council.

The key objectives of the Public Council:

- Involving relevant state bodies, youth organizations and international organizations in the implementation of youth policy;
- Taking part in the formation of state policy and elaboration of normative legal acts and state programs;
- Coming up with proposals on amendments and additions to the existing laws and normative legal documents;
- Preparing and submitting to relevant state bodies drafts of new laws, normative legal acts and state programs;

- Involving youth organizations, foundations and international organizations in public analysis youth laws of the Republic of Azerbaijan, as well as in the preparation and improvement of new laws;
- Involving youth organizations and foundations in the implementation of youth programs;
- Conducting discussions and studying public opinion on social and political processes going on in the republic and the world;
- Preparing proposals to support organization of young people and their active participation in public life;
- Exploring problems related with internal structurization of youth organizations and foundations, and with their specialization in various fields;
- Studying and analyzing civil and public initiatives on state youth policy;

### **Public Council under the State Migration Service**

The State Migration Service (SMS) has established the Public Council after the Law on “Public Participation” came into force. All formalities specified in the law have been following in the formation of the Public Council. Election were held to the Public Council on May 20, 2015 in accordance with the Law No. 816-IVQ of the Republic of Azerbaijan on “Public Participation” dated November 22, 2013, the Decree No. 89 of the President of the Republic of Azerbaijan dated January 16, 2014 regarding the application of this Law and the “Regulations on the election of a Public Council by civil society institutions” approved by the



Decision No. 171 of the Cabinet of Ministers dated May 30, 2015. Application of the Law No. 816-IVQ of the Republic of Azerbaijan dated November 22, 2013<sup>52</sup> and a composition was formed consisting of 5 members<sup>53</sup>. Members of the Public Council were provided with cards<sup>54</sup>.

Information is posted on the official website of the State Migration Service about activity of the Public Council<sup>55</sup>.

The Public Council under the State Migration Service has developed a package of proposals on amendments and additions to the normative legal acts regulating migration issues. Broad discussions have been conducted on the proposals drafted by the Public Council under the State Migration Service to contribute to the expansion of rights of foreigners and stateless persons, perfect protection of their interests, regulation and improvement of migration processes in the country.

It was decided to include the proposals containing 6 sections and 27 items on the migration strategy, improvement of the applicable legislation, status of refugees and asylum-seekers, registration rules for migrants, increasing opportunities for cooperation in migration and improvement of activity of the Public Council as summarized by relevant structural units of the Service<sup>56</sup>.

The proposals have also been discussed at a meeting of the Public Council with the director of the State Migration Service and heads of relevant structural units of the service.

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<sup>52</sup><https://migration.gov.az/post.php?pageid=5891&012-435-5891>

<sup>53</sup><https://migration.gov.az/post.php?pageid=5892>

<sup>54</sup><https://migration.gov.az/post.php?pageid=5853>

<sup>55</sup><https://migration.gov.az/cat.php?scatid=435>

<sup>56</sup><https://migration.gov.az/post.php?pageid=5867>

The SMS Public Council has held meetings, as well as information sessions for journalists for several times<sup>57</sup>.

### **Public Council under the State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan**

A Public Council on the Promotion of Electronic Services was established under the State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan in March 2013. The Public Council has been formed in accordance with the “National Action Plan for Promotion of Open Government for the years 2012-2015”.

The Public Council defines activity procedures agreed with the Agency to organize its activities.

In parallel to the agency, the Public Council is implementing activities on creation and promoting improvement of e-services provided by state bodies. The Public Council holds meetings on a regular basis.

However, the Public Council has not been aligned with requirements of the Law on “Public Participation”. Elections have not been held for the council since 2013. The official website of the agency does not contain a separate section for and information on the Public Council.

Officials of the Agency attend meetings of the Public Council on the Promotion of Electronic Services. The Public Council has drafted proposals on amendments and additions to the legislation on transition to electronic government.

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<sup>57</sup><https://migration.gov.az/post.php?pageid=5852>

## **Public Council under the State Committee for Family, Women and Children Affairs**

The State Committee for Family, Women and Children Affairs has posted an announcement on its official website in connection with establishment of a Public Council<sup>58</sup>. The announcement reads, “...a competition is announced for nomination and registration of candidates to the Public Committee under the State Committee for Family, Women and Children Affairs from April 13, 2017 to May 12, 2017. Every civil society institution can nominate only one candidate for membership of the public council”<sup>59</sup>.

## **State Examination Center**

The State Examination Center is a public legal entity established on the basis of two central executive authorities – the State Students Admission Commission and the Civil Service Commission under the President of Republic of Azerbaijan.

A Public Council had not been established under State Students Admission Commission. A Cooperation Network had been created as a Public Council under the Civil Service Commission under the President of Republic of Azerbaijan<sup>60</sup>.

The Cooperation Network with a complex composition had been created to ensure<sup>61</sup> development and improvement of cooperation

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<sup>58</sup><http://scfwca.gov.az/?cat=69>

<sup>59</sup>See:<http://scfwca.gov.az/?cat=69>

<sup>60</sup><http://www.csc.gov.az/home/post/1476>

<sup>61</sup>See: <http://www.csc.gov.az/home/post/1476>

with non-governmental organizations according to activity directions of the Commission, public awareness and public participation in decisions adopted by the Commission.

The website of the Commission contains information on activity of the public council<sup>62</sup>.

After the establishment of a new public legal entity on the basis of the two commission, the State Examination Center announced elections for a new composition of the Public Council<sup>63</sup>. The announcement was posted on 17.03.2017 on SEC's official website. The announcement reflects the main purposes of establishment of the Public Council. It reads, "SEC has attached great importance to the participation of the education community in management of the admission process at all stages of examinations, public control over this field, awareness of the public on and transparency of the admission process throughout its activity. Transparency has always been the key principle of SEC's activity. Contents of examinations held by SEC have always been open: admission programs on subjects, model tests, test books for trials and admission exams, test collections and various methodical materials have been developed and presented to entrants. Progress and different phases of admission campaigns have been highlighted on the Internet and mass media.

As the continuation of the above mentioned, SEC is forming a Public Council to organize public control over and ensure transparency of graduation exams on the general secondary education base, processing of materials and inspection of writing works. Members of the Public Council will be formed by the Board of Directors of the State Examination Center. Members of

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<sup>62</sup><http://www.csc.gov.az/home/post/1474>

<sup>63</sup>[http://www.tqdk.gov.az/news/general/2829/?sphrase\\_id=609602](http://www.tqdk.gov.az/news/general/2829/?sphrase_id=609602)

the council will be trained and explained their rights and responsibilities prior to involvement in processes”<sup>64</sup>.

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<sup>64</sup>See: [http://www.tqdk.gov.az/news/general/2829/?sphrase\\_id=609602](http://www.tqdk.gov.az/news/general/2829/?sphrase_id=609602)

## **Public Councils established under Universities**

Public Councils have been created in different models under a number of leading universities of the country. However, we should not that the Law on “Public Participation” does not impose such an obligation on universities. Establishment of public councils can be considered as will of the universities and a positive case.

### **Baku State University**

After the adoption of the decision of the Scientific Board of Baku State University on establishment of a Public Control and Advisory Council under the BSU rector and of its Statue, a composition of 11 members was approved by the order of the BSU rector upon the proposal a special Commission created for formation of Council members<sup>65</sup>.

The key objective of the Public Control and Advisory Council to ensure public control over activity of BSU, organize effective mutual relations between the university and the public, ensure publicity and transparency in the university’s activity, make proposals on protection of rights of staff and students and improvement of their activity<sup>66</sup>.

The Public Control and Advisory Council carries out observation of exam processes and conducts discussions at its meetings to fulfill the above objectives.

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<sup>65</sup>[http://bsu.edu.az/az/news/bdunun\\_rektorluu\\_yannda\\_ctimai\\_nzart\\_v\\_mslht\\_urasnn\\_ilk\\_iclas\\_keirilib](http://bsu.edu.az/az/news/bdunun_rektorluu_yannda_ctimai_nzart_v_mslht_urasnn_ilk_iclas_keirilib)

<sup>66</sup>[http://bsu.edu.az/az/news/bdunun\\_rektorluu\\_yannda\\_ctimai\\_nzart\\_v\\_mslht\\_urasnn\\_ilk\\_iclas\\_keirilib](http://bsu.edu.az/az/news/bdunun_rektorluu_yannda_ctimai_nzart_v_mslht_urasnn_ilk_iclas_keirilib)

## **Azerbaijan State Oil and Industry University**

A Council of Public Trust was established under Azerbaijan State Oil and Industry University in early 2017. The Council of Public Trust consists of 11 members, including MPs, education experts, scientists and NGO representatives.

The Council of Public Trust performs public control over exam processes, instructor-student relations and issues of organization of teaching, and members of the council attend activities relating to public life of the University<sup>67</sup>.

The Council of Public Trust is invited to take part in the meetings of the university's scientific board and presentation of scientific reports<sup>68</sup>.

Information is posted on the website of the University about activity of the Council of Public Trust<sup>69</sup>.

## **Council of Public Control under the Azerbaijan State University of Economics**

According to the Law of the Republic of Azerbaijan on "Public Participation," order No 279 of the minister of education on "Organization and conduction of exam sessions" dated May 11, 2016 and activities implemented in the direction of improving the quality of education, "UNEC Council of Public Control" has been

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<sup>67</sup><http://asoiu.edu.az/az/news/21-adnsu-ve-ufaz-da-universitetin-ictimai-etimad-surasi-nuemayendelerinin-istiraki-ile-mediator-kecirilib>

<sup>68</sup><http://asoiu.edu.az/az/news/67-adnsu-da-novruz-muehazireleri-nin-noevbeti-goeruesue-olub>

<sup>69</sup><http://asoiu.edu.az/az/search?q=%C4%B0ctimai+etimad+%C5%9Furas%C4%B1>

established considering importance of ensuring objectiveness in assessment of student's knowledge, preserving transparency, participation of the public and civil society representatives in exam processes. Control over the UNEC's summer exam session is assigned to this establishment without any exception<sup>70</sup>.

The council is composed of scientific figures in education, experts and civil society representatives.

The Council of Public Control holds events on outcomes of exam sessions as a rule and discloses its opinions on the outcomes for media<sup>71</sup>.

Information is posted on the website of the University about activity of the Council of Public Control<sup>72</sup>.

### **Council of Public Control under Azerbaijan University of Languages**

A Council of Public Control was established by the decision of the Scientific Board of Azerbaijan University of Languages (AUL) as consisting of 13 members on December 28, 2016. NGO and media representatives and education experts are represented in the Council established to further strengthen public participation and increase transparency at the university and organize effective mutual relations with the university and the public<sup>73</sup>.

The Council of Public Control consists of 13 members, including scientific figures in education, experts, NGO and media

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<sup>70</sup>[http://525.az/site/?name=xeber&news\\_id=60215](http://525.az/site/?name=xeber&news_id=60215)

<sup>71</sup><http://unec.edu.az/unec-ictimai-nezaret-surasi-yay-imtahan-sessiyasinin-yekunlarina-dair-hesabatini-aciqlayib/>

<sup>72</sup><http://unec.edu.az/?s=%C4%B0ctimai+%C5%9Eura>

<sup>73</sup><http://paralel.az/tehsil/6885-adu-da-ctimai-nezaret-shurasi-yaradildi.html>



representatives. During its first meeting held on January 06, 2017, the Council of Public Control set key directions of its activity<sup>74</sup>. Information is posted on the website of the University about activity of the Council of Public Control<sup>75</sup>.

### **Council of Public Control under Azerbaijan State Pedagogical University**

The Council of Public Control under Azerbaijan State Pedagogical University consists of 13 members, including education experts, NGO and media representatives. The new composition of the Public Council was formed in December of 2016. The Public Council performs control over exam process of the university and attends meetings of the scientific board and other events of the university. Information is posted on the website of the University about activity of the Public Council, but the website does not contain a special section for the council.

**Similar public councils have been established under other universities, as well. However, websites of those universities and media outlets either do not have or have little information about activity of those councils.**

### **Public Council under the City and District Executive Powers**

According to requirements of the Law on “Public Participation,” city executive power bodies shall also form public councils. Out

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<sup>74</sup><http://adu.edu.az/Az/2017/01/adu-nun-ictimai-n%C9%99zar%C9%99t-surasinin-ilk-iclası-kecirilib/>

<sup>75</sup><http://adu.edu.az/Az/?s=%C4%B0ictimai+N%C9%99zar%C9%99t+%C5%9Euras%C4%B1>

of 86 local executive power bodies, only a few have formed Public Councils. Below, one can find brief information about district executive powers that have established a public council.

### **Council of Public Control under Gabala District Executive Power**

An election commission has been established by the order of the head of Gabala district executive power taking into account requirements of the Law on “Public Participation” and the relevant statute<sup>76</sup>. A Public Council has been established as consisting of 9 members. The website of the executive power reflects a limited number of information on the public council<sup>77</sup>.

### **Council of Public Control under Zagatala District Executive Power**

A Public Council has been established under the Zagatala District Executive Power. However, the website of the executive power does not provide information about that. Model Regulations on Appeal Councils have been posted on the special section created on the website for the public council.

### **Council of Public Control under Binagadi District Executive Power**

The head of Binagadi District Executive Power signed an order on “Establishment of a Commission for elections to the Public

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<sup>76</sup><http://qebele-ih.gov.az/page/111.html>

<sup>77</sup><http://qebele-ih.gov.az/page/109.html>

Council under Binagadi District Executive Power” on November 12, 2014<sup>78</sup>. The Public Council has been formed and a limited number of information has been posted on the website of the executive power about the public council<sup>79</sup>

Though public councils have been established under a few more district executive power, we could not find any information about those public councils.

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<sup>78</sup><http://binegedi-ih.gov.az/page/146.html>

<sup>79</sup> See:<http://binegedi-ih.gov.az/page/146.html>

## **PROBLEMS AND OBSTACLES**

### **Existing Public Councils**

The above comments and brief information on the status of the existing public councils show that a necessary legal base is available for ensuring public participation in the country, including civil participation in decision making and implementation, and the legislation of the country is ahead compared to the regional countries. Also, looking at the above examples we can see that all forms starting from the first to the last phase of public participation are available in the country. Nevertheless, it does not mean that the Law on “Public Participation” is effectively applied as a whole.

The existing public councils were analyzed based on the following questions within the monitoring.

- Have functional Public Councils been established in compliance with the legislation?
- Have competitiveness and transparent elections been ensured in the formation of those councils?
- Does the process of re-election is carried out after the expiry of terms of office of those Councils?
- Do state bodies completely fulfill their obligations assumed under law in the formation of Public Councils?
- Has a special section been created on the official websites of state bodies under which Public Council are operating?
- Do the Public Councils draft and publish annual reports?
- Do the Public Councils have their own websites or pages at social networks?

- Are the existing Public Councils able to function independently?

A few public councils operating under **central executive authorities** have been established in conformity with the formalities specified in the Law on “Public Participation” and the “Regulations on the selection of a Public Council by civil society institutions” approved by the Decision No. 171 of the Cabinet of Ministers in 2014 in relation with the application of this Law. For example, the State Migration Service and the Ministry of Labor and Social Protection of the Population have observed all the formalities.

However, authorities that elect a public council informally intervene with processes in all cases. In fact, there is problem in nomination of candidates, but civil society institutions that are expected to vote for candidates encounter difficulties in their official registration. Thus, such organizations do not take active part in election processes and consequently the election commission or the state body that forms the public council is to involve civil society representatives in election processes by themselves. Sometimes, candidates do this by themselves (inviting potential voters). In this regard, councils have not been formed freely even in state bodies which have followed all formalities in the process of formation of public councils.

The Public Council under the State Agency for Public Service and Social Innovations under the President of the Republic of Azerbaijan and the “Public Council on work with Youths under the Ministry of Youth and Sport” had been established before the

enforcement of the Law on “Public Participation” and their activity has not been aligned with requirements of the law after it entered into force. New elections have not been held.

Another problem related with functional Public Councils is absence of relevant conditions for activity of those councils. The Law on “Public Participation” provides, *“Issues related with technical (at the funds of a central and a local executive authority, a local self-government body) and information provision of a public council shall be resolved by the relevant central and local executive authority, the local self-government body.*

*The central and local executive authority, the local self-government body shall create necessary conditions for activity of the public council<sup>80</sup>”.*

Regarding activity of existing public councils, central executive authorities that have established those councils shall provide space in their administrative buildings only for meetings of the councils. In this respect, public councils do not have permanent offices, communication means, office equipment, etc, which impedes effective activity of public councils. Members of public councils face difficulties in relation with official journeys and other issues due to lacking financial means.

Only the Public Committee under the Ministry of Justice used to fund its activities at grants received from various donors in the past. At present, problems related with access to grants make receipt of such funds very difficult, as well.

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<sup>80</sup><http://e-qanun.gov.az/framework/26879>

Most functional Public Councils face a problem with access to data of central executive authorities they belong to. The Public Council under the Ministry of Labor and Social Protection of the Population had been able to perform public control over activity of the ministry in all directions and the ministry had provided relevant technical support with this respect before the enforcement of the Law on “Public Participation”. At the same time, all projects drafted by the ministry had been sent to the public council for its opinion in writing. Presently, this practice is applied any more.

Observations show that all the public councils prefer passive activity as a rule. Mechanisms for independent control over activity of central executive authorities under which public councils function have not been created except for meetings. For instance, the public council under the State Migration Service is not able to access to the Migrants Detention Center without obstacles and advance notification. Activity of this public council is limited to a few meetings in a year and submission of proposals to the service. All other public councils, except for the Public Council under the Ministry of Justice, are in the same situation.

The Public Council under the Ministry of Justice has been entitled to access to all penitentiary institutions, make visits, hold confidential interviews with prisoners, examine bodies of prisoners (if a prisoner complains of torture and wishes to), prepare a report and submit to the ministry of justice through management of institutions (in a closed envelop) since 2006, and does not need any agreement for the above activities. This mechanism works by itself and gives an effect. The adoption of

the Law on “Public Participation” granted the public council the right to perform public control over activity of the ministry in other areas, as well. Issues relating to those areas are discussed at the public council and it participates in processes. However, mechanisms for active (without invitation) participation and control in other directions have not been developed yet. Those mechanisms are under elaboration. The Public Council under the Ministry of Justice is the only establishment with the status of public council that has its own website among functional public councils.

In fact, the essence of this law provides for completely independent activity of the public council based on the regulations and rules defined by itself. Nevertheless, participation in other public councils is agreed in advance or takes place only with the invitation of a relevant state authority.

### **Reasons for absence of Public Councils under other agencies and for failure to apply other forms of public participation**

Though it has been 3 years from the application of the Law on “Public Participation” as written in the report, the majority of central and local executive authorities has not established public councils and do not apply other forms of public participation specified in the law. What are the reasons for availability of public councils only in 5 out of 36 central executive authorities and in a few of 86 local executive authorities and absence of other forms of public participation in all those organizations? As mentioned before in this report, we are not about the absence of all forms of public participation in local self-government bodies.



As indicated in the report, mechanisms and practice of application of public participation in the country are extensive and the legal regulation of public participation is not limited to the Law on “Public Participation”. Moreover, public councils, a constant form of public participation, had been available even before the Law on “Public Participation” entered into force. Also, a measure on “Establishing relevant councils or partnership networks by state bodies serving the population in order to improve partnership with civil society institutions” was considered in the “National Action Plan for Promotion of Open Government for the years 2012-2015” approved by the Decree No. 2421 dated September 05, 2012, and public councils or cooperation councils have been established in a number of central executive authorities under that measure.

The measure considered in the National Action Plan has not been implemented by the majority of central executive authorities. The State Committee on Property Issues, the Ministry of Taxes, the State Customs Committee and other central executive authorities have not formed such councils. This is because relevant organizations are directly not interested in the establishment of such councils. However, the Ministry of Taxes maintains cooperation with NGOs and receives their proposals on a number of issues as mentioned above.

Though the sections 4.1. and 4.2. of the “National Action Plan for Promotion of Open Government for the years 2016-2018” include specific provisions on improvement of participation of civil society and application of public councils and other forms of public participation, it has been more than a year since the application of NAP and the majority of central and local

executive authorities has not established public councils and does not apply other forms of public participation.

Observations conducted during the monitoring show that most local executive authorities are waiting for extra orders for establishment of public councils, while there is a direct order in the law and the “National Action Plan for Promotion of Open Government”, and such councils have been established in a number of local executive authorities without any additional order or decision.

Another reason for absence of Public Councils, in particular those under local executive authorities is passive character of civil society institutions. Observations show that such councils have been established (for ex. Gabala district) or under formation (Shamkir district) in districts where NGOs are active. From this point of view, passive character of civil society institutions can be considered as one of the key reasons for absence of public participation forms despite that it does not release central and local executive authorities from responsibility.

Liability is specified in the law due to inconformity with requirements of the Law on “Public Participation”. The article 20 of the law provides, “*Violation of requirements of this Law shall be held liable in accordance with the Code of Administrative Offences of the Republic of Azerbaijan*<sup>81</sup>”.

The item 1.1.2 of the Decree of the President of the Republic of Azerbaijan on the application of the Law No. 816-IVQ of the Republic of Azerbaijan on “Public Participation” dated

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<sup>81</sup><http://e-qanun.gov.az/framework/26879>

November 22, 2013 provides, “*shall prepare a draft law specifying administrative responsibility for violation of this Law and submit to the President of the Republic of Azerbaijan*”<sup>82</sup>”

So far, specific administrative responsibility has not been defined despite of a concrete requirement of law. Even if responsibility is defined, it is under question who is going to be the organization that will apply the responsibility and perform control. It is the head of a central and a local executive body or a local self-government body who is entitled to make decisions on formation of public councils and election commissions in the above bodies. In this case, it does not seem real to apply an administrative penalty to those entities.

Thus, presence of administrative responsibility will not solve the problem. The problem can be partially solved by improving mechanisms and giving additional instructions in the order of subordination.

### **Problems and conflict of interests in the mechanisms for establishment of Public Councils**

Mechanisms for formation of public councils, the most important form of public participation, impede free activity of NGOs that are members of public councils. The provision 6.3 of the Law on “Public Participation” provides, “*A central and a local executive authority, a local self-government body shall release an announcement on nomination of candidates for a public council, a starting date and a deadline for their registration on their websites and by other means*”<sup>83</sup>”.

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<sup>82</sup><http://e-qanun.gov.az/framework/27044>

<sup>83</sup><http://e-qanun.gov.az/framework/26879>

The provisions 2.2., 2.3. and 2.4. of the “Regulations on the selection of a Public Council by civil society institutions” provide, “*Elections to public councils shall be arranged by central and local executive authorities, local self-government bodies.*”

*Election commissions consisting of 9 members shall be created for organization of elections to public councils under central and local executive authorities, local self-government bodies.*

*The composition of election commissions shall contain 4 members from employees of central and local executive authorities, local self-government bodies, and 5 members from representatives of civil society institutions (representatives of civil society institutions specialized in relevant areas in relation to public councils established under central executive authorities)<sup>84</sup>”.*

Those provisions of the law make public councils practically dependent on bodies that are expected to perform public control. Such bodies that have mechanisms for formation of public councils in hand get an opportunity to intervene with formation of the composition of public councils, which enables those bodies to remove members who are “not good” from their point of view during next elections.

The provision that prevents conflict of interests in the Law on “Public Participation” is not perfect. The provision 6.7. of the Law provides, “*Members of the Public Council do not get salaries, fees, compensations and other payments<sup>85</sup>”.* However, some state bodies, including the Ministry of Labor and Social

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<sup>84</sup><http://e-qanun.gov.az/framework/27803>

<sup>85</sup><http://e-qanun.gov.az/framework/26879>

Protection of the Population and the Ministry of Youth and Sport provide NGOs financial support through in ways. Thus, a significant portion of social orders for NGOs of the Ministry of Labor and Social Protection of the Population is given to NGOs that are members of the public council. Financial support allocated by the Ministry of Youth and Sport is provided to NGOs that function under the ministry. This case forms a loyal attitude in NGOs towards the body in which they are expected to perform public control. The legislation should regulate this issue by protecting interests of NGOs that are members of public councils. In this regard, the best way is conduction of tenders for social orders by the third body. Such mechanisms have been considered in the draft Law on “Social Orders,” but the draft law has not been tabled for discussions since 2012 when it was submitted to the Milli Majlis.

### **Gender aspects Public Participation**

Gender equality is also an important issue in the process of Public Participation. This balance is not in favor of women. Thus, only 3 out of 14 members of the public council under the Ministry of Labor and Social Protection of the Population, 2 out of 10 members of the public council under the Ministry of Justice, 1 out of 5 members of the public council under the State Migration Service. The situation is the same in other public councils, as well.

## **RECOMMENDATIONS**

### **Legislation**

Establishment of public councils is entrusted to state and local self-government bodies in the Law on “Public Participation.” Decision making on formation of public councils and establishment of election commissions (otherwise a public council cannot be formed) is realized by the decision of the head of a relevant body. This case creates a serious obstacle for the application of the law for 3 years.

It would be reasonable to entrust initiation of relevant amendments and additions to this Law and the “Regulations on the selection of a Public Council by civil society institutions” approved by the decision of the Cabinet of Ministers on the application of this law and formation of public councils to the third party which would lead to better application of the law.

Procedures related with mechanisms for formation of public councils should be changed in the Law on “Public Participation.” According to the law, public councils shall be formed by authorities in which those public councils are expected to carry out public control. Issues such as formation of an election commission, announcements on nomination of candidates, etc. should be assigned to the third authority. In this case, Public Council would be more independent.

Though the article 20 of the Law on “Public Participation” considers responsibility for violation of requirements of this law,

a provision on the corresponding responsibility has not been included into the Code of Administrative Offences. In addition to the inclusion of relevant provisions into the Code of Administrative Offences on the corresponding responsibility, the names of specific positions held liable responsible should be included into the law that ensures public participation;

Additional measures should be taken in connection with the application of public participation forms other than public councils specified in the Law on “Public Participation.” Relevant amendments and additions are recommended in the “Rules for conduction of public hearings and public discussions on draft legal acts prepared by central and local executive authorities, local self-government bodies” approved by the Cabinet of Ministers. Provisions making application of other forms of public participation imperative should be reflected in the law and responsibility should be considered for violation of the law.

### **Improving the practice of application of the legislation on public participation**

It would be reasonable to create a monitoring group consisting of civil society representatives to implement activities on “Organizing, strengthening and sustaining activity of public councils,” “Creating separate sections on official websites for and regular updating of information on the composition and activity of public councils” and “Elaborating public control mechanisms for protection of consumer rights, improving operation of the hotline created for this purpose and implementing awareness activities with this respect” considered in the National Action

Plan for Promotion of Open Government for the years 2016-2018 or to assign this activity to the Government-Civil Society Platform on the Promotion of Open Government;

It would be better to set a methodical document or instructions on creation of separate sections on official web pages to ensure the implementation of the activity considered in the National Action Plan in creation of separate sections on official web resources for and regular updating of information on the composition and activity of public councils. The existing practice seems unsystematic.

Gaps and shortcomings in the law and practice of its application should be defined and removed to prevent formal public participation.