



# The Legal Profession Reform Index

For

# Azerbaijan

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## INTRODUCTION

The American Bar Association's Central European and Eurasian Law Initiative (ABA/CEELI) developed the Legal Profession Reform Index (LPRI) to assess the process of reform among lawyers in emerging democracies. The LPRI is based on a series of 24 factors derived from internationally recognized standards for the profession of lawyer identified by organizations such as the United Nations and the Council of Europe. The LPRI factors provide benchmarks in such critical areas as professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations. The Index is primarily meant to enable ABA/CEELI or other legal assistance implementers, legal assistance funders, and the emerging democracies themselves to implement better legal reform programs and to monitor progress towards establishing a more ethical, effective, and independent profession of lawyers. In addition, the LPRI, together with ABA/CEELI's companion Judicial Reform Index (JRI), will also provide information on such related issues as corruption, the capacity of the legal system to resolve conflicts, minority rights, and legal education reform.

The LPRI assessment does *not* provide narrative commentary on the overall status of the legal profession in a country, as do the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. Rather, the assessment identifies specific conditions, legal provisions, and mechanisms that are present in a country's legal system and assesses how well these correlate to specific reform criteria at the time of the assessment. In addition, it should be noted that this analytic process is not a statistical survey. The LPRI is based on an examination of key legal norms, discussions with informal focus groups, interviews with key informants, and on relevant available data. It is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system at a particular moment in time through the prism of the profession of lawyers.

## SCOPE OF ASSESSMENT

Assessing legal profession reform faces two main challenges. The first is defining the terms legal professional and lawyer. The title Legal Profession Reform Index is somewhat of a misnomer. The LPRI focuses its attention on lawyers; however, most of the world's legal professions are segmented into various categories. For example, the Council of Europe lists several distinct categories of legal professionals, including judges, prosecutors, lawyers, notaries, court clerks, and bailiffs. ABA/CEELI could have included all of these professions, and perhaps others, in its assessment inquiry; however, the resulting assessment would likely become either overly complex or shallow.

In order to keep the LPRI assessment process manageable and to maintain its global applicability and portability, ABA/CEELI decided instead to focus on professions that constitute the core of legal systems; i.e., professions that are universally central to the functioning of democratic and market economic systems. As such, CEELI eliminated such professions as notaries, bailiffs, and court clerks because of variations and limitations in their roles from country to country. In addition, ABA/CEELI decided to eliminate judges and prosecutors from the scope of the LPRI assessment, because it wanted this technical tool to focus on the main profession through which citizens can defend their interests vis-à-vis the state. Independent lawyers, unlike judges and prosecutors, do not constitute arms of government. In addition, ABA/CEELI has also developed the JRI, which focuses on the process of reforming the judiciaries in emerging democracies. At some point, CEELI may also consider developing an analog assessment tool for prosecutors in order to complete the assessment triad.

Once ABA/CEELI determined which category of legal professionals would be assessed by the LPRI, the remaining issue was to define the term lawyer. In the United States and several other countries, lawyers constitute a unified category of professionals. However, in most other countries, lawyers are further segmented into several groups defined by their right of audience before courts. For example, in France, there are three main categories of advocate lawyers:

*avocat, avoués à la Cour, and advocates aux Conseils.* An *avocat* is a lawyer with full rights of audience in all courts, who can advise and represent clients in all courts, and is directly instructed by his clients and usually pleads in court on their behalf. An *avoués à la Cour* has the monopoly right to file pleadings before the Court of Appeal except in criminal and employment law cases, which are shared with *avocats*. In most cases, the *avoués à la Cour* only file pleadings but does not plead before the court. He has no rights of any sort in any other court. The *advocates aux Conseils* represents clients in written and oral form before the Court of Cassation and the *Conseil d'Etat* (the highest administrative court of France). Tyrell and Yaqub, *The Legal Professions in the New Europe*, 1996. In addition to rights of audience, large numbers of government lawyers and corporate counsel, who are not considered independent professionals, as well as the practice in some countries of allowing persons without legal training to represent clients, further complicates efforts to define the term "lawyer."

These issues posed a dilemma, in that, if ABA/CEELI focused exclusively on advocates (generally understood as those professionals with the right of audience in criminal law courts), it could potentially get an accurate assessment of perhaps a small but common segment of the global legal profession, but leave the majority of independent lawyers outside the scope of the assessment, thus leaving the reader with a skewed impression of reform of the legal profession. For example, according to the Council of the Bars and Law Societies of the European Union (CCBE), there were 22,048 lawyers currently practicing law in Poland in 2002. Of that number only 5,315 were advocates. If, on the other hand, the LPRI included all persons who are qualified to practice law, that might also produce an inaccurate picture, in that it would include non-lawyers and lawyers who are not practicing law. In order to keep its assessment relatively comprehensive yet simple, ABA/CEELI decided to include in the universe of LPRI lawyers those advocates and civil practice attorneys that possess a law degree from a recognized law school and that practice law on a regular and independent basis, i.e., excluding government lawyers and corporate counsel. In addition, because some of the factors only apply to advocates, ABA/CEELI decided to expand and contract the universe of lawyers depending on the factor in question.

## **ABA/CEELI'S METHODOLOGY**

The second main challenge faced in assessing the profession of lawyers is related to substance and means. Although ABA/CEELI was able to borrow heavily from the JRI in terms of structure and process, there is a scarcity of research on legal reform. The limited research on legal reform that exists tends to concentrate on the judiciary, excluding other important components of the legal system, such as lawyers and prosecutors. According to democracy scholar Thomas Carothers, "[r]ule-of-law promoters tend to translate the rule of law into an institutional checklist, with primary emphasis on the judiciary." Carothers, *Promoting the Rule of Law Abroad: the Knowledge Problem*, CEIP Rule of Law Series, No.34 (Jan. 2003). Moreover, as with the JRI, ABA/CEELI concluded that many factors related to the assessment of the profession of lawyer are difficult to quantify and that "[r]eliance on subjective rather than objective criteria may be ... susceptible to criticism." ABA/CEELI, *Judicial Reform Index: Manual for JRI Assessors* (2001).

ABA/CEELI compensated for the lack of research by relying on fundamental international standards, such as the United Nations Basic Principles on the Role of Lawyers and the Council of Europe's Recommendations on the Freedom of Exercise of the Profession of Lawyer and on ABA/CEELI's more than 10 years of technical development experience in order to create the LPRI assessment criteria. Drawing on these two sources, ABA/CEELI compiled a series of 24 aspirational statements that indicate the development of an ethical, effective, and independent profession of lawyers.

To assist in evaluating these factors, ABA/CEELI developed a manual that provides explanations of the factors and the international standards in which they are rooted, that clarifies terminology, and that provides flexible guidance on areas of inquiry. Particular emphasis was put on avoiding higher regard for American, as opposed to European, concepts of structure and function of the profession of lawyers. Thus, certain factors are included that an American or European lawyer may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading legal traditions have to offer. The main categories incorporated address

professional freedoms and guarantees; education, training, and admission to the profession; conditions and standards of practice; legal services; and professional associations.

In creating the LPRI, ABA/CEELI was able to build on its experience in creating the JRI and the newer CEDAW Assessment Tool<sup>1</sup> in a number of ways. For example, the LPRI borrowed the JRI's factor "scoring" mechanism and thus was able to avoid the difficult and controversial internal debate that occurred with the creation of the JRI. In short, the JRI, and now the LPRI, employ factor-specific qualitative evaluations; however, both assessment tools forego any attempt to provide an overall scoring of a country's reform progress since attempts at overall scoring would be counterproductive.<sup>2</sup> Each LPRI factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of a factor statement to a country's regulations and practices pertaining to its legal profession. Where the statement strongly corresponds to the reality in a given country, the country is given a "positive" score for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a "neutral."

The results of the 24 separate evaluations are collected in a standardized format in each LPRI country assessment. As with the JRI, there is the assessed correlation and a brief summary describing the basis for this conclusion following each factor. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits users to compare and contrast the performance of different countries in specific areas and – as LPRIs are updated – within a given country over time. There are two main reasons for borrowing the JRI's assessment process, "scoring," and format. The first is simplicity. Building on the tested methodology of the JRI enabled a speedier development of the LPRI. The second is uniformity. Creating uniform formats will enable ABA/CEELI eventually to cross-reference information generated by the LPRI into the existing body of JRI information. This will eventually give ABA/CEELI the ability to form a much more complete picture of legal reform in target countries.

Two areas of innovation that build on the JRI experience are the creation of a Correlation Committee and the use of informal focus groups. In order to provide greater consistency in correlating factors, ABA/CEELI will form a committee that will include the assessor and select ABA/CEELI DC staff. The concept behind the committee is eventually to add a comparative perspective to the assessor's country-specific experience and to provide a mechanism for consistent scoring across country assessments. The use of informal focus groups that consist not only of lawyers, but also judges, prosecutors, NGO representatives, and other government officials is meant to help issue spot and to increase the overall accuracy of the assessment.

Social scientists might argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Being sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of lawyers, judges, journalists, and outside observers with detailed knowledge of the legal system. Overall, the LPRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

The LPRI was designed to fulfill several functions. First, ABA/CEELI and other rule-of-law assistance providers will be able to use the LPRI's results to design more effective programs that help improve the quality of independent legal representation. Second, the LPRI will also provide donor organizations, policymakers, NGOs, and international organizations with hard-to-find information on the structure, nature, and status of the legal profession in countries where the

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<sup>1</sup> CEDAW stands for the UN Convention on the Elimination of All Forms of Discrimination Against Women. CEELI developed the CEDAW Tool in 2001-2002.

<sup>2</sup> For more in-depth discussion on this matter, see Larkins, "Judicial Independence and Democratization: A Theoretical and Conceptual Analysis," 44 *American Journal of Comparative Law*. 605, 611 (1996).

LPRI is implemented. Third, combined with the CEELI's Judicial Reform Index (JRI), the LPRI will contribute to a comprehensive understanding of how the rule of law functions in practice. Fourth, LPRI results can also serve as a springboard for such local advocacy initiatives as public education campaigns about the role of lawyers in a democratic society, human rights issues, legislative drafting, and grassroots advocacy efforts to improve government compliance with internationally established standards for the legal profession.

## **ACKNOWLEDGEMENTS**

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The Azerbaijan LPRI report was prepared by Kristine E. Womack, ABA/CEELI Rule of Law Liaison to Azerbaijan. The assessment was conducted from April 29, 2004 through February 28, 2005 by Kristine E. Womack, ABA/CEELI Rule of Law Liaison to Azerbaijan, Lisa Guffey, ABA/CEELI Criminal Law Liaison to Azerbaijan, staff attorneys Parviz Tahmazov, Gulara Guliyeva, Elchin Babanli, Mahir Mushteidzada and Farid Abasov along with Aliya Alakbarova, translator, and Legal Resource Director Ruhyya Issayeva in CEELI's Baku office. The team received strong support from Lynn Sferrazza, CEELI Country Director for Azerbaijan, Claude Zullo, Associate Country Director of ABA/CEELI's Caucasus Programs, Julie Garuccio, Caucasus Senior Program Associate, and Andrew Solomon, former Co-Director – ABA/CEELI Office of Rule of Law Research. In addition, Dr. Carson Clements, ABA/CEELI Legal Analyst in Washington, DC, helped prepare the report for publication. During the course of the assessment, the team met with approximately 30 judges, lawyers, prosecutors, government officials and NGO leaders and reviewed numerous laws and other documents collected by ABA/CEELI or provided by those interviewed. ABA/CEELI is extremely grateful for the time and assistance rendered by those who agreed to be interviewed for this project. Lists of persons interviewed and the documents reviewed are on file at the Washington, DC office of CEELI. Information regarding the identity of Respondents is strictly confidential.

## **AZERBAIJAN BACKGROUND**

### **OVERVIEW OF THE LEGAL PROFESSION**

The term “legal professional” as it is known in Azerbaijan is broadly defined, including anyone who has graduated from law school (which is a four or five year, undergraduate program). After law school, most graduates pursue one of the following careers:

- Procurators, or prosecutors, who oversee investigations and prosecute criminal defendants;
- Investigators, who investigate crimes and are a part of the law enforcement apparatus of the Police Department, national security bodies, or the Prosecutor’s office;
- Judges, who work either in first-instance or appellate courts or in the Court of Cassation or the Constitutional Court, which are the highest courts in the land;
- Advocates are members of the Collegium of Advocates and are the only lawyers allowed to represent clients in criminal matters;
- Jurists, or solicitors known as lawyers, are allowed to work either within companies or government agencies or on their own, and who represent companies, agencies or individuals in civil proceedings;
- Notaries have the power to authenticate signatures, certifying powers of attorneys as well as prepare and file contracts in family law and real estate;
- Public Defenders can only intervene in court proceedings on behalf of a non-governmental organization (NGO) similar to the process of filing an amicus brief. Public Defenders are not required to have any legal education.

For reasons outlined in the LPRI Introduction, the scope of this report will be limited to advocates and jurists, although some factors, such as those pertaining to legal education, can be applied to the broader legal profession as outlined above.

It is worth noting that a person does not need to be a lawyer to represent another person or entity in a civil case. A party can give a “power of attorney” to anyone, whether he/she has legal training. That person receiving the power of attorney can act as a representative of a party in any non-criminal case. In criminal cases, the injured or complaining party has a constitutional right to representation. The complainant’s representative is required to be an advocate; that is, a member of the Collegium of Advocates.

### **HISTORICAL CONTEXT**

More than 10 years after the collapse of the Soviet Union, the Azerbaijani legal profession is still struggling to shed itself of the Soviet system. During the Soviet era, the prosecutor’s office stood at the apex of the legal system and essentially dictated the outcome of cases. The prosecutor frequently intervened on matters that were considered important or when one party had the right personal connections. Presiding judges would yield to the prosecutor’s suggestions on how a case should be decided.

Although the Soviet Constitution included a right to counsel and presumption of innocence, the role of the advocate was limited: the guilt of the defendant was assumed and the advocate’s job was simply to negotiate a more lenient sentence if possible. In political cases, “telephone justice,” whereby Communist Party leaders would call a judge to tell him/her how to decide the case, prevailed. Civil cases were largely non-existent because there were few commercial or property rights subject to dispute. Accordingly, the only practicing attorneys outside the state’s prosecutorial machine were criminal defense attorneys called advocates.

No licensing system existed for advocates under the Communist system. Instead, an advocate had to become a member of the Collegium of Advocates, which was responsible for collecting

fees and taxes and for paying salaries. Private legal practice, as it is known in the West, was largely non-existent.

Since independence, Azerbaijan has taken steps towards advancing the legal profession and the rule of law. It adopted a new Constitution in 1995, which provides for political and individual rights and mandates the separation of powers and the independence of the judiciary. It is a participating state of the OSCE, obliged to fulfill its commitment to the rule of law and human rights standards established in several documents including the Copenhagen, Moscow and Budapest Documents of 1990, 1991 and 1994, respectively. In January 2001, Azerbaijan acceded to the Council of Europe (CoE). As a member of the CoE, Azerbaijan is obligated to bring its legislation into conformity with European standards. It is also a party to the European Convention of Human Rights, violations of which can be brought before the European Court on Human Rights in Strasbourg after all domestic remedies have been exhausted.

## **ORGANIZATIONS OF LEGAL PROFESSIONALS**

In 1999, Azerbaijan began to reform its Soviet-style legal profession. Since 1922, advocates have practiced law through the Collegium of Advocates. The Collegium was governed by the 1980 Provision on the Advokatura of the Azerbaijan Soviet Republic. The Collegium's monopoly on the criminal defense bar was challenged in 1997, when Presidential Decree No. 637 "On Confirming the List of Activities which Require Special Permission (Licenses)" was issued. This decree listed the types of fee-paid services that required a license to practice and included the activity of paid legal services. Resolution No. 103, "On Confirming the Rules for Special Permission for Paid Legal Services (Licenses)," provided the implementing regulations for the Presidential Decree. Accordingly, the government legalized an independent association of licensed lawyers. There was uncertainty, however, in the legal community regarding who was required to obtain a license and what rights the license actually conferred. The Presidential Decree required a license for "paid legal services." The phrase could be interpreted broadly to encompass all paid legal services including activities by advocates and jurists, or more restrictively to apply only to the activities of jurists. The Resolution, however, conferred to a licensed lawyer the right to partake in activities formerly reserved for an advocate. The ability of a licensed lawyer to engage in private criminal defense practice threatened the monopoly of the Collegium. In addition, the Collegium argued that it violated the 1980 Provisions on the Advokatura.

In response to the Resolution and its ensuing confusion, the Minister of Justice published an announcement stating the Presidential Decree and licensing regulations did *not* apply to advocates. In December 1998, the Minister released a letter stating, "in court cases, licensed lawyers cannot participate in the criminal defense of suspected and accused persons." The effect of the letter was to bar licensed lawyers who were not members of the Collegium from representing criminal defendants, thus, maintaining the monopoly of the Collegium.

The Minister of Justice's interpretation of the scope of the Decree and Regulation of licensed lawyers was codified on December 28, 1999, in the Law on Advocates and Advocate Activity ("Law on Advocates"), which entered into force on January 27, 2000. The law established the framework for the legal profession and required membership in the Collegium in order to practice criminal law. Licensed lawyers were restricted to civil and administrative practices. In addition, the Criminal Procedure Code enacted in 2002 reiterates the prohibition on non-advocates to represent criminal defendants. The distinction between advocates and jurists was further confirmed on September 2, 2002, with Presidential Decree No. 782, which removed "paid legal services" from the list of activities requiring special permission (license), thus eliminating the category of "licensed lawyers" all together.

The Law on Advocates also provided the structure for admittance to the Collegium, requiring a university degree in law, three years experience and passing of a written exam before the professional commission. Since its inception, however, the mechanism for admitting new members has not been established. Thus, no new members have been admitted to the Collegium of Advocates since 1999. The original members under the 1980 Provisions of the

Advokatura, therefore, maintain their monopoly on the criminal defense bar. There are approximately 350 members.

On June 11, 2004, amendments to the Law on Advocates passed Milli Majilis, Azerbaijan's parliamentary body. On August 4, 2004, the President signed the new law ("2004 Law on Advocates"). The 2004 Law on Advocates continues to restrict criminal practice to members of the Collegium. The mechanism for admittance to the Collegium is more restrictive with the addition of specialized written exams to practice in the appellate courts, Constitutional Court and Supreme Court. In addition, the 2004 Law on Advocates requires new members to pass an oral interview.

Because this assessment was conducted when the 1999 Law on Advocates was the governing law, it is the main reference used and is cited as the "Law on Advocates." To be complete, however, it is important to include references to the current 2004 Law on Advocates passed while the assessment was on-going. The new law is cited and referred to as the "2004 Law on Advocates." Many provisions remain the same under the 2004 Law on Advocates and thus have no substantive effect on the results of the assessment. Where the provisions differ, however, it is noted and explained. In addition, an addendum has been included at the end of the report regarding the most recent implementation measures of the 2004 law.

## **SUMMARY FINDINGS**

The LPRI assessment for Azerbaijan shows a legal profession that has made little progress to overcome its Soviet legacy. This problem can be directly linked to the fact that no new advocates have been admitted into the Collegium of Advocates since 1999. Although in theory the structure of the Collegium has changed under the 1999 Law on Advocates and the 2004 Law on Advocates, in practice the Collegium continues to function under the 1980 Provisions for the Advokatura. Leadership roles have not changed, membership has not changed and the role of the advocate has not changed.

The effect of failing to admit members into the Collegium of Advocates is a legal profession that is unable to meet the demands and needs of the country. There are only 350 members of the Collegium of Advocates. The population of Azerbaijan is approximately 8 million. The ratio of advocate to person is, therefore, 1 advocate for every 22,887 people. The failure to license and admit advocates into the Collegium is considered critical. The Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE ODIHR) has made the opening of the criminal defense bar a priority for Azerbaijan. A 1999 report by the International League of Human Rights addresses the closed criminal bar as a major curtailment to defending victims of human rights abuse stating, "Preventing independent lawyers from defending dissidents charged with criminal offenses will undermine the broader struggle for human rights and criminal justice."<sup>3</sup>

The problem associated with the diminutive number of advocates is compounded by the imbalance of power in the courtroom. For the most part, the prosecutor's office continues to dictate the outcome of cases. The Collegium's lack of independence leaves advocates vulnerable to the influence of the police, investigators, prosecutor's office and higher political authorities. The power of the prosecutor's office combined with rampant judicial corruption results in a diminished role for the advocate. Advocates are not selected based on their advocacy skills but rather on their ability to negotiate a bribe.

Until the 2004 Law on Advocates is fully and fairly implemented, the situation of the legal profession is unlikely to change. Without implementation, the criminal defense bar will remain closed. It will not become independent but will remain under the influence and power of the

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<sup>3</sup> International League of Human Rights, "Restrictions on the Independent Legal Profession in Azerbaijan", September 1999, Section I(C); available at <http://www.ilhr.org/ilhr/reports/legal/restrict.html>.

prosecutor's office. It will remain subject to the corrupt judicial system. Advocates will remain "decorative figures" in the courtroom. ABA/CEELI will continue to monitor the situation and determine how the new regulations and implementation affect, positively or negatively, the factors discussed in the body of this report.

On the civil practice side, there are no regulations regarding the standards or qualification for the profession. Anyone can represent a party in court on a civil matter through a notarized power of attorney. The civil practice of law is growing in correlation to the expanding business economy. As a result, there is a great need for qualified, trained and educated civil practitioners. Without some framework to regulate the profession, the civil practice will also remain vulnerable to outside influences and corruption.

## TABLE OF FACTOR CORRELATIONS

The Azerbaijan 2004 LPRI analysis reveals a legal profession trapped in the past. While these correlations may serve to give a sense of the relative status of certain issues present, ABA/CEELI emphasizes that these factor correlations possess their greatest utility when viewed in conjunction with the underlying analysis. ABA/CEELI considers the relative significance of particular correlations to be a topic warranting further study. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future LPRI assessments. ABA/CEELI views the LPRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

<b>I. Professional Freedoms and Guarantees</b>		
<b>Factor 1</b>	<b>Ability to Practice Law Freely</b>	<b>Negative</b>
<b>Factor 2</b>	<b>Professional Immunity</b>	<b>Negative</b>
<b>Factor 3</b>	<b>Access to Clients</b>	<b>Negative</b>
<b>Factor 4</b>	<b>Lawyer-Client Confidentiality</b>	<b>Neutral</b>
<b>Factor 5</b>	<b>Equality of Arms</b>	<b>Negative</b>
<b>Factor 6</b>	<b>Right of Audience</b>	<b>Negative</b>
<b>II. Education, Training, and Admission to the Profession</b>		
<b>Factor 7</b>	<b>Academic Requirements</b>	<b>Neutral</b>
<b>Factor 8</b>	<b>Preparation to Practice Law</b>	<b>Negative</b>
<b>Factor 9</b>	<b>Qualification Process</b>	<b>Negative</b>
<b>Factor 10</b>	<b>Licensing Body</b>	<b>Negative</b>
<b>Factor 11</b>	<b>Non-discriminatory Admission</b>	<b>Neutral</b>
<b>III. Conditions and Standards of Practice</b>		
<b>Factor 12</b>	<b>Formation of Independent Law Practice</b>	<b>Negative</b>
<b>Factor 13</b>	<b>Resources and Remuneration</b>	<b>Negative</b>
<b>Factor 14</b>	<b>Continuing Legal Education</b>	<b>Neutral</b>
<b>Factor 15</b>	<b>Minority and Gender Representation</b>	<b>Positive</b>
<b>Factor 16</b>	<b>Professional Ethics and Conduct</b>	<b>Negative</b>
<b>Factor 17</b>	<b>Disciplinary Proceedings and Sanctions</b>	<b>Negative</b>
<b>IV. Legal Services</b>		
<b>Factor 18</b>	<b>Availability of Legal Services</b>	<b>Negative</b>
<b>Factor 19</b>	<b>Legal Services for the Disadvantaged</b>	<b>Negative</b>
<b>Factor 20</b>	<b>Alternative Dispute Resolution</b>	<b>Negative</b>
<b>V. Professional Associations</b>		
<b>Factor 21</b>	<b>Organizational Governance and Independence</b>	<b>Negative</b>
<b>Factor 22</b>	<b>Member Services</b>	<b>Negative</b>
<b>Factor 23</b>	<b>Public Interest and Awareness Programs</b>	<b>Neutral</b>
<b>Factor 24</b>	<b>Role in Law Reform</b>	<b>Neutral</b>

## I. Professional Freedoms and Guarantees

### Factor 1: Ability to Practice Law Freely

***Lawyers are able to practice without improper interference, intimidation, or sanction when acting in accordance with the standards of the profession.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
The majority of legal professionals report they are able to practice law without <i>direct</i> interference, intimidation, or sanction. Reports of <i>indirect</i> interference, however, were overwhelming, nullifying any legal guarantees of independence in the profession.	

#### Analysis/Background:

The independence of the legal profession is established by the Constitution of the Azerbaijan Republic and the Law on Advocates. The Constitution guarantees the separation of powers – legislative, executive and judicial. *Constitution* Chapter II, Art. 7, III and IV. Under the Constitution, the President is the guarantor of judicial independence. *Constitution* Chapter II, Art. 8, IV. The Law on Advocates codifies the independence of the advocate in several articles. Article 1 of the Law on Advocates states: “Advocates shall exercise their duties in accordance with the principles of superiority of law, independence, democracy, respect to human rights and confidentiality.” *Law on Advocates*, Art. 1 (ii); *2004 Law on Advocates*, Art. 1 (ii). The same article further prohibits interference or pressure from “the prosecutor’s office, court, other State bodies, public associations, any enterprise, entity, organization and official.” *Law on Advocates*, Art. 1 (iii); *2004 Law on Advocates*, Art. 1 (iii). Article 15 affirms an Advocate’s independence: “Advocates shall be independent in the course of performance of his obligations and shall comply only with the provisions of legislation.” *Law on Advocates*, Art. 15(i); *2004 Law on Advocates*, Art. 15(i)

The Law on Advocates applies only to members of the Collegium of Advocates. There is no analogous legislation for civil practice attorneys. Guarantees of independence and safeguards against interference are, however, provided by the civil and criminal procedural codes. The Civil Procedure Code gives deference and superiority to the Constitution. *Civil Procedure Code*, Art. 1.2. It further states the illegality of violating the court’s independence. *Civil Procedure Code*, Art. 1.3. The Criminal Procedure Code contains the same guarantees of independence of the court and supremacy of the Constitution. *Criminal Procedure Code*, Art. 2.

In practice, most advocates and civil practitioners report they do not face direct interference or intimidation by government authorities. There were numerous reports, however, of indirect interference. The majority of complaints stem from interference by the prosecutor’s office. If an advocate actively and rigorously represents a client, which necessarily means challenging the prosecutor, he will not be “assigned” clients. Although individuals are free to hire an advocate of their choice, there is an informal assignment process controlled by the prosecutor’s office. The prosecutor’s office effectively cuts out any “undesirable” advocate from the system. The prosecutor or investigator has the power to do this during the pre-trial investigation by telling the detainee, “if you go with Advocate ‘X’, I will seek a lighter punishment but, if you choose Advocate ‘Y’, I will ask for the severest punishment.” Most detainees will, in fact, do as the investigator/prosecutor says because they are unaware of their rights and they know the judges rarely diverge from the prosecutor’s suggested punishment. One advocate reports that although there were 300 criminal cases filed in one year in his region, a region that only has five advocates, he was “assigned” only three cases. He attributes this to his refusal to participate in taking bribes and the fact that he often challenges the prosecutor’s investigation.

Civil practitioners suffer similar consequences if they are too critical of the government. Several civil law firms report that larger businesses and, therefore, the more lucrative businesses, will not retain a firm if they are not “friendly” with the government. The businesses fear jeopardizing their own standing with the government. As a result, they will ask for legal advice but when presented with a contract by the firm to formalize the relationship to provide legal services the contracts are rejected by the companies. The companies state that the firms need to “patch up” their relationships with the government first. Some civil practitioners reported they don’t publicize the businesses they represent so as not to “create problems” for the companies.

Both criminal and civil practitioners cite interference by judges as a common obstacle to the ability to practice law freely. As mentioned in the first example, judges rarely stray from the recommendations of the prosecutor’s office in criminal cases. In addition, practitioners point to the overwhelmingly corrupt judiciary as an impediment to justice. The corruption is seen in two forms: (1) the acceptance of monetary bribes for a favorable outcome and (2) following instructions “from above” regarding the outcome of a case. The reports of bribery in the judicial system are widespread and accepted by the community as the common practice. The public perception is that justice depends on how much you can pay: “If you don’t pay you won’t get what you want.” In fact, advocates are viewed simply as a necessary tool to negotiate the pay off. There is even an understanding as to how much each “player” in the justice system receives from the bribe: the Advocate receives 10% plus costs expended; the remainder is divided between the judge and the prosecutor’s office. The prosecutor must insure that his cut is large enough to share not only with the investigators but also on up the chain of command to the head prosecutor. Advocates refusing to cooperate in this system are denied cases as described in the first example.

The second form of corruption, sometimes referred to as “telephone justice”, denies a lawyer the ability to practice law without interference. No matter how skilled an advocate may be, it will not affect the outcome of a case. Judges make decisions based on what they are told the outcome should be rather than on what the law dictates.

Further, several advocates report that judges and/or the prosecutor’s office initiate contact with a defendant without the defendant’s advocate being present. Respondents report that on several occasions ex-parte communications with a defendant were used as a method of pressuring the defendant to pay a bribe to settle the case or dismiss his current attorney and hire a “preferred” advocate. This practice clearly reflects a more general lack of respect for the lawyer-client relationship.

Despite the very commonplace interference by the prosecutor’s office and judicial branch, advocates maintain that if you want to be independent you can. Independence, however, is often correlated to an advocate’s economic standing. The more financially independent you are, the more independent you can be in your law practice - consequences notwithstanding. The general perception of the “independent” lawyer is they can afford to be outside politics and are not subject to the same pressures other advocates face.

## **Factor 2: Professional Immunity**

***Lawyers are not identified with their clients or the clients' causes and enjoy immunity for statements made in good faith on behalf of their clients during a proceeding.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
<p>The law provides immunity for lawyers. In practice there are no reported criminal cases against lawyers for statements made in good faith on behalf of their clients. However, advocates are routinely identified with their clients. The identification often has negative, sometimes violent, consequences.</p>	

### **Analysis/Background:**

The Criminal Procedure Code prohibits the identification of lawyers with their clients or their causes and affords lawyers immunity for statements made in good faith on behalf of their clients. *Criminal Procedure Code*, Articles 92.1 and 92.9. There is no corollary in the civil procedure code to protect civil practitioners.

There were no reports of cases subjecting an advocate to criminal or other forms of liability for statements made on behalf of a client. Advocates unanimously agree that immunity is recognized and respected. The same cannot be said about identifying advocates with their clients or clients' causes. Several practitioners report that they are identified with their clients, which has resulted in them being politically labeled by the legal community, the government and even the public. For example, one advocate reports that he has avoided politically charged cases for over seven years and yet he is still regarded as an "Opposition Advocate." Consequently, to this day the prosecutor's office "advises" individuals not to hire this advocate, stating it would not be in their best interest.

Another advocate reports that his representation of individuals charged with crimes arising out of the recent political protest in October 2003 over the presidential elections has caused him to be labeled an "Oppositional Advocate." This advocate's subsequent nomination as a judge was blocked, which he attributes to the political label.

Several advocates report similar experiences to the two examples cited above. Other advocates representing or sympathetic to political opposition leaders report they have been subject to police violence. On May 7, 2004, a number of advocates along with journalists attempted to enter the courthouse to observe the trial of several opposition leaders. The area around the courthouse was blocked and surrounded by policemen. Access to the courthouse was denied and the police physically beat several advocates and at least one journalist. Several people in the legal community report that the advocates were beaten because they were "Opposition Advocates." Several advocates, including those beaten and those who witnessed the beatings, filed a complaint with the court concerning the events of May 7<sup>th</sup>. The case is pending in the court system.

Another lawyer reports that police forcefully entered the home of individuals alleged to be involved in the October political protests. During the arrest of the targeted individual, the police fired their guns in the air in the presence of family members, including women and children. Anyone who did not immediately lay prone on the ground was beaten. All of the men at the targeted individual's residence were arrested, including the advocate who identified himself as the attorney for the targeted individual. The men, including the advocate, were all taken to the organized crime unit, a department known for its torture tactics.

### **Factor 3: Access to Clients**

***Lawyers have access to clients, especially those deprived of their liberty, and are provided adequate time and facilities for communications and preparation of a defense.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
The law guarantees lawyers the right to access clients and requires adequate facilities for confidential consultations. In practice facilities are inadequate, communications are rarely confidential and detainees are frequently denied access to an advocate prior to the investigator obtaining a confession.	

#### **Analysis/Background:**

The right to an attorney is constitutionally guaranteed. Article 61 of the Constitution provides every citizen the right to the advice of a lawyer from the moment of detention, arrest or accusation of a crime. Article 67 further commands that every person detained, arrested or accused of a crime be immediately advised of his/her rights. In addition, the Constitution insures the right to defense at all stages of a legal proceeding. *Constitution*, Art. 61 (III). The Constitutional guarantees are supported by the Law on Advocates, which prohibit any restrictions on an advocate meeting and communicating with his client and requires a private and confidential meeting place. *Law on Advocates*, Articles 7 (iv) and 15 (ii) (6); *2004 Law on Advocates*, Articles 7(iv) and 15(ii)(6). Similarly, the Criminal Procedure Code provides an advocate shall have “unlimited opportunities and time to meet his client in private and in confidence.” *Criminal Procedure Code*, Art. 92.9.2.

The most visible failure in the practice of law regarding access to clients can be seen when the facilities for communications between an advocate and his client are viewed. Jails, courthouses and police stations all lack sufficient facilities for legal consultations. Separate, private meeting rooms are not guaranteed and are not the norm. Lawyer-client consultations are rarely confidential. Advocates report that the presence of the police, an investigator, prosecutor or judge is commonplace when an advocate meets with his client. One advocate reports that during his personal detention in jail he repeatedly requested to see his advocate. His requests were delayed for days and his attorney denied access. When his advocate was eventually allowed to see him a policeman remained present in the room at all times during every consultation. With the exception of two known courthouses, defendants are kept in a cage, which presents obvious obstacles to an advocate’s access to their client during trials and ability to consult with and mount a proper defense.

Less visible are the problems faced by a newly arrested or detained individual in accessing an advocate. Although the right to counsel is guaranteed from the moment of detention or arrest, in practice detainees rarely have access to an advocate until after a confession is obtained. Advocates report that police officers often hold detainees in facilities attached to the police station for 10 to 15 days before arraigning them in court. This is in violation of the Criminal Procedure Code, which requires arraignment within 48 hours. *Criminal Procedure Code*, Art. 148.4. During this time, the detainees are not given access to an advocate. Instead, detainees are coerced into signing a protocol refusing representation. Investigators promise a lesser sentence or insure the “safety” of the detainee’s family in exchange for full cooperation. One advocate summed up the problem by stating that the right to counsel becomes a right when the prosecutor has an obligation to enforce the right. The obligation only arises when the detainee demands an advocate, which is rarely the case because most detainees sign the protocol waiving representation under duress. Although the waiver requires an advocate, the detainee and the investigator to co-sign the protocol, it was reported that often times the investigator will have an advocate with whom the investigator has a cooperative relationship (also called a “pocket-

advocate”) sign the document after the fact. Because the public is uneducated about their legal rights, the majority of individuals detained are easily intimidated and coerced to do as they are instructed.

Even when detainees know their rights and attempt to exercise the right to counsel, it is often denied. The recent trial of the opposition leaders has highlighted this problem. Several individuals were arrested in October 2003 because they participated in a protest regarding the presidential elections. The protest turned violent. The individuals arrested included leaders of the opposition parties – i.e. political parties in opposition to the ruling government party. The men have testified to the fact that they were held, some for as long as five days, in the organized crime unit, and denied the right to speak to an advocate. They further testified that during their detention they were tortured and forced to make false statements. When they were eventually allowed to meet with an advocate they report that they were not provided private, adequate facilities to conduct confidential consultations.

#### **Factor 4: Lawyer-Client Confidentiality**

***The state recognizes and respects the confidentiality of professional communications and consultations between lawyers and their clients.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Advocates have the legal right to confidential communications with their clients. In practice confidentiality is generally respected. The exception is in cases where clients are deprived of their liberty and, thus, confidentiality of consultations is suspect.	

#### **Analysis/Background:**

Article 7 of the Law on Advocates prohibits the interrogation of an advocate with respect to his representation of a client. This prohibition does not change under the 2004 Law on Advocates. Documents, evidence and counsel's papers collected in the course of performing one's professional responsibilities cannot be requested or taken from an advocate. *Law on Advocates*, Art. 7 (iii); *2004 Law on Advocates*, Art. 7 (iii). All applications made to an advocate or an advocate's organization shall be treated as confidential. *Law on Advocates*, Article 7 (iv); *2004 Law on Advocates*, Art. 7 (iv). Furthermore, it is an advocate's duty to maintain the secrecy of information obtained during the representation of a client. *Law on Advocates*, Art. 16; *2004 Law on Advocates*, Art. 16. A blanket guarantee of confidentiality to all information obtained by an advocate in the course of performance of his professional duties is provided in Article 17 of the Law on Advocates and remains the same under the 2004 Law on Advocates. At the same time, Article 17 provides an advocate may not disclose information that constitutes a "secret of preliminary investigation" without the consent of the prosecutor or investigator. A "secret of preliminary investigation" is not defined and may include the fruits of an advocate's independent investigation. If an advocate discloses a "secret of preliminary investigation" he "shall bear the responsibility specified by the legislation of the Azerbaijan Republic." *Law on Advocates*, Art. 17 (ii) and (iii); *2004 Law on Advocates*, Art. 17 (ii) and (iii). The consequences for disclosure are set forth in the Criminal Code (Art. 300). This provision has been used adversely against at least one advocate. In that case, an affidavit of a witness was leaked to the press by an unknown source. Criminal charges were immediately brought against the advocate on the case for disclosing investigative secrets. Outside of this one incident, no other reports were made regarding use of this provision against an advocate.

For the most part, advocates and civil practitioners report confidentiality of communications is respected. There are no reports of search and seizure of lawyer's files; no demands for attorney-work product, evidence or documentation; and no reports of an advocate being interrogated or questioned with respect to his representation of a client. But, confidentiality of communications

between an advocate and his client who is being detained are suspect<sup>4</sup>. The presence of an investigator, police officer or prosecutor during a consultation between an advocate and his client is a breach of lawyer-client confidentiality.

### **Factor 5: Equality of Arms**

***Lawyers have adequate access to information relevant to the representation of their clients, including information to which opposing counsel is privy.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Azerbaijan law provides the right to access information relevant to the representation of a client. In practice, access to information is under the control of the prosecutor's office in both criminal and civil cases.	

#### **Analysis/Background:**

An advocate has the right to conduct an independent investigation, collect documents, request, review and copy information and documents from entities, enterprises and organizations, which are necessary for rendering legal assistance. *Law on Advocates*, Article 15 (ii); *2004 Law on Advocates*, Art. 15 (iii); *Criminal Procedure Code*, Art. 92.9 et.al.; *Civil Procedure Code*, Art. 68.2 et. al.

Advocates report there are few problems obtaining information from the prosecutor after an investigation of a case is complete. In fact, most report that the entire investigative file is given to them. Although full information is typically turned over, advocates advise that it is not always given in a timely manner to allow for preparation of a real defense. One advocate states that if the information is not given *before* trial it can always be reviewed *during* trial. This particular advocate viewed this as a positive step in access to information in the sense that at least the advocate is privy to the information.

Substantively the information provided by the prosecutor's office can be incorrect. When this occurs there is little opportunity for an advocate to counter the evidence or conduct an independent investigation. As a result, most advocates report they are unable to prepare an adequate defense. The inability to conduct an independent investigation is, in part, due to lack of funds needed to conduct an investigation. The larger contributing factor, however, is the inadequate amount of time given to an advocate to review the investigative materials prior to trial. The information is typically provided to the advocate just prior to trial or at the trial itself. An advocate has the right to object to acts and decisions of the preliminary investigator, investigator and prosecutor. *Criminal Procedure Code*, Art. 92.9.16; 92.9.20. Advocates report, however, that most judges overrule any objections and deny any requests for a continuance, especially if the motion shows the prosecutor's office did something wrong during the investigation.

In the rare instances where an advocate is involved at the pre-trial investigatory stage of a case,<sup>5</sup> advocates report requesting an investigation separate from the prosecutor's investigation is problematic. One advocate reports he filed twelve motions on behalf of his client, a victim of a stabbing incident, with the prosecutor's office requesting an investigation of the events surrounding the stabbing. The prosecutor's office ignored each request. The advocate then filed eight motions with the court, which eventually opened a case and ordered an investigation.

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<sup>4</sup> See Factor 3, *infra*.

<sup>5</sup> At the suggestion of the prosecuting authority, an advocate can participate in the investigation. *Criminal Procedure Code*, Art. 92.9.3.

Furthermore, advocates report that the Institute of Investigative Experts, which conducts the necessary scientific testing and analysis of evidence, will not proceed with an investigation unless an advocate presents a letter of permission from the prosecutor's office. If the testing is on evidence held by the prosecutor's office, for example drugs, advocates report the evidence is simply never submitted to the institute, further impeding the process.

Advocates also report favoritism or turning a blind eye as a common practice by the prosecutor's office prior to and during investigations. Bribery or personal relations dictate the course of an investigation more than the facts or the law. In the end, access to information is limited to what the prosecutor's office approves and reports. An advocate, therefore, may ultimately have access to the information held by the prosecutor's office but there is little that can be done to mount a defense. This reality nullifies the meaning and purpose of the legal provisions for equity of arms.

Civil practitioners with a commercial practice report they do not face the same problems their criminal defense counterparts experience in gaining access to information. Civil practitioners handling cases of administrative violations, however, did report difficulties in obtaining information. One advocate reports by way of example that out of twenty cases only five files were provided prior to any court proceeding. The remaining files were presented to him at the pre-trial proceeding. Overall, the perception is that if the case does not involve a large amount of money or the government does not have an interest in the outcome, then information is readily accessible. Otherwise, access to information is strongly in favor of the prosecutor's office, crippling any effort to adequately defend a client.

**Factor 6: Right of Audience**

***Lawyers have the right to appear before judicial or administrative bodies on behalf of their clients, are not refused that right and are treated equally by such bodies.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>Advocates have the right to appear before judicial and administrative bodies on behalf of their clients in all types of cases, both civil and criminal. This right is generally respected. Jurists, however, only have the right of audience in civil matters. Jurists' rights are typically not respected. Both advocates and jurists face unequal treatment by judicial and administrative bodies.</p>	

**Analysis/Background:**

The Law on Advocates states “**only** advocates shall be entitled to act as counsel in course of court session, preliminary inquiry and investigation associated with criminal court cases.” *Law on Advocates*, Article 4 (ii) (emphasis added). Furthermore, persons who are not members of the Collegium of Advocates are prohibited from engaging in advocate activities. *Law on Advocates*, Article 9 (i). Under Article 4 (iii) advocate activities are defined as:

- (1) representing physical persons and legal entities in governmental and non-governmental authorities and institutions, including foreign states and international organizations;
- (2) giving oral and written advice, opinion and consulting with respect to legal matters;
- (3) drafting applications, complaints and other legal documents;
- (4) rendering legal assistance to physical persons and legal entities, providing legal grounds for their activities;
- (5) providing other legal assistance.

The issue is complicated, however, by a footnote to Article 4 that states, “[the] type of activities stipulated by clause (iii) of this Article may also be performed under the procedure specified by the law by lawyers not being members of the bar of advocates.” The term “lawyer” as used in the footnote is not defined and has been a source of confusion for the legal profession. It is generally accepted by the community that this footnote allows persons holding a university degree in law and who are not members of the Collegium of Advocates to render legal services in civil matters. Because a corollary to the Law on Advocates does not exist for jurists, civil practitioners are only subject to the civil code and civil procedure code. But, under the civil procedure code, any person,<sup>6</sup> regardless of legal training, with a notarized power of attorney has the right to represent an individual or entity in a civil matter. *Civil Procedure Code*, Chapter 6. Accordingly, under the law jurists do not have a distinct right of audience different from the public’s right to act as a representative.

The right of audience significantly changed with the enactment of the 2004 Law on Advocates. On June 11, 2004, amendments to the Law on Advocates passed Milli Majlis, Azerbaijan’s parliamentary body. The President signed the law on August 4, 2004. Under the 2004 Law on Advocates, the right of audience is controlled by a series of exams that confer the right to appear before a court or administrative body. Article 1 (iv) of the amended law states:

The advocate activities shall be carried out in accordance with the level of access of advocates to different judicial instances. The persons who have successfully passed the professional examination defining the suitability of professional qualifications shall be granted access to relevant proceedings at all first and appellate instance courts in the territory of the Azerbaijan Republic. The advocates who, based on their wish, have successfully passed the additional professional examination defining the possibility of access to the Constitutional Court and the Supreme Court of the Azerbaijan Republic shall be granted access to proceedings at relevant courts for rendering legal assistance.

The amended law continues to restrict advocate activities to members of the Collegium of Advocates. *2004 Law on Advocates*, Article 9 (I). Advocate activities, however, are redefined to include legal services in criminal cases, representation at the Supreme Court of persons who lodge cassation complaints in civil cases and representation at the Constitutional Court for violations of rights and freedoms. *2004 Law on Advocates*, Article 4 (II). The newly defined sphere of advocate activities correlates directly with the professional exams required to have a right of audience. The amended law exempts current members of the existing Collegium of Advocates and licensed lawyers<sup>7</sup> from the qualification exams giving them full right of audience in civil, criminal, administrative cases and cases concerning economic disputes in courts of first instance and appellate instances. *2004 Law on Advocates*, Transitional Provisions Article I. The new Collegium members’ right of audience includes proceedings at the Constitutional Court and Supreme Court, but for a limited time frame. *2004 Law on Advocates*, Transitional Provisions Article I. The time frame is set as three months after the constitutive meeting (the first meeting of all the new members of the new Collegium of Advocates) at which time the professional examinations for admittance to the Constitutional Court and Supreme Court are held. *2004 Law on Advocates*, Transitional Provisions Article I and V. Advocates involved in on-going cases before the Constitutional Court and Supreme Court shall continue their representation for the duration of that case. *2004 Law on Advocates*, Transitional Provisions Article I.

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<sup>6</sup> Article 71 provides exceptions to the general rule. Persons without full capacity, under custodianship or guardianship, judges, investigators, prosecutors, deputies of Milli Majlis and Ali Majlis, or persons with a conflict of interest may not act as representatives in court. *Civil Procedure Code*, Article 71.

<sup>7</sup> See Addendum - “Who is a licensed lawyer?”

The additional requirement of a special examination to appear before the Constitutional Court can be seen as a further restriction on the right given to individuals to apply to the Constitutional Court for violations of human rights.

Equality in treatment before the courts is guaranteed by the Constitution. “In consideration of legal cases, judges must be impartial, fair, they should provide juridical equality of parties, act based on facts and according to law.” *Constitution*, Article 127 (II). Legal proceedings are to be adversarial in nature. *Constitution*, Article 127 (VIII).

In practice, an advocate’s right to appear before judicial or administrative bodies on behalf of his/her client is respected. Once in the courtroom, however, judges show preferential treatment to the prosecutor and do not treat advocates equally<sup>8</sup>. Jurists, on the other hand, are often harassed by the court about their representation of clients and report they often lose clients due to pressure exerted by the court. One jurist reports on several different occasions a judge has told his clients to retain a “professional advocate.” Another jurist made similar reports that the court or the prosecutor often exerts pressure on his clients to hire an advocate.

Regardless of how the right of audience is defined, and notwithstanding the constitutional guarantee of adversarial proceedings, it is generally accepted by the legal community and the community at large that advocates do not have equal standing in the courtroom. This sentiment was expressed by one advocate saying, “Advocates are merely decorative figures.”

## II. Education, Training, and Admission to the Profession

### **Factor 7: Academic Requirements**

***Lawyers have a formal, university-level, legal education from institutions authorized to award degrees in law.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Advocates are required to obtain a university degree in law. There are no educational requirements to represent a party in a non-criminal matter. Individuals without legal education may act as representatives in court on civil and administrative matters.	

#### Analysis/Background:

A university degree in law is an educational pre-requisite to becoming an advocate. *Law on Advocates*, Art. 8 (i); *2004 Law on Advocates*, Art. 8 (i). There is no similar requirement for civil practitioners. Any person,<sup>9</sup> regardless of legal training, with a notarized power of attorney has the right to represent an individual or entity in a civil matter. *Civil Procedure Code*, Chapter 6. Although most jurists do obtain a law degree, there is no formal requirement.

A law faculty degree is conferred after the completion of a post-secondary four-year program. A master’s degree can be obtained after an additional two years of concentrated study. Baku State University is the only university offering a doctorate degree but the degree is a doctorate of

<sup>8</sup> See discussion under Factor 5, *infra*.

<sup>9</sup> Article 71 provides exceptions to the general rule. Persons without full capacity, under custodianship or guardianship, judges, investigators, prosecutors, deputies of Milli Majlis and Ali Majlis, or persons with a conflict of interest may not act as representatives in court. *Civil Procedure Code*, Article 71.

science, not law. Khazar University, a private university, is planning to develop a doctoral program in law within the next five years.

The Ministry of Education provides the basic academic requirements and general curriculum plan for a law faculty degree. Universities may elaborate on the basic plan but must submit the curriculum to the Ministry of Education for final approval. Until 1990 there were only state institutions. Private universities, therefore, are a new dynamic in the educational system. There are forty-seven universities in Azerbaijan; fifteen are private universities. The majority of the universities are located in Baku, the capital of Azerbaijan, with only nine universities situated in the regions. All universities, both private and public, must receive a license from the Ministry of Education. The license confers the right to teach specific disciplines. Seven universities are licensed to confer a law faculty degree – two are public, five are private. Of these seven universities, only one is located outside Baku – Nakhchivan State University situated in the Autonomous Republic of Nakhchivan.<sup>10</sup> It is known that other universities award law faculty degrees without the approval of the Ministry of Education but the actual number of unofficial programs is unknown.

Respondents all agree that one of the major concerns with legal education in Azerbaijan is the curriculum falls short of meeting international standards. To address this problem, the Ministry of Education is in the process of developing an accreditation procedure for all universities. In April 2004 the government adopted regulations and licensing laws for higher education institutions. The mechanism for implementation of the new regulations have been drafted and distributed to the universities. The accreditation process commenced in September 2004. The process involves (1) a voluntary self-assessment by the universities based on standards and criteria developed by the Ministry of Education; (2) a public opinion survey; and (3) review by the Accreditation Commission. The self-assessment contains questions about the infrastructure, specialization of classes, professors, fee structure of classes, number of students, as well as the curricula content and evaluations of classes. A one hundred point scale system is used to evaluate the universities. Those with a score of fifty or below will be required to either terminate the programs completely or temporarily stop the programs until they comply with the appropriate standards.

## **Factor 8: Preparation to Practice Law**

***Lawyers possess adequate knowledge, skills, and training to practice law upon completion of legal education.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Law schools generally provide lawyers with a theoretical knowledge of the law, but fail to give sufficient practical and analytical skills training to practice law upon graduation.	

### **Analysis/Background:**

It is generally agreed that university graduates with a law degree are ill prepared to practice law. The focus of the law faculty programs is theoretical in nature. The majority of instruction is given through lectures with some seminars. Rote memory of lectures is expected over analytical discussions. Little emphasis is given to developing analytical skills or practical advocacy skills. Universities cite two reasons for this. First, the basic requirements mandated by the Ministry of Education do not require advocacy skills training. Legal education is still an undergraduate degree that does not necessarily place emphasis on legal topics but is all encompassing of humanitarian and social-economic studies. Second, the prosecutorial sector of the legal

<sup>10</sup> There is one autonomous region in the territory of the Republic of Azerbaijan known as Nakhchivan.

community has its own internal regulations regarding practical skills training. The Ministry of Justice operates a training center for judges, prosecutors and law enforcement candidates. It is mandatory for individuals accepted as judges, prosecutors and investigators to attend the training centers. Universities see these centers as technical training for those specific fields of law. Accordingly, the universities historically have seen little need to incorporate technical training in the law faculty curriculum. Unfortunately, no equivalent training center exists for advocates or civil practitioners. As a result, there is a large discrepancy in the skills of legal professionals.

Two private universities, Khazar University and Western University, are beginning to address the need for practical skills training. Both universities have reformed their law curriculum programs and expect to have their programs fully in place by fall 2005. Khazar has adopted a 3-1-2 system. Roughly, three years of undergraduate education, followed by one "pre-law" year and then two years of post-graduate, professional law courses. Western University has adopted a 4-2 system with 4 years of pre-law undergraduate courses and a two-year professional, graduate-level course. Khazar University intends to apply for international accreditation within the next five years at which point the university expects to begin awarding jurist doctorates.

Legal clinics also play a vital role in the development of practical and analytical skills. Khazar University has maintained a legal clinic since 1999. The clinic is mandatory for all law faculty students – that is, all students obtaining a bachelor's degree in law. The clinic aims to provide free legal services to the disadvantaged, thus providing both a service to the community and practical training for the students. Unfortunately, the clinic has seen very few cases. At its peak in 1999 -2000, the clinic received approximately thirty cases. The clinic also faces the difficulty of not being able to represent indigent clients in criminal matters due to the closed criminal bar. With donor support, however, the University is hopeful the clinic will reach a wider community and achieve its goal. Khazar anticipates introducing trial practice procedures in a newly built mock courtroom. Western University has introduced a legal clinic into its curricula. Both universities will institute legal research and writing courses as well as conflict resolution classes addressing negotiation skills, mediation and arbitration.

Baku State University established a master's program in law in 1997. As part of the curriculum program for the master's degree, fifty-four academic hours in the legal clinic is required. The clinic is open two times a week from one to four in the afternoon. It is supervised by three university professors and one practicing attorney. Since its opening in 2001, the clinic reports 70 consultations and one court case.

Three other universities host legal clinics as part of their curriculum. Azerbaijan University offers a legal clinic as an elective course. Odlar Yurdu University established a legal clinic in 2002 as an extracurricular activity for students. Students studying for a master's degree at Odlar can take an elective course on legal clinics. Nakhchivan State University also offers an elective course on legal clinics for its master students.

Even with the availability of some legal clinics, the internship or practicum required of third and fourth year law students is problematic for students attending private universities. The state institution, Baku State University, has the unique position of being able to provide internship opportunities at courts, ministries, prosecutor's office, investigator's office, law enforcement agencies, state agencies or any other governmental body. These governmental bodies unofficially accept only state institution students. A private university student is often requested to pay a "fee" to complete his or her internship. The explanation given by the state bodies demanding money is that if a student is paying for his/her education then he/she should pay the agencies for the internship as well. This puts private university students at a severe disadvantage in completing an internship and getting the hands-on experience needed to develop advocacy skills. In response to this situation, professors and students at private universities rely on personal connections to obtain their own internships.

Another major concern facing the academic institutions in Azerbaijan is the lack of legal resources and materials needed to adequately teach and train students. The availability of material in the Azerbaijani language is minimal. Most courses continue to use Russian language

or English language sources. Some professors will translate the materials themselves for their classes but many times will simply use the original source material. The quality of education, both in scope and depth of knowledge, depends in part on a student's ability to read and comprehend another language. To compound the problem, the numbers of classes the faculty members are responsible for teaching is significantly high. At most universities, a full-time professor teaches fifteen subjects; part-time seven subjects. The class load for professors at Baku State University is not as high because they have more professors to share the class load and their professors specialize in a subject area.

Finally, the level of knowledge, skill and training a recent graduate receives cannot necessarily be measured by the classes taught, clinics attended, grades obtained or diploma received. Too often it is reported that students use either money or connections to ensure good grades and graduation. Some respondents express the level of corruption is much less at private universities where students pay tuition and professors are paid a decent salary. Others believe it continues to be rampant in both the private and public education systems.

### **Factor 9: Qualification Process**

***Admission to the profession of lawyer is based upon passing a fair, rigorous, and transparent examination and the completion of a supervised apprenticeship.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
<p>The law provides for admission to the Collegium of Advocates based in part on passing an examination; however, the exam has not been administered.<sup>11</sup> There is also a three-year work experience requirement but it is not a supervised apprenticeship and can be academic in nature. Civil practitioners are not required to take any form of qualification examination or to serve any type of apprenticeship.</p>	

#### **Analysis/Background:**

On December 28, 1999, the Law on Advocates provided the qualification process for Advocates. It requires a university degree in the area of law and at least three years of experience “as a lawyer or engagement into activities in the field of law in scientific or educational organizations” and passage of an exam before the professional commission.<sup>12</sup> *Law on Advocates*, Art. 8 (i). In contrast, there is no qualifications exam or apprenticeship requirement for a civil practitioner.

The qualification exams for advocates were required to be held by the Professional Commission, also referred to as the Qualifications Commission. *Law on Advocates*, Art. 13 (iv). The rules for holding the examination were to be approved by the Executive Council of the Collegium of Advocates or Presidium. *Law on Advocates*, Art. 13 (viii) and 11 (ii)(5). The Professional Commission was supposed to consist of nine members – three advocates, three judges and three scientist-lawyers (typically academicians). *Law on Advocates*, Art. 13 (ii). The Presidium was supposed to appoint the advocate-members; the Supreme Court was to appoint the judge-members; and the scientist-lawyer-members were to be appointed by the relevant executive authority. *Law on Advocates*, Art. 13 (iii). The Professional Commission was never appointed.

<sup>11</sup> See Addendum, *infra*.

<sup>12</sup> Current members of the Collegium of Advocates are exempted from the exam process along with members of the executive council and members of the executive council of the current Collegium of Advocates. *Law on Advocates*, Transitional Provisions (ii). Furthermore, the current members of the Collegium of Advocates are entitled to continue to operate until the establishment of the new bar. *Law on Advocates*, Transitional Provisions (i).

An exam was never held. No one has been admitted into the Collegium of Advocates since 1999. See Addendum, infra.

The 2004 Law on Advocates, signed by the President on August 4, 2004, also requires an advocate to have a university degree in law, three years work experience as a jurist or in the legal field and successfully pass a professional examination before the Qualifications Commission. *2004 Law on Advocates*, Art. 8 (I). The exam process under the amended law consists of a written exam and an oral interview. *2004 Law on Advocates*, Art. 8 (I). The Qualifications Commission consists of five advocates instead of three, three judges and three scholar-jurists. *2004 Law on Advocates*, Art. 13 (II). The appointment process for the members is the same under both laws. *2004 Law on Advocates*, Art. 13 (II) and (III). The Qualifications Commission is also to conduct the professional exams required for the right of access to the Constitutional Court and Supreme Court. *2004 Law on Advocates*, Art. 13 (IV). Rules for holding the qualification examinations are to be defined by the Presidium. *2004 Law on Advocates*, Art. 13 (VIII).

One improvement in the 2004 Law on Advocates is the creation of an Assistant to the Advocate position. *2004 Law on Advocates*, Art. 8-1. Creation of this position allows a university graduate to work as an apprentice under the supervision and guidance of an advocate.

### **Factor 10: Licensing Body**

***Admission to the profession of lawyer is administered by an impartial body, and is subject to review by an independent and impartial judicial authority.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Admission to the Collegium of Advocates is controlled by the Presidium of the Collegium of Advocates. There are no standardized criteria for admission and the decision is not subject to judicial review.	

### **Analysis/Background:**

The Law on Advocates provides that the Professional Commission shall, “where necessary, request from state authorities, other legal entities and physical persons documents and information, which is pertinent to matters to be considered by the commission” for purposes of verification of suitability of a nominee to the position of advocate. *Law on Advocates*, Art. 13(iv); *2004 Law on Advocates*, Art. 13 (iv). The Professional Commission submits its opinion regarding a nominee’s suitability to the position of advocate to the Executive Council or Presidium of the Collegium of Advocates. *Law on Advocates*, Art. 13 (v); *2004 Law on Advocates*, Art. 13 (v). The Presidium determines membership acceptance and removal from the Collegium. *Law on Advocates*, Art. 11 (ii); *2004 Law on Advocates*, Art. 11 (iii).

The Professional Commission is bound by the regulations approved by the general meeting of the members of the Collegium of Advocates. *Law on Advocates*, Art. 13 (ix); *2004 Law on Advocates*, Art. 13 (ix). A general meeting has not been held since 1995, four years prior to the adoption of the Law on Advocates.<sup>13</sup> Hence, no regulations have been promulgated. Further, the Presidium is not bound by the recommendations of the Professional Commission. In addition, the law does not provide for any objective criteria to be used by the Professional Commission in making its recommendation to the Presidium or by the Presidium in making the ultimate decision on acceptance to the Collegium. Moreover, there are no provisions for appealing a negative decision. The law only provides for re-examination if the refusal is based on failing the exam. In

<sup>13</sup> See Addendum, infra.

that case, a nominee can retake the exam after one-year with the recommendation of the Professional Commission. *Law on Advocates*, Art. 13 (vii); *2004 Law on Advocates*, Art. 13 (vii). Otherwise, no appeal process is available.

Since the enactment of the Law on Advocates in December 1999, the Professional Commission has not been established. Therefore, no examination has taken place and no nominees have been recommended for admittance into the Collegium of Advocates. The Presidium, although continuing to function, has failed to admit any new members, stating that they are waiting for the Professional Commission to be appointed and an exam to take place.

Currently, there is no licensing body regulating civil practitioners. During the brief period in 1998 when a license to practice law was available<sup>14</sup>, the process was administrative in nature. To receive a license, an individual presented a passport, diploma proving a university degree in law, proof of registration with the tax inspector, work log showing two years of legal work and the equivalent of \$350. Most lawyers viewed the process as yet another way for the state to collect revenue, not as a method to monitor the qualifications of lawyers. Two applicants, however, were denied a license because they did not have a university degree in law.

The licensing procedure for advocates as described above remains the same under the 2004 Law on Advocates. Until the Qualifications Committee is established, the criminal defense bar will remain closed. There is already a large gap in the sheer number of advocates needed to adequately represent a population of 8 million people. The official number of advocates is unknown<sup>15</sup> but it is the general consensus of the legal community that there are approximately 350 advocates. Not only is the diminutive number of advocates a concern but the failure to admit advocates for the past five years causes a gap in the knowledge base and level of practical skills of advocates. The failure to license and admit advocates into the Collegium is considered at a critical level. The Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights (OSCE ODIHR) has made the opening of the criminal defense bar a priority for Azerbaijan. A 1999 report by The International League of Human Rights addresses the closed criminal bar as a major curtailment to defending victims of human rights abuse stating, "Preventing independent lawyers from defending dissidents charged with criminal offenses will undermine the broader struggle for human rights and criminal justice."<sup>16</sup> The situation has not changed and, in fact, many advocates and jurists report it has deteriorated since 1999. Some even state it was better in Soviet times.

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<sup>14</sup> See discussion in Factor 6 regarding licensing practice.

<sup>15</sup> Statistic data was requested from the Chairman of the Collegium of Advocates but was not received; see Addendum, infra.

<sup>16</sup> International League of Human Rights, "Restrictions on the Independent Legal Profession in Azerbaijan", September 1999, Section I(C); available at <http://www.ilhr.org/ilhr/reports/legal/restrict.html>.

## **Factor 11: Non-discriminatory Admission**

***Admission to the profession of lawyer is not denied for reasons of race, sex, sexual orientation, color, religion, political or other opinion, ethnic or social origin, membership in a national minority, property, birth, or physical disabilities.***

<b>Conclusion</b>	<b>Correlation: Neutral</b>
Advocates report historically admission to the practice of law does not appear to be denied for any of the cited discriminatory reasons. But, no members have been admitted to the Collegium for the past five years. When admissions do begin, there is concern that the new oral interview provides an opportunity to discriminate because it could be enforced in a subjective and inequitable manner.	

### **Analysis/Background:**

The Law on Advocates denies admission to the Collegium of Advocates to the following individuals:

- persons who have dual citizenship;
- possess obligations in relations with other states;
- do not have capability to act or are considered to have restricted capability to act;
- are not able to perform obligations and duties of the advocate due to mental and physical handicap as per a medical opinion issued under the rules prescribed by law;
- have been previously dismissed from performance of their office responsibilities due to reasons that are inconsistent with rendering legal assistance;
- have been convicted of a low severe, severe or grave criminal offense;
- a person subject to obligatory medical treatment under a court order.

*Law on Advocates*, Art. 8 (ii). The law does not specifically state that admission cannot be denied based on race, gender, religion, or ethnicity. Although these provisions are lacking, advocates do not report discrimination in terms of admission to the legal profession. In the southern region of Azerbaijan there is a large minority population of Talysh. Advocates in that region did not report any forms of discrimination, direct or indirect, to their ability to practice law. Women are also fairly evenly represented in the Collegium, although official numbers are unavailable. On the other side of the bar, however, the prosecutor's office has an admittedly under-representative number of women. The stated reason: "It is a hard, difficult field."

The 2004 Law on Advocates removes the prohibition on admission to persons with physical handicaps. It also revises the provision on previous dismissals as stated above to apply to those "previously dismissed from positions within the legal profession or whose office within the legal profession has previously been terminated due to gross violation of labor discipline, requirements of legislation, norms of behavior including the norms of professional ethics, or due to commission of improper acts." The prohibition on convicted persons is revised to apply to those individuals with convictions for the premeditated commission of serious or very serious criminal offenses that have not been removed or acquitted.

The 2004 Law adds a prohibition relating to persons who commit acts "staining the title of advocate or undermining the prestige of advocacy." This vague description, without further explanation, leaves room for subjective discrimination. There is also concern that the introduction of an oral interview in the admission process provides a means for discrimination. There are no

set criteria for the oral interview and there is no established appeal process<sup>17</sup>. Without any accountability, it is easy to see that the interview process could be a vehicle for discrimination and is cause for concern.

### III. Conditions and Standards of Practice

#### **Factor 12: Formation of Independent Law Practice**

***Lawyers are able to practice law independently or in association with other lawyers.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
Although the law provides advocates and jurists the right to freely choose the type of legal entity they wish to practice in, in reality the majority of advocates are still bound to the legal consultancies due to financial and other constraints. Jurists often face political obstacles in setting up legal entities.	

#### **Analysis/Background:**

The Constitution guarantees the “right to choose independently, based on his/her abilities, kind of activity, profession, occupation and place of work.” *Constitution*, Art. 35. The Constitution further guarantees that “everyone may, using his/her possibilities, abilities and property, according to existing legislation, individually or together with other citizens, carry out business activity or other kinds of economic activity not prohibited by the law.” *Constitution*, Art. 59.

The Law on Advocates provides advocates the right to freely choose how they wish to carry out advocacy activities either individually or through law firms or bureaus. *Law on Advocates*, Art. 5 (v); *2004 Law on Advocates*, Art. 5 (v). State registration of the entity is required prior to commencement of advocate activities and only advocates can be the founders of such organizations. *Law on Advocates*, Art. 5 (vi); *2004 Law on Advocates*, Art. 5 (vi). The Law on State Registration and State Registry of Legal Entities governs the process for registration, which is fairly routine, requiring presentation of foundation documents. The 2004 Law on Advocates does not change the provisions on an advocate’s right to choose the form of legal entity in which he/she wants to practice. Civil practitioners are governed by the Civil Code, which also permits establishment of a solo practice, law firm or bureau. *Civil Code*, Art. 43. The Law on State Registration and State Registry of Legal Entities also regulates the process for registration of civil legal entities.

In practice, the majority of advocates work for legal consultancies, a holdover from the Soviet structure. The total number of legal consultancies is unknown. Each region is supposed to have at least one legal consultancy office. It is known, however, that many regions do not have a legal consultancy at all.<sup>18</sup> In Baku, there are thirteen legal consultancy offices. Each consultancy is managed by the Head of the Legal Consultancy. Historically, the Head of the Legal Consultancy controlled the flow of work and the salary of the advocate members. Advocates report today clients are able to choose the advocate they wish to work with and individual contracts are made between the advocate and the client. The advocate is required, however, to give 25% of the contract price to the Collegium.<sup>19</sup> Advocates report there are few choices other than practicing in a legal consultancy due to the lack of personal resources and an inability to obtain clients

<sup>17</sup> See Factor 9, *infra*.

<sup>18</sup> See Factor 17, *infra*.

<sup>19</sup> See Factor 13, *infra*.

independently. The few advocates who do work independent of the consultancies are financially independent, which allows them to work outside the system. These advocates report few obstacles to establishing their firms. Actually being able to practice freely is a different issue.<sup>20</sup>

Civil practitioners report more difficulty in registering as legal entities. The Ministry of Justice is the executive authority in charge of deciding legal registration. Several jurists report the decision-making process is not objectively based on the required documentation established by the Law on State Registration and State Registry of Legal Entities. Rather, the general opinion is the decisions are made based on a subjective, political agenda. If a founding member of a firm is perceived as politically in opposition to the government, registration is difficult, if not impossible. In contrast, if a founding member of a firm is perceived as non-political there is no interference and registration is a matter of routine.

During the LPRI assessment, the Ministry of Justice was asked to provide statistics on registered legal entities pursuant to the Law on State Registration and State Registry of Legal Entities. The Ministry responded that the law no longer requires a license to provide legal services. The Ministry also commented that it only registered legal entities with foreign investment, branches or representations of foreign legal entities. Other legal entities are registered in regional branches of the Ministry. Legal entities founded in the territory of the Autonomous Republic of Nakhchivan are registered with the Ministry of Justice in Nakhchivan. Thus, the Ministry concluded that the request for statistics would need to include the list of commercial and non-commercial organizations of interest and application would need to be made to the appropriate state bodies.

In addition, the LPRI assessment team requested statistical information from the Head of the Collegium of Advocates. One of the requests included the number of legal consultancies throughout the country. The Head of the Collegium of Advocates did not respond to our request.

### **Factor 13: Resources and Remuneration**

***Lawyers have access to legal information and other resources necessary to provide competent legal services and are adequately remunerated for these services.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
Lawyers do not have adequate access to legal information and lack basic resources necessary to provide competent legal services. Remuneration is critically low.	

#### **Analysis/Background:**

Access to legal information is problematic for any individual working in the legal profession in Azerbaijan. Laws and decrees are officially published in a limited number by the government.

Libraries, or legal resource centers, provide free access to laws. However, these facilities are concentrated in Baku. Only one private corporation, “VneshExpertService” Consulting Company, provides access to the laws through a computer database. Access to the database costs approximately \$600 USD a year, which is a prohibitive fee for legal professionals. Access to the law is much more difficult in the regions. Most advocates in the regions do not have hard copies of the laws, much less a computer to access web-based data. If internet cafes exist in their town, the advocates do not have the resources to pay for the use of the computer and most do not have the legal research skills to access a database. The Ministry of Justice, in cooperation with the U.S. Embassy and US Agency for International Development, has undertaken a project to

<sup>20</sup> See Factor 1, *infra*.

address this issue. A comprehensive legal database incorporating all laws, regulations and decrees will be available on the internet free of charge. It is anticipated the database will be functioning in Fall 2005.

Legal commentaries are also in great need and short supply. Commentaries on the Family Code, Civil Procedure Code, Criminal Procedure Code and Civil Code have been released or will be released in 2005. Commentaries require a significant amount of time and money to complete. The majorities of commentaries are, therefore, funded by international NGOs and are limited in scope. With the comprehensive changes in the law over the past few years there is an urgent need for legal commentaries in every area of law. In addition to a lack of legal commentaries to guide lawyers and judges, only the Supreme Court and Constitutional Court publish a limited number of select decisions. Various efforts have been made by international non-governmental organizations to help the courts implement a judicial opinion publishing process. Thus far, those efforts have not resulted in sustained publishing. This problem stems from the lack of funding to maintain publications and the lack of judicial opinion writing in a civil law code system.

Other resources necessary to provide competent legal services are missing in the legal profession. Office space for advocates is provided by the legal consultancies but often times there is not enough space for each advocate to have his own office or desk. The desks themselves and general office furniture is old and dilapidated. Several advocates reported using their own furniture. Office supplies are minimal at best. Advocates in the region report there is even a lack of stationery.

Remuneration for legal services is difficult to determine. The Law on Advocates provides the right to contract for legal services and the right to negotiate the fees for those services. *Law on Advocates*, Art. 5 (iv) and 19. This right remains the same under the 2004 Law on Advocates. Advocates and jurists all report being able to negotiate a contract with their clients. Respondents report fees vary based on years of experience, reputation in the legal community, and specialization of the attorney. Most contracts set a flat fee for the service to be rendered. Some jurists reported taking contingency cases. Foreign firms and a few individual attorneys charge hourly fees but this is not the norm. Respondents were reluctant to give actual monetary amounts unless discussing state aid cases. This is due in large part to the problems with a high tax rate. Advocates are required to pay an income tax of 25% of reported income and an additional 25% of their fees to the Collegium of Advocates. Accordingly, many attorneys would not discuss the actual fees received for legal services. They did, however, report that only about 10% of the legal profession can earn a living as an attorney.

In regards to state aid cases, the Constitution and the Law on Advocates require the government to bear the costs of legal services for indigent criminal defendants. *Constitution*, Art. 61 (II); *Law on Advocates*, Art. 20, *2004 Law on Advocates*, Art. 20.<sup>21</sup> As far as remuneration is concerned, advocates report that the going government rate is 1,500 manats per hour (equivalent to 0.30 USD). No advocate reports ever receiving money from the government for providing legal aid services assigned and required of them. Collection of fees is not only an issue for state aid cases. Advocates and jurists report difficulties in collecting fees from private clients. Respondents estimate up to 50% of all their cases are essentially pro-bono.

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<sup>21</sup> See Factor 19, *infra*.

## **Factor 14: Continuing Legal Education**

***Lawyers have access to continuing legal education to maintain and strengthen the skills and knowledge required by the profession of lawyer.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Although there are no formal requirements for continuing legal education (“CLE”) within the legal profession, CLE opportunities exist through donor organizations.	

### **Analysis/Background:**

There are no formal requirements for advocates or jurists to participate in continuing legal education (“CLE”) programs. CLE programs are available, however, through international donors who fund NGOs or associations to conduct the courses. Some of the professional associations do provide seminars or workshops but, again, they are unable to conduct CLE without donor support. Most donor-funded programs make an effort to provide CLE in the regions or cover the expenses for attorneys to travel to Baku to attend seminars. Despite these efforts, attorneys in the regions report limited access to CLE.

Although CLE is becoming more available, there is one significant concern. Isolated reports of government interference exist. Each region in Azerbaijan is governed by a Local Executive Authority. Local Executive Authorities are the part of the state executive organs performing state executive duties within their regions. Heads of Local Executive Authorities are appointed by and are solely subordinate to the President of Azerbaijan. Certain topics addressed in CLE trainings have been perceived by the government as within its exclusive realm. Accordingly, the government believes NGOs should not be involved in trainings or programs on those topics. For example, the government recently enacted the National Action Plan Against Human Trafficking. Some seminars on human trafficking funded by NGOs were cancelled by the Local Executive Authorities stating human trafficking is a “government issue.”

## **Factor 15: Minority and Gender Representation**

***Ethnic and religious minorities, as well as both genders, are adequately represented in the profession of lawyer.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Positive</i></b>
Azerbaijan is predominately a mono-ethnic, mono-religious state. As a result, ethnic and religious discrimination is not an issue to practicing law. Both genders are also adequately represented in the profession. However, fewer women are represented in the prosecutor’s office.	

### **Analysis/Background:**

The Constitution guarantees the right to equality. *Constitution*, Art. 25. Article 25 provides:

- I. All people are equal with respect to the law and law courts.
- II. Men and women possess equal rights and liberties.

- III. The state guarantees equality of rights and liberties of everyone, irrespective of race, nationality, religion, language, sex, origin, financial position, occupation, political convictions, membership in political parties, trade union and other public organizations. Rights and liberties of a person, citizen cannot be restricted due to race, nationality, religion, language, sex, origin, conviction, political and social belonging.

Azerbaijan is largely a mono-ethnic state. The most recent census conducted in 1999 by the State Statistical Committee of Azerbaijan states 90.6% of the population is ethnic Azeri. Although official numbers are not available, the majority of the population is Islamic. Accordingly, ethnic and religious discrimination is not viewed as an obstacle in entering the legal profession. No respondent reports concern regarding this matter. Advocates interviewed in the southern region, which has a large national minority of Talysh, report equal representation in the profession.

As of 2003, women constitute 50.9% of the total population in Azerbaijan.<sup>22</sup> The percentage of women in the legal profession is unknown.<sup>23</sup> Female advocates did not report difficulties in admission to the Collegium (when it was admitting members) or obtaining positions as judges. High ranking positions within the legal profession such as judges and Heads of Legal Consultancies, however, are dominated by men. Only two women (out of eight total members) are members of the Presidium of the Collegium of Advocates. Furthermore, gender representation in the prosecutor's office is dominated by men.

For the most part, law schools unofficially report relatively equal balance of male and female students. One school, however, noted they had very few women in the law faculty program - as little as 1% of the enrollment.

### **Factor 16: Professional Ethics and Conduct**

***Codes and standards of professional ethics and conduct are established for and adhered to by lawyers.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
There is no comprehensive code of professional conduct governing advocates or civil practitioners. The Law on Advocates provides a guideline, at best, but it is not recognized by advocates as an ethical code of conduct; it is not enforced; and it fails to have a deterrent effect.	

#### **Analysis/Background:**

Article 18 of the Law on Advocates provides the following ethical standards for advocates:

- shall perform his duties in a perfect manner in accordance with the procedure specified by the provisions of this Law;
- shall not use confidential information for his own interest or interests of third parties for the purpose of easy profit or any other purpose;
- shall not perform actions inconsistent with the activity of protecting rights;
- shall not perform illegal acts;
- shall not perform any action or make any statement offending or degrading human dignity;

<sup>22</sup> The State Statistical Committee of Azerbaijan Republic, 2003 figures.

<sup>23</sup> The information is unavailable from The State Statistical Committee of Azerbaijan Republic. Requests from the Collegium of Advocates remain unanswered.

- shall not impede the presiding judge;
- shall not interrupt persons speaking in the court;
- shall not breach the rules of court session; and
- shall comply with other ethical requirements stipulated by the regulations on professional behavior of advocates approved by the general meeting of the bar of advocates.

Article 18 remains the same under the 2004 Law on Advocates.

The Collegium of Advocates has not promulgated any regulations on the professional behavior of an advocate because they have not held a general meeting since 1995 (see Addendum, *infra*), four years prior to the initial Law on Advocate’s enactment. A comprehensive code of professional ethics for advocates has been proposed by the Lawyer’s Forum, an unregistered association of lawyers that is comprised predominately of jurists but has the participation of some advocates. The proposed code has not been accepted or adopted by the Collegium. There are no codes for professional conduct of civil practitioners and no proposed code. Legal associations (more fully discussed in Section V) also do not have internal policies regarding professional conduct.

When asked about ethical codes or codes of conduct, no respondent referred to the general guidelines provided by Article 18 of the Law on Advocates. To the contrary, all respondents report that there are no professional codes. When questioned whether this is problematic, reports varied. About half of the respondents report it is not a problem because attorneys know and do act pursuant to the “normal norms of ethics and conduct.” The other half considers the lack of a codified standard of professional conduct a significant problem. Most respondents did acknowledge the existence of the Judicial Code of Ethics but all report it is not followed.

There were no reports of any disciplinary action against an advocate for violations of his responsibilities under Article 18 of the Law on Advocates. Despite this fact, the assessment team became aware of multiple examples of unethical conduct. The most common illustration of unethical behavior is corruption. The problem is perceived to be widespread. One judge estimates that 50% of all cases are decided by bribes and 90% of all clients choose an advocate based on his intermediary skills to negotiate a bribe as opposed to his advocacy skills.

The guidelines provided by Article 18 of the Law on Advocates are far from comprehensive. Further, they are not enforced and do not have a deterrent effect. There is a growing population of legal professionals that see the intrinsic value that codes and standards of professional ethics provide. These professionals, however, have yet to promulgate or enact codes of conduct for their own professional associations.

**Factor 17: Disciplinary Proceedings and Sanctions**

***Lawyers are subject to disciplinary proceedings and sanctions for violating standards and rules of the profession.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
There is no functioning disciplinary proceeding or method of sanctioning lawyers for violating standards and rules of the profession.	

**Analysis/Background:**

The only disciplinary structure available for violations of the standards and rules of the legal profession is contained in the Law on Advocates. Accordingly, only advocates are subject to disciplinary proceedings. There is no process for disciplining civil practitioners.

Pursuant to the Law on Advocates, the Collegium of Advocates is to establish a disciplinary committee. *Law on Advocates*, Art. 21. The committee is to be appointed and act in accordance with the regulations adopted by the general meeting of the Collegium of Advocates. *Law on Advocates*, Art. 10 (ii). The provisions for appointment and regulation of the disciplinary committee remain the same under the 2004 Law on Advocates. *2004 Law on Advocates*, Art. 21. The disciplinary committee has never been appointed. Again, this is due to the fact that the Collegium has failed to hold the required annual meeting of members since 1995.<sup>24</sup>

## IV. Legal Services

### **Factor 18: Availability of Legal Services**

***A sufficient number of qualified lawyers practice law in all regions of a country, so that all persons have adequate and timely access to legal services appropriate to their needs.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
A ratio of 1 advocate for every 22,887 people is insufficient to adequately provide legal services to all persons in need. Several regions of the country do not have a single advocate.	

#### Analysis/Background:

The legal community and the international community recognize that there is a severe shortage of qualified advocates in Azerbaijan. As discussed in Factor 10, the total membership of the Collegium of Advocates is estimated to be around 350 members. The population of Azerbaijan is just over 8 million. Accordingly, the ratio is about 1 advocate for every 22,887 people. The distribution of advocates, however, creates a greater hardship on individuals living outside of Baku. The majority of advocates are concentrated in the capital. Although official numbers were requested, they have not been produced. Unofficial reports estimate the number of advocates in Baku to be 300. This leaves only 50 advocates for the rest of the country. The country is divided into 65 rayons or regions. Respondents report that as many as 10 regions do not have any advocates. The statistics show that thousands of individuals in the regions are completely deprived of legal services in criminal matters. For example, in the region of Agstafa the population is 75,600 people.<sup>25</sup> There are no advocates in Agstafa. In the region of Gazakh the population is estimated around 82,500 people. There are no advocates in Gazakh. The same is true for the region of Gobustan, with a population of 35,700. Other regions do not have a sufficient number of advocates for the number of citizens living in the area. In Lankaran, 5 advocates represent a population of 194,800 people. In Jalilabad, 177,700 people depend on 5 advocates. In Masalli, 3 advocates exist for 180,300 people. In Nakhchivan, there are 5 advocates for 367,100 people but three live in Baku leaving only 2 advocates in the entire territory.

Respondents report that in the regions without advocates, the criminal process continues to function: arrests are made, trials are held and judgments are passed down. The proceedings simply go forward without the presence of an advocate, leaving the criminal defendant to represent himself.

<sup>24</sup> See Addendum, *infra*.

<sup>25</sup> The report from 2003 by The State Statistical Committee of Azerbaijan was used for the population data.

## **Factor 19: Legal Services for the Disadvantaged**

***Lawyers participate in special programs to ensure that all persons, especially the indigent and those deprived of their liberty, have effective access to legal services.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
The lack of available advocates, resources and an infrastructure for executing legal aid services results in thousands of individuals, especially the indigent or those deprived of their liberty, being deprived of their right to legal services.	

### **Analysis/Background:**

The Constitution guarantees the right to legal advice and provides payment for legal services to indigent persons. *Constitution*, Art. 61 (II). The Law on Advocates reinforces an advocate's duty to provide legal services to the disadvantaged. *Law on Advocates*, Art. 20. In fact, the Law on Advocates prohibits an advocate from refusing to perform his duties at the request of the State. *Law on Advocates*, Art. 20 (ii). This obligation remains the same under the 2004 Law on Advocates. *2004 Law on Advocates*, Art. 20. There is no framework, however, for providing legal aid services in civil matters. The government is attempting to address this problem through its Poverty Reduction Strategy. As part of the program, the government proposes to open twenty legal aid centers throughout the country. There is insufficient funding in the State budget, however, and international funding has been requested.

Although the provision for legal aid in criminal cases is in the Constitution and the Law on Advocates, there is no framework for executing the services. There are no government legal aid centers separate and apart from the Collegium's legal consultancy centers. It should be noted that there are a limited number of legal aid clinics in the country sponsored by International NGOs but, because the criminal bar is closed, most representatives cannot provide criminal defense aid. In addition, as discussed in Factor 18, the sheer diminutive number of advocates makes it a practical impossibility to provide the population with the services needed. More than 49.6% of the population lives in poverty.<sup>26</sup> As explained in Factor 13, the rate of remuneration from the government for state aid cases is 1,500 manat (equivalent to approximately 30 cents) per hour. Advocates practicing for as many as 20 years report they have never received payment for legal aid services rendered. Even if the government did realize its commitment to pay for legal aid services, it would be impossible for an advocate to make a living at the current rate of remuneration. Despite this fact, advocates take the duty to provide legal services to the disadvantaged seriously and fulfill their obligation irrespective of compensation from the government.

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<sup>26</sup> World Bank Group, 2001 Azerbaijan Data Profile. Figures for 2004 were unavailable.

## **Factor 20: Alternative Dispute Resolution**

***Lawyers advise their clients on the existence and availability of mediation, arbitration, or similar alternatives to litigation.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Negative</i></b>
There is no formal method of alternative dispute resolution (ADR) outside the scope of international contracts. Although an informal ADR process is available, attorneys do not systematically advise their clients of its existence or availability.	

### **Analysis/Background:**

Alternative Dispute Resolution (ADR) is not a developed alternative to litigation in Azerbaijan. Although the Civil Procedure Code allows for the referral of cases to arbitration,<sup>27</sup> a formal domestic arbitration system is not in place. On the national/domestic level, there is an informal process individuals sometimes use prior to initiating any court proceeding. The process is called “the Court of Referees.” It is very similar to an arbitration process. The parties with a dispute agree upon a third person to resolve the conflict. They request the third party to act as the arbitrator over their dispute. If the third party agrees, all three parties enter into a contract giving the arbitrator the authority to resolve the matter. The contract is executed before a notary. The arbiter’s decision is binding but not final. Unlike many standard arbitration procedures, the parties to the dispute can appeal the decision in the courts.

Because the Court of Referees is outside formal court proceedings, it is difficult to quantify how often it is used. Most respondents did not refer to this alternative method of dispute resolution when asked about forms of ADR. In fact, the general consensus is that ADR does not exist except in cases arising out of international disputes. Hence, the majority of attorneys do not advise clients on the existence or availability of the Court of Referees. Respondents familiar with the process downplayed its importance in resolving disputes. These individuals report finding someone to agree to be an arbiter is nearly impossible. One judge, however, reports he always advises parties at the beginning of any proceeding of the availability of the Court of Referees. But, he was unable to give a percentage of how many litigants attempt the process once suit has been filed. Litigation is viewed as the last method to resolve a dispute. The community believes that once a court proceeding has been initiated the parties are incapable of reconciliation.

At the international commercial level, arbitration clauses are recognized and awards upheld by the Azerbaijan Republic Court on Disputes Arising from International Agreements (informally referred to as The Economic Court for International Disputes). The Court’s jurisdiction is limited to cases that deal with international contracts. The Court will enforce an arbitration clause if it is contained in the disputed contract. Because a formal arbitration system is not yet developed in Azerbaijan, most international contracts will designate an arbitration court in the European Union. A need for a formal forum in Azerbaijan to address disputes arising out of international contracts prompted the passage of the Law on International Arbitration. The law applies only to international commercial arbitrations. Under this law, an International Court of Arbitration is being developed to arbitrate international contract disputes in-country. The International Court of Arbitration, however, is not yet fully functioning. In addition, the Azerbaijan Chamber of Commerce is in the process of developing a formal arbitration system within the framework of the Law on International Arbitration. Outside of international contract disputes, however, there are no other programs on court sanctioned mediation or arbitration.

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<sup>27</sup> *Civil Procedure Code*, Art. 29

## V. Professional Associations

### **Factor 21: Organizational Governance and Independence**

***Professional associations of lawyers are self-governing, democratic, and independent from state authorities.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
The only official professional association for advocates is the Collegium of Advocates. The Collegium's governing bodies are non-functioning because they require governmental appointment of the Organizational Committee to begin operations. All other professional associations of civil lawyers appear self-governing, democratic and independent from state authorities despite registration problems.	

#### **Analysis/Background:**

The Collegium of Advocates is the only official professional association for advocates. The Law on Advocates guarantees the independence of the Collegium of Advocates, stating the "bar of advocates shall operate as a non-state, independent, self-managed voluntary union of all advocates on the territory of the Azerbaijan Republic." *Law on Advocates*, Art. 9 (i); *2004 Law on Advocates*, Art. 9 (i). Membership in the Collegium is mandatory to practice criminal law.

The organizational governance of the Collegium is set out in the Law on Advocates. The "structure and activities of the [Collegium of] advocates shall be regulated by the Law [on Advocates] and the Charter of the [Collegium] approved in accordance with the Law [on Advocates] by the general meeting (conference) of the members of the [Collegium]." *Law on Advocates*, Art. 9 (iii). The general meeting is required to take place at least once a year. *Law on Advocates*, Art. 10 (iii). At the general meeting, the governing bodies are to be elected democratically by the members. The members elect the Presidium (the executive council of the Collegium) by secret ballot to a term of three years. *Law on Advocates*, Art. 10 (ii) and 11 (i). The Collegium members also elect the Chairman of the Presidium and the disciplinary committee. *Law on Advocates*, Art. 10 (ii); (see discussion in Factor 17 regarding the disciplinary committee). In turn, the Presidium appoints the advocate members to the Professional/Qualification Committee. *Law on Advocates*, Art. 11 (ii); (See Factor 9).

The 2004 Law on Advocates provides one change to the organizational governance of the Collegium. The general meeting of the members of the Collegium shall be held "at least once in three years by the Presidium" instead of the original annual meeting requirement. *2004 Law on Advocates*, Art. 10 (iii) (emphasis added).

The current organizational structure of the Collegium does not conform to the Law on Advocates or the 2004 Law on Advocates. The Collegium is still operating under the 1980 Soviet Law on Advocates. A general meeting under the 1999 Law on Advocates has never been held.<sup>28</sup> Accordingly, no Charter has been written or approved, the Presidium has not been elected, the disciplinary committee has not been appointed and the Professional Committee has not been established. The current Presidium and acting Chairman have been presiding over the Collegium since 1995. At that time thirteen members, including the Chairman, were elected. Since then two have become judges, one is in prison, one resigned and one left for unknown reasons. The remaining eight members have continued to re-appoint themselves every three years without holding a general meeting. Accordingly, there is no legitimate authorized organ representing the Collegium of Advocates. See Addendum, *infra*.

<sup>28</sup> See Addendum, *infra*.

Although the Presidium continues to preside over the Collegium as the executive council, in practice it is essentially non-functioning. In order for the new Collegium to become effective an Organizational Committee must be formed. *Law on Advocates*, Transitional Provisions (v); *2004 Law on Advocates*, Transitional Provisions (III). The Organizational Committee is responsible for preparing the internal documents of the new Collegium (e.g., drafting the Charter), holding the first general meeting, drafting and adopting the regulations of the Professional/Qualifications Commission and other necessary documents for holding the professional exams. *Law on Advocates*, Transitional Provisions (v); *2004 Law on Advocates*, Transitional Provisions (III). The government is responsible for establishing the Organizational Committee. *Law on Advocates*, Transitional Provisions (v); *2004 Law on Advocates*, Transitional Provisions (III). The same process is required under the 2004 Law on Advocates. Since the enactment of the Law on Advocates in 1999, the government has failed to appoint the Organizational Committee. Accordingly, the current Presidium maintains its position as the executive council for the Collegium but has no real authority to do anything. Until the government appoints the Organizational Committee, the criminal bar and the Collegium of Advocates will remain a closed association. Although the recently signed 2004 Law on Advocates does not change the process, it is a positive step in that implementation of the law can and should begin.

In addition to the organizational problems facing the Collegium, it is not viewed as self-governing. The general consensus among the legal profession and the international community is the Collegium of Advocates does not operate independent of the State. The Chairman of the Presidium is perceived as an extension of the government. The government continues to play a large role in the formation and implementation of the Collegium's activities. The government directly appoints the Organizational Committee and the three scholar-jurists to the Professional/Qualifications Committee. Moreover, it indirectly appoints the three judges to the Professional/Qualifications Committee through the Supreme Court giving it great influence and control of the qualifications process.<sup>29</sup>

The exact number of other professional associations of lawyers is unknown. Respondents report there are several but no one seems to know just how many. The more pressing issue for respondents is that many, if not most, associations have been denied registration by the government. That is, the government has not accepted or approved the foundation documents filed by the associations.<sup>30</sup> The OSCE issued a report in August 2003 addressing the problems of NGO registration.<sup>31</sup> The inability to register, however, does not seem to stop the associations from carrying out their activities. And no respondents report direct interference by the government.

The largest unregistered professional association is the Azerbaijan Lawyer's Forum ("Forum"). The Forum is composed of jurists, advocates and judges. It boasts a membership of over 400 legal professionals. According to its charter, the main purpose of the Forum is to strengthen democracy and the rule of law in society and protect the rights of the legal profession. *Charter of the Forum, Purpose and Principles of Activity*. The Forum's organization structure includes a Board of Directors, Council of Chairmen and an Audit Committee. These governing bodies are elected by its members. The Forum is a voluntary association and independent from the government. Despite its mixed membership, the Forum is viewed as the largest association of attorneys in opposition to the government and the Collegium.

Another notable professional association is the Azerbaijan Young Lawyers' Union ("AYLU"). ALYU is a registered legal entity aimed at the study of human rights, freedoms and legal problems in Azerbaijan. *Charter of the AYLU, Aims and Objectives*. It is a voluntary union with just over 100 members. The members elect the Board of Directors, the Chairman of the Board,

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<sup>29</sup> See Factor 9, *infra*.

<sup>30</sup> See Factor 12, *infra*.

<sup>31</sup> "Problems of NGO Registration in Azerbaijan – a Survey Summary of Findings" 12 August 2003; [www.osce.org/baku/documents/reports](http://www.osce.org/baku/documents/reports).

the members of the Central Inspection Commission (CIC) and its Chairman, as well as the editors of the media bodies of the AYLU.

## **Factor 22: Member Services**

***Professional associations of lawyers actively promote the interests and the independence of the profession, establish professional standards, and provide educational and other opportunities to their members.***

<b>Conclusion</b>	<b>Correlation: Negative</b>
The Collegium of Advocates does not provide any member services. Other professional lawyer associations do promote the interests of the profession through their continued work on the Law on Advocates. They also provide some legal publications and opportunities for continuing legal education. These services, however, are largely dependent on the support of international donor organizations.	

### **Analysis/Background:**

The Law on Advocates does not require Collegium members to promote the interests and independence of the profession, establish professional standards or provide educational opportunities to its members. The 2004 Law on Advocates does not create this responsibility. Moreover, the Collegium does not have a charter that delineates any similar responsibility. Nor does the Collegium voluntarily undertake any member service activity.

Other professional associations are not mandated by any legislation to promote the profession. Many of their own charters, however, do provide for member services. For example, the Forum's Charter provides its activities will include "active professional and public activity of its members"; "caring for raising the prestige of the legal profession"; "development of cooperation between lawyers engaged in legal work in different spheres of legal activity"; and "formation of necessary professional and moral qualities in them and compliance with norms of professional ethics." *Charter of the Forum, Forum's Subject of Activity.*

The Forum and the AYLU are both actively involved in promoting the interests and independence of the profession. Both associations contribute to the debate over the Law on Advocates and the 2004 Law on Advocates. Both have conducted roundtable discussions on the issues and participated in conferences sponsored by other local and international NGOs on the topic. The Forum has also proposed the only written Professional Ethics Code for advocates.

Except for the Collegium, most professional associations provide educational opportunities to its members. The opportunities are not, however, exclusive to the associations' membership. This is because the majority of the educational opportunities are funded by international NGOs.<sup>32</sup>

The AYLU, along with other legal associations, publishes material for the legal community including books and bulletins on legal issues. The Legal Educational Society publishes a weekly legal newspaper available to everyone and numerous books. The Azerbaijan Lawyer's Association will release a commentary on the family code in early 2005. These publications are, again, largely dependent upon international donor funds.

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<sup>32</sup> See Factor 14, *infra*.

### **Factor 23: Public Interest and Awareness Programs**

***Professional associations of lawyers support programs that educate and inform the public about its duties and rights under the law, as well as the lawyer's role in assisting the public in defending such rights.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Professional associations of lawyers have developed some public education programs, however these events are dependent on the funding of international donor organizations and take place on an ad-hoc basis.	

#### **Analysis/Background:**

The Law on Advocates does not require the Collegium of Advocates to support public legal education programs. And again, the 2004 Law on Advocates does not create the responsibility nor does the Collegium have a charter that delineates any similar responsibility.

The many and varied professional legal associations are actively involved in public education. For example, the AYLU consistently provides trainings, workshops, seminars and roundtables in Baku and the various regions. Likewise, the Forum educates the public through similar methods. The League of Independent Lawyers is also a professional association that provides education to the public on police behavior and rights of detainees. Unfortunately, as with member services (See Factor 22), the legal educational programs are dependent on the funding of international donor organizations. A variety of local NGOs, not necessarily professional association of lawyers, also provide legal education programs. But, they too operate on grants from international donors.

### **Factor 24: Role in Law Reform**

***Professional associations of lawyers are actively involved in the country's law reform process.***

<b><i>Conclusion</i></b>	<b><i>Correlation: Neutral</i></b>
Although professional associations appear to make a concerted effort to be involved in the law reform process, they have little opportunity to effectuate change because policy decisions are still developed in a closed governmental environment.	

#### **Analysis/Background:**

The Law on Advocates does not provide for the involvement of the Collegium of Advocates in legal reform and no charter exists identifying any similar responsibility. The 2004 Law on Advocates does not change this situation.

The charter for the Forum provides that it will participate in the following activities: "drafting . . . new laws and improvement of laws presently in force, examination of effectiveness of particular laws, active participation in elimination of shortfalls in implementation of law"; "judicial-legal reform"; and "improvement of legislations." *Charter of the Forum, Forum's Subject of Activity.*

The AYLUs role in law reform is more focused on the rights of youth, which includes the following objectives: "To draw bills concerning the youth"; "[Propagating] legislation concerning . . . youth's rights and freedoms"; "develop democratic values in the society and form[] public opinion". *Charter of the AYLUs, Aims and Objectives.*

Despite the stated objectives of the many professional associations to participate in legal reform, in practice respondents express frustration with the few opportunities to effectuate change. The overwhelming concern is the fact that legal professionals are not asked to participate in the government legislative working groups. Historically, laws are drafted by the government without outside participation. This closed system of policy making has not changed. For example, only after international organizations became involved did the government working group on the 2004 Law on Advocates meet with four outside legal professionals. As a result of the meeting the legislative working group incorporated some changes suggested by the legal professionals. Unfortunately, other changes were made and not disclosed to the working group or the legal community in general. The public was not provided the final proposed law presented to Milli Majlis until 15 days before it passed Parliament. And, again, access was only due to the intervention of the international community.

Other associations become involved with the legal reform process by petitioning governmental bodies to address specific concerns. The process is more in line with lobbying as opposed to legislative drafting. For example, the League of Independent Lawyers conducted a survey of short-term detention facilities. As a result of that survey they petitioned the Prosecutor General, the Minister of Interior, the Head of the Permanent Commission on State Building and Legal Policy of Parliament, the Head of the Permanent Commission on Human Rights of Parliament and the Ombudsman of Azerbaijan to investigate the problems discovered with short-term detentions. At the time of this writing, the government had not responded to the concerns raised by the League of Independent Lawyers.

## List of Acronyms

ABA/CEELI	American Bar Association, Central European and Eurasian Law Initiative
AYLU	Azerbaijan Young Lawyers Union
CCBE	Council of the Bars and Law Societies of the European Union
CEDAW	United Nations Convention to Eliminate all Forms of Discrimination Against Women
CEE	Central and Eastern Europe
CLE	Continuing Legal Education
COE	Council of Europe
ECHR	European Court of Human Rights
JRI	Judicial Reform Index
LPRI	Legal Profession Reform Index
MOE	Ministry of Education
MOJ	Ministry of Justice
NGO	Non-governmental organization
NIS	Newly Independent States
ODHIR	Office for Democratic Institutions and Human Rights (part of the OSCE)
OSCE	Organization for Security and Co-operation in Europe

## **Addendum – Implementation of the 2004 Law on Advocates**

The transitional provisions of the 2004 Law on Advocates provides that “licensed lawyers” shall be part of the membership of the new Collegium: “[t]here shall be acknowledged the right of persons, who at the date of entering of these Transitional Provisions into force are the members of the existing Collegium of Advocates and those who have special permission (license) for rendering paid legal services, to establish [the] new Collegium of Advocates without passing [a] professional examination . . .” These licensed lawyers, numbering approximately 220, were authorized to practice under Resolution No. 103, “On Confirming the Rules for Special Permission for Paid Legal Services (License)”. See *infra* “*Organization of Legal Professions*”.

The Ministry of Justice and the Organizational Committee for the new Collegium of Advocates interpreted this transitional provision to be inclusive of only those individuals whose licenses were active on the date of enactment of the new law, even though prior nullification of Resolution No. 103 had prevented license renewal. Under this interpretation only 62 lawyers held a “valid” license conferring the right to automatic membership. Of these 62 licensed lawyers, the Organizational Committee found that only 36 qualified under other provisions of the law to be automatic members of the new Collegium.

### **The Constitutive Meeting of the New Collegium**

On October 29, 2004, the Organizational Committee announced that the constitutive meeting would be held on November 3, 2004. Invitees included the 370<sup>33</sup> members of the previous Collegium and 36 licensed lawyers referred to above. Three hundred seventy-seven (377) invitees attended.

Participants and observers expressed concern regarding the process of the meeting. It was noted by participants that there were numerous plain clothes police officers present and participating as invited members. Observers reported there was no opportunity for meaningful input by the participants.

In addition, observers expressed concern over the voting process. The 2004 law provides for secret balloting in voting for the new Presidium. On October 26, 2004, a rush amendment to the law was introduced in Milli Majilis (parliament), which did away with the requirement of secret balloting. The amendment passed and came into effect on October 29<sup>th</sup>, the same day the Organizational Committee called the constitutive meeting. Council of Europe expressed the opinion this amendment was a fundamental change to the previously reviewed law.<sup>34</sup>

Despite the rush amendment changing the method of voting from a secret ballot to an open vote, the Organizational Committee put the issue to the participants at the constitutive meeting. In an open vote the participants voted in favor of secret ballots. Observers noted, however, that the process was disorderly and chaotic and continued past midnight. The method of voting did not allow for verification of the number of ballots distributed or who actually voted. Specifically,

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<sup>33</sup> The Organization Committee asserts there are 370 members forming the prior collegium.

Although requested, the Committee would not release a list of these 370 members.

<sup>34</sup> *“Still in connection with the functioning of the judiciary, the delegation was informed that the new law on advocates did not take account of the comments of the Council of Europe experts and the agreement reached between the Council of Europe and the Azerbaijani Minister of Justice. In particular, provisions designed to avoid an increase in the number of advocates - the number 350 criminal lawyers for a population of 8 million - have been added to the text. This measure - along with procedural irregularities at the inaugural meeting of the Bar Association, which was supervised by unauthorised people and by the police, without there being any debate - does not make for a democratic judicial system or safeguard the right to a fair hearing. This is contrary to the undertakings that Azerbaijan gave when it joined the Council of Europe.”* Council of Europe, Monitoring Group’s 5th Progress Report, CM (2004)215 prov. 8 December 2004, para. 49.

observers noted that many participants were given a ballot without presenting valid ID; ballots were not counted prior to distribution; ballots were not executed in a private manner; and voting booths were overcrowded with people preventing observation of the process.

### **Legal Proceedings**

Five lawsuits have been filed at the district court level against the Ministry of Justice, the Organizational Committee and the Presidium regarding the establishment of the new Collegium. Three lawsuits have been filed directly with the Constitutional Court.

Three cases were filed in the Nasimi District Court - one involving 18 licensed lawyers; one involving 4 licensed lawyers; and one involving one licensed lawyer. Two additional cases were filed in the Yasamal District Court - each case was brought by 2 licensed lawyers. The defendants failed to appear at all of the hearings. Both district courts have rejected all five lawsuits. The two Yasamal District Court cases and the two Nasimi District Court cases involving 4 and 1 licensed lawyers are on appeal to the Supreme Court, having been rejected at the district court level and the appellate level. The Nasimi District Court case involving 18 licensed lawyers is on appeal at the appellate level. The three Constitutional Court cases have all been rejected by the court.

### **Preparations for the Written Bar Exam**

On January 7, 2005, the Collegium announced that it would accept applications to sit for the bar exam up until January 30, 2005. The Collegium did not publish any test preparation materials in advance of the bar exam.

The Presidium reported that it accepted 359 applications. It further reported that more than 100 potential applicants were advised that they did not have the proper credentials to apply for the exam, and therefore were informally rejected. The majority of applicants informally rejected were advised by the Collegium that they lacked the three years of experience in the legal profession required by the 2004 law to qualify for membership. The Chairman of the Presidium informed international observers that the "three years of experience" can only be experience in a state institution or legally registered organization. He further stated that the Collegium does not recognize as "legal experience" practice in the civil courts by non-Collegium lawyers making an appearance via a power of attorney. The Civil Procedure Code allows for representation by a power of attorney.<sup>35</sup> The Chairman asserted, however, that such actions are "illegal."

Five applicants reported they were denied the right to take the exam because their foreign diplomas (from universities in the Russian Federation) could not be certified by the authorities in time to submit the application materials. At least one lawyer reported he was denied the right to take the exam under the provision of the 2004 Law on Advocates that excludes individuals with any disciplinary labor issues.

### **The Bar Exam**

The written bar exam was held on February 6, 2005. Three hundred forty-seven (347) out of 359 applicants sat for the exam. The exam consisted of two variants each containing 80 multiple-choice questions and 20 logic games. The 80 multiple-choice questions were valued at 1 point each; the 20 logic game questions were worth ½ point each. A minimum of 50 points was required to pass the exam. One hundred forty-four (144) test-takers passed the written exam. Applicants who passed the written exam are required to pass an oral interview before becoming a member of the Collegium. Oral interviews are expected to occur by the end of February, however, at the date of publication, the Collegium could not be reached for comment on whether this had occurred.

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<sup>35</sup> Civil Procedure Code, Chapter 6.

## **Legislative Amendments**

In November 2004, Milli Majilis passed changes to the Law on Trade Unions and the Administrative Violations Code. The amendments were signed by the President in January 2005. Amendments to the Law on Trade Unions require Unions to hire members of the Collegium for legal services. An amendment to the Administrative Violations Code makes it punishable by fine to provide "paid-for legal services" and use the title attorney ("vekhi") unless the individual is licensed under the Law on Advocates.