

Chapter 7



Local Government in Azerbaijan

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Developing New Rules in the Old Environment

Local Government in Azerbaijan

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Local Government in Azerbaijan

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1. Overview of Local Government Reform

Since independence, the Republic of Azerbaijan has pursued the establishment of a legal state and civil society as a main strategic objective. Most major legislation incorporates this principle, from the Constitutional Act on the Independence of the Republic of Azerbaijan (adopted 18 October 1991) to the Constitution itself (adopted 12 November 1995).

One of the most urgent tasks faced by the country in the ongoing process of democratization is the foundation of a system of local self-government. No precedent for a comprehensive system of local self-government can be found in Azeri history, although different elements have existed at various points. Under the Soviet Union, local government was exercised solely through local soviets and executive committees as part of state administration.

The newly adopted Constitution of Azerbaijan, effective from 27 November 1995, is the primary basis for the establishment of local government. Not only does the Constitution uphold decentralization of state authority, it specifically enumerates standards of local self-governance. The fourth section of the Constitution, also called the “Transition Provisions,” addresses the issue of local self-government in particular detail. Article 6 of the Provisions annulled the authority of the local soviets, while article 7 stipulates that laws on local self-government be introduced and municipal elections held within a period of two years.

The institution of local self-government in Azerbaijan emerged only at the end of 1999, rather than the deadline of 1997 cited in the Constitution. The official explanation for the delay was that the population was not ready and that there was a lack of appropriate experience in the field. In the view of independent experts, however, the delay was instead due to the reluctance of the former local authorities to transfer functions and relinquish the centralized system of control.

In 1995, *Milli Mejlis* (Parliament) created a standing commission on local self-government to prepare a package of relevant laws. This task remains uncompleted, although the commission has recently developed and submitted a number of draft laws on local self-government.

The campaign to establish municipalities truly began after July 1999, when the Law on Municipal Elections and the Law on the Status of Municipalities were passed. The first municipal elections were held on 12 December 1999, and the newly elected local governments commenced activity in January 2000.

According to the Constitution, local government in Azerbaijan is exercised both through local bodies of state administration and through municipal governments. Local bodies of state administration are regulated by the Constitutional Provision on Local Executive Authority and municipal governments by relevant laws, and legislation in both these areas continues to be developed. In general, the constitutional provisions on local self-government and the legislation on municipalities comply with principles stated in the European Charter of Local Self-government.

2. Legal and Constitutional Basis

2.1 Constitutional Basis of Local Government

The fourth section of the Constitution addresses major issues of local self-government, such as the legal status of municipalities, types of local self-government bodies, their basic powers and their relationships to other official entities. The Constitution does not explicitly declare whether the concept of municipalities is founded on the principle of decentralization of state authority or on the principle of local autonomy. However, closer analysis of the main provisions on the division of power indicates that decentralization is the dominant concept. Consequently, many municipal bodies are in fact former agencies of state administration, both central and local.

Article 142 of the Constitution stipulates that municipal councils are elected. According to Article 144, local councils perform the following functions:

- adopt municipal legislation;
- elect the council chairman and deputies;
- establish standing and temporary commissions;
- establish local taxes and duties;
- adopt the local budget and report on budget performance;
- manage and dispose of municipal property;
- adopt and implement programs for social protection and development, local economic development and the local environment.

Article 144 also stipulates that local councils may be vested with additional powers. Article 146 of the Constitution specifies guarantees of local autonomy such as judicial protection and compensation for additional expenses incurred by local governments due to state government decisions. According to article 150, municipalities may adopt statutory acts within their competence and in accordance

with legislation. Compliance with these acts is mandatory for citizens and legal entities residing or working in the territory of the relevant municipality.

2.2 Legal Basis of Local Government

The Law on Municipal Elections and Law on the Status of Municipalities were the first to be adopted in the field of local government. The Law on Municipal Elections sets forth general principles, rules governing electoral commissions, procedures for drawing up voter lists and eligibility requirements for candidates. The Law on the Status of Municipalities regulates the role and structure of municipal bodies and outlines state guarantees of legal and financial autonomy. The law pays special attention to the adoption and execution of municipal programs concerning social protection, social and economic development and the local environment. It also contains articles addressing municipal bodies and officials, forms of citizen participation, the economic foundations of municipalities, municipal property and the local budget.

The other normative legal document to address municipal government is the Model Municipal Charter. This document specifies common issues to be incorporated in all municipal charters, such as territorial boundaries, municipal assemblies, standing and temporary council commissions, executive bodies and administrative procedures.

The Law on Municipal Service regulates the activities of municipal employees, their rights, duties, labor conditions and social benefits, and outlines the structure of the executive apparatus and the organization of municipal service. The Law on Local Referenda defines the issues that may be decided by local referendum and establishes procedures for organizing referenda, publishing the results and enacting them into law.

The foundations of municipal finance are established by a triad of laws: the Law on the Transfer of Assets to Municipalities, the Law on Municipal Finance and the Law on Municipal Territory and Lands. Standards for determining municipal property and transferring it to municipal ownership are established by the Law on the Transfer of Assets. The Law on Municipal Finance defines principles of local finance, the basis for the local budget and the division of powers between the local council and local executive bodies. This law also regulates legal issues concerning the adoption, implementation and monitoring of the local budget. The Law on Municipal Territory and Lands, together with the list of all municipalities in Azerbaijan and their territories, defines municipal boundaries. According to this law, the State Land Committee and the local branch of state administration draw up documents for urban planning and construction which clearly indicate municipal territories and land to be transferred to municipalities. These documents are then made available to local governments. Other laws also regulate issues of municipal property, such as the Law on Land Reform, in which article 7 is wholly devoted to the issue of municipal lands. However, it must be noted that this law was adopted in 1996, prior to the establishment of municipal governments.

The foregoing legislation constitutes the legal basis for local self-government; in addition to these, other laws have been passed by Parliament and await presidential approval before taking effect. These laws include the Law on Local Council Members, the Law on Standing and Temporary Commissions, the Law on Association, Division, Liquidations and Joint Activities of Municipalities and the Provision on Municipal Coordination Boards. At present, the parliamentary commission on local self-government is in the process of drafting further legislation in this field. A number of laws devoted to municipal government were passed in the fall session of 2000, but information on specific issues covered by these laws is not yet available.

The role of local bodies of state administration remains imperfectly regulated by legislation. The Provision on Local Executive Authority is the primary law in this area, addressing local state administration activity, the structure of local state administration bodies and eligibility requirements for local administration heads.

Analysis of Azeri legislation reveals that local government reforms in Azerbaijan are based on decentralization of state authority. Currently existing legislation offers genuine opportunities for independence to self-government bodies at all levels, and there is a general tendency to transfer even more powers to municipalities.

2.3 Territorial Structure

As declared in its Constitution, the Republic of Azerbaijan is a unitary state. Other than the Nakhichevan Autonomous Republic (NAR), there are no independent states within the republic. The former Upper Karabakh autonomous region was formally abolished by the Supreme Board of the Republic on 26 November 1991. Since this decision was never recognized by the Armenian population of Upper Karabakh, the conflict escalated into war between Armenia and Azerbaijan. As a result, Upper Karabakh and neighboring areas, roughly twenty percent of Azeri territory, are still occupied by Armenian military forces. A cease-fire has been in effect since 1994.

The legal status of the NAR is defined in chapter 8 of the Constitution. Article 134 declares the NAR to be an independent state within the Republic of Azerbaijan and an integral component of the republic. The constitution, legislation and decisions adopted by the Parliament or Cabinet of Ministers of the NAR may not contradict the Azeri Constitution, legislation, presidential decrees or decisions of the Azeri Cabinet of Ministers, all of which are effective on NAR territory.

The government of the NAR is structured according to the principle of division of powers. Legislative powers are vested in the NAR Parliament, executive powers in the NAR Cabinet of Ministers and judicial authority in the courts of the NAR. Each of these government entities are independent from one another in decision-making issues within their competence, as stipulated in the Constitution and legislation.

According to Article 138 of the Azerbaijan Constitution, the NAR Parliament determines the following issues: elections to the NAR Parliament, taxes, the path of economic development within the NAR, social security, environmental protection, tourism, public health, science and culture. The Parliament also appoints the prime minister of the NAR, approves the organizational structure of the Cabinet of Ministers, approves the budget and adopts economic and social programs.

The president of Azerbaijan assigns heads of local state administration in the NAR upon nomination by the chairman of the NAR Parliament, the highest ranking official within the NAR.

The administrative-territorial division of Azerbaijan has essentially been retained from the Soviet era and consists of villages, settlements, regions and cities. These units were the basis for determining municipal territories in the Law on Municipal Territories and Lands. According to the Law on the Status of Municipalities, the local population must be consulted when municipal boundaries are drawn up or altered. Altogether, 2,673 municipalities have been created, with over twenty-two thousand elected officials.

Municipalities are established in villages, settlements or cities, rather than on a regional basis. Each municipality acts as an independent juridical entity, with neither horizontal nor vertical subordination. Cities may be divided into administrative-territorial units, in which case each unit comprises a separate municipality. Only two cities are divided into districts; these are Baku, the capital, and Ganja, the second largest city in the republic. In these cities, district or settlement bodies of local executive authority are subordinate to the city executive authority. No statutory document has yet been adopted on the legal status of these two cities, although the issue has been discussed at the state level.

3. Local Politics, Decision Making

3.1 Public Participation in Decision Making

Local self-government provides ample opportunity for citizens to be involved in the creation of local policies. Local government activity in Azerbaijan is based on resolutions adopted by local citizens or by elective bodies of local self-government. Citizens may participate in local government through a variety of forms, including referenda, assemblies and proposing municipal resolutions.

The municipal government may hold a referendum on any issue within its competence at its own initiative or at the request of at least ten percent of eligible voters in that territory. These referenda are financed from local budgets. When a referendum is to be held, the municipality issues a resolution announcing the date of the referendum, the issue at stake and the order of financing. This resolution must be publicized in the local mass media within three days. All citizens with the right to vote in that territory may take part in the referendum, which is held between thirty and sixty days after it is

announced. The municipality then enacts the results into municipal legislation. Other issues concerning electoral procedures, such as undue influence of voters or falsification of results, are defined in accordance with national legislation. Local referenda may not be held within three months from the official announcement of a state of emergency or martial law or while they remain in force. A second referendum on the same issue may not be held within one year of the publication of results from the first.

Citizens may also participate in local decision making through public assemblies. According to the Law on the Status of Municipalities, public assemblies have the power to adopt resolutions only in municipalities with fewer than five hundred inhabitants. These assemblies have due authority provided that at least twenty-five percent of all resident citizens over eighteen are in attendance. In these assemblies, citizens have the right to express their opinions on local issues, to initiate proposals, to express the collective opinion and to adopt, amend or dissolve the municipal charter.

The local population may also initiate municipal decisions. Such proposals must be discussed in open council session with the participation of citizen representatives, and their results should be officially announced.

3.2 Internal Structure of Local Government Decision Making

Local councils play a central role in the local decision-making process. The chairman, commissions and heads of municipal agencies are empowered to decide upon local issues within the framework of their authority, although local councils should approve major decisions. Local council sessions must be convened at least once per month by the chairman or at the request of either one-third of all council members or at least ten percent of the local population. Decisions passed in council sessions are valid if a majority of council members are present and are effective on the territory of the given municipality.

The local council passes municipal regulations, establishes local taxes and duties, adopts the local budget, reports on its performance and approves local programs for social protection, social and economic development and environmental protection, among others. Specific programs are designed by standing commissions and submitted to the local council for discussion. Decisions related to local taxes must be passed by a majority of two-thirds of all council members; all other decisions are adopted by a simple majority vote. Council sessions are transparent and open to all citizens residing in the municipality.

In its opening session, the local council elects a chairman from among its members by a simple majority vote through either open or secret ballot. The chairman both acts as the head of the executive apparatus and manages local council activity. According to legislation and municipal charter, the chairman issues orders and instructions, signs municipal resolutions, appoints heads of municipal agencies based on local council decisions and manages the implementation of local council decisions.

Councils may also create standing and temporary commissions to focus on particular areas of activity. Commission members are typically council members, although they may also choose to invite outside experts to participate. These commissions are generally established for the following purposes:

- to develop programs for social protection and development, local ecology, economic development and local services and submit them for discussion to council sessions and to the public;
- to discuss local issues and prepare information, draft resolutions and other materials for discussion at council sessions;
- to prepare proposals for the municipality and its executive apparatus;
- to assist in implementing and monitoring the performance of the voters' will.

Commission activity and decision-making procedures are defined in the Law on Standing and Temporary Commissions. Commissions are responsible to the local council and must report to them regularly.

The executive branch is charged with implementing local council decisions and consists of the municipality chairman and other municipal agencies established by legislation or municipal charter. In order to fulfill its obligations, the executive apparatus may adopt appropriate decisions within the framework of its authority. Heads of municipal divisions may issue orders, instructions or other documents of an administrative nature, as defined by the municipal charter.

3.3 System of Local Elections

Local elections are held according to the Law on Municipal Elections. Although political parties initially proposed a mixed majority and proportional system, it was finally decided to hold elections by a relative majority system in multi-mandate territories. This decision remains somewhat controversial among voters.

The first municipal elections in Azerbaijan were held on 12 December 1999. Altogether, local councils were elected in fifty-one cities, eight city districts, 123 settlements and 2,409 rural municipalities. Official elections were not held in Upper Karabakh and the neighboring occupied territories. Instead, internally displaced citizens from these areas took part in the municipal elections in their temporary residences. Although the Armenian community of Upper Karabakh held local elections in 1998, the government of Azerbaijan holds these elections to be illegal and consequently has not recognized the results.

Local councils are constituted through free, general, direct and equal elections. All citizens over the age of eighteen are eligible to vote, while those over the age of twenty-one are eligible to run for office. Candidates may be nominated by citizens, registered political parties or voter initiative groups. Although candidates are required to gather voters' signatures in support of their candidature, the number of required signatures is reasonable. Certain groups may not run for office: these include state administration officials, judges, law enforcement officers, religious officials, military officers and convicts.

The number of council members is determined by population according to the following scale:

Table 7.1
Size of Local Council According to Population

Population	Number of Council Members
0–500	5
500–1,000	7
1,000–5,000	9
5,000–10,000	11
10,000–20,000	13
20,000–50,000	15
50,000–100,000	17
100,000–300,000	19

The Central Electoral Commission (CEC) of Azerbaijan creates regional electoral commissions to organize elections for all municipalities within that region. These commissions establish polling stations and local electoral commissions in the appropriate municipal territories. Territorial and local electoral commissions are formed of representatives who are nominated by local branches of public associations and political parties or by voter assemblies in the given territory.

Elections are considered valid if over twenty-five percent of registered voters have participated. Upon the closing of the polls, official reports on the election results and statistics are compiled at polling stations and transferred to the regional electoral commissions. Based on local electoral commission reports, the regional electoral commissions must determine the outcome of the elections no later than two days hence. Within twenty days of the election, the CEC announces the results of municipal elections nationwide. The newly elected councils are then certified within five days by the regional electoral commissions.

Political parties actively participated in local elections, even though they were not held according to the proportional system. The law allows regional branches of political parties to field a list of candidates according to the number of council seats. Altogether, fifty-one percent of all nominated candidates (about eighteen thousand representatives) and forty-seven percent of elected candidates represented a total of twenty-six political parties. Of the elected candidates representing political parties, seven percent are members of opposition parties.

3.4 Relationship between Elected and Appointed Local Government Bodies

According to legislation, elected and appointed municipal bodies operate autonomously within their spheres of competence. When implementing local policies and adopting programs, elected bodies are not dependent on any local state administration authority. By law, the state guarantees local elected officials the unobstructed exercise of their authority and protection of their rights and dignity.

In relation to the local council, the executive branch of the municipality has similar freedom of action within its framework of authority. Although it is subordinate to the local council, established by local council decision and must report to the local council, this does not limit municipal employees' rights and freedom of activities. Based on local council decisions, the executive branch may establish institutions and enterprises and monitor their operation. These organizations have legal status and function according to legislation, municipal charter and municipal resolutions. According to law, municipal employees are not under direct subordination to the elected municipality bodies and may not be dismissed upon the expiration of the council mandate.

3.5 Local Government Associations

Municipal bodies may form associations in order to render mutual assistance, jointly solve social, economic and cultural issues, more effectively exercise their rights, promote their interests and coordinate their activities. Procedures for founding and operating municipal associations are regulated by the Law on the Status of Municipalities and the Provision on Municipal Coordination Boards. According to item 1 of the provision, coordination boards on local self-government are forums created in order to discuss issues within municipal competence; to develop methods for the joint solution of common, regional, district and urban problems; to analyze and disseminate best practices and experiences; to coordinate issues of joint municipal and state activity; and to prepare proposals on harmonizing the local self-government system. In addition to coordination boards, elected officials, municipal employees and other individuals in the field of local government may also create public associations, according to legislation.

Participation in coordination boards is voluntary and a given municipality may simultaneously belong to district, regional and republic coordination boards. A board consists of municipal representatives and selects a chairman, vice-presidents and a secretary from its members. Outside individuals may be invited by the chairman to participate in board activities or submit proposals to the board. These may be representatives from municipalities, from legislative, executive or judicial bodies, from scientific and educational establishments or from local government related public associations. By legislation, coordination boards must be registered by the state and may not exercise municipal powers.

At present, seventeen city districts of Baku have united to form a coordination board. In addition, the newly established Center of Municipal Reforms in Azerbaijan brings together municipalities from different regions. No other local government associations of municipalities, elected officials or municipal employees currently operate in Azerbaijan.

3.6 Territorial Branches of State Administration

The legal status of local state administration in Azerbaijan is determined by the Provision on Local Executive Authority, adopted 16 June 1999. According to legislation, the president of Azerbaijan establishes territorial branches of state administration in regions, cities and city districts and appoints a head to manage its operation. These heads in turn designate local administrations in the villages and settlements situated within their territory. Heads of local state administration carry out executive duties in regions, cities and city districts; ensure rights and freedoms of citizens; further the economic, social and cultural development of the given territory; and coordinate the activities of municipalities and territorial divisions of state administration.

Heads of local administration perform the following duties:

- carry out orders of the president of Azerbaijan and, in the Nakhichevan Autonomous Republic, those of high NAR officials;
- implement state programs authorized by the president of Azerbaijan as well as local programs;
- establish and dissolve local state administration departments, services, enterprises and organizations; appoint and dismiss their heads; and annul any documents that run counter to existing legislation;
- organize elections, national referenda and public discussion as established by legislation;
- submit issues and proposals concerning local development to the appropriate executive bodies;
- execute other duties as established by the legislation.

The head of local administration has the right to adopt statutory decisions on issues within the framework of his or her authority, provided that they do not contradict existing legislation. Compliance with these decisions is mandatory on the given territory. The head also defines the structure of the local apparatus as stipulated by the provision. Local administration expenses are financed from the state budget.

3.7 Relationship between Local Governments and Territorial Branches of State Administration

Relations between the municipalities and local state administration are only vaguely described in current Azeri legislation. In principle, municipalities and local bodies of state administration should carry out their activities autonomously, on equal terms. However, there are no explicit standards for the division of authority in current legislation; the topic is not even mentioned in the Constitution. Clarification of the resulting ambiguity has become essential.

According to Professor Ismailov, Director of the Center for Civil Society, this ambiguity is not accidental; the purpose of the provisions relating to municipal-state relations was to re-establish the old communist model. According to that model, boards of people's deputies were subordinate to the respective urban or district committee of the communist party, since board officials were also party members. However,

this principle no longer holds and the divergent interests of municipal and state administration bodies will inevitably lead to dissent in the absence of a precise delineation of authority.

In the Provision on Local Executive Authority, many issues referred to municipal competence are also referred to the competence of the local state administration. In some cases, divisions of state administration even continue to manage areas delegated to municipal authority. This has already created conflict.

The case of Baku offers a typical example. According to legislation, advertising on municipal territories is a municipal responsibility. However, the already existing Department of Advertising and Information in the Baku local administration has illegally prevented the municipal budget from receiving advertising revenue. The local branch of state administration in Baku has even signed an instruction stating that advertising revenue should be diverted to the administration, not municipal, budget until the end of 2000.

Similar cases occur throughout the republic. In the district of Barda, the conflict centers around taxes. Although the Law on Municipal Finance stipulated that land and property tax should go to the municipal budget, the Barda district administration has levied a duty of a million AZM (approximately USD 250) on each municipality to be paid from these taxes to the regional tax department.

Parliament is expected to pass a law, currently under development, to address the division of authority between the municipalities and bodies of local executive authority. It is hoped that adoption of this law will finally resolve relations between municipalities and local administrations as municipalities begin to fully realize their powers.

3.8 Local Government and the NGO Sector

As public associations have expanded their activities, it became evident that a more advanced law was required (the previous law governing public association activity was the Law on Public Associations, adopted in 1992). Accordingly, on 13 June 2000, Parliament passed a Law on Non-governmental Organizations (NGOs), which took effect on 6 October 2000.

Although roughly 2,500 NGOs exist in Azerbaijan, only 1,300 of them are registered and only 150 function significantly. The majority currently operate in Baku, but NGOs recently been emerging throughout the republic. Already, a few regional NGOs have some influence in the solution of local problems.

NGO activities focus on human rights, educational projects, citizen participation, electoral awareness and legislative amendments. Subsequent to the creation of municipalities, a number of NGOs were founded to promote municipal activity. Unfortunately, these organizations are unable to render any effective assistance to municipalities under current conditions.

Although NGOs exercise some influence on public processes, they do not participate in creating local policies. This is due to the lack of skills and experience in public administration and the absence of a favorable political climate. However, relations between NGOs and local government bodies have only just begun to develop, given the short history of local self-government in Azerbaijan.

4. Functional Structure of Local Government

The functional structure of local self-government in Azerbaijan can be categorized according to the division of powers and functions. In terms of the division of powers, the local council approves the structure of an executive apparatus to implement its decisions; this may include commissions or other executive bodies. In general, the executive branch of municipal administration is subordinate to the local council. However, direct day-to-day management is performed by the council chairman, who is responsible for composing the executive apparatus.

Administrative divisions generally fall along the functional areas of programs adopted by the local council, for instance, programs to address issues of social, economic or environmental development. Heads of structural divisions carry out management functions according to the municipal charter and local legislation and report to the executive apparatus. Working relationships within administration departments are governed by contracts drawn up according to national labor legislation.

The executive office is responsible for accomplishing the following tasks:

- to prepare draft budgets, plans, programs and resolutions to submit to the municipality;
- to implement the mandates and decisions of the municipal council;
- to manage municipal property and other property transferred for municipal use;
- to perform a technical inventory of municipal property;
- other obligations as stipulated by legislation.

Internal control of municipal entities is carried out by the appropriate municipal bodies. Municipalities define the objectives, conditions and regulations governing the activities of municipal entities; regulate prices and rates of their production and services; approve their charters; appoint and dismiss their heads and review reports on their activities. Relations between municipalities and subordinate municipal entities are regulated by civil and labor legislation. Municipal bodies may also monitor other non-municipally managed enterprises operating on municipal territory, but they do not have right to place restrictions upon the economic activities of legal and physical persons, except in cases specified by law. Municipalities establish relations with other legal and physical persons on a contractual basis.

According to article 13 of the Law on Municipal Finance, municipalities also create financial structures to monitor local budget execution and its correspondence to the planned budget. Municipalities may receive financial assets from legislative and executive authorities for this purpose.

5. Public Service Provision

Under the Soviet Union, public service delivery was a responsibility of the state. Although the transition to decentralized management and a market economy created certain preconditions for the development of the private sector, the burden of public service delivery continued to fall on the state through the initial years of the independent republic. When municipalities were established, however, they became responsible for public services as well. Currently, these functions are performed by the state, municipalities and, to a limited extent, the private sector.

The state continues to take the lead in public service delivery since, unlike municipalities, it has the pre-existing structures and financial resources to do so. Most services, such as education, culture, public health services, communications, public catering and other services, are carried out by local divisions of the relevant state structures. Management and control over public service delivery are performed by central executive bodies, such as ministries, committees and the local state administration. These services are financed from the state budget.

In theory, municipalities have extensive authority in providing public services as well. According to legislation, municipalities may adopt programs of public service delivery and create municipal entities to implement them in the following areas: education, health care, culture, municipal housing and other buildings, sanitation, water supply and sewerage, local transport and communication, cemeteries and funeral services, public catering and consumer services. The executive branch of the municipality reports to the local council on the performance of these services, which must correspond to the standards determined by the state. Municipalities have complete autonomy in determining the method of public service delivery and may take local conditions into account in order to determine exemptions and other special features.

Since municipalities do not have the necessary financial resources at present, they have not yet undertaken provision of public services. However, as one example, the state has begun to transfer a number of its housing and communal services to municipalities. If municipalities continue to operate these services at an acceptable level, all housing and communal services currently managed by the state are to be transferred to municipalities.

Certain public services may also be delivered by the private sector (local, joint and foreign organizations) on a contractual basis. Private companies may engage in any public service where not explicitly prohibited, provided that they meet standards established by the state. The role of the private sector is substantially increasing in this field, especially in public health care, education, transport, communication, trade and public catering. This is an undoubtedly positive trend, which leads to increased quality of public services at reduced cost. However, in the absence of quality control, certain negative phenomena emerge, such as inconsistency or division of services.

It must be noted that in-depth analysis of public service delivery by the state, municipalities and the private sector is difficult, as the area remains underdeveloped and lacks a normal level of competition.

6. Local Finance, Local Property

Independent finances and discretion over their use are essential to smoothly functioning local self-government. Article 3 of the Law on Municipal Finance establishes the fundamental principles of municipal finance: self-government, autonomy, transparency and the balance of local and national interests. Specific issues of municipal finance are regulated by the Constitution, the Law on Municipal Finance, the Law on the State Budget and the Law on Banking.

Municipal finances are comprised of local budgetary and non-budgetary funds, municipal property, municipal lands and profit from production, services and other economic activities.

Municipalities independently draft, adopt, implement and monitor local budgets, which are entirely separate from the state budget. Current legislation prohibits state bodies from intervening in municipal budget activity, except in cases stipulated by the law. This radical separation between the state and municipal budgets means that the state does bear any responsibility for local budget obligations. However, according to article 6 of the Law on Municipal Finance, the state undertakes the following guarantees of local financial autonomy:

- to create conditions for the development of industry through national investment and monetary policies;
- to allot additional funds to cover local budget deficits when the state budget permits; to allocate grants and subventions from the state budget if local social and economic development programs cannot be financed by local budget resources;
- to transfer funding to municipalities commensurate with the transfer of any additional legislative or executive responsibilities;
- to allocate resources in compensation for any losses or increased expenditures incurred by local budgets due to state decisions.

In turn, municipalities must report to the government statistical bodies on local budget implementation, as stipulated by law.

Municipalities have not yet exercised the above-mentioned guarantees, as they were only recently adopted and there are no programs in place to implement them. However, in 2000, the state allocated AZM 1.5 million to each municipality from the state budget to solve initial problems. According to official information for 2001, the state budget currently being drafted allocates a total of AZM 18 billion in grants to local budgets.

The absence of precise mechanisms for receiving grants, donations and subventions from the state budget has posed a problem for municipalities. So far, there is no specified method for distributing grants among municipalities or determining whether to divide them evenly or proportionately according to population or territory.

According to article 7 of the Law on Municipal Finance, the local budget is based on the following sources of income:

- land tax;
- property tax;
- tax on the use of natural resources upon building materials of local importance;
- enterprise profit tax;
- fee for advertising on public property;
- hotel tax, parking fees and other local taxes or duties stipulated by the law;
- subventions from the state budget;
- profit from privatization or the lease of municipal property
- income from lotteries or other municipal activities;
- financial aid from private entities and international organizations or funds;
- compensation from the state for expenses incurred due to state decisions.

Although several local taxes were designated as local budget revenues, it is unlikely that local incomes will increase much in the near future, due to flawed taxation laws and inefficient tax collection. Nor is it likely that other sources of income will provide a significant addition to municipal budgets.

The local council adopts decisions regarding local taxes and duties by a two-thirds majority vote. Municipalities have the authority to select the number of local taxes and duties and decide upon their rates within the list of taxes and duties enumerated in the Law on Municipal Finance. Local residents may also decide to create an ad hoc local public fund, either by local referendum or at citizens' assemblies, for the purpose of resolving local problems.

Relevant municipal agencies are responsible for tax collection. Initially, these duties were performed by state tax agencies due to the absence of the appropriate municipal structures. However, as of 3 August 2000, on the basis of contracts between municipalities and tax collection agencies, the Ministry of Taxation has decided that municipalities will independently collect land and property taxes from their citizens and transfer them to the municipal budget.

Municipalities have autonomy over budget expenditures as well as revenues. Local budget expenditures include operational expenses, maintenance of social, housing, cultural and sports establishments and maintenance of public streets, parks and squares. Local budgets may also designate funding for social protection programs, environmental programs and social and economic development programs. Local budget deficits may be partially covered by funding from the state budget.

Current legislation does not clearly define local budget procedures, referring them instead to municipal charters. However, the municipality should adhere to the general standards of budget preparation in use in Azerbaijan. The budgetary year for municipalities begins on 1 January and ends on 31 December. Municipalities approve budget implementation reports and inform the local population as determined by the municipal charter. The municipalities are responsible for monitoring local

budget implementation and may involve independent auditors at their discretion. Municipalities may dispose freely of any budget surplus.

Although the law accords broad financial powers to municipalities, they are currently only theoretical in nature. In reality, municipalities are far from able to balance the local budget based solely on own revenues.

In addition to local budget revenues, municipal property consists of the following: municipal possessions, lands, enterprises and organizations; municipal housing, and uninhabited premises; roads that are neither state nor private property; municipal establishments of education, health care, culture and sports; and other movable and immovable property. Municipalities may rent or redistribute municipal property, enter into contracts using municipal property as collateral and draw up contracts for the privatization of municipal services and factories. In the interest of local citizens, the municipality may also set conditions for the use of lands falling within municipal boundaries.

Much of the above-mentioned property was state property that is now due to be transferred to municipal ownership. However, this transfer has been delayed, with insufficient explanation. Some of this property is no longer even in the power of the state to transfer, since many of these entities were privatized before the list of state property to be transferred to municipalities was compiled. The remaining types of property to be transferred are typically unprofitable. According to Article 4 of the Law on the Transfer of Assets to Municipalities these objects are considered municipal property: municipal housing, social and cultural institutions, objects in common use of local citizens and other property.

This law also places certain restrictions on the transfer of state property. Article 4 declares that state property may only be transferred to municipal ownership at the request of the municipality and provided that conditions have been created for its utilization. The vagueness of those conditions, the absence of explicit procedures for transferring state property and the fact that this issue is referred to the appropriate state administration has created considerable confusion. As a result, property has not yet been transferred to municipalities, even though sufficient time has passed since the establishment of municipalities.

The issue of municipal land poses yet another problem for municipalities. According to the Law on Land Reform, thirty-three percent of common lands belong to the municipalities. These include all lands not privatized or retained by the state and are referred to as lands of the reserve fund. By a presidential decree on the implementation of the Law on Municipal Territory and Lands, the appropriate state administration bodies were to determine municipal lands and transfer them within two months. This was accomplished in the majority of municipalities, with the notable exception of major cities. In the cities of Baku, Ganja, Sumgayit and Mingachevir, the state administration bodies are reluctant to relinquish lands that generate high profits. In many cases, local administration heads had already illegally leased under long-term contracts many of the lands later designated for municipalities. Lands that are actually transferred to municipalities are usually unfit for use or of disputable ownership.

This situation places municipalities in a desperate situation. Since the judicial branch of government is entirely dependent on the executive branch, municipalities have no opportunity to resolve these conflicts fairly. Most local revenues specified by law are purely formal, since municipalities do not possess stable tax revenues, property to be privatized or rented or profitably functioning enterprises. For example, forty-eight municipalities in the capital city still are not able to regulate profits from advertising. In addition, the citizens themselves are incapable of paying the taxes stipulated by legislation, and non-payment of taxes is widespread.

7. Relationship between the State Administration and Local Governments

According to law, municipalities operate autonomously and separately from the system of state administration. Nonetheless, municipalities must often perform their functions in cooperation with central and local bodies of state administration.

Bodies of state administration are legally required to assist the local population in implementing local self-government and create the necessary legal, organizational and financial conditions for the foundation and development of municipalities. As an initial step, the central government passed legislation regulating municipal activity.

Municipalities and state administration must also cooperate in preparing and implementing local programs. Since issues often overlap, these bodies must take into account programs by the other, but may not directly interfere in their activities.

The legislative and executive branches of the central government may also transfer additional powers and responsibilities to local governments, provided that the requisite funds are allocated as well. In these cases, the legislative or executive authorities may supervise implementation of those responsibilities. The municipal government may also enter as a customer into a contractual relationship with state agencies in connection with certain economic activities

In economic affairs, the state is enjoined to protect municipal property and create conditions for its development. One method, as stated in the Law on the Status of Municipalities, is by distribution of subsidies, credits, and grants. If the central government passes a decision which results in increased expenditures or decreased revenues for municipalities, it must allocate funds in compensation. Also, expected local budget revenues should be taken into account during the adoption of the state budget. If a minimum amount of local budget revenue is not covered by own local revenues, then the state administration should transfer funds from the state budget to municipalities.

The state, through the Ministry of Justice, may also exercise control over compliance with the Constitution and laws of Azerbaijan by municipalities and their officials, according to Article 52 of

the Law on the Status of Municipalities. If municipal acts contradict the Constitution, legislation or ministry resolutions, they are subject to annulment by the Constitutional Court, according to article 130(5) of the Constitution. Bylaws of the Constitutional Court may not be appealed. According to law, only the president, Supreme Court, the Office of the Public Prosecutor, and the Parliament of the Nakhichevan Autonomous Republic have the right to address the Constitutional Court. The right of other entities, such as municipalities and citizens, to address the court is not stipulated by legislation.

Citizens and juridical persons residing in a given municipality may appeal municipal bylaws and activities of municipal bodies or officials. These appeals may be submitted in the district or urban court. The decision of the district court may be in the appeals court. Should the court deliver judgment mandating the annulment of a municipal decree, the municipality must abide by this decision. Failure to comply with the judgment of the court may result in criminal liability.

Within the Ministry of Justice, a division has been formed to provide legal assistance to municipalities, in order to establish close, permanent working relations between the state and municipalities. However, this division has not yet commenced activity.

Any conflicts that may emerge between municipal and state government bodies should be settled by legal proceedings. In closing, it must be noted that there has been little if any progress in municipal relations with central and local state authorities.

Local governments may collaborate with one another to achieve common goals, improve working practices and pursue common interests. Since a one-tier system of local government operates in Azerbaijan, there is no subordination between municipal governments of various levels, that is, from rural areas, settlements, districts, and cities. In cases of collaboration, each local government therefore acts autonomously.

8. Local Government Employees

Municipal service is regulated by the Law on the Status of Municipalities and the Law on Municipal Service. The personnel structure of the executive apparatus is determined according to the size of the municipal territory and local council decision, as stipulated by municipal charter. The executive office may be divided into agencies, departments or other units for different fields such as social security, social or economic development and the environment. Personnel hired to implement these programs may include agency heads and deputies, department heads and deputies, experts, inspectors and other employees.

The chairman and heads of municipal divisions are responsible for managing the municipal government's organizational affairs. Their tasks include the following:

- to organize advanced vocational training;
- to develop recommendations for the placement or transfer of municipal officers;

- to implement council resolutions;
- in the case of the chairman, to appoint heads of executive divisions.

Municipal officers possess the following rights:

- to request a written description of their duties and the conditions necessary for their fulfillment from their hiring supervisor;
- to demand information and documents from government bodies, agencies, organizations and citizens in compliance with legislation;
- to decide upon issues related to their sphere of competence;
- to establish professional unions of municipal officers;
- to pursue vocational training;
- to develop proposals to improve municipal service;
- to receive protection of their rights and privileges.

In performing their duties, municipal officers must keep in mind the following obligations:

- to execute their duties in keeping with the Constitution and legislation of Azerbaijan;
- to implement directives from municipal leadership;
- to be disciplined in their work and behavior;
- to coordinate their activities with the appropriate local bodies of state administration and seek to solve local problems jointly.

Municipal officers are full-time paid professionals of the local government and are classified in the same legal category as government officials. They may not jointly hold positions in legislative, executive or judicial bodies or use confidential information outside of their responsibilities to the local government. Salaries are determined in accordance with the organizational chart approved by the local government. Other working conditions, such as hours, vacation, retirement benefits and social security, are regulated by the appropriate labor legislation. Individual municipal governments may assign additional payment to municipal employees according to their financial capabilities. Further privileges or exemptions may also be stipulated in the municipal charter.

The head of the appropriate municipal division is responsible for the employment and dismissal of municipal personnel. According to law, the expiration of an employee's term of office may not be used as a basis for firing an employee.

Current legislation is lacking in any provisions regulating personnel recruitment by local governments, instead delegating the responsibility to determine criteria and rules of employment to the local governments themselves. Depending on the nature of the position, the local government may either hire staff on a competitive basis or simply solve the matter in keeping with the labor legislation.

Although the efficiency of government administration depends on the professionalism of their officials, municipal officials do not have the opportunities for advanced vocational training available to their counterparts in the state government. State government officials may attend vocational training

courses sponsored by the state. However, municipal employees have not been able to participate in these trainings due to lack of financial resources, and the state has done little to remedy the situation. Nor do non-governmental organizations render assistance to municipal governments in this area, beyond the distribution of a few guidebooks on methodology, although they are otherwise active in educating the population. This is due to insufficient financial support and a lack of other kinds of assistance rendered to local governments by international organizations.

9. Legal Guarantees for Local Autonomy

The Azeri state government has envisaged a system of guarantees, embodied in specific legislation, to ensure the autonomy of local governments.

The principle of local autonomy is embedded foremost in the Constitution, which defines municipal governments as independent self-governing institutions separate from the system of state administration bodies. Article 146 of the Constitution grants judicial protection to municipalities and guarantees that additional municipal expenditures caused by state decisions shall be reimbursed. Article 13 of the Constitution acknowledges municipal property as a legal category of property and guarantees its protection, the most important legal provision on the economic independence of municipalities.

Guarantees of local autonomy may also be found in other national legislation. Article 14 of the Law on the Status of Municipalities unambiguously states that local governments and their subordinate bodies are not incorporated in the system of state government bodies and state government bodies or officials may not intervene in municipal government affairs. Municipal governments are to be established as self-governing bodies in all districts, regardless of population size or the existence of municipal property in the given territory. That is, citizens in a territory without municipal property may not be prevented from exercising their right to local self-government on those grounds. Local governments are completely independent in passing and implementing resolutions that are binding for all persons and legal entities within their territory. Non-compliance with municipal government decisions results in judicial liability.

Legislation also provides specific guarantees of financial autonomy. The state government is obliged to protect municipal property and ensure the budgetary independence of local governments. The government may ensure compliance of local budgets with state standards by allocating the necessary funds to local budgets. If the government passes a resolution that results in increased local expenditures, it must immediately determine a sum to be transferred to the municipality in compensation. In managing municipal property, local governments have complete autonomy.

Municipal officials are also protected by law. The government guarantees that local government officers shall not be obstructed in the performance of their duties and undertakes to protect the rights and dignity of elected municipal officials. The conditions for dismissing municipal officers are

explicitly detailed in law. According to article 21 of the Law on the Status of Municipalities, a councilor's term of office may be prematurely terminated only in the following instances:

- if a court conviction is in force against the member;
- if the member must undergo medical treatment;
- if the court has judged a member not to be responsible for his or her actions;
- if the member terminates his or her citizenship, becomes a citizen of a foreign state or makes a similar commitment to a foreign government;
- if the member is deceased or declared dead or missing by the court.

According to the article 22 of the same law, municipal government officers may only be dismissed from office in the following cases:

- if it is discovered that electoral procedures were violated;
- if they submit a written resignation;
- if they fail to fulfill the legal requirements for the position;
- if they are appointed to a position in a legislative, executive or judicial body;
- if they have been declared medically incompetent to fulfill official duties for more than four months;
- if they fail to attend local government personnel meetings without due cause for a period of time stipulated in the municipal charter.

Judicial protection of municipalities is also guaranteed by law. Citizens, local governments, municipal agencies and officials may appeal against actions of state government agencies or other entities that violate the rights of local self-government. In the absence of a special court devoted to issues of local self-government, these claims are generally submitted to district and city courts. Economic disputes between municipal governments and other legal entities are settled in economic courts.

Legislation may impose certain restrictions on local governments' rights only in case of threat to the constitutional regime or national security and for a set period of time. Current legislation does not permit the dissolution of local self-governments prior to the expiration of the designated term. When individual council members are dismissed from office in the specific cases mentioned above, the municipal electoral commission must submit a request to the Central Electoral Commission to hold new elections within three months.

10. Next Steps in the Transition Process

Municipal governments were instituted in a period of wide-ranging political reform in Azerbaijan and therefore entered their existence on somewhat uncertain foundations. The resulting potential for problems has only been confirmed by time. Although municipal governments have been created, they are not significantly active and have little opportunity to become more so. This is reflected in public perception: the majority of citizens believe that local self-governing institutions will not be

able to fulfill their obligations under current conditions. If municipal governments in Azerbaijan are to become viable, certain factors currently impeding their development must be eliminated.

The lack of properly structured state power is the primary obstacle to normally functioning municipal government. Despite the division of powers stipulated in the Constitution, the legislative and judiciary branches remain virtually subordinate to the executive branch. Under these circumstances, Parliament is not in a position to adopt legislation that empowers municipal governments to act independently, that is, potentially counter to state administration interests. Similarly, the judicial branch cannot provide adequate legal protection when municipal rights are violated by the state administration. A true balance of powers must therefore be instituted at the national level before municipal autonomy can be realized.

Furthermore, the role and powers of municipalities in the national political system are imprecisely defined in legislation. This confusion seriously hinders the passage of necessary legislation on local government. Even if these laws were passed, they would not necessarily be effective. Supremacy of law does not always hold true in Azerbaijan, and many laws are ultimately purely formal.

Indifference on the part of the state government is yet another barrier to progress. Measures taken by the state are often unsystematic and ineffective since state officials lack a clear concept of local government. In addition, no government body responsible for local government issues has yet been created. However, this problem is under discussion, and the Office of the President and the Parliament are expected to create internal divisions to coordinate local governments' relations with the central government. This possibility gives rise to hope that the government will begin to render significant assistance to municipal governments.

The lack of finances is also a key source of difficulty for local governments. The central government often does not allocate due subventions or delays the transfer of property to municipal ownership. In general, current conditions do not allow local governments to carry out free economic activities. In order to endow municipalities with financial independence, the state must provide for the financial and economic demands of municipalities in the state budget and transfer a number of profitable state enterprises to municipalities or allocate subsidies for municipalities to create their own enterprises.

Finally, free and universal municipal elections are one of the most important prerequisites for local autonomy. The municipal elections held on 12 December 1999 were largely formal, as the majority of elected municipal officers were in fact candidates backed by the existing executive authorities and are therefore unable to act independently.

If the system of local governance in Azerbaijan is to meet international standards, these issues demand resolution. Several initiatives have recently been submitted to central authorities to hasten solutions to these problems. Both the Coordinating Council of Municipal Governments, which operates out of Baku, and the Center of Municipal Reforms have sponsored similar proposals. Support from both local government associations and the population at large have propelled these issues into prominent debate in the mass media, giving rise to the hope that the government will take serious steps in this direction.

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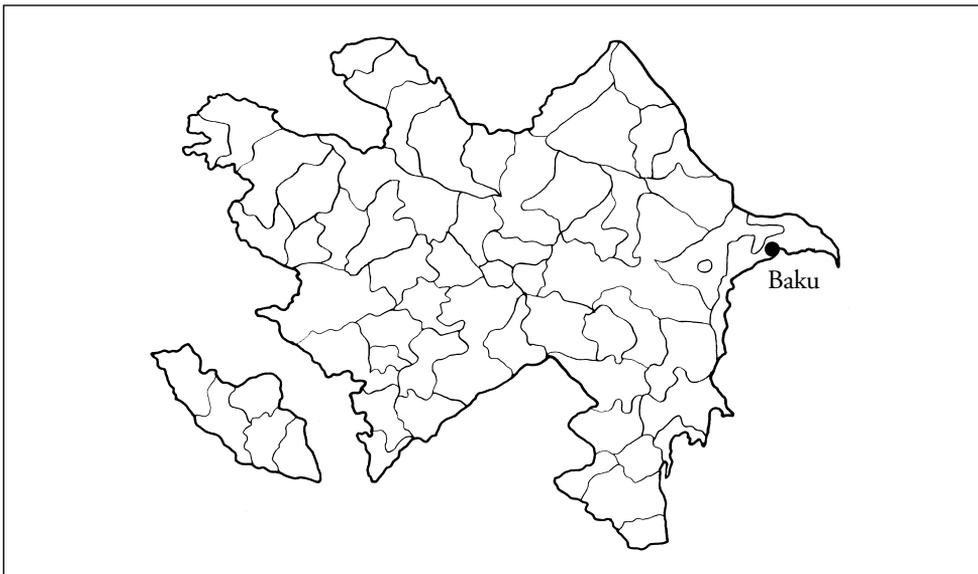
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Annex 7.1

Major General Indicators (1999)

Size of territory	86,600 square kilometers
Population	8,016,200
Pensioners	1,176,000
School-age children	1,848,300
Birth rate	1.1 percent
Population density	92.6 people per square kilometer
Public debt (foreign)	USD 336,200,000
Unemployment rate	1.2 percent
Inflation rate	91.5 percent

Figure 7A.1
Administrative Map of Azerbaijan



Annex 7.2

Major Laws on Public Administration and Local Government

- Constitution of the Republic of Azerbaijan
- Law on Presidential Elections
- Law on Parliamentary Elections
- Law on the State Budget
- Law on State Debt
- Law on the State Taxation Service
- Law on the Armed Forces
- Law on the Border Guards
- Law on the National Bank of Azerbaijan
- Law on the Status of Members of Parliament
- Law on the Judiciary System
- Provision on Local Executive Authority
- Law on the Status of Municipalities
- Law on Municipal Elections
- Model Municipal Charter
- Law on Municipal Finance
- Law on Municipal Territories and Lands
- Law on the Transfer of Assets to Municipalities
- Law on Municipal Service
- Law on Local Referenda

Annex 7.3

Responsibilities of Administrative Tiers

Table 7A.1
Specific Functions of Government Tiers in Azerbaijan*

Functions	Municipalities (individually or in partnership)	District and City Administrations	Central or State Territorial Administration
I. EDUCATION			
1. Pre-school	X		X
2. Primary	X		X
3. Secondary	X		X
4. Technical			X
II. SOCIAL WELFARE			
1. Nurseries	X		X
2. Kindergartens	X		X
3. Welfare homes			
4. Personal services for the elderly and handicapped	X	X	
III. HEALTH SERVICES			
1. First aid	X		X
2. Heath services	X	X	X
3. Hospitals	X		X
4. Public health			
IV. CULTURE, LEISURE, SPORTS			
1. Theaters	X		X
2. Museums	X		X
3. Libraries	X		X
4. Parks	X	X	X
5. Sports, leisure	X	X	X
6. Maintaining buildings for cultural events	X	X	X

Table 7A.1 (continued)
Specific Functions of Government Tiers in Azerbaijan*

Functions	Municipalities (individually or in partnership)	District and City Administrations	Central or State Territorial Administration
V. ECONOMIC SERVICES			
1. Water supply	X	X	X
2. Sewage	X	X	
3. Electricity	X		X
4. Gas	X		X
5. District heating	X	X	
VI. ENVIRONMENT, PUBLIC SANITATION			
1. Waste collection	X	X	
2. Waste disposal	X	X	
3. Street cleaning	X	X	
4. Cemeteries	X	X	
5. Environmental protection	X	X	X
VII. URBAN DEVELOPMENT			
1. Town planning	X		X
2. Regional construction			X
3. Local economic development	X		X
4. Tourism	X		X
VIII. GENERAL ADMINISTRATION			
1. Authorization functions (licenses, etc.)			
2. Other state administrative matters (electoral register, etc.)	X	X	
3. Local police			X
4. Fire brigades			X
5. Civil defense			X
6. Consumer protection	X	X	X

* As may be seen in table 7A.1, the majority of local public services fall under the competence of both state and municipal structures. However, the scope of powers exercised by the state

and municipal structures still does not reflect modern standards. In addition, the table reflects the range of powers delegated to local government by legislation; in reality, most local governments have failed to fulfill these responsibilities.