

PUBLIC FUND TRANSPARENCY KAZAKHSTAN

**REPORT ON THE PREVENTION OF
CORRUPTION IN KAZAKHSTAN
(THE VIEWPOINT OF CIVIL SOCIETY)**

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Public Fund Transparency Kazakhstan is a non-government and non-commercial organisation whose aim is to prevent corruption. It focuses its efforts on researching and generating recommendations on how to eradicate corruption at the systematic level. Transparency Kazakhstan is a national division of the international organisation Transparency International. With the support of private individuals, business representatives and state structures, Transparency Kazakhstan works towards ensuring greater transparency in society and the government and reducing corruption levels. The specifics of Transparency Kazakhstan activities include a focus on research, studying international experience in curbing corruption, developing technology and resources to adapt officially tested instruments and methods for use in Kazakhstan.

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Its mission is promoting values of the open society in Kazakhstan.

Priorities:

- Promote public policies to safeguard fundamental human rights;
- Ensure budget transparency and accountability;
- Increase social activism and tolerance within society.

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1. Introduction

1.1. Purpose of the report

We are currently preparing for the publication of the second national report on the prevention of corruption written by the Agency for Civil Service Affairs and the Prevention of Corruption. The last report was released in 2017. Both reports were prepared by state departments and express their viewpoint on corruption in Kazakhstan and efforts to fight it. The approach is justified and logical from the perspective of the state and business, but still does not reflect all points of view.

This purpose of this report is to show the situation with corruption through the eyes of the general public, experts and non-governmental organisations. It does not attempt to disprove the national report, but aims to supplement it and offers its own recommendations for the fight against corruption.

1.2. Objectives of the report

The objectives of the report included:

1. discussing the current status of the fight against corruption in Kazakhstan
2. analysing important aspects of the fight against corruption for society and experts
3. developing recommendation for the fight against corruption

1.3. Limitations in the research

It needs to be remembered that the authors were subject to certain restrictions that affected the content of the report. These restrictions were:

1. the use of only open information
2. the scope of the report is limited, which is why certain topics may receive less emphasis or may not be covered at all
3. the report does not try to cover all bases or represent the ultimate truth, but is a collection of the viewpoints of the authors, which means it may contain elements of subjectivity
4. the report is designed for an audience that has no real expertise in Kazakhstan law or the specifics of the fight against corruption in Kazakhstan. For that reason, we have tried to use easily understandable language and provide explanations to terms that would be clear to specialists and experts

2. Summary of the report

Since 2015, Kazakhstan has witnessed a new stage in the fight against corruption, one which changes the priority from reacting to corruption to preventing it, and which has impacted the entire state governance system. The government has already introduced a new law to fight corruption and a specialised state programme for the same until 2025. At the same time, the process to prevent corruption actively engages civil society in the form of political parties and non-governmental organisations. In addition, Kazakhstan has played an active role in the same issue with the UN, OECD and other organisation and initiatives that have the fight against corruption as their goal.

The report sets out in detail all of the above aspects of the fight against corruption, both as it is today and potential changes to it. It takes a look at Kazakhstan civil society's thoughts on the fight against corruption and the viewpoint of the international organisations on the same. Special attention has been paid to the issues that exist and the rights of individuals who come up against corruption.

In summing up the report, we believe that:

1. the fight against corruption is a real nationwide priority and that the state is making great efforts to reducing corruption levels. In this respect, the propelling forces and stimulants for the struggle are, on the one hand, international obligations and ambitions to attract foreign direct investment, and on the other hand, a need to improve the state governance process.
2. it is worth pointing out that the state is not united in fighting corruption, and that there is internal opposition to the progressive policy being developed by the Agency for Civil Service Affairs and the Prevention of Corruption. At the same time as the required effective solutions are being taken, a lot of decisions are also being made that actually hinder the fight against corruption.
3. a significant problem is the imbalance in the branches of power, specifically the clear domination of the executive branch of power over the legislative branch. This has a real impact on decisions being made, which may be a result of ulterior corporate or sector lobbying, which actually manages to harm society as a whole.
4. nevertheless, the state has the challenge, forms and tools to participate in, like society and the general public itself, the fight against corruption. Many examples exist of how interaction in this area can be successful. For example, the general public and non-governmental organisations can counter corruption at the system level, amending laws and other normative legal acts.
5. as every year passes, Kazakhstan society, as shown by sociological surveys, is becoming more and more willing to participate in the fight against corruption. However, due to low levels of legal literacy and a visible lack of trust in new tools of interaction between the public and the state, it is yet to meet its full potential.
6. on the whole, it is worth pointing out that in the last two years we have seen some progress in the fight against corruption, specifically in society becoming a participant in the process.

Report recommendations have been developed in the following directions:

1. Recommendations to improve access to judicial information, which requires the development of the adequate regulation of access to judicial information, including a mechanism for analysing and comparing examples of court resolutions
2. Recommendations to improve the legislative branch of power, which involves parliament creating its own expert centre, transferring the Accounts Committee to parliamentary

control and establishing ties with public councils. At a regional level, the staff headcount of maslikhat offices needs to be expanded to improve the opportunities available to deputies

3. Recommendations to improve state governance, which would require regulating the entire state asset sphere by simplifying and publishing reporting, developing governance strategies and highlighting concealed reserves. In addition, transparency in the economy also needs to be improved through openness in land use and the implementation of anti-corruption reviews for draft laws
4. Recommendations for the engagement of civil society. The mass engagement of civil society in the fight against corruption is only possible once a critical mass of people has been created that is aware of its rights. For that reason, the public needs educating in the principles of legal knowledge while still at school and then in how to make use of the “Electronic Government” and “Open Government” services

3. History of the fight against corruption in Kazakhstan

3.1. Corruption statistics

Statistics on corruption-related offences are available on the information service website of the Committee for Legal Statistics and Specialised Accounting of the General Prosecutor's Office of the Republic of Kazakhstan, in the following formats:

1. Form №1-M Report detailing registered crimes and the results of the activities of the criminal prosecution authorities (issued every three months)
2. Form №2-JI Report on persons who have committed offences (issued every three months)
3. Form № 3-K. Report on corruption-related offences, the persons who committed them, convicted offenders and movements in criminal cases for corruption-related offences and entities committing corruption-related offences (issued rarely)

Each of the forms is an MS Excel file with a large number of tables. For example, Form № 1-M consists of 21 sheets, including:

- Section 1. On registered criminal offences
- Section 3. Details of victims (with respect to administrative offences) (article 71 of the Criminal Procedural Code of the Republic of Kazakhstan)
- Section 4. Details of material damage and its recoverability in relation to completed criminal cases (in thousands of KZT)
- Section 6. Information on persons who have committed offences
- Section 8. Information on law enforcement authority members, judges and other civil servants and administrative employees who have committed offences

As can be seen, all information on similar offences is publically available.

Tables 3.1.1 and 3.1.2 below show the number of corruption-related offences registered and that were tried in court between 2008 and 2017 under various articles of the Criminal Code.

We can see the following trends from the registered offences:

- there are practically none or only a few offences related the authority of a civil servant being assumed, illegal participation in business activities, creating a hindrance to legal business activities, and a failure to act in an official position. The reason for this is probably that these sorts of offences are quite hard to prove
- the number of cases of civil servants' abuse of their position and falsification is falling
- the number of cases of the abuse of authority, the receipt of bribes, the giving of bribes, acting as an intermediary in the giving of a bribe and negligence is growing
- on the whole, even though the number of corruption-related offences has grown insignificantly, their share in the total number of offences has dropped almost three-fold

However, for offences that were tried in court the picture is a little bit different. The cases that were tried in court tended to be those related to bribes. It is worth pointing out that a far higher proportion of corruption-related offences make it to court than usual cases; the ratio being 70-80% as opposed to 30-20%, while 1 out of 4-6 usual offences are tried in court. Maybe this is testimony to the greater success of the National Bureau for the Prevention of Corruption than that of the Ministry of Internal Affairs.

Table 3.1.1. Number of corruption-related offences registered in the reporting period

Criminal Code Article	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Abuse of authority	596	658	546	551	581	644	472	945	558	388
Abuse of power or office	452	170	142	221	148	158	131	649	555	395
Receipt of officer authority	0	0	0	1	0	2	0	0	1	1
Illegal participation in business activities	8	8	6	5	1	10	8	12	4	15
Impeding legal business activities	-	-	-	-	4	5	4	12	5	5
Receipt of bribes	290	344	344	388	418	316	259	551	694	812
Giving bribes	246	312	228	136	121	192	185	274	290	338
Mediation in bribery	17	29	18	39	35	29	26	70	47	95
Falsification by officials	707	735	675	659	534	749	553	283	481	191
Failure to act in an official capacity	34	28	20	19	30	19	17	34	14	22
Negligence	133	183	111	126	215	287	472	507	279	212
Total number of corruption-related offences	2 483	2 467	2 090	2 145	2 087	2 411	2 127	3 337	2 928	2 474
Total number of offences	127 478	121 667	131 896	206 801	287 681	359 844	341 291	386 718	361 689	316 418
Share of corruption-related crimes in the total, %	1.95	2.03	1.58	1.04	0.73	0.67	0.62	0.86	0.81	0.78

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Number of corruption-related offences tried as a crime in court in the reporting period

Criminal Code Article	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Abuse of authority	397	443	424	340	197	402	293	302	357	243
Abuse of power or office	373	116	100	183	63	99	61	62	81	75
Receipt of officer authority	0	0	0	0	0	1	0	0	0	0
Illegal participation in business activities	5	7	3	5	0	7	8	10	7	11
Impeding legal business activities	-	-	-	-	2	2	5	8	5	2
Receipt of bribes	254	315	348	392	344	324	277	407	574	712
Giving bribes	207	241	260	123	72	148	171	152	180	257
Mediation in bribery	9	22	12	21	11	39	14	41	42	53
Falsification by officials	495	542	575	517	297	567	378	194	392	164
Failure to act in an official capacity	18	15	13	8	4	12	6	3	3	12
Negligence	36	74	48	30	25	29	43	21	52	45
Total number of corruption-related offences	1 794	1 775	1 783	1 619	1 015	1 630	1 256	1 200	1 693	1 574
Total number of offences	73 351	72 299	69 700	63 893	58 607	65 318	59 632	63 852	68 164	73 794
Share of corruption-related crimes in the total, %	2.45	2.46	2.56	2.53	1.73	2.50	2.11	1.88	2.48	2.13

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3.2. Damage caused by corruption-related offences

Likewise, in addition to the offences themselves, the damage they can cause is also an important factor. Statistics show that since 2008, damage caused by various offences has grown from KZT 148 billion to KZT 315 billion in 2017, with the maximum achieved in 2016 of KZT 383 billion. At the same time, the trend has been for a reduction in average damage from offences committed due to both an increase in the number of offences and a reduction in the opportunities for large-scale offences.

Table 3.2.1. Damage caused from all offences, by years

Year	Amount of damage caused by offences (thousands of KZT)	Number of registered offences	Average damage per offence (thousands of KZT)
2008	147 717 498	127 478	1 159
2009	233 104 739	121 667	1 916
2010	276 388 855	131 896	2 096
2011	198 484 495	206 801	960
2012	160 604 082	287 681	558
2013	304 273 875	359 844	846
2014	160 823 494	341 291	471
2015	245 513 656	386 718	635
2016	382 506 448	361 689	1 058
2017	314 698 907	316 418	995

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Damage from corruption-related offences fluctuates far more than for usual offences – 80-fold in facts – from KZT 80 billion in 2013 to KZT 1 billion in 2014. The corruption-related offence that contributes most to damage figures is the abuse of authority, which can account for up to 95% of all damage caused by corruption-related offences.

The highest share of corruption-related offences in total damage was in 2008, when they reached 21.4% and in 2013 – 26.3%. However, after that the share of corruption-related offences fell to 3%. In the last four years, we have managed to avoid major embezzlement cases, which would have caused major damage.

How is damage from corruption-related offences roughly allocated? To find out we can look at figures from 2017:

- total damage caused amounted to KZT 9 482 992 thousand, of which 99.35% was suffered by the state, 0.2% was suffered by businesses and 0.45% by individuals
- investigation led to the return of KZT 6 780 837 thousand
- property valued at KZT 1 844 422 thousand was either arrested or seized

In other words, it is worth pointing out that a large percentage of damage (over 85%) is recovered during investigation or when a case reaches court.

Table 3.2.2. Damage from corruption-related offences

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Total for corruption-related offences	46 442 560	4 327 123	12 391 650	31 977 267	30 482 261	80 142 262	1 049 433	9 384 378	14 941 599	9 482 993
Share of corruption-related offences in total damage	31.4	1.9	4.5	16.1	19.0	26.3	0.7	3.8	3.9	3.0
Abuse of authority (article 307)	43 139 759	982 250	1 034 628	29 491 981	15 742 578	79 951 049	523 809	7 214 699	8 306 392	1 133 281
Abuse of power or office (article 308)	3 005 196	2 397 298	1 360 586	1 714 175	34 815	25 592	3 284	3 008	5 894 810	44 038
Receipt of officer authority (article 309)										
Illegal participation in business activities (article 310)								38 110		
Impeding legal business activities (article 310-1)					5 585	416	550	2 290	68 867	
Receipt of bribes (article 311)	24 008	2 335	2 673	6 691				145 877	12 293	5 914 161
Giving bribes (article 312)	4 467	741	4 395	2 609				31 125	468	1 128 856
Mediation in bribery (article 313)	12	0	325	100				0	0	0
Falsification by officials (article 314)								353 815	517 190	777 497
Failure to act in an official capacity (article 315)								0	50 550	348
Negligence (article 316)								1 595 455	91 028	484 811

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3.3. Corrupt officials

As a rule, the typical perpetrators of corruption-related offences are male civil servants aged 21-49, with a higher education, and who have no previous criminal record. Roughly, every year between 700 and 900 people faced criminal charges with respect to committing corruption-related offences, which is approximately 70-80% of all those committing corruption-related offences. It is worth pointing out that criminal liability can be avoided if the suspect cooperates with an investigation.

Table 3.3.1. Persons who have committed corruption-related offences

Year	Total	Charged with a criminal offence	Acquitted	Percentage charged, %	Percentage acquitted, %
2008	1 132	831	301	73	27
2009	1 427	1 092	335	77	23
2010	1 262	957	305	76	24
2011	1 014	715	299	71	29
2012	1 146	510	636	45	55
2013	1 188	800	388	67	33
2014	1 011	662	349	65	35
2015	988	724	264	73	27
2016	1 055	803	251	76	24
2017	1 145	913	232	80	20

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If we look at those offences that are committed by civil servants and executives, in other words all branches of power in Kazakhstan, then roughly 45-49% of them are corruption-related offences. That is a rather high figure and it suggests that the problem is big. Table 3.3.3 lists the representatives of the departments and branches of power most likely to commit corruption-related offences, such as the police, akims and customs officials, which is only to be expected knowing the specifics of their work.

Table 3.3.2. Number of offences committed by civil servants and executives

Year	Total	Corruption-related offences	Share of corruption-related offences, %
2008	773	384	49.7
2009	1 020	497	48.7
2010	977	459	47.0
2011	819	386	47.1
2012	955	444	46.5
2013	1 186	506	42.7
2014	948	424	44.7
2015	863	402	46.6
2016	1 028	438	42.6
2017	1 033	473	45.8

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Table 3.3.3. Number of crimes committed by civil servants and executives (by department)

Category	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total	Share, %
Ministry of Internal Affairs employees (exclusive of criminal executive system and emergency officers until 2015)	169	217	188	182	191	234	203	234	286	307	2211	<i>51.10</i>
Penitentiary Service employees								21	23	32	76	<i>1.76</i>
Emergency Service employees	18	10	17	14	12	13	7			9	100	<i>2.31</i>
Committee for National Security employees	2	7	13	18	16	38	36	16	4	12	162	<i>3.74</i>
Prosecutor's Office employees	2	4	2	0	1	3	1	0	2	3	18	<i>0.42</i>
Customs Authorities employees	25	54	35	15	21	38	29	14	6		237	<i>5.48</i>
Justice Department employees	29	25	42	31	44	35	18				224	<i>5.18</i>
Economic Investigation Department employees								28	33	9	70	<i>1.62</i>
Anti-Corruption Service employees	2	21	12	13	9	5	6			0	68	<i>1.57</i>
Judges	12	7	2	7	3	5	6	0	0	1	43	<i>0.99</i>
Deputies	0	1	2	4	0	0	0	0	1	1	9	<i>0.21</i>
Akims	49	61	65	40	42	30	18	30	19	23	377	<i>8.71</i>
Court executives	34	36	24	21	38	32	22	4	7	1	219	<i>5.06</i>
Tax Service employees	34	29	34	16	38	32	35	5	9		232	<i>5.36</i>
Military servicemen and women in all forces	8	25	23	25	29	40	43	29	25	34	281	<i>6.49</i>
Total	384	497	459	386	444	505	424	381	415	432	4327	

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3.4. Basic anti-corruption measures

The state model for preventing corruption covers the following system-based areas within the framework of which measures are performed to ensure:

- 1) professional state administration observing ethics standards
 - a) a career model for the civil service
 - b) a three-level hiring system for civil servants
 - c) the introduction of ethical standards for civil servants and those responsible for ethics
- 2) the supremacy of law and the rule of law
 - a) the automation of judicial procedures
 - b) a new system for selecting judges through the use of lie detectors
 - c) a three-level court system
 - d) a performance evaluation for judges every five years
 - e) year-long internships for new judges
 - f) the notification of the participants of court sessions through the mass media
 - g) the removal of “general surveillance” from prosecutor functions
 - h) a geographical crime map
 - i) the hiring of candidates to the law enforcement authorities according to the civil servant selection model
- 3) the openness, transparency and accountability of state institutions
 - a) the creation of an “open government” and its five services for the people
 - b) the introduction of the institution of 229 public councils to operate at national and local levels
- 4) a service-oriented government
 - a) the transformation of the majority of state services to the electronic format
 - b) the full transition to the “one-stop-shop” principle
 - c) the constant monitoring of the quality of state services

4. Anti-corruption legislation

4.1. General information

4.1.1. Codes

In the Criminal Code¹, corruption-related offences and punishment for them are described in chapter 15 “Corruption and Other Criminal Offences against the Interests of the Civil Service and Public Administration.” The chapter in question incorporates the following 11 articles:

- Article 361. Abuse of authority
- Article 362. Abuse of power or office
- Article 363. Receipt of officer authority
- Article 364. Illegal participation in business activities
- Article 365. Impeding legal business activities
- Article 366. Receipt of bribes
- Article 367. Giving bribes
- Article 368. Mediation in bribery
- Article 369. Falsification by officials
- Article 370. Failure to act in an official capacity
- Article 371. Negligence

The punishments for each of the various offences above vary from fines and correctional work to custodial restraint, imprisonment and the confiscation of assets and property. As a rule, punishment tends to be accompanied by a life-long disqualification from taking up specific positions or partaking in specific activities.

The Code *On Administrative Violations*² also has a section on corruption-related offences – chapter 34 “Administrative Corruption,” which incorporates the following 6 articles:

- Article 676. Provision of unlawful material remuneration by individuals
- Article 677. Receipt of unlawful material remuneration by a person authorised to perform public functions, or by an equivalent person
- Article 678. Provision of unlawful material remuneration by legal entities
- Article 679. Performance of unlawful business activities and receipt of unlawful income by the state authorities and local self-regulation bodies
- Article 680. Failure by executives of the state authorities to take measures to prevent corruption
- Article 681. Hiring of individuals who have previously been found guilty of corruption-related offences

All the above articles stipulate punishment in the form of a range of fines.

4.1.2. Laws

¹ Criminal Code of the Republic of Kazakhstan. Code of the Republic of Kazakhstan № 226-V 3PK dated 3 July 2014. // <http://adilet.zan.kz/rus/docs/K1400000226>

² On Administrative Violations. Code of the Republic of Kazakhstan № 235-V 3PK dated 5 July 2014. // <http://adilet.zan.kz/rus/docs/K1400000235#z0>

The two most important laws in the fight against corruption are the Law *On the Prevention of Corruption* and the Law *On the Civil Service of the Republic of Kazakhstan*. If the first law focuses on the fight against corruption itself, the second governs those areas where corruption tends to arise:

1. the Law *On the Prevention of Corruption*³ governs public relations in the prevention of corruption and focuses on the implementation of anti-corruption policy in the Republic of Kazakhstan
2. the Law *On the Civil Service*⁴ governs public relations associated with joining the civil service of the Republic of Kazakhstan, the duration of civil service and its termination; determines the legal status, material welfare and social welfare of civil servants, and the activities of other persons working for the state authorities

The following laws are also considered significant in the fight against corruption:

1. the Law *On the Procedure for interacting with Individuals and Legal Entities*⁵ governs public relations arising in relation to individuals and legal entities applying to exercise and protect their rights, freedoms and legal interests, and the process around considering those applications
2. the Law *On State Services*⁶ governs public relations arising around the provision of state services. According to the law, a state service is one of the forms of implementing certain state functions individually according to requests from the recipients of services and aimed at exercising their rights, freedoms and legal interests, providing them with the corresponding tangible or intangible benefits
3. the Law *On Administrative Procedures*⁷ establishes administrative procedures enabling improvements in the organisation of management activities, the smooth running and continuous operation of the state authorities, the effective adoption of management solutions, observance of the rights and freedoms of citizens, the protection of state interests, and the exclusion of civil servants' use of their authority for unofficial purposes
4. the Law *On Permits and Notifications*⁸ governs public relations associated with the introduction of permits or notifications for private businesses and other entities stipulated by the law to perform specific activities or actions

4.1.3. Strategic documents

The main strategic document governing the fight against corruption is the “Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025”⁹. Its aim is to improve the effectiveness of the state's anti-corruption policy, involve society in anti-corruption movements by creating an atmosphere of “zero” tolerance towards any manifestation of corruption and reducing corruption levels in Kazakhstan. The strategy's objectives are to:

³ On the Prevention of Corruption. Law of the Republic of Kazakhstan № 410-V 3PK dated 18 November 2015. <http://adilet.zan.kz/rus/docs/Z1500000410>

⁴ On the Civil Service of the Republic of Kazakhstan. Law of the Republic of Kazakhstan № 416-V 3PK dated 23 November 2015. <http://adilet.zan.kz/rus/docs/Z1500000416>

⁵ On the Procedure for interacting with Individuals and Legal Entities. Law of the Republic of Kazakhstan N 221 dated 12 January 2007. http://adilet.zan.kz/rus/docs/Z070000221_

⁶ On State Services. Law of the Republic of Kazakhstan № 88-V 15 dated April 2013. <http://adilet.zan.kz/rus/docs/Z1300000088>

⁷ On Administrative Procedures. Law of the Republic of Kazakhstan N 107 dated 27 November 2000. http://adilet.zan.kz/rus/docs/Z000000107_

⁸ On Permits and Notifications. Law of the Republic of Kazakhstan № 202-V 3PK dated 16 May 2014. <http://adilet.zan.kz/rus/docs/Z1400000202>

⁹ On the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025. Edict of the President of the Republic of Kazakhstan № 986 dated 26 December 2014. <http://adilet.zan.kz/rus/docs/U1400000986#z15>

- prevent corruption in the civil service
- implement the institution of public control
- prevent corruption in the quasi-government and private sectors
- prevent corruption in courts and other law enforcement bodies
- create the required level of anti-corruption culture
- develop international interaction and cooperation in the prevention of corruption

The government has introduced and is currently executing three-year action plans in relation to its strategy.

4.1.4. By-laws

In addition, the following by-laws deal with the fight against corruption:

1. Anti-Corruption Monitoring Guidelines¹⁰. The activities of the state body (state bodies), organisations and quasi-state sector entities responsible for coordinating procedures in a specific area are subject to anti-corruption monitoring
2. Standard Guidelines for the Internal Analysis of Corruption Risks¹¹. The activities of structural divisions, departments, departmental organisations, regional or equivalent divisions are all subject to an internal analysis of corruption risks
3. Guidelines for performing an External Analysis of Corruption Risks¹². An external analysis of corruption risks is performed to highlight corruption risks in normative legal acts regulating the activities of the subject of an analysis of corruption risks; highlight corruption risks in the organisational and management activities of the subject of an external analysis of corruption risks

4.2. Substance and basic provisions of Kazakhstan anti-corruption law

The main document governing the structure and content of anti-corruption law is the United Nations Convention Against Corruption¹³ (the “Convention”), which was adopted by Resolution 58/4 of the General Assembly on 31 October 2003 and has been open for signing since 9 December 2003¹⁴. It is the first and probably most significant document in its field, containing in article 5 a requirement for each state party, in accordance with the fundamental principles of its legal system, to develop and implement or maintain effective and coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, the proper management of public affairs and public property, integrity, transparency and accountability. Other international and national documents governing the prevention of corruption should, in one way or another, conform to the Convention.

Kazakhstan ratified the Convention by Law № 31-IV dated 4 May 2008 *On the Ratification of the United Nations Convention Against Corruption*¹⁵, surrendered its ratified credentials for

¹⁰ On the Approval of Guidelines for performing Anti-Corruption Monitoring. Order of the Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption № 13 dated 19 October 2016 // <http://adilet.zan.kz/rus/docs/V1600014431>

¹¹ On the Approval of Model Guidelines to perform an Internal Analysis of Corruption Risks. Order of the Chairman of the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption № 12 dated 19 October 2016. // <http://adilet.zan.kz/rus/docs/V1600014441>

¹² On the Approval of Guidelines to perform an External Analysis of Corruption Risks. Resolution of the Government of the Republic of Kazakhstan № 806 dated 4 December 2017.

//<http://adilet.zan.kz/rus/docs/P1700000806>

¹³ http://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml

¹⁴ <http://www.un.org/ru/events/anticorruptionday/>

¹⁵ http://adilet.zan.kz/rus/docs/Z080000031_

storage with the General Secretary of the United Nations on 17 July 2008¹⁶ and acceded to the Convention on 18 June 2008¹⁷. Since then, Kazakhstan has been systematically reforming its anti-corruption legislation.

The Section for Corruption and Economic Crimes of the United Nations Office on Drugs and Crime monitors implementation of the Convention and acts as the secretariat of the state parties to the United Nations Convention Against Corruption and has the authority to help state parties ratify and execute the Convention, assist and support status reviews and provide a conference of state parties with information on measures adopted by the various countries, and also on difficulties arising during execution, which aids the exchange of information, practices and experience among state parties¹⁸.

The first cycle of the status review mechanism was launched in 2010, with the first review prepared in 2013-2015¹⁹ and the second – in December 2017²⁰. In fact, we used the 356-page second review “Execution Status of the United Nations Convention Against Corruption. Criminalisation, Law Enforcement and International Cooperation. Second Edition” (the “Review”) as the source for observing the current status of Kazakhstan anti-corruption legislation. It is worth pointing out that the Review, in accordance with Convention policy, does not refer to weaknesses in the laws of any specific country. The Review is abstract in nature and is based on the Convention itself.

The second significant document is the so-called Istanbul Anti-Corruption Action Plan, which is a sub-regional peer review programme launched in 2003 in the framework of the OECD Anti-Corruption Network for Eastern Europe and Central Asia²¹. The Anti-Corruption Network supports participating countries in their efforts to fight corruption, specifically taking measures to combat corruption and apply corruption prevention laws effectively. The current working programme was approved at the 14th session of the Anti-Corruption Network Management Group held on 9 October 2015²².

The Istanbul Anti-Corruption Action Plan supports reforms in the fight against corruption through country reviews and constant monitoring of the implementation of recommendations that promote international standard and best practices. The current 231-page “Anti-Corruption Reforms in Kazakhstan. 4th Round of Monitoring in the Framework of the Istanbul Anti-Corruption Action Plan” report (the “Report”) was approved at an OECD Network session held on 13 September 2017 in Paris²³. We will be using the Report as a second primary document to analyse progress in anti-corruption legislation of the Republic of Kazakhstan.

4.2.1. Analysis of the provisions of the Review and Report pertaining to anti-corruption legislation in the Republic of Kazakhstan

The public official question

The Report states:

“The main issue throughout and linked to the fulfilment of chapter III is the application of the term “public official.” It is important to establish how state parties define the term “public

¹⁶

<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1504244r.pdf>

¹⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&lang=en

¹⁸ <http://www.unodc.org/documents/corruption/Publications/2018/V1704681r.pdf>

¹⁹ https://www.unodc.org/documents/treaties/UNCAC/COSP/session6/15-03459_R_ebook.pdf

²⁰ <http://www.unodc.org/documents/corruption/Publications/2018/V1704681r.pdf>

²¹ <http://www.oecd.org/corruption/acn/istanbulactionplan/>

²² <http://www.oecd.org/corruption/acn/aboutthenetwork/>

²³ <http://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-4thRound-Monitoring-Report-RUS.pdf>

official” in relation to corruption-related offences and whether domestic definitions comply with point (a) of article 2 of the Convention” (page 21 of the Review).

The Report states:

“New recommendation № 25

Extend the term “public official” in legislation concerning the prevention of the legalisation (laundering) of criminal income to national officials performing important public duties; and expand the definition of “public official” to include executives in quasi-state sector enterprises, political parties and the family members and close relatives of public figures” (page 183 of the Report).

With respect to the above comment, it is worth pointing out that the Criminal Code of the Republic of Kazakhstan²⁴ (the “Criminal Code”) and the Law of the Republic of Kazakhstan *On the Prevention of Corruption*²⁵ (the “Corruption Law”) define the term “public official” differently. Specifically, point 27 of article 3 of the Criminal Code states that a person authorised to perform public duties is a civil servant in accordance with civil service legislation of the Republic of Kazakhstan or a maslikhat deputy. On the other hand, point 3 of article 1 of the Corruption Law adds, “and a person temporarily performing the duties stipulated by a public position, before his/her appointment to the civil service.”

Then, point 28 of article 3 of the Criminal Code defines an individual equivalent to those authorised to perform public duties as an individual elected to a local authority; an individual who has registered in accordance with the statutory procedure as a candidate for President of the Republic of Kazakhstan, a deputy of the Parliament of the Republic of Kazakhstan or maslikhats, and as a member of a local elected body; an individual permanently or temporarily working in a local authority body and whose salary is paid from the Kazakhstan state budget; an individual performing management functions in a state organisation or organisation in which the state holds an interest of over 50%, including in a national management holding company, national holding company, national company, a national development institution in which the state is a shareholder, subsidiaries of the same in which more than 50% of voting shares (interests) belong to it, and in a legal entity in which 50% or more of the voting shares (interests) belong to the subsidiary in question; employees of the National Bank of the Republic of Kazakhstan and its divisions.

Point 4 of article 1 of the Corruption Law adds the following definition, “the akims of district level towns, rural villages, villages and rural districts,” replacing the above list of terms with “an entity in the quasi-state sector.” Point 31 of article 3 of the Budget Code of the Republic of Kazakhstan²⁶ clarifies that entities in the quasi-state sector are state enterprises, limited liability partnerships, joint stock companies, including national management holding companies, national holding companies, national companies whose founder, participant or shareholder is the State, and subsidiaries, dependent and other legal entities affiliated to them in accordance with legislative acts of the Republic of Kazakhstan.

The question of liability for promising or offering a bribe

The Review states:

“A number of state parties adopt the “based on actions” approach, whereby only an actual exchange of the subject of a crime is treated as a crime, while the offer of a bribe is not treated

²⁴ Criminal Code of the Republic of Kazakhstan № 226-V dated 3 July 2014 (with amendments and additions as at 9 January 2018)

²⁵ Law of the Republic of Kazakhstan № 410-V dated 18 November 2015 On the Prevention of Corruption (with amendments and additions as at 3 July 2017)

²⁶ Budget Code of the Republic of Kazakhstan № 95-IV dated 4 December 2008 (with amendments and additions as at 9 January 2018)

as such, even though in the majority of cases the actual act of offering a bribe has the potential to be punished as an attempted crime, or “unfinished” crime or as “arranging” a crime (page 31 of the Review).

The Report states

“New recommendation № 17

1. Bring the provisions detailing criminal liability for corruption-related offences into line with international standards, and specifically establish criminal liability for:

1) promising or offering a bribe; accepting a promise or offer of a bribe, and for requesting a bribe to complete a corruption-related offence in the public or private sectors” (page 156 of the Report)

With respect to the above comment, we note that this issue has been controversial for as long as Kazakhstan has been monitoring the Convention and Plan. At the same time, article 24 of the Criminal Code explains the terms “arranging a crime” and “attempted crime” as covering a promise, offer or request to carry out a bribe. At the same time, liability for arranging a crime comes into play for serious and extremely serious crimes, while liability for an “attempted crime” also covers crimes considered as being of medium severity.

The abolishment of “active repentance” in relation to individuals who have bribed foreign public officials

The Review states:

“The OECD Working Group on Bribery in International Business Transactions believes that the use of “active repentance” as a defence in cases involving the bribery of foreign public officials is inadmissible because a foreign public official is usually answerable under a completely different jurisdiction and, even if in the bribe giver’s jurisdiction point 2 of article 16 regarding the passive bribing of foreign public officials comes into play, any practical application of the same is extremely difficult. As a result, if a state party to the Working Group extends its “active repentance” provision to the bribery of foreign public officials, it will have received the recommendation to abolish it or at least limit it so it does not become an obstacle to the effective application of a provision regarding the active party to a crime involving the bribery of foreign officials” (page 55 of the Review).

The Report states:

“New recommendation № 20

3. Remove the possibility of indemnity according with respect to the comment to article 367 of the Criminal Code in the event a bribe is given to a foreign public official” (page 162 of the Report).

The comment clarifies part of a larger comment on the “active repentance” mechanism for bribe givers under Kazakhstan law. Because the objective of article 16 of the Convention is probably most likely to guarantee the execution of provisions around the bribery of foreign public officials, the question remains whether the provisions of domestic law regarding the application of leniency on those supplying information on individuals contributes to the bribery of foreign individuals or they should be treated as inadmissible in these sorts of cases²⁷. The question here is that ultimately, both parties involved in the bribery of foreign public officials may remain unpunished.

The question of bribery in favour of third parties

The Review states:

²⁷ <http://www.unodc.org/documents/corruption/Publications/2018/V1704681r.pdf>

“Many cases have been seen of restrictions or discrepancies regarding the receipt of benefits for third parties, which have led to the corresponding recommendations. Although in a number of countries, the absence of direct evidence of an act committed in favour of another individual or legal entity is not considered grounds for concern, in other cases experts who have carried out similar reviews have thought it important to eradicate any significant ambiguity. The government authorities from one of the relevant state parties declared that the lack of any direct evidence of an act committed in favour of third parties is because it is not important how exactly the individual committing the crime uses the tools for the crime, as the crime is treated as having been concluded at the moment the tools were used unlawfully” (page 62 of the Review).

The Report states:

“New recommendation № 17

1. Bring provisions on criminal liability for corruption-related offences into line with international standards, and specifically establish criminal liability for:

2) giving bribes and commercial benefits in favour of third parties” (page 156 of the Report)

In a previous version of the Criminal Code of the Republic of Kazakhstan²⁸, bribery in favour of third parties was criminalised by articles 311 and 312²⁹. The current version of article 366 of the Criminal Code “Receipt of bribes” stipulates liability for the subject of a corruption-related offence receiving a bribe personally or through an intermediary in the form of cash, securities, other assets, rights to assets or benefit of a material nature for him/herself or other persons.

Point 6 of article 1 of the Corruption Law establishes that corruption is the illegal use by persons holding responsible state positions, persons authorised to perform state functions, persons recognised as the equivalent of those authorised to perform state functions, officials performing their official (professional) duties and any related opportunities, to receive or generate personally, or through intermediaries, material (intangible) gain and benefits for themselves or third parties, and equally the bribery of the same persons by providing gain and benefits.

Thus, Kazakhstan law defines liability for corruption-related offences in favour of third parties sufficiently well.

The question of criminal liability for the abuse of influence

The Review states:

“The state parties were recommended that they consider the possibility of including special provisions in their domestic legislation establishing criminal liability for using influence for corrupt purposes” (page 64 of the Review)

The Report states:

“New recommendation № 17

1. Bring provisions on criminal liability for corruption-related offences into line with international standards, and specifically establish criminal liability for:

3) the trading of influence” (page 153 of the Report)

“the offence of “abusing influence” should stipulate liability for promising, offering or transferring illegal benefits to an individual who asserts that he/she may have an unlawful

²⁸ Criminal Code of the Republic of Kazakhstan № 167-І dated 16 July 1997 (lost its force)

²⁹ https://online.zakon.kz/Document/?doc_id=1008032#pos=3995;-72&sdoc_params=text%3D%25D1%2583%25D0%25B3%25D0%25BE%25D0%25BB%25D0%25BE%25D0%25B2%25D0%25BD%25D1%258B%25D0%25B9%26mode%3Dindoc%26topic_id%3D1008032%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=0

influence on an official, and requesting, receiving or accepting an offer or promise of any such influence – irrespective of whether that influence was actually exerted or the exerted influence led to the required result” (page 153 of the Report).

Current legislation of the Republic of Kazakhstan does not criminalise the abuse of influence for corrupt purposes. Liability arises under articles 361, 362, 366 and others of the Criminal Code. At the same time, article 18 of the Convention “Trading in Influence” does not commit state parties, but recommends that they consider the possibility of adopting such legislative and other measures as may be necessary to recognise a punishable trading in influence as criminal.

At the same time, it is worth pointing out that article 361 “Abuse of Authority” and article 362 “Abuse of Power or Office” of the Criminal Code do not cover the full meaning of any such actions as the promise, offer or transfer of an illegal advantage to a person who asserts that he/she may exercise unlawful influence on an official, and request, receive or accept an offer or promise of any such advantage in return for that influence.

The question of criminal liability for illicit enrichment

The Review states:

“Illicit enrichment established in the Convention’s optional clauses is not recognised as a criminal offence in the majority of state parties” (page 74 of the Review)

“In many jurisdictions, where there is no criminal liability for illicit enrichment, the authorities have affirmed, and experts have tended to partially agree, that a similar result, even though it is not a full equivalent, can be achieved by creating a binding and efficient system for controlling the income and assets of public officials (for instance, having public officials report their salaries and taxes paid). This should ease data gathering, help ensure control and investigations. An even more effective tool would be to introduce an obligatory requirement for public officials to file annual returns on their assets and income, those of their spouses and dependent children (usually before taking up a position and afterwards). Persons required to file a return, when providing information, should have to explain any increase in assets. If a person does not file a return or provides false information in a return, this is, depending on the jurisdiction, a disciplinary or administrative violation or even a criminal offence. This type of system complies with state party obligations in relation to developing policies enabling transparency and accountability, as stipulated in point 1 of article 5 of the Convention” (page 80 of the Review).

The Report states:

“The introduction of a mechanism for the obligatory declaration of public income in the Republic of Kazakhstan is referred to in the Nation Plan – 100 concrete steps to implement the institutional reforms of the Head of State and the anti-corruption strategy for 2015-2025. From 2020, the income declaration system will extend to all individuals” (page 155 of the Report).

Article 20 of the Convention is the most controversial and has been the cause of a number of discussions, comments and even critical opinion during ratification of the Convention³⁰. The most significant argument against article 20 is that it “contradicts the constitution,” “contradicts the principle of innocent until proven guilty,” shows up “the shortcomings of the procedural activities of the law enforcement authorities” and represents “a significant risk of the conviction of innocent people.”³¹

³⁰ https://ru.wikipedia.org/wiki/Незаконное_обогащение

³¹ <http://www.unodc.org/documents/corruption/Publications/2018/V1704681r.pdf>

From the outset, the Republic of Kazakhstan has looked at the possibility of introducing liability for illicit enrichment, which was reflected in a draft version of its anti-corruption strategy and a draft law amending the Law *On Corruption*³².

The approved version of the anti-corruption strategy does not mention illicit enrichment. However, it does refer to the planned introduction of a mechanism to declare income and expenses, as follows:

“4. Key directions, basic approaches and priority measures

4.1. Prevention of corruption in the civil service

A consequence of corruption is the unlawful acquisition of tangible and intangible benefits, which subsequently undermines public interest and reduces the influence of state authority.

Therefore, the state will continue to assume all possible measures to create conditions whereby the use of official premises for corrupt purposes will become uneconomical and ultimately impossible.

One of the most important of these measures will be to have civil servants declare not only their income, but expenses as well. In the future, the declaration initiative will apply to the entire population, which will have a positive impact on compliance with the law and ensure transparency in the civil service.”³³

Subsequently, Law of the Republic of Kazakhstan № 412-V dated 18 November 2015 *On the Introduction of Amendments and Additions to certain Legislative Acts of the Republic of Kazakhstan regarding the Declaration of the Income and Property of Individuals* was introduced to implement the above³⁴. The amendments covered the Civil Code of the Republic of Kazakhstan (Special Part), the Code of the Republic of Kazakhstan dated 10 December 2008 *On Taxes and Other Obligatory Budget Payments (the Tax Code)*, the Criminal Executive Code of the Republic of Kazakhstan, the Code of the Republic of Kazakhstan *On Administrative Violations* and others.

There are currently two Tax Codes in effect: the Code of the Republic of Kazakhstan № 99-IV dated 10 December 2008 *On Taxes and Other Obligatory Budget Payments (the Tax Code)*³⁵ (with amendments and additions as at 25 December 2017) (which has partially lost its force) and the Code of the Republic of Kazakhstan № 120-VI dated 25 December 2017 *On Taxes and Other Obligatory Budget Payments (the Tax Code)*³⁶.

From 1 January 2020, when chapter 71 of the Tax Code “Universal Declaration of Income and Property of Individuals” enters into force, the following individuals will be obliged to file asset and liability returns, and income and property returns:

- residents of the Republic of Kazakhstan
- adult citizens of the Republic of Kazakhstan
- oralmans
- persons holding residence permits
- foreign nationals or stateless individuals (conditional)

³²

<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1504244r.pdf>

³³ https://online.zakon.kz/Document/?doc_id=31645304#pos=234;-102

³⁴ https://online.zakon.kz/Document/?doc_id=34634878#pos=1;-113

³⁵ https://online.zakon.kz/Document/?doc_id=30366217

³⁶ https://online.zakon.kz/Document/?doc_id=36148637

- minors (conditional)

Thus, Kazakhstan will meet the provisions of article 20 of the Convention in 2020 by establishing an obligatory and effectual income and asset control system, which will cover public officials, their spouses and their dependent children.

Question of the liability of legal entities for corruption-related offences

The Review states:

“Except for a few countries, all state parties have taken measures to establish the liability of legal entities for participating in crimes recognised as such in accordance with the Convention” (page 115 of the Review).

“... should also have the opportunity to bring a legal entity to accountability even if investigation does not establish the identity of the individual who committed the crime — which may often be the case in the most decentralised and complex corporate structures in which corporate activities and decision-making processes may have become unclear, — or establish his/her liability, for example, as a consequence of procedural obstacles” (pages 115-116 of the Review).

“It is clear that one of the goals of introducing liability for legal entities is to motivate them to introduce the appropriate mechanisms for preventing corruption, such as appointing a special official to test for corruption, determine that person’s prerogatives, create and certify an internal control system, and monitor its performance. Therefore, in certain cases, a legal entity may not be regarded as liable if it can prove that it applied the appropriate diligence or that it has an “organisation model” in place to test for the conclusion or sanctioning of criminal acts” (page 115 of the Review).

The Report states:

“New recommendation № 19

Establish the effective and efficient liability of persons for corruption-related offences with sanctions that are in proportion to the crime committed, according to international standards and best practices” (page 160 of the Report).

This is another issue where Kazakhstan’s position remains somewhat unclear. Article 678 of the Code of the Republic of Kazakhstan *On Administrative Violations* dated 5 July 2014³⁷ (the “Administrative Violations Code”) stipulates legal entity liability not for a criminal offence as required by article 26 of the Convention, but rather for “providing unlawful material benefits, gifts, concessions or services to persons authorised to perform state functions, or persons equivalent to them, if these actions do not give an indication of a criminally punishable act”³⁸. The stipulation “if these actions do not give an indication of a criminally punishable act” suggests that the criminal liability of legal entities is also possible.

However, the Draft Law of the Republic of Kazakhstan *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding the Introduction of the Criminal Liability of Legal Entities*³⁹ developed by the Financial Police and forwarded to the Mazhilis of the Parliament of the Republic of Kazakhstan on 30 March 2010 has been withdrawn and is no longer being considered.

The opponents of criminal liability for legal entities put forward the following arguments:

³⁷ Code of the Republic of Kazakhstan *On Administrative Violations* № 235-V dated 5 July 2014 (with amendments and additions as at 9 January 2018)

³⁸ https://online.zakon.kz/Document/?doc_id=31577399#pos=0;223471

³⁹ https://online.zakon.kz/Document/?doc_id=30997750#pos=13;-85;

https://www.interfax.kz/?lang=rus&int_id=10&news_id=7019

- 1) material liability for illegal activities can easily be increased within the framework of civil and administrative law
- 2) a legal entity does not have the physical attributed of a person, meaning it cannot be imprisoned or arrested, which are the basic types of criminal punishment
- 3) the criminal liability of legal entities contradicts the principle of personal guilt⁴⁰. The application of a model stipulating criminal liability for a legal entity based on the guilt of an individual, is a contentious issue for Kazakhstan criminal law⁴¹
- 4) the introduction of criminal liability for legal entities in national legislation under Customs Union conditions will place Kazakhstan businesses in a soft position compared to their partners
- 5) UN Conventions ratified by Kazakhstan against corruption and transnational organised crime recommend and recognise all type of liability in relation to legal entities – civil and legal, administrative or criminal
- 6) the draft law will harm the business climate and will act as an additional burden for businesses⁴²

On 24 February 2012, the Senate of the Parliament of the Republic of Kazakhstan, at the initiative of the Committee for Constitutional Legislation, the Legal System and Law Enforcement Bodies, hosted a roundtable to discuss the “Criminal Liability of Legal Entities: the Reality and Problems,” at which the Committee Head S Akylbai noted that “on the whole, when it comes down to it, we have all asserted there is currently no need to introduce criminal liability for legal entities⁴³.” Since that moment, the question of establishing criminal liability for legal entities, including for corruption-related offences, has not been raised.

It is worth pointing out that point 11 of article 11 of the Corruption Law stipulates that “individuals and legal entities involved in the management of state assets file, in accordance with the procedure and within the deadlines established by the Government of the Republic of Kazakhstan, reports on all transactions of a material nature and financial activities related to state property with the state body exercising owner legal authority in relation to state property⁴⁴ (*article 11 of the Corruption Law enters into force from 1 January 2020*).

Consequently, we can conclude that the provision by legal entities of unlawful material benefits, gifts, concessions or services to persons authorised to perform state functions or to persons equivalent to them, if these actions contain attributes of a criminally punishable act, are not punishable.

Another issue: article 678 of the Administrative Violations Code stipulates liability for providing unlawful material benefits, gifts, concessions or services to persons authorised to perform state functions, or to equivalent persons. However, the Convention demands liability for bribing officials, including any person managing the operations of a private sector organisations or working in any position in that organisation, including in the interest of third parties. As can be seen from the wording, the disposition of article 678 of the Administrative Violations Code does not meet these requirements.

⁴⁰ <https://www.zakon.kz/217744-mazhilis-obshhestvennaja-palata.html>

⁴¹ https://online.zakon.kz/Document/?doc_id=30995551

⁴² <http://www.zakon.kz/4482009-v-parlamente-rk-vneseny-izmeneniya-i.html>

⁴³ http://www.inform.kz/ru/vvedenie-ugolovnoy-otvetstvennosti-yuridicheskikh-lic-v-usloviyah-ts-postavit-predprinimatel-stvo-kazahstana-v-uyazvimoe-polozhenie-a-sud-in_a2443698

⁴⁴ https://online.zakon.kz/Document/?doc_id=33478302#pos=150;-103&sdoc_params=text%3D%25D1%258E%25D1%2580%25D0%25B8%25D0%25B4%25D0%25B8%25D1%2587%25D0%25B5%25D1%2581%25D0%25BA%25D0%25B8%25D1%2585%26mode%3Dindoc%26topic_id%3D33478302%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=4

The question of the protection of persons reporting corruption-related facts

The Review states:

“ ... the approaches of state parties to exercising article 33, which prescribes an optional provision, and to introducing the appropriate measures into domestic legal systems for protecting persons reporting information, i.e. persons who voluntarily and for reasonable reasons report any facts related to crimes recognised as such in accordance with the Convention (so-called reporting persons), are extremely varied. Over two thirds of the state parties have not introduced blanket measures to protect reporting persons Therefore, a number of recommendations have been made to prioritise the development or even adoption of similar legislation to cover all crimes recognised as such in accordance with the Convention, or introduce additional measures to protect reporting persons in accordance with the spirit of the Convention. ... In this case, the introduction of a special term “reporting person protection” may be treated as a factor in improving the current protection mechanism ... The lack of appropriate measures is especially clear in those state parties in which domestic law obliges public officials or other categories of individuals to report suspicions of corruption practices, but does not guarantee the appropriate protection against unfounded approaches. In certain cases, in the absence of specific mechanisms for protecting reporting persons, the authorities referred to provisions dealing with witness and expert protection in domestic law. Nevertheless, it is worth clearly understanding that the provisions in question are insufficient. Even though, persons providing information more often than not are worried about their physical safety and their eligibility for witness protection measures clearly aids the reporting of corruption-related offences, article 33 implies measures of a different kind and scale, and covers not only witnesses, but also persons who are not acting in a specific capacity and may not be direct participants in criminal proceedings, for example in those cases when criminal proceedings do not progress from the investigation stage. Furthermore, some people may possess information pertinent to an earlier stage of a particular case, which is not as detailed to be classed as evidence in the legal sense of the word, but clearly has the ability to prove the existence of an offence and force the authorities to understand the need to launch an investigation” (pages 199-200 of the Review).

“The second set of measures secures protection against judicial proceedings, i.e. an outright ban on filing civil claims, instigating criminal investigations (in particular pertaining to slander, perjury and wrongful accusations) or on any other lawsuit linked to the voluntary reporting of information, even if facts provided by an reporting person are recognised as insufficient to instigate a criminal investigation or issue a verdict.” (page 200 of the Review).

“Given the optional nature of article 33, reporting person protection should stipulate measures to prevent the discriminatory treatment or disciplinary sanctions in relation to persons providing information, including if it is linked to assumed violations of a professional secret or discretionary power provisions. If a civil servant does not receive legal guarantees of protection against retribution at work, he/she will never report information to his/her boss or the regulators. ... There needs to be a clear understanding of the rights of a person providing information and the special measures in place to improve his/her protection, such as a direct ban on discriminatory transfers to a different job, demotion, salary cuts, temporary suspension, dismissal, enforced early retirement or any other professional impingement that may follow a provision of information; the right to a transfer, if requested, without refusal, if a disclosure of information results in indictment; and finally, the transfer of the burden of proof to the employer during employment dispute hearings. Additional measures may be taken to reinforce the obligation of the authorities to protect a person providing information, if that person is exposed to real harassment, hounding, intimidation or aggression from colleagues; provide financial compensation in the form of an advance against a portion of expenses for a court hearing instigated at the initiative of reporting persons disputing a decision to dismiss

him/her or otherwise impair their rights; or even provide for criminal or other sanctions in those cases when an official applies arbitrary or unjustified punishment in relation to the reporting of corruption. Ultimately, it would be useful, as in other state parties, to create a special department to which people could bring their petitions or complaints against harassment, or delegate the relevant authority to the national agency for the prevention of corruption, and study approaches to speeding up access to active protection methods and replacing cumbersome procedures” (page 201 of the Review).

The Report states:

“The Kazakhstan anti-corruption law contains only a general position on the protection of reporting persons (persons reporting corruption), which is insufficient; current norms protecting participants in criminal proceedings have limited effect and relate to a different category of persons” (page 8 of the Report).

“Kazakhstan has not followed recommendations regarding liability for defamation, actively applying it in practice, which has restricted freedom of speech and the ability to report corruption” (page 9 of the Report).

“The procedure for allocating funds to encourage persons to report corruption needs to be positively abolished. However, Kazakhstan legislation does not contain the term “reporting person.” The Law on the State Protection of Persons participating in Criminal Proceedings covers only those persons with procedural status in a criminal case and not reporting persons. No special measures to protect persons reporting corruption have been put in place. ... Instead of abolishing liability for reporting inaccurate information on corruption, as has been recommended, the corresponding legislative acts have only been made stricter. The Criminal Code has been supplemented with a vague article on the distribution of intentionally false information, which may also cover persons reporting corruption” (page 65 of the Report).

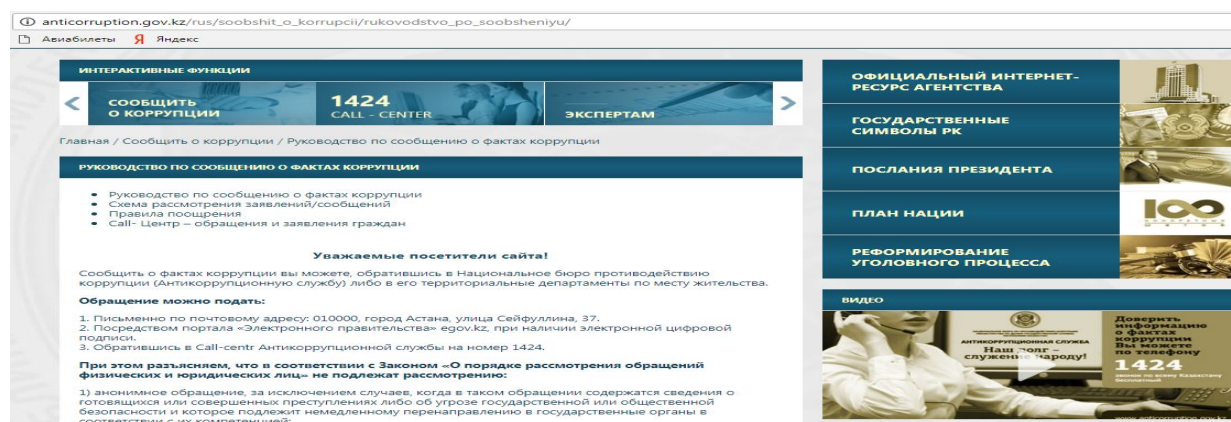
The issue of the status of persons reporting corruption-related facts of which they have become aware is ambiguous in Kazakhstan. On the one hand, in his Address to the people of Kazakhstan on 31 January 2017 “The Third Modernisation of Kazakhstan: Global Competitiveness”, President Nazarbayev said that “much in the fight against corruption depends on the active participation of all parts of society. With the development of social networks and other media resources, universal rejection should become a powerful tool in the prevention of corruption⁴⁵.” Legislation also encourages citizens to report on any relevant facts.

So, article 23 of the Corruption Law states that, “individuals, public associations and other legal entities, to prevent corruption, should: 1) communicate facts known to them about corruption-related offences in accordance with the procedure established by legislation of the Republic of Kazakhstan.” Article 24 of the Corruption Law stipulates that “a person in possession of information on a corruption-related offence should inform management of the state body or organisation employing him/her, or the authorised body for the prevention of corruption of that fact. Management of the state body or organisation, the authorised body for the prevention of corruption should adopt measures to report a corruption-related offence in accordance with the law. A person who has reported a corruption offence or otherwise assisted in preventing corruption will be under the protection of the state and rewarded in accordance with the procedure established by the Government of the Republic of Kazakhstan. This provision does not extend to persons who have reported intentionally false information about a corruption-related offence, but who will face liability in accordance with the law. The details of any person who has assisted in preventing corruption will be classed as a state secret and only divulged in

⁴⁵ http://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-prezidenta-respubliki-kazahstan-nnazarbaeva-narodu-kazahstana-31-yanvary-2017-g

accordance with the procedure established by law. Divulgence of the given information will lead to liability established by law⁴⁶.”

To make it easier for persons to report cases of corruption, the National Agency for the Prevention of Corruption (the Anti-Corruption Service) has created a “Report Corruption”⁴⁷ section on its website.”



To implement point 3 of article 24 of the Corruption Law, the Government of the Republic of Kazakhstan has adopted Resolution № 1131 dated 30 December 2015 approving Guidelines to encourage persons to report corruption or otherwise assist in the prevention of corruption, which is rewarded by a one-off cash payment of 30 times the monthly calculation index (“MCI”) for administrative corruption-related offences; 40 times the MCI for minor criminal corruption-related offences; 50 times the MCI for medium-sized corruption-related offences; 70 times the MCI for serious corruption-related offences and 100 times the MCI for extremely serious corruption-related offences⁴⁸.

However, the positive picture is somewhat spoilt by liability for corruption-related information that is not corroborated.

So, point 3 of article 24 of the Corruption Law stipulates that state protection and motivation do not extend to persons who have provided intentionally false information on a corruption-related offence, and who by law are liable for the same⁴⁹.

Article 5 of the Law of the Republic of Kazakhstan *On the Procedure for interacting with Individuals and Legal Entities*⁵⁰ limits the consideration of anonymous interaction, except in those cases when a specific address from an individual or legal entity contains details of criminal offences being prepared or criminal offences that have already been committed or of a threat to state or social security and which should be redirected immediately to the state authorities in accordance with their competence, and addresses from which the substance of the issue is not clear. Article 6 of the same law states directly that individuals or legal entities should only approach a competent entity, and provide their full name, IIN and signature⁵¹.

Article 439 of the Administrative Violations Code also stipulates punishment for providing the body responsible for the prevention of corruption with intentionally false information on a corruption-related offence⁵². Furthermore, article 274 of the Criminal Code provides for a sanction for distributing intentionally false information that creates a threat of public disorder or

⁴⁶ https://online.zakon.kz/Document/?doc_id=33478302

⁴⁷ http://anticorruption.gov.kz/rus/soobshit_o_korrupcii/rukovodstvo_po_sobsheniyu/

⁴⁸ https://online.zakon.kz/m/document/?doc_id=32328293

⁴⁹ https://online.zakon.kz/Document/?doc_id=33478302

⁵⁰ Law of the Republic of Kazakhstan № 221-III dated 12 January 2007 *On the Procedure for interacting with Individuals and Legal Entities* (with amendments and additions as at 1 July 2017)

⁵¹ https://online.zakon.kz/Document/?doc_id=30086115

⁵² https://online.zakon.kz/Document/?doc_id=31577399

significant harm to the rights and legal interests of citizens or organisations, or the interests of society or the State protected by law. In this respect, the use of means for the mass distribution of information or telecommunications networks is an indication of the above⁵³.

According to OECD experts, this approach to the analysis of the notification of corruption-related facts, which are sometimes very difficult to prove could actually lead to a reduction in the number of persons offering information on corruption-related offences or potential corruption because they are scared of a possible lack of evidentiary support and subsequent accusations of providing intentionally false information⁵⁴.

⁵³ https://online.zakon.kz/Document/?doc_id=30086115

⁵⁴ <http://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-4thRound-Monitoring-Report-RUS.pdf>,
<http://www.zakon.kz/4605110-ugolovnaja-otvetstvennost-za-klevetu-i.html>

5. State strategy for the prevention of corruption

It is a generally accepted fact that Kazakhstan has made significant progress in its economic development in the last 18 years. Its core exports and the high prices for them have helped the country demonstrate robust trends in economic growth in that period.

Economic growth is accompanied by state sector reforms to consolidate institutions. However, despite these initiatives, Kazakhstan still lags behind OECD member countries in terms of integrity in the state and quasi-state sectors and in the fight against corruption.

The Government of the Republic of Kazakhstan has identified the fight against corruption as one of its key priorities and has undertaken a number anti-corruption reforms, which have been launched under the aegis of wider economic, social and institutional reform, with the ultimate goal of becoming one of the Top 30 most developed countries in the world by 2050.

A national plan of “100 Concrete Steps” covering the following five areas of institutional reform has been developed to support the implementation of the 2050 Strategy and:

1. Create a modern and professional civil service
2. Ensure the rule of law
3. Promote industrialisation and economic growth
4. Create a united nation of the future
5. Support the transparency and accountability of the state

All UN and OECD international and legal standards have found their place in current strategic documents adopted and implemented in Kazakhstan. This has become a legal platform and the strategy for the actions of the government, business and society to achieve a combined goal – **a state without corruption.**

Implementation of current strategic documents to combat corruption is not only under the control of the relevant state authority, which is the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption, in conjunction with the National Bureau for the Prevention of Corruption, and the country’s senior leadership. A number of public institutions and business structures are already deeply involved in the realisation of the strategy.

5.1. International obligations of the Republic of Kazakhstan in the fight against corruption

5.1.1. UN Convention against Corruption

Kazakhstan ratified the Convention Against Corruption in 2008⁵⁵. This was an important step in reducing corruption levels in Kazakhstan and its acceptance by the general public, the business community, investors, national and international institutions, and is an effective mechanism for implementing international anti-corruption standards in domestic legislation.

Kazakhstan evaluates itself regularly and takes part in reciprocal assessments of progress in the implementation of the Convention Against Corruption. The latest assessment round was held in 2015. A Conference of Convention Party States assessed Kazakhstan’s progress in implementing anti-corruption reforms positively.

5.1.2. OECD Anti-Corruption Network for the countries of Eastern Europe and Central Asia, and the Istanbul OECD Anti-Corruption Action Plan

Kazakhstan takes an active part in the operations of the OECD Anti-Corruption Network for the countries of Eastern Europe and Central Asia.

⁵⁵ Profile of the Republic of Kazakhstan with respect to the process for executing the Convention Against Corruption. Information is available at: <http://www.unodc.org/unodc/treaties/CAC/country-profile/CountryProfile.html?code=KAZ>

The main goal of the OECD Anti-Corruption Network for the countries of Eastern Europe and Central Asia, which was founded in 1998, is to support party states in their efforts to prevent and combat corruption, exchange information, develop best practices and coordinate donor aid in the form of regional meetings and seminars, mutual training programmes and specialised themed projects. The Istanbul Action Plan to prevent corruption is a part of the Network.

Kazakhstan has been taking part since 2006 in the realisation of the Istanbul Anti-Corruption Action Plan, which is a sub-regional peer review programme initiated within the Network in 2003⁵⁶.

Kazakhstan has already passed the 4th round of Istanbul Anti-Corruption Action Plan recommendations. According to the report on the 4th round of monitoring, which was approved in September 2017, and with respect to the implementation of 3rd round monitoring recommendations, Kazakhstan:

- has only failed to implement 1 of the 19 previous recommendations
- has partially implemented 15 recommendations
- has substantially implemented 1 recommendation
- has not fully implemented any recommendations

The 4th round of monitoring resulted in 22 new recommendations, while 7 of the previous round's recommendations were recognised as still in force.

5.1.3. Other international treaties and agreements

Within the framework of international anti-corruption cooperation, Kazakhstan plans to ratify the Council of Europe Convention on Criminal Liability for Corruption, the Council of Europe Convention on Civil and Legal Liability for Corruption and accede to the Council of Europe Group of States Against Corruption (GRECO).

Furthermore, the country is also an active participant in the international system of financial monitoring and the Egmont Group⁵⁷ (an international initiative of state structures to prevent money laundering and the financing of terrorism).

5.2. The prevention of terrorism as a part of domestic policy

5.2.1. Kazakhstan Strategic Development Plan - 2025

In February 2018, the government published its **Strategic Plan for the Development of the Republic of Kazakhstan until 2025**⁵⁸, one of the priorities of which is to significantly improve preventative measures, reduce both “the demand for unlawful corruption-prone actions” and also the possibility to perform them.

One of the strategy's priorities is the extensive application of system-level and preventative measures to combat corruption and transition to the pin-point use of criminal and legal tools

⁵⁶ Profile of the Republic of Kazakhstan with respect to changes in the implementation of recommendations of the Istanbul Anti-Corruption Action Plan. Information is available at:

<http://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm>

⁵⁷ Egmont Group website, Kazakhstan profile. Information is available at:

<https://egmontgroup.org/en/content/kazakhstan-committee-financial-monitoring-ministry-finance-republic-kazakhstan>

⁵⁸ Strategic Plan for the Development of the Republic of Kazakhstan - 2025, approved by the Edict of the President of the Republic of Kazakhstan dated 20 February 2018. The text of the document is available at:

http://www.akorda.kz/ru/legal_acts/decrees/ob-utverzhenii-strategicheskogo-plana-razvitiya-respubliki-kazakhstan-do-2025-goda-i-priznanii-utrativshimi-silu-nekotoryh-ukazov-prezidenta

predominantly in those areas representing the greatest corruption risks.

The strategy assumes that simplifying, digitalising and reducing contact with the consumers of the most popular services used by the public and business community, and improving their transparency will reduce the need and opportunity for unlawful actions. Measures to prevent corruption will be applied gradually in those areas where state and quasi-state sector organisations with the greatest corruption risk operate.

How will the action strategy actually work and become successful?

Stage one will involve an audit of all points where the general public interacts with the state authorities, defining those public services and functions with the potential for simplification or automation, and increasing the percentage of services available in electronic form or using the “one-stop-shop” principle.

The next step will be to implement the “one application” principle (state services will be provided on the basis of an application and a copy of an identification document, without the need to present any additional documents).

The step after that will entail the introduction of the “proactive state services” concept when the public, without having to request them, will receive automatic notification of the need to or possibility of receiving a specific state service. In certain cases, that service will be provided automatically.

Stage two will see the state authorities and organisations starting to process all eligible requests and services electronically.

During **stage three**, the government will use OECD standards as the basis to draft guidelines for entities participating in state tenders on how to act should they suspect or highlight an unscrupulous tender process. To establish integrated approaches, reinforce liability and controls, work will be done to regulate procurements made by quasi-state sector companies.

During **stage four** the state authorities will launch an interdepartmental process to integrate information systems, including with the “electronic government” website. The integration will cover all existing and new information systems and databases, and will help transition from the current a current provision of separate state services to comprehensive services according to the “one application” principle, and reduce the opportunity for the public’s direct interaction with the machinery of government to a minimum.

The **fifth stage** will involve analysing and forecasting corruption risks using contemporary predictive analytics and current integrated databases. The introduction of the recommendations highlighted as a result of an analysis of corruption risks will be confirmed in the form of normative acts to eliminate the reasons behind and conditions promoting corruption.

Finally, during **the sixth stage** a series of comprehensive measures will be adopted to improve criminal policy, the independence of justice, accountability for budget spending, and measures to prepare institutions better to combat corruption.

5.2.2. Anti-Corruption Strategy of the Republic of Kazakhstan to combat Corruption - 2025

The **Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025**⁵⁹ is a comprehensive and system document identifying the main directions of activities in the fight against corruption.

Anti-corruption strategy focuses on:

⁵⁹ Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025, approved by Edict of the President of the Republic of Kazakhstan №986 dated 26 December. The text of the documents is available at: <http://adilet.zan.kz/rus/docs/U1400000986#z13>

- preventing corruption in the civil service
- implementing an institution of public control
- preventing corruption in the quasi-state and private sectors
- warning of corruption in court and law enforcement bodies
- creating an acceptable level of anti-corruption culture
- developing international cooperation in corruption-prevention issues

These areas correspond to the UN Convention Against Corruption, and recommendations made in Istanbul Anti-Corruption Action Plan reports.

2017 saw the conclusion of the first implementation stage of the Anti-Corruption Strategy of the Republic of Kazakhstan, with the second stage – from 2018 - 2020 – currently in progress.

Independent experts have been assessing the implementation of Anti-Corruption Strategy in Kazakhstan since 2017 in the form of annual national corruption prevention reports.

5.3. Legal platform for the fight against corruption and its compliance with international standards and principles

5.3.1. Law of the Republic of Kazakhstan *On the Prevention of Corruption*

The Law of the Republic of Kazakhstan *On the Prevention of Corruption*⁶⁰ governs public relations in the prevention of corruption and focuses on the implementation of anti-corruption policy in the Republic of Kazakhstan. The law generally focuses on issues around creating a civil service with integrity and preventing corruption risks.

In more detail, this includes:

- applying financial controls on the income and expenses of civil services
- conducting anti-corruption monitoring and highlighting anti-corruption risks
- preventing conflicts of interests
- conducting general and special measures to achieve integrity in business and in the civil service
- developing anti-corruption standards and applying them
- introducing instruments for assessing the state's implementation of anti-corruption policy, including annual national corruption prevention reports and others

Despite their importance and relevance, some legislative provisions have been criticised because they clearly do not comply with international standards.

An example of this would be the provisions covering the financial control of civil servants with respect to their expenses and income. In the first version of the law from 2015, the provisions introducing the practice of the obligatory declaration of civil servants' income and expenses and their publication complied with international standards and should have come into effect from 1 January 2017.

On 30 November 2016, amendments were introduced to the Law of the Republic of Kazakhstan On the Prevention of Corruption, which focused on introducing the universal declaration of income for individuals (article 11 Measures of Financial Control). The introduction of article 11 of the Law of the Republic of Kazakhstan On the Prevention of Corruption has been postponed

⁶⁰ Law of the Republic of Kazakhstan № 410 dated 18 January 2015 *On the Prevention of Corruption*. The text of the law is available at: <http://adilet.zan.kz/rus/docs/Z1500000410>

until 1 January 2020. The reasons for postponing universal declaration have been given as “state databases still need additional work” and “the tax authorities are not ready to processes and check returns.”

*The current version of article 9 “Financial Control Measures” (from the previous version of the Law on the Prevention of Corruption), which includes no obligation to publish details from returns, will remain into force until 1 January 2020. Furthermore, in accordance with the Law of the Republic of Kazakhstan On the Prevention of Corruption, return details received by the state revenue authorities are **considered an official secret**. Any divulgence will result in the dismissal of the guilty party.*

International experts, including members of a OECD monitoring group, have frequently recommended that Kazakhstan revise the above and implement a mechanism for declaring the expenses and income of civil servants as one of the most effective anti-corruption devices.

A report from the 4th round of monitoring to implement recommendations from the Istanbul Anti-Corruption Action Plan notes that universal declaration of the income and property of individuals in Kazakhstan still needs to be implemented from the 2nd round of monitoring. Under the previous version of the Law *On the Prevention of Corruption*, persons holding a public position filed an income and property return with the tax bodies in their place of residence. Only income and property taxable according to tax law was subject to declaration. The system was criticised in previous OECD reports on Kazakhstan.

The 2017 OECD Anti-Corruption Reforms in Kazakhstan report states, “*an important element of any system to disclose the income and expenses of civil servants is a mechanism to publish the details of property returns. Without this the system will be incomplete and will be unable to play any kind of valuable role. The current law needs to be revised to introduce as soon as possible (before 2020) the obligatory Internet publication of information from returns on the website of the relevant state authorities and on the Agency’s website or a different body’s website. The information to be published would be anything except some confidential information as per a list provided in the law itself (for example, the person’s home address and location of real estate, his/her date of birth and passport details).*”

5.3.2. Other codes and laws, by-laws used in the fight against corruption

Kazakhstan has adopted a number of other codes, laws and by-laws to create a legal platform from which to implement anti-corruption policy, such as Criminal and Criminal-Procedural Codes, an Entrepreneurial Code, a Code on Administrative Violations, Laws On the Civil Service, On Administrative Procedures, On Access to Information, On Social Councils and others. By-laws include guidelines for civil servants in their receipt and giving of gifts, guidelines for rewarding persons reporting cases of corruption, and guidelines and methods for assessing the activities of civil servants and others.

5.4. Current problems in the implementation of the state strategy to prevent corruption

5.4.1. Weaknesses in the implementation of international anti-corruption standards

Kazakhstan has achieved irrefutable progress in updating anti-corruption law, developing and adopting new legislative acts and by-laws to maintain anti-corruption reforms. However, the focus should now be on implementing the reforms and strengthening the mechanisms capable of implementing international anti-corruption standards.

To achieve budget transparency and openness, Kazakhstan needs to adopt a number of initiatives aimed at guaranteeing an open, transparent and all-encompassing budgeting process, both at the national and sub-national levels, such as publishing draft budgets and improving the integrity of budget documentation over the entire budgeting cycle.

As for accountability and monitoring, internal and external audit and control systems should focus on the economic effectiveness of specific programmes, and on assessing the quality of management performance and structure reporting. Further efforts are required to promote integrity and accountability in the mining sectors and in sovereign welfare funds.

The recent reform of the state procurement process in Kazakhstan demonstrates a promising way forward for future transparency and integrity in the procurement system. Nevertheless, a number of areas still require further reforms, such as a reduction in the large number of exceptions to the procurement rules, an expansion in the applicability of the rules to entities in the quasi-state sector and the development of a risk-based preventative foundation, which is characteristic for managing state procurement and reducing the level of corruption.

5.4.2. Weaknesses in anti-corruption institutions

Weak institutions in Kazakhstan slow down the course of reform. Significant work is still required to ensure favourable conditions for civil society institutions and their interaction with the state and business to reduce corruption levels throughout the country.

Legislation dealing with public councils and specific provisions concerning expert councils need to be revised to improve their status and possibilities.

Even though Kazakhstan has achieved significant progress in protecting persons reporting corruption-related offences, significant effort is still required to create a reliable and robust system to protect informers. A focus on protecting witnesses has raised concerns for the protection of those who pass on information in good faith, when that information does not then lead to a legal investigation.

The independent media has a pivotal role in ensuring facts about corruption, state accountability and improving public awareness about corruption are brought to light. In turn, the effectiveness of mass information depends on access to that information and the freedom of expressing an opinion, the pluralism of the media and the professional and staff structure of journalists and investigators.

For mass information to be able to perform its role, Kazakhstan needs to introduce a number of reforms, including improving the media's access to information in accordance with legislation dealing with access to that information. Furthermore, far more could be done to expand the freedom of opinion in Kazakhstan, in particular by getting rid of measures that lead to censorship, for example the decriminalisation of slander and libel.

5.4.3. Imperfections in anti-corruption criminal policy

Kazakhstan has made significant progress in reforming criminal law with respect to exposing, investigating and punishing persons who have committed corruption-related offences. Some of these changes have led to:

- the introduction of a graded fine system depending on the value of bribes
- an obligatory life-long ban on taking up public positions if a person is found guilty of corruption
- the abolishment of conditional release from liability for corruption-related offences and the non-application of statutes of limitation on any such offences, etc.

However, a number of problems still remain unresolved.

First of all, concern brings about a shift in emphasis onto financial sanctions instead of imprisonment for serious corruption offences. OECD experts have shown that limiting the sanctions for bribe-related offences to financial compensation may be insufficient and may actually help corrupt civil servants buy themselves out of stricter punishment.

Secondly, Kazakhstan also needs to introduce effective legal requirements in relation to corporate liability (the liability of legal entities) for bribery with sanctions that are in proportion to the offence committed.

Thirdly, there is great potential for improvements in the way the law enforcement bodies are able to investigate bribery cases, and provide or receive international assistance in criminal cases based on bi-lateral or multi-lateral agreements or, if they are not in place, based on requests for assistance and the principle of mutual assistance.

6. Economic policy and preventing corruption

Corruption is a complex socio-economic condition that has a negative impact on the security and stability of a country's economic system. It acts as a hindrance to social reform and improvements in economic performance; creates a lack of trust in state structures and promotes a global negative image for the country.

It is for this reason that corruption is regarded as one of the major threats for economic security. It affects all groups in society, irrespective of their social position or status.

Due to the sheer size of the harm caused by corruption, for the purposes of this chapter, we will be using the definition given to corruption by Transparency International, which reads as follows, "*the abuse of entrusted power for personal gain*"⁶¹.

Clearly the above definition describes the condition very well and does not limit the extensive range of influence corruption can have, including the consequences, in the state sector, as stated in Kazakhstan law - "*corruption is the illegal use by persons holding responsible state positions, persons authorised to perform state functions, persons recognised as the equivalent of those authorised to perform state functions, officials performing their official (professional) duties and any related opportunities, to receive or generate personally, or through intermediaries, material (intangible) gain and benefits for themselves or third parties, and equally the bribery of the same persons by providing gain and benefits*".

In this context, it is interesting to try and estimate the State's potential losses through the actions of individuals and businesses, or through production activities, consumption, exchanges and distributions not recorded or controlled and which are performed to generate illegal material benefits.

In our appraisal we will be using state statistics recording the harm inflicted on the country's economy. We will also break the review down into the many economic consequences of corruption, specifically:

- the growth of a shadow economy, the subsequent social problems it brings and ultimately the state's reduced financial security
- the collapse of competitive market mechanisms due to the increase in the state's market share
- the ineffective use of budget funds, including in relation to development programmes
- a decline in social welfare throughout the country
- the country's reduced investment attractiveness due to deteriorating trust around investing in it, because investors are unsure of the government's ability to control the situation and ensure their economic security

6.1. State of the shadow economic in Kazakhstan

The so-called "shadow economy" can have a number of names, some of which are the unobserved, informal, closed, grey or black economy. Just like its many names, there are a number of factors leading to the creation of a shadow economy, for example tax evasion, the avoidance of specific statutory standards and administrative procedures, and others.

The main consequence of the shadow economy is the redistribution of real public wealth in favour of a small circle of privileged groups, which in turn aids the subsequent deterioration in social welfare as a whole.

⁶¹Transparency International // <http://adilet.zan.kz/rus/docs/Z1500000410>

The main cause of the shadow economy is a crisis of trust among specific social groups and a lack of belief in tomorrow.

Corruption and the shadow economy are interdependent and complementary terms. The shadow economy causes corruption, and corruption in society creates an ideal “breeding ground” for a shadow economy. The shadow economy forms corruption-based relationships in all areas of policy and the economy that feed it. The high levels of corruption in society force the shadow economy to remain in the shadows and create a whole series of illegal mechanisms for it to thrive. And what’s most interesting is that the shadow economy is the financial foundation for corruption, and corruption is the financial foundation for the shadow economy.

According to validated information from the Kazakhstan authorities, annual losses from the shadow economy account for approximately 30% of the economy, and this has figure has practically remained unchanged for at least the last five years.

Experts from the International Monetary Fund issued a more pessimistic assessment after large-scale research into the shadow economies in 154 country between 1991 and 2015. According to their findings, the shadow economy in Kazakhstan averaged 38.88% of the official economy⁶².

Table 6.1.1. Share of the uncontrolled (shadow) economy in Kazakhstan GDP

Year	Statistics Committee (%)	IMF (%)
2013	30.7	30.77
2014	30.4	30.06
2015	29.89	32.82
2016	27.7	-

Statistics Committee of the Ministry of Economy of the Republic of Kazakhstan and International Monetary Fund (IMF)

These sorts of shadow economy figures not only threaten the economic security of the country, but also the government as an institution as a whole, because every year a third of state receipts do not make it into the official system.

6.2. State participation in the economy

The private sector is the basis of the economy in any developed country. Having said that, certain areas do exist where the market has not developed sufficiently to meet society’s needs. In this case, the State’s participation in the production process become unavoidable.

However, dominant state participation in the market has a negative impact on production and employment motivation. If you have a guaranteed budget, there is no need to fight for a customer or seek to improve how you provide your services. Competition intensifies if state or budget subsidies increase, which ultimately aids economic monopolisation and tends to reduce a country’s overall competitiveness.

At 1 July 2017, there were 26.9 thousand state owned enterprises registered in Kazakhstan, of which 25 thousand were operational.

Table 6.2.1. Company statistics. Registered companies

Year	Number of active state enterprises and enterprises with state participation ⁶³	Operational private companies ⁶⁴	Percentage of state enterprises of the total (%)
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62 Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?// <http://www.imf.org/en/publications/wp/issues/2018/01/25/shadow-economies-around-the-world-what-did-we-learn-over-the-last-20-years-45583>

63 Number of state owned enterprises in 1999-2017, by sector// <http://stat.gov.kz/getImg?id=ESTAT095205>

2013	24,827	150,324	16.5
2014	25,071	164,717	15.2
2015	25,127	187,763	13.3
2016	25,134	200,438	12.5
2017	25,111	218,327	11.5

Statistics Committee of the Ministry of Economy of the Republic of Kazakhstan

State participation is dominant in the social sphere (public health and social services – 12,290 enterprises; education – 9,740 enterprises; art, entertainment and leisure – 1,465 enterprises), which is 88.2% of all operational state enterprises and enterprises with state participation. The State's average market presence in the last five years has not exceeded 13%.

6.3. Effectiveness of the use of budget funds

The official data we have available on financial violations and the inefficient use of budget funds from the Kazakhstan Accounts Committee does not give us a full picture of the harm caused to the Kazakhstan economy. It does, however, allow us to highlight trends and identify those areas most susceptible to corruption.

Between 2013 and 2016, the value of financial violations discovered, including the ineffective use of budget funds, was KZT 1.7 trillion or US\$ 6.9 billion. The peak was in 2015, when violations hit KZT 874.3 billion or US\$ 4.7 billion.

Generally, the Kazakhstan Anti-Corruption Agency estimates annual corruption committed by the state sector to be worth approximately US\$ 3.8 billion⁶⁵ or around 10% of the country's annual budget⁶⁶.

Its data is based on violations treated by Kazakhstan law as corruption (bribery, fraud and other illegal actions that result in the redistribution of income that has already been generated by producers and manufacturers).

Table 6.3.1. Value of financial violations, including the ineffective use of budget funds

Year	Value, KZT (billions)	Value, US\$ (billions)
2013	191.0 ⁶⁷	1.24
2014	355.2 ⁶⁸	1.94
2015	874.3 ⁶⁹	4.70
2016	267.9 ⁷⁰	0.78

Kazakhstan Accounts Committee

The majority of financial violations, including the ineffective use of budget funds, seem to occur during processes to implement state programmes.

The “anti-record” was set during the execution of the following state programmes:

⁶⁴ Enterprise statistics, number of operational companies, by form of ownership // <http://stat.gov.kz/getImg?id=ESTAT098765>

⁶⁵ National Report on the Prevention of Corruption // <http://kyzmet.gov.kz/ru/pages/nacionalnyy-doklad-o-protivodeystvii-korruptcii>

⁶⁶ Law of the Republic of Kazakhstan № 25-VI dated 29 November 2016 *On the National Budget for 2017-2019* // <http://adilet.zan.kz/rus/docs/Z1600000025>

⁶⁷ Main provisions of the Accounts Committee Report on the Execution of the National Budget for 2013 // http://esep.kz/ckfinder/userfiles/files/Otchet_2013.pdf

⁶⁸ Main provisions of the Accounts Committee Report on the Execution of the National Budget for 2014 // http://esep.kz/ckfinder/userfiles/files/%D0%9E%D1%82%D1%87%D0%B5%D1%82%D0%A1%D0%9A_2014_%D0%BA%D1%80%D0%B0%D1%82%D1%80%D1%83%D1%81.docx

⁶⁹ Main provisions of the Accounts Committee Report on the Execution of the National Budget for 2015 // http://esep.kz/ckfinder/userfiles/files/%D0%9A%D1%80%D0%B0%D1%82%D0%BA%D0%B8%D0%B9%D0%9E%D0%A2%D0%A7%D0%95%D0%A2_2015_%D0%A0%D0%A3%D0%A1.docx

⁷⁰ Main provisions of the Accounts Committee Report on the Execution of the National Budget for 2016 // <http://esep.kz/rus/showin/article/2767>

1. the 2010-2014 Programme to develop Space Activities – 81.1% of total budget funds allocated to implement the programme
2. the “Information Kazakhstan – 2020” Programme – 46.4% of total budget funds allocated to implement the programme
3. the “Business Road Map - 2020” Programme – 32.2 % of total budget funds allocated to implement the programme

Total financial violations, including the ineffective use of budget funds, highlighted by the Kazakhstan Accounts Committee during the implementation of state programmes between 2013 and 2016 amounted to KZT 6.7 trillion or US\$ 2.07 billion. Interestingly, it is worth pointing out the Kazakhstan Accounts Committee’s growing reluctance to provide data with each year.

Table 6.3.2. Financial violations, including the ineffective use of budget funds, highlighted during the implementation of state programmes, KZT millions

Programme	Total allocated	% of funds misappropriated	Number of violations highlighted			
			2013	2014	2015	2016
“Salamaty Kazakhstan” Public Health Development Programme for 2011-2015	415,605.7 ⁷¹	16.2	1,800	-	65,800	-
Programme for Forced Industrial and Innovative Development for 2010-2014	6,500,000 ⁷²	2.4	22,300	137,200	-	-
Programme for the Development of the Mining and Metallurgical Sector in 2010-2014	1,151,400 ⁷³	0.001	14	-	-	-
Programme for the Development of the Oil and Gas Sector for 2010-2014	5,195,937 ⁷⁴	0.07	3,800	-	-	-
“Ak Bulak” Programme for 2011-2020	1,273,859 ⁷⁵	3.2	42,000	-	-	-
Programme to	1,099,373 ⁷⁶	1.7	18,700	-	-	-

⁷¹ Edict of the President of the Republic of Kazakhstan № 1113 dated 29 November 2010 *On the Approval of the “Salamaty Kazakhstan” Public Health Development Programme for 2011-2015* // <http://adilet.zan.kz/rus/docs/U1000001113>

⁷² Edict of the President of the Republic of Kazakhstan № 958 dated 19 March 2010 *On the State Programme for Forced Industrial and Innovative Development for 2010-2014 and the Recognition of certain Edicts of the President of the Republic of Kazakhstan as having lost their Force* // http://adilet.zan.kz/rus/docs/U100000958_

⁷³ Resolution of the Government of the Republic of Kazakhstan № 1144 dated 30 October 2010 *On the Approval of the Programme for the Development of the Mining and Metallurgical Sector in 2010-2014* // <http://adilet.zan.kz/rus/docs/P1000001144>

⁷⁴ Resolution of the Government of the Republic of Kazakhstan № 1072 dated 18 October 2010 *On the Approval of the Programme for the Development of the Oil and Gas Sector for 2010-2014* // http://adilet.zan.kz/rus/docs/P100001072_

⁷⁵ Resolution of the Government of the Republic of Kazakhstan № 1176 dated 9 November 2010 *On the Approval of the “Ak Bulak” Programme for 2011-2020* // http://online.zakon.kz/Document/?doc_id=30849574

modernise the Housing and Utilities Fund for 2011-2020						
“Employment Road Map - 2020” Programme	391,500 ⁷⁷	8.4	9,100	23,900	-	-
Programme to develop and manage Languages 2011 – 2020	19,134.9 ⁷⁸	15.7	-	3,020	-	-
Programme to ensure Road Traffic Safety in the Republic of Kazakhstan for 2012-2014	3,155.6 ⁷⁹	4.2	-	133	-	-
2010-2014 Programme to develop Space Activities	128,300 ⁸⁰	81.1	-	104,100	-	-
“Information Kazakhstan – 2020” Programme	121,400 ⁸¹	46.4	-	-	55,900	-
“Agrobusiness – 2020” Programme for the Development of the Agricultural Industry for 2013-2020	2,102,300 ⁸²	5.2	-	-	-	110,400
“Business Road Map – 2020” Programme	244,284.1 ⁸³	32.2	-	-	-	78,900

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⁷⁶ Resolution of the Government of the Republic of Kazakhstan № 473 dated 30 April 2011 *On the Approval of the Programme to modernise the Housing and Utilities Fund for 2011-2020* // <http://adilet.zan.kz/rus/docs/P1100000473>

⁷⁷ Resolution of the Government of the Republic of Kazakhstan № 636 dated 19 June 2013. Lost its force by virtue of Resolution of the Government of the Republic of Kazakhstan № 42 dated 5 February 2015 // <http://adilet.zan.kz/rus/docs/P1300000636>. The Programme for the Development of Efficient Employment and Mass Entrepreneurialism for 2017-2021, approved by Resolution of the Government of the Republic of Kazakhstan № 919 dated 29 December 2016, with a new budget and indices, is currently being implemented // <http://adilet.zan.kz/rus/docs/P1600000919>.

⁷⁸ Edict of the President of the Republic of Kazakhstan № 110 dated 29 June 2011 *On the State Programme to develop and manage Languages in the Republic of Kazakhstan for 2011 – 2020* // <http://adilet.zan.kz/rus/docs/U1100000110>

⁷⁹ Resolution of the Government of the Republic of Kazakhstan № 730 dated 1 June 2012 *On the Approval of the Sector Programme to ensure Road Traffic Safety in the Republic of Kazakhstan for 2012-2014*. Lost its force with Resolution of the Government of the Republic of Kazakhstan № 554 dated 28 May 2014 // <http://adilet.zan.kz/rus/docs/P1200000730>

⁸⁰ Resolution of the Government of the Republic of Kazakhstan № 1125 dated 29 October 2010 *On the Approval of the 2010-2014 Programme to develop Space Activities in the Republic of Kazakhstan* // <http://adilet.zan.kz/rus/docs/P1000001125>

⁸¹ Edict of the President of the Republic of Kazakhstan № 464 dated 8 January 2013 *On the “Information Kazakhstan – 2020” State Programme* // <http://adilet.zan.kz/rus/docs/U1300000464>

⁸² Resolution of the Government of the Republic of Kazakhstan № 151 dated 18 February 2013 *On the Approval of the “Agrobusiness – 2020” Programme for the Development of the Agricultural Industry in the Republic of Kazakhstan for 2013-2017* // <http://adilet.zan.kz/rus/docs/P1300000151>. Lost its force with Resolution of the Government of the Republic of Kazakhstan № 113 dated 13 March 2017

⁸³ Resolution of the Government of the Republic of Kazakhstan № 168 dated 31 March 2015 *On the Approval of the Integrated Business Support and Development Programme “Business Road Map - 2020”* // <http://adilet.zan.kz/rus/docs/P1500000168#z0>

6.4. Standard of living

Another important detail in the measurement of corruption levels is the standard of living in a particular country. An increase in corruption levels undoubtedly leads to a drop in the prosperity of the population.

The period between 2013 and 2016 saw a stable drop in average personal income in US\$ terms. On average, during the period under review, approximately 3% of people were living in Kazakhstan live under the poverty line.

Table 6.4.1. Average personal income per capita⁸⁴

Year	Amount, KZT	Amount, US\$
2013	56,453	336.5
2014	62,271	342.5
2015	67,321	246.1
2016	76,575	229.2

Statistics Committee of the Ministry of Economy of the Republic of Kazakhstan

Personal expenses per capita for the period under review make up 54% of nominal income, of which food costs accounted for 45.9% of average household consumer costs in 2017.

Table 6.4.2. Share of food costs in total consumer expenses per household⁸⁵

Year	Percentage of costs, %
2013	42.1
2014	41.8
2015	43.5
2016	44.4
2017	45.9

Statistics Committee of the Ministry of Economy of the Republic of Kazakhstan

Official employment market statistics, irrespective of the clear inconsistencies and differences between data, still point towards relatively high levels of unemployment and unofficial employment.

Since the end of 2016, the topic of unofficial employment has become a priority for the Kazakhstan Government, blaming it for tax shortfalls and citing it as a major factor in the growth of the shadow economy. At the same time, it is worth pointing out that when the state system does not correspond to the economic reality, official business practices become unviable (high taxes, ineffective state institutions and others) and businesses prefer to “go underground”.

Furthermore, another important reason for the increase in the numbers of unofficial workers is the low levels of education (which may be caused by limited access to secondary and higher education due to low income levels), which means the person cannot find an official job.

Table 6.4.3. Kazakhstan employment market data, thousands of persons⁸⁶

Year	Economically active population	Persons employed	Persons working unofficially	Unemployed
2013	9,041.3	8,570.6	2,621.0	470.7
2014	8,962.0	8,510.1	2,400.4	451.9
2015	8,887,614	8,433,314	2,138,414	454,214

⁸⁴ Statistics on the standard of living/personal income/cash income per capita (estimate) – // <http://stat.gov.kz/getImg?id=ESTAT105615>

⁸⁵ Food consumption in private households // <http://stat.gov.kz/getImg?id=ESTAT103814>

⁸⁶ Employment statistics/employment market// <http://stat.gov.kz/getImg?id=ESTAT105377>

2016	8,998,814	8,553,414	2,210,514	445,514
2017	9,013,121	8,572,121	2,176,121	441,021

Statistics Committee of the Ministry of Economy of the Republic of Kazakhstan

6.5. Investment attractiveness of the country

The level of investment in the Kazakhstan economy is one of the country's most important indicators of economic efficiency. It is first of all an indicator of the business community's trust in both the country and its leaders. In addition to the purely economic factors, investment attractiveness is affected by the level of transparency of the economy and its processes (corruption levels).

Investment attractiveness is a representation of the political, social and economic climate in the country, all of which from the point of view of potential investors (both state and private) are income generating, and persuade them to invest their capital in the country to ensure it is used effectively, as long as the State, from its side, provides a guarantee that it will keep profit safe and allow its free repatriation.

Kazakhstan National Bank statistics on direct investment in Kazakhstan do not show any real positive dynamics, despite the government's active efforts, but do confirm that the investment structure by sector is still relatively conservative. The gross inflow of direct investment into Kazakhstan from overseas direct investors has historically been directed towards the mining and pit development industry (34.3%), professional, scientific and technical activities (23.6%) and the refining and processing industry (18.4%), with the rest accounting for 23.7%⁸⁷.

Table 6.5.1. Direct investment, by investment area, US\$ millions⁸⁸

Year	Direct investment into Kazakhstan	Direct investment to overseas
2013	119,943.8	22,928.1
2014	125,218.07	23,368.9
2015	132,574.3	25,550.4
2016	133,832.1	23,925.4
2017	145,004.7	22,368.5

National Bank of the Republic of Kazakhstan

6.6. Conclusions regarding the impact of corruption on the economy

Overall, we can conclude that:

- the shadow economy according to the state authorities' own calculations accounts for 30% of national GDP. International experts estimate that figure to be slightly higher, at **38.88%**
- according to the Kazakhstan Anti-Corruption Agency, Kazakhstan's potential annual losses from corruption amount to approximately US\$ 3.8 billion or roughly 10% of the country's national budget
- the average value of financial violations highlighted every year, including the ineffective use of budget funds, is US\$ 1.9 billion. In total, between 2013 and 2016, total financial violations, including the ineffective use of budget funds, amounted to KZT 1.7 trillion or US\$ 6.9 billion. The peak of KZT 874.3 billion or US\$ 4.7 billion was seen in 2015

⁸⁷ Direct foreign investment into Kazakhstan // <http://rfcaratings.kz/6579>

⁸⁸ Direct investment statistics broken down into investment areas // <http://www.nationalbank.kz/?docid=680&switch=russian>

- National Bank statistics on direct investments into Kazakhstan do not show any real positive dynamics, despite the government's active efforts. They do, however, confirm that investment structure by sector is still relatively conservative. Gross investment inflow into Kazakhstan from overseas direct investors has historically been directed towards the mining and pit development industry (34.3%), professional, scientific and technical activities (23.6%) and the refining and processing industry (18.4%), with the remainder accounting for 23.7%
- the state's high concentration in the social sphere (public health, education and culture) correlates with indicators confirming the ineffective nature of the implementation of state programmes

7. Local government and the prevention of corruption

By overseeing local spending policy and processes, local government is viewed as one of the key elements in the fight against corruption. Point 1 of article 22 of the Law *On the Prevention of Corruption* captures local government's function as "all state authorities, organisations, quasi-state sector entities and officials are all responsible within their competence to prevent corruption."

7.1. Local government in Kazakhstan

According to the law⁸⁹, local government is an activity performed to resolve issues of local importance directly by the people themselves, as well as through Maslikhats and other local government institutions, at their own risk, and in accordance with the procedure determined by legislation of the Republic of Kazakhstan.

Local government exists in the following administrative and territorial units – oblasts, regions, cities, municipal districts, rural districts, and villages and communities that are not part of a rural district.

It is carried out:

- by members of local communities directly through meetings and gatherings
- through Maslikhats and territorial local authority committees

Furthermore, in addition to overseeing state administration functions, the Akims for the oblasts, regions, cities, municipal districts, rural districts, and villages and communities that are not part of a rural district are responsible for local government functions.

The main local representative body is the Maslikhat, which is a body elected in accordance with legislation of the Republic of Kazakhstan by the local oblast, national status city and capital city or region (oblast level city) population to express its will, and to identify the measures required to realise the will of the people and control their execution.

Maslikhats are elected by the people on the basis of universal, equal and direct suffrage, through the secret ballot procedure, for five years. There are a total of approximately 3,335 Maslikhat deputies across the country.

7.2. The role of the Maslikhats in the prevention of corruption

A number of Maslikhat functions are related to the fight against corruption, and include:

- approving plans economic and social development programmes for the relevant area, local budgets and budget execution reviews, which includes approving budget programmes that are realisable by municipal district akims (separately for each municipal district)
- at the request of the Akim, agreeing, in accordance with a Maslikhat session resolution, the composition of the corresponding Akimat
- reviewing reports prepared by executive body leaders and making proposals to the relevant bodies regarding the accountability of civil servants and organisations for their failure to execute Maslikhat resolutions
- monitoring local budget spending and regional development programmes
- reviewing annual budget spending reports for oblast, national status city and capital city revision commissions

⁸⁹ Law of the Republic of Kazakhstan № 148 dated 23 January 2001 *On Local State Administration and Self-Administration in the Republic of Kazakhstan* //

- making proposals to oblast, national status city and capital city revision commissions to include state audit and financial control facilities in revision commission working plans
- regulating land relations in accordance with land legislation of the Republic of Kazakhstan

Oblast, national status city and capital city Maslikhats are responsible for appointing the chairpersons and members of oblast, national status city and capital city revision commissions for five years, and dismissing them from their positions in accordance with legislation of the Republic of Kazakhstan covering state audit and financial controls.

Revision commissions are responsible within their competence for adopting corruption prevention measures in their administrative and territorial units, such as performance audits, which involve⁹⁰:

- planning and managing local budget spending in accordance with the principles of the budget system of the Republic of Kazakhstan, preparing local budget execution reviews for the reporting financial year, which in terms of content are an opinion or conclusion to the corresponding local executive body report
- making use of related grants, budget investments, state and state-guaranteed loans, loans raised with the support of the state and state assets
- the effect of the activities of local executive bodies and quasi-state sector entities on the development of the economy or any individual sector of the economy, social and other areas of state administration
- implementing documents of the State Planning System of the Republic of Kazakhstan with respect to budget spending and the use of state assets, according to the instructions of the President of the Republic of Kazakhstan, and in other areas
- justifying the planning, feasibility and effectiveness of the procurement of goods, work and services by local executive bodies and quasi-state sector body entities
- pricing, which includes an assessment of the difference between the value of local financial resources allocated (spent) to procure goods, work or services and the market value of procured goods, work or services
- managing the assets of quasi-state sector entities

What is the problem with the Maslikhats with respect to preventing corruption and why is their role in preventing corruption so small? The answer is a combination of procedural and political problems.

The procedural issues are as follows:

1. Due to constant legislative changes (8-9 thousand new and amended legal acts every year), the majority of Maslikhat deputies are not properly qualified to control the akimats. Because the deputies still have their day jobs and work in government in their spare time, they have few opportunities to get to grips with the situation
2. The Maslikhats have a small backroom staff, usually 1 person for every 6 deputies, which means they find it hard to consult the deputies when they need to and are actually forced to find their own assistants and consultants. For example, there are 37 deputies in the Almaty city Maslikhat, but only 9 backroom staff members, who review anywhere between 60 and 90 legal acts every year at the same time as performing their numerous other functions

⁹⁰ Law of the Republic of Kazakhstan № 392-V dated 12 November 2015 *On State Audit and Financial Monitoring* // <http://adilet.zan.kz/rus/docs/Z1500000392#z10>

3. The majority of Maslikhats operate in Akimat buildings, which tend to have strict security pass systems, which makes it difficult for the general public to take part in Maslikhat sessions and discussions
4. No specific requirements exist for the content of Maslikhat sites and their updates, or for broadcasting Maslikhat sessions across the Internet. This creates considerable transparency issues for the activities of local representative bodies

The political issues are as follows:

1. Strict election filters – deputy candidates need to file a tax return on their assets and there have been cases when errors in a few Tenge have resulted in their disqualification
2. The deputy candidate pool is relatively small, which is why candidates without support from parties or large public organisations with access to volunteers and a smooth-running system of political support do not have the opportunity to organise a full-fledged election campaign
3. Due to the above two filters, deputies tend to be members of the Nur Otan ruling party, while regional akims are its branch managers. As a result, party discipline does not allow criticism of the Akimat

Resolution of at least the procedural issues is needed to allow the Maslikhats to better deal with the corruption issue.

7.3. Role of public councils in the prevention of corruption

In addition to the Maslikhats, the administrative and territorial units also incorporate public councils, which were set up in 2016 in accordance with the corresponding law⁹¹.

The authority of public councils with respect to the prevention of corruption involves:

- discussing the execution of budget programmes, strategic plans or regional development programmes; state and governmental programmes
- discussing budget programme administrator reports on the realisation of budget programmes, on the execution of budget receipt plans and cash expenditure from the sale of goods (work or services), and on the receipt and expenditure of charity donations
- participating in the development and discussion of draft normative legal acts regarding human rights, freedoms and obligations
- considering inquiries from individuals and legal entities regarding improvements to state governance and the organisation of state departmental transparency, including compliance with state ethics requirements
- developing and making proposals to the state authorities with respect to improvements in legislation of the Republic of Kazakhstan
- overseeing other forms of statutory public control

However, there are relatively few cases when public councils have been able to put any anti-corruption activities into practice. The problems faced by public councils in the prevention of corruption are as follows:

1. Some of the procedural problems experienced by the Maslikhats are the same for public councils, i.e. they have no backroom staff and the general qualifications of council members tend to be insufficient

⁹¹ Law of the Republic of Kazakhstan № 383-V dated 2 November 2015 *On Public Councils*. // <http://adilet.zan.kz/rus/docs/Z1500000383>

2. The political issue is that the executive authorities are not obliged to follow or implement public council recommendations – they are only obliged to provide a justified response to any recommendations. However, how can you ascertain whether a response is justified or not? In other words, the executive authorities can ignore any public council actions or suggestions that they do not like. In addition, the public councils are not entitled to make inquiries or address the law enforcement or regulatory authorities because they do not have the required status to do so, i.e. are not legal entities

As such, the public councils in principle have very little authority and opportunity to fight corruption, and anything that they can do tends to be the result of the personal efforts and authority of specific members.

8. The judicial system and the prevention of corruption

8.1. General state of the judicial system in Kazakhstan

The fundamental law, in addition to the Constitution, regulating the functioning of the judicial system is Constitutional Law of the Republic of Kazakhstan N 132 dated 25 December 2000 *On the Judicial System and the Status of Judges in the Republic of Kazakhstan*⁹².

The judicial system in the Republic of Kazakhstan consists of:

- the Supreme Court
- local courts (oblast, city and regional)
- specialised courts (military, financial, economic and administrative courts, courts dealing with the affairs of minors and others)

New electronic technology, such as a database of judicial acts containing court rulings since 2010⁹³, a “court account” for anyone participating in a trial⁹⁴ and an integrated glossary of case categories that allows the user to research standard rulings⁹⁵, is gradually being introduced to the judicial system.

Below we present general statistics on how the Kazakhstan judicial system functions⁹⁶. The statistics allow us to conclude that:

1. individuals have begun to take their disputes to court more and more often, as proven by the total number of court petitions and cases, and the number of completed civil cases
2. the significance of mediation is growing – if in 2011 there were no civil cases that were adjudicated through mediation, then in 2016 there were already 20 thousand. The same is true for criminal cases; in 2017 there were nearly 13 thousand. This means that society is gradually learning how to resolve conflicts itself
3. we have seen a growth, albeit still insignificant, in the number of court acquittals in criminal cases. The majority of them occur at the investigation stage, but the fact that courts have started to acquit people is a start and should lead to a fledgling adversary nature to the general judicial process
4. fewer people are being given prison sentences, giving way to a far wider range of punishments such as custodial restraint, correctional and community work, and fines
5. the situation for cases involving juries, however, is getting worse – there are simply far fewer of them, and that is not good. We need to see the opposite; we need there to be more of them, but in 2017, there were five times fewer jury cases heard than in 2011
6. the extremely insignificant percentage of amended and overturned sentences – judges say it is because of the high quality of their original consideration of the case in the first instance, but their critics say that it is probably more to do with the solidarity among judges. In this particular point, it is hard to be on anyone’s side

⁹² http://adilet.zan.kz/rus/docs/Z000000132_

⁹³ <http://sud.gov.kz/rus/content/bank-sudebnyh-aktov>

⁹⁴ <https://office.sud.kz/>

⁹⁵ <https://office.sud.kz/forumTaldau/forum.xhtml>

⁹⁶ Analytical statements and information type reviews on court activities, including on the state of the administration of justice by Kazakhstan judges// <http://sud.gov.kz/rus/content/analiticheskie-doklady-i-obzory-informacionnogo-haraktera-o-deyatelnosti-sudov-v-tom-chisle>

Table 8.1.1. Court operation statistics in the Republic of Kazakhstan

Index	2010	2011	2012	2013	2014	2015	2016	2017
Court petitions received and cases considered	868 616	918 328	983 365	1 123 025	1 221 011	1 182 916	1 212 144	2 129 001
Number of cases completed	766 662	792 165	859 413	992 758	1 097 953	1 125 360	1 160 456	1 968 691
Number of civil cases completed	472 886	484 571	504 562	558 779	668 722	680 810	764 964	
Number of civil cases adjudicated with the help of mediation		0	122	1 276	5 090	7 087	19 798	
Number of completed criminal cases	56 187	48 639	43 676	47 460	43 794	48 866	48 943	55 184
Number of people acquitted in criminal cases		481	400	510	478	743	886	865
Number of criminal cases considered with the help of mediation							7 523	12 945
Total convictions in criminal cases	37 223	27 863	22 927	26 967	25 079	31 597	30 726	33 761
Number of criminal case convictions resulting in a custodial sentence		11 051	9 881	10 514	9 690	8 054	8 097	
Number of criminal case convictions resulting in suspended sentences		6 644	4 228	4 483	4 570	3 348	2 857	
Number of criminal cases considered by a jury	268	354	289	198	65	42	47	72
Number of administrative cases completed	237 589	258 955	311 175	386 519	385 437	395 684	346,549	
Percentage of overturned verdicts in civil cases		0.9	0.9	0.9	0.8	0.9	0.5	
Percentage of amended verdicts in civil cases		1.2	1.4	1.3	1.1	1.1	0.8	
Number of personal verdicts in criminal cases overturned, %		0.6	0.7	0.6	0.5	0.4	0.3	
Number of personal verdicts in criminal cases amended, %		1.9	2.4	4.3	4.3	4.3	2.3	
Number of rulings in administrative cases overturned, %		0.1	0.1	0.1	0.1	0.2	0.1	
Number of rulings in administrative cases amended, %		0.2	0.1	0.1	0.1	0.1	0.1	

Supreme Court of the Republic of Kazakhstan

8.2. Use of electronic judicial information and the prevention of corruption

At the current stage of development of the judicial system in Kazakhstan, the key problem for civil society is its lack of transparency and openness for the general public.

8.2.1. Anti-corruption analysis of legislation dealing with audio and video recordings of court hearings

According to a normative Supreme Court resolution⁹⁷, “the unlawful limited transparency and unjustified security classification of materials from criminal cases, closed court sessions for reasons that have no basis in law may detract from and impact the procedural rights of trial parties. A judge presiding over a criminal case may permit the use of photography, audio and video recordings with the consent of trial parties during the entire main court process, and a specific part of the main judgement proceedings or in relation to specific trial parties or other persons. Any such actions should not interfere with the normal course of court proceedings.”

Persons participating in a case, and other persons, including representatives of the mass media present at an open court session have the right to make notes on a court session, make an audio or digital recordings of it from their seat in the auditorium.⁹⁸

The exercising of this right is impeded by Guidelines⁹⁹ approved by a joint order¹⁰⁰, which “does not allow visitors and trial parties to bring the hardware referred to in a list into a court building, except in those cases stipulated by article 19 of the Civil Procedural Code of the Republic of Kazakhstan and article 345 of the Criminal Procedural of the Republic of Kazakhstan.” The list of hardware items that cannot be brought into court territory and buildings, and those of the Department and its regional bodies includes recording devices, visual observation devices and computers.

Cases exist when courts have demanded that before entering a court building advocates and lawyers surrender not only notebooks and mobile phones with video and audio recording facilities, but also voice recorders.

Judges in courts of first instance and appeal courts are not always overly happy to allow parties to make audio recordings in court. In the court of cassation of the Supreme Court, recordings are actually forbidden.

According to current legislation, “a written record of each session is drafted for courts of first instance and for each individual procedural out-of-court action. A short-form record is drafted for audit or video recordings of court sessions.¹⁰¹” In this manner, full records exclude audio and video recordings of court sessions.

At the same time, when the legislator was introducing the above provision, the intention was to make a full recording and draft a full record. Only, in this particular case, an audio and video record may be used as a means of supporting the transparency of justice and the prevention of

⁹⁷ Normative Resolution of the Supreme Court №25 dated 6 December 2002 *On Compliance with the Principle of the Transparency of Criminal Court Proceedings*

⁹⁸ part 7 of article 19 of the Civil Procedural Code of the Republic of Kazakhstan

⁹⁹ subpoint 25) of point 9 of Guidelines for providing on-site visitor access to the territory and buildings of the Supreme Court and local courts of the Republic of Kazakhstan, and the Department for the support of the activities of courts of the Supreme Court of the Republic of Kazakhstan (secretariat of the Supreme Court of the Republic of Kazakhstan) and its regional bodies

¹⁰⁰ Joint Order of the Head of the Department for the Support of Court Activities of the Supreme Court of the Republic of Kazakhstan (secretariat of the Supreme Court of the Republic of Kazakhstan) № 6001-16-7-6/183 dated 3 May 2016 and the Minister of Internal Affairs of the Republic of Kazakhstan № 489 dated 5 May 2016

¹⁰¹ Article 281 of the Civil Procedural Code of the Republic of Kazakhstan

corruption. Full records rule out audio and video recordings, while any such saving could end up very expensive from the point of view of the quality of court rulings and the abuse of procedural rights during the judicial process.

Audio and video recordings of case hearings are registered in short-form records that only make reference to the year, month, date and location of the court session; the start and end of the court session; the name of the court considering the case, the surname and initials of the judge and court secretary; the name of the case; details on the court's use of stenography and an indication of the reason, if applicable, for why an audio or video recording cannot be made of the trial; details of the appearances of the trial parties, representatives, witnesses, experts, specialists and translators; and the date the record was finalised.

It should be noted that if an audio and video recording of a trial is not made for technical or malicious reasons (which is not ruled out), short-form records do not contain any information on the objectivity and legality of the trial, whether judges and court secretaries observed ethical standards, what verbal motions were made by trial parties or any other violations.

The procedure behind the legislative control of the technical use of audio and video recording equipment to record court sessions, as well as the storage and destruction of audit and video recordings; access to audio and video recordings is relatively vague and is generally focused on a set of Guidelines¹⁰², which tend to be exposed to a number of different forms of corruption, for example:

- judicial proceedings are only partially recorded, which may lead to violations in those instances when court when recordings are not being made
- the fact that the above guidelines do not mention that audio and video recordings of court sessions are made to ensure a fair and legal trial and prevent court abuse and corruption may be a factor that contribute to the abuse of power and corruption
- corruption factors cannot be ruled out, for example, when persons on trial incriminate themselves or are not fully aware of their legal rights, or the court places pressure on them during the consideration of administrative cases, audio and video recordings are not used during a court session if the person on trial for an administrative violation fully admits his or her guilt and does not require evidence to be examined
- “a court session is not recorded using audio or video equipment if the equipment is not in working order, is not available or cannot be used for technical reasons.¹⁰³” In this case, there is a good chance that equipment may be defective, unavailable or unusable for technical reasons, all of which are also corruption factors. In these cases, the court needs to not only inform trial parties of the inability to make recordings, but also to receive their consent to conduct the court session without a recording
- if persons on trial for an administrative offence are unaware of their rights or they are pressurised by the court and others, there is actually a legal provision in place that states that “the inability to use audio and video recording equipment does not rule out the continuation of a court session”, which could also be viewed as a corruption factor. The fact that the reasons for the failure to use audio and video recordings will subsequently be recorded in court minutes will not help in the review of a court ruling

¹⁰² Guidelines for the technical use of audio and video recordings to record a court session, the storage and destruction of audio and video recordings, access to audio and video recordings, approved by Order of the Head of the Department for the Support of Court Activities of the Supreme Court of the Republic of Kazakhstan. (Secretariat of the Supreme Court of the Republic of Kazakhstan) № 6001-15-7-6/486 dated 24 November 2015

¹⁰³ article 189 of the Civil Procedural Code of the Republic of Kazakhstan

In a preliminary court hearing to prepare a case in a court of first instance, records are kept at the discretion of the court, except in those cases when a ruling is issued at that particular stage based on the merits of the dispute.

In light of statutory provisions requiring evidence in a civil case to be presented at the case preparation stage, a sufficiently “corruption-prone” factor is the court’s statutory right to resolve the issue of keeping a record at its discretion at the case preparation stage. Consequently, the higher judicial authority will not be able to verify whether a court of lower instance had prepared its materials objectively and in good faith, and whether the parties had had the opportunity to present their evidence to the court.

In a court of appeal, audit and video recordings of the legal process are made when a civil case is considered by a court of appeal according to court of first instance rules, in the event new evidence requires investigation. In any such case, court of appeal objectivity cannot be verified if the ruling of a court of first instance is considered in the court of appeal.

Legal provisions¹⁰⁴ enabling courts to commit procedural violations and a court of appeal to consider a case subjectively promote corruption, so that audio and video recordings are only made when an administrative case is being considered by a court of appeal according to court of first instance rules, and in those cases when additional materials received from expert opinions and the questioning of persons called to testify require investigation, and at their own initiative or in connection with the petition of the persons standing trial in an administrative case.

Courts of cassation do not keep records, short-form records, audio and video recordings of court sessions

This statutory provision can also be regarded as a corrupting factor because the court of cassation is effectively the final instance and judicial consideration in the cassation instance may also register violations and cases of subjectivity, and if recordings of it are not made there is no control over the criminal and civil cassation processes of the Supreme Court of the Republic of Kazakhstan.

Continuity of audio and video recordings

Audio or video recordings made during a court session should be without interruption. The interruption of audio and video recordings once an announcement has been made to defer judicial proceedings, take a break or adjourn the court to the consulting room to discuss a court ruling and until judicial proceedings are reinstated or restarted is not regarded as an interruption in the audio or video recording process.¹⁰⁵ (point 6 of the Guidelines).

At the same time, point 6 of the Guidelines regarding the continuous use of audio and video recording equipment during a court session contradicts previous provisions on the discretionary use of recordings.

Examples exist¹⁰⁶ of a court chairperson ordering the court secretary to stop recording, only after which has he begun the questioning process. The practice was only ended in the court of appeal once the higher instance had been presented with a recording made by a lawyer on a Dictaphone.

The court secretary is responsible for the technical operation of audio and video recordings

¹⁰⁴ part 2 of article 413 and part 4 of article 420 of the Civil Procedural Code of the Republic of Kazakhstan

¹⁰⁵ point 6 of the Guidelines

¹⁰⁶ <https://365info.kz/2017/08/v-astane-pridumali-kak-borotsya-so-spyashhimi-sudyami/> Astana has worked out a way to deal with “sleeping” judges 18 August 2017 [Alexandra Alekhova](#)

Court secretaries are responsible for the application of audio and video recording equipment to record court sessions. Before the start of a court session, the secretary should carry out a number of checks to see that the audio and video equipment is working properly.

The majority of courts, particularly the courts of first instance do not currently have the required technical staff to make audio and video recordings. Furthermore, as it would seem, audio and video recordings should be the job of a technician and not court secretaries, who currently tend not to have the required technical skills to work the equipment.

Having said that, the parties have the opportunity to resolve the issue of the quality or the lack of recording through court secretaries.

Court sessions conducted with no facilities to use audio and video recording equipment

A lack of facilities to use audio and video recording equipment does not mean that a court session cannot be conducted. If audio and video recording equipment cannot be used, the court secretary informs the judge of the same, entering the reasons in the record for the court session. Once the court session has finished, the secretary informs the head of the clerk's office of any technical faults in the audio and video recording equipment, who then informs the head information technology department specialist for the relevant oblast and equivalent court¹⁰⁷.

It is worth pointing out that the law does not clearly mention whether a detailed record needs to be made of this type of situation. It is important that the rules for doing so be drawn up in procedural legislation and not in the Guidelines.

When making an audio and video recording of a court session, the court secretary controls the quality of the recording by listening to it through headphones, monitoring recording levels through a sound equaliser and ensuring the sound recording equipment is in good working order by observing fluctuations in equaliser levels due to background noise.

With this in mind, it would probably be far better for a technically trained person to monitor the recording process rather than the court secretary.

“If the audio or video recording of a court session can no longer be continued, the parties involved in court proceedings should be notified of that fact.”¹⁰⁸

The above provision should be a part of procedural legislation. Likewise, the question arises as to how a court secretary would ever have the technical skills to notice in time that a recording cannot be made.

Violation of the rights of parties to a trial if a court session recording cannot be made for technical reasons

The responsible parties are obliged to draft the relevant act if audio and video recordings cannot be made for technical reasons or it has been discovered that an audio and video recording has not been made.¹⁰⁹

It is not clear how this will help parties to a trial because a court session in this case will obviously not be repeated and all the parties will have is a short-form record, which again is an opportunity for corruption. Furthermore, an act detailing an inability to make a recording can easily be backdated.

Acts detailing audio and video recordings in courts of appeal and courts of first instance signed by different people

¹⁰⁷ point 10 of the Guidelines

¹⁰⁸ point 16 of the Guidelines

¹⁰⁹ point 17 of the Guidelines

In a court of first instance, acts are signed by the court secretary and the head of the clerk's office for the relevant regional and equivalent courts, and then attached to a court session record.¹¹⁰

In a court of appeal, acts are signed by the court secretary, the head of the clerk's office for the relevant oblast and equivalent courts and the chief information technology specialist for the relevant oblast and equivalent courts, and then attached to a court session report.

It really is not clear why in the courts of first instance, which are extremely overloaded, acts detailing the recording process are only signed by the court secretary and the head of the clerk's office, while in a court of appeal they are signed by the chief information technology specialist.

Absence of statutory and adequate liability for the unsanctioned suspension or correction of audio and video recordings of court sessions

The unsanctioned suspension or correction of audio and video recordings of a court session are not allowed.¹¹¹ However, the law does not stipulate liability for doing so. Furthermore, it is impossible to establish who actually has corrected and (or) suspended a recording.

Safeguarding judicial information, as an independent judicial authority

"Servers and equipment recording a court session are secured by measures ruling out access to them. The procedure for gaining access to a server is provided in accordance with Law¹¹² of the Republic of Kazakhstan *On the Development of Electronic Communication*¹¹³.

In light of the division of power, and judicial authorities' system of checks and balances, the Law *On the Development of Electronic Communication* does not guarantee data storage as a body of judicial power.

Lack of quality control and (or) checks for audio and video recordings when cases are archived

When accepting a case, archivists check that electronic copies of court session audio and video recordings have been attached to case materials.¹¹⁴

The question arises as to why, when a case is archived, is the quality of the recording and its actual existence not checked, and then an act detailing the same not compiled?

Insufficient server storage periods for audio and video recordings of court sessions

Audio and video recordings of court sessions stored on the relevant server are destroyed automatically one year from the day a court verdict or ruling enter into force.¹¹⁵

The period of one year set by the Guidelines is clearly insufficient. If a court ruling is reconsidered due to the emergence of new circumstances and evidence, and the relevant disc is missing from the archive or the quality of the recording is low, certain files are missing or the recording itself, the presiding judge will be unable to study the case.

Insufficient facilities in which to listen to audio recordings of court sessions

¹¹⁰ point 18 of the Guidelines

¹¹¹ point 19 of the Guidelines

¹¹² Law of the Republic of Kazakhstan № 418-V dated 24 November 2015 *On the Development of Electronic Communication*

¹¹³ point 20 of the Guidelines

¹¹⁴ point 27 of the Guidelines

¹¹⁵ point 27 of the Guidelines

Persons participating in a civil or criminal case, persons on trial in an administrative case, and other administrative case participants and their representatives can apply to listen to or view audio and video recordings of court sessions in locations specially equipped for that purpose.¹¹⁶

The vast majority of courts do not have specially equipped areas or facilities in which to listen to audio recordings. Anyone without access to a computer will likewise not have access to court session recordings.

Thus, a conclusion can be made that the introduction of equipment to make audio and video recordings of court procedures will reduce court consideration periods, make the job of court staff much easier, but at the same time will be regulated by a random list of contradictory normative, departmental and judicial documents that have not undergone anti-corruption reviews, all of which contribute to a deterioration in the quality of judicial procedures and in specific cases even infringements on the rights of participants in them.

8.2.2. Court sessions conducted with the use of video conferencing systems

Video conferencing is used in courts in the Republic of Kazakhstan based on methodological recommendations¹¹⁷, predominantly in criminal cases.

A wider application of video conferencing in court activities will allow:

- two or more remote experts to participate in judicial proceedings and exchange and process information in real time
- a reduction in consideration periods for court cases; individuals spending a lot of time travelling to and from court because they live far away, or who have mobility issues, or who are already in prison or are under arrest to take part in court proceedings. Likewise, the state will not have to pay to bring the accused to court and back again or for convoy costs. Video conferencing also reduces the risk of an accused escaping, committing new crimes while in convoy or at a court session

It is still too early to talk about any positive effect and weaknesses in video conferencing, because only a very small number of courts have actually made use of the technology. In the first half of 2016¹¹⁸, judges used video conferencing to consider a total of 1,282 cases. In 2016, the Supreme Court purchased and installed 32 sets of video conferencing equipment in correctional facilities belonging to the Criminal and Executive System Committee of the Ministry of Internal Affairs.

8.2.3. Operation of the Supreme Court Internet resource and problems accessing judicial data

The Supreme Court's Internet resource www.sud.gov.kz was created to provide access for individuals, legal entities and the state authorities to information on court activities, to implement mechanisms to access justice in an informed society, create mechanisms for individuals and civil society to exchange information, and to resolve other objectives in the area of information policy in the judicial authorities of the Republic of Kazakhstan.

¹¹⁶ point 28 of the Guidelines

¹¹⁷ Methodological recommendations for the organisation of court sessions using video conferencing systems in courts of the Republic of Kazakhstan, approved by Instructions of the Head of the Department for the Support of Court Activities of the Supreme Court of the Republic of Kazakhstan (Secretariat of the Supreme Court of the Republic of Kazakhstan) in 2016. <http://sko.sud.kz/rus/content/metodicheskie-rekomendacii-po-organizacii-provedeniya-sudebnyh-zasedaniy-s-ispolzovaniem>

¹¹⁸ <http://sud.gov.kz/rus/news/videokonferencsvyaz-v-sudoproizvodstve>

The Supreme Court Internet resources provides a platform for the discussion of how to consolidate a wide range of users. Access to the Tal dau Forum on the Supreme Court Internet resources has been granted to only authorised users of the “Court Account” service.

The Supreme Court website is operated based on an Instruction¹¹⁹ of the Chairman of the Supreme Court of the Republic of Kazakhstan № 78 dated 15 April 2009 On Guidelines for updating and supporting the Internet Resource of the Supreme Court of the Republic of Kazakhstan.

Even though the Internet resource has many benefits, it also has a number of critics, many of whom have noted:

- the lack of any IT technicians employed in the various courts
- the “Court Account” function is not always working and when it does, it works poorly

By way of illustration, we can read the response from the court press service to a question¹²⁰ from the Facebook group “IT Justice KZ”, *“both the secretary and technical department are responsible for recording quality. If there is a recording failure, and the secretary failed to check the system before the court session started, then it is his or her fault. (Interestingly, how do they intend to prove that?). Or we sometimes see a scenario when microphones are not in the right place or we have plain technical issues. It just depends on the situation.”*

The above responses confirm that equipment failures occur during the audio and video recording of court sessions and that the issue suffers from a lack of statutory regulation. When case materials are not published on the Court Account site because judicial procedures were closed, the interested parties are also unable to find out through the courts themselves why the case remained closed for publication for such a long time.

We have seen relatively frequent cases when court rulings and other procedural documents were not signed using a digital signature, and procedural deadlines were not observed for issuing court documents, including because discs with recordings were not ready, court inquiries were ignored for long periods and documents are stored incorrectly.

As a result, social network sites have become a centre of protest¹²¹ and disappointment, along the lines of *“How long is this going to last!? I can’t keep calm any longer!!! Judges ... or their secretaries it seems are just making fun of us!!! I’m not asking for much! What could be easier than providing an audio and video recording like it’s supposed to be done? It seems like they are hiding my file on purpose. If we can’t get a copy of the audio and video recording, then what’s the point in spending so much public money on this expensive system? Two weeks have passed and I still can’t get hold of my court video. Each time I contact them they always give me a different response or reasons, just excuses! The last response was an absolute joke! I think that anyone not wanting to or unable to do their job properly, observe the legal rights of anyone taking part in a judicial process, should not be working in a court! I intend to write an open letter on this to the Chairman of the Supreme Court and I also think that a large number of my colleagues will support me by signing it!!!”* (Orthography has been maintained).

We have seen cases when certain files are missing witness statements that would have key significant for the case’s consideration in a court of higher instance. In this scenario, courts have

¹¹⁹ Instruction of the Chairman of the Supreme Court of the Republic of Kazakhstan № 78 dated 15 April 2009 *On Guidelines for updating and supporting the Internet Resource of the Supreme Court of the Republic of Kazakhstan*

¹²⁰ Facebook group “IT Justice KZ”
<https://www.facebook.com/search/top/?q=it%20%D0%BF%D1%80%D0%B0%D0%B2%D0%BE%D1%81%D1%83%D0%B4%D0%B8%D0%B5%20kz>

¹²¹ Facebook group “IT Justice KZ” <https://www.facebook.com/groups/452852024870764/>

the opportunity to hinder or prevent justified appeals that would lead to objective consideration in a court of higher instance.

9. Sociological research into corruption in the Republic of Kazakhstan

Official corruption level statistics do not always identify the current state of the country because they tend to be intrinsically latent. For this reason, research carried out by the various sociological organisations needs to be monitored annually.

9.1. “Corruption Barometer” results

The Global Corruption Barometer is the largest survey of people across the world on their direct personal experiences of corruption in their daily lives. This last fact is what distinguishes the Barometer from the Corruption Perception Index as an expert survey. The Barometer relies on people’s opinions on which particular institutions are most exposed to corruption. Research also assumes respondents will give their assessment of the performance of the authorities in preventing corruption. The survey is carried out once every few years.

The previous survey involved 114 000 persons in 107 countries. The current survey, which was published on 14 November 2017¹²², covers 119 countries, territories and regions across the world. It is based on interviews with 162 136 adults between March 2014 and January 2017. 25% of those questioned across the world declared that they had been forced to give bribes in the last 12 months when dealing with the state authorities. 57% of those questioned expressed a lack of confidence in their government’s ability to prevent corruption. However, over half of the respondents believe that the general public has a real opportunity to prevent corruption. 58% of people aged over 24 said that they felt they were capable of changing the current situation. 50% of those aged over 55 felt the same way. For 36% of respondents, the police and elected officials are the most corrupt (in Europe and Central Asia the survey covered eight state departments)¹²³.

In the Republic of Kazakhstan, 1,505 people (1,000 in 2013) were questioned “face to face” between 1 March 2016 and 19 May 2016¹²⁴. Due to the high number (more than 40% of those questioned) of “do not know” responses, certain results for Kazakhstan were not counted.

The first and one of the most important research questions was “have you paid a bribe for state services in the last 12 months?”¹²⁵

If we are talking about people’s practical experiences, we can point to a drop in corruption levels. However, survey results show that people are actually more affected by the economic situation in the country and the situation with respect to important issues such as healthcare, employment, education and crime rates.

In 2016, 29% of respondents noted that they had given a bribe. As a comparison, that figure in 2013 was 39.9%. According to research findings, the percentage of individuals having given a bribe has fallen 10.9%, compared to the level in 2013.

Have corruption levels fallen in the last four years? In 2016, 37% of respondents noted that they agreed with the statement, while 32% noted that they had not seen any progress in the fight against corruption. 22% of those questioned did not express an opinion.

If we compare the current set of results with those from 2013, while only 19% of those questioned said that they had seen any positive changes in the fight against corruption, there was an actual 18% improvement in corruption levels.

¹²² https://www.transparency.org/_view/publication/8064

¹²³ https://www.transparency.org/news/feature/global_corruption_barometer_citizens_voices_from_around_the_world

¹²⁴ <https://www.transparency.org/whatwedo/publication/7493>

¹²⁵ People and corruption: Kazakhstan (Global Corruption Barometer — 2016). 16 November 2016 // <http://tikazakhstan.org/lyudi-i-korrupsiya-kazakhstan-barometr-mirovoj-korrupsiy-2016/>

Respondents believe that the most corrupt institutions are the law enforcement bodies (35% of those questioned), business chief executives and leaders (29%), and judges and court employees (28%). Fewer respondents believe that high-level civil servants are involved in corruption (11%).

The same people recognised that they most often paid bribes to traffic police (47%), to arrange unemployment benefits (33%) and in court during the consideration of civil cases (31%). Less than a third of those questioned declared that they had given bribes to get a job in the education system (23%), to get a kindergarten or school place (17%), to receive social payments (21%), medical services (20%) and to receive official documents from the state authorities (19%).

2013 research also estimated corruption perception levels in state institutions where the most corrupt were deemed to be the law enforcement authorities, which scored 3.9 on a five-point scale, where 1 is a “total lack of corruption” and 5 is a “very corrupt state institution or service.” The next highest were courts, which scored 3.8, the healthcare and education systems, which scored 3.6, civil servants at 3.5 and the private sector, with a score of 3.2.

Results show that the problems raised in 2013 still remained in 2016. The leaders in corruption rating terms in 2016 were still the law enforcement bodies, courts and education and healthcare sectors.

On the whole, the majority of respondents assessed the government’s efforts to prevent corruption as poor. In fact, the poor and very poor ratings accounted for 46% of respondents, while the relatively good rating accounted for 37% of respondents. In other words, the Kazakhstan people confirmed the opinion in Europe and Central Asia that more effort needs to be made in the fight against corruption.

The survey shows that compared to 2013, the number of people prepared for action, whether that be protests, signing petitions or taking part in the activities of non-governmental organisations, had fallen (67% in 2013 and 47% in 2016).

The number of pessimistic people believing that “common people” could not make a change in the fight against corruption fell to 43% in 2016 from 56% in 2013. 24% of people in Kazakhstan believe that an important tool in the public’s fight against corruption their refusal to pay bribes.

Just like their counterparts in Europe and other Central Asian countries, 15% of the Kazakhstan public believes that corporate business exerts influence on the state decision-making process in its own interests and for that reason the legislators need to toughen legislation to prevent any such pressure.

9.2. Details from sociological surveys

In 2017, organisations such as the Public Administration Academy of the President of the Republic of Kazakhstan, the “Sotsium-Zertteu” Strategic Centre and Institute for Economic Research carried out a number of sociological research projects.

Respondents in the “Sotsium-Zertteu” Strategic Centre project assessed anti-corruption policy in Kazakhstan positively. As such, 80% of those questioned declared that they had never had to pay cash or present gifts as a bribe. At the same time, 83% of respondents link the reduction in corruption in the last 10 years with administrative reforms and an improvement in culture.

9.2.1. PREKO Consulting sociological survey

Between May and December 2017, PREKO Consulting carried out sociological research for the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption to determine corruption perception levels.

The research was carried out to determine corruption perception levels characterising public opinion on corruption levels in the state authorities, with findings based on an assessment of corruption perception levels in the Republic of Kazakhstan, an assessment of the stability of anti-

corruption values among the general public, an assessment of satisfaction with the state's anti-corruption policy, and the information openness of the state authorities in Kazakhstan.

The research work applied a number of research methods, for example surveys of individuals, individual entrepreneurs and legal entities; and in-depth interviews with representatives of the expert community. The expert community incorporates experts from sectors such as investigative research, the mass media, public organisations, scientific institutions, the law enforcement bodies and judicial bodies. In total, the research project involved 10,000 respondents, of whom 5,000 were individuals, 2,400 were individual entrepreneurs, 2,400 legal entities and 200 were representatives from the expert community.

Findings show that 70.1% of the people in Kazakhstan who took part in the research believe corruption in the country's governmental agencies is somewhere between average and high. Respondents from Kostanai, Almaty, Dzhambul and East-Kazakhstan Oblasts and the city of Almaty pointed towards corruption being higher in their regions of the country.

Broken down into research target groups, 71.7% of the respondents assessing corruption levels as average and high were legal entities. Among individual entrepreneurs this figure was 68.9%, and among the general public – 70.1%.

The perception of corruption among individuals depends somewhat on their place of residence. A high percentage (73.8%) of those respondents assessing corruption as average or high tended to reside in oblast centres and in national level cities. The same figure for inhabitants of smaller towns was 71.5% and 58.2% for rural inhabitants.

In the last three years, the percentage of Kazakhstan citizens assessing corruption levels in the state authorities as average or higher, fell by 8.6%. With that, in 2015 this figure was 78.7%, in 2016 it had fallen to 72.7%, and in 2017, as mentioned earlier, it had dropped to 70.1%.

According to those questioned in the sociological research, the key reasons for corruption in the state authorities are civil servants' sense of impunity, a poor judicial system, systemic corruption at the highest levels, large-scale favouritism shown to relatives and low moral and ethical character traits in civil servants. It is worth pointing out that the "sense of impunity" has been in the top position in the list of main reasons for corruption in Kazakhstan for the last three years.

Businesses that took part in the sociological research believe that today's main barriers suppressing or slowing down business sector development in the country are, primarily, inflation, currency regulation and state (administrative) instability. In this particular rating, 16.7% of entrepreneurs mentioned corruption in the state authorities, making it the fifth largest barrier to business development. Interestingly, corruption in the state authorities in 2015 and 2016, according to similar sociological research, was the fourth largest barrier to business development in Kazakhstan. This year, corruption in the state authorities fell to fifth place.

According to a survey of the population and businesses in Kazakhstan, the five least corrupt central state authorities were the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption; the Supreme Court of the Republic of Kazakhstan, the Ministry of Foreign Affairs of the Republic of Kazakhstan, the Ministry of Employment and Social Welfare of the Republic of Kazakhstan and the Ministry of Culture and Sport of the Republic of Kazakhstan., receiving the lowest corruption ratings across all three research groups.

Corruption perception levels in the local executive state bodies are recognised as average, which is evidenced by the average scores for each specific state body of between 4 and 7. An exception was in Kostanai Oblast where for several state bodies the average corruption perception score was over 7, i.e. higher than average. The state bodies with these scores were responsible for business activities, state procurements, the law enforcement bodies, state finances, the judicial bodies, housing, Akimat staff and the tax services.

According to the respondents, all civil service positions are exposed to some level of corruption, mostly higher than average. The general opinion among respondents is that the higher the person's position in the state hierarchy, the higher the risk of corruption. Having said that, the top five in this particular rating are division and department leaders, deputy akims in oblast level cities and regions, oblast and national level city akims, oblast city and regional akims, deputy division and department leaders.

The level of trust in the central state authorities is somewhere between average and high. The absolute leaders in public and business community leadership trust terms are currently the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption, the Supreme Court of the Republic of Kazakhstan and the Ministry of Defence of the Republic of Kazakhstan.

On the whole, the level of trust in local executive bodies among representatives from the three research target groups is higher than average. The average score for all local executive bodies varies between 3 and 5. Having said that, there are 4 regions, Akmola, Karaganda, Kostanai and South-Kazakhstan Oblasts where the average trust score is between 5 and 7 (medium level and below). Across the country, the five local executive bodies with the greatest trust from the public and business community differ, but more often than not the most trustworthy state authorities operate in the culture, environmental management and veterinary sectors, or are Akimat departments.

The percentage of people encountering corruption in the Kazakhstan state authorities in their jobs and in resolving personal issues is 19.9%. 29.9% of individual entrepreneurs encountered corruption in the current year, making them the most frequent category. According to legal entity representatives questioned, only 13.3% encounter corruption in the state authorities. For the country as a whole, 18.1% of people admitted encountering corruption in the state authorities. In location terms, residents of oblast centres encounter corruption in the state authorities far more often than anywhere else. In the current year, that figure was 20.2% of all respondents questioned. Among the residents of small towns, the figure was 14.2%, rising to 16.9% for rural communities.

Comparing the results of similar research in the last three years, there has been a 7.2% reduction in the percentage of persons encountering corruption in the state authorities. In 2015, that figure was 27.1%, in 2016 it was 38.2% and in 2017 – 19.9%. These positive changes are also seen findings are broken down into the research target groups. Individual entrepreneurs are an exception, who in the last three years have seen a rise in the numbers who have encountered corruption in the state authorities from 16.6% in 2015, 34.4% in 2016 to 29.9% in 2017.

In regional terms, respondents from Kyzylorda, South-Kazakhstan, Kostanai and Atyrau Oblasts encountered corruption most often in 2017. Of all the people who encountered corruption, 55.8% agreed to give a cash bribe to a civil servant. In the majority of cases, the initiative to enter into corruption relations came from the civil servant or an intermediary.

More and more often, individuals have begun to encounter corruption in the tax service, healthcare, law enforcement and education authorities, from employment inspectors and bodies dealing with land relations.

The general public and business community have the least confidence in the central state authorities' anti-corruption policy with respect to the Ministry of Health of the Republic of Kazakhstan (5.01), the Ministry of Agriculture of the Republic of Kazakhstan (5.00), the Ministry of Defence of the Republic of Kazakhstan (4.99), the Ministry of Education and Science of the Republic of Kazakhstan (4.99) and the Ministry of the National Economy of the Republic of Kazakhstan (4.96).

9.2.2. Sociological survey of the Public Administration Academy

In 2017, the Public Administration Academy of the President of the Republic of Kazakhstan prepared a study on the Sociological Measurement of Corruption: Research Methodology and Society's Attitude to Research Findings.

The study provides findings from a "face-to-face" sociological survey conducted in every oblast, in Astana and in all national level cities.

A random sample of 2,000 respondents aged 18 and above represents the adult population of Kazakhstan in terms of gender, age, ethnic background, education levels and place of residence in accordance with specific population centres.

To identify trends in the distribution of corruption, respondents were asked the question, "In your opinion, how widespread is bribery in Kazakhstan today?" to which the vast majority of 87.6% thought it was widespread. Only 10.5% of those questioned believe corruption is not particularly widespread.

An important step on the path to preventing corruption is the level of public awareness of the negative impact corruption has. 38.4% of respondents believe the situation is hopeless, maintaining that people are forced to give bribes because there is practically no other way.

34.9% note the stereotype that a bribe is an easy way of speeding up the resolution of a particular issue, while 30.7% of respondents believe a bribe is necessary because it has become the norm. 18.4% of respondents expressed a position whereby they exercised their civil right not to have to and refused to give bribes.

Many of those taking part in the sociological survey had encountered corruption in a number of forms second hand. The use of connections to resolve an issue is a form of corruption that involves the abuse of a position, which is punishable by statutory disciplinary, administrative and criminal liability. At the same time, 35.6% of respondents note the equal importance of giving bribes and having connections. 27.9% of survey participants note the importance of having good connections when resolving issues, and 24.5% believe that the most effective method is offering a bribe.

One of the goals of the research is to highlight the reasons persuading those questioned to participate in corruption. More often than not 29.9% of respondents made use of corruption services due to a lack of time or opportunity to resolve a specific issue legally; because everyone else gives bribes and bribery is a common occurrence (20.6%); 18.9% of those questioned were forced to offer cash or gifts because a bribe was extorted out of them. 17.9% of bribes were given to encourage the official to do a better job, while 16.2% of respondents used bribes as a form of gratitude for assistance provided. Every 10th respondent (10.4%) was of the opinion that he or she would not have been able to resolve their particular issue by going down the official path, and that a bribe was the only option they had. 7.2% of respondents actually saved money by paying a bribe because following the legal process of resolving a problem would have cost them far more.

During the survey, respondents were asked which were the most corrupt sectors and institutions in Kazakhstan; 25.2% chose the traffic police as the organisation most prone to corruption in Kazakhstan. 17.8% of respondents believe that the most corrupt is the medical sector, while 16.2% of those questioned went for the judicial system and local authorities. The housing and utilities sector and "society as a whole" received 15.5% of the votes. 15.1% believe that the tax authorities are corrupt, while 10.7% point the finger at the customs authorities. The remaining sectors all received less than 10% of respondent votes.

The attitude to the frequent mention of corruption-related offences in the media and in social networks is more or less positive:

- 34% of respondents believe it to be an indication that the “state is battling corruption and is winning”
- 47.7% of those questioned think that “corruption-related offences discussed in the media and social networks is just a drop in the corruption ocean”
- 15.6% of respondents reacted negatively, considering it “window dressing”

A sociological survey of 500 representatives of small and medium-sized business was also conducted as part of the research work.

The level of confidence in sociological research conducted by local experts is relatively low; only 14% of respondents from small and medium-sized businesses trust findings from sociological research carried out by domestic experts and companies. 36.8% of respondents have more confidence in joint research, while 27.4% of those questioned trust the results of overseas researchers and companies. A further 21.4% rely on the results of research carried out by international organisations.

54% of respondents from the small and medium-sized business sector trust the results of sociological research into corruption levels performed annually by the state authorities (43% of respondents are “more likely to trust them” and 11% “trust them in full”). 39.8% expressed a lack of trust in the results of annual sociological research carried out by the state authorities.

89.8% of respondents trust the annual corruption perception index published by the Transparency International Organisation (67.4% are “more likely to trust it” and 22.4% “trust it in full”).

The majority of respondents (92.4%) believe that findings from corruption sociological research should be published in the media. Only 7.6% of respondents believe that they should not be published.

As for the publication frequency of corruption-related information in the media, 62.6% of respondents “frequently” read about details of corruption in Kazakhstan in the media. Correspondingly, 31.4% do so less often.

The research also involved questioning a sample of 500 civil servants.

When questioned about corruption perceptions, 91.4% of civil servants gave an opinion that the results of sociological research into corruption should be published in the media. An absolute majority of respondents expressed confidence in the results of sociological reviews discussing corruption, with 52.2% “more likely to trust them” and 41.8% “trusting them.”

Over half (54.8%) of the respondents are inclined to attach importance to the results of the sociological research into corruption as a factor promoting anti-corruption culture in Kazakhstan. 44.2% of those questioned have the opposite opinion, believing that the research in question does not promote an anti-corruption culture.

The most frequent answers to the question, “who needs the findings from sociological research into corruption?” were divided more or less equally among three options – “the authorities and civil servants” (37.4%), “the people” (35.2%) and “society as a whole” (32.8%). 69.4% of respondents were unable to answer the question on the use of findings from research into corruption. In other words, the majority of civil servant respondents did not understand the practical application of the findings from sociological research into corruption.

The majority of civil service respondents (73.8%) were certain that the state authorities themselves were responsible for ordering the sociological research into corruption. 36.2% believed that it was ordered by the business community. 30.6% believe that research of this type is ordered by international organisations.

A little over a third of those questioned trust the results of sociological research conducted in conjunction with overseas partners. 26.8% have more confidence in research by domestic experts, and 26% prefer to believe in the results of sociological research conducted by overseas companies and researchers. Only 8.6% of respondents trust sociological research conducted by international organisations.

Respondent trust in the Transparency International corruption perception index is high at 80.2%, with 52.6% “more than likely trusting it” and 27.6% “trusting it in full.” Respondent trust in the results of sociological research into corruption performed by the state authorities is slightly lower (76.6%) than in the Transparency International corruption perception index – 47.6% “more than likely trust them” and 29% “trust them in full”. However, the lack of trust in the results of sociological research conducted by the state authorities is lower than the lack of trust in the Transparency International index.

9.2.3. United Nations Development Programme Research

The results of the United Nations Development Programme, which was conducted in conjunction with the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption, was the analytical report, “Improvements in the Institutions of Ethics in the Kazakhstan Civil Service: a Look at Ethics Officers.”

Focus groups applied OECD Development Centre “brain storming” methods in the Comprehensive Country Survey for Kazakhstan (2016) to use primary data as one of the effective methods of generating information on sensitive issues in transitional and developing countries.

The first focus group was held at the State Policy High School of the Nazarbayev University in April 2017, inviting 19 ethics officers from the central state authorities of the Republic of Kazakhstan, including the Supreme Court, the Accounts Committee, the Ministry of the National Economy, the Ministry of Investment and Development, the Ministry for Religious Affairs and Civil Society, the Ministry of Agriculture, the Ministry of Justice, the Ministry of Finance, the Ministry of Defence and Aerospace Industry, Agencies and local state bodies from Akmola, Aktobe, East-Kazakhstan, Karaganda, Kyzylorda, Pavlodar, North-Kazakhstan and South-Kazakhstan Oblasts, and the city of Astana.

Preliminary results were tested by the second focus group, which involved 25 ethics officers from local executive bodies from all regions of the country at the end of May 2017. The focus group was organised with the support of the Public Administration Academy of the President of the Republic of Kazakhstan. The participants acknowledged the problems and their causes, and added examples from their own practice.

Kazakhstan has witnessed a clash between traditional social values and the principles of the modern civil service. Potential sources for conflicts of interest according to the OECD report “Management of Conflicts of Interests in the Civil Service” (2003) include personal and family relations; gifts and hospitality. The complex contradiction between traditional social norms and the principles of the civil service result in a latent opposition to any reform of the civil service from the civil servants themselves.

The relatively low ethical values of civil servants reflects the moral values of Kazakhstan society. In 2014, the Nur-Otan Institute of Social Policy conducted research into the values of society in Kazakhstan, in which 1,600 people from all across the country took part. The top five most important values for Kazakhstan citizens were health (75.3%), children (54.2%), security (44.7%), well-being and prosperity (40.9%), that is to say values that focus solely on satisfying personal needs. The least important values were self-development (10%), serving the nation (10.8%), patriotism (12.7%), human rights (14.7%) and freedom (14.8%).

An exclusively legislative approach based on the adoption of new normative and legal acts and replacing them with new ones, without changing the mentality and culture of civil servants and society, and not implementing the concept of the rule of law, you face the risk of making any changes superficial.

The system of assessing current reforms and adopting political solutions according to evidence-based policy-making approaches is still not popular in Kazakhstan, but which is very widely used in OECD countries. Specifically, attempts to assess the effect of legislation on changes to the ethical values of civil servants and the culture of the state sector are made extremely rarely and irregularly.

Research findings have highlighted a number of serious barriers to effective advancements in civil service ethics in Kazakhstan, such as:

- insufficient effective accountability mechanisms with respect to ethics compliance for civil servants, particularly management level and political civil servants
- the dual accountability of a civil servant responsible for ethics as the head of his or her particular state body and the authorised body, which results in a conflict of interests
- non-competitive working conditions in the civil service and low motivation
- the extensive area of responsibility and restricted rights of the civil servant responsible for ethics
- the demand for training and methodological support in ethics
- low levels of accountability in the quasi-state sector and
- the lack of engagement of civil society and the limited freedom to express an opinion in the media and social networks

9.2.4. “Strategy” Public Fund sociological survey

In 2017, the “Strategy” Centre for Social and Political Research, with the support of the Atameken National Chamber for the Support of Business, conducted sociological research into the “Reasons of and Conditions contributing to Corruption-Related Offences when the Business Community interacts with the State Authorities.”

A comprehensive research approach making use of sociological methods to collect information such as business questionnaires and expert interviews, and interviews with entrepreneurs was used to help the project meet its goals.

1,532 respondents took part in the questionnaire and 51 took part in the expert interviews. The survey was taken in 14 oblasts and 2 national level cities.

According to entrepreneurs, the leaders in terms of corruption risk and actual corruption were in land relations and customs administration. At the same time, corruption in customs administration is more of a large-scale problem.

As such, 30.1% of those questioned reported corruption experience in customs administration. 21.1% had experienced it in land relations, 17% in construction, 11.9% in taxation and 9.7% in state procurements.

At the same time, in the majority of cases, the initiator of a so-called unofficial resolution was the civil servant. For land relations, the initiator in 75% of the cases was the civil servant, and 25% - the developer; as for procurements, in 63.3% of the cases, the initiators were the representatives from the state authorities, while in customs administration that figure was 52.9%, in taxation – 48.3% and 47.1% in construction.

Research showed that the transparent (understood) taxation base helps stimulate law-abiding behaviours in the business community, while on the other hand, the multitude of discretionary norms in customs law and the non-transparent methods used to identify the customs value of goods create corruption risks, which explains the high number of corruption cases in this particular sector.

The highest average value of unofficial payments was highlighted in the customs administration sector (between KZT 588 thousand and KZT 2.169 million). At the same time, the greatest number of unofficial non-cash payments (such as goods and services) was noted in the taxation sector, while the size of bribes in this area varied between KZT 248 and KZT 923 thousand.

The reasons for unofficial payments made by the business community can be grouped into three clusters as follows, dissatisfaction with the work of civil servants – 35.3%; entrepreneurs' lack of awareness of their rights – 31.5%; and dissatisfaction with the legislative regulation of entrepreneurial activities – 22.1%. From the above, we can conclude that more often than not an official payment is made as a kind of guarantee that the civil servant will perform his or her duties correctly, which confirms that there is no real concept of client focus in the activities of the state authorities.

The group of businesses that have been in operation for more than 10 years, essentially, play a central role in forming general opinion in the business community for the reasons behind unofficial payments. Established companies focus primarily on the lack of updated standard technical documentation and normative legal acts, due to irregularities or the absence of any statutory regulation of the issue of and reasons for an entrepreneur's ignorance of the law. The newer the company, the more often unofficial payments are a consequence of ignorance of the law and, subsequently, extortion from civil servants.

The results of research into corruption levels in the regulatory bodies show that the most corrupt are in the land control sector. At the same time, the level of trust in the land control bodies is also one of the lowest. The least corrupt bodies are the quarantine and phytosanitary and veterinary inspection authorities.

It is worth pointing out that regulatory bodies such as the building inspection and customs control authorities are in the upper half of the rating, which confirms that the business community probably perceives them as corrupt. At the same time, the tax control authorities registered one of the highest confidence levels among businesses. The main reasons for corruption situations in taxation are the irregularities in and the closed nature of the tax authorities' risk management system. Corruption-based relationships can take the form of not highlighting violations during the course of an audit or speeding up the review period.

More than a third of entrepreneurs (38%) prefer to follow the law and avoid corruption mechanisms when dealing with taxation issues. This is due to the transparent tax base, and the reduced frequency of direct interaction between the business community and state authorities due to process automation. In this respect, practically 50% of businesses (47%) are in a kind of interim (border) state. All of them in their own way are rational and act to improve their own benefits and within the framework of calculated risks. It is this category of entrepreneurs that is the target group for adopting tax-related anti-corruption measures.

Analysis has shown that the most onerous requirements for businesses are excise duty controls and the declaration of indirect taxes on imports. This is mainly due to the complexity of business processes, strict controls and repressive sanctions on any violations discovered (fines and the confiscation of goods).

Survey results show us that corruption relations arise more frequently at the start of or during the preparation for procurements before an official tender announcement, when there is direct

interaction between the client (state authority) and potential contractor at the discussion level, “in the early stage, when technical specifications are being drafted – then.”

According to behaviour patterns in procurement-related corruption situations, one third of businesses (33%) prefer to act within the law. This model is characteristic for an established business that has been in operation for between 3 and 7 years, because the older and larger a business is, the more often it is prepared to dispute a decision or approach the law enforcement bodies. This model is also characteristic for a large business which is more likely to defend itself by making justified claims against unscrupulous civil servants by approaching the law enforcement bodies. As for small and medium-sized businesses, according to representatives from sector associations, more often than not upholding interests leads to the state authorities actually increasing sanctions.

The most common situation resulting in corruption-based relationships around procurements is the preparation of tender documents (40.3%). In 25.8% of cases, corruption arises when accepting deliverables or services provided under a purchase agreement; ensuring procurements are tailored for a specific supplier, the removal from or the failure to include an entity in a register of unscrupulous suppliers.

Every fourth (26%) business in the customs administration sector may be treated as “illegal”, as they prefer to resolve issues the “unofficial way” (small businesses operating for more than 7 years). Customs administration is where the lowest number of businesses (31%) opt to act within the law (small business; new businesses operating less than 3 years). This is caused by the number of discretionary regulations in customs administration and the non-transparent methods used to determine the customs value of goods.

The research results show that the onerous nature of customs procedures is actually higher than the corruption risks inherent in the same procedures. The onerous nature of customs administration procedures is confirmed by the fact that the majority of businesses still prefer to use the services of custom brokers rather than have to navigate their way through them themselves.

Analysis shows that customs broker activities create favourable conditions for corruption relations between the customs authorities and a business in the form of customs consultants and the creation of a self-regulating organisation.

By this means, both society and the expert community believe that all positions in the state authorities are exposed to a certain risk of corruption. Moreover, the general opinion of respondents is along the lines that the higher the public position in the overall state hierarchy, the greater the argument for an unofficial resolution to any issues that may arise in return for payment.

In the last three years, the percentage of people in Kazakhstan assessing corruption levels in the state authorities as average or higher has fallen by 8.6%. At the same time, 87.6% of respondents note a relatively high level of bribery in Kazakhstan. Only 10.5% of those questioned believe the level of corruption is low.

According to those questioned in Kazakhstan, the key reasons for corruption in the state authorities are civil servants’ sense of impunity, a poor judicial system, systemic corruption at the highest levels, large-scale favouritism shown to relatives and low moral and ethical character traits in civil servants.

Every fifth Kazakhstan citizen questioned (19.9% of respondents) has encountered corruption in the state authorities of Kazakhstan for their job or when trying to resolve personal issues. At the same time, in 2017, 29.9% of individual entrepreneurs encountered corruption. Businesses with operations of more than 10 years tend to give bribes less often due to their experience and advanced knowledge of the law.

Many of those taking part in the sociological survey had encountered corruption in a number of forms second hand. The use of connections to resolve an issue is a form of corruption that involves the abuse of a position.

More often than not 29.9% of respondents made use of corruption services due to a lack of time or opportunity to resolve a specific issue legally.

25.2% of respondents believe the traffic police is the organisation most prone to corruption in Kazakhstan. 17.8% of respondents believe that the most corrupt is the medical sector, while 16.2% of those questioned went for the judicial system and local authorities. The housing and utilities sector and “society as a whole” received 15.5% of the votes.

According to businesses, the leaders in terms of corruption risk and actual corruption were areas such as land relations and customs administration. At the same time, corruption in customs administration is more of a large-scale problem.

9.3. Inquiries and appeals

In addition to sociological surveys and research, inquiries with the state authorities collated by the Committee for Legal Statistics and Special Accounts of the General Prosecutor’s Office of the Republic of Kazakhstan are of great interest. The information in question is collected in form 1-OG and issued annually and semi-annually, except in 2009, when it was not published.

As can be seen, the number of corruption-related inquiries from individuals fluctuates between 627 and 2,953, but they are still only a very small percentage of the total number of inquiries. The percentage of corruption-related appeals among total inquiries ranges between 16% and 40%, but this is still only 1% of all appeals. It seems that corruption does not really worry people in Kazakhstan, and it only becomes an issue when it directly affects their life.

Table 9.3.1. Corruption-related inquiries and corruption appeals from individuals

Year	Individuals’ corruption- related inquiries	Individuals’ appeals against corruption	Number of inquiries from individuals	Number of appeals from individuals
2008	1 741	618	13 573 508	127 099
2009				
2010	1 045	472	16 254 682	111 433
2011	627	202	16 110 804	117 858
2012	1 786	1 002	13 868 608	105 536
2013	1 737	937	8 062 987	101 565
2014	2 385	900	2 757 093	97 584
2015	2 953	1 268	1 997 480	118 189
2016	1 458	170	2 027 023	157 126
2017	1 374	227	1 881 207	146 027

Strange as it may seem, but legal entities appeal directly against corruption nearly 10 times less often than individuals.

Table 9.3.2. Corruption-related inquiries and appeals from legal entities

Year	Legal entities’ corruption- related inquiries	Legal entities’ appeals against corruption	Number of inquiries from legal entities	Number of appeals from legal entities
2008	855	352	3 002 941	20 781

2009				
2010	994	377	3 972 769	20 964
2011	726	496	4 404 535	22 528
2012	630	372	4 729 820	32 506
2013	301	98	2 773 398	25 455
2014	336	101	764 251	22 915
2015	551	252	570 627	20 478
2016	182	19	481 968	31 388
2017	215	29	444 930	33 480

Thus, the above shows that the general public and business community is not yet ready to fight corruption directly – possibly because corruption suits them or they are scared of corrupt officials. Therefore, sociological surveys and research, which help to measure corruption levels, remain a very important tool.

10. Civil society and the prevention of corruption

The effectiveness of anti-corruption reforms has a huge impact on a country's foreign policy image and its investment opportunities. Kazakhstan's efforts to become one of the top 30 most competitive countries in the world as a full member of the OECD, significantly increase its investment attractiveness, create the Astana International Financial Centre and achieve sustainable economic growth and prosperity for the population, clarify the strict priority given to anti-corruption reforms.

Successful experience in introducing anti-corruption reforms clearly points to the need to engage civil society, which includes activists, journalists, bloggers, investigators and public organisations, in the process. With no interaction between the state and civil society, anti-corruption reforms will never be effective or reach their full potential. In this case, civil society acts as a kind of litmus paper for the effectiveness of anti-corruption reforms and the accomplishment of specific goals as they are implemented.

If civil society does not understand anti-corruption reforms or does not support them, the general population will not understand them either or learn to trust them. For this reason, the role of civil society in implementing anti-corruption reforms is extremely important and critical because it helps the state:

- highlight concealed corruption, especially at the lower levels; make latent corruption processes more obvious, which helps attract the attention of the law enforcement bodies
- perform in depth research into the reasons for corruption in various areas and sociological surveys of a more confidential nature, which consequently give a clearer result
- fill in the holes in educational programmes aimed at informing society about the reasons for, risks and threats of corruption
- better interact with business structures and help them implement programmes to reduce corruption risks and threats
- monitor the implementation of anti-corruption reforms and meet the requirements of national anti-corruption legislation
- improve national anti-corruption legislation
- work with international organisations and monitor the implementation of their recommendations
- track the execution of the Republic of Kazakhstan's international obligations with respect to agreements and treaties pertaining to the fight against corruption, money laundering and the prevention of the shadow economy

The above list is not limited to civil society's role and participation in the implementation of anti-corruption reforms. The most successful and best practices of a number of countries with corruption problems are built on expanding the role as much as possible and including public institutions in the fight against corruption. For example, engaging public organisations in the various transparency initiatives, for example in the extractive industry (Extractive Industries Transparency Initiative (EITI)) and in the construction industry; public spending at central and local levels, the participation of active members of the public and public organisations in the decision-making and drafting processes for anti-corruption strategies, assessing draft laws or other documents for potential corruption risks.

10.1. The role of civil society in the UN Convention Against Corruption

The Republic of Kazakhstan ratified the UN Convention Against Corruption in 2008¹²⁶. The Convention assumes society's access to information and its role as an important and integral element in anti-corruption reforms. Article 13 of the Convention assumes the participation of society in reforms and in actions aimed at preventing corruption.

Society's participation assumes a wide range of possibilities, such as:

- jointly developing and discussing strategic documents and programmes to be adopted in Convention state parties to prevent corruption
- civil society monitoring and controlling the implementation of anti-corruption documents and programmes
- expanding society's participation in the decision-making process at all levels
- conducting anti-corruption investigations; receiving and distributing information on facts surrounding corruption, without fear for life or safety
- discussing draft normative documents to highlight corruption risks should they be adopted
- developing educational programmes to prevent corruption; working with the general public to create a stable image of anti-corruption behaviour
- working with the state authorities to reduce the role of factors promoting the development of corruption, such as the existence of complex procedures or requirements; long waiting times for state services; frequent amendments to legislation, the extensive discretionary powers of officials and others
- conducting wide-ranging sociological research into the level and perception of corruption among the general public both nationally and in specific regions

10.2. OECD standards and the expansion of the role of civil society in anti-corruption reforms

Kazakhstan is a member of the OECD Anti-Corruption Network for the countries of Eastern Europe and Central Asia¹²⁷. Network members have signed an integrated platform of actions and measures to fight corruption, which is the Istanbul Anti-Corruption Action Plan¹²⁸. Within the framework of international cooperation, any changes and progress of party states in implementing Istanbul Action Plan recommendations are monitored and assessed.

One of the recommendations constantly monitored by the OECD monitoring group for Kazakhstan is society's involvement in implementing anti-corruption reforms, the use of civil society's great potential to conduct research, educational programmes and various forms of public control and monitoring, and implementing procedures and mechanisms for providing access to information, participating in the discussion of draft laws and by-laws, ensuring transparency and accountability in public spending¹²⁹.

¹²⁶ Law of the Republic of Kazakhstan №31 dated 4 May 2008 *On the Ratification of the United Nations Convention Against Corruption* <http://adilet.zan.kz/rus/docs/Z080000031>

¹²⁷ Anti-Corruption Network for the Countries in Eastern Europe and Central Asia. Web-site: <http://www.oecd.org/corruption/acn/>

¹²⁸ Istanbul Action Plan. More information is available at: <http://www.oecd.org/corruption/acn/istanbulactionplan/>

¹²⁹ For example, recommendation 1.4. "Community Participation" in the report from the 3rd round of Kazakhstan monitoring with respect to the Istanbul Anti-Corruption Action Plan. The text of the report can be found at: <http://www.oecd.org/daf/anti-bribery/Kazakhstan-3rd-Round-Monitoring-Report-RUS.pdf>

The report from the 4th round of monitoring of the Istanbul Anti-Corruption Action Plan¹³⁰ underlined society's insufficient role in the process of implementing anti-corruption reforms in Kazakhstan.

The OECD's more detailed recommendations made to Kazakhstan to engage society and the general public in carrying out anti-corruption reforms pertain to:

- *ensuring the extensive engagement of civil society organisations in drafting and implementing anti-corruption policy, removing the opportunity for selective approaches to any such cooperation*
- *supporting dialogue with civil society regarding consultation on issues of anti-corruption policy and anti-corruption reviews*
- *considering the possibility of expanding the composition of the Interdepartmental Commission to improve Current Legislation concerning the Prevention of Corruption by including experts from non-governmental organisations*
- *considering the possibility of introducing guidelines covering the obligatory public discussion of the most important draft acts, and obliging the developer to publically justify any rejection of proposals from regulatory agencies and other civil society institutions*
- *reconsidering the operating practices of public and expert bodies so as to exclude state interference in identifying delegates from non-governmental organisations for membership of the bodies in question*

The OECD also welcomes the active interest and engagement of civil society in the alternative monitoring of state parties' implementation of the Istanbul Anti-Corruption Action Plan¹³¹. Alternative (or "shadow") monitoring is the parallel and independent participation of representatives from the non-governmental sector in all stages of Istanbul Action Plan monitoring, in accordance with a developed methodology.

10.3. Legislation of the Republic of Kazakhstan and the role of civil society in anti-corruption processes

Legislation of the Republic of Kazakhstan promotes the active involvement of public institutions in anti-corruption reforms.

The Law of the Republic of Kazakhstan *On the Prevention of Corruption*¹³² contains a list of possible actions and measures that public organisations may apply to implement anti-corruption reforms, such as:

- 1) *reporting on corruption-related offences known to them in accordance with the procedure established by legislation of the Republic of Kazakhstan*
- 2) *proposing improvements to legislation and law enforcement practices with respect to the prevention of corruption*
- 3) *participating in the creation of an anti-corruption culture*
- 4) *working together with other entities involved in the prevention of corruption and the authorised body for the prevention of corruption*
- 5) *requesting and receiving information in accordance with the procedure established by legislation of the Republic of Kazakhstan on activities to prevent corruption*

¹³⁰ Report from the 4th round of Kazakhstan monitoring with respect to the Istanbul Anti-Corruption Action Plan. The text of the report can be found at: <http://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-4thRound-Monitoring-Report-RUS.pdf>

¹³¹ "Practical guidelines: how civil society can perform monitoring."

¹³² Article 24 "Community Participation in the Prevention of Corruption" of Law of the Republic of Kazakhstan №410 dated 18 November 2015 *On the Prevention of Corruption*. The text of the law can be found at: <http://adilet.zan.kz/rus/docs/Z1500000410#z23>

- 6) *conducting research, including scientific and sociological, on issues related to the prevention of corruption*
- 7) *carrying out expository work in the mass media and organising socially significant events in relation to the prevention of corruption*

The Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025¹³³, for example, calls for the public control or inspection of civil society institutions as an effective mechanism to preventing corruption. It notes that the introduction of any such control requires not only the activation of civil society institutions, but also the corresponding legislative regulation. The institution of public control for the prevention of corruption is in place to play an important role in the future development of civil society, whose institutions help strengthen state authority and improve the performance of the state apparatus.

10.4. Practical implementation of civil society participation in anti-corruption reforms in Kazakhstan

10.4.1. Participation in the development of anti-corruption strategy

Civil society representatives have taken part in Anti-Corruption Strategy discussions at dialogue platforms organised by the state authorities and political parties. Well-known lawyers, political analysts, experts, public figures, representatives from the general prosecutor's office and Agency for Civil Service Affairs and the Prevention of Corruption have all taken part in a working group to develop and discuss the Strategy.

Even though the Kazakhstan state authorities hold regular meetings with public representatives, expert sessions and roundtables, the impact of civil society on the decision-making process is still insufficient. Zhanar Dzhandosova, a member of the social council for the prevention of corruption, has noted that developers have received no feedback, comments or suggestions on the Strategy from civil society¹³⁴.

Civil society recommendations included in the Anti-Corruption Strategy include:

1. civil servants having to declare income, expenses, assets and property (implementation of this point has been deferred until 2020)
2. intensifying interaction with civil society, engaging it in the decision-making process. (The Laws *On Access to Information*, *On Public Councils* and *On the Prevention of Corruption* have been adopted)
3. anti-corruption education – anti-corruption training courses from school age, the abandonment of legal nihilism – improving legal literacy, expository work in conjunction with the mass media

Recommendations not included in the Anti-Corruption Strategy include:

1. the confiscation of property if a civil servant is unable to explain its origin
2. anti-corruption reviews of normative legal acts
3. the accountability of national companies

According to information from the Transparency Kazakhstan Public Fund, it is clearly not fact that the new anti-corruption strategy is based on a thorough analysis of the current corruption situation. However, it is important to point out that the most important weakness in the previous

¹³³ Section 4.2. "Implementation of the Institution of Public Control." Edict of the President of the Republic of Kazakhstan №986 dated 26 December 2014 *On the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025*. The text of the document can be found at: <http://adilet.zan.kz/rus/docs/U1400000986#z19>

¹³⁴ Interview "We cannot force anyone to stop extortion, but we can stop giving bribes." The text can be found at: <https://rus.azattyq.org/a/den-borby-s-korrupsiey-interview-zhandosova/26733146.html>

programmes was their clear punitive direction. In this Strategy, the focus is on preventative measures in the fight against corruption and on improving legislation. One of the directions of the Anti-Corruption Strategy is to work with the general public and create an atmosphere of zero tolerance towards corruption, which has been recommended by the Transparency – Kazakhstan Public Fund. Recommendations from the Atameken National Chamber for the Support of Business to prevent corruption in business were also taken into consideration.

From a civil society perspective, participation in the implementation of anti-corruption policy involves holding expert meetings, participating in social councils, and conducting public training and seminars. The demand for public anti-corruption education is far higher than civil society's ability to provide it.

Civil society's participation in the implementation of anti-corruption programmes and strategies is inadequate. The public is very interested in anti-corruption training and educational programmes to improve legal competence, however, the measures taken by the authorities to meet that demand are mostly token in nature. Expert councils have been put in place to discuss legislative initiatives and discuss the results of state programmes and strategies. The opinion of civil society is often not considered when drafting reports on the status of the various programmes.

According to non-governmental organisations in Kazakhstan, civil society's participation in creating and implementing anti-corruption policy remains inadequate. There is no information available from the state authorities on which proposals made by the general public are actually used to improve anti-corruption legislation.

10.4.2. Society's involvement in developing the first National Statement on the Prevention of Corruption

In April 2017, the Agency for Civil Service Affairs and the Prevention of Corruption drafted and published its first National Statement on the Prevention of Corruption¹³⁵. According to the Law of the Republic of Kazakhstan *On the Prevention of Corruption*, a national statement is a document containing an analysis and assessment of the condition and trends for the spread of corruption at international and national levels, as well as proposals for creating, implementing and improving anti-corruption policy¹³⁶. The president has approved the procedure for drafting and presenting the National Statement on the Prevention of Corruption for presidential approval and publication¹³⁷.

Even though the normative legal acts in question assume the participation of individuals and legal entities in the drafting of the National Statement on the Prevention of Corruption, we are not aware of any non-governmental organisations or media representatives, civil activists, researchers or experts that took part in drafting it. It was not announced by the Agency for Civil Service Affairs and the Prevention of Corruption. We also do not possess any information on the creation of any working group to draft the document.

The Draft National Statement has not been published and was not discussed with public representatives. Non-governmental organisations, the media and other interested parties have not had an opportunity to present their materials, comments or proposals. According to experts from the Legal Policy Research Centre (LPRC), the lack of public discussion and engagement of

¹³⁵ First Annual National Statement on the Prevention of Corruption (2017). The text of the statement can be found at: <http://kyzmet.gov.kz/ru/pages/nacionalnyy-doklad-o-protivodeystvii-korrupcii>

¹³⁶ Article 17 of the Law of the Republic of Kazakhstan №410 dated 18 November 2015 *On the Prevention of Corruption*. The text of the law can be found at: <http://adilet.zan.kz/rus/docs/Z1500000410>

¹³⁷ Edict of the President of the Republic of Kazakhstan №154 dated 29 August 2015 *On the Approval of Guidelines for drafting and passing the National Statement on the Prevention of Corruption to the President of the Republic of Kazakhstan and publishing it*. The text of the document can be found at: <http://adilet.zan.kz/rus/docs/U1500000154>

representatives from civil society, the media and expert communities in the drafting process for the National Statement have had a negative impact on the quality of the document.

Analysis of the document highlights the following trends:

1. The first National Statement, unfortunately, has not become society's national strategy in the fight against corruption. Its weakness include:
 - a lack of any in-depth study and analysis of all aspects of Kazakhstan corruption
 - a lack of any analysis and research into why the level of perception of corruption has not fallen (according to international organisations)
 - a lack of any consistency in actions that are understandable, clear and accurate for the public, and which need to be taken to reduce corruption levels across the country
 - a lack of any comprehensive or systematic analysis of the areas most exposed to corruption, for example, state procurements or the provision of state services
 - a total lack of any analysis of issues surrounding prejudicial inquiries, court practices and the execution of punishment for corruption-related offences
 - a lack of any assessment of Kazakhstan's implementation of international obligations (with respect to ratified agreements and conventions)
 - a lack of any assessment of actions taken by the government or parliament, in violation of commitments taken, and which have had a negative impact on the effectiveness of anti-corruption reforms (for example, the delay in the deadline for civil servants to declare property)
2. Discussion of the formation of anti-corruption culture and the engagement of civil society in the implementation of anti-corruption reforms takes up four of the 70 pages in the statement, the majority of which are of a general nature (for example, the number of pupils and students in various educational institutions and other such facts). This brings us to the conclusion that the state authorised body does not attach great significance to the role and functions of civil society, including journalists and the media, in the fight against corruption, which is actually the case in practice
3. The statement does not cover issues around the enforcement access rights to information, and the accountability and transparency of the state authorities as an important element of state policy in the fight against corruption

The above weaknesses are the consequence of a lack of any public discussion of the draft statement and the engagement of representatives from civil society and the media in the drafting and preparation process.

10.4.3. Open agreement to consolidate efforts to prevent corruption in society

According to the State Authorised Body for the Prevention of Corruption, active cooperation should also take the form of involvement in the "Open Agreement to consolidate Efforts to prevent Corruption in Society"¹³⁸, initiated by the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption. Feedback from civil society is achieved through video conferences and discussion of the most acute issues and how to resolve them. According to the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption, approximately 39,000 organisations and 54,000 individuals (not confirmed) are currently signed up to the Agreement.

The Social Council for the Prevention of Corruption¹³⁹ of the Agency of the Republic of Kazakhstan for Civil Service Affairs and the Prevention of Corruption also actively participates

¹³⁸ Open Agreement to consolidate Efforts to prevent Corruption in Society. More detailed information is available at: <http://kyzmet.gov.kz/ru/kategorii/otkrytoe-soglashenie-o-sotrudnichestve>

¹³⁹ Materials of the Social Council for the Prevention of Corruption of the Agency for Civil Service Affairs and the Prevention of Corruption are available at: <http://kyzmet.gov.kz/ru/kategorii/obshchestvennyy-sovet-pri-agentstve>

in the implementation of the Anti-Corruption Strategy, including through the engagement of non-governmental organisations.

10.4.4. Civil control – the basis for preventing corruption

2016 saw the launch of the State “Civil Control” Project, whose goal was to engage non-governmental organisations in a range of anti-corruption measures, including anti-corruption monitoring and forming an anti-corruption culture by creating public reception points in all regions of the country, where representatives from non-governmental organisations could develop mechanisms to overcome administrative barriers, register abuses of power and overpricing for state procurements and others.

Over 1,000 people have contacted the public reception points, with 300 of those contacts made in writing. The authorities have also organised academic and practical conferences, seminars, roundtables and business forums as part of the Civil Control Project.

The expectation is that funds will be used to organise measures to improve public awareness of procedures around state services; produce short films and generate recommendations discussing anti-corruption culture.

The government has introduced a scheme to reward people reporting corruption-related offences. As evidence of its success, in 2016 the scheme paid out a total of KZT 27 million to 185 persons.

10.4.5. Participation of civil society in the law making process

According to the LPRC, Kazakhstan has in place at the legislative level a requirement for the public discussion of draft legislative acts. The new version of the Law of the Republic of Kazakhstan dated 6 April 2016 *On Legal Acts* stipulates at least two procedures for the public discussion of draft normative legal acts:

1. draft normative legal acts affecting the interests of private businesses require obligatory agreement with the National Chamber of Commerce and its regional divisions¹⁴⁰
2. draft normative legal acts affecting the rights, freedoms and obligations of citizens should undergo obligatory agreement with public councils¹⁴¹

In addition, Law of the Republic of Kazakhstan dated 16 November 2015 *On Access to Information* stipulates the obligatory publication of draft normative legal acts on information owner and legislator websites¹⁴². The same law obliges information owners to publish draft normative legal acts for discussion in the “Open Normative Legal Acts” section on the “Open Government” website¹⁴³ <https://legalacts.egov.kz/>. However, because public information campaigns are non-existent, the number of website users is low, meaning this particular channel for discussing draft normative legal acts for the time being is underperforming.

¹⁴⁰ Article 19 “Characteristics for developing and adopting Normative Legal Acts affecting the Interests of Private Businesses” of the Law of the Republic of Kazakhstan dated 6 April 2016 *On Legal Acts*. More detailed information is available at: <http://adilet.zan.kz/rus/docs/Z1600000480>

¹⁴¹ Article 20 “Characteristics for developing and adopting Normative Legal Acts affecting the Rights, Freedoms and Obligations of Citizens” of the Law of the Republic of Kazakhstan dated 6 April 2016 *On Legal Acts*. More detailed information is available at: <http://adilet.zan.kz/rus/docs/Z1600000480>

¹⁴² Subpoint 5) of point 3 of article 16 of the Law of the Republic of Kazakhstan dated 16 November 2015 *On Access to Information*. More detailed information is available at: <http://adilet.zan.kz/rus/docs/Z1500000401>

¹⁴³ Point 4 of article 17 can be found at the same place

Guidelines for publishing draft normative legal acts and discussing them on the “Open Government” website are created at the by-law level by an order of the Minister for Information and Communication of the Republic of Kazakhstan¹⁴⁴.

Even though procedures for the public discussion of draft normative legal acts are prescribed by law, in practice they are ineffective and in many cases they tend to be just declaratory and rubber-stamp procedures. In many cases this is because the deadlines set for public discussions are far too short (by law discussion periods should be at least 10 business days from the moment a draft normative act is published, but in the majority of cases a maximum of 10 days is allocated for public discussion). Furthermore, social councils quite often do not have the people or experts available to properly discuss draft normative legal acts as soon as they are published. For this reason, the only purpose of the social councils is to rubber-stamp draft normative legal acts without adding any amendments or additions.

The state bodies developing draft normative legal acts are not obliged to justify their decisions regarding requests to amend or supplement draft normative legal acts or notify the requestor of their decision. This confirms that the developers of draft normative legal acts treat the public discussion procedure as a rubber stamp that has no real impact on the quality of the draft normative legal act in question.

Non-governmental organisations and the media, in conjunction with the expert community, all of which are interested in the process of preparing draft normative legal acts, have noted the lack of feedback with the developers of normative legal acts and their practical lack of interest in amending draft documents. This kind of rubber stamp and declarative public discussion procedure around draft normative legal acts in Kazakhstan does have its negative consequences.

For instance, in May 2016 the lack of any public discussion of the draft Land Code of the Republic of Kazakhstan led to meetings, the arrest of human rights defenders and the detention of journalists, after which the Ministry of Information and Communication was forced to take steps to reorganise itself. In December 2016, a similar situation arose with the draft Law of the Republic of Kazakhstan *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding the Prevention of Terrorism and Extremism*, which proposed introducing internal registration for Kazakhstan nationals at their actual place of residence. Due to time constraints and ineffective discussion procedures and explanations of the law itself, its implementation caused indignation and resentment among the general public.

A report on the public discussion procedure for draft normative legal acts should be provided to the Ministry of Justice of the Republic of Kazakhstan before the agreement process with all state bodies starts. However, as we mentioned above, the developers do not treat comments and proposals made within the framework of expert and public discussions as binding and can easily reject them.

10.4.6. Opportunities to carry out anti-corruption investigation work

Journalist and media roles and participation levels in anti-corruption reforms in Kazakhstan are extremely low. A journalist's main function in the fight against corruption should be to investigate cases of corruption and publish any findings. Why is this so difficult and dangerous in Kazakhstan?

¹⁴⁴ Order of the Minister for Information and Communication of the Republic of Kazakhstan № 22 dated 30 June 2016 *On the Approval of Guidelines for the Publication and Public Discussion of Concepts for Draft Laws and Draft Normative Legal Acts on Open Non-Governmental Organisation Websites*. The text of the order can be found at: <http://adilet.zan.kz/rus/origins/V1600013974>

First of all, due to the general restrictive nature of media-related legislation, on the whole, and the criminalisation of libel and slander, in particular. Slander related to accusations of corruption is a criminal offence and is punishable by imprisonment of up to three years¹⁴⁵.

Secondly, the ample opportunity to prosecute journalists and the media, with punishment in the form of large fines, and the suspension or closure of media outlets. For example, a former civil servant took the “Ratel.kz” website to court and won KZT 50 million (over US\$ 150,000)¹⁴⁶.

Thirdly, judges are ill equipped to consider cases involving journalists and the media. In addition, prejudice or corruption elements are another factor capable of making journalists and the media very wary of conducting anti-corruption investigations.

According to journalists and members of the mass media who were questioned during the alternative monitoring period, any interaction with the Agency for Civil Service Affairs and the Prevention of Corruption and the National Bureau for the Prevention of Corruption merely involved copying press releases, reports, statistics and holding press conferences with pre-prepared questions.

Opportunities to carry out anti-corruption investigation have been severely reduced due to the latest round of legislative amendments. With the adoption of Law of the Republic of Kazakhstan №128 dated 28 December 2017 *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Information and Communication Issues*¹⁴⁷, journalists are now required to obtain permission to share judicial secrets in the media. The law does however provide exceptions. For instance, permission is not required if information is provided in official notifications or disclosed by the individual and/or legal entity themselves or by their representatives through publically accessible sources.

Current legislation of the Republic of Kazakhstan also contains provisions protecting legal secrets, citing a general rule forbidding the disclosure of information considered a judicial secret, without the consent of the person to whom it refers.

Exceptions to the general rule arise when information may be disclosed without the above consent (for example, medical, banking or tax secrets). A journalist, as a rule, does not have direct access to secrets. They tend to be disclosed by their channels of information or insiders. Non-governmental organisations in the media sector assume that the obligation to obtain permission may become a barrier for journalists planning or conducting anti-corruption investigations, and could act to cool and limit the freedom of speech, contributing to negative outcomes in court disputes with the media and journalists.

10.4.7. Opportunities for civil society to receive and distribute information freely

One of the most important measures adopted in Kazakhstan since 2014 with respect to access to information has been the adoption of the Law of the Republic of Kazakhstan *On Access to Information*¹⁴⁸. However, a year after it was adopted, it became clear that in practice the law is ineffective and its implementation has been associated with limitations and difficulties and that the legal guarantees surrounding the right to access information are ineffective.

¹⁴⁵ Part 3 of article 130 of the Criminal Code of the Republic of Kazakhstan. The text of the Code can be found at: <http://adilet.zan.kz/rus/docs/K1400000226>

¹⁴⁶ “The case of Kakimzhanov against Ratel.kz – the unlawful verdict is upheld.” The text of the publication can be found at: http://www.ratel.kz/outlook/v_dele_kakimzhanov_protiv_ratelkz_nezakonnoe_reshenie_ostalos_v_sile

¹⁴⁷ Law of the Republic of Kazakhstan №128 dated 28 December 2017 *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Information and Communication*. The text of the law can be found at: <http://adilet.zan.kz/rus/docs/Z1700000128>

¹⁴⁸ Law of the Republic of Kazakhstan dated 16 November 2015 *On Access to Information*. More detailed information is available at: <http://adilet.zan.kz/rus/docs/Z1500000401>

LPRC experts have noted the following obstacles to the effective implementation of the right to access information in Kazakhstan:

- the Law of the Republic of Kazakhstan *On Access to Information* is not a high priority: the Law of the Republic of Kazakhstan *On the Procedure for interacting with Individuals and Legal Entities*, and provisions on access to specific information in other laws (for journalists – the Law of the Republic of Kazakhstan *On the Mass Media*, access to archive information – the Law *On the National Archive Fund and Archives*) act in conjunction with it
- the lack of a tripartite test in the Law of the Republic of Kazakhstan *On Access to Information* and a judicial set of tools that would fully embody the principle of the maximum openness of information and the proportionality of any restriction in access to information. Even though the proportionality principle is embedded in article 5 of the Law of the Republic of Kazakhstan *On Access to Information* (“...to the extent it is required to...”), however, without further elaboration in the form of a full tripartite test it is unlikely that it will be duly applied in practice or will be applied at all, even in court
- the lack of a list of exceptions and the lack of mechanisms for guaranteeing and protecting access rights to information in legislation make it ineffective. The Law of the Republic of Kazakhstan *On Access to Information* does not provide sufficient legal guarantees, and does not even provide weak protection of the right to access information
- the lack in the Law of the Republic of Kazakhstan *On Access to Information* of provisions regarding the creation of an independent administrative body to consider appeals against the unlawful actions of officials with respect to the access to information; and appeals against violations of access rights to information. Any such actions can only be appealed with a higher entity or organisation, or in court. In addition, these particular procedures are not simple or free of charge, and may be time consuming. According to experts, the mention in legislation of a Commission for Information Access Issues does not guarantee an adequate level of appeal as provided for by basic standards for the freedom of information. A Committee for Information Access Issues has limited status and is unable to consider appeals against the violation or restriction of access rights to information
- the administrative fines stipulated by the Code of the Republic of Kazakhstan *On Administrative Violations* are inadequate. The punishment for officials violating or restricting access rights to information stipulated by the Law of the Republic of Kazakhstan *On Access to Information* are inadequate. There is no administrative liability in place for violating the deadline for providing information requested, although this is the most frequent violation related to information access rights. According to an online survey of journalists conducted by Internews Kazakhstan in December 2016, 79.81% of journalists questioned (out of 105) reported a failure to respond within a deadline as the most common violation associated with access to information
- the lack of criminal liability for an intentional violation of access rights to information and liability for the intentional destruction of documents
- the lack in the Law of the Republic of Kazakhstan *On Access to Information* of provisions to protect informers, that is to say persons who have provided information that has led to the disclosure of an offence
- the lack of provisions obliging information owners or state authorities to introduce measures to promote the law. This makes the law vulnerable when applied in practice. Information owners are not obliged to maintain registers of documents they accept and

issue. There is no obligation to create structural divisions that would be responsible for executing and observing the law

Another obstacle making the effective implementation of access rights to information difficult in practice is the lack of integrated statistics on requests for information. A general register of information statements is also not maintained.

The Committee for Legal Statistics and Special Accounting of the Prosecutor General of the Republic of Kazakhstan provided data to confirm that in 2016 it had handled 4,310,996 inquiries (which were mostly from individuals about previous convictions, and from the law enforcement and other state authorities).

In practice, civil society, as well as the mass media, civil activists and bloggers constantly come up against the “closedness” of the state authorities and an unwillingness to publish information that should be open and accessible in accordance with legislative requirements. For example, the Legal Media Centre Public Fund demanded in court that information on public spending allocated to the mass media be made available by the Ministry of Information and Communication of the Republic of Kazakhstan on a tender basis. The court refused to provide the information even though it had no right to do so¹⁴⁹.

¹⁴⁹ “State-owned cash likes peace and quiet.” http://ratel.kz/raw/gosudarstvennye_dengi_ljubjat_tishinu

11. Participation of international organisations in the prevention of corruption in the Republic of Kazakhstan

11.1. Participation of international organisations in the prevention of corruption in Kazakhstan

11.1.1. UN Convention Against Corruption. UN Office on Drugs and Crime

The Republic of Kazakhstan ratified the UN Convention Against Corruption¹⁵⁰ (the “Convention”) in 2008. The Convention establishes a roundtable of party states to expand opportunities and cooperation among them to achieve common goals, and work together in the implementation of the Convention and review its status.

A final document was published in 2015¹⁵¹ detailing Kazakhstan’s implementation of the UN Convention Against Corruption, commenting, specifically, on the country’s positive achievements in implementing the Convention and also providing recommendations, such as:

- given the specifics of criminal and judicial doctrine, to continue with efforts to find ways to criminalise the promise or offer of unlawful benefits with intent to provide false evidence or interfere in the process of giving evidence or providing evidence during proceedings in connection with an offence
- to continue efforts in establishing an approach to the effective administrative of the liability of legal entities for committing at least all corruption-related offences subject to criminalisation in accordance with the Convention, including the laundering of income generated by corruption-related offences
- to continue efforts to find ways to criminalise the promise and offer of bribes, taking into account the specifics of criminal and judicial doctrine in Kazakhstan, and others

11.1.2. Interaction between Kazakhstan and the OECD

The Republic of Kazakhstan, at the highest political level, has declared its interest in becoming a full member of the Organisation for Economic Cooperation and Development (OECD)¹⁵². The relationship was officially recorded in a Memorandum of Mutual Understanding between the Government of the Republic of Kazakhstan and the OECD to implement the Draft Country Programme for Cooperation between Kazakhstan and the OECD¹⁵³.

OECD standards have been recognised as benchmark targets for Kazakhstan to become one of the top 30 most developed countries in the world. Having declared its intention to become one of the top 30 most developed countries by 2050, the Kazakhstan Government has committed to adopt steps to upgrade and reform state administration, including public spending policy. Some of the most important improvement and reform issues include state finances and fiscal policy,

¹⁵⁰ United Nations Convention Against Corruption. Adopted by Resolution 58/4 of the General Assembly dated 31 October 2003. The text of the Convention is available at:

http://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml

¹⁵¹ Final document on Kazakhstan’s implementation of the UN Convention Against Corruption, 2015. More detailed information is available at:

<http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1504244r.pdf>

¹⁵² The OECD is a forum in which governments compare the effectiveness of their policies in a number of areas, share experience, identify best practices with regard to new challenges, and promote the adoption of solutions and recommendations aimed at guaranteeing best practices for a better life for their citizens. The OECD’s mission is to promote a policy focused on improving the economic and social welfare of people across the world. Detailed information on the OECD can be found at: www.oecd.org

¹⁵³ Resolution of the Government of the Republic of Kazakhstan № 10 dated 20 January 2015 *On the Signing of a Memorandum of Mutual Understanding between the Government of the Republic of Kazakhstan and the Organisation for Economic Cooperation and Development to implement a Draft Country Programme of Cooperation between Kazakhstan and the Organisation for Economic Cooperation and Development*. The text of the resolution can be found at: <http://adilet.zan.kz/rus/docs/P1500000010>

and transparency and accountability in the public sector. All of these issues fit into one basket and represent a complex area – public administration.

Article 12 (b) of the OECD Convention¹⁵⁴ covers relations with non-member States; while article 12 (c) of the Convention authorises the participation of OECD non-member governments.

In 2011, OECD ministers adopted a Concept for a Common Vision, underlying the need to “develop new forms of partnership and cooperation to improve the welfare of all of our citizens.”

The Concept also welcomes “cooperation with all countries interested in exchanging knowledge and experience supporting reform, and which adhere to OECD standards.”

The Kazakhstan economy is one of the fastest growing in Central Asia. In recent years, Kazakhstan has strengthened its OECD ties by expanding interaction with OECD committees and bodies such as the Investment Committee, Committee for Agriculture and the Committee for Industry, Innovation and Enterprise. Kazakhstan is an active member of the OECD Eurasian Competitiveness Programme, and is a co-chair of the Central Asian initiative of the Eurasian Competitiveness Programme, in the regional OECD Working Group Programme in the Fight Against Corrupt Practices in international business transactions. It plays an active role in OECD development-related political dialogue based on the production of natural resources as a co-leader in efforts to stabilise funds and allocate expenses.

As part of their cooperation, the OECD and Republic of Kazakhstan have drafted a number of reviews, such as “the Reform of Public Administration” and “Open Government”¹⁵⁵, and the review “Responsible Allocation of Duties and Resources”¹⁵⁶, which, to a greater or lesser extent, cover issues around the transparency, openness and accountability of state authorities and institutions, and the implementation of open government principles in practice. Kazakhstan is keen on working with the OECD in these and other areas of policy, using that relationship as a means of supporting country reforms.

2.3. OECD Anti-Corruption Network for the countries of Eastern Europe and Central Asia

Kazakhstan has an active role in the OECD Anti-Corruption Network for the countries of Eastern Europe and Central Asia¹⁵⁷. Kazakhstan’s anti-corruption reforms and the actions of its government are monitored regularly within the framework of the Istanbul Anti-Corruption Action Plan¹⁵⁸.

The first report on monitoring findings, which was adopted in September 2007, assessed the implementation of initial recommendations and rated Kazakhstan’s compliance with them.

The report from the 2nd round of monitoring Kazakhstan was approved in September 2011, with the 3rd round report approved in October 2014. The monitoring reports included updated ratings

¹⁵⁴ Convention of the Organisation for Economic Cooperation and Development. The text of the convention can be found in English at: <http://www.oecd.org/general/conventionontheorganisationforeconomiccooperationanddevelopment.htm>

¹⁵⁵ More detailed information is available at: http://www.keepeek.com/Digital-Asset-Management/oecd/governance/towards-an-open-government-in-kazakhstan_9789264279384-en#.Whqbjkpl_cs#page29

¹⁵⁶ More detailed information is available on the OECD website or at: http://www.oecd-ilibrary.org/governance/towards-an-open-government-in-kazakhstan_9789264279384-en

¹⁵⁷ The main goal of the OECD Anti-Corruption Network for the Countries of Eastern Europe and Central Asia, which was founded in 1998, is to support member countries in their efforts to prevent and fight corruption, exchange information, develop best practices and coordinate donorship in the form of regional meetings and seminars, mutual training programmes and specialised themed projects. The Istanbul Anti-Corruption Action Plan is a part of the Network. More information is available at www.oecd.org/corruption/acn/

¹⁵⁸ The Istanbul Anti-Corruption Action Plan is a sub-regional peer review programme launched in 2003 in the framework of the OECD Anti-Corruption Network. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through the use of country reviews and the constant monitoring of their efforts to implement recommendations to support the implementation of the UN Convention Against Corruption, other international standards and best practices. More information is available at www.oecd.org/corruption/acn/istanbulactionplan/.

of Kazakhstan's implementation of initial recommendations and any new recommendations¹⁵⁹. During the period between the monitoring rounds, Kazakhstan provided updated information at all Network monitoring sessions on its actions to implement recommendations. Kazakhstan also plays an active role in and supports other Network measures.

The 4th round of monitoring within the framework of the Istanbul Anti-Corruption Action Plan was launched in 2016 based on a methodology approved by Network state parties, and is due to be completed in September 2018 in conjunction with the publication of an "Anti-Corruption Reforms in Kazakhstan" report¹⁶⁰ on the OECD website.

The report consists of the following three sections, which on the whole repeat the structure of the UN Convention Against Corruption: (1) anti-corruption policy; (2) the prevention of corruption; and (3) criminal liability for corruption and its use.

The report was adopted at a plenary session of the Istanbul Anti-Corruption Action Plan on 13 September 2017 in Paris at the OECD headquarters and contains the following ratings with respect to the implementation of recommendations from 3rd round monitoring: of the 19 previous recommendations, Kazakhstan has not implemented only 1, has implemented partially 15 recommendations, substantially implemented 1 recommendation; and has not implemented any recommendations in full. Fourth round monitoring resulted in the creation of 22 new recommendations, with 7 previous recommendations recognised as remaining valid.

Among others, OECD recommendations with respect to the fight against corruption cover all three of the areas mentioned above. For example, legislative weaknesses with respect to the criminalisation of corruption remain outstanding, which is why Kazakhstan still does not comply with international standards in full. Specifically, the weaknesses concern the retention in the *Code On Administrative Violations* of liability for the receipt of unlawful material consideration; the existence of a cash trigger after which the receipt of giving of a bribe is considered a criminal offence; criminal liability is not stipulated for all elements of the bribery process or for the trading of influence; the target of corruption-related offences does not include intangible benefits; and there is no effective liability in place for legal entities.

Even though Kazakhstan has introduced a definition of "foreign legal entities", it is not sufficiently broad and needs to be clarified. Kazakhstan has also introduced new confiscation guidelines, which generally meet global standards; but still needs to improve its guarantee with respect to protecting good faith purchasers of property. The procedures for withdrawing immunity have not been reformed.

The report shows that the process for engaging the general public in the development of the national anti-corruption strategy is not totally open, inclusive or transparent. It recognises the importance of introducing a mechanism for monitoring the implementation of anti-corruption policy documents and assessing corruption risks. This is an important stage in the formation of a mature anti-corruption policy.

Kazakhstan has once again deferred the introduction of a new system for civil servants to declare their property and income (this time until 2020); with the old criticism still valid that the new system will only extend to taxable income and assets, which makes it ineffective because the requirement for public officials to declare their income and property has other goals and requires far broader information. Returns remain closed for the public and are only published with the permission of the given civil servant (even though the practice is common and even impacts the civil servant's assessment).

Because only insignificant progress has been achieved with respect to the integrity of political civil servants, the report recommends that Kazakhstan establish detailed integrity rules for the

¹⁵⁹ All OECD Anti-Corruption Network monitoring reports and other materials for the countries of Eastern Europe and Central Asia are available at: <http://www.oecd.org/corruption/acn/>

¹⁶⁰ Report on the 4th round of monitoring of the Republic of Kazakhstan's implementation of recommendations from the Istanbul Anti-Corruption Action Plan "Anti-Corruption Reforms in Kazakhstan." The text of the report can be found at: <http://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-4thRound-Monitoring-Report-RUS.pdf>

political civil servants not covered by the Law *On the Civil Service* (with respect to the conflict of interests, financial control, and liability for corruption and related offences), taking into account their status and duties, and also introduce an effective mechanism for controlling the compliance of political civil servants with integrity rules.

The report recommends that for the transparency of state procurements, Kazakhstan continue to improve its electronic procurement system and open it up for use by non-residents; publish regularly updated information on procurements in machine-readable data format, including statistics on appeals and their consideration; introduce a direct and obligatory exclusion from procurements for a legal entity or its management if they have been found guilty of corruption; improve mechanisms for highlighting and preventing conflicts of interest in state procurements; bring the contents of obligatory anti-corruption declarations in tender documentation into line with best international practices. It is also important to intensify training for the private sector and purchasing organisations in state procurements and integrity.

11.1.3. Participation of the Republic of Kazakhstan in other international corruption prevention initiatives

Since 2005, the Republic of Kazakhstan has taken an active role in the international Extractive Industries Transparency Initiative (EITI)¹⁶¹, which is an important international, political and anti-corruption project focusing on the transparency of governments and companies in the mining sector. The initiative uses legislation to commit subsoil users to observe an EITI Memorandum of Mutual Understanding and present audited reporting on taxes and other budget payments¹⁶².

From 1 July 2017, the Republic of Kazakhstan should start to undergo validation¹⁶³ to reaffirm its highest EITI status, which was received following validation in 2013. According to a working plan for 2017-2018, the EITI International Secretariat recommended that Kazakhstan¹⁶⁴:

- 1. promote transparency: increase awareness of how to use natural resources and how companies in the extractive industries spend the income they generate*
- 2. make data available: make data on extractive industry companies available and free to access at any time*
- 3. conduct public debates: a society that understands government income and spending will help the public debate and make an informed choice with respect to the correct and realistic options for realising sustainable development*
- 4. disclose the beneficiaries of extractive companies in the oil and gas and mining sectors (from 2020)*

11.1.4. Plans for the Republic of Kazakhstan to accede to other anti-corruption organisations and initiatives

The Republic of Kazakhstan also has plans to join up to two anti-corruption initiatives. *Accession to the Council of Europe Group of States Against Corruption*

¹⁶¹ The Extractive Industries Transparency Initiative (EITI) was initiated by Mr Tony Blair in 2002 at the Johannesburg World Sustainable Development Summit and represents a global standard promoting the transparency of revenue from the oil, gas and mining industries. More details are available on the EITI official website: www.eiti.org

¹⁶² Law of the Republic of Kazakhstan №291 dated 24 June 2010 *On the Subsoil and Subsoil Use*. The text of the law is available at: http://adilet.zan.kz/rus/docs/Z100000291_#z170

¹⁶³ More detailed information on the validation of the Republic of Kazakhstan as a country follower of the EITI is available at: <http://eiti.geology.gov.kz/ru/validation>

¹⁶⁴ Working Plan for the Implementation of a Transparency Initiative for Extractive Industries for 2017-2018 (approved by Protocol of the National Council for Interested Countries №66 dated 19 April 2017). More detailed information is available at: http://eiti.geology.gov.kz/images/stories/ipdo2/work_plan/work1718.pdf

The Group of States Against Corruption (GRECO)¹⁶⁵ is an international organisation created by the Council of Europe to monitor how legislation and law enforcement in party states comply with Council of Europe anti-corruption standards.

GRECO was founded by the Council of Europe on 1 May 1999 to aid party states in their anti-corruption efforts by highlighting, with the help of mutual assessment procedures, weaknesses in current national anti-corruption mechanisms. In its activities, GRECO is governed by the Council of Europe Convention on Criminal Liability for Corruption¹⁶⁶, the Council of Europe Convention on Civil and Legal Liability for Corruption¹⁶⁷, the 20th Council of Europe Guidelines in the Fight Against Corruption¹⁶⁸, and its own policies.

According to the GRECO Charter, any state that has signed and ratified the Council of Europe Convention on Criminal Liability for Corruption, or the Council of Europe Convention on Civil and Legal Liability automatically becomes a GRECO member and commits to following GRECO assessment procedures. GRECO currently has 46 member states, which include all Council of Europe countries and the USA.

Representatives of the authorised state bodies for the prevention of corruption have often discussed Kazakhstan's possible ratification of the Council of Europe Convention on Criminal Liability for Corruption, the Council of Europe Convention on Civil and Legal Liability for Corruption and accession to GRECO. They believe that by doing so, the country will create a solid legal platform with which further anti-corruption reforms in Kazakhstan and work with the European member states of the Council of Europe in the many aspects of anti-corruption policy¹⁶⁹.

The same intention – Kazakhstan's accession to GRECO – is reflected in the Action Plan for 2018 – 2020 to implement the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015 – 2025.

Accession to the international “Open Government Partnership” initiative

The international “Open Government Partnership” initiative¹⁷⁰ joins the governments of 75 countries in their attempts to raise their performance and serve society appropriately. The Open Government Partnership offers its members a methodological platform to assess and analyse transparency and accountability in the various sectors of management and administrative activities, and the opportunities to discuss and exchange best practices and contemporary experience, and participation in the joint search for the best solutions to problem issues.

The Open Government Partnership establishes four minimum criteria for countries wishing to accede to the initiative:

- public spending transparency
- access to information
- asset declaration
- civil participation¹⁷¹

¹⁶⁵ The organisations' official website is available at: <https://www.coe.int/en/web/greco>

¹⁶⁶ Convention of the Council of Europe *On Criminal Liability for Corruption*, 27 January 1999. The text of the convention is available at: [https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/173?coconventions=WAR coconventionsportlet languageId=en_GB](https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/173?coconventions=WAR%20coconventionsportlet%20languageId=en_GB)

¹⁶⁷ Convention of the Council of Europe *On Civil and Legal Liability for Corruption*, 4 November 1999. The text of the convention is available at: [https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/174?coconventions=WAR coconventionsportlet languageId=en_GB](https://www.coe.int/fr/web/conventions/full-list/-/conventions/treaty/174?coconventions=WAR%20coconventionsportlet%20languageId=en_GB)

¹⁶⁸ “Twenty Guiding Principles in the Fight Against Corruption of the Council of Europe.” The text of the document is available at: <https://rm.coe.int/16806cc17c>

¹⁶⁹ For example, see “Kazakhstan plans to join the Council of Europe GRECO.” The publication is available at: https://bnews.kz/ru/news/obshchestvo/kazakhstan_planiruet_vstupit_v_greko_soveta_evropi

¹⁷⁰ Open Government Partnership. <https://www.opengovpartnership.org/>

¹⁷¹ Open Government Partnership minimum eligibility criteria. <https://www.opengovpartnership.org/resources/eligibility-criteria>

One of the latest OECD recommendations given to Kazakhstan within the framework of the 4th round of monitoring of the Istanbul Anti-Corruption Action Plan is to join the Open Government Partnership¹⁷².

11.2. Kazakhstan in international ratings

11.2.1. International ratings in Kazakhstan's main anti-corruption documents

Article 7 “Anti-Corruption Monitoring” of Law of the Republic of Kazakhstan № 410-V dated 18 November 2015 *On the Prevention of Corruption* (with amendments and additions as at 3 July 2017) states that the measures used to prevent corruption in the collection, processing, collation, analysis and assessment of information regarding the effectiveness of anti-corruption policy, the status of law enforcement in the prevention of corruption, and society's perception and assessment of corruption levels may be based on data provided by non-governmental and international organisations.

In this respect, anti-corruption monitoring findings may be treated as justification for analysing corruption risks, and perfecting measures to generate an anti-corruption culture.

The Anti-Corruption Strategy of the Republic of Kazakhstan for 2015–2025, approved by Edict of the President of the Republic of Kazakhstan № 986 dated 26 December 2014, links the international standards adopted to prevent corruption with the steps taken by Kazakhstan for further integration in the global community. Improving the country's standing in the international community and improving the corresponding international ratings, including its rating in the Transparency International Corruption Perception Index is a target covered by the Strategy.

Point 57 of the 2015-2017 Action Plan to implement the Anti-Corruption Strategy of the Republic of Kazakhstan for 2015-2025 and to prevent the shadow economy, approved by Resolution of the Government of the Republic of Kazakhstan № 234 dated 14 April 2015 (with amendments made by Resolutions of the Government of the Republic of Kazakhstan № 414 dated 19 July 2016 and № 628 27 October 2016) guarantees permanent interaction with international organisations assessing and rating corruption levels in the Republic of Kazakhstan and preventing corruption.

Thus, Kazakhstan's strategic anti-corruption documents place great emphasis on the country's place in indices and ratings that directly or indirectly demonstrate the status of corruption prevention in Kazakhstan.

Below we provide an analysis of key indices and ratings and how they relate to the status of the prevention of corruption, changes and how they reflect the real status of citizens of the Republic of Kazakhstan.

11.2.2. The Republic of Kazakhstan in international ratings that directly or indirectly reflect the status of corruption in the country

Transparency International ratings

Transparency International is an international organisation whose mission is to stop corruption and increase transparency, accountability and integrity at all levels and in all sectors of society. Transparency International carries out periodical research to test and measure the impact of country corruption across the world. Research findings are provided in two formats – a corruption perceptions index and a global corruption barometer.

¹⁷² Recommendation 13 (8). Page 126 of the Report on Kazakhstan's Implementation of Istanbul Anti-Corruption Action Plan Recommendations (4th round of monitoring). The report can be found at: <http://www.oecd.org/corruption/acn/OECD-ACN-Kazakhstan-4thRound-Monitoring-Report-RUS.pdf>

The corruption perceptions index is an annual estimate of corruption levels in a particular country according to experts and a survey of public opinion. The index currently covers 176 countries and ranges from 100 (very low corruption levels) to 0 (extremely corrupt). According to the current index for 2016, the global average score is 43. Correspondingly, countries with a score lower than 43 can only be treated as corrupt.

The Republic of Kazakhstan, after scoring 28 in the 2015 corruption perceptions index, moved in the right direction in 2016, improving its score to 29. In county terms, like many others, Kazakhstan's ranking has deteriorated, dropping from 126th (out of 176) to 131st¹⁷³.

According to Transparency International experts, the 2016 corruption perceptions index demonstrates a link between corruption and inequality, which seem to feed off each other to create a vicious circle of relevance between corruption and the irregular distribution of power and wealth in society. The consequence of these growing developments is political disillusionment in a large section of the population and also an intensification in populist waves of socio-political impact on the people¹⁷⁴. "Countries with a lower rating in our index suffer from unreliable and badly functioning public institutions, such as the police and the judicial system. Even where laws governing the fight against corruption have been put in place, in practice they are often avoided or ignored, and for that reason people often come up against bribery and extortion¹⁷⁵."

In 2018, Kazakhstan's corruption perceptions index for 2017¹⁷⁶ was 31, placing it together with Azerbaijan and Moldova in 122nd.

In six out of nine surveys, Kazakhstan improved its rating compared to the previous year, and in two received a lower score, and in one its score remained unchanged.

Experts from six ratings agencies, whose research is used to create the corruption perceptions index, took a favourable view of Kazakhstan's efforts:

- Global Insight Country Risk Ratings rose 1 point from 34 to 35 in 2017
- the Bertelsmann Foundation Transformation Index increased its score by 5 points from 20 in 2016 to 25 in 2017
- the IMD World Competitiveness Yearbook raised its assessment of Kazakhstan by 14 points from 41 to 55
- the World Justice Project Rule of Law Index raised Kazakhstan's score of 32 in 2016 2 points to 34 in 2017
- the Varieties of Democracy Project rose 8 points from 16 to 24
- the Economist Intelligence Unit Country Ratings improved by 1 point from 19 to 20

The PRS International Country Risk Guide remained unchanged at 24 points.

In two ratings — the World Economic Forum and Freedom House Nations in Transit Ratings — Kazakhstan's score fell by 9 and 4 points, respectively:

- the World Economic Forum— from 36 points in 2017 to 45 points in 2016
- the Freedom House Nations in Transit Ratings— from 24 points in 2017 to 28 points in 2016

¹⁷³ https://www.transparency.org/news/feature/corruption_perceptions_index_2016

¹⁷⁴ https://www.transparency.org/news/feature/corruption_and_inequality_how_populists_mislead_people

¹⁷⁵ https://www.transparency.org/news/feature/corruption_perceptions_index_2016

¹⁷⁶ <http://tikazakhstan.org/index-vospriyatiya-korrupsii-kazahstana-vyros-na-2-balla-i-sostavil-31-2/>

Kazakhstan has earned the maximum number of points since 1999. Its worst showing in the corruption perceptions index was in 2007, earning 21 points. Before this point, its best result had been 30 in 2000.

Transparency Kazakhstan experts believe that:

1. against the backdrop of a global drop in the corruption perceptions index, the Republic of Kazakhstan has demonstrated progress in its fight against corruption, especially in 2017
2. to further improve its corruption perceptions index, Kazakhstan needs to continue its fight against corruption at the same level and introduce further reforms aimed at improving government transparency and accountability to the public
3. the main contribution to improving the corruption perceptions index came from reforms in the redistribution of authority among the branches of power; the activities of the Agency for Civil Service Affairs and the Prevention of Corruption; General Prosecutor reforms, and changes to the judicial and local self-government systems
4. reforms in media and telecommunications legislation, and the government's economic solutions, which are somewhat restricted by other branches of power, were unsuccessful
5. to improve the situation as a whole, the Kazakhstan government needs to reduce its influence on the country's economy, introduce effective control measures for state procurements, including in the quasi-state sector, and revise media-related legislation, which significantly restricts the opportunities for journalists and civil activists to carry out anti-corruption investigations. It also needs to improve how the national parliament and local representative bodies are run in terms of organisation and financing

World Bank ratings

The World Bank, which is the largest and best known development bank in the world, and also an observer in the UN Development Group, also provides authoritative ratings. The Bank's objective is to end extreme poverty and consolidate general prosperity. The World Bank consists of five organisations: the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency and the International Centre for the Settlement of Investment Disputes. Kazakhstan is a member of all five World Bank organisations.

The World Bank periodically analyses member countries' social-economic policy and provides recommendations on the same. Its main corruption-related research issues are the Corruption Control Index and Ease of Doing Business rating.

The Corruption Control Index is a part of the annual Worldwide Governance Indicator project, and starting from 1996 it has presented combined and individual governance indices for more than 200 countries and territories¹⁷⁷. Global governance indices represent an investigative collection of data that provides an opinion on the quality of governance. The data is collected from a number of research institutions, analytical centres, non-governmental organisations, international organisations and private sector firms. The Worldwide Governance Indicator uses four different types of primary data: household and corporate surveys, sources of commercial data, non-governmental organisations and public sector organisations¹⁷⁸.

The Corruption Control Index reflects perception as to the level to which state authority is used for personal gain, including minor and major corruption. It also takes into account cases when elite and private interests "seize" state power. The measurement of control over corruption is

¹⁷⁷ <http://info.worldbank.org/governance/wgi/#home>

¹⁷⁸ <http://info.worldbank.org/governance/wgi/#doc>

clearly based on the accepted definition of “corruption” as the use of a public position for personal gain.

Data is taken annually to compile a table detailing specific variables from each data source used to build a yardstick for global governance indices. The table is interactive and can be used to show all available data in any form¹⁷⁹.

Research methodology suggests that a comparison with recent years does not really provide a good representation of changes in processes in the country, which is why we use data on Kazakhstan starting from 1996.

Changes in the first corruption control index, the governance score, are measured on a scale of -2.5 to +2.5. Good governance returns a higher score. The figure shows an improvement in Kazakhstan’s score from -1.13 to -0.80, which is a sign of progress. Despite this, the country has still not managed to register a score over zero in 20 years.

The second index – the percentile rank – gives the country’s ranking among all other countries, where 0 is the lowest and 100 the highest. After reaching a low of 9.64 in 2000 and a high country score of 22.6 in 2014, Kazakhstan’s 2016 score was 20.67, which is still in the lowest 25% of countries in corruption control terms.

Kazakhstan in the Ease of Doing Business Rating

The Ease of Doing Business Rating is a project that provides objective business regulation measures and their application in 190 countries. It covers domestic small and medium-sized companies and measures the regulations applied to them over their life cycle. By collecting and analysing comprehensive quantitative data to compare business regulation conditions in various countries, over a period of time the Ease of Doing Business Rating stimulates economies to become better regulated, offers measurable reform criteria, and serves as a useful resource for politicians, academics, journalists, private sector researchers and other individuals interested in the business climate. In this fashion, the World Bank assesses the principles enabling the expansion of business activities and any principles restricting them¹⁸⁰.

Ease of doing business data has been updated annually over the last 15 years as at 1 June by analysing legal standards applicable to private businesses in 11 specific areas across their life cycle. This year, 10 of the areas were included in the general rating to assess business conditions¹⁸¹. The indicators are used to analyse economic performance and highlight successful reforms in business regulation, and to determine where and how they were effective. They include “Starting a Business”, “Dealing with Construction Permits”, “Getting Electricity”, “Registering Property”, “Getting Credit”, “Protecting Minority Investors”, “Paying Taxes”, “Trading Across Borders”, “Enforcing Contracts” and “Resolving Insolvency.” The Ease of Doing Business Rating also has a “Regulating the Employment Market” measurement, which this year was not included in the rating¹⁸².

In 2018, Kazakhstan placed 36th out of 190 analysed countries. The “Distance to Frontier” score of 75.44 demonstrates each country’s distance from the “frontier”, which represents the best performance observed on each of the indicators across all economies, starting from 2005. An economy’s distance to frontier is reflected on a scale from 0 to 100, where 0 represents the lowest performance and 100 represents the frontier. As a comparison, in 2017, Kazakhstan’s frontier score was 74.38. While scores for starting a business, getting electricity, registering property, protecting minority investors and enforcing contracts improved, and the scores for

¹⁷⁹ <http://info.worldbank.org/governance/wgi/#reports>

¹⁸⁰ <http://russian.doingbusiness.org/data>

¹⁸¹ <http://russian.doingbusiness.org/reports/global-reports/doing-business-2018>

¹⁸² <http://russian.doingbusiness.org/methodology>

getting credit and trading across borders remained unchanged, the scores for dealing with construction permits and paying tax actually deteriorated¹⁸³.

PricewaterhouseCoopers Ratings

PricewaterhouseCoopers is an international professional services' firm, providing management consulting and data analytics advice. The firm has offices in 158 countries and employs over 236,000 people, which makes it one of the world's leading professional services firms. The strategic consulting group PwC Strategy & works with leading global companies, governments and organisations to create and fashion significant business advantages by generating opportunity and navigating them through critical business issues. The company's mission is to help clients make transformation changes, create new organisational models, extract value from their client strategies and channels; improve the effectiveness of their supply chains and assets, and integrate security into their strategy so as to guarantee the sustainability of their business.

PricewaterhouseCoopers' most interesting research work pertaining to this review has been its Annual Global Business Executive Confidence Survey (the "CEO Survey") and Economic Crime Review.

The annual global CEO Survey focuses on identifying key trends and behaviours in the global economy, highlighting problems, the business mood and ambitions influencing management decision-making processes. The CEO Survey is PricewaterhouseCoopers' core research tool, and its findings are presented at the annual World Economic Forum at Davos¹⁸⁴.

Country results are summarised later, but for Kazakhstan, the Astana Economic Forum is the key disclosure point in country research terms¹⁸⁵. In 2016, the majority of interviews in Kazakhstan were held between the middle of December 2015 and the end of February 2016. A total of 52 Kazakhstan (non-national) company executives were questioned, the majority noting that the "main priorities of the state were to ensure macroeconomic predictability, increase the country's investment attractiveness and combat corruption. The business community is rather critical of the government's achievements in the above priority areas¹⁸⁶."

According to the CEOs of major companies, bribery and corruption are the second greatest threat to business.

According to 61% of chief executives, government efforts to combat corruption and bribery are ineffective, which is why the fighting corruption is third in the list of priority measures expected from the government. More than 33% of those questioned are ready to work with the government in this area.

In 2017, a total of 56 CEOs working in Kazakhstan for non-national companies were interviewed between the middle of January 2017 and the middle of March 2017. "In response to the traditional question concerning relationships between the business community and the government, corruption has moved up from second to first place, with 66% of chief executives believing that corruption is the most serious threat to business. By the way, business leaders saved the worst feedback for the heads of overseas companies, government performance in the fight against corruption and the training of highly qualified staff¹⁸⁷."

The fight against corruption is now in first place, with the business community insisting on a long overdue plan for more effective action from the Kazakhstan Government with respect to the fight against corruption. And if 64% of those questioned pointed towards this as a priority, only

¹⁸³ <http://russian.doingbusiness.org/data/exploreeconomies/kazakhstan>

¹⁸⁴ <https://www.pwc.com/gx/en/ceo-agenda/pwc-at-davos.html>

¹⁸⁵ <http://forum-astana.org/>

¹⁸⁶ <https://www.pwc.kz/en/ceo-2016/ceo-survey-2016-rus-new.pdf>

¹⁸⁷ <https://www.pwc.kz/en/ceo-2017/kz-ceo-survey-2017-rus.pdf>

29% were ready to work with the government to achieve any positive changes. On top of that, only 14% believe that the state is capable of effectively resolving the problem.

PricewaterhouseCoopers began issuing its Economic Crime Survey in 1999, and since then it has become one of its main publications on the subject. The survey takes the form of country reports on findings from the bi-annual World Economic Crime Review. “We believe that the review will help leaders better understand risks in general and mitigate the risk of fraud in their particular organisations. We have decided it will be useful to start building a foundation so we can take measures to prevent fraud by corporate leaders and management¹⁸⁸.”

PricewaterhouseCoopers’ 2016 Global Economic Crime Survey was carried out online, involving 6,337 respondents from 115 countries. 45% of the respondents were senior level management, 30% - department or business division managers, 59% of respondents representing international companies, and 37% were from listed companies. The respondents covered a wide spectrum of sectors, including financial services (24%), consumer goods (14%), technology (7%), industry (35%) and professional services (6%). The survey was conducted between July 2015 and February 2016¹⁸⁹.

The Kazakhstan review of economic crime for 2016 opens with the following figures: 35% of respondents noted that in the last two years their companies had come up against economic crime (which is roughly the same as the global average of 36%). 91% of survey participants believe that the supplier selection process is most exposed to the risk of fraud. 36% of companies that took part in the research had never conducted a risk assessment.

PricewaterhouseCoopers’s assertion that bribery and corruption are the third most common form of economic crime in Kazakhstan is extremely relevant to our theme of corruption in Kazakhstan. As evidence of that it confirms that 38% of respondents stated that they had faced bribery and corruption in Kazakhstan in the last two years (compared to 24% across the world)¹⁹⁰.

At the same time, corruption is understood as the dishonest or fraudulent behaviour of persons in authority, as a rule, offering in the form of a bribe. 16% of survey participants stated that they had been asked to give a bribe, while 25% believe that they had lost a tender because of a competitor having given a bribe.

PricewaterhouseCoopers, in its economic crime survey, underlines that “bribes may take many forms, including cash (or a cash equivalent, for example shares), gifts, leisure or entertainment events, kick-backs, unjustified reductions or extremely high commission (for example, amounts paid to agents for a sale or marketing), incentive payments or payments to specific individuals to speed up a particular piece of work and (or) to treat a specific client as a priority, and contributions or donations for political causes.”

The survey also notes that Kazakhstan has adopted a number of normative acts and laws to prevent corruption. The Kazakhstan Government, in support of the Organisation for Economic Cooperation and Development (OECD), has been actively fighting corruption.

It is important to stress that the PricewaterhouseCoopers survey, in addition to the current situation, also considers respondents’ suggestions on how to improve the situation with economic crime in the future. As such, 40% of respondents in Kazakhstan (24% across the world) believe that they will probably come across bribery and corruption in the next two years.

TRACE International Ratings

¹⁸⁸ <https://www.pwc.kz/ru/publications/publications-new/crime-survey-2016.html>

¹⁸⁹ <https://www.crn.ru/news/detail.php?ID=108627>

¹⁹⁰ <https://www.pwc.kz/en/publications/new-2017/crime-survey-2016-rus.pdf>

In 2014, the International Non-Commercial Business Association TRACE International announced the creation of its own index for measuring corruption levels, the TRACE Matrix, which, according to its creators, is a far more user-friendly tool to assess corruption-related risks than Transparency International's annual Perception Corruptions Index¹⁹¹.

TRACE International, Inc. is an internationally recognised organisation in the fight against bribery and a leading supplier of third party risk management solutions. TRACE positions itself as an internationally recognised organisation in the fight against bribery and a leading supplier of inexpensive third party risk management solutions¹⁹².

TRACE Matrix is composed of experts from TRACE International and the US Rand Corporation analytical centre. In the TRACE Matrix, countries are assessed on four core parameters: the interaction of business and power, the existence of anti-corruption laws and their practical application, the transparency of the civil service and public administration, the opportunity to exercise public control in all of these processes, including in the media. Each of the four parameters has its own weighting coefficient that is taken into consideration in a consolidated index. As a result, the TRACE Matrix is an index ranging from 1 to 100: the higher the number, the higher risk of corruption in a particular country. The authors of the research stress that the TRACE Matrix measures corruption not on a general level, but rather in relation to doing business¹⁹³.

Research data is generated by participants anonymously entering details of bribery cases on a website¹⁹⁴. Bribery country risks are assessed according to a five-point system that ranges from very low to very high.

According to the TRACE Matrix, Kazakhstan is a predominantly high bribery risk country (registering 4 out of 5). Positions of 141st out of 197 countries in 2014, 121st out of 199 countries in 2016 and 152nd out of 200 countries in 2017 paint a pessimistic picture and do not give any evidence that there has been any substantial drop in the corruption risk.

A detailed assessment of numerical data does not make for optimistic reading either. The consolidated index was 68 in 2014, 65 in 2016 and 58 in 2017 (*as a comparison, in 2017 the best score was registered by Sweden with 5 and the worst score by Somalia, with 88. The average score was 46.55*).

The changes in each of the four parameters mentioned above are also disappointing. For example, the interaction between business and power, which focuses on the direct contact between companies or their agents and public officials, where the risk increases as the frequency of interaction rises (the number of chances to offer a bribe), together with the expectations related to bribery (how widespread it is and how normal it has become) and the triggers that officials may have at their disposal (how expensive would it be for a company not to pay a bribe) was measured at 72 in 2014, 68 in 2016 and 55 in 2017.

The existence of anti-corruption laws and their practical application affect the intensity of the government's efforts to prevent bribery through the adoption of the required laws and their effective application. The Kazakhstan Government's efforts were measured at 22 in 2014 and 2016 and at 41 in 2017.

The transparency of the civil service and civil service suggests a study of how the government indirectly facilitates the highlighting of bribery, opening its reports for verification and guaranteeing their authenticity. In this activity, the Kazakhstan Government was rated at 55 in 2014, 51 in 2016 and 58 in 2017.

¹⁹¹ <http://www.islamsng.com/tkm/news/8353>

¹⁹² https://www.traceinternational.org/bribe_swindle_or_steal

¹⁹³ <https://neg.by/novosti/otkrytj/izmerenie-korruptciic-19083>

¹⁹⁴ <http://www.nalogi.net/print.htm?id=1107&str=press>

The fourth area, which is the opportunity for exercising public control across all of these processes, including by the media, is outside of the government's remit and focuses on considering whether the press and civil society are sufficiently independent and strong enough to control public corruption. In this area Kazakhstan scored 53 points in 2014, 52 in 2016 and 69 in 2017.

The 2017 edition introduces several significant and methodological improvements, in doing so raising the reliability of the model¹⁹⁵.

World Economic Forum Ratings

The World Economic Forum is an independent international organisation based on public and private cooperation, committed to improving the state of the world. It was created in 1971 as a not-for-profit fund with its headquarters in Geneva, Switzerland. The Forum strives in all its efforts to demonstrate entrepreneurship in the global public interest while upholding the highest standards of governance.

The Forum holds four major annual meetings:

1. an annual meeting at the start of the year of the World Economic Forum in Davos-Klosters, Switzerland, incorporating global, regional and industry agendas
2. an annual meeting of Forum champions in innovation, science and technology, held in China
3. an annual meeting of the Global Future Council in the United Arab Emirates, which brings together global community leaders to exchange opinions on the core issues facing the world
4. an industry strategy meeting that brings together industry strategy colleagues to create industry programmes and study how the various sectors can transition from managing changes to forward-looking changes¹⁹⁶

The Fund is an independent, international organisation bringing together business leaders, governments, academic circles and society as a whole in a global community committed to improving the state of the world.

To achieve its mission, the Fund acts as a leadership catalyst both in thought and actions, predominantly through the medium of state and private partnership. With this in mind, the Fund acts as a catalyst for issues and questions to be included in global, regional and industrial agendas; seeks out solutions and, whenever possible, creates conditions for actions in partnership.

The Forum is committed to always acting in the spirit of entrepreneurialism for global public interests, combining the strength of creative thinking and landmark initiatives with a desire to advance peace and prosperity throughout the world¹⁹⁷.

In this review, we are interested in the World Economic Forum's Global Competitiveness Index.

The Global Competitiveness Index, which was created for the World Economic Forum by Columbian University Professor Xavier Sala-i-Martin, is a global study and an accompanying rating of countries according to their economic competitiveness. It is calculated using a method based on a combination of publically accessible statistics and the results of a global survey of company executives. Research has been conducted since 2004 and currently represents an extensive body of competitiveness data for a number of countries. It is assumed that the Global Competitiveness Index should be used by countries as a tool to analyse problems in their economic policy and develop strategies to achieve robust economic progress to eradicate obstacles in the path of economic development.

¹⁹⁵ <https://traceinternational.org/uploads/MatrixFiles/2017/TRACEMatrix2017MethodologyReport.pdf>

¹⁹⁶ <https://www.weforum.org/about/world-economic-forum>

¹⁹⁷ http://www3.weforum.org/docs/WEF_FoundationStatutes.pdf

The Global Competitiveness Index comprises 113 variables incorporated in 12 performance pillars defining national competitiveness: institutions, infrastructure, macroeconomic environment, health and primary education, higher education and training, goods market efficiency, labour market efficiency, financial market development, technological readiness, market size, business sophistication and innovation.

For each of the economies covered by the research, the report provides a detailed description of the country and national economy together with in-depth results justifying an overall rating and discussing the most exceptional competitive advantages and weaknesses that were highlighted by the analysis used to calculate the index. It also includes a detailed statistics section with ratings tables. The report contains a detailed review of the competitive strengths and weaknesses of each country, allowing the user to identify priority areas for the promotion of economic development policy and key reforms. As a rule, the report also includes targeted sections incorporating more detailed research into a number of countries and regions¹⁹⁸. The respondents to the Global Economic Forum survey selected the five most problematic factors for doing business in their particular countries. The assessment matches the responses weighted in accordance with their rating.

As has been the case across the world, over the last two years, corruption has remained one of the main factors hindering competitiveness in the Republic of Kazakhstan. In 2016, it was the third largest problem, behind inflation and the taxation system¹⁹⁹, rising to second in 2017, behind only the lack of financing²⁰⁰.

The Global Competitiveness Index also contains a more detailed “Unregulated Payments and Bribes” score.

The “Unregulated Payments and Bribes” score demonstrates an average score for five response components: in your country how often do firms make undocumented additional payments or pay bribes related to (a) imports and exports; (b) utilities; (c) annual tax payments; (d) the receipt of state contracts and licenses; (e) the receipt of favourable court verdicts? In each case, the response varies from 1 (very often) to 7 (never).

In 2016, Kazakhstan received a score of 4.2, which fell in 2017 to 3.8. Ultimately, this affected the country’s final global competitiveness index, which fell to 4.3 compared to 4.4 in 2016.

¹⁹⁸ <http://gtmarket.ru/ratings/global-competitiveness-index/info>

¹⁹⁹ http://www3.weforum.org/docs/GCR2016-2017/05FullReport/TheGlobalCompetitivenessReport2016-2017_FINAL.pdf

²⁰⁰ <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/TheGlobalCompetitivenessReport2017%E2%80%932018.pdf>

12. Interaction between society and the state in the prevention of corruption

In this chapter, we discuss how society and the state interact to prevent corruption through the example of a number of important state processes, such as the budget process, the legislative process, the process of adopting policy decisions and the actual fight against corruption.

Our general conclusions are as follows:

1. at this moment, society's participation in the most important state management processes, in whatever form that may take, is obligatory
2. however, even though the State considers society recommendations, it is not obliged to include them in draft decisions and resolutions. The process is left to the discretion of the executive or legislative branches of power
3. the only opinions considered by the executive branch of the government are those of the various maslikhats, parliament and public councils. For this reason, the people working in those institutions is extremely important, as they need to be able to realise their authority in practice, otherwise any realisation will not be complete
4. another important element is society's passive attitude and its lack of awareness as a whole, waiting for someone to resolve its problems for it. This is why discussions on social networks seem to have far more significance than those on special platforms established through legislative processes. More often than not, society is not ready to fight corruption due to its actual acceptance of it

Improvements in the interaction between society and the State in preventing corruption require at least more advanced legal awareness in society and improvements in the professionalism of those serving in parliament, the maslikhats and public councils.

12.1. Society's influence on public spending

Kazakhstan society is involved in the public spending and budgeting process as follows:

1. Society is informed about public spending through citizen's budgets
2. Kazakhstan was one of the first CIS countries to have issued a citizen's budget. In March 2011, the Ministry of Finance of the Republic of Kazakhstan first issued a non-technical and easy to understand version of the state budget on its website²⁰¹. A working group made up of representatives from the Ministry of Finance of the Republic of Kazakhstan, the National Budget Network of Kazakhstan and Soros Foundation Kazakhstan, developed a Citizen's Budget Methodology that included realities inherent in the Republic of Kazakhstan, international norms and standards, and civil society recommendations. The Citizen's Budget Methodology was approved by Order of the Minister of Finance of the Republic of Kazakhstan №331 dated 27 June 2011. In 2013, the Ministry of Economy and Budget Planning of the Republic of Kazakhstan and Ministry of Finance of the Republic of Kazakhstan adopted a Joint Order *On the Approval of Methodological Recommendations for drafting and allocating State Budgets*, which state that a citizen's budget is a document published on official websites of the authorised bodies for state planning and public spending that covers the main provisions and mechanisms for drafting and executing national and local budgets in adapted formats and which uses language understandable by the general public. A separate "Citizen's Budget" tab has been created on the official websites of the authorised bodies for state planning and budget spending

²⁰¹ Civil Budget. // http://budget.kz/glossariy/g/citizens_budget.html

3. Information sharing and assessment on the “Open Budgets” website. On the special purpose website <https://budget.egov.kz/>, which is part of the “Open Government” initiative, the public can read, comment on and evaluate draft budget programmes, approved programmes and status reports. The website also provides consolidated financial statements, public spending reports, information on the results of state audits and financial controls, and local executive body and central state authority citizen’s budgets. It currently provides access to 23,388 documents. However, it is worth pointing out that site activity is extremely, registering few hits, usually less than 100, and no evaluations or comments. Users are more used to searching for information on ministry and Akimat budgets on their dedicated sites and not on the “Open Government” website
4. Public councils consideration of budget spending reports. Ministries and Akimats report on the previous year’s budgets and provide annual target execution reports
5. Maslikhat budget planning, development, adoption and control. Maslikhats control the entire budget process for local executive bodies (Akimats). Their role is extremely broad, but depends greatly on the integrity of Maslikhat deputies and their professionalism
6. Parliament budget planning, development, adoption and control. Parliament has immense influence on the national and state budget drafting process. However, as with the Maslikhats, the issue lies in the integrity, independence and professional qualifications of the deputies involved in the process

The main issue with engaging society in the budget process is that experts and non-governmental organisations are unable to gain much public support when raising the issue of budget corruption, especially systemic corruption. The truth is that subsoil use generates the vast majority of taxes, and for that reason, the general public finds it hard to become emotionally involved in the budget process. However, in the future, as personal income taxation increases and universal asset and income declaration are introduced, the situation will probably change.

12.2. Society’s influence on the law-making process

The law-making process in Kazakhstan currently involves²⁰²:

1. the preparation of a future plan for the drafting of normative legal acts
2. the preparation of a current plan for the drafting of normative legal acts
3. the Ministry of Justice preparing a conceptual law-making plan based on parliament and government proposals
4. the president’s administration and central bodies reporting to the President, the government and parliament preparing concepts for draft normative legal acts
5. the National Chamber of Entrepreneurs carrying out a review if a draft law affects business or the same by a public council if a draft law affects human rights and freedoms
6. a Ministry of Justice review of any draft document
7. draft legal acts being placed on the open normative legal act website for public discussion
8. an agreement process with the interested state bodies
9. the prime minster’s office carrying out a scientific review of the draft law and approving it
10. the passing of the draft law to the Mazhilis for its consideration and review
11. the passing of the draft law to the Senate for its consideration and review

²⁰² Law of the Republic of Kazakhstan № 480-V dated 6 April 2016 *On Legal Acts* // <http://adilet.zan.kz/rus/docs/Z1600000480#z353>

12. the subsequent passing of the draft law to the president's administration for consideration and the President's signature
13. the law enters into effect

The above process applies to laws and codes. For government resolutions and minister orders, the process is slightly simpler. It is worth pointing out that the key law-making body in Kazakhstan is the Joint Department Commission for Law Drafting Activities²⁰³, and not parliament itself. Parliament is restricted in its law-making activities by point 6 of article 61 of the Constitution, which states that "draft laws stipulating reductions in state revenue or increases in state expenses may only be introduced following a positive opinion by the Government of the Republic of Kazakhstan." As any significant action results in a change in state expenses or revenue, the government is entitled to block any parliament initiative.

So, how does society participate in any of the above stages of the law-making process? The answer may be in the following four:

1. the development of a draft law or its concept – as experts invited by the legislator
2. any member of the public may take part in Internet discussions of open normative legal acts
3. a public council review – as council members or experts invited by the council
4. discussion in Mazhilis working groups – as experts invited by parliament

This position is also vulnerable because only one stage, i.e. Internet discussions, is obligatory, while in all the other cases, everything depends on the party inviting experts, who may decide to invite an expert or not, choose who they invite, decide which recommendations will be developed and which will not be. Discussions on the "Open Draft Legal Acts" website also only have a recommendatory nature – even if all comments and assessments are negative, they do not necessarily influence the fate of a draft law. On the whole, it is worth pointing out that society's participation in the legislative process depends fully on the people working or involved in parliament, the Ministry of Justice and public council departments, i.e. if they want to, they will get involved, if they do not, they will not. In other words, it is very hard for society to prevent the adoption of a law that incorporates corruption-related provisions.

There are two other problems in the law-making process that deserve mentioning and they are the lack of any state anti-corruption review since 2014 and the domination of departmental law-making. The latter is especially dangerous, because the various departments are able to determine for themselves the legality of their actions, determine their authority and, it goes without saying, by virtue of bureaucratic logic, build up their influence as much as possible, which always affects the interests of other departments and individuals.

12.3. Influence of society on the policy-making process

An example of society's influence on the policy-making process may be the five social initiatives voiced by President Nursultan Nazarbayev on 5 March 2018²⁰⁴, which are:

1. new opportunities for all families to purchase real estate
2. a reduction in the tax burden to increase the salaries of low-income employees

²⁰³ Order of the Prime Minister of the Republic of Kazakhstan № 11-p dated 19 February 2016. *On the Joint Department Commission for Law Drafting Activities* // <http://adilet.zan.kz/rus/docs/R1600000011>

²⁰⁴ Address to the People of the President of the Republic of Kazakhstan N A Nazarbayev "Five Presidential Social Initiatives" on 5 March 2018
//http://www.akorda.kz/ru/speeches/internal_political_affairs/in_speeches_and_addresses/obrashchenie-prezidenta-respubliki-kazakhstan-nanazarbaeva-k-narodu-pyat-socialnyh-iniciativ-prezidenta

3. an increase in accessibility to and the quality of education and an improvement in living conditions for students
4. the development of microloans
5. further gasification of the country

Of the five initiatives, two originated from public discussions held in 2017 and 2018:

- an improvement in access to higher education, including an increase of 20,000 further education grants in the 2018-2019 educational year and the building of student hostels – a discussion of the education migration of Kazakhstan youngsters to Russia, which has a knock-on effect on general migration
- the further gasification of the country, i.e. the construction of a gas pipeline from Kyzylorda Oblast to Astana – as a result of discussions on the smog in Astana, which has become a big problem for Astana residents

A further example is the government's reaction in 2016 to protests against land reforms – while a moratorium on the changes was put in place, a special commission of all interested parties was created to work on the situation and whose recommendations are finding a voice in legislation.

However, this is not always the case. For society to be able to influence policy-making decisions, it requires:

1. more extensive publicity in the mass media and social networks
2. public interest in the subject, and not only over 2-3 days as usual, but over several months
3. reasonable simplicity of the issue – otherwise there is a risk that the topic will not gain popularity
4. leaders, experts and representatives of the elite to have an opinion on the subject
5. resolution of the issue to be important due to its for society and the state as a whole
6. detachment from issues of national security and the current political regime
7. there to be no resistance from elite groups. If any such resistance exists, those groups tend not to meet society half way

Again, it all boils down to a lack of resistance from the elite at the very least, or its acceptance – while society has the opportunity to influence political solutions. On the other hand, it all depends on the active participation of society itself and its ability to understand its own needs.

12.4. Participation of public organisations in the fight against corruption

The participation of public organisations in the fight against corruption in Kazakhstan can be classified as follows:

1. independently, within the framework of processes to defend one's own rights
2. on platforms and in cooperation with the Nur Otan party's Council for the Fight Against Corruption (leading party)
3. on platforms and in cooperation with the Special Monitoring Group for the External Audit and Evaluation of the Realisation of the Anticorruption Strategy of the Republic of Kazakhstan for 2015-2025 of the Agency for Civil Service Affairs and the Prevention of Corruption

On the whole, participation is a fairly serious process and is such because the Agency for Civil Service Affairs and the Prevention of Corruption makes active attempts to attract public organisations to the fight against corruption. For example, an action plan for implementing

Kazakhstan's anti-corruption strategy for 2018-2020 was developed during 2017 together with 283 Kazakhstan public organisations. A number of the actions in the plan (approximately 7 out of 120) were proposed by Transparency Kazakhstan.

Having said that, it should be pointed out that outside of any such work, Transparency Kazakhstan recommendations constantly find practical application. For example, at the end of 2017, at a meeting of the then Deputy Chairman of the Agency for Civil Service Affairs and the Prevention of Corruption A Z Shpekbayev and the founders and board of trustees of Transparency Kazakhstan, a proposal was made to introduce special badges for civil servants to ensure they are no longer anonymous to the public, and within two months that proposal was put into action²⁰⁵.

²⁰⁵ Special badges for civil servants developed in Kazakhstan. 12 February 2018 // <http://www.kazpravda.kz/news/obshchestvo/spetsialnie-beidzhi-dlya-gossluzhashchih-razrabotani-v-kazahstane/>

13. Civil rights and the prevention of corruption

In this chapter we will be discussing how Kazakhstan citizens are in a position to protect their rights and fight corruption.

13.1. Access to legal knowledge

The first step for individuals towards fighting corruption is legal knowledge, that is to say how well they know the law and what is actually legislated in it, and how prepared they are to exercise their rights. Citizens of Kazakhstan have the following legal knowledge available to them (in the various stages of their life):

1. School “Person. Law. Society” course, which lasts three years and teaches school children the basics of legal knowledge and awareness. The problems with the course are that by no means all children take it, and it actually has little in common with Kazakhstan reality, and gives only a rudimentary theoretical knowledge.
2. Higher education “State Theory and Law” course, which nearly all professions take. However, it has the same shortfalls as the school “Person. Law. Society” course.
3. Normative legal acts from the website of the Information and Legal System of Normative Legal Acts of the Republic of Kazakhstan of the National Centre for Legal Information of the Ministry of Justice (<http://adilet.zan.kz>), which contains 228 606 documents in Kazakh, Russian and English. It is easy to use and the documents in it are well categorised. Amendments to legal acts can be tracked easily. The database is constantly being updated. Registration is not required to use the website.
4. Draft normative legal acts on the “Open Government” and “Open Normative Legal Documents” website (<https://legalacts.egov.kz/>). The database is home to a total of 23 767 draft documents that have been developed by the government, bodies reporting to the president, as well as local executive and representative bodies. The website operates in Kazakh and Russian. It does have a search system, albeit not a very good one. Registration is not required to read and download draft documents. Registration is required using an individual digital signature (for each Kazakhstan citizen) to evaluate a draft document or leave comments on it.
5. Draft laws (only future laws, treaties and agreements to be approved by laws) received by the Mazhilis – the lower Parliament chamber (<http://www.parlam.kz/ru/mazhilis/itreceived>). Draft documents can be downloaded in Russian and Kazakh without registration. As a rule, the site includes draft laws themselves, draft amendments to be made to other legislative acts and explanatory notes.
6. Draft laws approved by the Mazhilis and sent to the Senate – the upper Parliament chamber (<http://www.parlam.kz/ru/mazhilis/sent-to-the-senate>). The documents in question already contain versions corrected according to comments from Mazhilis deputies.

Only one stage of the process is not open to Kazakhstan citizens and that is the period between the Senate review and review by the President’s Administration, and discussion at a joint committee for drafting activities.

One of the things that needs to be done for the legislative process in the near future is to personify legislative amendments and on a broader scale the whole legislative initiative. It does not have to be created at the “amendment” level, but just noted in a draft law file that it is technically possible.

The problem in Kazakhstan is that the general public generally does not fully understand the legislative system, is unaware of the legal acts it requires in day-to-day life and the law-making process as a whole. The constantly changing legislative base plays an important role in all of

this. For example, 8-9 thousand new or amended legal acts out of a total of 65 thousand appear every year, which makes it very hard, even for professionals, to track amendments.

13.2. Public spending (state budget) knowledge

Awareness of public spending, especially at the local budget level, plays an important role in the fight against corruption, and in this section, we discuss the general public's access to budget details.

Citizens of Kazakhstan have access to the following budget knowledge:

1. citizen's budgets published by departments and akimats on their websites for public access
2. budget documents published by departments and akimats on their websites for public access. Maslikhats also publish this type of budget information
3. state, national and local budgets, as a part of the database of legal acts approving them on the website of the Information and Legal System of Normative Legal Acts of the Republic of Kazakhstan of the National Centre for Legal Information of the Ministry of Justice (<http://adilet.zan.kz>)
4. budget documents (drafts, status reports and additional information) on the "Open Budgets" website
5. budget monitoring and audit results on the Accounts Committee and Financial Control Committee of the Ministry of Finance websites. Interestingly, the volume of information on these websites seems to be decreasing year on year. For example, if review details used to be quite detailed, they seemed to have turned into brief press releases that do not give any information on which violations were committed

On the whole, if legal knowledge, albeit limited, is disseminated due to its practical use, budget information has no real use in our day-to-day lives. The mass media and public associations are not interested in it, even though special non-government organisations exist that specialise in it, for example the Kazakhstan National Budget Network. However, in the future, as personal income taxation increases and universal asset and income declaration are introduced, the situation will probably change.

13.3. Consideration of enquiries from the general public

Consideration of enquiries from the general public is regulated by the corresponding law²⁰⁶ and may serve as good indicator of how the state interacts with the public. It is worth pointing out that the development of automated systems that allow the public to obtain information and documents independently and without involving the state authorities has significantly reduced the number of enquiries made, and, of course, the amount of time and money spent in doing so. For example, table 13.3.1 below shows the subject matter of the most popular enquiries in 2011 from individuals and also how many enquiries were received in 2017. The difference is 129-fold, which testifies to the theory that automation can significantly reduce the risk of common corruption.

Table 13.3.1. Comparison of the number of enquiries from individuals

Enquiry subject	2011	2017
taxes and other budget payments	5 033 233	39 456
others	3 780 562	124 216
vehicles	1 046 606	26 764

²⁰⁶ Law of the Republic of Kazakhstan N 221 dated 12 January 2007. *On the Procedure for considering Enquiries from Individuals and Legal Entities* // http://adilet.zan.kz/rus/docs/Z070000221_

marriage and the family	913 248	
social and pension services	906 630	108 648
real estate	681 447	31 885
land and land use	589 331	50 394
law and order – other issues	523 486	9 759

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The number of enquiries from individuals to appeal against the actions of the state authorities have quadrupled. However, if the number of enquiries regarding Akimat decisions has dropped, the number regarding the actions of the central authorities and security officials has increased. On the whole, this seems to confirm that the general public has become more active.

Table 13.3.2. Appeals against the decisions and actions (inaction) of the state authorities and officials by individuals

Year	Total	local executive authorities (Akimat)	state authorities	law enforcement bodies
2014	9 183	768	1 570	1 088
2015	14 547	884	2 167	4 160
2016	36 601	479	2 353	6 107
2017	37 795	648	3 494	4 666

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Similarly, the number of enquiries disputing the decisions and actions of the state authorities has tripled in the last four years. Having said that, the emphasis is slightly different because appeals are made about the ministries and not the akimats or special services. This is probably because these are the areas where business is regulated.

Table 13.3.3. Appeals against the decisions and actions (inaction) of the state authorities and officials by legal entities

Year	Total	local executive authorities (Akimat)	state authorities	law enforcement bodies
2014	2 445	117	428	673
2015	2 934	110	707	481
2016	8 319	103	2 122	693
2017	7 291	173	1 903	658

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Here, I would like to discuss enquiries as a whole. Due to automation and improvements in state services, the number of enquiries from individuals has fallen 7-8 times. The share of enquiries considered has remained unchanged, but the number upheld has fallen. For example, in 2008, nearly all cases considered were upheld, while that figure in 2017 has nearly halved. The number of rejections has increased – if in 2008 that figure was 0.8%, in 2017 it rose to 2.2% of all enquiries considered. Likewise, the number of clarifications provided has also significantly increased, a possible reason being the better arrangement of responses from the state authorities and greater liability for the responses they provide.

Table 13.3.4. Consideration of enquiries from individuals

Year	Received	Considered	Upheld	Rejected	Clarified
2008	13 573 508	13 381 906	12 109 888	117 903	924 827
2009					

2010	16 254 682	15 955 197	14 488 390	124 884	1 089 905
2011	16 110 804	15 916 992	14 369 037	114 522	1 166 198
2012	13 868 608	13 392 598	12 284 116	102 204	990 710
2013	8 062 987	7 652 327	6 680 233	63 011	890 851
2014	2 757 093	2 394 082	1 640 678	48 326	695 282
2015	1 997 480	1 639 546	911 577	39 813	675 430
2016	1 552 886	1 620 502	780 549	44 948	774 791
2017	1 881 207	1 552 950	781 854	34 525	714 846

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Complaints need to be looked at separately. The number of complaints between 2012 and 2017 grew 1.5 times, while the percentage of complaints upheld fell 1.5 times. The reason for this, whether it be a change in the state's position or a drop in legal literacy in those making the complaints, is not clear.

Table 13.3.5. Consideration of complaints from individuals

Year	Complaints	Complaints upheld	Share of upheld complaints
2012	105 536	24 992	23,7
2013	101 565	24 777	24,4
2014	97 584	33 890	34,7
2015	118 189	39 778	33,7
2016	157 126	22 112	14,1
2017	146 027	21 012	14,4

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Now, legal entities. The same story seems to have taken place as with enquiries from individuals.

Table 13.3.6. Consideration of enquiries from legal entities

Year	Received	Considered	Upheld	Rejected	Clarified
2008	3 002 941	2 936 031	2 573 961	41 236	266 397
2009					
2010	3 972 769	3 931 000	3 477 354	54 080	335 075
2011	4 404 535	4 359 183	3 735 112	104 104	459 558
2012	4 729 820	4 609 316	4 267 282	55 076	280 660
2013	2 773 398	2 680 966	2 421 860	29 276	223 266
2014	764 251	688 610	494 345	11 795	177 301
2015	570 627	497 526	324 293	9 666	160 475
2016	481 968	401 568	226 809	10 224	161 333
2017	444 930	355 797	194 665	10 010	148 030

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However, the number of complaints from legal entities has remained practically unchanged at 33 thousand per year. It is worth pointing out though, that the percentage of complaints upheld differs significantly, which needs to be looked at separately.

Table 13.3.7. Consideration of complaints from legal entities

Year	Complaints	Complaints upheld	Share of complaints upheld
2012	32 506	6 934	21.3
2013	25 455	21 211	83.3

2014	22 915	10 798	47.1
2015	20 478	10 021	48.9
2016	31 388	5 389	17.2
2017	33 480	6 528	19.5

Committee for Legal Statistics and Special Accounts of the General Prosecutor of the Republic of Kazakhstan

As can be clearly seen, in terms of the number of complaints and enquiries, interaction between the public and state is constant and on a mass level. Even though interaction procedures are improving, specific risks arise due to the relative legal illiteracy of the public, which is partially because of constant legislative changes, all of which need to be tracked.

13.4. “Electronic Government” and “Open Government” services

A key part of public and state interaction and the main element in the prevention of common corruption are the “Electronic Government” (<http://egov.kz/>) and “Open Government” (<https://open.egov.kz/>) services. In this area, the role of the “Electronic Government” is somewhat larger.

The “Electronic Government” and “Open Government” services developed as follows²⁰⁷:

1. 2004 saw the launch of President Nazarbayev’s initial electronic government idea, which involved a system for direct interaction between the general public and the state. In his address to the people of Kazakhstan on 19 March 2004²⁰⁸, the President said, “Furthermore, it’s already time to begin working on creating an “electronic government”. It will be a small government in terms of people, but transparent in its activities. It will help reduce contact between the public and civil servants, and improve service quality and waiting times. It will also bring about new administrative reform and reduce the number of civil servants we need to have. To ensure this happens, we need to launch a comprehensive programme to make computer illiteracy a thing of the past and provide Internet access to everyone. I will ask the government, our people, especially the younger generation, to launch computer training programmes, just like we fought illiteracy in the 1930s”
2. 2007 saw the introduction of the *Law On the Procedure for considering Enquiries from Individuals and Legal Entities*²⁰⁹, which governs public relations related to the submission and consideration of enquiries from individuals and legal entities pertaining to the realisation and exercising of their rights, freedoms and legal interests
3. public services centres operating under the “one stop shop” principle were opened in 2007 to provide services to the public and business community. As they combine a number of state bodies under one roof, their introduction has significantly simplified the provision of state services, which even back then had begun to be standardised
4. 2007 also saw the introduction of Government Resolution № 559 dated 30 June 2007 *On the Approval of Model Guidelines for the Provision of State Services*²¹⁰, which formalised state services and what they included
5. in 2010, state services were incorporated into the System for the Annual Assessment of the Performance of the Activities of Central State and Local Executive Bodies for the Oblasts, National Level Cities and Capital City, approved by Edict of the President of the

²⁰⁷ M Shibutov. Development in Kazakhstan of Direct Democracy: History and Potential. 31 August 2017 // <https://regnum.ru/news/2316139.html>

²⁰⁸ http://www.akorda.kz/ru/addresses/addresses_of_president/poslanie-prezidenta-respubliki-kazakhstan-n-a-nazarbaeva-narodu-kazakhstana-19-mart-2004-g_1342416361

²⁰⁹ http://adilet.zan.kz/rus/docs/Z070000221_

²¹⁰ http://adilet.zan.kz/rus/docs/P070000559_

Republic of Kazakhstan № 954 dated 19 March 2010²¹¹, i.e. an assessment of the quality of state services was made a special priority in assessing the performance of the state authorities

6. public service centres and the Electronic Government initiative were amalgamated in 2011
7. the Electronic Government website was launched in 2012, which removed intermediaries in communication between the state and the general public. With the introduction of the Electronic Government, it became possible to not only receive state services, but also pay taxes, fines and make other payments
8. the Law *On State Services* was introduced in 2013 to govern public relations in the provision of state services. If up until its introduction, state services and their standards had been governed by government resolution, now they began to be governed by law. With the new law, the role of the state changed in the eyes of the public from an instrument of force and budget redistribution to a service provider, that is to say it partially changed its functions
9. the Plan of the Nation²¹² was developed in 2014 together with the “Creation of an Accountable State” section, within the framework of which the state was charged to create an open government that offered access to information
10. 2015 saw the introduction of the Law *On Access to Information*, which governs public relations arising as a result of the implementation of constitutional law allowing everyone to receive and distribute information in any legal way possible
11. 2015-2016 saw the launch of the Open Government, the Court Account and other state e-services enabling remote and partially automated interaction with the state
12. the “Government for the People” corporation was created in 2016 to include the Public Service Centre, Real Estate Centre, the Land Cadastre Scientific and Processing Centre and State Pension Payment Centre. Approximately 70% of state services are available through the 353 offices and centres across the country

The Electronic Government website currently has 7.4 million registered users (the adult population of the country is 12.9 million) and offers 235 services²¹³. Common corruption has been dramatically reduced thanks to service automation, performance, transparency and reduced contact with civil servants.

As can be seen from table 13.4.1, non-personal contact between the state and public is becoming more and more popular. Furthermore, electronic enquiries on the Electronic Government website allow any individual to see for themselves the entire chain of execution and his or her rights to complain should any type of violation arise.

Table 13.4.1. Statistics on the provision of state services

Index	2014, million services	2017, million services	Change, %
Total	139,1	164,3	+18,1
Through the Electronic Government and its website	39.6	80.5	+103.3

²¹¹ http://adilet.zan.kz/rus/docs/U100000954_

²¹² <http://adilet.zan.kz/rus/docs/K1500000100>

²¹³ The number of egov website users exceeded 7.4 million. 12 April 2018 // http://www.inform.kz/ru/chislo-pol-zovateley-na-portale-egov-prevysilo-7-4-mln_a3216855

Through the Government for the People corporation and its Public Service Centres (TsON)	15.1	38	+151.7
Through service providers (state body or organisation) in hard copy form	84,3	45,8	-45,7

Committee for Legal Statistics and Special Accounts of the General Prosecutor of the Republic of Kazakhstan

13.5. Public fights against corruption

The public can fight corruption not only within the framework of public associations, but also independently. According to the 2017 national report outlining the prevention of corruption, in 2016, the “1424” call centre received 14 thousand calls regarding corruption, which led to facts in corruption offences as follows:

- in 2016, 185 people reported corruption and received rewards of KZT 27 million
- in 2017, 226 people reported corruption and received rewards of KZT 31 million

All of this proves that progress is being made, albeit slowly, in the public’s involvement in the prevention of corruption.

14. Conclusions and recommendations

These conclusions and recommendations have been generated based on the experience of experts and recognised to reflect the opinion of the team of authors regarding the fight against corruption in Kazakhstan.

14.1. Conclusions

In summing up the report, we believe that:

7. the fight against corruption is a real nationwide priority and that the state is making great efforts to reducing corruption levels. In this respect, the propelling forces and stimulants for the struggle are, on the one hand, international obligations and ambitions to attract foreign direct investment, and on the other hand, a need to improve the state governance process.
8. it is worth pointing out that the state is not united in fighting corruption, and that there is internal opposition to the progressive policy being developed by the Agency for Civil Service Affairs and the Prevention of Corruption. At the same time as the required effective solutions are being taken, a lot of decisions are also being made that actually hinder the fight against corruption.
9. a significant problem is the imbalance in the branches of power, specifically the clear domination of the executive branch of power over the legislative branch. This has a real impact on decisions being made, which may be a result of ulterior corporate or sector lobbying, which actually manages to harm society as a whole.
10. nevertheless, the state has the challenge, forms and tools to participate in, like society and the general public itself, the fight against corruption. Many examples exist of how interaction in this area can be successful. For example, the general public and non-governmental organisations can counter corruption at the system level, amending laws and other normative legal acts.
11. as every year passes, Kazakhstan society, as shown by sociological surveys, is becoming more and more willing to participate in the fight against corruption. However, due to low levels of legal literacy and a visible lack of trust in new tools of interaction between the public and the state, it is yet to meet its full potential.
12. on the whole, it is worth pointing out that in the last two years we have seen some progress in the fight against corruption, specifically in society becoming a participant in the process.

14.2. Recommendations

Further in this chapter, we provide recommendations on how to improve streamline the many areas of state activity and better fight corruption. It is important to remember that the recommendations made are the very minimum that can be made without fundamental reforms.

14.2.1. Recommendations for improving access to judicial information

1. The main problem today with access is the lack of adequate statutory regulation of the process to provide access to judicial information. The fact²¹⁴ that access to judicial information is currently regulated by a random and illogical list of documents, many of which are not accessible to the public and which have a compartmentalised nature for court employees, and acts that the Supreme Court has not been authorised to pass by the

²¹⁴ Speech by I Y Loskutov at the “Transparency Kazakhstan” Public Fund Conference, October 2012, “Problems of access to judicial information in the Republic of Kazakhstan”, <https://www.zakon.kz/4646504-problemy-dostupa-k-sudebnoj-informacii.html>

Constitution of the Republic of Kazakhstan or constitutional law²¹⁵, actually aids corruption in the judicial system. Court obligations to publish rulings should be legislated as should the scope of those publications, and it should also be made impossible for courts to decide whether they need to publish a particular court ruling, and make it their duty to publish entire rulings except for those sections prohibited by law. The Law of the Republic of Kazakhstan *On Personal Data* should not extend to relations arising when delivering justice, as it could be deemed a restriction in the right to justice.

2. Because websites in Kazakhstan are treated by law as the equivalent of the mass media, the issue needs to be resolved by law what information on Supreme Court websites should be treated as official announcements
3. To realise the constitutional principle of transparency and prevent corruption in the judicial system, a new law²¹⁶ needs to be adopted ensuring:
 - the maximum complete, effective and accessible distribution of judicial information, and public access to court hearings
 - the publication of all necessary details about the judicial system and courts, and basic details about judges and court employees
 - full information on when courts are open and their procedures, the progress of court cases and petitions, including information on the time and location for their consideration, deferral and suspension
 - the creation of a system guaranteeing general access to court acts (verdicts, rulings and others)
 - the creation of a system for notifying the public about the activities of communities of judges, including the selection of candidates to the position of judge and their appointment
 - the enforcement of access to judicial acts, including the search for, inspection, copying and printing of judicial acts or sections of them
 - the regulation of access to generally accessible judicial acts free of charge on the official Internet website of courts of the Republic of Kazakhstan
 - the registration of an exhaustive list of officials with access to judicial information resources and a procedure for the official publication of judicial acts
 - the introduction of accountability for violations of the rules for keeping and storing judicial information, and for restricting access rights to judicial acts, and guarantees of compensation to entities in the event of material or moral damage caused by a violation of their rights and interests
 - measures are in place to ensure that when judicial acts are published, the persons participating in a specific case are kept safe, and secrets and confidential information on their private lives are not divulged, creating accountability for the falsification of judicial information

²¹⁵ Law of the Republic of Kazakhstan № 132-II dated 25 December 2000 *On the Judicial System and Status of Courts of the Republic of Kazakhstan*

²¹⁶ Concept of the Draft Law *On Access to Judicial Information in the Republic of Kazakhstan*. Collection of materials for the “Public Participation in ensuring the Transparency and Independence of Courts in Kazakhstan” project, edited by S M Zlotnikov of the Transparency Kazakhstan Public Fund, Almaty, 2012

4. For each judicial act, the Database of Judicial Acts of the Supreme Court (<http://sud.gov.kz/rus/content/bank-sudebnyh-aktov>) needs to make reference to the classification of cases according to the Integrated Classifier of Categories of Cases (<http://office.sud.kz/forumTaldau/forum.xhtml>) and the full names of judges. This would allow the public and other state authorities to easily highlight court rulings that stand out from court practices and see possible judge affiliation.

14.2.2. Recommendations on improvements to the legislative branch of power

1. Article 11-1 “Advisory and Consultative Bodies of the Parliament of the Republic of Kazakhstan” of the Law *On the Parliament of the Republic of Kazakhstan and the Status of its Deputies*, stipulates the creation and implementation of an advisory and analytical centre and public chamber
2. An advisory and analytical centre will be responsible for reviewing draft laws, analysing regulatory actions, drafting draft laws, providing consultation and organising public expert discussions for parliament, which would reduce parliament’s intellectual dependence on central state authorities. The centre would also be able to engage experts to reviews specific issues for a fee, which parliament is currently unable to do
3. The public chamber is an advisory and consultative body that interacts with local public councils (at the oblast and national city levels). Once a quarter, public council representatives would meet in Astana to discuss the state of the country and law-making issues, enabling parliament to keep a constant track of the situation in the regions
4. Transfer the Accounts Committee to Mazhilis control. The executive branch of power is currently authorised to conduct state audits and reviews with the help of the Accounts Committee, the General Prosecutor, the National Bureau for the Prevention of Corruption, the Economic Investigation Service of the State Revenue Committee of the Ministry of Finance, the Internal State Audit Committee of the Ministry of Finance, the Committee for Financial Monitoring of the Ministry of Finance and the National Bank. The legislative branch of power does not have these bodies at its disposal, apart from revision commissions as part of the maslikhat system, and which are also partially under the leadership of the Accounts Committee. The Accounts Committee’s transfer to parliament control would expand the opportunities to prevent corruption and strengthen the role of the legislative branch of power as a whole
5. Create a separate parliamentary mass media service that would be responsible for reporting on parliament’s activities in a creative and understandable manner for the public, including on the status of working groups and committees, and the work of specific deputies. This would increase the public’s interest in the law-making and budget planning processes
6. The range of issues discussed by parliament needs to be expanded. Important state solutions affecting the public as a whole should be discussed publically and on parliament platforms, rather than government platforms
7. An article 22-1 “Consultation with the Mazhilis regarding Candidates for the Position of Members of the Government” of the Law *On the Parliament of the Republic of Kazakhstan and the Status of its Deputies* needs to be introduced and tracked. At the very least, parliament decisions on member of parliament candidates should be made public
8. The standard for staffing levels for maslikhat back office headcount should be changed to at least 1 employee per deputy, and not as it is at present – 1 employee per 6 deputies

14.2.3. Recommendations for improvements to state governance

1. The Committee for State Assets and Privatisation of the Ministry of Finance should publish annual national reports discussing income generated by state assets that would include the following data:
2. All entities with state participation need only file a semi-annual condensed report that is used as the base for calculating general data for the management of all state assets. The figures and data are as follows (should be no more than 10 items, otherwise it will be difficult to process):
 - a. short-term and long-term assets
 - b. gross profit
 - c. net profit
 - d. total taxes paid
 - e. total dividends paid to the state
3. Perform a stocktake and then record a number of facilities on the state balance sheet, many of which, although almost permanently in operation, often seem to be ownerless such as electricity cables, transformers, cemeteries, roads, bridges, dams, water reservoirs, water conduits, sewage systems and others
4. The Law *On State Property* should denote the goals and objectives the state meets with the help of its assets and entities under its jurisdiction. In addition, the purpose of each type of state asset needs to be recorded
5. A procedure for creating entities under the jurisdiction of central executive bodies should be created that references the aims of their creation and justification, confirming that they do not compete with private business and do not have the function of a governmental agency or department. If any such entity generates profit, it should be transferred to the national management holding. Entities performing social and infrastructure functions and complex tasks that private business is unable to perform should report directly to the department
6. Use satellite images to perform an inventory of all types of land and create a land cadastre website with information available on functional zoning and the current distribution of land
7. Use satellite images or aerial photographs to record houses and other buildings in towns and cities; compare them with the current cadastre base and general plan “building lines” and highlight any illegal structures
8. Expand the publication of general plans for populated areas with “building lines” to aid the planning of town construction activities
9. According to subpoint 7) of article 1 of the Law of the Republic of Kazakhstan dated 28 February 2007 *On Accounting and Financial Reporting*, include as public interest entities all land users with over 10,000 hectares of agricultural land at their disposal (leased or owned)
10. Develop dividend rates for all entities with state participation and performing economic activity
11. In the Law *On Legal Acts*, carry out an anti-corruption review as an independent and obligatory stage of the scientific review of legal acts
12. For draft laws that have direct impact on the public across the entire country, for example, a change in the pension system, introduce a procedure for assessing and

analysing regulatory impact. At the same time, parliament should be the body ordering this procedure, and not the developing department

14.2.4. Recommendations for engaging civil society

1. Create an integrated open database of liabilities owed by the general public, such as utilities, alimony, a range of fines, with the obligatory notification of the individuals involved of amounts due
2. The abolishment of Law №128 dated 28 December 2017 *On the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan regarding Information and Communication*, requiring journalists to receive consent to distribute legal secrets in the mass media
3. Amend the Law *On Access to Information* according to a list of exceptions and a mechanism for ensuring and protecting access rights to information. Accountability for civil servants needs to be developed and implemented for violating deadlines related to the provision of information
4. Introduce an optional course in colleges and universities dealing with the use of “Electronic Government” and “Open Government” services; and also place the course on the Internet for the general public
5. Revise the content of the school “Person. Law. Society” course taking into consideration the specifics of Kazakhstan law and law-enforcement practices. The course should be tailored as much as possible to cover the everyday needs of the general public