The third round monitoring report on Kazakhstan was adopted at the Istanbul Anti-Corruption Action Plan monitoring meeting in October 2014. This document contains progress updates on the implementation of recommendations to Kazakhstan and the assessment of progress made. The progress updates made at the following ACN Istanbul Action Plan plenary meetings are included: 23-24 March 2015; 7-9 October 2015.
SUMMARY

16th ACN Istanbul Action Plan Meeting on 7-9 October 2015

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Pillar I. Anti-corruption policy

Recommendation 1.1.-1.2. Political will and anti-corruption policy

- To ensure adoption and proper implementation by responsible authorities of a new anti-corruption strategy and action plan based on a thorough analysis of the status of and trends in corruption; assessment of the earlier efforts against corruption, results of the research on corruption in Kazakhstan, including the research conducted by NGOs, statistical and other data on the performance of public authorities fighting corruption, and suggestions and analysis by public authorities, civil society and representatives of the business sector.

- To provide in the new anti-corruption strategy and implement in practice a proper mechanism for its monitoring and assessment of implementation results, which would involve an analysis of implementation of the measures, their effectiveness, achieved performance indicators, impact of the strategy on the level of corruption, and the elaboration and implementation of the necessary actions following up on the monitoring results. To ensure civil society engagement in such monitoring process and publication of all monitoring reports (assessments).


Measures taken to implement this recommendation

Government information

The Strategy has been developed in pursuance of Clause 33 of the National Plan of Measures to implement the Head of State’s Address «Kazakhstan Way – 2050: Common Goal, Common Interest and Common Future».

Its main targets correlate with the initiatives to create the Eurasian Economic Union, with the Concept of Legal Policy, programs of further modernization of the law enforcement system, of counteracting shadow economy, with the Anti-Corruption Program of the «Nur Otan» party, and are aimed at achieving the target goals of the Kazakhstan Development Strategy -2050.

The Strategy developers have taken advantage of the best anti-corruption practices of Singapore, Hong-Kong, Finland, Norway, and South Korea. The National Chamber of Entrepreneurs, Transparency Kazakhstan and the OSCE Center in Astana have jointly contributed to the development of the Draft Strategy (the expert evaluation report is attached hereto). Furthermore, the OSCE Center in Astana invited international experts to join in the drafting of the Strategy, and they provided their opinions on the draft law. The Anti-Corruption Strategy was approved by Decree #986 of the Head of State of the Republic of Kazakhstan, dated 26 December 2014.

The Anti-Corruption Strategy establishes a general framework of the State Anti-Corruption Policy and highlights priority areas for each and every government agency.

The main goal of the Strategy is to enhance the effectiveness of anti-corruption policies and reduce the level of corruption. The indicators are defined as follows:
- The quality of government services;
- People’s confidence in the anti-corruption policy of the State;
- The level of legal awareness of the population;
- Kazakhstan’s position in the Corruption Perception Index.

These tasks reflect the main seven areas of the Strategy.

A Plan of Actions for a phased implementation of the Anti-Corruption Strategy of the Republic of Kazakhstan 2015 – 2025 and counteracting informal economy is currently reviewed by government authorities.

This Plan provides for the following actions:
- Improvement of the legal framework, including regulations on the provision of government services;
- Improvement of business processes for entrepreneurs;
- Promotion of an anti-corruption culture, including through collaboration with mass media and NGOs;
- Implementation of a sociological survey on corruption.

Apart from that, the Strategy implementation envisages the development of 26 draft laws, 83 regulations, conversion into electronic form of 56 government services (50% of expert evaluation work would be done on a competitive basis and by 2020 this market indicator is expected to reach 90%).

**Assessment of progress – PROGRESS**

Since the previous monitoring round Kazakhstan adopted a new Anti-Corruption Strategy for 2015-2025 (President’s Decree of 26 December 2014 no. 986). It has also started development of an Action Plan to implement the Strategy. This in general is in line with the recommendation.

However in its progress report Kazakhstan did not explain how the new strategy is based on a thorough analysis of the status of and trends in corruption, whether assessment of the earlier efforts against corruption was made, whether results of the research on corruption in Kazakhstan (what studies and how taken into account), including the research conducted by NGOs, statistical and other data on the performance of public authorities fighting corruption, and suggestions and analysis by public authorities, civil society and representatives of the business sector were taken into account.

The new Anti-Corruption Strategy provide for certain mechanism of monitoring and assessment of its implementation, which is also in line with the recommendations. However the mechanism itself has not been established as yet in practice and it is therefore too early to evaluate it. Also the mechanism is described in the general terms, focusing in institutional aspect, not providing details on the contents of the monitoring itself. It does include two positive aspects: involvement of the civil society in the monitoring and evaluation process and publication of annual reports. At the same time it should be noted that recommendation in this part concerns practical involvement of the civil society in the strategy monitoring process. The draft action plan, which was provided as attachment to the progress update, also does not include any analysis of the situation and details on the monitoring and evaluation mechanism.

The above attests to insignificant progress aimed at the implementation of the recommendation.

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**Measures taken to implement this recommendation**

*(a summary by the National Coordinator about actions taken to comply with this recommendation)*:

The Head of State’s Decree No.986 dated 26 December 2014 approved Kazakhstan’s Anti-Corruption Strategy 2015-2025. To implement the mentioned Decree, the Government of the Republic of Kazakhstan issued a resolution to adopt an Action Plan for 2015-2017 to implement the Anti-Corruption Strategy 2015-2025.
According to the Strategy’s Section 5 “Monitoring and Evaluation of the Strategy” and in an effort to counteract shadow economy, an authorized anti-corruption agency will play the main role in the mechanism of implementation of the Anti-Corruption Strategy. All government authorities, organizations and institutions, parastatal companies, political parties and other non-government associations and the civil society in general will take part in implementation of the Strategy.

A necessary condition to achieve goals of the Strategy is the monitoring and evaluation of its implementation, with both tools divided into internal and external. Internal monitoring and evaluation will be conducted directly by the performer of a certain action, while external – by a special monitoring group to include representatives of interested government agencies, public and media.

Openness is a necessary condition to ensure due monitoring and evaluation of the progress in implementation of the Anti-Corruption Strategy. Reports on progress of respective actions will be necessarily made public to receive an external assessment and take into account the public opinion.

The further stages of the Strategy will duly note the public evaluation and opinion. Submitting the corresponding report to the Head of State for consideration will be the final stage of the Anti-Corruption Strategy. The Annual National Report on implementation of the document will be published in mass media.

Given the above, we believe that the recommendation has been implemented.

The agency will also add the report on the first monitoring of the Strategy implementation with analysis of previous anti-corruption programs.

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### Assessment of progress – PROGRESS


The Action Plan includes the following system for monitoring and assessment of the Action Plan implementation:

1) Central executive authorities, government agencies which are directly subordinate to the President, akims (governors) of oblasts, Astana and Almaty submit information on the progress on implementation of the Action Plan for Anti-Corruption Strategy to the Agency for Civil Service and Anti-corruption of the Republic of Kazakhstan. The information is submitted once a year, on or before the 15th day of the month following the reporting year.

2) The Agency for Civil Service and Anti-corruption of the Republic of Kazakhstan submits a summary report on the monitoring and assessment of the implementation to the Office of the Prime Minister. The report is to be submitted on or before 15 February following the reporting year.

3) The Office of the Prime Minister submits to the Presidential Administration of the Republic of Kazakhstan the information about the progress achieved on the Action Plan for the Strategy Implementation on or before 15 March following the reporting year.

Under the Action Plan, the reports about its implementation should be placed in public domain for the purpose of receiving external public assessment and taking public opinion into account. The annual report for implementation of the Anti-Corruption Strategy should also be made public according to the Action Plan.

Information has also been provided about the establishment of monitoring commissions responsible for analysing and assessing the Anti-Corruption Strategy, both internal (comprising representatives of the Agency for Civil Service and Anti-corruption of the Republic of Kazakhstan) and external one (representatives of state authorities, the parliament, Nor Otan party, the public, and mass media).

It is too early to say whether the system is effective and how it can be applied in practice.
Recommendation 1.3. Corruption surveys

- To develop and apply in practice a national methodology for evaluation of corruption on the basis of the respective international experience. Such methodology should cover both public and private sectors and include at least such components as the most corrupt areas, frequency and models of corruption practices, actors taking part in corruption, types of corruption benefits. To ensure regular evaluation of the corruption situation in the country based on such methodology and also to continue the practice of sectoral corruption surveys in specific, most corrupt-prone areas.

- To consider a possibility of assigning the co-ordination role in the field of evaluation of the corruption situation and conducting corruption surveys to the body which is responsible for implementation of the anti-corruption strategy.


Measures taken to implement this recommendation

Government information

By his Decree no. 900 of 29.08.2014, the President of Kazakhstan approved the Regulations on the RK [Republic of Kazakhstan] Agency for Public Service and Anti-Corruption Enforcement (the Agency). Under the Regulations, within its mandate the Agency submits to government authorities and organizations mandatory instructions to eliminate such grounds and conditions as may be conducive to corruption offenses. The Agency’s main goal is to minimize the grounds and conditions that facilitate corruption offenses.

To this end, the Agency is charged with the following tasks:
- identify the grounds and conditions for corruption in the activities of government agencies and organizations;
- submit to the Government recommendations on the minimization and elimination of grounds and conditions that may foster corruption;
- monitor and assess the implementation by government agencies and organizations of instructions to eliminate and prevent the occurrence of such grounds and conditions as may be conducive to corruption offenses.

For these purposes, the Agency has established a Department for the Analysis and Detection of Corruption Risks (further referred to “the Department”). The Department has developed Methodological recommendations for the analysis and monitoring of corruption risks associated with government agencies (see Attachment). In addition, a Research and Analytical Anti-Corruption Center (hereinafter referred to as “the Center”) was established in September 2014 within the structure of the Academy for Public Administration under the RK President.

The Center provides research, analytical and educational support, and assistance in implementing the government function of combating corruption, methodological support of mass media policies, anti-corruption training, and coordination of research work in this area.

In November-December 2014, the Agency reached an agreement with UNDP, the EU Project and the OSCE Center in Astana on joint actions.
Assessment of progress – PROGRESS

The new Kazakhstan’s Agency on Civil Service and Corruption Counteraction includes a department for analysis and corruption risks, which has developed methodological recommendations on analysis and monitoring of corruption risks in the public authorities. While positively assessing these steps, it should be noted that the said document cannot be seen as a methodology for comprehensive evaluation of corruption situation, although it can be useful from the view of sectoral assessment of corruption situation. Moreover no information was provided on the status of the document and its practical implementation. Therefore no steps were taken to develop a methodology for evaluation of corruption situation, as recommended.

It appears that the possibility of assigning the co-ordination role in the field of evaluation of the corruption situation and conducting corruption surveys to the body which is responsible for implementation of the anti-corruption strategy was not raised.

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Measures taken to implement this recommendation
(a summary by the National Coordinator about actions taken to comply with this recommendation):

The action plan 2015-2017 for the realization of Kazakhstan’s Anti-Corruption Strategy suggests measures, including research, to ensure proper monitoring and evaluation of the strategy implementation.

According to Article 8-1 of the Law On Prosecutor’s Office, the prosecution authorities shall coordinate activities of law enforcement and other government agencies aimed to ensure law, order and fight against crime through cooperation of these agencies, mutual information exchange and coordination of their actions to deliver on common goals and objectives. The prosecution authorities are carrying out this activity through permanent coordination councils established in the General Prosecutor’s Office, regional prosecutor’s offices and equivalent prosecutor’s offices.

At the same time, Regulations No. 900 “On the Agency for Civil Service and Anti-Corruption Enforcement” approved by the President on 29 August 2014, the Agency is a government authority that reports and is accountable to the President of Kazakhstan. It governs the civil service, assesses and controls the quality of government services. Within the limits set in the laws of the Republic of Kazakhstan, it manages and carries out cross-sectoral coordination and performs other special executive and permitting functions to prevent, detect, stop, disclose and persecute corruption-related crimes and offenses.

The Agency also carries out R&D, education, publishing work in the manner established by laws of the Republic of Kazakhstan. It is entitled to create and use information systems helping the Agency and its territorial units achieve their objectives, organize researches in the course of preliminary investigation, inquest, proceedings in administrative cases as established by laws of the Republic of Kazakhstan.

The action plan 2015-2017 for the realization of the Anti-Corruption Strategy of the Republic of Kazakhstan also suggests that the Agency is the main monitor and evaluator of the strategy implementation.

Following the instruction of the Agency Chair, the Department for the Analysis and Identification of Corruption Risks is working to develop the methodology to assess corruption areas jointly with representatives of the non-governmental sector. It also continues sectoral researches, ensuring that their results are made public.
Assessment of progress - PROGRESS

Kazakhstan has provided information about sector analytical research studies conducted to identify and remove corruption risks. In particular, such studies have been initiated or have taken place at the Committee for Regulation of Natural Monopolies and Protection of Competition, Ministry of Health and Social Development, Ministry of Investment and Development, and Ministry of Finance. Sample forms have been provided to summarize the research studies.
Recommendation 1.4. Public participation

- To ensure broad involvement of the civil society organizations in development and implementation of the anti-corruption policy, having excluded a selective approach towards such co-operation. To maintain dialogue with the civil society in consultations on anti-corruption policy and anti-corruption screening; to consider broadening the composition of the Interdepartmental Commission for Improvement of the Legislation in Anti-Corruption Area by inclusion of non-governmental experts. To consider introducing rules on mandatory public discussion of the most important draft legal acts with an obligation of the drafting body to publicly provide explanation in case of rejection of proposals from non-governmental organizations and other civil society institutions.

- To revise the ways of establishment and work of the public and expert councils in order to exclude intervention of the State into the process of nomination of delegates from non-governmental organizations into such councils. To spread into other areas positive experience of the National Council of the interested parties for the EITI promotion.


Measures taken to implement this recommendation

Government information

Jointly with the Ministry of Education and Science, the Agency has set up a working group to develop anti-corruption training programs. The working group includes representatives of mass media and civil society groups. Heads of the Agency’s regional departments arrange regular meetings with representatives of civil society and non-governmental organizations. 31 meetings were held in 2014.

The regional departments have drawn up plans of actions and meetings with representatives of civil society and non-governmental organizations in 2015, and established anti-corruption public councils, which include representatives of regional civil society and non-governmental organizations.

Apart from the educational programs, the working group is working on the content and methodology of anti-corruption education for different target groups, including public officers, representatives of mass media, NGOs, ethnocultural and religious associations, and business community.

The Agency ensures a broad engagement of civil society groups in the implementation of the State Anti-corruption Policy. In 2014, the Agency, jointly with NGOs, the «Nur-Otan» party and local executive authorities, arranged 37 round-table meetings, 32 seminars, 5 conferences, 37 educational and other events. All of these events were regularly covered in mass media.

Regional chapters of the «Nur-Otan» party are actively promoting anti-corruption efforts by organizing meetings with different strata of civil society (youth and students’ organizations, ethnocultural associations, regional chambers of entrepreneurs, and business associations).

Such meetings and discussions are attended by representatives of the local executive authorities, law enforcement agencies and the judiciary.
The Agency’s regional departments and NGOs have concluded and started the implementation of anti-corruption joint action plans. With a view to protecting legitimate rights of entrepreneurs, similar work is carried out by public councils in collaboration with regional offices of the Chamber of Entrepreneurs.

Assessment of progress – LACK OF PROGRESS

Kazakhstan did not provide information on measures taken to ensure broad involvement of the civil society organizations in development and implementation of the anti-corruption policy, having excluded a selective approach towards such cooperation. While reported development of education programmes is beyond the scope of this recommendation.

The most significant development in terms of implementation of this recommendation was that the new Anti-Corruption Strategy for 2015-2025 provides for involvement of civil society in the work of the council on monitoring of the strategy implementation, as well as mandatory taking into account of the public opinion during future steps of the strategy implementation. However lack of their practical enforcement does not allow concluding that progress was in actually involving the civil society in the development and implementation of the anti-corruption policy. Moreover according to the NGO comments strategy drafting process could be characterised as an open one.

Kazakhstan also mentioned some examples of cooperation with the civil society in the anti-corruption area, in particular regular meetings with the public, setting up several consultative councils under the Ministry of Education and Science.

However there is no data showing that the approach for engaging civil society did indeed change, in particular in terms of public councils and spreading into other areas positive experience of the National Council of the interested parties for the EITI promotion.

Therefore no progress was made in implementing this recommendation.

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Measures taken to implement this recommendation
(a summary by the National Coordinator about actions taken to comply with this recommendation):

To eliminate the drawbacks outlined in the previous report, the Agency’s department for anti-corruption education and public relations is working on practical aspects of engaging the civil society into implementation of the anti-corruption policy in line with the best international practices.

In addition, the Agency’s Organization and Control Department has been instructed to monitor the quality of the members of Community councils established in the government authorities.

To engage widely the civil society organizations into building and implementing the anti-corruption policy, the Agency worked to conclude cooperation agreements with the non-government sector institutions, increase the scope of social services contracts commissioned to NGOs to build the anti-corruption culture, organize social events with participation of the non-government sector and also use the platforms and capacity of advisory authorities.

Signing cooperation agreements with non-government sector institutions
Today around 9900 non-governmental organizations (hereinafter – NGOs) operate in Kazakhstan. Following a review of their activities, the NGOs can by classified into nine major areas: business entities, organizations with activities for youth, science, culture and women, human rights and trade union organizations, mass media, ethnic and religious associations.
The format of cooperation with civil society entities requires a uniform agreement outlining general and special cooperation areas.

Under such agreements, NGOs, when implementing social services contracts, must promote and propagate the principles of zero-tolerance to any manifestation of corruption and build a strong anti-corruption culture in the society.

So, actions are being taken now to sign this agreement with 17 NGOs operating nationwide, in particular the Assembly of the People of Kazakhstan, Kazakhstan’s Civic Alliance and the Nur Otan Party. Organizations and natural persons willing to support the principles of zero-tolerance to corruption can join the agreement by signing a Statement of Accession.

Therefore, the agreement can be signed by NGOs, non-commercial organizations and also other organizations regardless of their ownership, organizational or legal structure as well as Kazakhstan nationals sharing its goals and objectives.

The cooperation agreement signed between the Agency and the National Chamber of Entrepreneurs on 23 June 2015 and a detailed action plan to implement it have become an important step towards joining efforts with the public. The agreement seeks to protect interests of entrepreneurs, improve the quality of government services and raise transparency of doing the national business.

*Increasing the scope of social services contracts commissioned to NGOs to build anti-corruption culture*

Engaging the most active members of the society into the work done to prevent corruption and introducing the institute of public control are seen as an instrument for cooperation with the civil society. In this regard, social services contracts are the most practical mechanism to engage NGOs into the anti-corruption activities.

Joint efforts with the Ministry of Culture and Sports resulted in two nationwide projects on building the anti-corruption culture that are being rolled out – *Country without Corruption is a Prosperous Country* and *Organizing Dialogue Platforms On Provision of Government services in Different Regions of the Country*. The Agency also lodged recommendations to local executive authorities, asking them to focus the planned social services on projects designed to build the anti-corruption culture in the society.

So, following the work done in all local executive authorities, 24 projects for the non-government organizations have been scheduled for 2015 to the total amount of over KZT 44.4 million.

*Organizing social activities with participation of the non-government sector*

Mass cultural events help involve general public into corruption prevention efforts. Over the reporting period, the territorial departments of the Agency have held 266 social activities including flash mobs, sports events and others to promote zero tolerance to corruption in the society. The events have covered more than 45,000 people.

The Agency distributed over 200,000 leaflets to business representatives, explaining how to get government services and where to avoid corruption risks. It conducted seven meetings with population and helped organize 25 community liaison offices. In addition, the Agency consulted over 6,000 people on compliance with civil service and anti-corruption laws.

*Using platforms and capacity of advisory authorities*
The Agency instructed to carry out certain actions to modernize the way the regional commissions established in local executive authorities work in the area of anti-corruption with NGOs, youth, religious associations and in the business area. Therefore, employees of the Agency’s territorial units are members of 66 out of 80 regional commissions. Building the anti-corruption culture will be a major objective of these commissions.

The Ministry of Education and Science of Kazakhstan is organizing activities to engage the non-government sector into building and implementing the anti-corruption policy within the established community council. Active work is also underway to involve more NGOs into the operation of the council.

Its session has approved goals and objectives of the community council and Action Plan 2015. The community council for combating corruption established in the Ministry of Education and Science of Kazakhstan is an advisory body. It ensures cooperation of the ministry with the general public of Kazakhstan to fight corruption in the area of education and science.

The community council pursues the following goals: to establish continuing cooperation with non-government institutions and population, raise trust of people in educational establishments and the efficiency of the education system, develop and further improve relationships with NGOs and the public, implement the principle of transparency and openness, protect the rights and freedoms of the citizens of Kazakhstan.

Main objectives:
1) engage people as well as non-government, human rights, science, creative, religious and other organizations to implement the national education policy;
2) raise people’s trust in education establishments and also education and science management organizations; engage NGOs in further strengthening of the rule-of-law state;
3) help to address the issues related to social support to employees of the ministry and pensioners who used to work in the ministry;
4) engage mass media to provide comprehensive, quality and objective information to the public about the activities taken by the government in the area of education and science and also about important educational issues; and
5) prepare opinions, forecasts and suggestions on how to improve the activities of the ministry with due regard to the proposals made by NGOs.

The information is published in media. Works are underway in the area.

In addition, Kazakhstan set up a Council for combating corruption in higher education institutions. As a permanent advisory body in the Ministry of Education and Science of Kazakhstan, the Council coordinates activities of higher education institutions in Kazakhstan in anti-corruption efforts in higher and post-graduate education. The goal of the Council is to strengthen the rule of law and civilian oversight in the area of higher and post-graduate education and contribute to implementation of the national anti-corruption policy.

Objectives of the Council:
- improve and develop ways of cooperation between the Ministry of Education and Science of Kazakhstan and higher education institutions in the area of anti-corruption;
- prepare recommendations on how to improve graduate and post-graduate education in the country including the area of anti-corruption in higher education institutions;
- consider initiatives of the civil society related to addressing the most challenging and important issues in the fight against corruption in higher education institutions; and
- prepare recommendations to improve the national anti-corruption policy.
The information is published in media. Works are underway in the area.

On 25 November 2014, the Ministry had a teleconference to discuss how to implement the instructions of the Head of State to intensify the fight against corruption as well as the current situation with the fight against corruption in education over nine months of 2014.

The lineup included representatives of the General Prosecutor’s Office, the Agency for Civil Service and Anti-Corruption Enforcement, the Nur Otan Party, trade union of the workers in education and science sectors, heads of agencies and structural units of the Ministry, presidents of higher education institutions, heads of education management departments in regions, cities of Astana and Almaty.

Heads of education management departments from regions where the most of corruption crimes in the area education have been committed, particularly Akmola, Jambyl and South Kazakhstan, spoke during the conference.

Following the event, the participants took specific actions to organize the fight against corruption and gave relevant instructions to heads of committees and departments of the Ministry, education management departments in regions and the cities of Astana and Almaty.

The Ministry of Agriculture developed and approved an action and media plan for 2015 to hold anti-corruption actions, including video and internet conferences, round tables, articles in media and lectures about the fight against corruption. The calendar of anti-corruption activities has been approved for 2015. On 10 February 2015, a memorandum of cooperation was signed with Janaru, a republican civil society association. The parties agreed to join anti-corruption efforts and work together to build the anti-corruption culture in the society.

Regular meetings with representatives of civil society and non-governmental organizations take part to explain adopted legal instruments, main points of the Address of the President of Kazakhstan and the current Agrobusiness 2020 program. A Business Council consisting of representatives of industry-specific NGOs works to discuss challenges in the development of the industry.

Kazagro, a grassroots organization of the Nur Otan’s Birlik branch, regularly discusses gross violations of the laws detected in subordinate organizations at the community council for combatting corruption. Articles and speeches are published in media along with radio programs and workshops about anti-corruption (over 133 stories in media, 11 speeches in media and radio, 209 round tables, 115 lectures, seminars and workshops in 2014).

A close cooperation with the National Chamber of Entrepreneurs is being in place to develop standards and norms of government services as well as draft regulations. The central office of the Ministry, the buildings of Committees, regional and district territorial units as well as their subordinate organizations have trust lines, boxes for letters and requests of physical and legal persons. In addition, requests on problematic issues are received and reviewed through the ministry’s website.

**Assessment of progress - NO PROGRESS**

*Kazakhstan has not taken actions to ensure broad engagement of civil society organisations in development and implementation of the anti-corruption policy and thus excluded the possibility for a selective approach to cooperation. Many formal procedures undertaken by the state authorities, placement of public orders and conclusion of agreements cannot be regarded as proof of real and*
substantial engagement of the public in development and implementation of the anti-corruption policy.

The Agency for Civil Service and Anti-corruption of the Republic of Kazakhstan has established an external monitoring group to analyse and assess the implementation of the Anti-Corruption Strategy. Although a number of civil society representatives have been put on the monitoring committee this cannot be treated as broad representation. Moreover, the monitoring mechanism has not become functional yet. Considering the above mentioned and the actions specified in the recommendation these steps cannot be regarded as progress in terms of implementation.

Besides, no information has been provided on changes in the way of formation and operation of public and expert councils to exclude interference of the government in the appointment of NGO representatives as members of the councils. The information about the decision of the Agency for Civil Service and Anti-corruption of the Republic of Kazakhstan to conduct monitoring of the quality composition of public councils working at government agencies does not mean in itself the intention to review the approaches to their formation. This step should be assessed later following the results of its implementation. There is no information about dissemination of positive practices of the National Stakeholder Council relating to promotion of the Extractive Industries Transparency Initiative (EITI).
Recommendation 1.5. Raising awareness and public education

- To carry out an evaluation of how awareness-raising campaigns influenced the dynamics of qualitative and quantitative characteristics of corruption. To use the research data during development of the strategy for further awareness-raising campaigns taking into account the pursued goals and the target audiences. To direct awareness-raising campaigns to the practical aspects of preventing and fighting corruption.


Measures taken to implement this recommendation

Government information

To ensure the implementation of this recommendation as to the necessity to highlight practical aspects of anti-corruption efforts in information campaigns, the Agency focused on corruption prevention mechanisms and facilities. First of all, the main messages urging to devise effective anti-corruption educational and training facilities for Kazakhstan citizens had to be filled with an appropriate content. The Agency is developing educational programs for different target groups.

The main purpose of anti-corruption education is to foster an uncompromising attitude of the public at large to any manifestation of corruption. The nature and detrimental effects of corruption are clearly defined, values incompatible with bribery and abuse of office are emphasized, and intolerance to corrupt behavior is actively promoted. With a view to coordinating these efforts, the Agency set up a Department for anti-corruption education and public relations.

The Agency takes into account all the nuances of child development, so different teaching methods would be applied at every educational level depending on the learners' phases of development. Children would be taught with the aid of games, arts lessons, animated and strip cartoons. Special learning computer and table games would be developed for these learners. The Agency and its territorial departments have drafted a plan for visiting schools, universities and government agencies in 2015. Lessons on anti-corruption enforcement for children and students will include real-world examples that they are familiar with and understand because at their stage of personality development it is most important to teach them to counteract corruption in a legally correct manner. The anti-corruption educational programs will include, as an integral part, youth competitions, academic Olympics, contests and debates.

The main goal of all corruption prevention measures is to teach each and everyone what they should do if someone solicits a bribe in exchange for a government service, document, license and etc. To this end, officers of the Agency and its territorial departments organize seminars and meetings with citizens to raise their awareness of their rights, of proper procedures for the provision of government services, the issue of licenses, and of various governmental functions. Education of the public at large is an effective way of neutralizing the breeding ground for corruption.

The Agency's regional departments have formed from among their officers awareness-raising groups that are assigned to most corruptogenic institutions in designated areas to promote the State Anti-Corruption Policy.
The Agency has developed designated programs for various target groups – NGOs, mass media, business entities, public officers, and general public.

Various methods will be used for raising the anti-corruption awareness of citizens:
- production and dissemination of short documentary films, reference materials, information and promotional leaflets that would explain terms and definitions, forms of corrupt behavior, ways of corruption identification and counteraction, and methods of assistance to anti-corruption enforcement agencies;
- creation of a high-quality anti-corruption Internet content and utilization of capacity provided by social networks.

A Center for the Study of Anti-corruption Enforcement has been established under the Presidential Academy for Public Administration. The Center’s staff would simulate and analyze real-life situations of corruption offenses, and conduct sociological surveys to study levels of corruption perception.

These innovative approaches are expected to have a positive impact on the quantitative and qualitative indicators of corruption.

In 2014, the RK Agency for Economic and Corruption Crimes continued the implementation of the State Anti-Corruption Policy towards raising the anti-corruption awareness of citizens through the publication of relevant articles in the press, including the following republican newspapers which were used as information venues for launching and jointly running news columns: «Stop corruption», «Report from the court room», «Panorama of events», «Date», «Operative unit» (the «Kazakhstani Pravda»), «Zhemkorlyk – indet, ony zhoyu – mindet» (the «Egemen Kazakhstan»); «Corruption», «Fighting corruption», «Swindle», «Criminal news», «Bribery», «Fraud», «Law and order» (the «Express-K»); «Sengen serkim...», «Esep» (the «Aikyn»), «Impound yard» (the «Caravan»), and etc.

In 2013, the RK Academy for Economic and Corruption Crimes (AECC) published 30,000 leaflets entitled «Together against corruption», «How and when must the financial police give me assistance?», «My rights in dealing with the financial police», which in 2014 were sent to the National Chamber of Entrepreneurs for further distribution among entrepreneurs.

One hundred (100) advertising banners on anti-corruption issues were printed and distributed among 16 territorial departments and placed in public areas across the country.

In 2014, the RK AECC went on with the broadcasting of awareness-raising anti-corruption video films in crowded downtown areas.

In 2014, two (2) audio messages on anti-corruption issues with the hotline number of the financial police were recorded by the RK AECC and broadcast on the radio; measures were taken to broadcast these audio recordings on 300 bus routes in the capital city.

In 2014, the Mangistau Region Department commissioned a video film explaining the Rules for awarding individuals for assisting anti-corruption enforcement agencies, which was dispatched to the Agency’s local departments for posting in social networks and for broadcasting on the regional radio stations by government order.

In 2014, the Eastern-Kazakhstan Region Department, in collaboration with the TV «7 Channel», made three (3) video films urging the general public to launch an uncompromising war against corruption; these videos were actively used at seminars and lectures in higher educational institutions and government organizations.
The Northern-Kazakhstan Region Department commissioned video films on non-interference in the activities of small and medium-sized businesses, which were broadcast in crowded city areas.

**Assessment of progress – LACK OF PROGRESS**

*Kazakhstan did step up efforts in conducting informational campaigns. However it did not report on how those campaigns were directed to the practical aspects of preventing and fighting corruption. There was no assessment of how awareness-raising campaigns influenced the dynamics of qualitative and quantitative characteristics of corruption. Therefore consequent campaign are planned without taking account of previous results.*

*Setting up within the Agency of a department for anti-corruption education and interaction with the civil society is welcome step.*

16th ACN Istanbul Action Plan Meeting on 7-9 October 2015

**Measures taken to implement this recommendation**

*(a summary by the National Coordinator about actions taken to comply with this recommendation):*

To develop an awareness raising strategy, the Agency has instructed territorial departments to conduct regular opinion surveys upon results of anti-corruption activities using special questionnaires for lectures, seminars, roundtables, flash mobs, etc. The results are sent to the President’s Academy of Public Administration for processing and review. Every quarter the results of the review are sent to the Agency. The opinion surveys specifically evaluate the level of corruption perception, the practical help of awareness raising campaigns, satisfaction with the content and delivery of information. The conclusions will serve as a foundation for building a strategy for further awareness raising campaigns.

During April-May 2015, the Agency also conducted an opinion survey *Building Anti-Corruption Culture* among students and faculty of higher education institutions in Astana. It covered five biggest universities in the country (Gumilyov Eurasian National University, KazGUU, Medical University, Kazakh National University of Arts, and Seifullin Kazakh Agro Technical University), 1,532 third-year and fourth-year students and 356 lecturers.

Opinion surveys to identify the corruption perception index in Kazakhstan have been also scheduled for this year under the social services contracts. The goal is to find out the index of corruption perception that indicates the public opinion about the current corruption level in the government agencies. The surveys will cover both individuals and legal entities. The final report is expected in December 2015, according to the terms of reference.

An opinion survey *Finding Out the Level of Anti-Corruption Culture in Kazakhstan* is also expected in 2016 to understand the level of the anti-corruption culture and problematic issues that arise when building the principle of zero-tolerance to corruption.

**Assessment of progress - PROGRESS**

*The Agency has started conducting surveys, including on the results of anti-corruption information campaigns. It also plans to carry out sociological research studies. This has been a useful undertaking. Our recommendation is to conduct independent assessment of anti-corruption information campaigns carried out by public authorities.*
Recommendation 1.6. Specialised anti-corruption policy and co-ordination institutions

- To introduce legislative amendments aimed at assigning the powers of developing and coordinating anti-corruption policy to a specific state agency.
- To ensure compliance with Articles 6 and 36 of the UN Convention against Corruption concerning the independence of the specialised anti-corruption agency.


Measures taken to implement this recommendation

Government information

The Agency is drafting a Law «On Anti-Corruption Enforcement», which would include a rule defining the authority of the government anti-corruption enforcement agency. The draft law would contain provisions aimed to consolidate the Agency’s powers to devise the State Anti-Corruption Policy, conduct anti-corruption educational and awareness-raising campaigns, and communicate with the general public.

Furthermore, the Anti-Corruption Agency, like the other government authorities, would make decisions autonomously, would be accountable to the Head of State, and all of it decisions must be consistent with the Constitutional provisions.

The Head of State’s Decree #986, dated 26.12.2014, approved a Regulation on the Agency for Government Service and Anti-Corruption Enforcement. Within its scope of competence, the Agency is responsible for administrative and criminal prosecution of persons who commit corruption offenses and crimes.

Assessment of progress – LACK OF PROGRESS

According to the information provided, no progress was achieved in reaching compliance with the recommendation since the adoption of the monitoring report.

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Measures taken to implement this recommendation

(a summary by the National Coordinator about actions taken to comply with this recommendation):

The members of the Parliament’s Majilis house have taken a parliamentary initiative to develop a draft law On Combating Corruption (the main draft law) and an associated draft law On Amendments and Supplements to Certain Legislative Acts on Anti-Corruption (the associated draft law).

Article 20 of the main draft law stipulates that the Agency shall be authorized to implement the anti-corruption policy in Kazakhstan and coordinate activities of government authorities, quasi-government entities, physical and legal persons in the area of anti-corruption.

The General Prosecutor’s Office of Kazakhstan notes that according to Cl.1 of the Regulations No.900 on the Agency for Civil Service and Anti-Corruption Enforcement dd. 29 August 2014 approved by the President of
Kazakhstan, the Agency is a government authority that manages and carries out cross-sectoral coordination and performs other special executive and permissive functions to prevent, detect, stop, solve and investigate corruption-related crimes and offenses.

The General Prosecutor’s Office of Kazakhstan also believes that the recommendation to ensure compliance with Articles 6 and 36 of the UN Convention against Corruption in terms of the independence of the specialized anti-corruption agency is redundant as none of the above articles in the Convention stipulates independence of the specialized anti-corruption agency. The provisions specify that each State Party shall grant the appropriate body or bodies the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence.

Moreover, according to Regulations No.900 on the Agency for Civil Service and Anti-Corruption Enforcement approved by the President of Kazakhstan, the Agency is a government authority that reports and is accountable to the President of Kazakhstan. It governs the civil services, assesses and controls the quality of the government services. Within the limits set by laws of Kazakhstan, it manages and carries out cross-sectoral coordination and performs other special executive and permissive functions to prevent, detect, stop, solve and persecute corruption-related crimes and offenses.

Therefore, in our view, the Agency is independent from any party in its operations concerning special executive and permissive functions to prevent, detect, stop, solve and investigate corruption-related crimes and offenses.

Assessment of progress - NO PROGRESS

According to the available information, a draft law On Combating Corruption has been submitted to the parliament. The document introduces an authorized anti-corruption agency which will be subordinate and accountable to the President of the Republic. Its responsibility will include implementation of anti-corruption policies and coordination of anti-corruption activities. However, the competencies as suggested by the draft law do not empower the Agency to participate in development and coordination of anti-corruption policies as required in the first part of the recommendation. The third round of monitoring report also pointed to this problem.

Thus, despite the fact that the draft law has passed the second reading, one cannot conclude that progress has been made under this recommendation.

There is no information about any actions taken to address the second part of the recommendation referring to independence of the specialized anti-corruption agency.
Pillar II. Criminalisation of corruption

Recommendation 2.1.-2.2. Offences and elements of offence

- To continue harmonisation of the legislation on corruption offences (Law on the Fight against Corruption, Criminal Code, Code of Administrative Offences).

- To bring provisions on criminal liability for corruption offences in compliance with international standards, namely:
  - to establish criminal liability for: promise/proposal of a bribe, acceptance of promise/proposal of a bribe, as well as for solicitation of a bribe as completed corruption crimes in the public and private sectors; giving a bribe and commercial bribery for the benefit of third parties; trading in influence;
  - to define the notion of ‘bribe’ in the Criminal Code and to envisage that the object of corruption crimes and administrative offences can be both material and any other (non-material) benefits;
  - to consider establishing criminal liability for illicit enrichment.

- To ensure that the offence of money laundering is criminalized in line with the international instruments and definitions from the Criminal Code and the Law on Combating Money Laundering and Financing of Terrorism are consistent.

- To envisage an effective and dissuasive liability of legal entities for corruption crimes with proportionate sanctions, which should be commensurate with the committed crime. Both commission of a crime by certain officials and lack of proper control by the governing bodies / persons of such legal entity, which facilitated commission of the crime, shall trigger corporate liability. To conduct additional consultations with business representatives regarding criminal liability of legal entities and the respective draft law; to envisage deferred enactment of the law introducing criminal liability of legal entities.

- To analyse application of provisions on effective regret in administrative and criminal corruption offences and, if necessary, introduce changes which will exclude possibility of unjustified avoidance of liability.


Measures taken to implement this recommendation

Government information

Four new codes came into force in 2015: the Criminal Code, the Criminal Procedure Code, the Penitentiary Code and the Code of Administrative Offenses.

The following innovations were aimed at enhancing liability for corruption crimes:
- prohibition of probationary sentencing for corruption crimes;
- prohibition to discharge from criminal liability persons who commit corruption crimes on the grounds of conciliation of the parties;
- criminal sanctions in the form of penal fines in amounts multiple of the amount of bribe in line with international standards. Failure to pay a penal fine in the amount set by the court automatically entails the replacement of the fine with imprisonment;
- mandatory confiscation of property with respect to all types of corruption crimes.

Furthermore, the confiscation rule applies to criminally obtained property and to property acquired for the account of illicit funds, which the sentenced defendant has assigned into the ownership of other persons. Another sanction for corruption crimes provides for a life-long prohibition to hold certain positions in government agencies and organizations.

In 2014, the Anti-Corruption Agency referred to court case files of 30 persons who had committed corruption crimes. On the national level, 1031 persons were convicted for corruption crimes in 2014.

In 2014, Kazakhstan enacted the Law «On the amendment of certain legislative acts on the counteraction of legitimization (money laundering) of criminal proceeds and terrorism financing», under which, inter alia, relevant amendments were introduced into the 1997 Criminal Code (the previous one) and into the Law “On the counteraction of legitimization (money laundering) of illicit proceeds and terrorism financing” (the AML/TF Law).

The new amendments to the 1997 Criminal Code revised the title and Article 193(1) thereof, and replaced the words “illicit proceeds” with “criminal proceeds” in the text of the AML/TF Law.

The same changes were introduced into the descriptive part of the relevant rule in the new Criminal Code. A new element was included in the crime – the specified acts will only be criminally liable if they are committed «on a large scale». A large scale of damage (under Article 218 “money-laundering”) is understood to mean an amount in excess of 2,000 MCI.

International experts maintain that this provision is not fully in line with international standards – under the Explanatory Note to FATF Recommendation № 3, the crime of money-laundering must refer to any type of property, irrespective of its value, which constitutes, directly or indirectly, proceeds of a crime. FATF deemed similar amendments to legislation made by other countries as inconsistent with the international standards and recommended to remove them.

However, according to the Explanatory Note to FATF Recommendation № 3, countries should determine all serious crimes as money-laundering crimes so as to cover as many predicate offenses as possible, or establish a certain threshold that should be linked either to the category of crime or to the punishment by imprisonment.

Article 218 of the Criminal Code must provide for such a threshold because such thresholds are indicated in most of the predicate crimes.

For instance, all of the crimes listed in Chapter 8 of the Criminal Code («Criminal Offenses in the Sphere of Economy») contain threshold values linked to the amount of damage, which may be substantial, large or very large.

Thus, the developers of the new version of the Criminal Code rule on the “legitimization of money (money-laundering) and (or) of other criminally obtained property” took into account all of the FATF recommendations.

It does not seem expedient to narrow criminal liability to the laundering of criminal proceeds, i.e. income derived from crimes. Income derived from minor criminal offenses and from administrative offenses can also be laundered. All the more so, as the Code of Administrative Offenses contains provisions prescribing liability
for actions that are similar to criminal offenses but cause less damage or generate smaller proceeds than the amounts specified in the Criminal Code. For instance, tax evasion by companies in the amount of less than 20,000 MCI constitutes an administrative offense. However, such unlawful proceeds may be channeled into legal economy. Similarly so, the «threshold» of criminal liability for illegal trade is 5,000 MCI, while smaller amounts entail an administrative liability. Engagement in illegal or prohibited business operations trigger off liability at 10,000 MCI.

According to the RK General Prosecutor’s Office, the Republic of Kazakhstan has implemented the above recommendation not only by introducing liability for the laundering of proceeds derived from a crime, but by including proceeds derived from administrative offenses in the money-laundering list.

The new Criminal Code is believed to comply with the international standards and to enhance the anti-money laundering efforts. The definition of a «substantial» amount of damage is largely explained by the fact that it should encourage criminal prosecution agencies to prevent the laundering of most dangerous and large amounts of criminal proceeds.

The RK General Prosecutor’s Office assures that the implementation of recommendations will continue within the framework of the Anti-Corruption Strategy of the Republic of Kazakhstan 2015-2025.

### Assessment of progress – LACK OF PROGRESS

> Amendments introduced in the Code of Administrative Offences do not concern criminal liability for corruption.

> In its progress report Kazakhstan also questions conclusions of the Third round monitoring report with regard to the offence of money laundering. Third monitoring round report conclusions on the non-compliance of this offence in the new Criminal Code with international standards were based on clear standards established by the FATF and FATF findings in a similar situation with regard to another country. Therefore Kazakhstan arguments are not sustainable. In any case the aim of the progress update is not to question the monitoring report but to present update on the progress achieved in implementation of the recommendations.

### 16th ACN Istanbul Action Plan Meeting on 7-9 October 2015

#### Measures taken to implement this recommendation

*(a summary by the National Coordinator about actions taken to comply with this recommendation):*

To harmonize the legislation on corruption-related offenses, the draft law *On Anti-Corruption Enforcement (the main draft law)* defines a corruption-related crime as an act (action or inaction) with signs of corruption for which criminal or administrative liability has been established. Thus, the disciplinary liability for corruption-related offenses is excluded.

The draft law *On Amendments and Supplements to Certain Legislative Acts on Anti-Corruption* (the associated draft law) suggests amendments into the following articles of the Criminal Code: Article 366 (Receipt of a bribe), 367 (Giving a bribe), and 253 (Commercial bribery) in terms of adding non-material benefits to the subject of bribe and commercial bribery as well as adding commitment of such actions in the interests of third parties.
The new Code of Administrative Offenses came into force on 1 January 2015. Along with property concepts, it suggests that the subject of corruption-related administrative offenses covers such concepts as receipt or provision of “benefits or services” and “advantages besides the established funding sources”.

The concept of the law policy 2010-2020 makes provisions for criminal liability of legal persons. We believe that such a decision should be adopted on a stage-by-stage basis by 2020.

“Analyze application of provisions on effective regret in administrative and criminal corruption offenses and, if necessary, introduce changes which will exclude possibility of unjustified avoidance of liability.”

During seven months of 2015, the Anti-Corruption Services dismissed 90 criminal cases on basis of Article 35.1.12 of the Criminal Procedure Code of Kazakhstan; of which 61 were dismissed because of active repentance. Altogether, 43 of the 61 cases were related to corruption crimes (Article 189.3.2 – 1 case, Article 361 – 20 cases, Article 367 – 8 cases, Article 368 – 3 cases, Article 369 – 11 cases).

Article 65.1 of the Criminal Code of Kazakhstan explains the release of liability in case a person commits a minor crime or commits an offense for the first time and shows certain behavior after its commitment. The law connects it with active repentance. The active repentance means admission of guilt for the committed crime supported with actions with due regard to the personality of the guilty person. Such actions include voluntary pleading guilty to the police, contribution to the disclosure, investigation of the crime; remedy for the damage inflicted by the crime.

Release of the criminal liability under such grounds has big practical importance and contributes to solution of crimes.

Encouraging people with release of the criminal liability on grounds of active repentance helps to hold criminally liable not only perpetrators but also organizers, accessories and instigators. This norm also encourages the guilty person to reimburse the damage inflicted by the crime.

At the same time, when the criminal prosecution is abandoned because of active repentance, the guilty person in fact is regarded as brought to responsibility that results in certain legal consequences. The use of this norm is highly important also to make the criminal law more humane along with wide application of penalties, correctional and community service that in turn reduces the number of people serving sentences in prison.

Thus, the experience has proven that release of criminal liability on grounds of active repentance is necessary for criminal proceedings and there are no pre-conditions for unreasonable release of liability.

Assessment of progress - NO PROGRESS

The provided information is insufficient to make any conclusions on the progress. The Law On Combating Corruption as well as the new Code of Administrative Offences do not impose criminal liability for corruption offences. The text of the draft law On Amending Certain Legislative Acts Concerning Anti-Corruption has not been provided. It is also not clear how it was possible to add non-material benefits to the subject of bribery and commercial bribery in Article 366 (Receiving a bribe), Article 367 (Giving a bribe) and Article 253 (Commercial bribery) of the Criminal Code of the Republic of Kazakhstan as these articles and the Code in general do not contain the definition of the term "bribery".

In regard to the analysis of application of effective regret, Kazakhstan has repeated the arguments
expressed during the third round of monitoring (See Kazakhstan Report, pages 52-54). As it was stated in the Third Monitoring Round Report, the rationale for the institute of effective regret as such was not questioned in the report. Such provisions are used in different countries and can be useful to detect and solve corruption crimes. At the same time, such provisions can be misused if they allow for broad interpretation, particularly to avoid liability. This is especially true in case of automatic relief that leaves no choice to the judge or a public prosecutor in terms of assessment of facts and evidence of the case. The giver of a bribe can use this mechanism for own protection by blackmailing or putting a pressure on the bribetaker to obtain further benefits or by reporting about the offence long after its commitment when he/she becomes aware that the law enforcement agencies can detect the crime on their own.

Kazakhstan has analysed how provisions on effective regret are applied in administrative and criminal procedures and even introduced certain amendments to the new Criminal Code and the Code of Administrative Offences. However, it has not addressed specific comments from the Second and Third monitoring round reports, and the recent analysis does not cover these issues either.
Recommendation 2.3. Definition of a public official

- To harmonise provisions of the Criminal Code which determine the subjects of criminal liability for corruption crimes. To ensure application of the legislation on liability for corruption offences to all persons assigned with state powers.
- To envisage criminal liability of foreign public officials for all bribery offences and also to provide definition of such foreign public officials in accordance with international standards.


Measures taken to implement this recommendation

Government information
According the RK General Prosecutor’s Office, the Criminal Code provisions that identify persons who are liable for corruption would be further harmonized in line with the draft law “On Corruption Counteraction” and concurrently with the improvement of criminal legislation as provided for by the draft Plan for the implementation of the Anti-Corruption Strategy.

For instance, it would be necessary to study the issue of including jurors in the list of persons liable for corruption crimes, complete with the scope of their liability for such crimes, as is mentioned in the Third Round Monitoring Report.

Assessment of progress – LACK OF PROGRESS

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Measures taken to implement this recommendation
(a summary by the National Coordinator about actions taken to comply with this recommendation):

To harmonize the main draft law On Anti-Corruption Enforcement with the Criminal Code, the provisions of the main draft law suggest that the persons liable for commitment of corruption-related offenses include the persons authorized to perform government functions and persons with the equal status. Thus, all persons having government authorities shall share the liability for commitment of corruption-related crimes.

According to the General Prosecutor’s Office of Kazakhstan, experts believe that the problem with definition of “a person performing management functions in commercial or other organization” remains unaddressed. In opinion of the General Prosecutor’s Office, such a conclusion is wrong as Article 13.3 of the Criminal Code suggests that if one and the same action shows elements of a general and special provision of corresponding articles in the Criminal Code, the criminal liability will be established according to the Special Part of the Criminal Code that includes special provisions.

The concepts “administrative and economic” functions are in fact the same in the Criminal Code and the Law On Combating Corruption. The concepts “organizational and administrative functions” differ only in wording but the meaning is identical. Experts also believe that the definitions of the concepts specified in the Law On Combating Corruption have not been aligned with the new Criminal Code. However, we believe that harmonizing them in this part is redundant.
In general, we believe that harmonization of the provisions of the Criminal Code that define parties liable for corruption must continue as part of efforts of developing the draft law on anti-corruption enforcement and improving the criminal legislation. In particular, it would be necessary to consider including jurors in the list of persons liable for corruption crimes and establish the scope of their liability for such crimes as mentioned in the Third Round Monitoring Report.

“To envisage criminal liability of foreign public officials for all bribery offenses and also to provide definition of such foreign public officials in accordance with international standards.”

Article 2 of the main draft law On Anti-Corruption Enforcement establishes that the law will cover officials of foreign countries and international organizations operating in Kazakhstan or entering into relations with officials, government agencies, physical and legal persons of Kazakhstan outside its territory. Also, Article 366 of the Criminal Code defines an official of a foreign country or an international organization as a bribe receipt party.

The General Prosecutor’s Office points out that the UN Convention against Corruption gives a clear definition that a foreign public official shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise.

Clause 30 of the Legislative Guide for the implementation of the United Nations Convention against Corruption states that it is not necessary for States parties to incorporate into their legislation the Convention definitions. States parties are encouraged to take these definitions also into account and to ensure that their national legislation is compatible with them.

Given the above, the Criminal Code does not define “an official of a foreign country or an international organization”. The provisions of the Convention in such cases will be applied directly.

Assessment of progress - NO PROGRESS

In fact Kazakhstan is challenging the conclusions of the third round monitoring report which have been approved, inter alia, with the consent of Kazakhstan. Consideration of the comments to the Monitoring Report is not the subject of the Progress Update and thus they cannot be taken into account.
Recommendation 2.4.-2.5. Sanctions, confiscation

- To analyse the application of the sanctions established by the 2014 Criminal Code for corruption offences from the point of view of their effectiveness and proportionality to crime committed.
- To provide for mandatory confiscation for all corruption offences. To consider enforcing the new confiscation provisions of the 2014 Criminal Code ahead of the schedule.
- To provide for the confiscation from those third parties who knew or must have known about the criminal origins of the property in question, together with protection for the bona fide buyers of the property to be confiscated.


Measures taken to implement this recommendation

Government information

Four new codes of law came into force in 2015: the Criminal Code, the Criminal Procedure Code, the Penitentiary Code and the Code of Administrative Offenses. The following innovations are aimed at enhancing liability for corruption crimes:

- prohibition of probationary sentencing for corruption crimes;
- prohibition to discharge from criminal liability persons who commit corruption crimes on the grounds of conciliation of the parties;
- criminal sanctions in the form of penal fines in amounts multiple of the amount of bribe in line with international standards. Failure to pay a penal fine in the amount set by the court automatically entails the replacement of the fine with imprisonment;
- mandatory confiscation of property with respect to all types of corruption crimes.

Furthermore, the confiscation rule applies to criminally obtained property and to property acquired at the expense of illicit funds, which the sentenced defendant has assigned in the ownership of other persons. Another sanction for corruption crimes provides for a life-long prohibition to hold certain positions in government agencies and organizations

Assessment of progress – NO PROGRESS

As was noted in the Third round monitoring report, in the new Criminal Code confiscation is provided as an optional, possible sanction for the main offence of active bribery, intermediation in bribery, receiving of unlawful reward. Therefore mandatory confiscation is not provided for all corruption crimes, despite Kazakhstan statement in the progress update.

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Measures taken to implement this recommendation

To analyse the application of the sanctions established by the 2014 Criminal Code for corruption offences from the point of view of their effectiveness and proportionality to crime committed

The General Prosecutor’s Office of Kazakhstan notes that the new Criminal Code took effect on 1 January 2015, so it stands to reason to analyze the application of the sanctions for corruption offenses from the point of view of their effectiveness and proportionality to the crime committed in the end of 2015, i.e. at least after
one year of application. We invite the Supreme Court, the General Prosecutor’s Office and Agency for Civil Service and Anti-Corruption Enforcement carry out this work jointly

To provide for mandatory confiscation for all corruption offenses. To consider enforcing the new confiscation provisions of the 2014 Criminal Code ahead of the schedule.

The General Prosecutor’s Office of Kazakhstan notes that the mandatory confiscation for all corruption-related crimes is better to be studied in the longer term with due regard to the national legislation that individualizes punishment and normally imposes confiscation of property for acquisitive crimes. As to the enforcement of the new confiscation provisions of the Criminal Code ahead of the schedule, we believe it is not sensible to enforce these provisions ahead of the schedule until special conditions are in place: introduction of the universal declaration of incomes and declaration of expenses for civil servants.

To provide for the confiscation from those third parties who knew or must have known about the criminal origins of the property in question, together with protection for the bone fide buyers of the property to be confiscated.

The General Prosecutor’s Office of Kazakhstan notes the current criminal and criminal procedure laws establish that if the investigation proves that a property received through crime was handed over to third parties who knew about its criminal origin, such property shall be confiscated. In most cases, the norm is applied in the course of law administration when facts of legalization of criminal incomes have been established.

According to the Ministry of Justice of Kazakhstan, the Round 3 Monitoring Report outlines that Article 206-2 of the Code of Administrative Offenses (“Violations of Financial Controls”) does not specify liability for submission of incomplete or falsified declarations of assets and income, whereas Article 9.5-1 of the Law On Combating Corruption stipulates that the deliberate failure to submit or submission of incomplete or falsified declarations of assets and income and repeatedly commitment of such actions are subject to administrative liability. The report also indicates that this drawback is not addressed in the new Code of Administrative Offenses. To implement this recommendation, the Law On Amendments and Supplements to the Code of Administrative Offenses of the Republic of Kazakhstan of 29 December 2014 has changed the first paragraph of Article 274.1 “Violation of Financial Control Measures” of the Code of Administrative Offenses as follows: “1. An intentional failure to submit or submission of incomplete or falsified declarations and information about incomes and property subjected to taxation by a civil servant, a person dismissed from civil service due to negative motives and a spouse of the such persons within the time frame established by the legislation of the Republic of Kazakhstan...”.

Thus, this part of the recommendation has been fulfilled.

Lack of differentiation and clear regulation of how the criteria of Article 67 “Release of administrative liability on grounds of effective regret” of the Code of Administrative Offenses of 30 January 2001 should be applied resulted in different interpretation and practical application of this norm in similar cases. Therefore, the institute of release of liability on grounds of effective regret has been cancelled in the new Code of Administrative Offenses.

Assessment of progress - NO PROGRESS

Information on liability for providing incomplete and false asset declarations is not related to the implementation of this recommendation.
Recommendation 2.6. Immunities and statute of limitations

- To improve procedures for lifting immunity from criminal prosecution, in particular, to specify in the legislation clear procedures for taking such decision by the President with the participation of the Supreme Judicial Council in established cases, to specify the terms for consideration of issues related to lifting of immunity by the relevant authorities. To limit immunities to acts committed in the course of execution of official duties.

- To consider increasing the statute of limitations for bringing to administrative liability for corruption offences. To ensure consistency among provisions of laws concerning suspension of terms for imposing disciplinary and administrative sanctions.


**Measures taken to implement this recommendation**

**Government information**

Statistical data: In 2014, 7 judges were convicted for corruption crimes (under Articles 311 – 5, 312 – 1 and 177(3)(d) of the RK Criminal Code - 1).

**Assessment of progress – NO PROGRESS**

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**Measures taken to implement this recommendation**

To improve procedures for lifting immunity from criminal prosecution, in particular, to specify in the legislation clear procedures for taking such decision by the President with the participation of the Supreme Judicial Council in established cases, to specify the terms for consideration of issues related to lifting of immunity by the relevant authorities. To limit immunities to acts committed in the course of execution of official duties.

The Constitution provides for the immunity of the MPs, Chairman or members of the Constitutional Council, judges and the General Prosecutor without separating the periods of execution or non-execution of their duties (excluding Article 47.2 of the Constitution). Therefore, extending or reducing the scope of immunity will result in the need to amend the Constitution of the country.

We believe that the current manner of lifting the immunity is sufficiently regulated and there is no need to embed in the law the manner of making such a decision by the President.

Under Article 79 of the Constitution, judges may not be subjected to arrest, detention or criminal prosecution without consent of the President of the Republic of Kazakhstan based on the opinion of the Supreme Judicial Council of the Republic of Kazakhstan, or in the specific case established by Article 55.3 of the Constitution, where the consent of the Senate of the Parliament of the Republic of Kazakhstan is required, except in cases of apprehension at the scene of crime or grave and particularly grave crimes.

The same constitutional provision is reiterated in Article 498 of the Criminal Procedure Code. Additionally, Article 498.3 of the Code stipulates that to obtain consent to have a judge subjected to criminal prosecution, arrest, or detention, the General Prosecutor of the Republic of Kazakhstan must make a plea to the President.
of the Republic of Kazakhstan, and in cases stipulated in Article 55.3 of the Constitution, to the Senate of the Parliament of the Republic of Kazakhstan. This plea is made before the judge is charged, sanctioned to arrest, or arraigned to make appearance before a criminal investigation authority.

To consider increasing the statute of limitations for bringing to administrative liability for corruption offences. To ensure consistency among provisions of laws concerning suspension of terms for imposing disciplinary and administrative sanctions

The General Prosecutor’s Office of Kazakhstan informs the new CAO did not change the statute of limitation for holding parties at fault administratively liable for corruption offenses. Under Article 69.3 of the Code of Administrative Offenses, an individual may not be prosecuted under administrative liability for corruption offense after one year of the commission of the offense, and a legal entity, after five years. Experience shows that there are really no reasons for increasing the limitations. In this regard, we believe it is not sensible at this stage to review the statute of limitations established by the Code.

We point out that the disciplinary liability for corruption offenses was cancelled by the main draft law.

Assessment of progress - NO PROGRESS

In fact Kazakhstan is challenging the conclusions of the third round monitoring report which have been approved, inter alia, with the consent of Kazakhstan. Consideration of the comments to the Monitoring Report is not the subject of the Progress Update and thus they cannot be taken into account.
Recommendation 2.7. International co-operation and mutual legal assistance

- To provide in the legislation measures for direct asset recovery as envisaged by Article 53 of the UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention.


Measures taken to implement this recommendation

Government information

These procedures are clearly defined in Articles 577, 601, 608 of the new Criminal Procedure Code. Article 608 of the CPC establishes court proceedings with respect to the execution of a sentence or of a decision of a foreign court, including those pertaining to the confiscation of property located in the Republic of Kazakhstan, or of its money equivalent. The Third Round Monitoring Report mentions that these provisions are compliant with Articles 54 and 57 of the UN Convention Against Corruption.

Assessment of progress – NO PROGRESS

Third round monitoring report noted that provisions of the new Criminal Procedure Code comply with Article 57 UNCAC but do not comply with Article 53 UNCAC. Provisions of the Criminal Procedure Code which Kazakhstan refers to have already been studied in the monitoring report. Kazakhstan did not provide any new information in this regard.

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Measures taken to implement this recommendation

To provide for measures in the legislation for direct asset recovery as envisaged by Article 53 of the UN Convention against Corruption, as well as procedure for and conditions of recovery and disposal of assets in accordance with Article 57 of that Convention.

These procedures are clearly defined in Articles 577, 601, 608 of the new Criminal Procedure Code. Article 608 of the Code establishes court proceedings with respect to the execution of a sentence or of a decision of a foreign court, including those pertaining to the confiscation of property located in the Republic of Kazakhstan, or of its money equivalent. The Third Round Monitoring Report mentions that these provisions are compliant with Articles 54 and 57 of the UN Convention against Corruption.

Experts say that having developed a new version of the Code, Kazakhstan has implemented the recommendation (partially) in terms of the need to implement Article 57 of the UN Convention against Corruption (“Return and Disposal of assets”). However, provisions of Article 53 of the UN Convention against Corruption (Measures for direct recovery of property) have not been reflected in the new Criminal Procedure Code.

According to Article 53 of the Convention (the norm is mandatory, not optional), each State Party that has ratified the Convention shall take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of a
corruption offense, money laundering; take such measures as may be necessary to permit its courts to order those who have committed offenses to pay compensation or damages to another State Party that has been harmed by such offenses; and take such measures as may be necessary to permit its courts to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offense established in accordance with this Convention.

We believe that the provisions of Article 53 of the Convention that suggest an opportunity to initiate civil actions cannot be included into the Criminal Procedure Code. The opportunity to apply subparagraphs a) and b) of Article 53 of the Convention is stipulated in the Civil Procedure Code of Kazakhstan, namely Article 413, 416 of the Code. The provision of the subparagraph c) in Article 53 of the Convention is implemented in provisions by Articles 425 and 425-1 of the Civil Procedure Code.

Section 5 of the Civil Procedure Code regulates the international procedure. Pursuant to Article 413 “Procedure rights and duties of foreigners” the “foreigners and stateless persons, foreign and international organizations (hereinafter – foreign persons) have the right to apply to courts of Kazakhstan for protecting their violated or contested rights, freedoms and lawfully protected interests”.

Foreign nationals exercise procedure rights and perform procedure duties on par with nationals and organizations of the Republic of Kazakhstan. Court proceedings in trials on cases that involve foreign nationals care carried out in accordance with the Code and other laws. Also, neither the criminal law nor the civil procedure law directly prohibits to exercise the right of a foreign country to initiate an action to establish title to or ownership of property acquired through the commission of an offense. The definition of “person” in the Criminal Procedure Code includes foreign persons as well (Article 7 of the Code “Explaining Certain Concepts in this Code” defines the concept “representatives”. They include persons authorized to represent legal interests of a victim, civil claimant, private prosecutor, civil defendant in pursuance of law or contract).

Given the Round 3 recommendations, further implementation of Article 53 of the Convention into the national legislation can be continued in the future on basis of best global practices. According to the Ministry of Justice of Kazakhstan, the new Criminal Code has significantly toughened criminal liability for corruption crimes.

In particular, now the statute of limitation for criminal liability is not applied to corruption offenders. In this regard, to implement this recommendation, resolution no. 44-p of the Prime Minister of Kazakhstan dd. 26 May 2015 established an interdepartamental group for improvements of administrative offense legislation. The task group will consider whether it stands to reason not to apply the statute of limitation for brining to administrative liability for corruption offenses.

Assessment of progress - NO PROGRESS

In fact Kazakhstan is challenging the conclusions of the third round monitoring report which have been approved, inter alia, with the consent of Kazakhstan. Consideration of the comments to the Monitoring Report is not the subject of the Progress Update and thus they cannot be taken into account.

The third round monitoring report specified that provisions of the new Criminal Procedure Code correspond to Article 57 but not to Article 53 of the UN Convention. The provisions of the new Criminal Procedure Code to which Kazakhstan refers have already been analysed in the Monitoring Report. Kazakhstan has not provided any new information on the issue.
Recommendation 2.8.-2.9. Application, interpretation and procedure, specialized anti-corruption law enforcement bodies

- To introduce specialization of prosecutors to supervise investigations and to press charges for corruption crimes during trial.
- To ensure free access via Internet to regularly updated detailed statistic data on criminal and other corruption offences, in particular, on the number of reports of such offences, number of registered cases, the outcomes of their investigation and criminal prosecution, and the outcome of trial (among other things, data on sanctions imposed, and categories of the accused depending on their position and place of work). The above data should come together with analysis of current trends and causes of changes in trends.


Measures taken to implement this recommendation

Government information

According to the General Prosecutor’s Office, the idea of introducing prosecutorial specialization by the functions of supervision over the legality of pre-trial investigation and of representation of the State interests in cases of corruption will be eventually and unfailingly examined.

According to the General Prosecutor’s Office, reports on the status of corruption-related crimes and offenses can be provided with the consent of the General Prosecutor of the Republic of Kazakhstan.

Under Decree #66 of the General Prosecutor, dated 26.06.2013, information marked “for official use only”, which includes corruption-related data, is not subject for disclosure.

At the same time, the Unified Register of Pre-Trial Investigations (the Register) was launched in 2015; the Register is an automated database that collects data on the grounds for initiating pre-trial investigations under Article 180(1) of the RK CPC, on relevant procedural decisions, investigative activities, progress of criminal investigations, informers and parties to the criminal proceedings. To enhance the transparency of and control over case investigation, a simultaneous access to a case file would be allowed for the case investigator, his/her superior officer, and a supervising prosecutor (see Attachment).

Assessment of progress – NO PROGRESS

Access of investigator, his superior or supervising prosecutor to information in each case cannot be seen as a way of implementing this recommendation, as the latter concerns public access to statistical data and not case-specific information. The recommendation is about free access for everyone to relevant statistics including analysis of the trends. No steps were taken to implement recommendation with regard to specialisation of prosecutors.

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Measures taken to implement this recommendation

This recommendation is implemented by means of the post of a procedure prosecutor introduced by the Criminal Procedure Code as he/she supervises a specific criminal case (including corruption cases) from the
start of a pre-trial investigation to the support of public prosecution in court (Article 7.35 of the Code): “a procedure prosecutor is a prosecutor authorized by the head of the prosecution office for supervision of the enforcement of criminal case laws according to the present Code”. Article 193.3 of Code states: “A procedure prosecutor supervises a criminal case from the start of a pre-trial investigation and takes part in a first-instance court as a public prosecutor”.

According to Instructions “On organization of supervision by a procedure prosecutor” approved by Order No.163 of the General Prosecutor on 29 December 2014, a procedure prosecutor can be appointed by the head for a specific criminal case from amongst employees who supervise the law compliance on the pre-trial stage of the criminal process. Today it is a common practice to appoint procedure prosecutors for important and especially difficult criminal cases regardless of the category. The first reason is the limited number of personnel. In future, as the personnel issues are addressed, the plan is to determine certain categories and increase the number of cases to be supervised and attended in court by procedure prosecutors.

Also, there is a unit for law compliance supervision in pre-trial proceedings on corruption and economic criminal offenses within the Second Department of the General Prosecutor’s Office that supervises investigation of criminal cases in this category that are under control of the General Prosecutor’s Office.

“To ensure free access via Internet to regularly updated detailed statistic data on criminal and other corruption offenses, in particular, on the number of reports of such offenses, number of registered cases, the outcomes of their investigation and criminal prosecution, and the outcome of trial (among other things, data on sanctions imposed, and categories of the accused depending on their position and place of work). The above data should come together with analysis of current trends and causes of changes in trends.”

Today the reports on the status of corruption-related crimes and offenses can be provided with the consent of the General Prosecutor of the Republic of Kazakhstan. Under order No.66 of the General Prosecutor dated 26 June 2013, the information marked “for official use only”, which includes corruption-related data, is not subject for disclosure.

At the same time, the Supreme Court of Kazakhstan has a website on court decisions made in all types of criminal cases where any person can check online an offense and a sentence period served by a certain person.

**Assessment of progress - PROGRESS**

Some progress has been made in terms of introduction of specialization for public prosecutors supervising investigation and court prosecution of corruption cases. It is recommended to record corruption offences as a separate category and assign procedural public prosecutors responsible for such crimes (or a structural unit of the General Prosecutor's Office). At the same time it is recommended that Kazakhstan should present the structure of the General Prosecutor's Office together with the next intermediary report to support the conclusion about the progress on the issue.

No progress with regard to publication of criminal offense statistics.
Pillar III. Prevention of corruption

Recommendation 3.2. Integrity of public service

**Legal framework.** To revise the existing legislative differentiation between administrative and political civil servants, in particular to substantially decrease the list of political servants, in order to ensure professionalism and real protection of administrative civil servants as well as law enforcement officers from political influence.

**Recruitment and promotion.** To continue reforming the system of recruitment and promotion of civil servants by establishing clear criteria for evaluation based on personal merit and qualifications; to eliminate the possibility of occupying administrative positions without a competitive selection; to envisage in the law a procedure for merit-based promotion and procedure for carrying out internal competitions.

**Remuneration.** To set clear statutory limitations on the amounts and frequency of additional remuneration (awards), which is not included in the basic fixed salary, and to envisage criteria for such awards in order to limit discretionary powers in taking decisions on such issues and to ensure transparency of such payments.

**Conflict of interest.** To develop and broadly disseminate among employees of state authorities practical guides on prevention and resolution of conflict of interest with taking due account of the specifics of work of certain authorities. To introduce a practice of consulting employees with respect to observance of the regulations on conflict of interests, requirements of incompatibility and other restrictions both at the level of separate authorities and on a centralized basis (by the authorized body in the field of civil service). To carry out monitoring and analysis of implementation of the regulations on conflict of interests and restrictions in the civil service.

**Internal control.** To strengthen preventive work of the internal control (security) units, including work on raising awareness of anti-corruption regulations, assistance in prevention and resolution of conflicts of interests. To ensure methodological support of and guidance to such units.

**Declaration of assets.** To amend legislation and practice of asset and income declarations in order to ensure their effectiveness, in particular, to envisage verification of part of declarations (for example, of high-level administrative civil servants, political civil servants, judges, prosecutors, employees of bodies which are most prone to corruption). To envisage mandatory publication of data from declarations of the high-level officials, political servants, judges, as well as availability of all other declarations of public servants upon request.

**Codes of ethics and anti-corruption training.** To define in the Code of Ethics the observance of the rule of law principles and ensuring professionalism of civil service as the main duty of civil servants; to revise provisions on obligatory refutation of public accusations; to ensure regular and practical training on observance of the codes of ethics (codes of conduct). To create a system of annual education and continuous training on the issues of preventing and combating corruption with the focus on the practical implementation of the legislation.

**Restrictions in receiving gifts.** To develop and disseminate detailed guidelines on the implementation of provisions on gifts in order to clarify established restrictions and liability for their violation. To carry out monitoring of the implementation of provisions on gifts and to develop proposals on their improvement.

**Protection of whistle-blowers.** To stipulate in the legislative acts detailed provisions for the protection of whistle-blowers, in particular, effective guarantees of their protection from oppression and persecution. Review provisions of the Code of Administrative Offences, which establish administrative
liability for reporting false information about corruption, as the corruption facts are difficult to prove and information about them can be purposefully presented as intentional disinformation.


Measures taken to implement this recommendation

Government information

The legal framework

Amendments to the Law «On Public Service» and the follow-up regulations came into force on 26.03.2013, including the new Register of Public Service Posts (approved by Decree #523 of the President of the Republic of Kazakhstan, dated 07.03.2013). It established a classification of administrative public officers, and, for instance, grouped public officials of the managerial level into Corps «А». The staff of public policy officials was reduced from 3,272 to 410 persons (8 times).

The staff of law enforcement agencies had to undergo requalification tests, and as a result, the number of administrative public officers in law enforcement agencies increased more than 2.8 times (from 3,151 to 9,009 persons). Thus, more than 5,500 employees of law enforcement agencies received the status of administrative public officers who are, by law, protected from any political influence and changes within the body of public policy officials.

Recruitment and professional advancement

Under the amendments to the Law «On Public Service» (which were introduced by the Law «On the amendments and amplifications to certain legislative acts of the Republic of Kazakhstan on public service», dated 14.12.2012), the posts of administrative public officers are divided into 2 corps: Corps «А» - administrative public offices of the managerial level, and Corps «B». Administrative public offices are manned on a competitive basis, with a few exceptions.

The amendments to the Regulation on the Procedure for Holding a Public Office have minimised the possibility of non-competitive appointments by way of transfer. Such transfers would only happen within a government agency, or within its department, including territorial divisions, or between them, with a few exceptions.

The Law «On Public Service» stipulates that a public officer has a right to professional advancement according to his/her qualification, competence, merits and good faith performance of his/her official duties. Professional advancement of administrative public officers of Corps «B» depends on their qualification, competence, merits, good faith performance of his/her official duties, and professional performance in the previous position.

Government agencies carry out annual evaluations of the performance of administrative public officers to assess the effectiveness and quality of their work. With regard to public officers of Corps «А», the performance assessment results serve as the grounds for decisions on bonuses, training, career planning, and rotation.
If a public officer of Corps «B» receives two successive “unsatisfactory” grades within three years, that would serve as the ground for reviewing his/her professional rating. Those of public officers who may receive negative ratings would be reduced in or dismissed from office.

Thus, the effective legislation excludes the possibility of access to the public service on a non-competitive basis. Professional advancement of a public officer depends on his/her personal merits and qualities, and performance rating.

_Salaries and compensation_

Under Decree #304 of the President of the Republic of Kazakhstan «On certain measures to facilitate the administrative reform», dated 29.03.2007, and Regulation #1127 of the Government of the Republic of Kazakhstan «On the approval of the Rules for the payment of bonuses, financial aid and markups to the official salaries of employees of the government agencies of the Republic of Kazakhstan from the state budget», dated 29.08.2001, there were adopted rules for the payment of bonuses (use of the national language, extension of official duties, marriage, birth of a child) and the procedure for introducing salary markups for employees at the expense of salary budget savings due to available vacancies. Under the specified regulations, bonus amounts and bonus payment frequency are determined by heads of government agencies at their sole discretion and in accordance with the budgetary program (subprogram) funding plan in the part relating to the maintenance costs of relevant agencies.

_Codes of conduct and anti-corruption training_

On 01.10.2013 the RK President signed a decree «On the amendment of Decree #1567 of 03.05.2005 «On the Code of Honor of Public Officers of the Republic of Kazakhstan». The new amendments cite compliance with the rule-of-law principles and professional performance of government services as the main duties of public officers. The regulation on a mandatory disproof of public allegations has been reviewed. The Agency has organized, on an ongoing basis, the training and education of government employees on compliance with the Code of Honor and anti-corruption efforts. The training and education of government officers on matters of professional ethics and anti-corruption policy will be continued.

_Conflict of interests. Gifts policy_

The Head of the RK Agency for Public Service and Anti-Corruption Enforcement has approved an Action Plan to implement the instructions issued at the Agency’s extended session on 26.11.2014. Under Clause 14 of the Action Plan, the Agency’s Department of Public Service and Corruption Prevention has to draft Conflict of Interest Guidelines and a Gifts Policy by 25.12.2015.

_Protection of whistle-blowers_

Government Regulation №1077 of 23.08.2013, approved the Rules for rewarding persons who report facts of corruption offenses or otherwise facilitate the anti-corruption efforts. These Rules were prepared in line with Clause 2-1 of Article 7 of the RK Law «On Anti-Corruption Measures». Under the Rules, persons who report facts of corruption offenses or otherwise facilitate the anti-corruption efforts are entitled to rewards in the form of a lump-sum payment. In view of the abolishment of the Agency for Economic and Corruption Crimes, which previously coordinated activities in the area, the Agency for Public Service and Anti-Corruption Enforcement is now responsible for the monitoring of the amendment of these Rules. Furthermore, the new Anti-Corruption Strategy proposes to increase the amount of remuneration to whistleblowers so as to more actively engage citizens in such activities.
Assessment of progress – NO PROGRESS

According to the information provided, the Civil Service and Corruption Counteraction Agency plans to develop and disseminate guidelines on conflict of interests and gifts regulations, as well as to review amount of reward to persons who report about corruption offences and assist in the anti-corruption work otherwise (as a percentage from the damage redressed). Also, as a part of the 2011-2015 Anti-Corruption Strategy, it is planned to implement gradual asset and income disclosure of all natural persons.

However these are just plans, not implemented in practice, which does not allow to make conclusion about progress achieved.

No information was provided on progress in the other parts of the recommendation.

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Legal framework

Amendments to the Law On Civil Service and regulations thereunder became effective on 26 March 2013. Therefore, a new Register of civil servant posts (as approved by Presidential Decree No.523 of 7 March 2013) came into force. The Register categorized administrative civil servants, in particular, it singled out Corps A management-level civil servants.

The established number of political civil servants was reduced eightfold from 3,272 to 410. Law enforcement agencies were re-appraised with a view to increase the number of administrative civil servants in law enforcement agencies by more than 2.8 times from 3,151 to 9,009).

Therefore, over 5,500 law enforcement officers were categorized as administrative civil servants protected by law from political influence and change of political civil servants.

Under the Kazakhstan's 100 Concrete Steps initiative called the Plan of the Nation, the country developed a new draft law On Civil Service as part of the first of five institutional reforms for building modern, professional and independent institutions.

The draft law suggests that powers of ministers and secretaries-general of central executive government agencies should be differentiated to ensure independence of public institutions. In particular, ministers will be responsible for political management, shape public policy and strategic goals in respective areas and interact with the Parliament in terms of lawmakers.

In turn, secretaries-general will be responsible for administrative management of a government agency and implement decisions of political servants. In this case, chiefs of staff in regions will get their status increased to the one of secretaries-general. This move will help to reduce political influence on the administrative civil service, enhance its independence, ensure succession and stability of staff policy in government authorities.

Recruitment and promotion

Under the new draft Law of Kazakhstan On Civil Service, current civil service model will turn into a career-based model: a civil service candidate is recruited first for a low-level position; a civil servant may be promoted if he/she has worked at low-level posts.
Recruitment for the civil service. Newcomers will start their professional career from low-level positions. Candidates are selected through a primary three-stage selection procedure:
Stage 1 - testing knowledge of laws and identifying competencies in the Agency;
Stage 2 - appraising candidates in the Agency through the study of their soft skills and issuing opinions;
Stage 3 - interviewing a candidate in an employing agency to check his/her specialist knowledge.
Civil servants will be promoted on the basis of the in-house competition according to simplified procedures. The competition will be first held inside an agency. If there are no winners, the competition will be held among civil servants across all government agencies.

The draft law cancels the current mechanism of transfer of Corps B servants (except assistants, advisers and press secretaries of the senior officials) and the Corps B succession pool.

Recruitment and promotion will follow the competency-based approach. A candidate for any position will have to meet competency criteria apart from working experience and education requirements. The draft law introduces a Uniform Competency Framework including basic (depending on the level of a position) and differentiated (depending on a function) competencies of civil service positions. These mechanisms will facilitate a merit-based promotion.

The Law On Civil Service as amended by the Law dd. 14 December 2012 On amending certain regulatory acts of the Republic of Kazakhstan divide administrative civil posts into two corpses: corps A (administrative senior-level public offices) and Corps B. A candidate may take an administrative public office on a competitive basis with some exceptions. Amendments to Regulations on serving in public offices have extensively reduced chances to appoint candidates on a non-competitive basis through transfers. Transfers will take place inside an agency, its representative and regional offices as well as between them with some exceptions.

The Law On Civil Service establishes that a civil servant shall be entitled to promotion subject to his/her qualifications, skills, merits and good-faith performance of duty.

Corps B administrative civil servants can be promoted subject to their qualifications, skills, merits, good-faith performance of duty and performance in the last office.

A government agency shall conduct an annual performance appraisal for administrative civil servants to see their efficiency and quality of work. The performance appraisal of Corps A servants shall be a ground for decisions on rewards, training, career planning and rotation. If a Corps B servant is appraised unsatisfactory for two times during the last three years, he/she will be subject to a competency test. Civil servants who failed the competency test shall be down-graded or dismissed. Therefore, laws eliminate the risk of recruiting civil servants on a non-competitive basis. Promotion shall be based on merits, skills and performance appraisal of a civil servant.

Remuneration
The draft Law of Kazakhstan On Civil Service adopts a performance-based remuneration system. For civil servants, it means meeting annual individual plans; for government agencies, it involves meeting strategic plans; for ministers and akims, it means meeting certain criteria of quality of civil services, quality of living and investment raising; for Government members, it is meeting integral macroeconomic indicators.

On 1 January 2017, a points-factor evaluation scale will be introduced to take into account not only the role hierarchy, but a real workload and contribution of the staff to achievement of strategic goals and objectives of a government agency.
The scale provides an academic scientific factor-based approach to develop a uniform instrument for measuring remuneration on the basis of competencies.

Since 1 January 2018, bonuses will be paid to all civil servants (political offices, corpses A and B) on the basis of their performance appraisal. The Head of State shall establish KPIs for political servants in government authorities with strategic plans.

Where there are no plans, KPIs shall be established by: the Chief of Staff in the Presidential Administration for those accountable to the President; the Prime Minister for those within the Government's structure. Corps B servants will have their quality of work evaluated on the basis of annual individual plans. Senior officials will be entitled to decide on the staff optimization within the established staff number. Any saving on the payroll fund and other administrative expenses (lease of premises, transport services, secondments, communication services, etc.) shall be allocated for salary increments and bonuses to be paid to remaining civil servants.

*Internal control*

A respective control system will be in place to supervise compliance by the civil servants with ethical standards. The system will include actions of an authorized authority in the field of civil service, introduction of an office of the ethics commissioner, and actions of a respective government authority. The ethics commissioner shall be responsible for:
- preventing ethical violations, including such measures as training and raising awareness of civil servants about compliance with civil service laws of the Republic of Kazakhstan, anti-corruption and professional ethics;
- protecting interests of civil servants, including measures to restore legitimate rights and interests of civil servants if they were infringed;
- advising civil servants about application of ethical standards in particular situations and about adherence to ethical standards not established by law;
- building a positive psychological environment in a team, including encouraging a culture of relationship between civil servants, which meets universal moral principles.

To this end, it is suggested that a full-time office of an ethics commissioner be introduced in administrations of central government authorities, administrations of akims in oblasts, Astana and Almaty cities.

In law enforcement agencies, duties of an ethics commissioner shall be discharged by employees responsible for morale building and preventing violations by officers (the internal security service).

The Agency for Civil Service and Anti-Corruption Enforcement or its regional offices shall coordinate activities and provide methodological support to ethics commissioners. The above measures seek to build more trust of the people in the government, encourage the culture of relationship in the civil service, and prevent violations of anti-corruption laws and professional ethics.

*Codes of ethics and anti-corruption training*

The President signed a decree on 1 October 2013 "On amending Decree No.1567 dd. 3 May 2005 “On the code of honor of civil servants of the Republic of Kazakhstan". The amendments established that observance of the rule of law and professionalism of the civil service should be key duties of civil servants. The amendments revised regulations on obligatory refutation of public accusations.
The Agency regularly conducts training and ensures professional development of civil servants in terms of observance of the code of ethics, corruption prevention and counteraction.

The 100 Concrete Steps programme sets an objective to develop professional civil servants. In particular, as part of steps 12 and 14 of the initiative, the following regulations are being developed: draft Law On Civil Service, draft Code of Ethics in the Civil Service and Regulations on Ethics Commissioners.

Therefore, Kazakhstan is building a two-level system of ethical standards of civil servants consisting of the Law On Civil Service and the Code of Ethics in the Civil Service.

The draft Law On Civil Service regulates anti-corruption conduct of civil servants, professional ethics compliance, standards of conduct in a conflict of interests, disciplinary offenses which discredit the civil service and establishes the liability for violations of these provisions.

Additionally, a draft Code of Ethics in the Civil Service is being developed. It consists of two parts: general provisions and special provisions. General provisions include main regulations while special provisions give detailed standards of conduct of civil servants when contacting citizens, colleagues, senior officials, provide an algorithm of actions for public speaking and media relations and the conduct in off-duty time.

To improve the morale of civil servants, the ethics system outlines principles of the civil service, which include lawfulness (the rule of law), efficiency, effectiveness, openness in activities of government authorities (professionalism) and continuing training and competency development.

To ensure professionalism of civil servants, staff takes training, retraining and skills upgrading courses an ongoing basis, such courses to cover corruption prevention and counteraction among other topics. Moreover, additional training and counselling will be held by ethics commissioners on compliance with ethical standards.

Conflicts of interests
All civil servants, political and administrative, shall be subject to the Law On Civil Service and the Code of Ethics in the Civil Service. These regulations shall govern anti-corruption actions of civil servants, ethics compliance requirements, conduct standards in a conflict of interests, disciplinary offenses discrediting the civil service and provide for liability for violations.

Declaration of assets
Mandatory publication of information from declarations of public officials, political servants and judges is established by the key draft law. The list of persons to whom the publication requirement applies shall include senior officers (officials) in the quasi-public sector.

According to the Presidential Administration, this requirement will become effective from 2020. In terms of requested access to all remaining declarations of civil servants, this provisions will be set out by a draft law On Access to Information.

It is worth adding that the Government of the Republic of Kazakhstan has developed and is now agreeing on a draft law On amending certain regulatory acts of the Republic of Kazakhstan on declaring income and assets of Kazakhstan’s citizens and persons with a temporary residence permit.

The draft law seeks to ensure full control over declaration by all physical persons of their incomes and assets for taxation purposes and for detecting tax evaders, without restricting the scope of persons. The draft law provides for:
- filing a declaration of assets and obligations (to record data about property and savings of physical persons);
- filing a declaration of incomes and property (covering incomes for a reporting period and information about alienation and/or acquisition of property/rights and/or where transaction therewith are subject to state or other registration). This move will help to detect any mismatch between incomes and expenses of physical persons, including civil servants.

In addition, a stage-by-stage transition is in place for particular taxpayers to ensure gradual introduction of the declaration system.

At Stage 1 (2017), a declaration of assets and obligations shall be filed by employees of public-sector organisations (those who are bound by law to file the declaration), employees of national companies as the most prepared category of taxpayers and employees of public-sector companies. At Stage 2 (2020), all remaining physical persons will file the declaration. The idea is supported to authorize Kazakhstan’s Agency for the Civil Service and Anti-Corruption Enforcement to fulfil the requirement of mandatory publication of information from declarations of senior officials.

**Gifts policy**

Up to date, the Agency's Chairman has approved an Action Plan to perform instructions issued at an extended session of the Agency on 26 November 2014. Under clause 14 of the Action Plan, the Agency's Department of Civil Service and Corruption Prevention should draft conflicts of interests guidelines and gifts policy by 25 December 2015.

Moreover, currently the Majilis house in the Parliament is considering a draft Law *On Civil Service*. The draft law restates the gifts policy and establishes that acceptance of gifts or services in relation to performance of public functions or their equivalents from persons who depend on them in the virtue of the public office, general favoritism or connivance in office shall be a disciplinary offense discrediting the civil service.

Gifts received without knowledge of a civil servant or accepted by him/her in relation to performance of his/her respective functions shall be transferred within seven days without compensation to a special public fund. Services provided to a person under the same circumstances shall be paid by him/her by transferring money to the national budget.

A person to whom gifts were sent may, subject to consent of his/her superior, buy in the gifts from the special fund at market retail prices existing in a respective locality. The fund shall transfer proceeds for sold gifts to the national budget.

Given that the draft Law *On Civil Service* is being currently under approval process, the Agency plans to draft detailed gifts guidelines in 2016.

**Protection of whistle-blowers**

Government’s Resolution No.1077 of 23 August 2013 approved the Rules for rewarding persons who reported facts of corruption offenses or otherwise facilitated the anti-corruption efforts.

These Rules were developed in line with Article 7.2-1 of the Law of Kazakhstan *On Combating Corruption*. Under the Rules, persons who report facts of corruption offenses or otherwise facilitate the anti-corruption efforts are entitled to rewards in the form of a lump-sum payment.
Because of abolishment of the fiscal policy agencies which previously coordinated activities in the area, the Agency for civil service and Anti-Corruption Enforcement is now responsible for amending these Rules accordingly.

The amendments include:
1. Identity protection - the law should ensure that identity of a whistle-blower be kept in secrecy unless this person agrees to disclosure and that information disclosure be on an anonymous basis.
2. Protection against retaliation - the law should protect a whistle-blower against any negative effects of such exposure. Such protections shall cover all kinds of negative effects, including dismissal, employment-related sanctions, punishments in form of transfers to other work, prosecution, loss of status, benefits, etc.
3. Reverse burden of proof - an employer shall be bear the burden of proof to confirm that any measures damaging the whistle-blower were based on reasons not related to the exposure by the whistle-blower. This burden may again lie with a whistle-blower if a sufficient time elapsed after the exposure.
4. Release of liability - any exposure subject to the law shall be released of disciplinary sanctions and liability under criminal, civil and administrative laws, including libel and slander regulations and official secrecy acts.
5. Renouncing sanctions for false reports - the law should protect any exposures committed on a basis of honest misperception.
6. Waiver – the law shall empower whistle-blowers to waive participation in a suspected offense without any sanctions or negative consequences for such waiver.
7. Preventing circumvention – the law shall invalidate any private regulations or agreements to the extent they violate laws on reports about corruption or illegal activities.

Assessment of progress - PROGRESS

Kazakhstan has been taking actions to improve the laws on integrity in civil service. Progress in this area is related to the development of a new draft Law on Civil Service, Ethical Code of Civil Servants, Regulations about Ethics Commissioner and changes in the Rules for Encouraging Whistle-blowers who Report about Corruption Offences or Help Otherwise in Combating Corruption. The content of the aforementioned draft laws has not been assessed in this report.
**Recommendation 3.3. Promoting transparency and reducing discretion in public administration**

- To envisage mandatory anti-corruption screening of all draft normative acts. To consider the possibility of placing on the web-sites of the respective state authorities draft laws and draft normative acts of the Government and other central state authorities, accompanied with conclusions of the anti-corruption screening. To consider the possibility of assigning to a state authority functions of carrying out anti-corruption screening.

- To revise the Law on State Control and Supervision, namely to bring it in line with the Law on Private Entrepreneurship, to eliminate inaccuracies and clearly define its sphere of regulation, which should not cover internal control issues, to put emphasis on protection of rights of the inspected entities from possible infringements by the inspection bodies.

- To bring the legislative act on the administrative procedure in line with international standards of regulation of the procedure for considering administrative cases.

- To reform the system of administrative justice in accordance with international standards and best practices, namely to adopt the Administrative Adjudication Code, which should not regulate issues of bringing to administrative liability, and to set up specialized administrative courts for consideration of private persons’ claims against public administration.

**15th ACN Istanbul Action Plan Meeting on 23-24 March 2015**

**Measures taken to implement this recommendation**

**Government information**

The function of anti-corruption evaluation is performed by the Ministry of Justice as part of the effort of legal evaluation of effective and newly drafted regulations. Pursuant to Article 3 of the Law «On justice bodies» and Article 14 of the Law «On Legal Acts», justice agencies are responsible for the legal evaluation of all drafted regulations. The agency are concurrently improving the mechanism of anti-corruption evaluation and plan to use official web-sites of government agencies for posting draft laws and regulations developed by the Government and other central authorities, complete with anti-corruption evaluation reports.

All of the legal acts are subject for expert evaluation: laws and regulations are examined at the drafting stage, while acts of government agencies, which are listed in Article 36 (2)(4) of the Law «On Legal Acts», are examined in the course of state registration in judicial agencies.

Pursuant to the Minutes of the Meeting of the Interdepartmental Committee for Administrative Reform, dated 27.05.2014, the RK Ministry of Justice is charged with the drafting of a new version of the Law «On Administrative Procedures». Under this act, the law must be drafted in 2015, submitted to the Parliament in 2016, and enacted in 2017. At present, the Ministry of Justice is developing the Concept of the draft Law «On Administrative Procedures». This work would be completed within the approved time-schedule. Pursuant to the Minutes of the Meeting of the Interdepartmental Committee for Administrative Reform, dated 27.05.2014, the RK Supreme Court will be responsible for the drafting of the Administrative Procedure Code (the Code must be drafted in 2014-2015, submitted to the Parliament in 2016, and enacted in 2017).

**Assessment of progress – NO PROGRESS**

*No new information on tangible progress in addressing the recommendation was provided.*
“To envisage mandatory anti-corruption screening of all draft normative acts. To consider the possibility of placing on the web-sites of the respective government authorities draft laws and draft regulatory acts of the Government and other central state authorities, accompanied with conclusions of the anti-corruption screening. To consider the possibility of assigning a government authority with functions to carry out anti-corruption screening.”

In the area of rule-making, the anti-corruption screening of draft regulatory acts shall cover legal and academic screening under the law on segregation of powers between public administration levels dd. 29 September 2014. This decision was prompted by the fact that anti-corruption screening was a part of legal screening of all draft regulatory acts and laws.

Under applicable laws, all draft regulatory acts shall be posted on the web. Moreover, now a drafting agency shall publicly justify rejection of proposals by NGOs and other civil society institutions. Additionally, registered associations of private entrepreneurs shall provide expert opinions on draft regulatory acts relating to interests of private entrepreneurs. The launch of the National Chamber of Entrepreneurs has given am impetus to these efforts. Now no regulatory act relating to entrepreneurs’ interests passes by the Chamber and registered organizations.

A new system of regulatory impact assessment was introduced in regard to regulatory acts governing the entrepreneurship. The system helps to evaluate risks, including corruption risks, arising from adoption and enforcement of the acts. In particular, the Law On issues of fundamental improvement of environment for the entrepreneurial activities in the Republic of Kazakhstan (dd. 29 December 2014) establishes main guidelines of this system.

In addition, pursuant to the Law On Combating Corruption, all civil servants shall, within their competence and mandate, fight corruption and comply with the Law according to the principles of protection of rights and legitimate interests of physical and legal persons as well as protection of social, economic, political, legal, organizational and administrative systems of the country.

Ministries are now responsible for developing and implementing the public policy in a respective area. Therefore, every drafting government agency shall make sure than no corruption provisions are in its draft regulations. Moreover, in its legal monitoring efforts, every government agency shall detect any corruptogenic provisions in any regulatory acts within its competence and take measure to eliminate them.

“To revise the Law On Government Control and Supervision, namely to bring it in line with the Law On Private Entrepreneurship, to eliminate inaccuracies and clearly define its scope of regulation, which should not cover internal control issues, to put emphasis on protection of rights of the inspected entities from possible infringements by the inspection bodies.”

Currently, Majilis house of the Kazakhstan Parliament is considering a draft Entrepreneurial Code, which consolidates provisions of a number of the country’s laws, including the Law On Government Control and Supervision and On Private Entrepreneurship, which will become invalid by adoption of the Entrepreneurial Code. In particular, the draft Entrepreneurial Code excludes provisions of the Law On Government Control and Supervision relating to internal control. The Code is expected to be adopted during the first ten days of November 2015.
“To bring the legislative act on the administrative procedure in line with international standards of regulation of the procedure for considering administrative cases”

To meet this recommendation, currently the Ministry of Justice of Kazakhstan is developing a concept for a draft Law on Administrative Procedures (restated version). This draft law is expected to be submitted to the Majilis in H1 2016.

Assessment of progress - NO PROGRESS

Anti-corruption expert assessment. Kazakhstan has not presented any legal provisions to confirm that the recommendation has been implemented. The Law On Amending Certain Legislative Acts Concerning Delimitation of Powers between Public Administration Levels (dd. 29 September 2014) of the Republic of Kazakhstan does not contain the provisions specified in the information provided by Kazakhstan.

The Law on State Control and Supervision. The second and third round monitoring reports recommend that Kazakhstan should not adopt the Entrepreneurial Code which is referred to as means for addressing this recommendation.

The Law on Administrative Procedures. Development of the concept for the draft law On Administrative Procedures is insufficient proof of the progress.
Recommendation 3.4. Public financial control and audit

- To specify the main directions of reforms in the area of the public financial control in order to clearly separate the key functions: external audit, internal audit, internal control, and financial inspections.

- To adopt and ensure enforcement of the legislative provisions on public internal audit and internal control in compliance with international standards and best practice. To approve and implement in practice general standards of internal audit and relevant guidelines and codes of conduct for internal auditors in accordance with international standards of internal audit. To establish internal audit units in the executive authorities and the Central Unit of Harmonization of Methodology of Internal Audit in the Ministry of Finance.

- To prepare and adopt a separate law on the Accounting Committee in order to regulate principles of its activity and to ensure the necessary level of functional and institutional independence of the Accounting Committee in line with the Lima Declaration and other international standards; to strengthen legislative guarantees of the financial independence of the Accounting Committee.

- To introduce a practice of detection and response to corruption risks, especially in state authorities who face a high level of corruption risk.


Measures taken to implement this recommendation

Government information

The Concept of introducing Public Audit in the Republic of Kazakhstan, which was approved by Presidential Decree #634, dated 03.09.2013, (hereinafter - the Concept of Public Audit), reflects the division of the key functions in the sphere of public audit and fiscal oversight (external and internal audit). The Concept implementation necessitated the drafting of the Law «On Public Audit and Fiscal Oversight», which provides definitions of public audit, complete with principles, agents, objects, functions, mechanisms and instruments, as well as the scope of authority of the agencies responsible for public audit and fiscal oversight.

The draft law includes the following provisions that allow to delineate, so as to avoid duplication, the functions of agencies responsible for the external and internal public audit and fiscal oversight:

1) mandatory planning of audit and oversight measures on the basis of a risk management system, with due account of inspection plans and such changes thereto as may be proposed by the public audit and fiscal oversight agencies;

2) a functional Common Database of the public audit and fiscal oversight agencies that would be integrated with the e-government system and IT facilities of the public authorities. This IT system would post information on planned public audits and relevant findings, expert analytical activities of the public audit and fiscal oversight agencies, as well as any other information that may be required for the planning and implementation of public audits. Furthermore, the public audit and fiscal oversight agencies would be submitting documents and reports to the Common Database on a mandatory basis, and within agreed time periods would exchange information on inspection plans prior to their approval;

3) mandatory registration of inspections with the Authority for Legal Statistics and Special Accounts in accordance with the effective legislation of the Republic of Kazakhstan;
4) mandatory mutual recognition of public audit outcomes by other public audit and fiscal oversight agencies. An additional provision introduces liability for a public auditor who refuses to recognize the results of inspections conducted by other agencies of public audit and fiscal oversight.

Discussions of the draft law covered the matter of overlapping functions, which can be avoided through delimitation of functions and powers of the respective agencies according to the types and forms of public audit and fiscal oversight; a number of coordinated decisions were made to exclude from the sphere of competence of the Internal Audit Authority the following functions:
- an integrated audit of the performance of government agencies that are part of the Government structure, including the analysis of annual assessment outputs;
- the compliance audit of the use of the Government Reserve on the instructions of the Government, as the draft law provides for an unplanned compliance audit when so instructed by the Government;
- the compliance audit of costs related to the increase of estimated expenditures under budgetary investment projects, as the draft law provides for an audit of funds use on the instruction of the Government;
- the compliance audit of the validity, completeness, timeliness and accuracy of the accrual and transfer of non-tax revenues to the national and local budgets, as the Internal Public Audit Authority is responsible for auditing compliance with legislation on government property;

Furthermore, it is proposed to make the Internal Audit Authority responsible for reduced inspections of the use of national and local budget funds, subject exclusively to the instructions of the President and Government of the Republic of Kazakhstan, parliamentary inquiries, and on the basis of data monitoring results received from the information system of the Central Budget Implementation Authority.

In line with international standards and best practices, provisions on the internal public audit and internal fiscal oversight are reflected in the Concept of Public Audit and the draft Law «On Public Audit and Fiscal Oversight».

It should be noted that this paragraph bears no relation to the activities of the Accounts Committee, as under Article 135(3) of the Budget Code, the Accounts Committee is responsible for external fiscal oversight, while the Ministry of Finance is responsible for internal fiscal oversight under Government Regulation #387 «On Certain Issues of the Ministry of Finance of the Republic of Kazakhstan», dated 24.04.2008.

Apart from the above mentioned provisions, the draft law stipulates as follows:
- establishment of internal audit services in central government agencies and local executive bodies, as well as internal audit divisions within territorial departments of central government agencies, subject to the decision of the head of a central agency and within the limits of the staff list;
- creation of an Internal Public Audit Authority that would, inter alia, perform general coordination of the activities of internal audit services, and provide methodological and advisory assistance to them.

In compliance with international practices and with a view to introducing elements of corporate governance, and organizing an effective interaction between the internal audit and risk management divisions within the structure of a government agency, it has been proposed to set up an Audit and Risk Management Council as a consultative and advisory body chaired by the head of the relevant government agency, consisting of heads of departments and structural divisions.

It has been suggested that the Council should coordinate the activities of structural divisions, the allocation of funds, the IT assistance during the planning and performance of internal audits, and the risk management efforts by arranging discussions of relevant reports, plans and programs.
In addition, the draft law establishes uniform requirements to public audits, which are set by the standards of public audit and fiscal oversight.

To adopt a set of regulations in execution of the draft law would require the streamlining of internal audit procedures, the approval of general and procedural standards, of a model risk-management system that would be used for the planning and performance of internal audits, the creation of a common database on public audit and fiscal oversight, and etc.

The draft Law «On Public Audit and Fiscal Oversight» contains a Chapter regulating the organization and activities of the Accounts Committee, with due account of the provisions of the Lima Declaration and of other international standards, competences and status of the Committee officials, and principles of collaboration with the other government authorities.

It was deemed impractical to develop a separate draft law in view of the focus on the consolidation of the effective legal framework and simplification of the law enforcement practices.

However, this fact in no way signifies non-implementation of the relevant recommendation, as primary concern is given to the content of the rules regulating the status and activities of the Accounts Committee, as well as their formalization in the format of a legislative act.

Regulatory Resolution # 3-NP of the Accounts Committee, dated 31.08.2011, approved a Model Risk Management System to be used for the planning and performance of external fiscal oversight measures (hereinafter – the RMS). The RMS goal is to identify high-risk entities, including corruption risks, in order to ensure the maximal oversight coverage of such entities.

One of the criteria is the number of earlier detected violations and a lack of corrective actions.

Besides, the Accounting Committee, upon detecting signs of a criminal offense, including a corruption offense, in the actions of officials of the inspected entity, would refer all of the relevant records to the law enforcement agencies.

In pursuance of the Concept of Public Audit and Fiscal Oversight, the working group composed of representatives of the Accounts Committee and the Ministry of Finance Fiscal Oversight Committee has developed Rules for the application of common risk management principles and procedures by public fiscal control (audit) agencies, [whose main task is to develop uniform risk management principles and procedures to be applied by public fiscal control agencies – duplication, translator’s note].

One of main principles of the future risk management system would be timeliness – the performance of a set of measures to identify risks within supervised entities and ensure a timely response to such risks, including corruption risks. At present the draft Rules are being examined by relevant government authorities.

Work is under way to draft regulations, including those that would set forth procedural standards for public internal audit and fiscal oversight, and a Code of Ethics for public auditors.

**Assessment of progress – LACK OF PROGRESS**

*Despite continued work on improving the system for public financial audit and control, in particular discussion of the draft law in the parliament, development of the Rules for the application of common risk management principles and procedures by public fiscal control (audit) agencies, no new.*
16th ACN Istanbul Action Plan Meeting on 7-9 October 2015

"To specify the main directions of reforms in the area of the public financial control in order to clearly separate the key functions: external audit, internal audit, internal control, and financial inspections."

Presidential Decree No. 634 of 3 September 2013 approved the Concept for the implementation of public audits in the Republic of Kazakhstan (the Concept). The paper segregates key functions in the public audit and financial control (external and internal audit).

In line with the Concept, the government developed a draft Law On public audit and financial control. It defines the public audit, its principles, types, auditors, auditees, functions, mechanisms and instruments as well as the mandate of public audit and financial control agencies.

Pursuant to Government's Resolution No.1446 of 31 December 2013, the draft law was submitted with the Majilis. A Majilis task group met six times to develop 260 amendments thereto, of which 35 were responded by the Government.

The draft law segregates and prevents duplication of functions of agencies for internal and external public audit and financial control:

1) mandatory planning of control measures on the basis of the risk management system subject to audit plans and changes thereto agreed by public audit and financial control agencies;
2) a shared database of public audit and financial control integrated into the e-government system and information systems of governmental authorities.

This information system shall include all information about plans, public audit outcomes, expert analyses by public audit and financial control agencies as well as other data for public audit planning and conducting. The agencies are obliged to enter information related to the public audit and financial control and reports to the shared database and exchange information within the agreed timelines about audit plans before they are approved.

3) mandatory registration of audits with the government agency for legal statistics and special accounting according to the laws of the Republic of Kazakhstan
4) mandatory mutual recognition of outcomes of public audit in other public audit and financial control agencies. At the same time, the draft law establishes that a failure of a public auditor to recognize outcomes of audit in other public audit and financial control agencies shall entail liability.

Discussions of the draft law also covered elimination of function duplication between public audit and financial control agencies by segregating their functions and powers by type of public audit and financial control and adopted a number of agreed decisions to remove the following functions from the government agency for internal audit:

- a comprehensive performance audit of public authorities within the Government, including the analysis conducted as part of the annual appraisal;
- compliance audit in regard to the use of Government’s reserve under the Government’s instruction as the draft law provides for extraordinary compliance audits under the Government’s instructions;
- audit of expenses related to an increase in the cost estimate of budget-funded investment projects because the agency is responsible for the compliance audit under the Government’s instruction;
- compliance audits in regard to relevancy, completeness, timeliness and reliability of accrual and transfer of non-tax revenues to the national and local budgets as an internal public audit agency is responsible for the compliance audits in regard to laws on public property.

Moreover, the government agency for internal audit is suggested to be responsible for reduced inspections of the application of public funds in the national and local budgets only under the instruction of the President and Government of the Republic of Kazakhstan, upon requests of members of the parliament and on the basis of outcomes in the monitoring of information systems run by the central agency for budget utilization.

“To adopt and ensure enforcement of the legislative provisions on public internal audit and internal control in compliance with international standards and best practice. To approve and implement in practice general standards of internal audit and relevant guidelines and codes of conduct for internal auditors in accordance with international standards of internal audit. To establish internal audit units in the executive authorities and the Central Unit of Harmonization of Methodology of Internal Audit in the Ministry of Finance.”

According to international standards and best practices, regulations on internal and external public control are included in the Concept and draft Law On public audit and financial control.

We would like to note that this clause does not refer to activities of the Accounting Committee as under Article 135.3 of the Budget Code, the Committee is responsible for the external public financial control while the Ministry of Finance is responsible for the internal public audit as prescribed by the Government’s Resolution No.387 dd. 24 April 2008 “On certain issues of the Ministry of Finance of Kazakhstan”.

It has been suggested to remove the Accounting Committee from the list of co-actors (new clause 39, Letter to the Ministry of National Economy No. 10-1-48/73//12-21/4603/122 dd. 20 January 2015) in regard to a draft updated allocation of recommendations of the OECD’s Round 2 Monitoring of the Istanbul Anti-Corruption Action Plan for the Eastern Europe and Central Asia (the Allocation) among government authorities.

Currently, the government is drafting secondary legislations, including those that regulate procedures and standards of internal public audit and financial control as well as Rules of Ethics for the public auditors.

Also, the draft law provides for:
- establishment of an internal audit function in central and local executive authorities and, at the discretion of the head acting within the established staff number, an internal audit function in departments of central government authorities; and
- establishment of the government agency for internal public audit which will, among other things, coordinate internal audit functions and provide methodological support and consultations.

In line with international practices and in order to introduce some elements of corporate governance, ensure effective cooperation during internal audits, risk management in a government authority, it is suggested that an Audit and Risk Council be established. It would be an advisory body chaired by the head of a government authority which includes heads of departments and structural divisions.

Key objectives of the Council are to coordinate structural units, allocate resources and provide informational support during internal audit planning and performance, risk management through discussions of reports, plans and programs.

In addition, the draft law establishes uniform public audit requirements which are guided by the standards of public audit and financial control.
To enforce the draft law, it is suggested to develop a number of secondary legislations. Up to date, Kazakhstan has developed procedures and standards of internal public audit and financial control on the basis of the Presidential Decree “On approving General Standards of the public audit and financial control”.

The draft law also provides for the Rules of Ethics for public auditors (a uniform code of ethical standards of conduct for public auditors) to be developed and approved jointly by the Accounting Committee and the government agency for internal public audit. The Rules of Ethics for internal public auditors is already in place.

As to organization of internal audit functions in executive authorities, the draft law provides for:
- establishment of an internal audit function in central and local executive authorities and, at the discretion of the head acting within the established staff number, an internal audit function in departments of central government authorities; and
- establishment of a government agency for internal public audit which will, among other things, coordinate internal audit functions and provide methodological support and consultations.

In line with international practices and in order to introduce some elements of corporate governance, ensure effective cooperation during internal audits, risk management in a government authority, it is suggested that an Audit and Risk Council be established. It would be an advisory body chaired by the head of a government authority which includes heads of departments and structural divisions.

Key objectives of the Council are to coordinate structural units, allocate resources and provide informational support during internal audit planning and performance, risk management through discussions of reports, plans and programs.

“To prepare and adopt a separate law on the Accounting Committee in order to regulate principles of its activity and to ensure the necessary level of functional and institutional independence of the Accounting Committee in line with the Lima Declaration and other international standards; and to strengthen legislative guarantees of the financial independence of the Accounting Committee.”

The draft Law On Public Audit and Financial Control contains a chapter regulating the organization of activities of the Accounting Committee with due account of the Lima Declaration and other international standards, powers and status of the Committee’s officials, and principles of collaboration with other government authorities.

It was deemed impractical to develop a separate draft law because of the focus on the consolidation of the effective legal framework and simplification of the law enforcement practices. However, this fact in no way signifies non-implementation of the recommendation as the priority is given to the content of the standards regulating the status and activities of the Accounting Committee as well as to their formalization in the legislative act.

“To introduce a practice of detection and response to corruption risks, especially in state authorities who face a high level of corruption risk.”

As we mentioned earlier, the Agency has the Department for Corruption Risks which analyzes corruption risks across all government authorities on an ongoing basis. Following the analysis, the department submits respective motions for elimination of violations and risks.
As to activities of the Accounting Committee and the Ministry of Finance in this area, the Committee approved on 31 August 2011 (regulatory resolution No.3-NP) a Model Risk Management System to be used for the planning and performance of external public financial control. The system is designed to identify high-risk entities, including those most exposed to corruption, in order to ensure the maximum coverage by the control measures.

One of the criteria is the scope of violations detected earlier and a lack of corrective actions. Besides, the Accounting Committee, upon detecting signs of a criminal offense, including a corruption offense, in the actions of officials of the inspected entity, would refer all relevant records to the law enforcement agencies.

In pursuance of the Concept of Public Audit and Financial Control, the task group composed of representatives of the Accounting Committee and the Ministry of Finance Financial Control Committee has developed Rules for the application of common risk management principles and procedures by public financial control (audit) agencies whose main task is to develop uniform risk management principles and procedures applied by public financial control agencies.

One of main principles of the future risk management system would be timeliness – measures are taken to identify risks within supervised entities to make a timely response to such risks, including corruption risks. At present, the draft Rules are being examined by respective government authorities.

Pursuing the public audit principles, the Ministry of Agriculture has transformed its Internal Control Department into a 18-strong Department of Internal Audit and Control. The move will also help to ensure proper audit and control of subordinate organizations of the Ministry. The Department consists of an internal audit unit (9 staff members) and financial control unit (8 staff members). Under Article 144 of the Kazakhstan’s Budget Code, the Department operates independently of other structural divisions and is subordinate and accountable only to the Ministry’s head.

The Department’s mission is to audit and evaluate performance of the Ministry’s strategic and operational plans, the quality of civil services, HR management, use of information technologies, and legal support. In addition, it controls compliance with the budgetary and other laws of the Republic of Kazakhstan as well as organizes and conducts evaluation of the Ministry’s structural divisions.

If the public financial control agencies and the Ministry’s Department of internal audit and control detect financial violations, officials at fault shall be subject to a disciplinary action while if they detect signs of corruption and/or administrative offenses, they shall refer respective records to law enforcement agencies for them to make further procedural decision.

The example of the Ministry shows that risk identification is both from inside and the outside by the Agency.

Assessment of progress - PROGRESS

Some progress has been noted as a result of adoption of the draft law On State Audit and Financial Control in the first reading on 23 September 2015 by the Majlis (the Parliament) of the Republic of Kazakhstan. This step covers the larger part of the recommendation.
Recommendation 3.5. Public procurement

- To continue reforming public procurement legislation, in particular, by substantially decreasing the number of areas which are exempt from the scope of regulation of the Public Procurement Law, by stipulating a competitive public procurement procedure - based on the law and in line with international standards - for national management holdings, national holdings, national management companies, national companies and legal entities affiliated with them.

- To establish a system of statistical recording and analysis of data on the performed procurement, complaints and results of their consideration, frequent violations and sanctions, etc. These materials should be updated and made public on a regular basis.

Measures taken to implement this recommendation

Government information

The draft Law “On Government Procurement” (the Draft) was elaborated by the RK Ministry of Finance following the Head of State’s instructions made on 02.09.2013 at the opening of the fourth session of the fifth Parliament of the Republic of Kazakhstan. By RK Resolution #1412 “On the Draft Law “On Government Procurement”, dated 31.12.2014, the Draft was submitted for the consideration of the Mazhilis of the Parliament of the Republic of Kazakhstan. The Draft envisages the reduction of the grounds (the number of sectors) for government procurement from one supplier on the basis of direct procurement contracts.

Furthermore, under Clause 2.2.4 of the RK Government Meeting Minutes, dated 21.01.2014, an Interdepartmental Working Group was established to draft a Uniform Law on Procurement that would regulate procurements made by state-owned enterprises.

At the same time, the government procurement system requires modernization.

The establishment of a Price Monitoring Centre is under way; it would eliminate dispersion of prices on goods, works and services. In this manner it would be possible to get rid of artificial price increases and “kickbacks” of 10-30% that are incorporated into the budget requests.

The procurement procedure would be simplified due to an automated selection of standard items with an annual volume of below 4,000 MCI.

The automated selection of a supplier would preclude the customer’s influence on the competitive bidding results and the appointment of the winning bidder.

A period of not more than 10 business days would be set for the customer to make payments to the supplier after the signing of acceptance acts (expect instances when collection orders are made). This would prevent deliberate delays of payment for contracted works and services.

State Standards (GOSTs) are being introduced for all types of procured goods, works and services. For instance, standard model projects of social infrastructural facilities (schools, kindergartens and hospitals) would be designed and approved in the sphere of construction of educational and health care institutions. Such standardization would simplify the competitive bidding procedures, prevent overpricing and eliminate
the tailoring of projects to the capacity of certain companies.

The scope of subcontracted works and services would go down to 50%, thus increasing the responsibility of the general contractor for the quality of work and for meeting contractual deadlines. Currently the volume of subcontracted works approximates 70%. Treasury would be nominated by a single money operator so as to prevent any communication between the customer and the contractor regarding payment for the works and services.

**Assessment of progress – LACK OF PROGRESS**

*Kazakhstan reported about a draft law that reduces the number of exemptions from the Public Procurement Law. The text of the draft law was not provided.*

*This proposal is positive, as it would allow to extend the scope of competitive procurement, but as for the recommendation in general it is just an interim step, thus not allowing to mark progress.*

*The rest of the information provided is about future planned actions that cannot be yet evaluated.*

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The Ministry of Finance developed a draft Law *On Government Procurement* following the Head of State’s instructions given on 2 September 2014 at the opening of the fourth session of the Kazakhstan’s Parliament of the fifth convocation. The Government passed Resolution No.1412 “On the draft Law *On Government Procurement*” on 31 December 2014 to submit the draft to the Majilis.

The draft law reduces grounds (a number of areas) for single-source public procurements under a direct public procurement contract. Furthermore, under Clause 2.2.4 of the Government Meeting Minutes No.2 dated 21 January 2014, an interdepartmental working group was set up to draft a Uniform Law on procurement that would regulate procurements made by state owned enterprises. The Ministry of the National Economy is assigned to develop this draft law.

**Assessment of progress - NO PROGRESS**

*No information has been provided in regard to any new actions undertaken since the time of the previous progress update.*
Recommendation 3.6. Access to information

- To ensure speedy adoption of the Law on Access to Public Information, which would comply with international standards and recommendations. To revise provisions on liability for non-provision or incomplete (untimely) provision of information upon request of individuals and legal entities.
- To achieve compliance with standards of the Extractive Industries Transparency Initiative.
- To avoid using liability for defamation to suppress the freedom of speech and reports of corruption; to consider repealing criminal liability for libel and insult as well as similar special offences against public officials.
- To provide effective legislative mechanisms for preventing lawsuits that seek compensation for moral damages in excessive amounts (for example, by setting court fees in proportion to the declared amount of claims, introducing shorter periods of limitations for such lawsuits, exempting from liability for expression of value judgments), and to carry out relevant training for judges.


Measures taken to implement this recommendation

Government information

The enlarged meeting of the “Nur Otan” Party Political Council held on 11.11.2014 under the chairmanship of N.A. Nazarbaev, President of the Republic of Kazakhstan, adopted the Party Anti-Corruption Program 2015-2025, which provides for the development of the draft law “On Access to Information” by the “Nur Otan” faction in the Mazhilis of the RK Parliament. It is necessary to say that NGO representatives are also engaged in these activities. Furthermore, the mass-media government authority would provide support and assistance to the promotion of this draft law.

The EITI implementation is fully in line with the quadrilateral Memorandum of Understanding signed on October 05, 2005 by extraction companies, Mazhilis deputies, government authorities and representatives of civil society; EITI is aimed to ensure compliance with the principles and standards of financial transparency of the primary sector and of the relevant government revenues. For Kazakhstan, the EITI implementation has a great international, political and anti-corruption significance.

Since 2005 seven National Reports were drawn up on the results of annual reconciliation of data on taxes and payments to the budget from mineral developers and the government data on relevant budget revenues.

These joint efforts resulted in the acknowledgement by the EITI International Board, an agency that coordinates the EITI implementation worldwide, of Kazakhstan compliance with the transparency standards followed by the award of the “EITI Compliant country” status in 2013.

To maintain the achieved level and status, further EITI implementation in the country would proceed in accordance with new international requirements.

To avoid situations when liability for defamation may be used to restrict freedom of speech and whistle-blowing; to consider the possibility of decriminalization of libel/slander, insult and similar special offenses against public officials.
According to the RK General Prosecutor’s Office, this recommendation requires additional consideration, as decriminalization of libel is not conducive to the freedom of expression, but may provoke a growth of malevolent attacks on the honor and dignity of citizens.

According to the RK General Prosecutor’s Office, this recommendation runs counter to the International Covenant on Civil and Political Rights where the freedom of expression is proclaimed with a special covenant stating that the exercise of the right “carries with it special duties and responsibilities” and “may therefore be subject to certain restrictions”. Such restrictions may be imposed to “respect the rights or reputations of others” and to “protect national security or public order, or public health or morals”.

It should be noted, that the new Criminal Code in no way facilitates the introduction of any form of censorship with respect of information about government officials as it makes a distinction between knowingly false information and critical remarks that do not entail criminal liability.

In addition, Article 17 of the RK Constitution stipulates that dignity of an individual is inviolable. The State ensures the inviolability of honor and dignity of its citizens by introducing criminal liability for libel and slander. This may be explained by the high level of social danger of libel or slander. Slanderous fabrications may irreparably ruin the family or private life of a person, damage his/hers reputation, professional carrier or lead to the loss of health.

More than 20 EU countries, having joined international treaties on the decriminalization of libel (defamation), still treat the act as a criminally liable offense (Germany, France, Poland, Spain and Italy).

The FRG Criminal Code prescribes liability for a whole range of acts involving dissemination of knowingly false information, including insults, slander and libel. A public act of libel or slander is punished by imprisonment for a term of up to five years or by a fine. Libel or slander against a political official, or against a military serviceman constitutes separate criminal offenses. The Criminal Code of France prescribes punishment for such acts as a non-public insult, public and non-public defamation, a discriminatory insult and a false denunciation. Under the Criminal Code of Poland, libel and insult are punishable by imprisonment for a term of up to 1 year, and defamation in mass media – for a term of up to 2 years. The public insult of an executive official, of a constitutional entity or the President constitute separate offenses. These acts are punishable by imprisonment for a term of up to 3 years. Libel is punishable in Spain where a public insult may result in imprisonment for a term of up to three years. In Italy, defamation in mass media is treated as a punishable offence entailing imprisonment for a term of up to three years.

The Russian Federation, Ukraine and a number of other ex-USSR states have already experimented with the “inclusion-exclusion” of the “libel” and “insult” articles into/from their criminal legislation. For instance, in 2011 the Russian Federation removed both acts from the Criminal Code, but in 2012, the libel article was reinstated and significantly extended. Numerous experts in the Russian Federation insisted that decriminalization of libel had resulted in the impunity of such acts.

In view of the above, we believe that Kazakhstan, similarly to the EU states, maintains the balance of public and private interests on the issue of criminal liability for defamation as defined by the International Covenant.

As proposed by the Ministry of Justice, pursuant to the draft Law “On the introduction of Amendments to certain Legal Acts of the Republic of Kazakhstan to Improve the Civil Procedure Legislation” that was developed by the Supreme Court, the Tax Code was also amended to include a provision for the levy of a state duty on claims in defense of honor, dignity and business reputation in the amount of 1% of the claimed
amount for individuals, and in the amount of 3 % for legal entities. This amendment is aimed at a partial implementation of Recommendation 3.6 «Access to information». The above mentioned draft Law was submitted to the consideration of Mezhilis of the RK Parliament under Government Resolution # 1420, dated 31.12.2014.

Since the Recommendation relates to the courts of the Republic of Kazakhstan, by Instruction # 12-21/4603 of Prime-Minister Masimov K.K, dated 12.01.2015, the proposal to vest the execution of this part of the Recommendation with the Supreme Court was dispatched to the Ministry of National Economy. OECD suggested introducing short statutory limitation periods as a mechanism to avoid claims for moral damage with excessive compensation requirements.

Article 178 of the Civil Code provides for a general period of limitation of three years. At the same time, for some types of claims, other (special) limitation periods - longer or shorter than the statutory period - may be established: for instance, a 3-month limitation period to defend an LLP member’s pre-emptive right to purchase a share in the event of its violation (Article 216(3) of the Civil Code); a 1-year limitation period to invalidate deals executed by means of fraud, violence or threat, as well as bondage deals, or deals executed due malicious collusion between a representative of one party with the other party (Article 162 of the Civil Code); a 1-year limitation period for freight and mail carriage contracts, a 6-month limitation period for passenger, luggage and cargo-luggage carriage contracts (Article 93 of the Law “On the Railway Transport”).

Furthermore, the Law “On Mediation” is currently widely used to avoid litigation for compensation of non-economic.

In view of the above, we believe that the matter of duration of limitation periods is fairly well regulated by the effective legislation.

**Value judgments**, except for libel and insults, represent statements that are not based on facts. Articles 130 and 131 of the Criminal Code establish criminal liability for such offences as libel (dissemination of knowingly false information that discredits the honor and dignity of a person or undermines his/her business reputation) and insult (indecently expressed debasement of the honor and dignity of a person). Within the framework of the second round of monitoring it was agreed that Kazakhstan had implemented the Recommendation on libel and insult decriminalization. Thus, the effective legislation does not provide for liability for the expression of value judgments.

<table>
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<th>Assessment of progress – PROGRESS</th>
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<td>The parliament of Kazakhstan, after a long pause, has restarted work on the draft law on access to information, which complies with the recommendation. Adoption of the relevant law is also provided for in the new Anti-Corruption Strategy for 2015-2025 adopted by Kazakhstan.</td>
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<td>Kazakhstan also reported about a draft law submitted by the government to the parliament concerning court fee for lawsuits seeking compensation of damages for protection of honour and dignity in proportion to the amount of compensation requested – 1 per cent from the amount of lawsuit filed by a natural person, 3 per cent of the amount for legal persons. This complies with one of the recommendation’s parts.</td>
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“To ensure speedy adoption of the Law on Access to Public Information, which would comply with international standards and recommendations. To revise provisions on liability for non-provision or incomplete (untimely) provision of information upon request of individuals and legal entities.”

An extended meeting of the Nur Otan Party’s Political Council held on 11 November 2014 under the chairmanship of the Kazakhstan’s President Nursultan Nazarbayev adopted a party anti-corruption program 2015-2025. The paper provides for the development of a draft Law On Access to Information by the Nur Otan faction in the Majilis house of the Parliament.

It is necessary to say that NGO representatives are also involved in these activities. Furthermore, the government authority for mass media would provide support and assistance to promote this draft law.

“To achieve compliance with standards of the Extractive Industries Transparency Initiative.” (EITI)

The EITI implementation is fully in line with the quadrilateral Memorandum of Understanding signed on 5 October 2005 by extraction companies, Majilis members, government authorities and representatives of the civil society. EITI seeks to ensure compliance with the financial transparency principles and standards in the extractive sector and the relevant government revenues. Kazakhstan has reached the compliance with the Initiative’s standards and on 17 October 2013 the EITI International Board awarded the EITI Compliant status to the country. The next round of validation is scheduled for 2016. For Kazakhstan, the EITI implementation has a great international, political and anti-corruption significance.

Since 2005 Kazakhstan has drawn up seven National Reports on the results of annual reconciliation of data on taxes and payments to the budget from mineral developers and the government data on relevant budget revenues. These joint efforts resulted in the acknowledgement by the EITI International Board, a body coordinating the EITI implementation worldwide, of Kazakhstan’s compliance with the transparency standards followed by the award of the “EITI Compliant country” status in 2013. To maintain the achieved level and status, further EITI implementation in the country would proceed in accordance with new international requirements.

Moreover, the President instructed the 16th session of the Nur Otan party in March 2015 to draft a Law On Access to Information. The instructions became a part of the party’s Anti-Corruption Strategy and Program for fighting corruption.

Headed by Maulen Ashimbayev, the Chairman of the Majilis’ Committee for international affairs, defense and security, a group of members of Nur Otan faction in the Majilis developed between March and May 2015 a draft law On Access to Information. The Committee for Communications, IT Penetration and Information of the Kazakhstan’s Ministry of Investments and Development played a role as well in the process.

In May 2015, the groups presented in the Majilis house as part of a round table "The Draft Law of the Republic of Kazakhstan On Access to Information" within the Open Government initiative. The participants, including Kazakhstan and international experts from UNDP, OSCE and UNESCO, welcomed the draft law.

At the same time, President Nazarbayev’s 100 Concrete Steps Plan to implement five institutional reforms (approved for 2015 by the Government, Protocol No.20 dd. 6 May 2015) assigned the Ministry of Investments and Development to submit the draft law to the Majilis in September 2015.
On 2 July 2015, the group's draft law was submitted to the Prime Minister's Office for the Government's opinion. On 9 July, the Prime Minister's Office referred the draft law to all central and local government authorities for comments to be consolidated by the Ministry.

Under Clause 105 of the Government's Rules, a draft opinion should be considered by the interdepartmental commission for legislative drafting to deliver the opinion. Also, the Republican Budget Commission should consider financial and economic calculations because the draft law has expense provisions. In addition, the draft opinion should be approved by the ministers of finance, national economy and justice within three days of its registration in the ministries' administrative offices.

On 31 July 2015, the interdepartmental commission held its 368th meeting by correspondence and approved the draft laws subject to comments of the commission's members. The draft opinion was submitted for approval to the ministries of justice, national economy and finance under No. 04-1-30/6648 on 4 August 2015. The Ministry of Finance failed to examine the financial and economic calculations sent on 27 July under No.04-1-30/6378 because the Republican Budget Commission failed to meet and adjourned its meeting for an indefinite period. The Government's draft opinion was submitted to the Prime Minister's Office on 20 August 2015, outgoing No. 01-30/D-3342//20-25/I-476-I.

"To avoid using liability for defamation to suppress the freedom of speech and reports of corruption; to consider repealing criminal liability for libel and insult as well as similar special offenses against public officials."

This recommendation requires additional consideration as decriminalization of libel is not conducive to the freedom of expression, but may provoke a growth of malevolent attacks on the honor and dignity of citizens.

This recommendation runs counter to the International Covenant on Civil and Political Rights where the freedom of expression is proclaimed, with a special covenant stating that the exercise of the right “carries with it special duties and responsibilities” and “may therefore be subject to certain restrictions”. Such restrictions may be imposed to “respect the rights or reputations of others” and to “protect national security or public order, or public health or morals”.

It should be noted that the new Criminal Code in no way introduces any form of censorship with respect to information about government officials as it makes a distinction between knowingly false information and critical remarks that do not entail criminal liability.

In addition, Article 17 of the Kazakhstan’s Constitution stipulates that dignity of an individual is inviolable. The State ensures the inviolability of honor and dignity of its citizens by introducing criminal liability for libel and slander. This may be explained by the high level of social danger of libel or slander. Slanderous fabrications may irreparably ruin the family or private life of a person, damage his/her reputation, professional carrier or lead to the loss of health.

Although more than 20 EU countries joined international treaties on the decriminalization of libel (defamation), they still treat the defamation as a criminally liable offense (Germany, France, Poland, Spain and Italy). The German Criminal Code imposes liability for a whole range of acts involving dissemination of knowingly false information, including insults, slander and libel. A public act of libel or slander is punished by imprisonment for a term of up to five years or by a fine. Libel or slander against a political official or a military serviceman constitutes separate criminal offenses.
The French Criminal Code prescribes punishment for such acts as a non-public insult, public and non-public defamation, a discriminatory insult and a false denunciation. Under the Criminal Code of Poland, libel and insult are punishable by imprisonment for a term of up to one year, and defamation in mass media is punishable for a term of up to two years. The public insult of an executive official, constitutional entity or the President constitute separate offenses punishable by imprisonment for a term of up to three years. Libel is punishable in Spain where a public insult may result in imprisonment for a term of up to two years. In Italy, defamation in mass media is treated as a punishable offense entailing imprisonment for a term of up to three years.

The Russian Federation, Ukraine and a number of other former USSR states have already experimented with the inclusion/exclusion of the libel and insult articles into/from their criminal legislation. For instance, the Russian Federation removed both acts from the Criminal Code in 2011, but reinstated and significantly extended libel provisions in 2012.

Numerous experts in the Russian Federation insisted that decriminalization of libel had resulted in the impunity of such acts. In view of the above, we believe that Kazakhstan, similarly to the EU states, maintains the balance of public and private interests in the criminal liability for defamation as defined by the International Covenant.

“To provide effective legislative mechanisms for preventing lawsuits that seek compensation for moral damages in excessive amounts (for example, by setting court fees in proportion to the declared amount of claims, introducing shorter periods of limitations for such lawsuits, exempting from liability for expression of value judgements), and to carry out relevant training for judges”.

Under the new Code of Civil Procedure, the amount of a claim fore recovery of money, including claims for moral damage compensation shall be in pecuniary terms. Article 535 of the Tax Code establishes the state duty on property claims to the amount of 1 % of the claimed amount for individuals and 3 % for legal entities.

[Please see the Russian version of the Progress update for comments by NGOs]

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**Assessment of progress - PROGRESS**

- **Law on Access to Information.** The Law on Access to Information adopted by the parliament on 30 September demonstrates progress. However, the final text of the law has been criticised by experts as it is not fully in line with the international standards and recommendations of the monitoring reports prepared within OECD/IAP.
- **Liability for failure to provide information.** No progress.
- **Compliance with EITI standards.** The government has not provided any new information. NGOs point out to the failure to perform specific recommendations contained in the third round monitoring report.
- **Actions against claims demanding excessive cash compensation of moral damages.** No progress.
Recommendation 3.7. Political corruption

- To revise legislation on political parties’ financing by limiting the maximum size of private donations and membership fees, removing unjustified limitations on such donations, defining the term “donations” which should include non-material benefits, and by clearly prohibiting financing of parties by companies with state participation.

- To consider allocating budgetary funding to parties which received a certain percentage of votes (for example, 2-3%), even if they were unable to pass the election threshold.

- To ensure transparency of party finances, including during elections, in particular, by setting detailed requirements for the contents and form of annual reports, which have to undergo prior control by the state body, ensuring publication of detailed reports on both receiving and spending of funds by parties and candidates in the course of election campaigns. To consider cancelling the possibility of revoking election registration for providing false information in declarations and violating the financing rules.

- To ensure independence of the body in charge of control over political parties’ financing, assign to it a duty of carrying out regular monitoring and control over observance of the legislation on financing and transparency of political parties and election campaigns.

- To strengthen integrity rules for political servants, which are not covered by the Law on the Civil Service (conflict of interest, codes of ethics, financial control, liability for corruption and related offences).


Measures taken to implement this recommendation

Government information

To enhance the integrity rules for public policy officials who are not covered by the Law on Public Service (conflict of interests, codes of ethics, financial control, liability for corruption and related crimes)

The draft Law “On Corruption Counteraction”, which is developed by the Agency, includes specific provisions regulating the conflict of interests, measures of financial control, liability for corruption crimes and offences, which apply to persons empowered to perform government functions or to persons of equal status, including public political officials.

Assessment of progress – LACK OF PROGRESS

The draft law development is at its initial stage and cannot be evaluated as progress as yet. Moreover the main part of the recommendation concerns financing of political parties reform, where no new measures were taken.

16th ACN Istanbul Action Plan Meeting on 7-9 October 2015

“To revise legislation on political parties’ financing by limiting the maximum size of private donations and membership fees, removing unjustified limitations on such donations, defining the term “donations” which should include non-material benefits, and by clearly prohibiting financing of parties by companies with state participation”
"To consider allocating budgetary funding to parties which received a certain percentage of votes (for example, 2-3%), even if they were unable to pass the election threshold."

Part one of the recommendation specifies (see the progress update on recommendations of the third round of monitoring within the OECD ACN/Istanbul Action Plan approved by the plenary meeting in Paris on 10 October 2014 in the OECD HQ in Paris): "Note the recommendation was talking about donations not in the context of elections...".

Also, Article 18.1.2 of the Kazakhstan's Law On Political Parties establishes that procedures for donations by physical persons and NGOs in Kazakhstan shall be developed by a central executive authority responsible for tax control of performance of tax liabilities.

Therefore, Kazakhstan’s Ministry of Finance is considering ways of effective implementation of this recommendation.

"To ensure transparency of party finances, including during elections, in particular, by setting detailed requirements for the contents and form of annual reports, which have to undergo prior control by the state body, ensuring publication of detailed reports on both receiving and spending of funds by parties and candidates in the course of election campaigns. To consider cancelling the possibility of revoking election registration for providing false information in declarations and violating the financing rules."

Pursuant to Article 34.4 of the Constitutional Law On Elections, reports on the use of election funds by political parties and nominees must be published in the local mass media.

Under the Constitutional Law, election commissions and banking institutions shall control the use of electoral funds. Banks shall submit weekly reports to a respective election commission on money credited to/debited from special temporary accounts.

In line with Article 34.6 of the Constitutional Law, the Central Election Committee passed a resolution on 7 August 1999, No. 19/222, approving the rules for the use of election funds.

Presidential candidates, members of the Senate, maslikhats, political parties and akims shall keep records of money contributed to/spent from their election fund. These records shall specify each type of contribution, indicating the date, sum in tenge and the name of a physical or legal person who/that contributed the money. The expense register shall feature: date of crediting money to the account, dates of withdrawals, sums, causes on which the money was spent and documents confirming crediting and spending.

Also, the resolution sets requirements to the form and content of the reports of political parties. A political party shall submit, not later than within five days following establishment of the election results, to the respective election commission a report on using money from its election fund. The report shall indicate sources of funding and all campaigning expenses covered by the election fund. Confirming documents shall be attached to the reports.

One should note that the reports feature personal data of citizens, and dissemination thereof in mass media would infringe their constitutional right to privacy, personal and family secrets, which is prohibited by the Law of Kazakhstan On personal data and their protection.
Information about a total sum of an election fund and its sources shall be posted on the website of the Central Election Commission. Reports on spending shall be published in local mass media. These moves help to ensure transparency in financing and spending during elections.

The Central Election Commission developed supplements to these Rules. The new provisions demand that respective election commissions should publish reports on the money credited to/spent from special temporary accounts twice a month.

As to removing from the legislation the provision on revoking election registration for providing false information in declarations, the Central Election Commission filed a motion with the Ministry of Justice to include into the Conceptual Plan of Lawmaking a draft Constitutional Law amending election laws to set an upper allowable limit of a money sum, which can be wrongly reported by a candidate.

“To ensure independence of the body in charge of control over political parties’ financing, assign to it a duty of carrying out regular monitoring and control over observance of the legislation on financing and transparency of political parties and election campaigns.”

Pursuant to Article 12 of the Kazakhstan’s Law On Political Parties, compliance with the Kazakhstan’s laws on political parties and compliance of activities of a party and its structural units (branches and representative offices) with Kazakhstan laws shall be supervised by the registry authorities, fiscal agencies under tax legislation and other government authorities in cases established by laws of Kazakhstan.

Nevertheless, the Constitutional Law does not establish that the Central Election Commission should supervise political parties’ financing.

A law on the national budget for a respective year establishes the amount allocated by the government to finance political parties. The spending of the budgetary funds is supervised in accordance with Article 135 of the Kazakhstan’s Budgetary Code.

Pursuant to Article 135.3 of the Code, the internal public financial control involves supervision of the national budget utilization carried out by the internal control agency designated by the Government. On 24 April 2008, the Government adopted resolution No.387 “On certain issues of the Ministry of Finance of Kazakhstan” to authorize the ministry to carry out the internal financial control (Clause 15.6 of the resolution).

Therefore, the Ministry of Finance is now considering compliance with this part of the recommendation.

“To strengthen integrity rules for political servants, which are not covered by the Law on the Civil Service (conflict of interest, codes of ethics, financial control, liability for corruption and related offenses).”

The recommendation is not fully within the mandate of the Central Election Commission. The Commission is a government agency responsible for preparing and holding elections of Kazakhstan’s President, members of the Parliament and maslikhats at different levels and has no mandate to establish integrity rules for political servants.

The ethical rules for members of Kazakhstan Parliament are established by the Rules of the Parliament and its houses and the Law On Combating Corruption.
Pursuant to Article 14 of the Constitutional law *On the Parliament and status of its members*, the Parliament's Rules as well as the rules of the Senate and Majilis shall be adopted by the Parliament and its houses respectively.

Therefore, the Parliament itself should include the issues relating to the conflict of interest, disclosure and corruption prevention into its Rules.

The ethical rules for members of Kazakhstan Parliament are established by the Rules of the Parliament and its houses and the Law On Fighting Corruption. Article 33.3 of the Law On the Parliament of the Republic of Kazakhstan and status of its members provides for penalties to be imposed for violations of the parliamentary ethical standards fixed in the Parliament's Rules. The Chairman of the respective house may impose the penalties on a member at fault.

**Assessment of progress - NO PROGRESS**

*No new information has been provided.*
Recommendation 3.8. Judiciary

- To amend legislative acts in order to strengthen the independence of the judiciary and judges, in particular: to change the legal status and the arrangement for providing for the activities of the Supreme Judicial Council, where the majority of members should be judges elected by their peers; to limit, to the maximum extent possible, the influence of political bodies (the President, and Parliament) on the appointment and dismissal of judges; to consider the possibility of having administrative positions in courts be elected by judges’ vote in the relevant courts; to revoke court chairmen’s powers in relation to careers of judges, their material provision, or liability; to envisage in the law a detailed procedure for making judges subject to disciplinary liability, as well as - in accordance with the principle of legal certainty and the right to defence - to limit the number of, and provide clear definition of, the grounds for disciplinary liability and dismissal, envisage a uniform system of bodies disposing of such issues and the possibility of appeal against their decisions in court; and to specify in law the salary rates for judges and an exhaustive list of all possible wage increments, eventually cancelling bonuses for judges.

- To limit to the maximum extent possible subjective influence on the procedure for selecting judges, to ensure publication of detailed information at all stages of selection (list of candidates, results of tests and other components of the qualifications exam, results of competition, etc.) and to ensure access of the public and representatives of the mass media to the respective meetings. To consider introducing mandatory training at the Institute of Justice to be able to qualify for the judicial selection and to consider re-subordination of the Institute of Justice to the body of the judiciary.

- To introduce mandatory declarations (without a link to tax obligations) of assets, income and, possibly, expenses of judges and their family members, with subsequent publication.


Measures taken to implement this recommendation

Government information

To change the legal status of and operational procedures for the Supreme Judicial Council where the majority of judges should be elected by other judges.

The Constitution stipulates that members of the Supreme Judicial Council (hereinafter –SJC) must be nominated by the Present. Powers of the President in respect of SJC are also defined in the Constitutional Law “On the President of the Republic of Kazakhstan”. SJC is established to execute the constitutional powers of the Present and to support his functions. The SJC legal status is set forth in the relevant law.

SJC includes the General Prosecutor, deputies of the Senate and Mazhilis of the RK Parliament, and the Chair of the RK Defence Bar. The State Legal Department of Presidential Administration is the working body of SJC. In pursuit of Presidential Decree # 964, dated 21.11.2014, the number judges among 13 members of SJC has been increased to 8.

Conclusion. This Recommendation can only be implemented in full if relevant amendments are introduced in the Constitution and other legislative acts.

To minimize the influence of political entities (President, Parliament) on the appointment and dismissal of judges.

Pursuant to the Constitution, the Chair and judges of the Supreme Court are appointed to and dismissed from position by the Senate of the Parliament upon recommendation of the President as advised by SJC.
Chairpersons and judges of local and other courts are appointed and dismissed by the President upon the SJC recommendation.
At the same time, the appointment and dismissal procedures for judges are defined in such a way that the final decision is made by phases: at first judicial bodies formulate the decision, and only at the last stage the decision is approved by the political authorities.
Only persons who pass the qualification test of the SJC Qualification Commission may be appointed judges. The status and composition of this collegial body are regulated by law; the Commission includes judges delegated by the Judicial Jury on a rota basis.
Candidates have to complete internship in a court as provided by the rules set forth in the relevant Presidential Decree. The internship results are examined at a plenary session of a regional or equal-status court. Candidates to the Bench are selected on a competitive basis by SJC that must have an appropriate representation of judges.
In the same manner, the judiciary plays a decisive role in the dismissal of judges. In accordance with Article 2 of the Law “On the Supreme Court of the Republic of Kazakhstan”, the termination of judicial powers due to dismissal, resignation, transfer to another position, attainment of the retirement age or the professional age limit, disciplinary proceedings, professional incompetence, or other reasons, come within the authority of SJC. Prior to submission to SJC, the issues of professional incompetence or disciplinary liability of judges are reviewed by the judicial community at plenary sessions of regional or equal-status courts and of the Judicial Jury.
Conclusion. The exact implementation of this Recommendation requires the amendment of the Constitution and of other legislative acts.

To consider the possibility for election of judges to administrative positions in courts by the vote of the staff of such courts
It has been mentioned that Chairpersons of local and other courts are appointed and dismissed by the President upon SJC recommendation, in accordance with the Constitution and other legislative acts.
At the same time, the recommendations of international experts to enhance the role of the judicial community in the delegation of administrative powers to judges are being implemented. An ever growing attention is given to further development and promotion of the personnel reserve for senior administrative positions in courts or for positions of Supreme Court judges. Candidates to the personnel reserve are selected by the relevant Republican and regional commissions. To be selected to the personnel reserve, judges should have sufficient service records in the position of judge, good performance indicators, organizational skills and impeccable reputations.
Later on, when candidates to administrative judicial positions are nominated, priority is given to the personnel pool members, while the possibility for nominating other judges to such positions is extremely low. Candidates to vacant positions of court chairpersons or chairpersons of judge panels are discussed at plenary sessions of regional or equal-status courts and of the Supreme Court, and are elected by vote.
Conclusion. The exact implementation of this Recommendation requires the amendment of the existing procedures for the formation of judiciary, which are set forth by the Constitution

To revoke the authority of court chairpersons on issues related to career growth, remuneration and responsibility of judges.
In accordance with the Constitutional Law “On the Judicial System and Status of Judges in the Republic of Kazakhstan”, candidates to vacant positions of chairpersons of courts and chairpersons of judicial panels in local and other courts, chairpersons of judicial panels and judges of the Supreme Court are discussed at plenary sessions of courts on an alternative basis upon the recommendation of the Supreme Court Chairperson. Resolutions of the regional or Supreme Court plenary sessions give the Supreme Court Chairperson the grounds for submitting a list of candidates to SJC for consideration on an alternative basis.
Resolutions of the regional court or the Supreme Court plenary sessions, or recommendations of the regional court or the Supreme Court Chairpersons give the Judicial Jury grounds to examine the file of a particular judge.

Thus, the functions of court chairpersons, including the Supreme Court Chairperson, on matters of careers and responsibility of judges are significantly restricted by the powers of the judicial community, namely the plenary sessions of courts and of the Judicial Jury.

The mandate of the Supreme Court Chairperson to extend the term in office of a judge until the attainment of the professional age limit can only be executed with account of the opinion of the collegial judicial body, namely SJC.

The logistical and social security issues fall within the competence of an independent entity – the Department of operational support of courts under the Supreme Court, and its territorial divisions.

The performance of this authority is also evaluated at court plenary sessions. Moreover, in view of the existing procedures for court funding, external agencies supervise the logistical and financial support of court operations and the optimal use of funds allocated from the republican budget.

Conclusion. The exact implementation of this recommendation requires the amendment of the existing procedure of forming the judiciary corps, which is set forth in the Constitution.

To include in the law a detailed description of disciplinary proceedings against judges, and, in line with the principle of legal responsibility and dismissal from office, to create a single system of agencies that would examine such matters and provide for a possibility to challenge their decisions in court.

The matter of disciplinary liability of judges falls within the competence of a single collegial body – the Judicial Jury, which is composed of representatives of all judicial instances.

Resolutions of the regional or Supreme Court plenary session, or recommendations of the regional or Supreme Court Chairpersons offer the Judicial Jury the grounds to examine the personal file of a judge.

In accordance with the Constitutional law “On the Judicial System and Status of Judges in the Republic of Kazakhstan”, disciplinary offences in the form of gross violation of the law during trial, disreputable misconduct, violation of judicial ethics, or gross violation of labor discipline are punished by a reprimand, letter of warning, dismissal from the position of court chairperson or chairperson of a judge panel for undue performance of official duties, or by dismissal from the position of judge.

Under the Regulation on the Judicial Jury, that was approved by Presidential Decree # 643, dated 26.06.2001, judges may only be liable for disciplinary proceedings on the grounds set forth in the Constitutional Law “On the Judicial System and Status of Judges in the Republic of Kazakhstan”. The resolution of the Judicial Jury is not subject to appeal.

At the same time, the Constitutional law “On the Judicial System and Status of Judges in the Republic of Kazakhstan” provides for the SJC refusal to issue recommendation on the dismissal of a court chairperson or of a chairperson of a judge panel, which serves as the ground for the Judicial Jury to reverse or review its own resolution.

To define in the law the amount of compensation to judges and an exhaustive list of all possible salary mark-ups, as well as a possibility for the elimination of bonuses for judges.

Judges get remuneration in accordance with provisions set forth in the Presidential Decree “On the Unified Remuneration System for Public Officers”. The rate of remuneration depends on a set of multipliers linked to court levels (Supreme Court, regional court or district court), official positions (chairperson, chair of panel, judge) and seniority.

Bonuses to judges are paid in accordance with the Rules for the payment of bonuses, financial aid and mark-ups to official salaries of public officers in the Republic of Kazakhstan from the state budged; the Rules were approved by Government Resolution # 1127, dated 29.08.2001 (hereinafter – the Rules).

This form of incentive is standard and can be awarded to any public officer, including judges, for good performance. Payment of awards for trial outcomes is prohibited.
Conclusion. To implement this recommendation to the letter, the existing system of judiciary remuneration should be changed and relevant amendments should be introduced into legislative acts, including constitutional laws.

To minimize subjective influence on the selection of judges, to ensure the publication of detailed information at all stages of selection (list of candidates, testing results and other components of the qualification exam, contest results etc.) and access to relevant meetings for the public and mass media

Pursuant to the Law “On the Supreme Judicial Council of the Republic of Kazakhstan”, selection of candidates to vacant positions of judges in local and other courts is done by SJC on a competitive basis. Procedures of SJC meetings and other organizational issues are defined by SJC Rules and Regulations. The State Legal Unit of Presidential Administration is a SJC working body. The competition is an open procedure; SJC resolutions are made public immediately upon their adoption. Mass-media and court web-sites post information about:

– Persons who passed the qualification exam for the position of judge;
– Candidates serving internship in courts;
– Candidates competing for vacant positions of judges;
– Candidates recommended for the positions of chairpersons and chairs of panels in local courts;
– Announcement of competitions.

Mass media are invited to SJC meetings. This way the public participation is ensured at all stages of judges’ selection.

Conclusion. This recommendation can only be implemented in full, when relevant amendments are introduced into the SJC Rules and Regulations, and into other legal acts.

To study the possibility of mandatory training at the Institute of Justice as an eligibility criterion for candidates to the bench and of assigning the Institute to a judicial authority

The Judicial Academy under the Supreme Court was created in 2003 at the premises of the Institute of Advanced Training for Judges and Judiciary Personnel; in 2005 the Academy was renamed the Institute of Justice and merged with the Presidential Academy of Public Administration. The Institute of Justice (hereinafter – the Institute) is a higher educational establishment that trains personnel for the judicial system under a special Master’s Degree program. The share of the Institute graduates among judges is growing consistently, and 90% of judges are estimated to hold the Masters’ Degrees of the Institute by 2018. Jointly with the Agency for Public Service, the Supreme Court plans to enhance the role of the Institute in the training of judicial personnel. The training of judicial staff at the Institute is also regulated by the Strategy of Judicial Education 2012-2016, approved by Resolution of the Supreme Court Chairman # 31, dated 03.12.2012.

Conclusion. To implement this recommendation to the letter, the existing system of judiciary training should be changed, and relevant amendments should be introduced into effective legislation.

To introduce mandatory declaration of property, income and, if possible, expenses of judges and their families (apart from tax obligations), and public disclosure of such declarations

According to the Law ‘On Anti-Corruption Enforcement’, judges, being public officials empowered to administer justice in accordance with the procedure set forth in the Constitution and the Constitutional Law “On the Judiciary System and Status of Judges in the Republic of Kazakhstan”, and their spouses have to declare their incomes and property. Further steps to improve the income declaration procedure for judges are based on the common principle that applies to all public officers in all branches of power.

1 Recommendation to publish detailed information is implemented (see OECD Report).
Conclusion. The implementation of this recommendation requires the alteration of the constitutional principle declaring the equality of all persons before the law, regardless of their social status or position.

In shaping approaches to the implementation of recommendations based on the monitoring results (the second and third rounds), one should bear in mind that the effective law in the Republic of Kazakhstan is represented by the Constitution and laws that are consistent with it, and by obligations of the Republic of Kazakhstan resulting from international treaties or other sources. The Constitution has the ultimate legal force.

Kazakhstan is a unitary state with a presidential form of government. President of the Republic of Kazakhstan is the Head of State, the superior public official who defines the key areas of domestic and foreign policy. President of the Republic is a symbol and guarantor of unity of the people and the state power, of inviolability of the Constitution, of the rights and freedoms of a person and a citizen. President of the Republic ensures the coordinated functioning of all branches of the state power. The state power in the Republic is executed according to the principle of its division into legislative, executive and judicial branches, which interact by using the system of checks and balances.

In accordance with the Constitution, Kazakhstan respects the principles and norms of international law, pursues the policy of cooperation and good neighborly relations between states, of equality and mutual non-interference in domestic affairs.

**Assessment of progress – LACK OF PROGRESS**

Despite the increase in the number of judges in the High Judicial Council, who now comprise the majority in its composition, which is a positive development, implementation of the recommendation in this part should concern permanent legislative changes as to the principle of this body composition. No new information on implementation of other parts of the recommendation was provided.

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“To change the legal status and the arrangement for providing for the activities of the Supreme Judicial Council, where the majority of members should be judges elected by their peers”

No new information has been provided.

“to limit, to the maximum extent possible, the influence of political bodies (the President and Parliament) on the appointment and dismissal of judges;”

No new information has been provided.

“to consider the possibility of having administrative positions in courts be elected by judges’ vote in the relevant courts;”

No new information has been provided.

“to revoke court chairmen’s powers in relation to careers of judges, their material provision or liability;”

No new information has been provided.

“to envisage in the law a detailed procedure for making judges subject to disciplinary liability, as well as - in accordance with the principle of legal certainty and the right to defence - to limit the number of, and provide
clear definition of, the grounds for disciplinary liability and dismissal, envisage a uniform system of bodies disposing of such issues and the possibility of appeal against their decisions in court;”

The matter of disciplinary liability of judges falls within the competence of a single collegial body – the Judicial Jury. It is composed of representatives of all judicial instances.

Decisions of plenary sessions of a regional court or the Supreme Court or a motion of the regional court chairperson or the Supreme Court Chairperson give the Judicial Jury grounds to examine the documents of a particular judge.

Pursuant to the Constitutional Law On the Judicial System and Status of Judges in the Republic of Kazakhstan, disciplinary offenses in the form of gross violation of the law during trials, disreputable misconduct, violation of judicial ethics, or gross violation of labor discipline are punished by a reprimand, letter of warning, dismissal from the position of a court chairperson or chairperson of a judicial panel for undue performance of official duties, or by dismissal from a judicial office.

Under the Regulation on the Judicial Jury as approved by Presidential Decree No. 643 dated 26 June 2001, judges may only be liable for disciplinary proceedings on the grounds set forth in the Constitutional Law On the Judicial System and Status of Judges in the Republic of Kazakhstan. Decisions of the Judicial Jury are final and not subject to appeal.

At the same time, the Constitutional Law On the Judicial System and Status of Judges in the Republic of Kazakhstan establishes that the Supreme Judicial Council may refuse to issue recommendation on the dismissal of a court chairperson, chairperson of a judicial panel or judge, which serves as the ground for the Judicial Jury to reverse or review its own decision.

To implement the recommendation, the Supreme Court sent letter No.7-2-9/4911/9127//01-38.71 (ПӘ) to the Head of Staff in the Presidential Administration on 9 December 2014 to raise these issues before the Council. Position of the Presidential Administration is set forth in resolution No.2307-4 PAB dd. 24 December to memorandum No.51-15/2307-4 PAB of the State and Legal Department dd. 23 December 2014.

“to specify in law the salary rates for judges and an exhaustive list of all possible salary increments, eventually cancelling bonuses for judges.”

No new information has been provided.

“To limit to the maximum possibilities of subjective influence on the procedure for selecting judges, to ensure publication of detailed information at all stages of selection (list of candidates, results of tests and other components of qualifications exam, results of competition, etc.) and to ensure access of the public and representatives of the mass media to the respective meetings.”

No new information has been provided.

“To consider introducing mandatory training at the Institute of Justice to be able to qualify for the judicial selection and to consider re-subordination of the Institute of Justice to a body of the judiciary.”

No new information has been provided.
To be fully compliant with this Recommendation, Kazakhstan should change the existing judicial training system by amending legislative acts.

“To introduce mandatory declarations (without a link to tax obligations) of assets, income and, possibly, expenses of judges and their family members, with subsequent publication.”

No new information has been provided.

To implement this recommendation, Kazakhstan has to change the constitutional principle declaring the equality of all persons before the law, regardless of their social status or position.

The Ministry of Finance reported that it has finalized a draft Law On amending and supplementing certain legislative acts of the Republic of Kazakhstan on declaring income and property of Kazakhstan’s citizens and persons with temporary residency permits with due regard to recommendations of the Presidential Administration and outcomes of a session of the National Commission for Modernization on 6 June 2015. Currently, the Government is examining the draft law.

The draft law establishes that a particular category of citizens (civil servants, judges, their family members, etc.) should declare their expenses on property subject to the state registration (real estate, transport vehicles, shareholdings, and securities).

**Assessment of progress - NO PROGRESS**

Kazakhstan has again provided the information which was previously recognized as insufficient. The provided arguments were also analysed and rejected in the third round monitoring report.
Recommendation 3.9. Private sector

- To consider legislative and other measures for establishing proper systems of reporting, information disclosure, internal and external audit, financial control and ensuring general transparency of national management holdings, national holdings, national development institutes, national holding companies and other similar legal entities.
- To conduct a monitoring of activities of expert councils at state authorities and to engage representatives of business organizations in dialogue on anti-corruption mechanisms in the public and private sectors. To set the minimal period of consultations to be held with the business community, and the deadline for publication of draft legal acts before their adoption.
- To facilitate, in close co-operation with business unions and civil society organisations, promotion and enforcement of internal corporate compliance programmes having taken due account of the best international practice and standards, in particular, Annex 2 to the OECD Council Recommendation of 26 November 2009.


Measures taken to implement this recommendation

Government information

To consider legislative and other measures so as to establish proper systems of reporting, disclosure of information, internal and external audit, financial oversight and overall transparency of national managing holdings, national companies, national development institutes, and of other similar legal entities

Since 2012, the Accounting Committee has been implementing the investment project “The Integrated Information System of the Accounts Committee” (hereinafter IIS-AC), which is scheduled to become operational in 2015.

To ensure an automated exchange of information between the Accounting Committee and the Ministry of Finance, both authorizes signed a joint Instruction “On the Interoperability of IIS-AC and of the Integrated Automatic Information System “e-Minfin” of RK Ministry of Finance” (hereinafter IAIS “e-Minfin”) # 84-n/k, dated 23.05.2014.

Within the framework of information exchange, the Ministry of Finance should provide to the Accounting Committee the following data:
- performance outputs of the Financial Oversight Committee at the Ministry of Finance, auditing results per region in relation to the implementation of the republican budget, and audit plans;
- a list of Joint-Stock Companies and Limited Liability Partnerships with a state share in the authorized capital, which are registered as republican SOEs.

The Concept of Public Audit envisages the development by the Accounts Committee of a Common Database for the purposes of Public Audit and Fiscal Oversight.

Furthermore, there is an ongoing close interaction with the public and mass media. Full information on the supervisory, analytical, international and social activities of the Accounts Committee is regularly posted on its official web-site and disseminated among the mass media. Mass media briefings are arranged to hear reports of members of the Accounts Committee on audit and inspection outputs.
Assessment of progress – NO PROGRESS

No new information on implementation of the recommendation was provided. Information that was provided concerns mainly public financial control and audit which are not covered by this recommendation.

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No new information has been provided.