



# **REVIEW OF THE NATIONAL LEGISLATION AND INSTITUTIONAL STRUCTURES FOR THE IMPLEMENTATION OF THE PROTOCOL ON STRATEGIC ENVIRONMENTAL ASSESSEMNT (SEA) IN AZERBAIJAN**



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## **LIST OF ABBREVIATIONS**

SEA – strategic environmental assessment

MEA – multilateral environmental agreement

CBD – United Nations Framework Convention on Biologic Diversity

OVOS – environmental impact assessment (*otsenka vozdeystivya na okruzhayushchuyu sredu*)

PCA – Partnership and Cooperation Agreement

EU –European Union

ENPI - European Neighborhood and Partnership Instrument

UNDP – United Nations Development Program

MENR – Ministry of Environment and Natural Resources

SER – state environmental review (*gosudarstvennaya ekologicheskaya ekspertiza*)

## INTRODUCTION

Azerbaijan is not yet a Party to the Protocol on Strategic Environmental Assessment (Protocol on SEA) to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). To better prepare for accession to the treaty the country requires to undertake a number of steps and develop a national system to apply SEA procedures according to the provisions of the Protocol, including:

- (a) Improving its legislative and institutional framework to fully comply with the Protocol;
- (b) Defining roles and responsibilities of various authorities in the SEA process;
- (c) Building national and local capacities, developing practical experience and national guidelines in application of the SEA procedures in line with the Protocol;
- (d) Raising awareness and common understanding of the benefits of the SEA at national and local levels and in different sectors, including the benefits of public participation and the consultation of relevant authorities.

At the sixth session of the Meeting of the Parties to the Espoo Convention and the second session of the Meeting of the Parties to its Protocol, in June 2014 in Geneva, the Government of Azerbaijan confirmed its request to the UNECE secretariat to assist in addressing the above mentioned challenges. The request was reflected in the adopted workplan of the two treaties for 2014–2017 (decision VI/3–II/3) containing the following activities:

- (a) Review of existing strategic environmental assessment (SEA) legislation and procedures to be carried out from June to October 2014, followed by the drafting of relevant legislation in 2015 (if required);
- (b) Pilot application of an SEA procedure to a draft Government plan or programme, scheduled to take place from September 2014 to April 2015, combined with national and local level training workshops on SEA to be held in 2015 and 2016;
- (c) Preparation in 2015 of national guidelines on the application of SEA in Azerbaijan;
- (d) Participation of national experts of Azerbaijan in three annual subregional experience-sharing events.

This review of the national legislation and institutional structures for the implementation of the Protocol on SEA to the Espoo Convention in Azerbaijan was provided with financial assistance from the EU funded Programme 'Greening Economies in the Eastern Neighborhood'. The report briefly presents the requirements of the Protocol on SEA; summarizes the existing national strategic planning system and environmental assessment system; and presents analysis of the key stakeholders. It further reviews the draft law on EIA vis-à-vis the Protocol and presents a number of recommendations on how to better align the draft law with the requirements of the Protocol and relevant EU legislation.

The draft of this review was consulted with the national stakeholders during the round-table event held in Baku on August 28, 2014. The comments and recommendations obtained during and after the round-table discussions were incorporated to this final version of the report.

## 1. GENERAL CONTEXT

### 1.1 Introduction of the SEA Protocol

The Protocol on SEA was adopted in 2003 during a ministerial conference “Environment for Europe” in Kyiv ( Ukraine). It entered into force on July 11, 2010.

Under the Protocol on SEA strategic environmental assessment means *the evaluation of the likely environmental, including health, effects, which comprises the determination of the scope of an environmental report and its preparation, the carrying-out of public participation and consultations, and the taking into account of the environmental report and the results of the public participation and consultations in a plan or programme* (art. 2, para. 6).

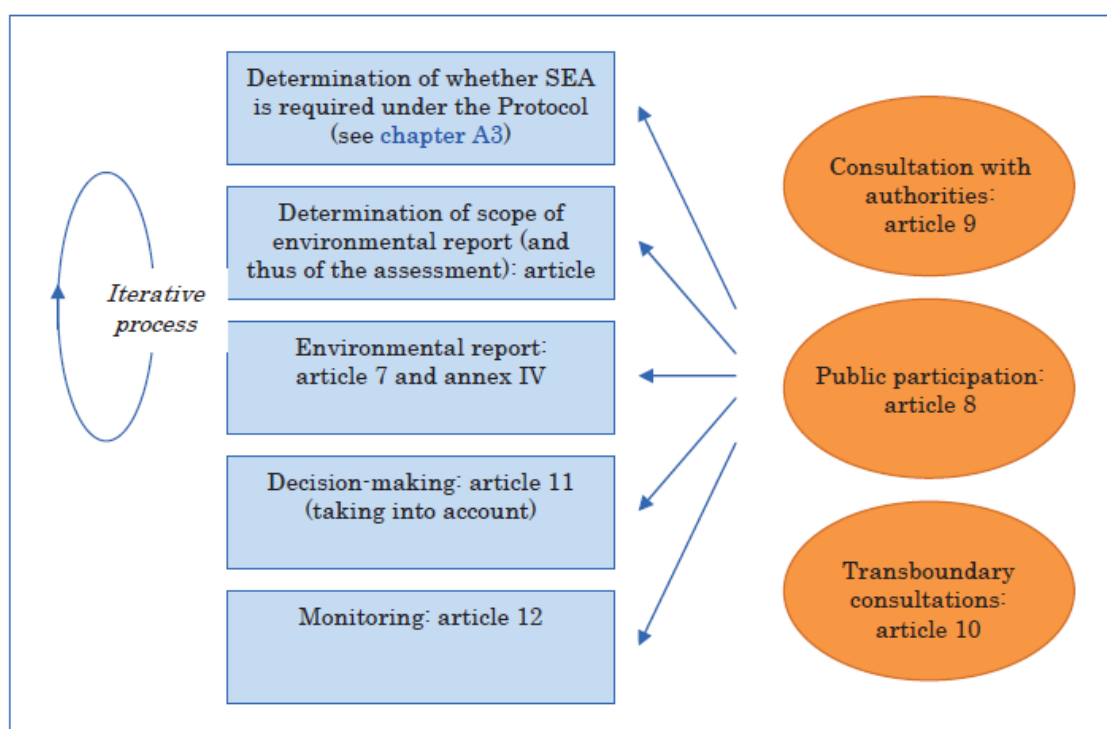
The Protocol sets out a process for carrying out the SEA of plans and programmes, as well as, to some extent, of policies and legislation:<sup>1</sup>

- Field of application concerning plans and programmes (art. 4)
- Screening (art. 5).
- Scoping to determine the content of the environmental report (art. 6).
- Environmental report (art. 7).
- Public participation (art. 8).
- Consultation with environmental and health authorities (art. 9).
- Transboundary consultations (art. 10).
- Decision on the adoption of the plan or programme (art. 11).
- Monitoring of effects (art. 12).
- Application to policies and legislation (art.13).

Main elements of the SEA process are shown in Figure 1 and described in the Table 1 below.

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<sup>1</sup> Based on Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment. United Nations, New York and Geneva, 2012.



**Figure 1. Elements in SEA of plans and programmes.<sup>2</sup>**

**Table 1. SEA Elements.<sup>3</sup>**

Element	Description
Scoping	The first element is, having determined that a plan or programme is to be subject to SEA, to determine the scope of the environmental report. Determining the scope of the report implies also defining the scope of the analyses that will lead to the preparation of the report. Scoping provides an opportunity to focus the report on the important issues to maximize its usefulness to the public, authorities and decision makers. It does not preclude changes in the scope of the report if the need for them were to become apparent at a later stage. Environmental and health authorities have to be consulted in scoping, and the public may be provided with opportunities to participate.
Environmental report	The second element is the preparation of the environmental report (in line with the scope). The report will provide the public and the authorities consulted with information on the environmental effects of the plan or programme.
Public participation	The third element is the participation of the public. This may have already begun during scoping or even during the determination of whether SEA is required under the Protocol for a plan or programme (see chapter A3). The draft plan or programme and the environmental report must be made available to the public, and the public concerned

<sup>2</sup> Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment. United Nations, New York and Geneva, 2012. Page 24.

<sup>3</sup> Ibid. Page 26.

	must be consulted and given the opportunity to express its opinion on the draft plan or programme and the environmental report.
Consultation	The fourth element is the consultation with the environmental and health authorities, which must be allowed the opportunity to express their opinion on the draft plan or programme and the environmental report. Consultation and public participation may occur at the same time. (The public and the authorities are consulted together under article 6 of the SEA Directive.)
Transboundary consultations	If it appears that the plan or programme may have significant transboundary effects (on another Party to the Protocol), or if a potentially affected Party so requests, the affected Party or Parties should be notified and invited to enter into consultations. Those transboundary consultations, which may be done at the same time as the public participation and the consultation with the authorities, must lead to an opportunity for the concerned public and the environmental and health authorities in the affected Party to express their opinion on the draft plan or programme and the environmental report.
Decision-making	The sixth element is the taking of a decision on the adoption of a plan or programme. This decision has to take into account the environmental report and the opinions expressed by the public concerned and the authorities, both domestic and of any affected Party. The decision maker has to produce a statement summarizing how that information was taken into account and why the plan or programme is being adopted in the light of reasonable alternatives. The adopted plan or programme, the decision and the justification must be made publicly available.
Monitoring	The final element is monitoring. SEA does not stop with the decision to adopt a plan or programme. The significant environmental effects of implementation have to be monitored to, among other things, identify unforeseen adverse effects and enable appropriate remedial action to be taken. Monitoring results have to be made available to the authorities and to the public.

## 1.2 International law context

### **Legal status and ratification/accession procedure of multilateral environmental agreements (MEAs)**

International agreements to which Azerbaijan is a party constitute an integral part of the national legal order of Azerbaijan (Art. 148(II) of the Constitution). Whenever there is disagreement between Azerbaijan national legislation (except the Constitution of Azerbaijan and acts accepted by way of referendum) and international agreements to which Azerbaijan is a party, provisions of international agreements shall prevail (Art. 151 of the Constitution).

The procedure for signature, ratification, approval and accession to international treaties is set by the Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijan of June 13, 1995, No. 1057 and the Rules for Submitting Proposals for Conclusion and Denunciation of the International Agreements of Azerbaijan by Central Executive



Authorities and State Owned Enterprises set by Decree of the President of Azerbaijan of January 19, 2011, No.373.

International treaties establishing rules other than those provided by national legislation are ratified by the Parliament of Azerbaijan (Article 8 of the Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijan). The proposals for ratifications/accession are made by the President of Azerbaijan upon a proposal by the Cabinet of Ministers (Art. 2.1 of the Rules for Submitting Proposals for Conclusion and Denunciation of the International Agreements of Azerbaijan by Central Executive Authorities and State Owned Enterprises). They must be accompanied by the text of the international agreement in one of the authentic languages and official translation into Azerbaijani language (Art. 2.6 of the Rules for Submitting Proposals for Conclusion and Denunciation of the International Agreements of Azerbaijan by Central Executive Authorities and State Owned Enterprises). Once approved by the Parliament, the text of the treaty to which Azerbaijan becomes a Party must be published in one of the authentic languages and translated into the national language in two official journals (Art.25 of the Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijan).

### **Relevant MEAs**

Azerbaijan is not a Signatory or Party to the Protocol on SEA, however; during the preparation of this report, government sources indicated that Azerbaijan intends to accede to the Protocol.

Azerbaijan is a party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) and the Convention on Biological Diversity (CBD). These international instruments have direct relevance to the issues covered by the Protocol on SEA: the Espoo Convention sets a general obligation to establish an environmental impact assessment procedure, which is important for the purpose of screening provisions under the Protocol on SEA (article 2). The Aarhus Convention provides for public participation requirements in relation to adoption of the programs, plans and policies (article 7), which is directly relevant for the purpose of the public participation requirements under the Protocol on SEA. CBD sets a general obligation to introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity (article 14), which should be considered in the context of SEA as well.

Azerbaijan acceded to the **Espoo Convention** on March 15, 1999 (Law No.616-IQ of February 1, 1999). The key national acts in areas covered by the Espoo Convention are the Law on Environmental Protection (No.678-IQ of June 8, 1999), Guidelines on Environmental Impact Assessment (*OVOS*) Process (1996), Rules on Financing State Ecological Expertiza. There are no specific provisions in these legal acts on transboundary procedures (notification, consultations).

Azerbaijan acceded to the **Aarhus Convention** on March 23, 2000. The key national acts related to three pillars of the Aarhus Convention are the Constitution of Azerbaijan (1995), Law on Access to Information (No. 1024-IIQ of September 30, 2005), Law on Obtaining Information about the Environment (No.270-IIQ of March 12, 2002), Law on Public Participation (No.816-IVQ of November 22, 2013), Constitutional Law on Legal and Normative Acts (No.21-IVKQ of December

12, 2010), Law on the Basis for Town-Planning (No.684-IQ of June 11, 1999), Law on Environmental Protection (No.678-IQ of June 8, 1999), Law on Environmental Safety (No.677-IQ of June 8, 1999), The Civil Code (No.779-IQ of December 28, 1999, in force since May 26, 2000), Administrative Offences Code (No.906-IQ of July11, 2000, in force since September 1, 2001), Code on Urban Planning and Construction (No.392-IVQ of June 29, 2012) and various sectoral laws on biodiversity, energy, etc.

Azerbaijan acceded to the **Convention on Biological Diversity (CBD) on August 3, 2000**. The national acts related to the Convention on Biological Diversity include a number of nature protection and biodiversity legal acts. The list of key of them is attached as Appendix I to this report. There is no separate biodiversity impact assessment procedure (as referred to in Art.14 of the CBD).

### **Relationship with the EU**

The legal basis of comprehensive relations between Azerbaijan and the European Union is the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part (PCA) signed in Luxembourg on April 22, 1996 and came into force in June 22, 1999.<sup>4</sup> The agreement ensures frameworks of various kinds of cooperation between Azerbaijan and EU (including social, environmental and economic), except military area. PCA was signed for 10 years period and since then is automatically renewed year by year provided that neither the EU or Azerbaijan gives the other Party written notice of denunciation of this (PCA art. 97). In 2010 the EU and Azerbaijan started negotiations over new Association Agreement.

In order to fulfill the obligation undertaken for the harmonization of the legislation of the Republic of Azerbaijan to the EU, the "Action Plan on approximation of the Azerbaijani legislation to the EU's legislation (2010-2012)" was approved by Azerbaijan in accordance with the 43rd Article of the PCA. In accordance with the order of the President of the Republic of Azerbaijan dated June 1, 2005, the State Commission on Integration Azerbaijan to EU and task groups under this Commission were established to strengthen relations with the EU.

The European Neighborhood and Partnership Instrument (ENPI) has been under implementation since 2007. Within the framework of this instrument assistance is provided to implement European Neighborhood Policy tasks, including such assistance instruments such as budget support, twinning, technical assistance, TAIEX<sup>5</sup>, SIGMA<sup>6</sup>. The present review is undertaken under ENPI framework to facilitate harmonization of national legislation with the Protocol on SEA and relevant EU legislation (such as the Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment)

## **2. NATIONAL STRATEGIC PLANNING SYSTEM AND SEA**

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<sup>4</sup> [http://www.economy.gov.az/index.php?option=com\\_content&view=article&id=1038&Itemid=183&lang=en](http://www.economy.gov.az/index.php?option=com_content&view=article&id=1038&Itemid=183&lang=en)

<sup>5</sup> TAIEX is the Technical Assistance and Information Exchange instrument managed by the Directorate-General Enlargement of the European Commission. Source: [http://ec.europa.eu/enlargement/taix/what-is-taix/index\\_en.htm](http://ec.europa.eu/enlargement/taix/what-is-taix/index_en.htm).

<sup>6</sup> SIGMA is a joint European Commission and OECD initiative, mainly funded by the EU, which helps mobilize European expertise to support reforms in partner countries' public administration in fields such as public internal financial control or public procurement. Source: [http://www.enpi-info.eu/maineast.php?id=168&id\\_type=10](http://www.enpi-info.eu/maineast.php?id=168&id_type=10)

Implementation of the SEA procedure first requires a clear analysis of the national planning system. Integration of SEA procedures into the national legal framework should take account existing planning procedures corresponding to the requirements of the Protocol and be tailored to any particularities of the national system. The proposed SEA legal framework must cover all planning documents falling under the definition of plans and programs (Art. 2.5 and Art. 4) (and subject to screening requirements, Art. 5), irrespective of the names/terms used for the planning documents in the country.

## 2.1 Planning system

### General observations of planning system

At the national level various types (names) of the strategic documents were identified. State (national) programs and respective action plans seem to be most often used in policy planning. In particular, state programs are the basis for state budget expenditures, and, therefore, have a major impact on the ground by enabling state financing of specific projects (sometimes called “measures”<sup>7</sup>). In parallel, state (national) strategies and respective action plans are used for policy planning quite often.

The state programs and state strategies have similar pattern of preparation, adoption and content:

- Approved by the President of Azerbaijan;
- Include program/strategy description;
- Include action (policy measures) plan.

Program/strategy description usually has an introductory part, describes current state of affairs in the area covered by program/strategy, set specific goals/targets (may include indicators) and the financing sources. The level of details in each program/strategy differs, but they follow a general pattern described below:

- Action plan (sometimes plan of policy measures) is usually included in the text of the program/strategy in the form of a table: action/policy measures>responsible agency>duration/time. Depending on the timeframe of the program/strategy the action plan may covers part or whole period of the program/strategy. Accordingly, it may provide for a mid-term review of completion of targets/goals.
- Spatial planning documents are subject to robust procedures described and need to follow the structure/requirements described in this section below).

These and other planning documents identified during the study are summarized in Table 2.

**Table 2. Strategic planning instruments in Azerbaijan.**

<i>General planning documents</i>	<i>Spatial planning documents</i>	<i>Planning documents in bilateral relations</i>
<ul style="list-style-type: none"> <li>- State programs</li> <li>- National program</li> <li>- Action plan</li> </ul>	<ul style="list-style-type: none"> <li>- Region broad plan</li> <li>- City general plan</li> <li>- City detailed plan</li> </ul>	<ul style="list-style-type: none"> <li>- Concession agreements, especially on oil/gas development</li> </ul>

<sup>7</sup> E.g, Complex Plan on Measures to Improve Environmental Situation in Azerbaijan (2006-2010).

<ul style="list-style-type: none"> <li>- National action plan</li> <li>- Measures (group of measures)</li> <li>- National Strategy</li> <li>- Development Concept</li> <li>- State investment program</li> <li>- Targeted program</li> </ul>		<ul style="list-style-type: none"> <li>- Action Plans and programs (with the EU)</li> <li>- Loan agreements with World Bank group.</li> </ul>
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### **Definitions and procedures for adoption of strategic planning documents**

There are significant differences in the level of detail in the national legislation regarding strategic planning, including definitions and procedures for the adoption of various planning instruments (documents). While strategies, programs, and action plans are most often used instruments, there no specific laws or other acts establishing relevant procedures and definitions. In the absence of a clear and comprehensive legal framework in Azerbaijan, development and adoption of strategies, programs and action plans are subject to general rules for adoption of normative legal acts. Strategies have no definitions in the legislation. In contrast, spatial planning is subject to detailed legislative provisions. These considerations are discussed in details below.

#### *State programs and action plans*

The Constitution of Azerbaijan uses the terms “state social program” and “state economic program” (article 109(3)). Yet, the Constitution does not define these terms.

“Action plans” are usually either part of the program or separate documents, but national legislation does not define this term.

Despite lack of definitions in the legislation, in practical terms programs and action plans are the most important government’s policy and planning instruments, especially periodically approved state program of social economic development of the regions.

#### *State investment program and targeted program*

The Law on Budget System of the Republic of Azerbaijan (No.358-IIQ of July 2, 2002) uses the term “state investment program” as necessary in budgeting process encompassing significant investment projects in compliance with the drafts of the state budget and summary budget for the next year, the summary budgets for the following three year. The same law is uses the term “targeted program” (which must accompany the draft annual budget to be financed under such annual state budget) without defining it.

#### *Legislative development programs and plans*

The Law on Normative Legal Acts uses the term “program for preparation of normative legal acts” and “plan for preparation of normative legal acts” (both being planning documents for legislative process). Yet, no definition is given to these terms.

#### *Spatial planning documents*

The three types of the spatial planning documents (region broad plans, city general plans and city detailed plans) are subject to a special legal act - Urban Planning and Construction Code (2012). All of these spatial plans are obligatory acts (art. 20.3 of the Code) and should be open to

public access (art. 20.4 of the Code). Each of them is developed on the basis of the preceding (more general) document (art. 20.2 of the Code).

Chapter 5 of the Urban Planning and Construction Code sets out detailed provisions on spatial planning documents.

“*Broad plans*” are documents of territorial<sup>8</sup> planning (art. 20.1 of the Code) developed within the general planning of the territory of Azerbaijan (regions, territorial units) (art. 20.1.1 of the Code) and may contain (art. 21.1 of the Code):

- Settlements system (cities and connecting roadways, as well as future development of them)
- Un-urbanized territories (forests, pastures, subsoil resources, protected areas)
- Territories’ amenities and functional use changes
- Infrastructure sites and corridors
- Important sites for a territory functioning (airports, sea ports, etc).

Broad plans have no expiry date.

“*General plans*” are documents of territorial planning (art. 20.1 of the Code) developed at the level of cities or other settlements (art. 22.1 of the Code). City general plans must specifically indicate (art 22.3 of the Code):

- territories necessary for construction (as well as natural events safety measures);
- territories provided for extraction industry use or processing of minerals;
- territories provided for construction activities and having significant amount of environmentally dangerous materials.

City general plans may contain (art. 22.2 of the Code):

- territories provided for construction activities;
- objects to provide goods and services, including to meet social and cultural needs, to the inhabitants;
- parks, green areas, beaches and cemeteries;
- road infrastructure territories;
- territories provided for communication and engineering lines, and wastes;
- territories under special environmental protection status;
- water territories provided for ports and water business, as well as water territories which need to remain untouched for flood protection purposes;
- territories which require engineering preparatory works, including territories where landscape projects are needed (for drilling or filling), or territories for stone or other extraction;
- agricultural lands;
- forests;
- territories provided for environmental protection and landscape purposes.

General plans must be accompanied by an explanatory note providing description of general plan’s goals and significant impacts.

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<sup>8</sup> For the sake of this report and accuracy of citing relevant legislation “territorial” is used when referring to specific provisions of the legislation. The report uses the term “spatial” for general reference to planning of territories.

General plans are valid for 20 years.

“Detailed plans” are documents of territorial planning (art. 20.1 of the Code) developed for territories of the cities, settlements, villages, rayons or parts of their territories (art. 23.1 of the Code). Article 23 of the Code defines various elements of such plans, including elements covered in general plans but in more details (e.g, maximum number of apartments in multi-apartment buildings, width and length of territories for construction). In practice, these plans are made in a larger scale compared to general plans. Detailed plans may have no validity date.

#### *Other planning documents*

There is no definition of a “strategy”, “development concept” or “measures”.

#### **Procedure for the preparation of strategic documents**

There is no specific procedure for preparation of the state programs and strategies.

In practice, state programs and strategies are approved by decree of the President of Azerbaijan. An order of the President of Azerbaijan usually begins the preparation of the program/strategy, setting out timeframes and stakeholders involved. In most cases, the state programs are prepared by the Cabinet of Ministers upon such orders by the president. The strategies may be prepared by specific agencies (e.g, state water company, energy efficiency agency, etc. depending on program subject area), which is important for identifying stakeholders. If the preparation of a program is given to the Cabinet of Ministers, it starts a process of gathering proposals from all central and local executive branches. Final draft of the program is “approved” (given a consent) by all central executive agencies, including the Ministry of Environment and Natural Resources.

Since the programs and strategies are adopted by a decree of president and mostly prepared by the Cabinet of Ministers, in principle such decisions are subject to two general legislative acts setting out rules on all legislative acts in the country: the Law on Normative Legislative Acts (2010) and the Regulation on the Procedure for Preparation and Adoption of Normative Legal Acts by Executive Powers (2011).

Chapter 6 of the Urban Planning and Construction Code sets out detailed procedure for preparation of the broad plans, general plans and detailed plans.

#### **Role of environmental ministries and other authorities**

Draft strategies, programs and plans are subject to consultation (consent) procedure within the Cabinet of Ministers. In this context, all central public authorities are consulted on the draft program or plan, including MENR and Ministry of Health. The draft program/plan needs a consent given by every central authority before it is submitted for approval. This is governed by a general procedure established by the Law on Normative Legal Acts and the Regulation on the Procedure for Preparation and Adoption of the normative legal acts by executive public authorities (this includes acts by President of Azerbaijan, the Government, ministries, committees, and other central authorities).

In practice, central public authorities are consulted twice: first to submit their proposals for the draft program or plan and second at the end of the preparation procedure when they are providing their consent to draft documents prepared by the Cabinet of Ministers.

There is no formal role of health authorities in the development of the territory planning documents.

### **Final decision**

Strategies or programs are adopted by the President of Azerbaijan in the form of a decree. Broad plans, general plans and detailed plans for territory planning are adopted by local executive authorities. It was reported during fact finding mission that some plans may be adopted by the Cabinet of Ministers but no examples were provided by interviewees.

## **2.2 Strategic documents at the national level that will require SEA under the Protocol on SEA**

A strategic environmental assessment must be carried out for plans and programmes which are prepared for specific sectors: agriculture, forestry, fisheries, energy, industry including mining, transport, regional development, waste management, water management, telecommunications, tourism, town and country planning or land use (art. 4.2 of the Protocol on SEA). Such programs and plans (meeting, in addition, other requirements of the art. 4.2 of the Protocol on SEA) comprise the one group of strategic documents for which SEA will be required in Azerbaijan under the Protocol on SEA. It is also important to understand what other strategic documents are prepared in Azerbaijan for the purpose of the screening requirements under articles 4.3 and 5 of the Protocol on SEA.

In Azerbaijan governmental policy is mostly implemented through State Programs, National Action Plans and similar documents. The total number of all strategic documents adopted annually can be estimated as <10. This shall be taken into account when developing national SEA system to estimate administrative burden created by SEA framework if no screening requirements are envisaged (i.e., if all strategic documents are subject to SEA).<sup>9</sup>

The most relevant examples of strategic documents potentially requiring SEA are:

- State Program on Socio-Economic Development in Baku City and its Suburbs - 2011-2013, 4 May 2011, № 1490 (II program);
- Action Program on Socio-Economic Development in the Settlements, February 27, 2006, № 1338 (I program);
- Action in Connection with the Construction and Repair of Roads in the Settlements, May 4, 2011, №1490;
- Detailed Master Plan for Conservation of the Historical Center of Baku, November 8, 2010, № 206;
- State Program on Poverty Reduction and Sustainable Development in the Republic of Azerbaijan - 2008-2015, September 15, 2008, № 3043 (II program);

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<sup>9</sup> Taking into account the number of strategic documents developed on the annual basis in Azerbaijan the expected administrative burden will not be excessive, compared to the benefits that application of SEA brings. For example, in Finland SEA procedures are applied to 1500 strategic documents annually, in UK this number corresponds to 400-500 SEAs per year, and in Austria about 270. At the same time only in Salzburg region (Austria) screening procedures are applied to about 300 documents annually.

- State Program for the Social-Economic Development of the Regions of the Republic of Azerbaijan in 2014-2018, 2014 (III program);
- Comprehensive Action Plan for the Years 2006-2010 to Improve the Environmental Situation, September 28, 2006, № 1697 (Plan II is going to be developed)
- National Program for Sustainable Socio-Economic Development in the Republic of Azerbaijan, February 18, 2003, № 1152 (formerly the National Action Plan was adopted in 1998);
- State Program on the Use of Alternative and Renewable Energy Sources in the Republic of Azerbaijan on, October 21, 2004, № 462;
- State Program on Development of Tourism in the Republic of Azerbaijan 2010-2014, April 6, 2010, № 838 (II program);
- State Program on Reliable Provision of the Population in the Republic of Azerbaijan with Food Products -2008-2015, 25 August, 2008, № 3004 (II program);
- National Strategy and Action Plan on the Conservation and Sustainable Use of Biological Diversity in the Republic of Azerbaijan, March 24, 2006, № 1368.

These state programs and national documents address sustainable socio-economic development, urban planning, environmental protection, material and spiritual heritage, the preservation of historical monuments, the country's natural resources, the effective use of land and their sustainable management, and land degradation. Information gathered about these and other recently adopted strategic documents is summarized in the Table 3 below.

At present, new state programs and strategies are being prepared. One of them is a National Strategy for Solid Waste Management, being prepared with the support of the World Bank. Other documents in preparation include "National Strategy on the Use of Alternative and Renewable Energy Resources for the years 2012-2020", regional development plans for each of the nine regions of Azerbaijan. This project is financed by the Government of Azerbaijan itself.

Azerbaijan receives assistance to achieve its development goals from multi-lateral and bi-lateral international agencies. Several of agencies implement projects that address environmental priorities in the country and in Greater Baku, including the World Bank (water, wastewater, solid waste), UNDP (tourism), and German Development Bank/German International Cooperation Agency (KfW/GIZ - waste, water/wastewater, land remediation/redevelopment). The World Bank's project in Greater Baku area included development of the Greater Baku Regional Development Plan, which was subject to strategic environmental assessment.

**Table 3. Strategic documents adopted in specific sectors in recent years.**

Sectors	Names and legal basis of strategic documents in each given sector that are being prepared or are required to be prepared by public authorities at all levels of government	Information of the number actual documents prepared during last five years, current situation and planned changes in the legislation and any other relevant information
Agriculture	Program, strategy or plan.	1 (Vine-Growing Program December 15, 2011, No.1890). In previous years programs were adopted to address



		agrarian sector, food supply.
Forestry	Program, strategy or plan.	0 In previous years a program was approved for forests development and rehabilitation.
Fisheries	Program, strategy or plan.	No information available.
Energy	Concession (production sharing) agreement, program, strategy. Alternative Energy Development strategy under preparation currently.	5-10 Most relate to extraction of oil/gas deposits), in the form of concession (production sharing agreements) or on investigation and extraction of specific group of deposits, except for Energy Fuel Complex Development Program for 2005-2015 (February 14, 2005, No.635). In previous years several strategic documents were adopted: long term strategy on management of revenues from oil and gas, alternative and renewable energy sources program, etc.
Industry	Program, strategy or plan.	1 (Outer Space Industry Development Program, August 19, 2009, No.443).
Mining	Program, strategy or plan.	0 State Program on efficient use and development of natural stone beds in Absheron Peninsula in( 2003-2006) (June 13, 2003, No.1242)
Transport	Program, strategy or plan.	2 Railways Development Program for 2010-2014 (July 6, 2012, No.1002) and Plan of Measures for Modernizing Transport System in Baku city for 2008-2013(July 5, 2008, No.2930).
Regional development	Program or plan. Regional development plans for other regions are under development.	<10 There is an overarching and major national program periodically adopted: State Program on Social and Economic Development of the Regions of Azerbaijan, the most recent adopted in 2014 for the period of 2014-2018 (President Decree of February 27, 2014, No.118). A number relate to social and economic

		development of specific territories.
Water Management	Program or plan. Improved water supply and sanitation program is to be implemented in Absheron peninsula under World Bank funded project.	1-2 relating to drinking water supply.
Telecommunications	Program, plan, strategy.	5 relating to information and communication technologies development (plans, programs and strategies).
Tourism	Program or plan. No under development.	1 State Tourism Development Program.
Town and country planning or land use	Broad plans and general plans. Greater Baku Regional Development Plan is under approval, as well as regional development plans.	See also regional development.
Other national and subregional relevant documents	Programs, strategies, plans, measures.	>10 Most important include State Program on Poverty Eradication and Sustainable Development (2008-2015) (September 15, 2008, No.3043), National Action Plan on Operation of Development of an Open Government (2012-2015) (September 5, 2012, No.2421), National Action Plan to Fight Corruption (2012-2015) (September 5, 2012, No.2421), Strategy on Employment (2006-2015) (October 26, 2005, No.1068), Complex Plan on Measures to Improve Environmental Situation in Azerbaijan (2006-2010) (March 30, 2006, No.1396), Additional Measures on Protection of Caspian Sea (2008) (June 13, 2008, No.2867).

### 3. DESCRIPTION OF THE CURRENT ENVIRONMENTAL ASSESSMENT PROVISIONS

It is important to understand current environmental assessment system in the country in order to develop feasible and comprehensive approach for integrating requirements of the Protocol on SEA into national environmental assessment and planning system. In particular, screening requirements of the Protocol on SEA directly refer to project level decisions and projects

requiring an EIA under national legislation (art. 4.2 of the Protocol). Current environmental assessment frameworks should also be assessed for their applicability to strategic decisions from the perspective of current practice as well as compliance with the requirements of the Protocol on SEA, including when or if) it is applied to strategic decision-making.

### **3.1 Environmental assessment system**

The environmental assessment system in Azerbaijan is based on state environmental review/expertiza system (SER), which includes EIA documentation developed by the project initiator and its subsequent review by environmental authority (EIA/SER system).

Under current practice, the initiator submits information form (describing proposed activity) to the Department of Expertiza at MENR. The expertiza department takes screening decision. If a full scale EIA procedure is needed, then it also makes a scoping decision. The initiator develops EIA documentation (OVOS) and submits it to the Department of Expertiza at MENR. To assess EIA documentation an expert commission is set by the department. Experts analyze EIA documentation, discuss it at a meeting and adopt conclusions of the state environmental expertiza. The experts can be both officials and sub-contracted outside persons. Recently NGOs have been invited to the meetings of the expert commissions.

The conclusions of the state environmental expertiza are approved by the head of the Department of Expertiza at MENR. In total, over 500 conclusions were issued last year (2013), the vast majority of were related to land use projects<sup>10</sup> (investment projects covered by Annex I to the Espoo Convention and Protocol on SEA amount to just 20-25 per year). The conclusions of the state environmental expertiza have permitting nature and can impose conditions upon project implementation.

Yet, in the absence of a comprehensive legal framework (as explained below) lead to unsystematic application of the EIA/SER process in Azerbaijan, where a number of projects falling under Annex I to the Espoo Convention and Protocol on SEA) are implemented without being subject to EIA/SER.<sup>11</sup>

All experts interviewed share an opinion that no comprehensive legal framework for environmental assessment exists in Azerbaijan. There are two legislative acts in this area: the Law on Environmental Protection (1999) and Rules on Financing State Ecological Expertiza. Relevant international treaties have also direct application under the Constitution.

The *Law on Environmental Protection* is the only legal act that provides a basis for EIA/SER in Azerbaijan. At the same time, relevant provisions of this law (articles 50-58) do not specify any details as to the procedure: scope of application, screening, scoping, requirements on EIA report (documentation).

The law has a broad definition of “objects” of the state environmental expertiza without any reference any specific field of economic activity (like Annex I to the Espoo Convention) and includes:

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<sup>10</sup> In Azerbaijan EIA/SER procedure is applied to land-use documentation (land use is subject to decision-making separate from construction permit for a industrial project, for example).

<sup>11</sup> This conclusion is based on information obtained from unofficial sources during desk research and fact finding mission.

- Draft state and local programs on development and location of productivity forces in accordance with economy sectors;
- Feasibility studies, projects for construction (reconstruction, widening, introduction of new technologies) and liquidation of business entities and complexes, EIA documentation (OVOS);
- Documents on development, including import from abroad, of new technique, technologies, materials and substances;
- Draft educational and normative technical documents in environmental protection area;
- Environmental conditions<sup>12</sup> evolved in the process of economic activity or emergency situations;
- Environmental conditions in regions, specific natural sites and complexes (ecosystems);
- Environmental chapters of agreements (contracts) for natural resources use based on a decision of a relevant executive public authority.

The law also provides for so called public environmental expertiza (environmental expertiza carried out by citizens associations), a procedure which should not be considered relevant in the context of public participation concept.

There are Guidelines on Environmental Impact Assessment (OVOS) Process (1996) (approved by MENR coordination board), which are being used without having legal status. These guidelines define various procedures as described below. They are not applicable to the strategic documents.

No information was found in the biodiversity assessment within the legislation (in relation to Article 14 of CBD) in Azerbaijan. This suggests no such assessment is carried out, in particular as a separate procedure.

### **Applicability of the current assessment procedures to strategic documents**

Currently SER procedure is applied to strategic documents on a case-by-case basis only. Development and adoption of the strategic documents is not mandatory subject to SER. While planning documents are listed among SER objects, this is not sufficient for a routine process where some strategic documents would undergo SER in an obligatory manner. No legal requirements on environmental assessment report (or similar document) were identified for strategic documents. There is no guidance regarding the content of such a report.

There is information<sup>13</sup> that on a pilot basis some strategic documents were subject to SEA (in line with Protocol on SEA/Directive) and/or state environmental review. For example, in 2013-2014 comprehensive SEA process has been carried out for the Greater Baku Development Plan (covering the whole Absheron Peninsula, which is much beyond Baku city). This planning process in general precedes a World Bank project on improving sanitation and water supply in Absheron peninsula. SEA was carried out by a consultant in close cooperation with the planning agency. Another example is the regional economic development plan for Gyanzha Kazakh and Lyankoran economic regions were subject to state environmental review.

No examples were found for application of SER procedure to state sectoral programs or plans (adopted by the President of Azerbaijan).

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<sup>12</sup> It is unclear what is meant by “environmental conditions”. It is likely to include state of the environment (including changes in it), pollution levels, etc.

<sup>13</sup> Based on interviews during fact finding mission.

### Scoping requirements

There are no requirements as to scoping in relation to environmental assessment during development/adoption of strategies, programs or plans. The available practice for SEA suggests scoping was made by the initiator (Greater Baku Development Plan is the most recent example).

Under Urban Planning and Construction Code a construction project documentation shall have “an environmental chapter” (Article 83.0.6). Article 10 of the Code requires that environmental safety and protection must be ensured in urban planning and construction. Provisions on preparation of specific spatial planning documents (broad plans, general plans and detailed plans) set out requirement on indication of the territories which need protection, measures to address pollution, etc. *See also chapter 2.1*). These requirements still leave space for individual scoping, especially in relation to environmental impacts.

Under current practice for projects, scoping made by Department of Expertiza at MENR. The Law on Environmental Protection sets general requirements on project documentation and location preparation (Articles 36-37). The Guidelines on Environmental Impact Assessment (*OVOS*) have specific requirements on the content of the EIA report (*OVOS* documentation) of the project. However, as mentioned above, the Guidelines do not address strategic documents.

### 3.2 Public participation

Public participation is one of the key elements of the SEA procedure under the Protocol on SEA. In addition to Article 8 of the Protocol on SEA, respective requirements on public participation are part of every stage under the Protocol: screening (art. 5.4), scoping (art. 6.3), transboundary consultations (art. 10.4), final decision (art. 11).

**Public participation in EIA/SER** Public participation and access to information framework is separate from EIA/SER provisions (except for public environmental expertiza) and includes the following key acts:

- Law on Environmental Protection (Articles 6 and 7);
- Law on Public Participation (2013);
- Rules on public hearings and discussions of legal acts, prepared by central and local executive authorities and local self-governing bodies (2014);
- Law on Obtaining Information about the Environment (2002).

The Law on Environmental Protection (Articles 6 and 7) broadly defines rights and duties of the citizens and their associations, including on access to environmental information and public environmental expertiza.

The *Law on Obtaining Information about the Environment* defines environmental information, procedure for providing the information, grounds for refusal, timeframes.

The *Law on Public Participation* was adopted rather recently and covers various forms and detailed requirements on public participation in decision making. While many provisions reflect key international law principles and provisions applicable, including those by the Aarhus Convention, the scope of application of the law is vague: “law regulates relations arising when involving the citizens of the Republic of Azerbaijan in the realization of state governance” (preamble of the Law). In particular, it defines public participation as:

“public participation - participation in preparation and implementation of the state policy in different fields of state and social life; participation of citizens and civil society institutions in decision-making on nationwide and local level; participation of citizens and civil society institutions in the forms defined in this Law in organization of public control over the activity of the central executive authority bodies defined by the relevant executive authority bodies (hereinafter – central executive authority bodies), local executive authority, and self-government bodies; consultation of state bodies with the society and consideration of the public opinion”. [Article 1.0.1]

The only area specifically defined for public participation is public discussion of the draft laws which are to be organized by the Parliament (Chapter V).

In summary, public participation framework under the Law on Public Participation sets overall requirements on public participation process but needs individual integration into sectoral laws (e.g., EIA).

On the basis of the Law on Public Participation, the government recently adopted *Rules on public hearings and discussions of legal acts, prepared by central and local executive authorities and local self-governing bodies*. These Rules set requirements on public participation during the preparation of legal acts by executive authorities.

Since key strategic documents are adopted by the President of Azerbaijan, the requirements set by the Law on Public Participation do not automatically apply to such decision-making processes. An example of this is when the process of preparation of a strategic document initiated by an order of the President of Azerbaijan (e.g., Order No2786 of May 1, 2008, on Development of the State program on Secure Food Supply to Population) requires the involvement of the non-governmental and citizens organizations.

### **Public participation in spatial planning**

The Code on Urban Planning and Construction sets rather detailed requirements on public participation in territorial planning. Articles 26-34 of the Code sets a clear principle of transparency of the preparation process, which is further strengthened by the following requirements: the procedures to ensure transparency in the process of development of the territorial planning documents include (a) informing about territorial planning, (b) creating conditions for the public to examine draft documents on territorial planning, (c) consideration of any objections and proposals on territorial planning and (d) carryout public debates; [Art 26.0]. Article 27 sets detailed requirements on notice, examination and public discussion of draft documents on territorial planning. Article 28 outlines a right of the public to submit comments on first draft within 30 days of a notice. Article 30 is specifically devoted to public discussion procedures.

In summary, there is a sufficient legal framework for public participation in the adoption of the spatial planning documents, such as broad plans, general plans and detailed plans.

### **Public participation in the existing pilot SEA practice in Azerbaijan**

The pilot SEA conducted during the fact finding mission, ensured public participation. For example, for the Greater Baku Development Plan public participation was organized twice with different approaches:

- During the SEA process as such public consultations were held in 8 rayons

- During the final stage of the plan development a public hearing was organized in May 2014.

The public consultations organized by the initiator (together with consultant for SEA) was subject to international applicable standards, such as Article 7 of the Aarhus Convention. At the same time, recent public hearing in Baku involved stakeholders consultations, since the hearing was targeted at public authorities, universities and the public.

### **Transboundary Procedures**

National legislation does not provide for transboundary consultations in EIA/SER. Practice analyzed in relation to EIA/SER and SEA provides for no examples of transboundary consultations.

### **Responsibilities in EIA/SEA process**

MENR is responsible for screening and scoping in the EIA/SER process. No screening is made for SEA purposes (strategies, programs and plans).

Initiator was also responsible for SEA examples identified.

Public participation is carried out by the initiator in EIA/SER procedure, as well in SEA examples identified (run by subcontractors preparing strategic documents). For the purposes of SEA it may satisfy Protocol on SEA requirements since vast majority of the strategic documents is initiated and/or prepared by public authorities.

### **Upcoming changes in the legislation**

There is an intention to adopt a law on environmental impact assessment (see draft in Annex I). It basically covered three regulatory areas: EIA, SEA and SER. The draft text is discussed in the sections 5-6 below.

## **4. KEY STAKEHOLDERS IN ASSESSMENT REFORMS**

Department of Expertiza of MENR is the only public authority currently involved in the environmental assessment procedure. For the purpose of a possible future SEA framework main stakeholders can be divided into following groups:

- State Central Authorities;
- Local Authorities;
- Corporate Entities;
- Civil society, including non-governmental organisations.

Their roles and responsibilities relevant to application of SEA to strategic documents are described below.

#### *State Authorities*

The main stakeholders in this group include:

**Ministry of Ecology and Natural Resources (MENR)** which implements the State environmental policy through programs to maintain environmental quality, protection of ecological systems and efficient use of natural resources.

The Ministry in collaboration with other agencies (within their competence in environmental issues) builds on its work with other stakeholders based on the following tasks and principles with regard to the main priorities of environmental policies:

- Conducting decision-making processes with short and long term economic, ecological and social consequences and expected complications in mind and considering alternatives as part of this process;
- Increased recruitment of the representatives of public and non-governmental organizations into decision-making processes that involve protection of the environment;
- Prevention of activities that could cause irreparable violation of an environmental component;
- Ensuring strong and diversified economic development that involves lesser amounts of waste;
- Broadening of cooperation with international organizations and developed countries in the area of protection of the environment;
- Increasing public's awareness and promotion of the environment.

Since social and economic processes have rapidly developed during the transition period in Azerbaijan, new methods and principles have also emerged in the country's environmental policies. From this point of view, the National Program "On Environmentally sustainable social and economic development" developed by MENR and endorsed by the President of Azerbaijan, reflected enhanced environmental policies and created additional opportunities for the implementation of these policies.

In order to involve other stakeholders into environment related discussions, the regional branch of MENR closely cooperates with the executive power of relevant regions through the created commissions or through organised meetings with other authorities.

**The Ministry of Transport** monitors the requirements of environmental policy and responsibilities related to the road sector during road construction works, monitors security of roads during other construction works, and monitors activities to prevent environmental problems related to the sector in cooperation with other organizations including local executive authorities and MENR.

**The Ministry of Emergency Situations** protects people in emergency situations to secure public safety, and takes actions during emergencies.

It carries out activities related to the prevention of natural and anthropogenic impacts to environment, human health, residential areas and different areas of economy in cooperation with other organizations, local executive authorities and MENR.

#### **The Ministry of Culture and Tourism**

The Ministry identifies and protects historic and cultural monuments, as well as cultural heritage, and takes required measures related to culture and tourism in cooperation with other organizations and local executive authorities. The Ministry prevents impacts of other activities in the territories where historical and cultural monuments are situated.



### **The Ministry of Agriculture**

It carries out activities related to land reform, food supply and conservation/fertility of agricultural land in cooperation with other organizations, local executive authorities and Ministry of Justice. It monitors environmental requirements during the planning of land use.

### **The Ministry of Education**

The Ministry develops and delivers environmentally-related education materials for use in schools.

### **The Ministry of Health.**

The Ministry ensures public health, prevents hazardous impacts of industrial activities and facilities, and monitors the level of carbon emissions from vehicles and its effect on the environment and human health.

The **State Committee of Land and Cartography** is responsible for monitoring of lands, land reform, organizing effective use of land resources.

**The State Committee on Urban Planning and Architecture** is responsible for the overall urban planning framework of Azerbaijan. The Committee was responsible for the preparation of the Greater Baku Regional Development Plan.

### *Local Authorities*

The main stakeholders in this group include:

**Local Executive Powers** are responsible for overall supervision and monitoring of government policy within their jurisdictions, and for implementation of a range of services at the local level (e.g. solid waste management). They also take spatial planning decisions.

Local Executive Powers monitor and apply environmental requirements relevant to their activities within the rayon.

**Municipalities** are responsible for the delivery of services at the local level; however, the legal framework that support their activities are often either weak or incomplete and their authorities are often subsumed by the local Executive Power.

Municipalities monitor environmental requirements and requirements of human health.

### *Corporate Entities*

The main stakeholders in this group include: AZERSU, State Company for Alternative Energy, SOCAR, AZERIGAS, AZERIENERGY, Bakielektrikshebeke, Sumgaitelektrikshebeke. It has been reported that such agencies were responsible for development of the draft program/plan in the past for the relevant sector.

**AZERSU** is responsible for water supply, and for establishment and maintenance of sewerage system.

AZERSU carries out activities related to environmental issues in water supply and sanitation in cooperation with other organizations, local executive authorities, Melioration and Water Economy JSC, State Water Agency of the Ministry of Emergency Situations and MENR.

**State Agency for Alternative Energy** is responsible for identifying and implementing alternative energy projects. The Company carries out activities related to producing of alternative energy in cooperation with other organizations, local executive authorities and MENR.

**SOCAR** is responsible for oil-gas sector and also production and transportation of oil-gas.

**AZERIGAS** is responsible for gas supply.

**AZENERGY** is responsible for electrical power generation, and for the transmission of electrical power to the entities responsible for its distribution. AZENERGY undertakes its activities in cooperation with the appropriate State agencies.

**Bakielektrikshebeke** and **Sumgaitelektrikshebeke** distribute electrical power to households, industrial users and commercial users throughout Baku and Sumgayit respectively. Both entities manage the receipt of power from AZERENERGY and cooperate with the relevant State agencies.

#### *Non-Governmental Organizations and Institutes*

The main stakeholders in this group include Ecores, AIHP, Towards Sustainable Development and Ecolex. These NGOs carry out activities related to environmental issues in cooperation with other organizations, local executive authorities and MENR.

## **5. ANALYSIS OF CURRENT ENVIRONMENTAL ASSESSMENT PROVISIONS**

Since there is no legal framework for SEA currently available in Azerbaijan, it is it's not feasible to provide analysis of the current environmental provisions. For this reason, chapters 5 and 6 reflect the analysis of the proposed framework on environmental assessment (draft Law on Environmental Impact Assessment). Such an approach seems to be the most appropriate to meet the goals of the legal review as such, i.e. to provide technical assistance to Azerbaijan in the process of development of the national framework for Protocol on SEA implementation.

**TERMINOLOGY NOTE:** The English text of the draft law on EIA (provided by Azerbaijan MENR) uses the term "Public Environmental Examination", which means *state ecological expertiza*, a procedure often referred to as "state environmental review" in English-language sources. For the sake of clarity in the context of the further analysis of the draft legislation, the terms "*state ecological expertiza*", "*state environmental review*" and "*public environmental examination*" will be understood as equal.

The main strengths and weaknesses of the proposed SEA system are summarized in the table 4 below in relation to key elements/requirements of the Protocol on SEA. Some of the key issues relating to the proposed EIA/SEA system are presented below.

## 5.1 General observations

The Draft Law on Environmental Impact Assessment (Annex I to this report) was designed **as a framework law** which requires adoption of subordinate legal acts defining various procedural requirements for EIA, SEA and SER.

The draft law incorporates three major legal concepts: (a) EIA/OVOS, (b) SEA and (c) SER.

For EIA level projects the proposed environmental assessment system uses existing **expertiza/OVOS system** where OVOS is responsibility of the developer and SER is a permitting procedure, which verifies/checks information in the OVOS.

Similarly, the same approach was taken for SEA level of decision making: SEA outcomes are submitted for SER procedure. Since SER is a permitting procedure, the whole **SEA process is proposed as a permitting procedure**.

In the draft law SEA is defined as a decision-making process, which consists of the following stages: (a) identification of coverage of the environmental report, (b) development of final [SEA] report, (c) public participation<sup>14</sup> (d) decision making and (e) monitoring of results.

## 5.2 Key conclusions (observations)

**The proposed SEA provisions in the draft Law on Environmental Impact Assessment is a good basis for implementation of the Protocol on SEA in Azerbaijan**, subject to observations below and comments reflected in Table 3. While current text of the draft law raises questions and concerns, some of the inconsistencies can be addressed by amending proposed text while others can be addressed in subordinate acts.

**Application of SER concept to SEA may avoid some intrinsic problems of EIA/SER system.** Proposed concept of SEA process where it ends with SER decision (conclusions) may avoid some of the “systemic” inconsistencies of EIA/SER system with international standards (such as EIA model used in the Espoo Convention and EIA Directive). In particular, since the initiator of a strategic document in Azerbaijan is the public authority, requirements on public participation and consultations may be implemented at the stage of the development of SEA report (before SER). At the same time, this can become complicated if the initiator subcontracts a legal entity to develop draft program/plan or strategy.

**The proposed “framework” nature of the draft law can be acceptable.** It is possible to have a framework law together with a package of subordinate acts (depending on the legal nature and status of such acts). Moreover, such practice is common in Azerbaijan’s legal system and in accordance with its Constitutional Law on Normative Legal Acts. The draft law on EIA needs to establish, in a sufficient and balanced manner, minimum standards on SEA which can be further developed by subsidiary legislation so that the requirements of the Protocol on SEA can be fully met by the overall legal framework.

**The link between SEA and decision-making on strategic documents is not clear.** It is unclear how SEA outcomes, in particular SER, can impact the decision-making process for plan/program. In the proposed legal framework it may be legally possible that the

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<sup>14</sup> “Public participation” is not included into the English translation of the draft EIA law. It appears only in the unofficial Russian translation of Article 10 provided by the national consultant.

plan/program/strategy is adopted without SEA. If SEA is considered a “parallel” process to the development and adoption of a strategic document itself, the legislation needs to specify links between the two decision-making procedures on the same strategic document. The SEA needs to be implemented in a way that a strategic document cannot be adopted without SEA unless it is screened out or gets a positive feedback (decision) of SER.

**The draft law on EIA defines “objects” of SEA and SER in the same way (e.g, draft program) which creates legal uncertainty.** There is no legal certainty whether SEA ends with SER outcomes as a final decision or decision to adopt the plan/program is a final decision. This is important for the purpose of implementation of the Article 11 of the Protocol ‘Decision’.

**Permitting nature of SER may be legally difficult to apply for strategic documents.** Most strategic documents are adopted by the President of Azerbaijan. At the same time SER outcomes are defined as a permit. It seems to be legally difficult (if possible) to have a permitting procedure applied to what is a legislative process in the country.

**There is uncertainty as to who bears obligation to carry out most stages of SEA.** In particular, the draft law does not define who is responsible for screening, scoping, preparation of SEA report and monitoring.

**There is a need to include provisions on consultations with health authorities.** Proposed provisions on SEA have references to health issues/impacts. At the same time, no provisions are made to make sure that health authorities are involved.

**Inclusive proposed categorical screening approach leads to situation that all possible strategic documents must be subject to SEA (with exception on national defense, budget, etc).** In principle, this should not create significant administrative, time and financial burden on planning in Azerbaijan in the future.

**There are a number of requirements of the Protocol on SEA which are not met by the provisions of the draft law.** These inconsistencies are reflected in the Table 4 and can be dealt in various ways, as suggested in the recommendations (see section 6.1).

**It is unclear what is “referred information” for the purpose of Article 10 and 10.6 of the draft law.** The analysis presented in the Table 4 is based on the assumption that “referred information” is information to be gathered or produced during the SEA process and included into the SEA report.

**Table 4. Main strengths and weaknesses of the proposed SEA framework in Azerbaijan**

<b>Requirements under the Protocol on SEA:</b>	<b>Requirements under draft law on EIA (as presented in the Annex I)</b>	<b>Comment as to how the draft law meets the provisions of the Protocol</b>
Undertake SEA in plan- and programme-making processes in accordance with definition of SEA in article 2.6 of the Protocol (e.g., how to link SEA to the decision-making process, etc.)	Strategic environmental assessment (SEA) – is a systematic (planned) and transparent <b>decision making process</b> applied in the <b>proposed plans and programs</b> aimed at sustainable use of environment and provision of	<b>The definition of SEA as such does not correspond to the definition of SEA in the Protocol on SEA.</b> In particular, draft law defines SEA as a decision-making process. If it is a separate decision making process then it leaves open the

	<p>other feasibly sustainable development aspects, and identified the implementation feasibility in the early stage through assessment of their <b>consequences of negative effects</b> on environment and human health.[Art. 1.0.3]<sup>15</sup></p> <p>The goal in the strategic environmental assessment (SEA) is to ensure sustainable development of environment and environmental safety during implementation of plans and programs with making correct decisions based on consideration of environmental discretions precisely and <b>identification of potential environmental impacts</b> simultaneously with delivery of early and effective information when developing <b>the proposed plans and programs</b>. [Art. 7.1]</p> <p>Strategic environmental assessment (SEA) process is conducted in parallel with the development of plans and programs, and the obtained results are incorporated to the SEA environmental reports and their environmental examinations are performed. [Art. 10.1]</p> <p>The SEA process consists of identification of coverage of the environmental report for verification of the content of it, development of the final report on the obtained results, decision making and</p>	<p>question of how other applicable legal instruments can contribute to the SEA system. E.g., the public participation provisions available in urban planning or in general law on public participation will unlikely be applicable to SEA process as such. <i>See also comment on Article 10.</i></p> <p>The definition focuses on “negative” consequences of the effects on environment and human health. The definition proposed is based on the terms “plans” and “programs” leaving aside strategies. <b>These are clear shortcomings of proposed system.</b></p> <p>At the same time, the goal of SEA phrased in Article 7 refers to “impacts” without referring to negative consequences.</p> <p>The definition in article 1 is complemented by Article 10.1 and 10.2 which specify, that the SEA process proposed is similar to the EIA scheme: there’s an assessment process which is followed by SER (“public environmental examination”).</p> <p><b>The draft law makes no cross-references to the strategic decision-making process as such. As a result a program/plan/strategy can be adopted without any SEA.</b></p>
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<sup>15</sup> All references are made to provisions of the draft Law on Environmental Impact Assessment attached in Appendix II.

<p>Undertake SEA screening in accordance with articles 4 and 5 (e.g., how to combine mandatory and exclusions lists and when to apply case-by-case examinations, etc.)</p>	<p>monitoring of results. [Art. 10.2]<sup>16</sup></p> <p>Article 8. Strategic environmental assessment objects and scope</p> <p>8.1. <b>The objects of strategic environmental assessment</b> are as follows:</p> <p>8.1.1. <b>State plans, programs and strategies;</b></p> <p>8.1.2. <b>General plans of administrative regions, major and detailed plans of cities and other settlements;</b></p> <p>8.1.3. The entities, manufacturing, service and infrastructure complexes <b>of strategic importance</b> regardless of property and organizational-legal forms;</p> <p>8.1.4. <b>Development programs in the especially sensitive territories</b> (environmental disaster, free economic and environmental zones and etc.).</p> <p>8.1.5. <b>The projects derived from international conventions and concession agreements envisaging the use of natural resources</b> in the Republic of Azerbaijan.</p> <p>8.2. Strategic environmental assessment <b>is not applied</b> in the plans and programs on <b>emergency situations, civil defence, finance and budget.</b>[8]</p>	<p><b>The SEA “objects” listed in Article 8 potentially cover all relevant strategic documents in the country.</b></p> <p>Unlike the definition of SEA, the objects include strategies, concession agreements and territorial planning documents.</p> <p>“Objects” of SEA are not limited to any particular area of economic or territorial development. They are neither limited by significance of their potential impacts.</p> <p>It is unclear as to why SEA shall be applied to “entities, manufacturing, service and infrastructure complexes of strategic importance”. <b>Such activities should normally be subject to EIA procedure.</b></p> <p><b>Exceptions in the scope of application are in line with Article 4.5 of the Protocol on SEA.</b></p> <p><b>Therefore, the draft law potentially includes any strategic document into the scope of application of SEA.</b> There is no separate screening procedure. For newly developed plans and programs this does not create implementation obstacles, but for modifications to such programs/plans screening procedure would significantly decrease possible administrative and financial burden.</p>
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<sup>16</sup> Russian translation also includes “public participation”.

		While such an approach may be difficult in some countries, it seems that the overall number of strategic documents adopted per year is small (<5) so this may not add significant pressure on the planning system as such.
Organize SEA scoping in accordance with article 6 (e.g., when to undertake scoping, how to select suitable methods for consultations with public and authorities, how to write terms of reference for SEA, etc.)	SEA process is consisted of <b>identification of coverage of the environmental report</b> for verification of the content of it, development of final report on the obtained results, decision making and monitoring of results.[10.2] <b>Detailed information and environmental prognosis</b> are reflected in the SEA environmental report while development of plans and programs. <b>The report provides the defined scope of plans and programs, analysis of preliminary information, comparison and selection of alternatives, monitoring of significant environmental impacts, as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.</b> [10.3]	It is unclear the relationship between “identification of coverage” and “defined scope of programs”. The former likely refers to scoping as required by Protocol on SEA.  <b>Requirement for SEA report to provide “the defined scope of plans and programs” is unclear as it refers to scope of program/plan, not the scope of SEA process.</b>
Prepare environmental report:	SEA process is consisted of identification of coverage of the environmental report for verification of the content of it, <b>development of final report on the obtained results</b> , decision making and monitoring of results.[10.2]	<b>There is no indication as to who is responsible for the preparation of the SEA report.</b>
- Elaborate environmental (baseline) studies in SEA (in accordance with annex IV, paras. 2, 3 and and 4)	The report provides the defined scope of plans and programs, <b>analysis of preliminary information</b> , comparison and selection of	<i>See the last observation in the narrative text of this section (above) on applicability of provisions of Article 10.6.</i>

	<p>alternatives, monitoring of significant environmental impacts, as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.[10.3]</p> <p><b>10.6.1. Expected quality of welfare of population and environment</b> related to natural and man-made factors in various stages of implementation of plans and programs.</p> <p><b>10.6.2. Existing and potential actions</b> which have negative effect on the environment and human health</p> <p><b>10.6.6. Current status of environmental context of natural ecosystems and natural and economical systems</b> related to economic activity. [Art. 10.6]</p>	<p>The requirement to include information on the current status of the environment and impact of existing activities seems to cover some elements of the paragraphs 2-4 of Annex IV.</p> <p>Requirements on existing health problems are lacking (para 4 Annex IV of Protocol on SEA).</p> <p>The provision to provide information on “expected” quality of welfare and environment may well be sufficient to implement the requirement on “evolution” in para 2 of Annex IV of the Protocol on SEA. Health issues are likely to be left outside (“welfare” does not necessarily include health).</p>
- Use environmental objectives in SEA (in accordance with annex IV, para. 5)	N/A	
- Analyse the likely significant environmental, including health, effects (in accordance with annex IV, para. 6)	<p><b>10.6.2. Existing and potential actions</b> which have negative effect on the environment and human health</p> <p><b>10.6.5. Results of environmental risk assessment</b> related to the facts of negative effect on environment and <b>human health</b>; [Art. 10.6]</p>	<b>There is no clear requirement to include information on effects as such.</b>
- Compare alternatives of the plan or programme (in accordance with annex IV, para. 8)	The report provides the defined scope of plans and programs, analysis of preliminary information, <b>comparison and selection of alternatives</b> , monitoring of significant environmental	<p>The requirements on SEA report content provide for alternatives to be reflected in it.</p> <p>Requirements of article 10.4 are rather unclear as they</p>



	<p>impacts, as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.[Art. 10.3]</p> <p>Development scenarios of relevant activities in accordance with the proposed plans and programs, their technological solutions, spaces for implementation of activities or <b>alternatives on subsequent completion of the activity, including submission, comparison and environmental efficiency of selection of alternative actions</b> shall be justified to prevent negative environmental effects, mitigate their outcome.[Art. 10.4]</p>	<p>impose requirements on programs/plans as such. In light of the fact that the draft law covers only SEA and there is no legislation covering development of plans or programs as such, <b>this requirement will unlikely be applicable to the process of development of the plan/program.</b></p>
<p>Ensure that SEA report includes proposals for the scope, timing and methods of monitoring to carry out post-SEA monitoring to meet requirements of article 12 and annex IV, paragraph 9</p>	<p>Detailed information and environmental prognosis are reflected in <b>the SEA environmental report</b> while development of plans and programs. The report provides the defined scope of plans and programs, analysis of preliminary information, comparison and selection of alternatives, <b>monitoring of significant environmental impacts</b>, as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.[Art. 10.3]</p>	<p>No requirement to have “monitoring plan”.</p>
<p>Analyse transboundary effects (in accordance with annex IV, para. 10)</p>	<p>N/A</p>	<p>Needs to be addressed in subordinate act(-s).</p>
<p>Organize public review of the SEA report and the draft</p>	<p>SEA process is consisted of identification of coverage of</p>	<p><b>Public participation is included as a stage in SEA process</b> (in</p>

<p>plan/programme in accordance with article 8 (e.g., how to identify the public concerned; how to inform the public and collect feedback, how to review public comments, etc.)</p>	<p>the environmental report for verification of the content of it, development of final report on the obtained results, decision making and monitoring of results.[Art. 10.2]<sup>17</sup></p> <p><b>Consultations with the community are launched upon definition of the scope of a plan and program draft.</b> [Art. 10.5]</p> <p>The referred information to conducts strategic environmental assessment is as follows:[...]</p> <p><b>The results of public discussions and hearing in the development period of the plans and programs referred to SEA object.</b>[Art. 10.6.10]</p> <p>Duties of relevant <b>executive authority on environmental examination</b> are as follows:  17.2.4. To send information to relevant executive and self-governing authorities, scientific institutions, <b>non-governmental organizations, individuals and legal entities providing proposals</b> on realization of the envisaged activity <b>about consideration of those proposals during public environmental examination;</b> [..]  17.2.6. <b>Inform to mass media</b> about results of the conducted public environmental examination <b>based on the inquiry</b> provided in accordance with legislation;  17.2.7. <b>Ensure public awareness on the results of public environmental examination through mass</b></p>	<p>the Russian translation of Article 10.2).</p> <p>Public consultations are envisaged at the stage of the preparation of the SEA report. <b>No indication is made who is responsible for this and no details on the procedure are set.</b></p> <p>It is not clear what is subject to public consultations: draft program and/or SEA report.</p> <p>At the SER stage the competent public authority is under the obligation to “send information” to those who provided comments on the envisaged “activity” about consideration of such proposals.</p> <p>There is no clear obligation to notify the public of the results of SER or SEA process in general. Results of the public examination are given <b>to mass-media upon request</b> only. The competent SER authority is under obligation to “raise awareness” on the results of SER <b>which is not equivalent to the obligation of informing the public about the final decision).</b></p> <p><b>Therefore, public participation provisions are not clear enough to ensure implementation of the Protocol on SEA. The fact that public consultations are envisaged at SEA report preparation stage in itself does not contradict the requirements of the Protocol</b></p>
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<sup>17</sup> Russian translation also includes “public participation”.

	<b>media or public presentations as stipulated by the legislation.</b>	<b>on SEA (unless development of draft program/plan is subcontracted to private entity).</b>
Organize consultations with environmental and health authorities in accordance with article 9 (e.g., how to identify relevant authorities, how to effectively consult them during SEA, etc.)	Rights and duties of relevant <b>executive authority on environmental examination</b> are as follows: [...] to collaborate with other state bodies, offices and organizations within its authorities. [Art. 17.1.10]	There is no direct reference to involve health authorities.
Undertake transboundary consultations in accordance with article 10 (e.g., when to notify, what level of document should be exchanged, how to organize effective transboundary consultations)	<p><b>Authorities of relevant state and local self-governing bodies</b> in the sphere of environmental examination [...] in case of necessity for implementation of environmental examination on the complexes and objects having or posing negative effect on environment and human health <b>in the boundaries</b> of the Republic of Azerbaijan <b>with locating in the territory of a foreign country</b> to resolve the related issues in accordance with participation in the EIA process, exchange of information, public awareness on the EIA document and organization of public discussions reciprocally with those foreign countries or in accordance with the international covenants supported by the republic of Azerbaijan. [Art. 16.0.3]</p> <p>Rights and duties<sup>18</sup> of relevant <b>executive authority on environmental examination</b> are as follows: [...] in case of necessity for implementation of environmental examination on the complexes and objects having or posing negative</p>	<p>There is only general obligation in the draft law that “International cooperation in terms of environmental impact assessment is implemented in accordance with the obligations stipulated by the international agreements supported by Azerbaijan”.</p> <p>State authorities in the field of environmental protection and those in charge of SER have certain obligations “to resolve issues”. It is unclear whether the words “with locating in the territory of a foreign country” cover situations when Azerbaijan needs to act as a country of origin. In any case such obligations arise only at the stage of SER, therefore after the preparation of the SEA report.</p> <p><b>Therefore, the proposed SEA system does not include detailed provisions on transboundary consultations procedure which need to be included into a subordinate act.</b></p>

<sup>18</sup> There is no distinction in the text (list) between duties and rights under Article 17.1.

	<p>effect on environment and human health in the boundaries of the Republic of Azerbaijan <b>with locating in the territory of a foreign country</b> to resolve the related issues in accordance with participation in the EIA process, exchange of information, public awareness on the EIA document and organization of public discussions reciprocally with those foreign countries or in accordance with the international covenants supported by the republic of Azerbaijan. [Art. 17.1.6]</p> <p>Article 35. International cooperation in terms of environmental impact assessment</p> <p>35.0. International cooperation in terms of environmental impact assessment is implemented in accordance with the obligations stipulated by the international agreements supported by the Republic of Azerbaijan in the sphere of environmental impact assessment and environmental protection, environmental safety and public awareness, and the following principles are guided in such case:</p> <p>35.0.1. Priority of ecological safety;</p> <p>35.0.2. Share of information and experience;</p> <p>35.0.3. Joint participation in the prevention of economic activity which might pose regional and global problems in the sphere of environmental protection and use of nature (natural resources);</p> <p>35.0.4. Violation of sovereign rights of the state over its</p>	
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	<p>natural resources; 35.0.5. Expansion of international relations in the sphere of environmental impact assessment, SEA, EIA and environmental examination process methodologies, methods and forms, also scientific and technical information sharing in this direction; 35.0.6. Fulfilment of international obligations in the sphere of environmental impact assessment and environmental protection, use of nature (natural resources).[Art. 35]</p>	
<p>Take environmental report and comments from authorities and the public into account during the adoption of the plan or programme into account (art. 11)</p>	<p>Article 11. The goals and roles of <b>environmental examination</b> 11.1. The goal of environmental examination is to define the fullness and accuracy of environmental impact assessment, environmental safety level of the made decisions, the efficiency of the actions proposed for the use of nature (natural resources) and environmental protection in accordance with Article 5.2 of this law, during the activities envisaged on the objects of environmental examination specified in Article 14 of the law.[Art. 11]</p> <p>Article 14. Environmental examination <b>objects</b> 14.0. Environmental examination objects are as follows: 14.0.1. <b>Strategic environmental assessment (SEA) objects in accordance with Article 8.1 of this law;</b> 14.0.2. The <b>drafts of</b></p>	<p><b>The proposed SEA system, by analogy with EIA/SER model it uses, proposes that SEA objects are subject to the state environmental expertiza.</b></p> <p>It is unclear whether in practice SEA report will be subject to SER or draft strategic document will be subject to SER.</p> <p>There is no indication as to who is responsible for submitting SEA report and/or other documents (e.g.draft program) to SER authority. The procedures for SER use the term “project client” [1.0.10] which clearly does not cover an initiator of the program or plan.</p> <p>The outcome of the SER process is “public environmental examination feedback” which is issued by executive environmental authority and it has a <b>clear permitting nature.</b></p>

	<p><b>normative and legal acts</b>, guideline-methodological documents and technical normative acts in the sphere of environmental protection...[Art. 14]</p> <p>17.1. Rights and duties of <b>relevant executive authority on environmental examination</b> are as follows: 17.1.1. <b>Organize and implement environmental examination</b> for the objects specified in the Article 14 of this law...[Art. 17]</p> <p>Article 20. Implementation of public environmental examination 20.1. <b>Public environmental examination is considered a type of activity of relevant executive authority.</b> 20.2. <b>Public environmental examination is conducted on the objects specified in the Article 14 of this law which have impacts on the environment and human health</b> during projections of economic activity as well as use of nature (natural resources). [Art. 20]</p> <p>24.1. <b>Public environmental examination feedback</b> is consisted of grounded results about the feasibility of the realized project and permissible limit of potential impacts on environment and human health. 24.2. <b>The positive feedback of public environmental examination is an official permit for realization of environmental examination object.</b> [Art. 24]</p>	<p>It is unclear what would be the consequences of a negative feedback: can the program be still adopted and/or implemented?</p> <p>Since SEA is defined as a “parallel process” the outcomes SEA process are only taken into account during SER procedure. As such SER procedure is not a decision-making process for a plan or program.</p> <p>At the same time, the public authority adopting the plan/programme has no obligation to take into account the SEA outcomes.</p> <p><b>Therefore, the link between SEA process, SER and adoption of the strategic document is not clear under the proposed law.</b></p>
Monitor significant	SEA process is consisted of	<b>There is only a general</b>

environmental and health effects during implementation of plans and programmes (art.12)	identification of coverage of the environmental report for verification of the content of it, development of final report on the obtained results, decision making and <b>monitoring of results</b> . [Art. 10.2]	<b>provision stating monitoring shall follow decision-making on plans/programs. It is unclear what the term “results” refers to.</b>
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## 6. RECOMMENDATIONS FOR THE REQUIRED AMENDMENTS TO ALIGN THE EXISTING LEGISLATIVE FRAMEWORK TO THE PROVISIONS OF THE PROTOCOL

### 6.1 General recommendations

The consultant is of the opinion that new legislation needs to be introduced in Azerbaijan in order to form a sufficient legal framework for the implementation of the Protocol on SEA. **The proposed draft law on environmental impact assessment is a good starting point** for the development of new legislation on SEA.

The “framework” nature of the draft law on EIA, in particular provisions on SEA, is acceptable. However, the development of the legal framework for SEA should include efforts for a whole package (consisting of relevant subordinate acts), to avoid any gaps which would not be possible to fill at the level of subordinate acts. For this reason, **it is strongly recommended that the Government immediately start developing draft subordinate act(s) related to SEA procedure.**

The framework law should equally stipulate all key/core elements of the Protocol on SEA. For the time being, scoping, public participation, transboundary consultations and monitoring are not sufficiently addressed. **It is strongly recommended to ensure that all elements of SEA, provided by the Protocol on SEA, are included into the framework law and equally treated (including the level of procedural details set for them).**

**Various inconsistencies identified in the Section 5 should be addressed in the draft law or act(s), notably those that constitute core elements of the Protocol.** Some of the shortcomings identified can be resolved at a level of subordinate act.

### 6.2. Specific recommendations

#### a) The link with planning decision-making

It must be ensured that the provisions on procedures for the preparation of sectoral plans and programmes identified in Part 2 include a clear requirement to apply the procedure envisaged in the SEA law. To clarify the link between strategic decision-making and SEA process, it is recommended to introduce amendments into the Urban Planning and Construction Code and the Constitutional Law on Normative Legal Acts (and/or Regulation on the Procedure for Preparation and Adoption of Normative Legal Acts by Executive Powers) to make sure that a draft

strategy/program/plan and territory planning documents must be subject to the proceedings of the SEA law if they fall under the scope of application of the Protocol on SEA. Such legal “hooks” will help avoid a situation where a program/plan is adopted without SEA.

#### **b) Objects of SEA/SER**

It is recommended to amend Article 14.0.1. with a provision stating that SEA Report should be subject to SER procedure. This would provide for legal certainty and help solve the issue with permitting nature of SER in relation to strategic decision-making. There is also need to amend Article 21.1 to list documents submitted for SER as SEA objects. It needs also to be ensured that draft strategic document is submitted together with SEA Report for SER review.

#### **c) Distribution of responsibilities**

**It is recommended to make clearly identify who is responsible** for screening, scoping, development of SEA report, public participation at the level of law. This needs to be taken into account if legal framework will allow subcontracting development of draft plans or programmes to private entities, such entities cannot bear all of these responsibilities, in particular in relation to public participation and transboundary consultation procedures.

#### **d) Role of health authorities**

**There is a need to provide for consultations with health authorities.** Unfortunately, the consultant was not in a position to get views of these authorities during the meeting with Ministry of Health representative in Baku.

#### **e) Discuss potential scope of SEA application**

It is recommended that consultations are run with stakeholders to identify any possible threats from the fact that categorical screening proposed basically covers any draft strategy/program/plan.

#### **f) Amendments to plans or programs**

It is advised to introduce screening procedure as set by Article 5 of the Protocol on SEA in relation to modifications (amendments) to plans or programs. Screening should result in a decision whether implementation of plan/program is likely to have significant environmental, including health, effects (as required by art. 5.1 of the Protocol on SEA), taking into account criteria set in the Annex III to the Protocol on SEA.

#### **g) Specific amendments proposed**

- **In the Regulation on the Procedure for Preparation and Adoption of Normative Legal Acts by Executive Powers:** to amend paragraph 2.9 by inclusion of a new subparagraph 2.9-5:

“Draft normative legal acts, preparation of which is subject to strategic environmental assessment, are submitted for approval together with environmental report and [positive] feedback of state environmental expertiza”.

- **In the Code on Urban Planning and Construction:** to amend article 32.1 by inserting a new last sentence:



“Draft broad and general plans shall be accompanied by environmental report and [positive] feedback of the state environmental expertiza”.

- **In the draft Law on EIA:** to amend article 24.2 by adding the following language:

“24.2. The positive feedback of public environmental examination is an official permit for realization of environmental examination objects referred to in Article 14.0.2 to 14.0.3.”

## **7. PAST, ONGOING AND PLANNED INITIATIVES TO BUILD SEA CAPACITY IN THE COUNTRY**

The consultant was provided with outcomes from the project “SEA – Promotion and Capacity Development in Azerbaijan”, coordinated by the UNDP and supported by the Environment and Security Initiative (ENVSEC). The main goal of the project was to improve the decision-making process and institutional development in Azerbaijan by promoting the implementation of SEA for integrating environmental concerns and sustainable development principles into national development.<sup>19</sup>

A document called *Legal provisions for development of SEA legal framework in Azerbaijan. December 2010* is of particular relevance for the subject of this review. It contains a number of recommendations for the future legal framework on SEA.

Given the fact that no substantial changes have been introduced to the EIA system in Azerbaijan since 2010, most of the recommendations made in *Legal provisions for development of SEA legal framework in Azerbaijan December 2010* are still relevant, subject to the following reservations.

Since 2010 Azerbaijan introduced significant changes to the legal framework for strategic planning as such. There is a completely new legal framework for spatial planning in Azerbaijan based on Code on Urban Planning and Construction (2012). There is a new legal framework for public participation at strategic level, which has been introduced with the Law on Public Participation (2013). There is also a new legal framework for adoption of normative legal acts (that’s the form for adoption of plans and programs): Constitutional Law on Legal and Normative Acts (2010), which entered into force in 2011 and the Regulation on the Procedure for Preparation and Adoption of Normative Legal Acts by Executive Powers (2011).

The changes in the legal framework for strategic planning put recommendations set in *Legal provisions for development of SEA legal framework in Azerbaijan December 2010* in a different legal context. While general recommendations remain valid, specific proposals need to be elaborated upon in a new legal context.

This review focused on a specific draft legislation proposed in Azerbaijan covering both EIA and SEA issues, this was not the case with the UNDP report on development of the legal framework.

As a conclusion, the recommendations made as a result of the UNDP initiative provides a general framework for further development of the SEA legal framework. These recommendations need to be taken into account when developing other drafts of the legal “package”, as suggested by this review.

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<sup>19</sup> Legal provisions for development of SEA legal framework in Azerbaijan . December 2010. UNDP. Page 1.

**ANNEXES:**

Annex 1. Draft law on environmental impact assessment.

Annex 2. List of interviewees.

Annex 3. List of sources.

## **Annex 1. Draft law on environmental impact assessment.**

Draft

### **LAW ON ENVIRONMENTAL IMPACT ASSESSMENT OF THE REPUBLIC OF AZERBAIJAN**

This law regulates legal, economic and organizational basis of the environmental impact assessment process implemented in order to study potential impacts of economical, farming as well as city building and construction activities on the environment and human health and the compliance of their results with the quality standards and ecological requirements in accordance with the Article 39 and Paragraph 1, Section 1 of the Article 94 of the Constitution of the Republic of Azerbaijan

#### **Chapter 1**

##### **General provisions**

###### Article 1. Basic concepts

1.0. Basic concepts used in the law express the following definitions:

1.0.1. - is an assessment process focused on exclusion of negative effects of proposed economic, farming, as well as city building and construction activities on the environment and human health in view of identification of physical, socio-economic and ecological standpoint, and minimize such impacts, and consequent selection of ecologically efficient ways;

1.0.2. Environmental impact assessment (EIA) document – is a final summary reflecting the results of environmental impact assessment process;

1.0.3. Strategic environmental assessment (SEA) – is a systematic (planned) and transparent decision making process applied in the proposed plans and programs aimed at sustainable use of environment and provision of other feasibly sustainable development aspects, and identified the implementation feasibility in the early stage through assessment of their consequences of negative effects on environment and human health.

1.0.4. Strategic environmental assessment (SEA) document - is a final summary reflecting the results of environmental impact assessment process;

1.0.5. The executor of environmental impact assessment (EIA) process – is a relevant individual or legal entity having scientific and technical and methodical capabilities related to implementation of environmental impact assessment by itself or with its assignment (request);

1.0.6. Specialized executor of environmental impact assessment (EIA) process – is an EIA process executor which has obtained a special certificate of relevant executive authority on the public environmental examination to carry-out EIA;

1.0.7. Environmental examination – is the definition of compliance of the planned economic, farming, as well as city building and construction activities with ecological requirements, and the level of admissions of these activities;

1.0.8. Public environmental examination – is the environmental examination conducted by a state body;

1.0.9. Community environmental examination – is the environmental examination conducted by local self-governing bodies, non-governmental organizations, individuals and legal entities;

1.0.10. Project client - is an individual and legal entity tasking the projection of planned economic, farming, as well as city building and construction activities;

1.0.11. Environmental quality standards – are environmental indicators meeting with the requirements of technical normative legal acts and standards ensuring the balance of human health and environmental protection;

1.0.12. Harmful effect on environment – is adverse effect to the features and peculiarities which belong to the components composing the ecosystem as a result of economic activity from quantity and quality aspects and overuse of natural resources;

1.0.13. Norms (limits) of possible environmental impacts – are the norms imposed to ensure quality degree of environment and ecological safety;

1.0.14. Environmental risk – is the presumed occurrence of anthropogenic effects which are undesirable for the environmental context and health of population (deliberate, occasional, permanent or catastrophic);

1.0.15. Environmental examination object – is the area of activity with direct or indirect impacts on environment and human health;

1.0.16. Realization of environmental examination object – is accession of farming, city-building and construction activities to implementation turnover which are referred to environmental examination object (hereinafter – economic activity).

## Article 2. Environmental impact assessment legislation of the Republic of Azerbaijan

2.1. Environmental impact assessment legislation consists of the legislation of the Republic of Azerbaijan, Constitution of the Republic of Azerbaijan, this law, the laws of the Republic of Azerbaijan on “environmental protection”, and “Environmental safety” the legislations of the Republic of Azerbaijan on civil, city building and construction, other normative and legal acts adopted accordingly as well as international covenants supported by the Republic of Azerbaijan.

2.2. If the rules defined in the sphere of environmental impact assessment in the international covenants supported by the Republic of Azerbaijan are different than those specified in this law, then the rules of international covenants shall be applied.

## Chapter 2

### Environmental impact assessment

#### Article 3. Environmental impact assessment process

3.1. Implementation of the Environmental impact assessment (EIA) process is considered important for the economic activity provided in accordance with the list in the Annex to this Law, and is a basis for the providence of opinion by relevant executive authority on the public environmental examination.

3.2. The party proposing a project bears responsibility to obtain the opinion of the public environmental examination, implementation of EIA, and delivery of the EIA document to relevant executive authority on the public environmental examination prior to initiation of economic activity.

3.3. The goal of EIA is while in the envisaged economic activity is to detect potential adverse effects to environment and human health, assess and eliminate their scale and intensity for the space and time, or to develop and implement actions to minimize them.

3.3. Environmental impact assessment is implemented through consideration of the following in all stages:

3.3.1. Current environmental context in the territory of envisaged implementation of economic activity;

3.3.2. Substantiate and selection of alternative options to achieve the goals of envisaged economic activity;

3.3.3. Compile the environmental management plan;

3.3.4. Socio-economic development perspectives of the region (territory);

3.3.5. Requirements of the legislation of the Republic of Azerbaijan in terms of setting-up industrial monitoring and environmental protection;

3.4. The following environmental impact assessments are implemented in the environmental impact assessment process:

3.4.1. Atmosphere;

3.4.2. Surface and underground waters;

3.4.3. Subsurface of water reservoirs;

3.4.4. Natural and artificial landscapes;

3.4.5. Earth's womb and topsoil;

3.4.6. Flora and fauna;

3.4.7. Environmental system context;

3.4.8. Health of population;

3.4.9. Socio-economic sphere (employment, education, health, traffic and transport and engineering infrastructure);

3.4.10. Material and cultural heritage;

3.4.11. Climate changes;

3.5. Environmental impact assessment process is regulated with this law and the rules adopted on the basis of this law by a relevant executive authority.

#### Article 4. Environmental impact assessment document

4.1. The environmental impact assessment document on the proposed economic activity is developed by the executor of the environmental impact assessment (EIA) process.

4.2. Environmental impact assessment document which is written in the style and form to be understandable by the people at large, indicating potential environmental impacts and ways of their eliminations, as well as consisting of preamble and result, also is the summary of recommendations on minimizing environmental adverse effects.

4.3. The following shall be included to the environmental impact assessment document:

4.3.1. Types, periods and levels of the environmental impacts of the envisaged economic activity, including information to consider environmental risk;

4.3.2. Forecast of potential changes on environment and their socio-economic outcomes as a result of employment of the envisaged economic activity;

4.3.3. Develop environmental protection measures for all stages of implementation of the envisaged economic activity;

4.3.4. A monitoring plan focused on identification of occurring and potential changes as a result of the impact of the envisaged economic activity;

4.3.5. Project description and technical specifications of the devices and equipment to be used;

4.3.6. Compliance with the requirements of technical and normative-legal acts in this sphere;

4.4. Geological and hydrological data shall also be included to the environmental impact assessment (EIA) document of economic activity related to the use of earth's womb.

#### Article 5. Documenting environmental impact assessment

5.1. The results and developed documents obtained as a result of environmental impact assessment are the object of the public environmental examination.

5.2. The documents authorising the implementation of the planned economic activity by the executor of environmental impact assessment (EIA) process are included to the list of the documents submitted to the relevant executive authority on the public environmental examination in order to obtain feedback on the environmental impact assessment document.

5.3. Environmental impact assessment related process is coordinated by relevant executive authority on the public environmental examination as a part of the public environmental examination process.

5.4. The executor of environmental impact assessment (EIA) process raise public awareness about the EIA document via internet resources and circulars, and provide detailed information to individuals and legal entities upon their requests. The individuals and legal entities residing in the administrative unit of the implemented economic activity or the property thereof are eligible to make proposals or express their claims against the EIA document. The requests related to the provided proposals or claims shall be replied in writing within 15 days from the date of receipt of such request.

5.5. The executor of environmental impact assessment (EIA) process shall bear responsibility for organizing public hearings of the EIA document. The results of the processed proposals given in the public hearings related to the EIA document as well as the new changes made on the basis of those proposals are discussed with participants. Consecutively, the reasons of the changes as well as claims and proposals made to the draft document by the organizer of public hearing are communicated to the participants of the public hearing.

5.6. The EIA process executor is obliged to submit the EIA document to public hearing. The EIA document without minutes is agreed by the relevant executive authority on the public environmental examination.

5.7. The rules of setting-up and hosting of public hearing of EIA document are defined by the relevant executive authority considering the requirements of this law.

5.8. The specialized executor of EIA process has a privilege and priority to obtain the feedback of the public environmental examination to the EIA document delivered to the relevant executive authority on the public environmental examination.

#### Article 6. The features of environmental impact assessment for existing objects

6.1. If no environmental impact assessment has been conducted in the initial design stage of the existing object which cause to environmental context and human health in operations or the use of nature (natural resources) differs from the envisaged terms envisaged in the project, then the environmental impact assessment for the current operation period of the same object shall be conducted.

6.2. If the relevant executive authority on the public environmental examination identifies a grounded change to the environment and human health in the rehabilitation which has not been envisaged in the initial project documents of the existing object, then overall environmental impact assessment is conducted in the form of documentation of additional materials or the change made to the preliminary materials of EIA document.

6.3. Currently the development of the EIA document is not required to restore of the enterprise operating currently while operating or replacement of the existing devices and equipment in accordance with the environmental impact to the existing environmental normative documents (the limit of emission (LE), the limit of releasable discharge (LRD), environmental passport). After implementation of these projects it is required to make relevant amendments and changes in the environmental normative documents of enterprises (objects) considering their periods.

### Chapter 3

#### STRATEGIC ENVIRONMENTAL ASSESSMENT

#### Article 7. Goal and application of strategic environmental assessment

7.1. The goal in the strategic environmental assessment (SEA) is to ensure sustainable development of environment and environmental safety during implementation of plans and programs with making correct decisions based on consideration of environmental discretions precisely and identification of potential environmental impacts simultaneously with delivery of early and effective information when developing the proposed plans and programs;

7.2. Strategic environmental assessment process is related to the environmental impact assessment, as well as public environmental examination processes and ensures their efficiency and outcomes.

#### Article 8. Strategic environmental assessment objects and scope

8.1. The objects of strategic environmental assessment are as follows:

8.1.1. State plans, programs and strategies;

8.1.2. General plans of administrative regions, major and detailed plans of cities and other settlements;

8.1.3. The entities, manufacturing, service and infrastructure complexes of strategic importance regardless of property and organizational-legal forms;

8.1.4. Development programs in the especially sensitive territories (environmental disaster, free economic and environmental zones and etc.).

8.1.5. The projects derived from international conventions and concession agreements envisaging the use of natural resources in the Republic of Azerbaijan.

8.2. Strategic environmental assessment is not applied in the plans and programs on emergency situations, civil defence, finance and budget.

#### Article 9. Key principles of implementation of strategic environmental assessment

9.1. Key principles of implementation of strategic environmental assessment are based upon the norms and principles of international law in terms of environment and environmental assessment and ratified international covenants, environmental, environmental safety, city building, construction, land and civil legislations and other normative and legal acts and technical regulatory acts.

9.2. The referred principles while implementing the strategic environmental assessment are as follows:

9.2.1. Ensure accuracy, transparency and reliability of economic activity of environmental safety related materials on the proposed plans and programs;

9.2.2. Ensure cautious and scientific forecasting of possible environmental outcomes in order not exceed permissible norms by potential impacts related to economic activities on the proposed plan and program projects.

9.2.3. Assessment of practicable environmental risk levels, and suspension or prohibition of the prognosis which has not been scientifically justified or new types of economic activities which donor have any guarantee for ensuring the environmental safety.

9.2.4. Ensure sustainable development of environment;

9.2.5. Public recognition of environmental policy, strategic plans and comprehensive programs which touch upon constitutional rights such as living in safe environment and ensure environmental safety resulting from their implementation;

9.2.6. Implement international (inter-state) cooperation requiring formulation of integrated environmental policy and strategic planning of regional settlement of means of production in the development of comprehensive territorial programs on socio-economic development of trans-boundary territories and common use of the nature (natural resources).

9.2.7. The importance of this assessment for the objects of strategic environmental assessment.

Article 10. Referred information for the performed strategic environmental assessment and the report on SEA

10.1. Strategic environmental assessment (SEA) process is conducted in parallel with the development of plans and programs, and the obtained results are incorporated to the SEA environmental reports and their environmental examinations are performed.

10.2. SEA process is consisted of identification of coverage of the environmental report for verification of the content of it, development of final report on the obtained results, decision making and monitoring of results.

10.3. Detailed information and environmental prognosis are reflected in the SEA environmental report while development of plans and programs. The report provides the defined scope of plans and programs, analysis of preliminary information, comparison and selection of alternatives, monitoring of significant environmental impacts, as well as the results of consultations of the relevant executive authority on the public environmental examination with the community subsequently.

10.4. Development scenarios of relevant activities in accordance with the proposed plans and programs, their technological solutions, spaces for implementation of activities or alternatives on subsequent completion of the activity, including submission, comparison and environmental efficiency of selection of alternative actions shall be justified to prevent negative environmental effects, mitigate their outcome.

10.5. Consultations with the community are launched upon definition of the scope of a plan and program draft.

10.6. The referred information to conducts strategic environmental assessment is as follows:

10.6.1. Expected quality of welfare of population and environment related to natural and man-made factors in various stages of implementation of plans and programs.

10.6.2. Existing and potential actions which have negative effect on the environment and human health;

10.6.3. Results of environmental impact assessment in the decision making stage on initiation of projection and implementation of economic activity objects;

10.6.4. Information of environmental audit of entities;

10.6.5. Results of environmental risk assessment related to the facts of negative effect on environment and human health;

10.6.6. Current status of environmental context of natural ecosystems and natural and economical systems related to economic activity;

10.6.7. Environmental policy and action plan implemented on preventive and mitigating measures by the organization (entity) implementing economic activity in the reviewed territory;

10.6.8. Action plans endorsed on staged limitation and prohibition of dangerous types of economic activity in the reviewed territory;

10.6.9. Economic activity projects included into the drafts of plans and programs referred to SEA object;

10.6.10. The results of public discussions and hearing in the development period of the plans and programs referred to SEA object.

10.7. The rule for implementation of strategic environmental assessment is defined relevant executive authority in accordance with international law related tithe field.

## **Chapter 4**

### **ENVIRONMENTAL EXAMINATION**

Article 11. The goals and roles of environmental examination



11.1. The goal of environmental examination is to define the fullness and accuracy of environmental impact assessment, environmental safety level of the made decisions, the efficiency of the actions proposed for the use of nature (natural resources) and environmental protection in accordance with Article 5.2 of this law, during the activities envisaged on the objects of environmental examination specified in Article 14 of the law.

11.2. The duties of environmental examination are as follows:

11.2.1. To prevent casual decisions which affect environment and human health directly and indirectly In accordance with Article 11.1 of this law, based on the definition of objective assessment of environmental safety level and potential impacts of economic activities envisaged and to be implemented;

11.2.2. To check compliance of projected economic activities with environmental protection legislation, environmental requirements, hygiene-sanitary norms and rules;

11.2.3. To check compliance of the envisaged actions in terms of environmental protection in the socio-economic development forecasts with environmental norms and requirements;

#### Article 12. Basis of completion of environmental examination

12.1. The followings are guided in completion of environmental examination:

12.1.1. International legal obligations in the sphere of environmental san human safety;

12.1.2. Rule of law (legality), scientific foundation, environmental, socio-economic, engineering-technical, technological, city building, transparency and other principles;

12.1.3. The results of comprehensive environmental, social and economic assessment of the impact of economic activity on human health and environment;

12.1.4. The right to live in the environment for human health, welfare and environmental safety;

12.1.5. The necessity of ensuring the maintenance of environmental balance, biodiversity and genetic fund for the sake of current and future generations;

12.1.6. Potential threat of non-balanced use of nature (natural resources) and making of similar decisions;

12.1.7. Assessment of environmental protection as an integral part of sustainable social and economic development.

#### Article 13. Principles of completion of environmental examination

13.0. The main principles of completion of environmental examination are as follows:

13.0.1. The importance of implementation of EIA and public environmental examination prior to implementation of the planned economic activity;

13.0.2. Prevent from making casual decisions which would adversely affect to environment;

13.0.3. The like hood of potential environmental danger of all types of economic activity;

13.0.4. Comprehensive assessment of the impact of the envisaged economic activity on environment;

13.0.5. The importance of consideration of environmental safety requirements;

13.0.6. Full of value, accuracy and preciseness of the information submitted to the environmental examination;

13.0.7. Independency of the experts conducting environmental examination;

13.0.8. Scientific justification, objectivity and compliance of expert feedbacks with full and normative legal acts;

13.0.9. Transparency, public awareness and consideration of public feedback;

13.0.10. The responsibility of environmental examination participants and stakeholders for the organization, conduct and quality of examination;

#### Article 14. Environmental examination objects

14.0. Environmental examination objects are as follows:

14.0.1. Strategic environmental assessment (SEA) objects in accordance with Article 8.1 of this law;

14.0.2. The drafts of normative and legal acts, guideline-methodological documents and technical normative acts in the sphere of environmental protection;

14.0.3. Projects, feasibility analyses (FA) on projection, construction, reconstruction, conversion, cancellation, supply with new machinery and expansion of manufacturing, service fields, infrastructure objects and complexes and EIA documents provided in accordance with list in the Annex to this law;

14.0.3.1. Project documents of environmental protection, disposal, utilization, recycling and use of water, land, air, forest, flora and fauna, minerals and other natural resources, including environmental restoration of areas and soil re-cultivation, state complex development schemes (plans);

14.0.3.2. International agreements, covenants and project documents related to the use of nature (natural resources) including environmental impact assessment documents in the trans-boundary context;

14.0.3.3. Technical and other documents on creation of new machinery and technologies including Nano-technologies, materials and substances;

14.0.3.4. Comprehensive environmental baseline materials, including the documents which justify the granted special protection status, announcement of environmental disaster and emergency situation in the known area as well as rehabilitation programs of those areas;

14.0.3.5. Documents characterizing environmental status of individual regions, areas and objects;

14.0.3.6. Contracts, agreements and covenants on changing the property and organizational-legal forms of operating entities which adversely effect to the environment;

14.0.3.7. Environmental passports of entities, drafts of standards on the emissions to atmosphere, land and water environment (ABTH, permissible threshold of flows PTL)

14.0.3.8. Other documents justifying economic activities related to the use of nature (natural resources).

#### Article 15. Types and executors of environmental examination

15.1. The types of environmental examination are as follows in the Republic of Azerbaijan:

15.1.1. Public environmental examination;

15.1.2. Community environmental examination.

15.2. Public environmental examination is conducted by relevant executive authority, and community environmental examination is conducted by local self-governing bodies, non-governmental organizations, individuals and legal entities;

15.3. The representative of the bodies implementing the administration in the related field in the process of public environmental examination of the projects and designs on allocation of any economic activity objects in the areas nearby the specially protected natural areas and objects as well as in the EIA process.

### Chapter 5

#### **Authorities of the state and local self-governing bodies, non-governmental organizations and individuals in the sphere of environmental examination**

Article 16. Authorities of relevant state and local self-governing bodies in the sphere of environmental examination

16.0. The Authorities of relevant state and local self-governing bodies are as follows in the sphere of environmental examination:

16.0.1. Participate in the completion and provision of the requirements of the environmental examination to the drafts of inter-state and other programs as well as treaties;

16.0.2. To make organizational and legal and scientific-technical decisions related to implementation of feedbacks and recommendations of the environmental examination;

16.0.3. In case of necessity for implementation of environmental examination on the complexes and objects having or posing negative effect on environment and human health in the boundaries of the Republic of Azerbaijan with locating in the territory of a foreign country to resolve the related issues in accordance with participation in the EIA process, exchange of information, public awareness on the EIA document and organization of public discussions reciprocally with those foreign countries or in accordance with the international covenants supported by the republic of Azerbaijan.

Article 17. Rights and duties of relevant executive authority on environmental examination

17.1. Rights and duties of relevant executive authority on environmental examination are as follows:

17.1.1. Organize and implement environmental examination for the objects specified in the Article 14 of this law;

17.1.2. To form expert commissions on public environmental examination;

17.1.3. Make proposals on the rules on completion of environmental examination within the framework of environmental protection legislation;

17.1.4. To draft, process and endorse within authorities of the guideline and methodical and technical normative and legal acts ensuring the implementation of this law and environmental impact assessment process;

17.1.5. To provide feedback in accordance with technical normative legal acts on the envisaged economic activity project and requirements of environmental protection legislation;

17.1.6. In case of necessity for implementation of environmental examination on the complexes and objects having or posing negative effect on environment and human health in the boundaries of the Republic of Azerbaijan with locating in the territory of a foreign country to resolve the related issues in accordance with participation in the EIA process, exchange of information, public awareness on the EIA document and organization of public discussions reciprocally with those foreign countries or in accordance with the international covenants supported by the republic of Azerbaijan.

17.1.7. To involve specialized specialists and researchers to implementation of public environmental examination depending on the features of the projects on economic activity;

17.1.8. Implement relevant actions aimed at enhancement of forms, methods and methodologies of public environmental examination and share of information in this sphere;

17.1.9. Ensure supervision of execution of this law and requirements of other normative and legal acts related to this field during organization and implementation of public environmental examination;

17.1.10. To collaborate with other state bodies, offices and organizations within its authorities;

17.1.11. Organize training of experts in the field of environmental examination, their qualifications, extra education and certification;

17.1.12. Receive information on the environmental status from state bodies, offices and organizations;

17.1.13. In case of contradiction of the environmental status and use of nature (natural resources) to involve specialists and international experts as stipulated by the legislation of the Republic of Azerbaijan with the consent of relevant executive authority to conduct environmental examination and EIA;

17.1.14. Make decision on suspension of implementation of projects or the activities of the objects in accordance with the Articles 6.1 and 6.2 of this law before the errors specified by the provided environmental examination feedback;

17.1.15. Use of the rights stipulated by the legislation of the Republic of Azerbaijan.

17.2. The duties of relevant executive authority on environmental examination are as follows:

17.2.1. To conduct public environmental examination process according to requirements of this law and other normative and legal acts;

17.2.2. To send the examination feedback to the participants of decision makers about realization of examination object and project client;

17.2.3. Based on the request of the project client, people conducting community environmental examination to submit normative and legal acts in the sphere of environmental examination, guideline and methodical documents and technical normative legal acts to them for familiarization;

17.2.4. To send information to relevant executive and self-governing authorities, scientific institutions, non-governmental organizations, individuals and legal entities providing proposals on realization of the envisaged activity about consideration of those proposals during public environmental examination;

17.2.5. To define the template and method of issuance of the special certificate verifying the specialized executor of the EIA process as per stipulated by the legislation;

17.2.6. Inform to mass media about results of the conducted public environmental examination based on the inquiry provided in accordance with legislation;

17.2.7. Ensure public awareness on the results of public environmental examination through mass media or public presentations as stipulated by the legislation.

Article 18. The duties of local executive and self-governing authorities in terms of environmental examination

18.1. The rights of local executive and self-governing authorities are as follows in terms of environmental examination:

18.1.1. To propose its representatives to participate in the environmental examination of the object with potential environmental impact within its own administrative territorial units or adjacent administrative territorial units, simultaneously in the composition of expert commission to participate in the EIA process;

18.1.2. To make decisions about public discussion of the results of environmental examination and related surveys the statements of as well as non-governmental organizations operating in the area of environment, as stipulated by the legislation of the Republic of Azerbaijan;

18.1.3. Receive necessary information from relevant executive authority on environmental examination on the environmental impact of the planned environmental examination object in the subordinated and adjacent administrative territory.

18.1.4. Send justified proposals to the relevant executive authority on environmental examination about the planned activity to be implemented in the subordinated administrative territory.

18.2. The duties of local executive and self-governing authorities are as follows in terms of environmental examination:

18.2.1. Assist to organize community environmental examination based on requirements of the affected local population;

18.2.2. Inform to the relevant executive authority on environmental examination on the planned economic activity in the subordinated administrative territory.

Article 19. Rights and duties of non-governmental organizations and individuals in terms of environmental examination

19.1. The rights and duties of non-governmental organizations and individuals in terms of environmental examination are as follows:

19.1.1. Obtain information on all types of implemented environmental examination and their results, and provide independent feedback on them;

19.1.2. To get familiar with environmental examination documents as stipulated by the legislation;

19.1.3. To participate via the agent in the public environmental examination activity;

19.1.4. Implement community environmental examination;

19.1.5. Use of other rights as specified with the legislation

19.2. The duties of non-governmental organizations and individuals are as follows in terms of environmental examination:

19.2.1. To establish an expert commission on community environmental examination and organize its activity;

19.2.2. To implement community environmental examination in accordance with the rules and requirements specified in the bi-laws;

19.2.3. Public awareness on the results of community environmental examination through mass media or public presentations (hearing).

## **Chapter 6**

### **State environmental examination and rules of implementation**

Article 20. Implementation of public environmental examination

20.1. Public environmental examination is considered a type of activity of relevant executive authority.

20.2. Public environmental examination is conducted on the objects specified in the Article 14 of this law which have impacts on the environment and human health during projections of economic activity as well as use of nature (natural resources).

20.3. The rule of implementation of the public environmental examination and template of examination feedback is defined by relevant executive authority.

Article 21. Documents submitted to the environmental examination and requirements thereof

21.1. The documents submitted to the environmental examination of the project client and requirements thereof are as follows:

21.1.1. EIA document developed (submitted) by project client and the documents specified in the Article 14 of this law, and information on socio-economic and environmental assessment process of environmental status and public health of the envisaged economic activity for implementation;

21.1.2. The documents on the permit (license) documents issued by relevant executive authorities aimed at realization of the envisaged economic activity, also the minutes of the meeting (public hearing) held with community as stipulated;

21.2. The following information shall be reflected in the documents submitted to the public environmental examination

21.2.1. Employment of technologies with the use of suitable materials (raw materials), saving energy, reduction of technological losses and use of energy, also with less wastes and zero-waste;

21.2.2. Efficient use and restoration of nature (natural resources), attraction of the wastes to recycling originated from industry and services, their comprehensive processing and utilization;

21.2.3. Ensure the treatment of waste waters, prevent such waters from running into natural and artificial water flows, water basins and the relief of the earth, and use them for technical needs;

21.2.4. Justification of effective and guaranteed actions on protection of atmosphere from pollution;

21.2.5. Justification of the use of water, land, air, forest, flora and fauna, minerals and other natural resources;

21.2.6. Conservation and restoration of lands, flora and fauna, and protection of the status of specially protected natural areas and objects;

21.2.7. Develop actions to ensure the protection of the population and environment from harmful effects of physical, chemical and biological factors of anthropogenic origin;

#### Article 22. Expert commission on public environmental examination

22.1. In case a need arises for an expert commission in the review process of the project documents submitted for any object this commission is set up by the relevant executive authority on the public environmental examination. The composition of the expert commission includes agents of the relevant executive authority on the public environmental examination together with representatives of relevant representatives of offices and organizations and independent experts.

22.2. The operations of the expert commissions on the public environmental examination on the state programs, and projects of large and complex objects projects include relevant specialists, and representatives of scientific institutions, non-governmental organizations and community.

22.3. The participating persons as experts in the expert commission on public environmental examination cannot be clients and executors of a relevant project.

#### Article 23. Public environmental examination implementation period

23.1. Public environmental examination is conducted within 60 (sixty) days upon delivery of the related documents (EIA document in the first turn) fully and ensured the payment of relevant fund for conduction the examination.

23.2. The implementation period of the public environmental examination can be extended to 1 (one) month depending on the complexity of the environmental examination object and volume of the delivered documents.

23.3. Upon settlement of the claims (defined errors) in the public environmental examination, the revised examination materials shall be re-submitted to the relevant executive authority on the public environmental examination. Re-submitted documents are processed within 10 (ten) days and relevant feedback is provided.

23.4. The provision period of feedback cannot be longer than 90 (ninety) days including the implementation of environmental examination.

#### Article 24. Public environmental examination feedback and implementation

24.1. Public environmental examination feedback is consisted of grounded results about the feasibility of the realized project and permissible limit of potential impacts on environment and human health.

24.2. The positive feedback of public environmental examination is an official permit for realization of environmental examination object.

24.3. The positive feedback issued by the public environmental examination in case of initiation of a project is valid for 5 (five) days.

24.4. If the environmental examination object with positive feedback of environmental examination object has been realized in contradiction with the specifications in the project documents, as well as illicit changes have been made in those documents, then the examination feedback shall be invalid.

24.5. If the public environmental examination feedback is negative about implementation of activity of environmental examination object that project cannot be realized.

24.6. The project client shall be eligible to re-submit the examination materials to the relevant executive authority on the public environmental examination upon settlement of the claims (defined errors) which have been specified in the negative feedback in the public environmental examination.

24.7. Heads of offices, entities and organizations and other officials are responsible for execution of public environmental examination feedback in accordance with legislation.

24.8. Officials of relevant executive authority on the public environmental examination and experts conducting the public environmental examination are responsible for justification and accuracy of their feedbacks in accordance with this law, rules of public environmental examination, requirements of technical normative legal acts and ecological standards.

24.9. The financing for initiation and implementation of a project is authorized only upon the positive feedback of public environmental examination

## **Chapter 7**

### **Community environmental examination**

#### **Article 25. Rules of conducting the community environmental examination**

25.1. Community environmental examination is organized and conducted on the basis of the initiative of local self-governing bodies, non-governmental organizations, legal entities and individuals.

25.2. Community environmental examination can be conducted regardless of implementation of public environmental examination for the same object.

25.3. The initiators of community environmental examination shall be informed about the venue and time of the examination to be conducted with the written request filed to relevant executive authorities and local self-governing bodies 5 (five) days prior to implementation of the examination.

25.4. If the requirement and field of activity of conducting the community environmental examination is belonged to the object included to the list of other secrets protected by the state, commerce and law, then the request for completion of community environmental examination can be disagreed.

25.5. The rule of completion of community environmental examination is defined by relevant executive authority.

Article 26. The rights of local self-governing bodies, non-governmental organizations, individuals and legal entities in terms of community environmental examination

26.0. The rights of local self-governing bodies, non-governmental organizations, individuals and legal entities conducting community environmental examination are as follows:

26.0.1. Receive complete set of project documents of environmental examination object from project clients;

26.0.2. To get familiar with the normative and legal acts and technical normative legal acts which define the requirements on implementation of environmental examination;

26.0.3. Communicate the results of community environmental examination to the public at large through mass media, and host public hearings accordingly;

26.0.4. To file a request to relevant state body about cancellation of decisions on accommodation, construction and operation of ecologically harmful objects, limit, cease their operations or change their profiles as stipulated by the legislation;

26.0.5. To make recommendations on development of EIA documents of the projects of the main funds, industries and services fields and objects participating in carrying-out economic activity, and implementation of public environmental examination;

Article 27. Community environmental examination feedback

27.1. Community environmental examination feedback and (or) minutes of community meeting (public hearing) is sent to relevant executive authority on the public environmental examination and also to decision making body (organization) on realization of environmental examination object.

27.2. Community environmental examination feedback is of advisory nature. This feedback can be disseminated through mass media and delivered to local self-governing bodies, project clients and executors and other stakeholders in this sphere.

## Chapter 8

### **Rights and duties of project client on environmental examination project, financing**

Article 28. The rights of project client on environmental examination object

28.1. The rights of project client on environmental examination object are as follows:

28.1.1. Receive information on normative and legal acts, guidelines-methodical documents and technical normative legal acts from relevant executive authority on the public environmental examination in terms of environmental examination;

28.1.2. Receive information about implementation period of environmental examination;

28.1.3. To request for elimination of circumstances of violations of the rule of implementation of environmental examination specified with legislation from relevant executive authority on the public environmental examination;

28.1.4. Submit or make written or verbal explanations and proposals related to the objects undergone to EIA and environmental examination;

28.1.5. Get familiar with the results of environmental examination;

28.1.6. To file a complaint to the court against the public environmental examination feedback;



28.1.7. To raise a notion in the court about compensation of the damage inflicted as a result of violation of legislation of the Republic of Azerbaijan in the sphere of EIA and environmental examination.

28.2. The rights of environmental examination object's project client are protected with this law, law on environmental protection and civil legislation.

Article 29. The duties of environmental examination object's project client

29.0. The duties of environmental examination object's project client are as follows:

29.0.1. To submit the documents on objects specified in the Article 14 of this law to the public environmental examination in terms of environmental examination in accordance with requirements of legislation;

29.0.2. Public awareness of the population affected as a result of envisaged economic activity;

29.0.3. To finance EIA and conduct of public environmental examination;

29.0.4. To submit information to relevant executive authority about environmental examination object with the request of the public environmental examination;

29.0.5. To submit necessary materials, information and reports about environmental examination object to local executive and self-governing authorities, and non-governmental organizations and individuals and legal entities which have organized community environmental examination with their requests;

29.0.6. To perform economic activity according to positive feedback of public environmental examination;

29.0.7. To submit the public environmental examination feedback to the bank or non-bank credit organization to finance the realization of environmental examination object;

Article 30. Settlement of disputes related to EIA, SEA and environmental examination

30.1. If a project client or executor on environmental examination object does not agree to the rule, method and results of conduct public environmental examination they file their disagreements reflecting their claims to the relevant executive authority on the public environmental examination in written forms.

30.2. The claim against the decision on the rejection of the disagreement can be filed to higher bodies or the court as stipulated by the legislation.

30.3. The feedback of public environmental examination is invalid in the following circumstances:

30.3.1. Violation of the rule and procedure of conducting EIA, SEA and public environmental examination;

30.3.2. Failure of fulfilment of ecological norms, rules and requirements in the field of environmental protection, use and restoration of nature (natural resources) or distortion thereof;

30.3.3. Violation of civil rights to live in the healthy environment;

Article 31. Financing of public environmental examination

31.1. The costs related to conducting the public environmental examination on environmental examination objects, including their recurrence are paid off by the project client, and are calculated on the basis of the defined estimation documents.

31.2. The funds are transferred to the account of relevant executive authority on the public environmental examination by the environmental examination object's project client in order to fund the public environmental examination. Re-funding of environmental examination constitutes 25 percent of the initial examination value.

31.3. The proceeds received as a result of implementation public environmental examination are utilized for the conduct of public environmental examination, completion of relevant works, including payment of salaries of consultants, off-duty experts and stimulation of the labour of employees of relevant executive authority on the public environmental examination.

31.4. The rule of financing the public environmental examination in the Republic of Azerbaijan is regulated as stipulated by legislation.

#### Article 32. Financing of community environmental examination

32.1. Financing of community environmental examination is carried out by the funds of non-governmental organizations grants, also the funds allocated by the decisions of local self-governing bodies and stakeholders, as well as on the account of contributions of citizens and legal entities and other sources of finance which have not been prohibited with the legislation.

### Chapter 9

#### Final provisions

#### Article 33. Violation of legislation on environmental impact assessment

3.1. The following circumstances include the violation of legislation on environmental impact assessment:

33.1.1. Failure of submission of the documents to the public environmental examination, which have been specified in the Article 14 of this law;

33.1.2. Falsification of the materials, information and statistics including the results of implemented EIA and environmental examination submitted to the public environmental examination;

33.1.3. Deliberate involvement of the expert to develop fake feedback, conducting the environmental examination;

33.1.4. Impede the set-up and implementation of EIA and environmental examination process;

33.1.5. Failure of materials, information and statistics to the relevant executive authority on the public environmental examination related to environmental examination object;

33.1.6. Realization of a project without positive feedback of public environmental examination;

33.1.7. Implementation of the activities which do not meet or contradicting with the positive feedback documents of public environmental examination.

33.2. The violations of legislation on environmental impact assessment of the Republic of Azerbaijan by the state and local self-governing bodies and their officials, head of expert commission on public environmental examination, banks and credit organizations their officials, individuals and legal entities of the Republic of Azerbaijan:

33.2.1. Violation of rules and requirements on the conduct of public environmental examination, defined with this law and other normative and legal acts:

33.2.2. Violation of the requirements of the legislation of the Republic of Azerbaijan on environmental impact assessment also the legislations on environmental protection and environmental standards and technical normative legal acts;

33.2.3. Failure of performance of duties defined with this law;

33.2.4. Violation of the rules on shaping the expert commission on public environmental examination and set up activities;

33.2.5. Failure of justification of the results of environmental examination feedback on environmental examination object;

33.2.6. Falsification of the results of environmental examination feedback on environmental examination object;

33.2.7. Disclosure of public and commercial secrets in the delivered documents to the environmental examination;

33.2.8. Granting permits to use the nature (natural resources) having direct or indirect impacts on the environment and implementation of other economic activities without obtaining the positive feedback of public environmental examination;

33.2.9. Unauthorized set up and implement EIA and environmental examination process as per legislation;

33.2.10. Loan allocations and financing of project implementation, realization of environmental examination object without the positive feedback of public environmental examination;

33.2.11. Illegal objection against the registration of the request on conducting the community environmental examination accordingly.

#### Article 34. Responsibility for violation

34.1. The culprits bear civil, administrative and criminal responsibilities for violation of this law as stipulated in the legislation of the Republic of Azerbaijan;

#### Article 35. International cooperation in terms of environmental impact assessment

35.0. International cooperation in terms of environmental impact assessment is implemented in accordance with the obligations stipulated by the international agreements supported by the Republic of Azerbaijan in the sphere of environmental impact assessment and environmental protection, environmental safety and public awareness, and the following principles are guided in such case:

35.0.1. Priority of ecological safety;

35.0.2. Share of information and experience;

35.0.3. Joint participation in the prevention of economic activity which might pose regional and global problems in the sphere of environmental protection and use of nature (natural resources);

35.0.4. Violation of sovereign rights of the state over its natural resources;

35.0.5. Expansion of international relations in the sphere of environmental impact assessment, SEA, EIA and environmental examination process methodologies, methods and forms, also scientific and technical information sharing in this direction;

35.0.6. Fulfilment of international obligations in the sphere of environmental impact assessment and environmental protection, use of nature (natural resources).

#### Article 36. Enforcement of the law

36.1. This law is enforced from the date of publishing.

**Ilham Aliyev**

**President of the Republic of Azerbaijan**

Baku city “ ” \_\_\_\_\_ 2013

No \_\_\_\_\_

## **Annex 2. List of interviewees**

1. Aysel Babayeva, Department of Environmental Expertiza, MENR
2. Jamil Malikov, Senior Advisor, State Agency of Alternative and Renewable Energy
3. Amin Mammadov, Deputy Director of Project Implementation Unit, State Committee on Urban and Architecture of Azerbaijan
4. Bariz Mehdiyev, Senior Program Specialist, Azerbaijan Branch of Regional Environmental Center for Caucasus
5. Shamil Huseynov, Expert, Permanent Commission on Natural Resources and Energy of the Parliament
6. Teymur Shakaraliyev, Head of Legal Department, MENR
7. Mubariz Agayev, head of Environmental and normative documents Expertiza sector of Environmental Expertiza Department, MENR
8. *Anar Qadirly, head of the press service of the Minister of Health*
9. Feyzulla Kuliyyev, Honored Architect of Azerbaijan, local consultant for Greater Baku Regional Development Plan, co-author of Baku General Plan (1985)

## **ANNEX 3. LIST OF SOURCES.**

### *National legislation*

1. Constitution of the Republic of Azerbaijan (1995)
2. Administrative Offences Code (No.906-IQ of July11, 2000, in force since September 1, 2001)
3. Civil Code (No.779-IQ of December 28, 1999, in force since May 26, 2000)
4. Code on Urban Planning and Construction (No.392-IVQ of June 29, 2012)
5. Constitutional Law on Legal and Normative Acts (No.21-IVKQ of December 12, 2010)
6. Guidelines on Environmental Impact Assessment (OVOS) Process (1996)
7. Law on Access to Information (No. 1024-IIQ of September 30, 2005)
8. Law on Budget System of the Republic of Azerbaijan (No.358-IIQ of July 2, 2002)
9. Law on Environmental Protection (No.678-IQ of June 8, 1999)
10. Law on Environmental Protection (No.678-IQ of June 8, 1999)
11. Law on Environmental Safety (No.677-IQ of June 8, 1999)
12. Law on Obtaining Information about the Environment (2002)
13. Law on Obtaining Information about the Environment (No.270-IIQ of March 12, 2002)
14. Law on Public Participation (No.816-IVQ of November 22, 2013)
15. Law on the Basis for Town-Planning (No.684-IQ of June 11, 1999)
16. Law on the Order for Conclusion, Execution and Denunciation of the International Agreements of Azerbaijan (No.1057 of June 13, 1995,)
17. Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part (PCA) signed in Luxembourg on April 22, 1996
18. Regulation on the Procedure for Preparation and Adoption of Normative Legal Acts by Executive Powers (2011)
19. Rules for Submitting Proposals for Conclusion and Denunciation of the International Agreements of Azerbaijan by Central Executive Authorities and State Owned Enterprises set by Decree of the President of Azerbaijan (No.373 of January 19, 2011)
20. Rules on Financing State Ecological Expertiza
21. Rules on public hearings and discussions of legal acts, prepared by central and local executive authorities and local self-governing bodies (2014)

### *Programs and plans*

1. Additional Measures on Protection of Caspian Sea (2008) (No.2867 of June 13, 2008)
2. Complex Plan on Measures to Improve Environmental Situation in Azerbaijan (2006-2010) (No.1396 of March 30, 2006)
3. Comprehensive Action Plan for the Years 2006-2010 to Improve the Environmental Situation , September 28, 2006, № 1697 (Plan II is going to be developed)
4. Detailed Master Plan for Conservation of the Historical Center of Baku, November 8, 2010, № 206;
5. Energy Fuel Complex Development Program for 2005-2015 (No.635 of February 14, 2005)

6. National Action Plan on Operation of Development of an Open Government (2012-2015) (No.2421 of September 5, 2012)
7. National Action Plan to Fight Corruption (2012-2015) (No.2421 of September 5, 2012)
8. National Program for Sustainable Socio-Economic Development in the Republic of Azerbaijan, February 18, 2003, № 1152 (formerly the National Action Plan was adopted in 1998);
9. National Strategy and Action Plan on the Conservation and Sustainable Use of Biological Diversity in the Republic of Azerbaijan, March 24, 2006, № 1368.
10. Order No2786 of May 1, 2008, on Development of the State program on Secure Food Supply to Population
11. Outer Space Industry Development Program (No.443 of August 19, 2009)
12. Plan of Measures for Modernizing Transport System in Baku city for 2008-2013 (No.2930 of July 5, 2008)
13. Program on efficient use and development of natural stone beds in Absheron Peninsula in ( 2003-2006) (No.1242 of June 13, 2003)
14. Railways Development Program for 2010-2014 (No.1002 of July 6, 2012)
15. State Program for the Social-Economic Development of the Regions of the Republic of Azerbaijan in 2014-2018, 2014 (III program);
16. State Program on Development of Tourism in the Republic of Azerbaijan 2010-2014, April 6, 2010, № 838 (II program);
17. State Program on Poverty Eradication and Sustainable Development (2008-2015) (No.3043 of September 15, 2008)
18. State Program on Poverty Reduction and Sustainable Development in the Republic of Azerbaijan - 2008-2015, September 15, 2008, № 3043 (II program);
19. State Program on Reliable Provision of the Population in the Republic of Azerbaijan with Food Products -2008-2015, 25 August, 2008, № 3004 (II program);
20. State Program on the Use of Alternative and Renewable Energy Sources in the Republic of Azerbaijan on, October 21, 2004, № 462;
21. Strategy on Employment (2006-2015) (No.1068 of October 26, 2005)
22. Vine-Growing Program (No.1890 of December 15, 2011)

*Other*

1. Legal provisions for development of SEA legal framework in Azerbaijan . December 2010. UNDP.
2. Resource Manual to Support Application of the Protocol on Strategic Environmental Assessment. United Nations, New York and Geneva, 2012
3. Strategic environmental assessment in support of Greater Baku Regional Development Plan: Summary report: Final. 2014. Eptisa. HMC.