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**STRENGTHENING INSTITUTIONAL FRAMEWORKS FOR LOCAL GOVERNANCE PROGRAMME
2015-2017**

**STUDY
MAPPING THE OBSTACLES TO INTERMUNICIPAL
CO-OPERATION in Azerbaijan
Country name**

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Introduction

The development of the assessment regarding the current state of the Intermunicipal Cooperation (IMC) in Azerbaijan is connected to the implementation of the Eastern Partnership Programmatic Co-operation Framework (PCF) for 2015-2017, carried out directly by the Council of Europe and supported by the European Union. The main goal of this program is to support the reforms in local self-governance in 6 Eastern Partnership Program participating countries, including Azerbaijan, through improvement of the existing legislation. The main goal of this study assessing the current state of the intermunicipal cooperation in Azerbaijan is to identify the legal, political and regulatory framework enabling mutual cooperation of local self-government bodies in terms of undertaking of their functions. At the same time, the study draws the real picture with regard to the attitude of all stakeholders of the intermunicipal cooperation process towards this mechanism. However, the study is not limited only to assessment of the current situation. It reviews the favorable sectors with potential for the development of intermunicipal cooperation, various types of public services, and based on this, presents proposals and recommendations to the stakeholders for IMC development.

The Assessment is worked out on the basis of the Best IMC Practices Manual jointly prepared by UNDP, CoE and OSI. Thus, when assessing the current situation in Azerbaijan we referred to the activity principles and the major important conditions for IMC mentioned in the Manual. The legal basis of IMC in Azerbaijan and the real status of cooperation in the practical life has been assessed within this study.

Assessments show that Azerbaijani legislation does not prohibit IMC. However, this cooperation experience is not spread in practice. The main reason for this is that the possibility to introduce the IMC model is not envisaged either in the sector laws regulating the delivery of various social and public services available for the population residing in municipalities, or in the legal-normative acts regulating the carry-out of various public powers that ensure socio-economic development at the local level. The functions related to the provision of major public services, which has potential for IMC development, are delegated to various public agencies or State-owned companies. In other words, there is no potential sphere for IMC development. Taking this into account, the report cites the advantages of IMC in terms of efficiency, accessibility and effectiveness of services, and suggests concrete mechanisms for practical development of IMC.

However, assessments show that in recent years the official policy was aimed at increasing the size of municipalities by amalgamating them, rather than developing IMC. The official approach is that small municipalities are not effective, they have very

weak financial, cadre and administrative potential to deliver public services. Growth in size of the municipalities may help increase their potential to deliver the services. As a result of this approach and the policy of amalgamation of small municipalities, during the last 6 years, the number municipalities decreased by 40%.

The findings of the assessment allow saying that Azerbaijan needs well-thought strategy for IMC development. The strategy should accurately define the role of various institutions, their impact potential, activity directions and resources at the local and international level. Undoubtedly, the main role in this process belongs to the central government. If the government includes IMC into its local self-governance development priorities, this would eliminate all political obstacles for a comprehensive and thorough development of legal aspects of cooperation. The central government also can be considered the major actor in the definition of the administrative and financial boundaries of IMC. One of the main roles in this process belongs to the relevant international organizations. The organizations can contribute to the strategic paper for IMC development through their experts, and conduct various training programs to improve skills and knowledge of the relevant institutions and individuals, should IMC mechanism is introduced. It is possible that such education and training programs may encourage the interest groups in Azerbaijan to reconsider the importance of IMC and launch reforms in this direction.

Chapter 1. Local self-governance in Azerbaijan

1.1. Overall framework of local self-governance

The territorial governance of Azerbaijan started to form since the restoration of the country's independence 24 years ago. According to the first Constitution of the independent Azerbaijan, adopted in 1995, Azerbaijan is a unitary state. According to the Constitution, there are two governance structures at the local level: local executive authorities and municipalities.

Pursuant to Article 124 of the Constitution, the local executive authorities are appointed by the President, whereas pursuant to Article 142 of the Constitution, municipalities are elected through nationwide elections¹.

Local self-governance in 1991-1995 included only district and town executive authorities as part of the public authorities system. These structures were formed on the basis of district (town) party committees that functioned during the Soviet period and their appointment was the sole prerogative of the President. In accordance with the Constitution, the first municipal elections were held in 1999 and thus municipalities started functioning in the local self-governance system alongside the executive authorities.

The initial legal framework of the administrative-territorial structure and territorial governance of Azerbaijan is regulated by the Law of the Republic of Azerbaijan "On the Territorial Structure and Division". Pursuant to Article 2 of the Law, Azerbaijan, as a unitary state, is divided into territorial units in the form of cities, districts, settlements and villages². According to the data of the State Statistics Committee, Azerbaijan presently is formed of 66 administrative districts, 78 cities, 261 settlements and 4249 villages and 1 autonomous republic (Nakhchivan Autonomous Republic)³.

Pursuant to Article 2.5 of the Law "On the Territorial Structure and Division", the administrative-territorial units are those, within the limits of which, the public authorities are established. For example, presently 4249 villages exist in Azerbaijan as historical residential areas. But the number of village executive authorities is little more than 1600. It means that, approximately, village level executive committees are established per 2.6 villages. Since the population of the majority of the villages is too small, local executive bodies covering several neighboring

¹ <http://e-qanun.az/framework/897>

² <http://e-qanun.az/framework/510>

³ <http://www.stat.gov.az/source/demography/>

villages are established. For instance, according to the official statistics, currently the population of 2624 rural residential settlements (61.7%) in Azerbaijan is less than 1000 people.

However, individual local executive authorities are available for 66 districts and 78 cities.

The municipal system in Azerbaijan is a single-level one. That is, there is no hierarchical subordination between city, district and village municipalities. In the situation when one fifth of the territory of Azerbaijan is under occupation and the Nagorno-Karabakh conflict has not been resolved yet, the Government of Azerbaijan has a cautious approach to regionalization reforms that may undermine the integrity of the country. Therefore, Azerbaijan still maintains the administrative-territorial division inherited from the Soviet period. Overall, local self-governance bodies of second and third tier covering district and city administrative-territorial units have not been established. The governance of districts and cities is fully delegated to local executive authorities and municipalities function in parallel with all administrative-territorial representations of executive authorities at village, settlement and town level established within all district.

The activities of local executive authorities are regulated by the Statute "On Local Executive Authorities" approved by the Decree of the President of Azerbaijan dated June 6, 2012. The Statute defines the scope of authorities of local executive bodies. These bodies have the following exclusive competences at the local level: implementation of social protection activities, management of housing and communal economy and beautification, ensuring socio-economic development of the relevant territory, support to the development of the agriculture sector, and regulation of the architecture and urban-planning fields.

Municipalities are presently established under almost the same principles as the local executive bodies. City municipalities are established in the standalone cities (like Mingachevir), which do not have district or settlement divisions, and individual district and settlement municipalities are established in the cities which have district and settlement divisions (like Baku and Ganja). Elections to village municipalities are conducted based on the principle of existence of local executive authorities. For example, if 2 or 3 villages are governed by 1 village executive authority representation, then those villages have a single municipality. Presently, 1607 municipalities function in Azerbaijan. About 250 of them are town and settlement municipalities, and 1357 are village ones. The official statistics shows that 1 municipality in Azerbaijan covers on average 3 villages.

The status and mission of the institution of municipality in Azerbaijan is defined by the Constitution and the Law "On the Status of Municipalities". According to Article 1 of

the Law “On the Status of Municipalities”, local governance in the Republic of Azerbaijan is a system of organization of citizens that enables them to exercise their right to independently and freely solve the issues of local importance within the legislation and take part in the public activities envisaged in the Constitution.

Presently, even the smallest administrative-territorial units’ local executive representatives function along with municipalities. The current principles of organization of the public administration in Azerbaijan are inherited from the Soviet Union. Thus, the model of local administration called “territorial (village, settlement or town) soviets” has been replaced with “territorial (village, settlement or town) executive representations”.

1.2. Structure and institutional capacity of municipalities

Presently, 15,682 elected people function in 1607 municipal councils. In other words, the average number of councilors per municipality is nine. The number of elected councilors differs based on the number of people residing in the territory of that municipality. The smallest municipal councils consist of 5 members, whereas the largest – 19 members. The number of councilors in the rest of the municipalities ranges from 7 to 17 depending on the number of population. Thus, pursuant to Article 210 of the Election Code, the municipal council members shall be elected on the basis of election territories as follows: 5 municipal members in territories with a population of less than 500 people, 7 municipal members in territories with a population from 500 to 999 people, 9 municipal members in territories with a population of 1,000 to 4,999 people, 11 municipal members in territories with a population of 5,000 to 9,999 people, 13 municipal members in territories with a population of 10,000 to 19,999 people, 15 municipal members in territories with a population of 20,000 to 49,999 people, 17 municipal members in territories with a population of 50,000 to 99,999 people; and 19 municipal members in territories with a population of 100,000 to 299,999 people.

90% of all people (or 13,434 persons) elected as municipal councilors in the 2014 Municipal Elections have higher education. 35% or 5,236 of them are women, and 36.4% or 5,450 – are young people.

Municipalities carry out their activities through various structures. Activities of those structures are regulated by the legislation. According to Article 17 of the Law “On the Status of Municipalities”, any municipality shall establish standing and other type of commissions to hold discussions on issues related to its competence, and oversee the activities of the enterprises, offices and organizations under its subordination.

According to Article 18 of the Law “On the Status of Municipalities”, the executive body of a municipality is its executive apparatus. The Executive Apparatus is comprised of the chairman of the municipal council and the structural divisions established in accordance with the municipal council’s statute. The Executive Apparatus of the municipal council carry out the information, organizational, record keeping and logistical activities, execute the tasks of the chairman and the decisions of the council.

Municipalities in Azerbaijan are represented by the councilors elected by the people. The councilors elect the chairperson and his/her deputy among themselves. The main duty of the chairperson is to convene the council’s meetings, sign the council’s decisions, issue orders and instructions in the name of the council. In his/her absence, his/her powers are automatically delegated to the deputy chairperson.

The officials of the municipal councils, who are not elected, are called municipal servants and their activities are regulated by the Law “On Municipal Service”. The effectiveness of local self-governance bodies, making efficient and quick decisions on the issues of local importance and their effective implementation, depends on the capacity of the municipal cadre. Presently, more than 15 thousand municipal servants work in the municipal system of Azerbaijan. According to the effective legislation, municipal chairpersons are responsible for hiring municipal servants on a competitive basis. However, in some cases when municipalities do not have enough funds to maintain and develop their own cadre, this leads to shortage of employees. A system of training, re-training and development of qualifications of municipal cadre has been established in the country. Training of local self-governance cadre is carried out in the Public Administration Academy under the President of Azerbaijan, the State Economics University, Baku Business University, Qafqaz University, Azerbaijan International University, Nakhchivan State University and Ganja State University. The annual average number of people enrolled to local self-governance specialties in the universities is around 200-250. And the development of qualifications of the municipal servants is undertaken at the Public Administration Academy under the President of Azerbaijan and the Justice Academy.

The annual reports submitted by the Ministry of Justice to the Parliament about the administrative oversight on the activities of municipalities demonstrate that every year newly elected municipal councilors and servants receive numerous qualification development training courses and at least 400-500 listeners got lectures on urgent issues in those courses. Additionally, qualification development training courses are delivered also in the Public Administration Academy. It is noted that on average 450-500 municipal cadres got their qualifications improved in those courses.

Municipalities do not have large potential in Azerbaijan. The total budget income of all municipalities in Azerbaijan in 2014 was 49.1 million manat (41.3 million EUR), per capita income of the local budgets nationwide was approximately 5.1 manat (4.2 EUR)⁴. Presently, the proportion of total budget income of municipalities in the grand State budget is less than 0.2%. The effective legislation - the Tax Code, the Laws «On Local (Municipal) taxes and payments », «On Financial Basis of Municipalities », «On Budget System» set forth a number of income sources for local self-governance bodies.

The analysis of statistical data reflecting the status of local self-governance bodies demonstrates that, despite the identification of more than 10 income sources for municipalities by the legislation, none of them can play a significant role in the formation of local budgets. Specifically, property and land taxes collected from natural persons can potentially constitute a large income source for municipalities. However, according to the results for 2014, only 11.4 million manat was allocated from these two sources to local budgets. Overall, the proportion of local taxes in the nationwide municipal budgets for 2014 was 13.4 million manat or 27.3%.

The effective legislation envisages that municipalities can receive targeted (subsidies and subventions) and non-targeted (grant-in-aid) financial aids from the state budget.

⁴ Statistical bulletin on municipal bodies' budgets, Jan-Dec 2014, Baku – 2015, SSC

Chapter 2. The legislation on intermunicipal cooperation in Azerbaijan

2.1. General legal provisions

The main legal framework for intermunicipal cooperation in Azerbaijan is the Law “On Joint Activities, Amalgamation, Splitting and Liquidation of Municipalities”. Article 7 provides that municipalities can have joint activities to increase the efficiency of their activities in economic, social, cultural, ecological and other fields within their powers and strengthen their mutual cooperation. Joint activities of municipalities are conducted based on decision of the municipalities. Municipalities need to conclude agreements for such joint activities. The agreement should include the areas of cooperation, the rules for financial operations and other terms and conditions. The territories of municipalities do not change upon such joint activities. Since the establishment of municipalities in Azerbaijan 16 years ago, the law enabled the amalgamation of municipalities in larger ones and the number of municipalities decreased since then from 2757 to 1607. However, no intermunicipal cooperation examples exist based on the mentioned form of agreement. The Law does not include conditions, procedures for intermunicipal cooperation, nor does it state the responsibilities of potential parties under their contractual obligations.

The Law “On Approval of the Statute for Municipal Tax Bodies” also creates legal opportunities for intermunicipal cooperation. Thus, Article 2.2 of the Law provides that, depending on the territory, financial capacity, local (municipal) taxes and number of taxpayers and other aspects, based on agreement, several municipalities may establish a tax service that would serve them. The agreement should indicate the names of municipalities the service will cover, the period of authority of the service, terms for withdrawal of municipalities from the agreement, and the rule for division of service’s costs among the municipalities.

One of the important legal means for the formation of intermunicipal cooperation is that municipalities have the right to establish economic entities for various purposes. Because in practice, according to the agreement signed by local self-governance bodies for intermunicipal cooperation, they deliver their mutual services through joint enterprises they establish. Pursuant to Article 34 of the Law “On the Status of Municipalities”, municipalities can establish legal entities to undertake economic activities and other activities not prohibited by legislation. According to Article 35 of the Law, municipalities define the scope and terms of activities of the legal entities they establish, and set the prices and tariffs for their products (services).

2.2. Provisions on the organizations or procedures related to intermunicipal cooperation

The model of intermunicipal cooperation has not been tested during the period of formation of the institution of local self-governance in Azerbaijan. At the same time, the country's legislation is silent about concrete mechanisms and ways for the establishment of intermunicipal cooperation and its forms. Though, based on the international best practice, there is a need to define legal provisions for the forms of intermunicipal cooperation bodies depending on their mandate (those established for concrete single purpose or multiple purposes), the mechanisms and principles of establishment and operations. At the same time, it is important that the regulation of relations between the intermunicipal cooperation body and the local self-governance body established, as well as the commitments of the parties are reflected in the legislation.

According to Article 34 of the Law "On the Status of Municipalities", in order to ensure the undertaking of its authorities, each municipality can establish entities and organizations. However, this provision sets forth the right of an individual municipality to independently establish an entity or organization. The fact that intermunicipal cooperation envisages the involvement of 2 and more municipalities suggests the formation of joint entities by the partner municipalities. In turn, if intermunicipal cooperation is based on formal relations, municipalities have to establish the entities operating on commercial principle. The problem is that the existing legislation of Azerbaijan prohibits such joint establishment of entities by municipalities. Thus, pursuant to Article 64 of the Civil Code, municipalities cannot establish commercial organizations like limited or additional liability companies, as well as joint stock companies⁵.

The Azerbaijani legislation also does not envisage the possibility of development of informal forms of intermunicipal cooperation, as well as public service areas to be covered by such cooperation. Considering the international practice, it is expedient for the legislation to cover such aspects like the development of intermunicipal cooperation on a formal or informal basis, and whether the cooperation should be compulsory or voluntary.

The mechanisms of transferring municipal powers to an institution created as intermunicipal cooperation body must be clear from the legal point of view. It is important to reflect in the legal documents the mechanism of transferring the financial

⁵ <http://e-qanun.az/code/8>

aids allocated from the state budget to a intermunicipal cooperation body covering several municipalities and which carries out the powers of those municipalities.

Intermunicipal cooperation was never a discussion issue on the public agenda in Azerbaijan. During the past period, wider discussions were held on the boundaries of municipal powers, their financial potential, property and ownership issues, and the state of their relations with public structures and amalgamation of municipalities. Intermunicipal cooperation model becomes a working mechanism under the condition of existence of the powers of local self-governance gained through an exclusive right. In turn, the official policy in Azerbaijan in recent years was geared towards the establishment of larger municipalities. As a result of this policy, the number of municipalities operating in the country was reduced from 2757 to 1607 in 2009-2014. Overall, since the issue of intermunicipal cooperation in Azerbaijan is not widely debated, it does not have political sensitivity.

2.3. Other legal leverages

The contractual mechanism can be used for the development of the intermunicipal cooperation model and there are certain, although limited to few sectors, legal leverages for this. For example, according to Article 40 of the Water Code, any property owner has the right to lease their water facilities on a contractual basis. Using this right, the public bodies may transfer the State-owned water supply facilities located in the territory of municipalities to the municipalities or the intermunicipal cooperation bodies established by them for long-term usage. Similar contracts can be used to transfer transportation, social and other services of local importance to intermunicipal cooperation bodies without changing their ownership. The mechanism of concession envisages the long-term leasing of public and municipal property to the third economic entities. Some CIS countries have already adopted laws on concession (for instance, Ukraine and Kazakhstan).

Chapter 3. Municipal reform in Azerbaijan

3.1. General discussion: amalgamation or cooperation?

During the last 7-8 years, amalgamation of municipalities has been actively discussed at the official level in Azerbaijan. The Government considers the enlargement of municipalities by amalgamating them as the main alternative to intermunicipal cooperation. The official approach is that smaller municipalities are the least effective in their scope, the services provided get more expensive and they become unfeasible. Also the cadre potential of such municipalities is low and inevitable. Since the government was mainly focused on amalgamation of municipalities as alternative to their joint cooperation, intermunicipal cooperation has never become a discussion issue.

2757 municipalities have been operating in Azerbaijan in 1999-2009. The population of 1257 of them or 46% was less than 1000 people. When the municipalities were initially established, neither the size of their territory, nor their population and the principle of their location in the administrative-territorial areas were taken into account. Administrative-territorial unit is the one within which the executive body is established. For example, village and settlement executive authorities are sometimes established to cover 3-4 or even more villages, however, all of them together are considered as one administrative-territorial unit. Until 2009, municipalities were basically covering all villages and sometimes there were several municipalities in one administrative-territorial unit and they were mostly small ones.

For the first time, in May 2009 the Law "On Establishment of New Municipalities by Amalgamating in the Republic of Azerbaijan" was adopted and the process of amalgamating of municipalities took place. After this reform, the number of municipalities was reduced from 2757 to 1718. Later, in May 2014, the Law "On Joint Activities, Amalgamating, Splitting and Liquidation of Municipalities" was adopted. As a result of implementation of this law, the number of municipalities reduced again and became 1607. Presently, the number of municipalities is equal to the number of administrative-territorial units and on average one municipality covers 2.5 villages. After the implementation of the two laws on amalgamation, the population of only 12% of the municipalities is less than 1000, whereas at the initial stage this indicator was 46%. At the same time, the share of the municipalities with population of less than 5000 people remained unchanged. Before the reform this indicator was around 77%. After the amalgamation steps, the level is pretty much the same. The reason is that the

amalgamation process mainly impacted the municipalities with less than 2000 population. Although the reduction in the number of all municipalities by more than 40% as a result of the amalgamation is a positive thing, taking into consideration the international practice, we can say that the share of large municipalities in the total number of municipalities is still small. Because usually the municipalities with more than 10,000 people are considered as large ones in a number of countries. Whereas, currently in Azerbaijan, save large city municipalities, the average number of population in 90% of the rest of the village (settlement) municipalities is 3000 people. From the "coverage effect" point of view, this level demonstrates the necessity for intermunicipal cooperation in the urban areas of Azerbaijan. Or as an alternative to the intermunicipal cooperation, the Government should continue the amalgamation process of municipalities and achieve the reduction in their number on average by 2.5-3 times.

3.2. Intermunicipal cooperation (IMC) continues in Azerbaijan

A formal intermunicipal cooperation mechanism does not exist in Azerbaijan. Even on small scale, the municipalities in the country try to develop this cooperation informally. Informal intermunicipal cooperation is observed mainly in the following areas: cleaning of internal irrigation canals and organization of distribution of irrigation water resources. IMC in the mentioned areas is mainly carried out on a voluntary basis as public initiatives. Because unlike other public service areas, the irrigation water resources usually cross the territories of several municipalities. We need to take into account that the activities of 90% of the rural population of Azerbaijan are connected with the agriculture. Therefore, it is very important to maintain good condition of the internal irrigation system during the agricultural season to ensure uninterrupted and unimpeded irrigation water flow.

3.3. IMC actors

Turning IMC into a working mechanism is significantly dependent on the support provided to this model by all stakeholders. Especially, chairpersons of municipalities, associations representing the interests of local self-governance, governmental institutions should have positive attitude towards this process, and should believe that IMC is the effective management model at the local level to provide quality public services. The positions of potential stakeholders in this process in Azerbaijan have been analyzed and the arguments are presented below.

a. **Municipal chairpersons**

Municipal chairpersons in Azerbaijan are not directly elected by the population. The councilors, elected through nation-wide elections, then elect their chairpersons and deputy chairperson among themselves. All municipal decisions are made collectively. Because of this, even if municipal chairpersons do not accept the concept of IMC, the collective decision-making process may neutralize their personal preferences. In general, municipalities may consider the new management mechanisms under IMC (for instance, intermunicipal entities) as a limitation of their authority and can be against such cooperation. However, for the community, the most important thing is ensuring quality and sufficient access. Community has large tools to influence municipal decisions. First of all, if communities find IMC as feasible, and municipalities are against such cooperation, the population wouldn't vote for the councilors in the elections, and would support those candidates who support IMC. Secondly, communities have leverages to influence the council's decisions during its tenure. For example, pursuant to Article 29 of the Law "On the Status of Municipalities", the population has the right to come up with initiatives to draft municipal acts on issues of local importance. Draft municipal acts on issues of local importance presented by the population to the councils must be publicly discussed in the town-hall meetings and the decision made on them must be officially announced. This means that communities can ensure that the decisions on introduction of IMC model are discussed in the town-hall meetings. According to Article 30 of the Law, citizens have the right to submit individual and collective petitions to municipal councils. Municipal councils, bodies and their officials must provide substantiated responses to the petitions within 30 days. Finally, according to Article 52 of the same Law, if more than half of the participants in the town-hall meetings attended by at least 25% of the population with voting right are unsatisfied with the municipal council's annual report, their position, based on the minutes of the meeting, shall be sent to the Ministry of Justice as the administrative oversight agency. If the Ministry finds the petition substantiated, he/she can send a request to the Parliament on the dissolution of the municipal council.

The availability of these mechanisms shows that communities living in the territory of the municipalities should be interested in IMC more than the municipal councils. And there is no serious ground for communities not to be interested in IMC, because IMC is the best model to improve the quality and effectiveness of the services in the territories of small municipalities.

b. Municipal associations

The associations protecting the interests of local self-governance bodies in Azerbaijan have few real leverages and tools to change the current situation. However, these institutions have close day-to-day contacts with the Ministry of Justice and municipal councils. This is a real opportunity and the initiator of the IMC model has the opportunity to use the capacity of the associations to promote and advocate for this model.

In recent years, no IMC programs have been delivered by associations to municipalities on the provision of technical assistance and improvement of their skills and knowledge. But experts from the associations could develop and distribute guidebooks on IMC among municipalities and organize training sessions on the development of IMC agreements and their implementation, and there are no obstacles for such activities.

c. Authorities as a whole

There are many stakeholders on IMC. But the political authorities should play a leading role in this process. The authorities, including the Parliament, so far have not taken any steps to develop the legislative, as well as to define the financial-administrative framework for IMC.

3.4. *Role of donors and international organizations*

Donors and international organizations have not implemented IMC-related projects in Azerbaijan. The main reason for that is the absence of IMC in the agenda of the host government. And donors and international organizations, as a rule, try to coordinate their interventions and set priorities in line with the government's policy agenda. But this type of organizations, in particular the Council of Europe and its relevant institutions, were interested in strengthening the local self-government institution in Azerbaijan. For example, CoE Congress of Local and Regional Authorities twice - in 2003⁶ and 2012⁷ - prepared packages of recommendations for strengthening the municipalities in Azerbaijan. It is true that there were no recommendations specifically related to IMC in those packages, however, upon the implementation of recommendations on strengthening the independence of municipalities, increasing their

⁶ <https://wcd.coe.int/ViewDoc.jsp?id=36939&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

⁷ <https://wcd.coe.int/ViewDoc.jsp?id=1992639&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C>

powers and financial capacity, many current institutional obstacles for IMC would be lifted.

If the political authorities include IMC on their agenda, donors and international organizations undoubtedly would have this issue on the top of their priority list.

Chapter 4. IMC assessment in Azerbaijan

4.1. Level of equipment in provision of main public services

From the legal perspective, the impediment to formal IMC development in Azerbaijan is not limited only to lack of individual legislation on this topic. The possibility to introduce the IMC model is not indicated either in the laws regulating the delivery of various social and public services, or in the legal-normative acts regulating the realization of various local public authorities ensuring socio-economic development at the local level. Such approach is linked to different reasons. The problem basically emerges from the lack of explicit municipal powers in Azerbaijan. Thus, certain part of the powers delegated to local self-governance institutions is not full, and there are uncertainties in the legislation with regard to the right of municipalities and executive authorities to give orders based on those powers. Article 4.4 of the European Charter of Local Self-government states the necessity of exclusiveness of powers. The Article says that the powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law. For instance, according to the Law "On the Status of Municipalities", municipalities can deal with collection and take-out of waste in their territories. However, Article 12 of the Law "On Industrial and Domestic Garbage" adopted on October 26, 1998, states in general terms that residential areas must be regularly cleaned from domestic garbage, but no responsible structure is defined to do this work. In order to implement the Law, the Cabinet of Ministers approved the Decision #74 of April 21, 2005 (the Decision is about ensuring sanitary rules in the residential areas, temporary storage of domestic garbage and its regular take-out), under which local executive authorities are delegated with full power to undertake this task.

The same situation is with potable water supply and waste water management services at the local level. Presently, the services in all villages and cities of the country are delivered by the 100% state-owned "Azersu" Open Joint-Stock Company. The Company's structures operate in the whole territory of the country.

The introduction of IMC in road infrastructure is not possible from the legal point of view. Because according to the Law «On Automobile Road», municipal automobile roads include only the roads that are within the limits of the municipalities. It becomes clear from the list of the roads of local importance prepared under the Decision #59 of the Cabinet of Ministers dated March 31, 2005 to implement the above-mentioned Law, that the roads of local importance connecting individual residential areas and settlements are not in the municipal ownership. This type of roads are managed by the local executive authorities. So, IMC with regard to the road infrastructure could be possible, only if the road network connecting territories of different municipalities and used by several communities residing in different municipalities are under the competence of those local self-governance bodies. In the Azerbaijani realities, the roads within the limits of a single municipality and used by the people residing in the territory of that municipality are under municipal ownership. Such roads, by their status, are considered inter-territorial and inter-residential ones.

Similarly, the powers in various public service areas within the territories of municipalities are given to 100% State-owned companies, including "Melioration" OJSC for the irrigations services in accordance with the Law "On Melioration and Irrigation", local executive authorities and local Departments of the Ministry of Education for the education services of local importance, in accordance with the Law "On Education", local executive authorities and local Departments of the Ministry of Health for the health services of local importance, in accordance with the Law "On Public Health", and SOCAR and "Azərişiq" OJSC for gas and electricity supply to the population. Obviously, in accordance with the legislation, the powers to organize all local-level transportation, communal and social services are given to the relevant executive authorities or State-owned companies. Municipalities do not have exclusive and precise role in the execution of these powers. In contrary, the powers of the relevant executive authorities or State-owned companies to undertake the mentioned activities are unambiguously and clearly stated. In such legal environment, even informal ties and initiatives make IMC on the services impossible.

Investment needs for these service areas are also big and the current financial potential of the municipalities is too small vis-a-vis those services. For example, a bit more than 2 billion manats were allocated from the State budget to the local executive authorities and different service companies in 2014 to deliver services like potable water and electricity supply, automobile roads maintenance, garbage collection and take-out, as well as maintaining local level health and education institutions. This amount is about 40 times more than the total income of all municipalities in the country.

4.2. The areas in need of IMC and easy to implement

Currently, the development of two IMC areas can yield positive results in Azerbaijan: potable water supply and collection and take-out of garbage. This specifically is relevant to entire urban areas where the municipalities operate. Because both potable water supply and collection and take-out of garbage in the big cities and towns are undertaken by the State-owned enterprises in the centralized manner. In the urban areas, as a rule, there is no centralized potable water supply infrastructure and no communal-housing department function for the collection and take-out of domestic garbage.

As there is no centralized water supply system, the provision of this service is chaotic. In the mountain areas, the population mostly use spring water, and in plain areas - artesian wells. However, due to the lack of funds, it is impossible to move forward spring and artesian water resources to special tanks and distribute them to the population through a pipeline network. The "Household Budget Assessment" conducted by the State Statistics Committee confirms that at least 45% of the urban population is not able to receive water in a centralized manner.⁸ This category of the population gets water from special vehicles by payment or carries water from remote sources using their personal vehicles.

As a rule, since the number of population in the urban areas is small, it is not economically feasible to build costly water supply infrastructure for each village. As mentioned above, one municipality in Azerbaijan has on average 3000 residents. Building on the benefits of technical and technological opportunities to ensure integrity of the infrastructure and on the aspects of proximity of several areas to each other, the development of a single potable water infrastructure within the territories of 3-4 municipalities (app. 10-12 thousand people) based on the IMC model seems quite real. From this perspective, the establishment of joint water supply infrastructure through municipal associations could create conditions to reduce costs. These associations that serve population of several municipalities at the same time, on the basis of an integrated structure, would provide the services efficiently, even if the number of population is small. On the other hand, sometimes water sources are located in the same proximity of several municipalities. In such case, ensuring the access of more people to water based on an integrated tank network and water pipelines increases the effectiveness of the investment.

The same situation is in the collection and take-out of domestic garbage in rural areas. District (town) communal and housing associations function only in district centers and major cities, and are responsible for collection and take-out of garbage in those areas. The population of rural areas takes their garbage to the outskirts of the residential areas. Sometime the areas are not cleaned up for years and this creates an anti-sanitary

⁸ http://www.stat.gov.az/source/budget_households/

situation. In such situation, several neighboring communities could set special joint garbage deposits, jointly use vehicles for take-out and establish responsible integrated intermunicipal associations to deliver this service.

4.3. Is there a need to develop a law on IMC or for any improvement of the current legislation?

The legislation regulating the joint activities of municipalities in Azerbaijan is available and there is no need for any new law in this field. However, it is possible to improve certain aspects of that law. For instance, possible forms of IMC and principles to introduce the public mechanisms for their application can be added to the law. Or it is possible to clarify the scope of the voluntary and compulsory IMC spheres. The law can be improved by adding the following provisions: basic duties and responsibilities of the municipalities that sign IMC agreement, mechanisms for the resolution of disputes emerging from their interrelations, and possible frames of public organizational and financial support to functionalities within IMC.

4.4. IMC and services or access to governance

The optimal physical distance between the municipalities that intend to have a partnership is one of the main conditions for the effectiveness of the IMC model. Distance between the municipalities in plain areas of Azerbaijan is not big and is on average between 3 and 5 kilometers. About 75% of all villages in Azerbaijan are located in plain areas.

Up to 25% of village municipalities operate in mountain areas and sometimes the distance between the local self-governance bodies that are closest to each other may be even 10 kilometers.

The optimal distance can be evaluated during the needs assessment for IMC in concrete situation. One of the possible options here is that the government and the Municipal Association draw an IMC map for each district of Azerbaijan. The map could identify the list of potential IMC municipalities based on the distance between them and with concrete indication of the future services to be delivered by them. Based on the data from this map, it would be possible to define the number of IMC agreements to be made on the individual services.

4.5. Cross-border IMC

Back in 2004, Azerbaijan acceded to the European Framework Convention on Cross-Border Cooperation of Territorial Communities and Authorities and its Additional Protocols. According to the Convention, based on the cross-border consultations, authorities of adjacent countries, including local governments, can cooperate on issues like regional development, tourism, environment, transportation and communication, waste disposal and management, sewerage, etc.

Since Armenia - one of the 5 countries which have common borders with Azerbaijan - keeps our lands under occupation, all ties are broken. As the governance systems existing in Georgia and Russia are different from the Azerbaijani system, there are certain obstacles for such cooperation. For example, these countries have multi-tier municipal systems, whereas Azerbaijan has a single-tier one. Or the functions of the municipalities in those countries, that could be a subject for cooperation, are within the authorities of executive bodies in Azerbaijan.

Chapter 5. Perspectives and conditions for development

5.1. *Help create friendly environment for IMC*

In the current situation in Azerbaijan, IMC does not seem viable only based on the leadership skills of heads of neighboring municipalities. It is very important to make the first critical step to make municipalities closer to each other, which would improve IMC. This step is about promoting the advantages of IMC to develop the culture of such communication, and ensuring that all stakeholders accept the benefits of IMC for the entire country. Especially, municipalities should not be rivals, but have friendly relations with each other in terms of provision of public services that can be delivered based on their joint cooperation and mobilization of resources, because the main goal of municipalities is to provide communities with high-quality and accessible services. If IMC is a feasible tool to achieve this goal, the notion of "competition" should be put aside. It is possible that the main obstacle here may be psychological factors. For example, municipal leaders concluding an IMC agreement may think who will be "victorious" in this process and be perceived as a strong leader by the public. Promotion and education should help the public understand that it is irrelevant to consider who is the winner or the loser, who is strong or weak in the projects implemented for the public good. If the IMC mechanism is established, all participating municipalities will have equal power of influence and will have proportional level of cost and benefit. Especially within formal relations, all interactions are based on agreement and important points like provisions, obligations and duties of the parties, division of activities and cost-share are regulated by the agreement. Overall, the formation of a culture of cooperation envisages the ability of municipal leaders to achieve consensus on any issue, build dialogue and compromise on the important matters.

One of the main conditions in order to turn IMC into a successful model is the introduction of the best management principles and the mechanisms of transparency. Only transparent and accountable municipalities approach the establishment of IMC without hesitation. Because they have no activities they would like to hide from each other.

If we take into consideration also the legal framework principles indicated in the Manual developed by CoE, UNDP and OSI, it is important to clarify in the legislation of Azerbaijan some issues like the status and structure, the status of the cadre and the type of legal entity of IMC body.

Development of a positive public opinion about IMC is very important for successful overcoming of the above-mentioned obstacles. The leading Azerbaijani CSOs specialized in local self-governance are interested in strengthening the institution of municipality in the country. The public not only have a positive approach to the transformation of

municipalities into the decisive institution in local socio-economic development, but in fact have been waiting for this for long time. This is because the public services at the local level are rendered in a centralized manner and the public do not interact with the entities responsible for low-quality services on a daily basis. The attitude of the public is that if municipalities become the leading body to render the services, their quality can be improved significantly. This is because daily oversight on the municipalities is possible, besides the current legislation provides mechanisms of such oversight on municipalities, rather than the public service entities. On these issues, the media takes into account the public opinion, particularly the position of the civil society. Since the public perceives municipalities as needed structures with limited powers and financial resources, there are no doubts that they will have the same attitude to IMC among self-governance bodies.

5.2. *Financial issues*

In order to push forward the development of IMC in Azerbaijan, the municipalities and the bodies established by them should be financially supported. Currently, municipalities have weak potential. Except for administrative costs of municipalities (cadre maintenance and management costs), the mentioned funds are too small for undertaking of powers, especially for rendering the public services. So, the IMC format established for the delivery of public services or the protection of environment can be supported by the central government in two ways:

1) It is possible to allocate targeted transfers from the State budget to the IMC body for execution of concrete duties. The current legislation envisages that municipalities may receive both targeted financial support (subsidies and subventions) and non-targeted (grant-in-aid) financial aids. At the same time, during the past 15 years after the establishment of local self-governance in Azerbaijan, no targeted aid was allocated from the State budget to municipalities. The legislative framework for allocation of targeted financial support to municipalities has not been developed and there is a big need for such framework;

2) Capital-type budget funds within the public investment projects can be allocated for development and restoration of the infrastructure managed by the IMC body functioning in the territory for the municipality. According to "The Guidelines for Composition, Execution, Monitoring and Evaluation of the Public Investment Program of the Republic of Azerbaijan" approved by the Decree of the President of Azerbaijan of March 15, 2010, municipalities can act as the customer of investment projects within the Public Investment Program. To this end, it is critical to create mechanisms for engagement and forms of participation of municipalities in the development and implementation of the targeted budget programs and public investment programs.

The introduction of the shared tax system could be another mechanism. This mechanism envisages the return of a part of the taxes paid by the legal entities and natural persons operating or residing in the territory of a municipality to the State budget, back to the municipality based on the proportion explicitly stated in the legislation. The government can purposefully introduce the shared tax mechanism and set a requirement to allocate the funds accumulated in this source for the execution of powers within IMC.

Thus, targeted subsidizing, ensuring the participation of local self-governance in the public investment projects and introduction of the shared tax system may meet the financial needs of IMC institutions.

If the central government agrees to launch the IMC model without introducing any of the above-mentioned mechanisms, then the forms (e.g. debts, introduction of service tariffs, etc.) and terms of self-financing by municipalities of their joint activities must be explicitly set forth in the legislation.

5.3. *Human resources related issues*

The IMC institutions carry out the activities that individual self-governance institutions are either not able to carry out independently, or cannot implement effectively. In such situation, the need for professional employees of IMC institutions emerges. The institutions can fulfill their obligations namely through those employees. If we take into account that no finances were available to hire and keep the municipal cadre in Azerbaijan in recent years, it is impossible to claim that the institutions have developed large and professional cadre. However, if the IMC model is established, there is certain available institutional basis in the country to meet the need for cadre and increase the level of professionalism of human resources. For example, currently there is professional cadre in the entities and institutions providing public services. Consultancy and training services can be established within the Municipal Associations to improve the capacity of IMC bodies' cadre, and experts can be hired as trainers in those services. In the later stage, the municipal unions can ensure training, re-training and further development of qualifications of the cadre based on individual agreements with vocational institutions. It is possible that in the initial stage the central government would provide financial, methodical and expert support to the IMC bodies for the development of their cadre. After development of a critical mass of the cadre in several IMC bodies, it would not be difficult to develop mechanisms to extrapolate the skills and knowledge through exchange of experience.

5.4. Is there necessity, desire or appropriateness for adoption of an open national policy?

The findings of the assessment allow saying that there is a need for well-designed strategy for the development of IMC in Azerbaijan. The strategy should explicitly define the role of various local and international institutions, their impact potential, directions of activity and resources.

Especially international organizations and the municipal associations of Azerbaijan can make significant contribution to the development of the strategy. The international organizations through their experts can establish a dialogue between all stakeholders on IMC formation and enlighten the stakeholders on the advantages of this mechanism based on the best practices. At the same time, the international organizations could support study tours for all stakeholders for on-the-spot learning of the best practices.

As for the role of the associations, these structures can take the responsibility for the development of the strategy and ensure the achievement of the targets envisaged in the strategy through regular contacts with the central government. For instance, they may set a target to establish 20 IMC bodies in 5 pilot districts of the country during the coming 3 years and based on this experience, the mechanism for the establishment of IMC bodies throughout the entire country will be supported within the next 5 years. Or the associations may undertake the task to develop the legal mechanisms for IMC and their subsequent submission to the Parliament.

Finally, activities of the associations might include organization of promotional work to make the IMC mechanism a working institution, the arrangement of legal services to promote the mechanism at the local level and the training of expert lawyers to deliver the services.