

Summary of review team findings

On March 2 2015, CIVICUS, Publish What You Pay, and Article 19 sent a letter of concern to the OGP Steering Committee regarding the threats faced by civil society in Azerbaijan and the way they affect its ability to engage effectively in the OGP process (see Annex 4). The letter claims that Azerbaijan's government is putting pressure on NGOs, and their leaders, through different means. It raises concerns about five issues: government control over registration and operations of NGOs; government control over NGO finances; harassment of civil society; initiation of criminal and tax cases; and consultation failures.

The letter asks OGP to “take action in relation to Azerbaijan under the Policy on Upholding the Values and Principles of OGP, as articulated in the Open Government Declaration (OGP response policy).” It refers in particular to two aims included in the OGP response policy: “to help re-establish an environment for government and civil society collaboration” and to “safeguard the Open Government Declaration and mitigate reputational risks to OGP.”

According to the OGP Response Policy, the criteria to establish the relevance of the concern are as follow:

1. Establish the relevance of the concern to the Open Government Declaration and OGP's Articles of Governance – i.e., is the matter being reported directly undermines fulfillment of the nation's commitment to OGP principles, thereby calling into question the process of its OGP participation. (Annex 1)
2. Check with previous OGP data points, such as cross-referencing with the findings of the most recent IRM report on the country, including the national context section. (Annex 2)
3. Establish the veracity of the information by cross-referencing concerns with government, civil society, IRM researchers and third parties, including UN bodies, according to the nature of the issue. (Annex 2)
4. Assess whether an OGP intervention could have the desired impact in a country or is necessary to protect the credibility of OGP.¹

The review team's process involved reviewing OGP's Article of Governance and the Open Government Declaration, cross-referencing the concern with the most recent IRM report for Azerbaijan, and establishing the veracity of the information by reviewing civil society, government, media, and United Nations sources, as well as the response letter submitted by the Government of Azerbaijan to the Support Unit on April 15, 2015. Having followed this process, the review team's findings are as follows.

Establishing the concern's relevance

A review of OGP's Articles of Governance and the Open Government Declaration, endorsed by the Government of Azerbaijan, confirms the relevance of the concerns raised by the letter submitted to the

¹ Open Government Partnership, *Articles of Governance*, p. 21.

OGP Steering Committee. The Declaration, for example, includes a commitment to “protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion.”² Similarly, the types of issues that the OGP Response Policy defines as forming “a relevant concern” include the following:

- Introduction of new/revised policies or actions that significantly reduce the space for non-governmental organizations to work independently, voice critiques, and/or receive funding from domestic or international sources (e.g. new NGO laws)[...]
- Introduction of new/revised policies, laws, or practices, or actions that significantly reduce enjoyment of fundamental freedoms, notably freedoms of expression and peaceful assembly, and freedom to associate.³

Establishing the complaint letter’s veracity

While both the government of Azerbaijan and activists report that NGOs have been able to undertake monitoring efforts around the country’s 2012 National Action Plan, the Letter of Concern’s claim that the climate for civil society in Azerbaijan has significantly deteriorated since February 2014 is supported by a number independent sources. These include the United Nation’s Human Rights Council, the United Nation’s Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, the International Federation for Human Rights (FIDH), the European Commission for Democracy through Law (the Venice Commission), Amnesty International, Freedom House, the Open Society Foundation, Human Rights Watch, and the United States Department of State (See Annex 3 for a full list of sources, and Annex 2 for relevant citations). The 2012-13 IRM Progress Report also speaks to some of these concerns, particularly issues around consultation failures. In its response to the OGP Support Unit, the government of Azerbaijan does not disagree with the factual assertions made in the complaint letter and rationalizes them as necessary for compliance and regulatory reasons.

Government control over registration and operations of NGOs

While the Government of Azerbaijan argues that NGO registration law is in line with international best practice and that hundreds of organizations have successfully registered, a number of independent sources support the Letter of Concern’s claim that recent amendments to key laws provide the Azeri government excessive control over the registration and operations of NGOs, and allow the authorities to stifle the activities of NGOs they deem a hindrance. Specifically, independent sources confirm that NGOs are required to register as legal entities, an excessively bureaucratic process that provides ample opportunities for officials to interfere during registration, as well as in the form of compliance checks. Sources also support the letter’s claim that the amendments establish higher penalties for violating various laws and onerous administrative obligations, and that these violations are often described as excessively vague actions. In one of its opinions, the Venice Commission concludes that, “The chilling

² Open Government Partnership, *Articles of Governance*, p. 28.

³ Open Government Partnership, *Articles of Governance*, p. 30.

effect of those amendments is evident as the scope for discretion of executive scrutiny over associations' activities seems unlimited and not precisely defined."⁴

Government Control over NGO Finances

The Letter of Concern's assertion that the new amendments give authorities extensive powers over NGO finances – by mandating the registration of all grants (including individual grants, subgrants, and amendments to grants), tightening the rules governing INGOs and their provision of grants, and imposing serious penalties for violations – is similarly supported by independent sources. According to the International Federation for Human Rights (FIDH), "Restrictive amendments [...] to these laws systematically impede access to domestic and foreign funding, including by requiring government licensing of all foreign donors, and approval of each funded project, which cuts off practically all funding for CSOs that work to hold the government accountable."⁵ The Government of Azerbaijan considers new regulations around grant registration a necessary reform to bring more clarity, transparency, and accountability to non-governmental organizations' activities. The government's letter to the Support Unit is silent, however, on the willingness of the government to actually process and register grants to civil society organizations operating under the new regulations.

Harassment of Civil Society

The letter of concern claims that Azerbaijan's government uses a number of strategies to put pressure on civil society leaders and organizations. These strategies include pressuring private actors not to provide services to civil society, lengthy and repeated law enforcement interrogations of activists, and a campaign to discredit NGOs and their leaders. While the Government of Azerbaijan claims that NGOs in the country are free to act and free of pressure, legal harassment, and discretionary action, the complaint letter's arguments are supported by numerous independent sources, statements, communications, and reports. The most common forms of harassment that have been documented include denying requests to hold meetings and events, office raids and threatening interrogations, warnings from government officials (both formal and informal), smear campaigns, and blackmail. Additionally, there have been reports of physical intimidation, detentions, violent assaults, and torture while in official custody.

Criminal and Tax Cases

Concerns related to criminal and tax cases initiated by the government and mentioned in the complaint letter emphasize that these cases are often based on "trumped up charges" or on "unclear provisions in the laws"; in both cases, these investigations "create a serious chilling effect on those who are targeted." Many independent reports confirm these claims, citing detentions based on charges of tax evasion, fraud, drug-related offences, abuse of office and treason, and argue that these charges are

⁴ European Commission for Democracy through Law; Venice Commission. 2014. p. 19.

⁵ The International Federation for Human Rights (FIDH). 2015.

“trumped up,” “politically motivated,” or at best based on “grounds that raise serious concerns.”⁶ Moreover, some of the sources state that incarcerated activists have faced interference in their right to legal counsel with confessions being extracted under ongoing ill-treatment, and with lawyers being pressured not to take their cases due to fear of being disbarred or being interfered with in their work by calling them as witnesses in activist’s trials – so they cannot defend their clients.

Consultation Failures

Finally, the letter’s contention that the Azeri government has failed to consult with civil society, including around the development and implementation of the country’s OGP Action, is documented by and addressed in the IRM report. While the report recognizes that some steps were taken to notify and consult with civil society, it finds that these efforts were limited in quality, breadth, and duration.

Assessing the impact of an OGP intervention

We perceive an immediate and real threat to OGP’s credibility should OGP not take any action on the recently submitted letter of concern, in part because of the ongoing attention to the situation in Azerbaijan by the international community. Most recently, the Extractive Industries Transparency Initiative (EITI) downgraded Azerbaijan’s participation in EITI to that of a “candidate country” following “deep concern for the ability of civil society to engage critically in the EITI process in Azerbaijan.”⁷ Our review confirms that the matters reported in the letter of concern are factual and call into question Azerbaijan’s fulfillment of key OGP principles. We deem a formal response necessary to protect the credibility of OGP.

In addition, there may be some potential for an OGP response to “help establish a positive environment for government and civil society collaboration,” especially if coordinated with similar international initiatives, such as EITI. While we cannot guarantee that an OGP response will necessarily lead to an improvement in the operating environment for civil society in Azerbaijan, we do believe that diplomatic engagement and offers of technical assistance are warranted at this stage.

⁶ UN Special Rapporteur on the rights to freedom of peacefully assembly and association. 2015. p. 6; Amnesty International. 2015. p. 5; and U.S. Department of State. 2014.

⁷ See <https://eiti.org/news/azerbaijan-downgraded-candidate-country> (April 15 2015)

Annex 1: Establishing the Relevance of the Concern to the Open Government Declaration and OGP's Articles of Governance

A) The concern is relevant to OGP's Articles of Governance, in particular:

Concern in letter	OGP's Article of Governance
<p>p. 1 “We are writing to you as civil society organizations which actively monitor the situation in Azerbaijan to ask you to take action in relation to Azerbaijan under the Policy on Upholding the Values and Principles of OGP, as articulated in the Open Government Declaration (OGP response policy), which you adopted on 25 September 2014. The aims of the OGP response policy are “to help re-establish an environment for government and civil society collaboration” and to “[s]afeguard the Open Government Declaration and mitigate reputational risks to OGP”. We believe that the situation in Azerbaijan engages both of these aims.”</p>	<p>p. 28 Addendum F: OGP Response Policy</p> <p>“All participating governments are to endorse the Open Government Declaration to become full participants in OGP. [...] the Declaration includes a commitment to ‘<i>protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion</i>’. In addition, OGP’s theory of change in the 2015-18 strategy document highlights the importance of having an engaged civil society with the space to participate and influence National Action Plans.</p> <p>p. 29 The aim is to take actions that:</p> <ul style="list-style-type: none"> a) Assist the country in question to overcome difficulties and to help re-establish an environment for government and civil society collaboration, and b) Safeguard the Open Government Declaration and mitigate reputational risks to OGP.

<p>p. 1 “Problems have been documented for some time, but have become particularly acute since February 2014, when new amendments to a number of pieces of legislation which regulate civil society activities in Azerbaijan came into force and when the government instituted what can only be described as a crackdown on independent non-governmental organizations (NGOs), especially those which dared to be critical of the authorities. This has been wide ranging in nature, but it has particularly targeted groups which promote government transparency and accountability. [...] Together, the rules subject NGOs to extensive government control, contrary to guarantees of freedom of association, including over their registration, governance, receipt of funding (including blocking new funding) and banking operations (including freezing bank accounts). International NGOs (INGOs) have increasingly been subjected to similar controls. The formal rules have been accompanied by various forms of harassment of NGOs, which range from a smear campaign against NGO leaders and groups which criticize the government to interrogations of activists to actual physical attacks in some cases. Criminal cases and tax investigations – either entirely trumped up or based on the politically-motivated application of excessively flexible legal rules – have been launched against a number of NGOs and activists, as well as a number of INGOs.</p> <p>These tactics have exerted a powerful intimidating effect on independent NGOs and their leaders. Some activists have censored themselves, withdrawn from NGO work or left the country altogether because they fear retaliation. Many NGOs have stopped operating, in some cases permanently, while others struggle to continue their activities.”</p>	<p>p. 30 Addendum F: OGP Response Policy</p> <p>“The types of issues that may form a relevant concern: [...]</p> <ul style="list-style-type: none"> • Introduction of new/revised policies or actions that significantly reduce the space for non-governmental organizations to work independently, voice critiques, and/or receive funding from domestic or international sources (e.g. new NGO laws). • Manipulation of the OGP process by governments in terms of civil society participation (e.g. only inviting GONGOs to participate in consultations). • Introduction of new/revised policies, laws, or practices, or actions, that significantly reduce enjoyment of fundamental freedoms, notably freedoms of expression and peaceful assembly, and freedom to associate. • Introduction of new/revised policies or actions that significantly reduce online or offline media freedom, or threaten media ownership and independence.”
<p>p. 5 “Consultation Failures</p> <p>These problems have already resulted in failures by Azerbaijan to meet its OGP obligations in the</p>	<p>p. 19 Addendum C: Guidelines for Public Consultation on Country Commitments</p> <p>“OGP participants commit to developing their</p>

area of consultation with civil society, in particular to ensure that the manner in which the Action Plan is developed and implemented is as open, consultative and participatory as possible. This is reflected in the OGP Independent Reporting Mechanism: Azerbaijan Progress Report 2012-2013, which highlights the fact that only a limited number of CSOs and no private sector stakeholders were consulted on the original Action Plan, adopted in September 2012, that public awareness about the OGP was low in the country and that no platform for ongoing discussions about OGP and the Action Plan was ever established.”

country action plans through a multistakeholder process, with the active engagement of citizens and civil society. Taking account of relevant national laws and policies, OGP participants agree to develop their country commitments according to the following principles:

- (i) Consultation during development of action plan
- Availability of timeline: Countries are to make the details of their public consultation process and timeline available (online at a minimum) prior to the consultation;
 - Adequate notice: Countries are to consult the population with sufficient forewarning;
 - Awareness-raising: Countries are to undertake OGP awareness-raising activities to enhance public participation in the consultation;
 - Multiple channels: Countries are to consult through a variety of mechanisms—including online and through in-person meetings—to ensure the accessibility of opportunities for citizens to engage;
 - Breadth of consultation: Countries are to consult widely with the national community, including civil society and the private sector, and to seek out a diverse range of views; and
 - Documentation and feedback: Countries are to make available online a summary of the public consultation and all individual written comment submissions.
- (ii) Consultation during implementation
- Countries are to identify an existing or new forum to enable regular multistakeholder consultation on OGP implementation.”

p. 30

Addendum F: OGP Response Policy

“The types of issues that may form a relevant [...]

- Manipulation of the OGP process by governments in terms of civil society participation (e.g. only inviting GONGOs to participate in consultations).”

B) The concern is relevant to the Open Government Declaration's commitment to "Support civic participation." In particular (p. 2):

"We commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities. We commit to protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion. We commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses."

Annex 2: Establishing the Veracity of the Claims

Claim in letter	Sources	Counter-arguments or mixed record
<p>General argument:</p> <p>Since February 2014, the climate for civil society in Azerbaijan has deteriorated to the point where it seriously threatens the ability of civil society organizations (CSOs) to engage effectively in the OGP process. This heightened government control over CSOs is contrary to guarantees of freedom of association and has exerted a powerful intimidating effect on NGOs, curtailing their work.</p> <ol style="list-style-type: none"> 1) Amendments to a number of pieces of legislation which regulate civil society activities in Azerbaijan came into force 2) Government instituted a crackdown on independent non-governmental organizations (NGOs), especially those which dared to be critical of the authorities through various forms of harassment 	<p>European Commission for Democracy through Law; Venice Commission (2014), p. 20 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282014%29053-e “93. Globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law. Like the Council of Europe Commissioner on Human Rights has, the Venice Commission finds that the amendments, in an overall assessment, “further restrict the operations of NGOs in Azerbaijan”.</p> <p>--</p> <p>FIDH (2015), p. 3 https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/17056-addressing-the-human-rights-situation-in-azerbaijan-at-the-28th-session-of “Recent changes to Azerbaijan's laws governing the activities of CSOs, in combination with targeted persecution of critical HRDs, have effectively ended the work of many independent</p>	<p>Response letter from the Government of Azerbaijan (April 15, 2015), p. 2 “Amendments made into several regulations governing NGO activities in December 2013, which took effect in February 2014, serve the purpose of bringing more clarity, transparency, accountability into the activities of NGOs’ and they should not be interpreted as a means of pressure.”</p>

activists in the country. Since May 2014, authorities have frozen the bank accounts of at least 50 independent organizations and, in many cases, of their staff members, while numerous others have been interrogated and otherwise harassed, forcing them to suspend their activities. In addition, several international CSOs operating in Azerbaijan, with longstanding partnerships with local CSOs in the country, have been forced to leave Azerbaijan or suspend operations.

Restrictive amendments were introduced to the Law on Grants, the Law on Non-governmental Organizations, the Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offense. Amendments to these laws systematically impede access to domestic and foreign funding, including by requiring government licensing of all foreign donors, and approval of each funded project, which cuts off practically all funding for CSOs that work to hold the government accountable. The amendments also provide the government with enormous discretion to dissolve, impose financial penalties on, and freeze the assets of CSOs for minor infractions of existing laws. Of particular concern are provisions which prevent national organizations from accessing local cash donations, and allow the government to freeze or deny international funding to domestic CSOs if an activity is determined to "undermine the interests of the state."

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UN Human Rights Council (2014), p. 8

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/S>

[ession25/Documents/A-HRC-25-55-Add3_en.doc](#)

“30. The Special Rapporteur wishes to express her deep concern about what she considers undue restrictions imposed on the rights to freedom of peaceful assembly and association. Individual human rights defenders have been arrested, while organisations have been impeded in their work to promote human rights by means of changes in legislation which have unduly curtailed basic freedoms. 31. Specifically, following the amendments made to the Law on Freedom of Assembly, the Administrative Offences Code and the Criminal Code in December 2012, peaceful gatherings can now be criminalised when it “causes the significant violation of the rights and legal interests of citizens” (art. 169, para. 1 of the Criminal Code). According to the Government’s response, gatherings “propagandizing national, racial or religious discord” can constitute an “abuse” of the right to freedom of peaceful assembly. The Special Rapporteur expresses her concern about what she considers the shrinking of the space for the peaceful promotion of human rights and fundamental freedoms in Azerbaijan.”

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The International Center for Not-for-Profit Law (2015)

<http://www.icnl.org/research/monitor/azerbaijan.html>

“In addition to the aforementioned concerns, on February 3, 2014, November 16, 2014, and November 20, 2014, changes were made to the Law on Grants, the Law on State Registration of Legal Entities and the State Registry and the Code of Administrative Offences, which have the potential to significantly impair the work of both Azerbaijani and foreign organizations. They introduce many obligations for

organizations, including new registration requirements, and rules regarding receiving and using grants and reporting to the government. In addition, the new changes establish harsh penalties for those who violate both new and previously existing obligations under the law.”

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EITI Validation Report (2015), pp. 10-11

“Following an EITI fact-finding mission to Baku, the 28th EITI Board meeting in Myanmar (October 2014) agreed during a closed session that “the situation facing civil society in Azerbaijan is clearly problematic. The Board discussed the findings of the fact finding mission and expressed deep concern. The Board hopes that Azerbaijan will open up more space for civil society to make its essential contribution to the EITI as laid down in our Standard.”

(<https://eiti.org/news/statement-eiti-chair-clare-short-azerbaijan>)

p. 24

“Reviewed together, the issues of lack of access to funding to fully participate, frozen bank accounts, as well as self-censorship, would suggest to the Validators that CSOs do not currently have access to the level of freedoms recommended under the EITI CSO protocol.”

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Interview with Azeri rule of law expert, currently working in the commercial sector (April 2015)

“The whole civil society sector has now been disabled.

Contrary to expectations, since the beginning of its Chairmanship of the Council of Europe's Committee of Ministers, Azerbaijan has seen a wave of repression. NGO activity has been stopped and activists silenced through amendments to the NGO law, the freezing of bank accounts, and the detention of human rights defenders."

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Azeri Report, Open Letter Regarding the Human Rights Situation in Azerbaijan (2015)

"We the undersigned are alarmed by the deteriorating human rights situation in Azerbaijan. Arrests and detentions of journalists, civil society and human rights activists, religious believers, and opposition figures have multiplied; Azerbaijan now has twice as many political prisoners as Russia and Belarus combined. The government has targeted domestic and foreign NGOs, freezing their bank accounts and effectively paralyzing them. [...]The December 26 raid on the office of Radio Free Europe/Radio Liberty, a publicly funded news organization that reaches countries in the former Soviet Union and beyond, represents a direct challenge to the principles of freedom of speech. Through these actions and statements, the government of Azerbaijan has openly rejected its international obligations as signatory to the International Covenant on Civil and Political Rights and the Open Government Partnership as well as the Extractive Industries Transparency Initiative, and as a member of the OSCE and the Council of Europe."

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	<p>The Council of Europe, Human Rights Europe (2014) Human rights commissioner Nils Muižnieks fears the rights to free expression, assembly and association in Azerbaijan are worsening.</p> <p>“I once again call on the authorities to pay urgent attention to these issues so as to comply with Azerbaijan’s human rights obligations and commitments as a member state of the Council of Europe” said Muižnieks, releasing his observations on the human rights situation in the country. [...]</p> <p>A further reason of concern are the additional restrictions to the activities of non-governmental organisations introduced by the law signed by the President of Azerbaijan on 3 February 2014.</p> <p>“This new law worsens an already cumbersome situation in which NGO activities were disproportionately restricted. The authorities should alleviate, rather than complicate the administrative requirements for NGOs.”</p>	
Government control over registration and operations of NGOs		
<p>The laws and recent amendments give the government, especially the MOJ, extensive control over the operations of NGOs, which is inconsistent with the right to freedom of association. This allows authorities to stifle the operations of NGOs that are critical of government</p>	<p>The International Center for Not-for-Profit Law (2015) http://www.icnl.org/research/monitor/azerbaijan.html “Barriers to Operational Activity Azerbaijani law erects a number of barriers to the operational activity of NGOs:</p> <ul style="list-style-type: none"> • All bank or any other operations on sums received as grants are banned unless the NGO registers such grant agreements with the Ministry of Justice. Legal entities violating this prohibition are subject to a 	<p>Response letter from the Government of Azerbaijan (April 15, 2015), p. 2 “More than four 4000 NGOs have been registered and operating in Azerbaijan. In 2013 and 2014, 168 NGOs were registered in accordance with</p>

<p>1) All I/NGOs need to register as legal entities with MOJ; the process is excessively bureaucratic and allows interference from officials</p> <p>2) The MOJ has extensive powers to monitor compliance with the law and interfere</p> <p>3) Some of these qualifying violations are breaches of onerous administrative obligations and excessively vague actions that would unlikely pass the test of “provided by law” for assessing the legitimacy of restrictions on freedom of association</p> <p>4) The penalties for violating laws are very high</p>	<p>penalty of 5000-8000 AZN.</p> <ul style="list-style-type: none"> • The law defines serious financial penalties for violation of provisions of NGO legislation, such as failure to adjust constituent documents of NGOs (including foreign NGOs) to local legislation, conducting any activity based on changes made to the constituent documents where such changes have not yet been registered, failure to register grant agreements, failure of NGOs to maintain registry of members, failure to conclude contracts with volunteers, etc. It is unclear when and why the maximum amount of these penalties would be imposed. For example, the failure to register a grant agreement with the Ministry of Justice may be penalized in an amount ranging from 1000-2500 AZN; the margin is very broad and is applied in a discretionary manner. • The law entrusts the Ministry of Justice with broad powers to supervise NGOs and to issue warning letters. According to the law, if an NGO receives two warnings within a year, the Ministry may initiate involuntary dissolution through the court. In the regions outside the capital, NGOs are expected to seek approval of the regional executive authorities in order to conduct their events, despite there being no such requirement in the law. [...] • According to a presidential decree, the State Committee for Statistics is responsible for receiving statistical reports “with regard to labor protection, labor conditions and on the results of the measures taken to adapt them to the existing norms” that the 	<p>requirements of the legislation. Only 1 NGO's registration has been cancelled due to its continuous breach of the legal requirements.”</p> <p>--</p> <p>EITI Validation Report (2015), p. 19 “Meanwhile, the government’s view is that NGO registration law is in fact in line with international best practice and the recent activity in ensuring compliance is to be expected in a complex region. One government official involved in EITI stated that if there are any aspects of the NGO law that are not reflected in international good practice, the GoAZ would amend the law.”</p> <p>p. 20 “Meanwhile, GoAZ officials point to their record in improving registration and administrative processes and</p>
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	<p>owners of property and employers are obliged to provide “within time and in the manner determined by the State Committee for Statistics.” Changes were made to the Code of the Administrative Offences that establish fines for the “non-provision” of these reports ranging “from 1000 to 2000 AZN.” This is a serious penalty which is also applicable to NGOs. [...]”</p> <p>--</p> <p>UN Human Rights Council (2014), p. 8 http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55-Add3_en.doc</p> <p>“32. The Special Rapporteur is also concerned that the legislative amendments to the Code of Administrative Offences, the law “On non-governmental organizations” and the law “On grants” could be used to hinder the work of non-governmental organisations (NGOs) in Azerbaijan. These amendments have increased the penalties in cases where organisations do not register with the Ministry of Justice and have defined what constitutes a “donation” for the purposes of grants legislation. Therefore, only those organisations whose causes are approved by the Government via registration are legally entitled to receive funds for their cause. The Special Rapporteur believes that this constitutes an undue restriction to the right to associate freely, which further narrows the space for peaceful and independent work by human rights defenders.”</p> <p>--</p> <p>European Commission for Democracy through Law; Venice</p>	<p>interfaces between citizens and government. It points to the Azerbaijan Service and Assessment Network (ASAN) service centres [...] More centrally to this requirement, the Council on State Support to NGOs contests any view that there is political pressure being applied on the NGO sector, and points to its record supporting organisations associated with opposition parties. [...] Their view is that the requirement that foreign donors must apply via the Ministry of Finance to provide support is simply practising administrative efficiency (to avoid duplication of resourcing). They also remarked that the same registration processes for foreign donors also apply to Azerbaijan state agencies – all 26 agencies providing support to NGOs also have to comply with the Council on State Support to NGOs. Meanwhile, the government view is that the NGO sector</p>
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	<p>Commission (2014), pp. 9-11 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282014%29053-e</p> <p>“40. Despite the Venice Commission’s findings in its opinion adopted in 2011²⁵ that the 2009 and 2011 Azerbaijan’s NGO legislation “<i>unfortunately overturn the previous efforts to meet with the requirements of international standards</i>”, further wide ranging legal restrictions on NGOs have been introduced after the adoption of this Opinion.</p> <p>41. The amendments raise barriers to the establishment of NGOs; introduce additional administrative requirements and increased checks as well as more problematic registration procedures; raise barriers to activities and operations; and restrict access to resources. More severe sanctions and penalties are also introduced for those acting in contravention of such or other legal obligations²⁶. As such, the amendments fail to address some of the most important recommendations made by the Venice Commission in its 2011 Opinion, especially those relating to the establishment and/or registration of NGOs, to foreign NGOs and to the liability and dissolution of NGOs.” [...]</p> <p>“44. Mandatory registration for associations in order to acquire legal personality is not as such in breach of the right to freedom of association, as the Commission has observed in its 2011 Opinion. However, registration should not be an essential condition for the existence of an association, as that might enable domestic authorities to control the essence of the exercise the right to freedom of association. Moreover, the procedure of registration of NGOs in Azerbaijan has been</p>	<p>has operated with little or no internal accountability, and with issues of tax evasion and corruption prevalent.”</p> <p>p. 22 “Despite the strident protests of CSO representatives, another view of the situation was captured during the mission which lies some way between the two diametrically opposed positions. This view was expressed by independent observers with a close familiarity both with government and with civil society. [...] In addition, these stakeholder’s argue that the civil society sector <i>did</i> require rationalisation and stronger regulation, given tax irregularities and the misappropriation of funds – a view which echoes to an extent the government position.”</p> <p>p. 23</p>
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	<p>criticised for its lengthy and cumbersome nature.” [...]</p> <p>“46. The recent amendments have failed to address most of these shortcomings. The registration is still a lengthy and cumbersome process, though this is linked more to the implementation of the legislation than to its content. According to the recent expert reports, the applicants are often required by the registering department to submit additional documentation not required under the national legislation; they often receive repeated requests for corrections of the documents, although such requests must be submitted at once (Article 8(3) of the Law on Registration); the deadline for issuing the decision on the registration is not always respected (as was found in the above-mentioned judgments in <i>Ramazanova and Others</i> and <i>Ismaylov</i> of the ECtHR); and the automatic registration, in case the Ministry of Justice does not respond to the applications within the statutory time-limit (Art. 8(5) of the Law on Registration), does not seem to be respected. Moreover, the registration is still possible only in Baku, be it that the documents may be sent by mail and plans to introduce computer-based registration and establish a single information network of registry authorities are reportedly being considered.”</p> <p>(footnote: 32) <i>“according to the information available to the Venice Commission, only in 2013, more than 20 applications were introduced before the ECtHR claiming a violation of the right to freedom of association of the applicants because of repeated refusal of registration of NGOs...”</i></p> <p>pp. 13-14</p>	<p>“This issue is complicated. The civil society view is that project funding for standard EITI activities has been stalled and accounts frozen and that an absence of law means that registration of the NGO coalition is not possible. Meanwhile, the GoAZ perspective is that civil society organisations are simply going through the growing pains of internationally standard levels of regulations and that frozen accounts are due to investigations of fraud and corruption, rather than related to specific types of activity. The GoAZ also is keen to point out that there are no barriers to registering the coalition, and that organisations known to be associated with political opponents are nonetheless funded through the Council on State Support to NGOs.”</p>
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	<p>“55. The 2009 amendments to the Law on NGOs introduced special provisions relating to the registration and operation of branches and representatives of foreign NGOs in Azerbaijan. As the Venice Commission stated in its 2011 Opinion, <i>“the need for such a procedure, i.e. for international NGOs to create local branches and representatives and have them registered, is in itself questionable”</i>. It is important to stress in this context that international legal instruments, as well as Article 58 of the Constitution of the Republic of Azerbaijan, grant the right to freedom of association to “everyone”, citizens and non-citizens alike.</p> <p>56. Branches and representatives of foreign NGOs, unlike public associations, have the legal obligation to register under a financial penalty. The registration <i>“shall be carried out on the basis of the agreement signed with such organizations”</i> (Article 12(3)), with the details provided for in the 2003 Law on Registration and the 2011 Presidential Decree no. 43. In its 2011 Opinion, the Venice Commission criticised both the requirement of this registration and its actual content. The recent amendments fail to address these recommendations. In fact, they impose new obligations upon branches and representations of foreign NGOs that can seriously hamper their registration and their very operation.</p> <p>57. Under the new Article 7(1)1, foreign NGOs can establish only one branch or representation in the territory of Azerbaijan. This requirement might be problematic for larger NGOs which engage in various types of activities and could therefore find it useful to pursue their aims through several branches or representations in Azerbaijan. The limitation to one representation or branch constitutes, therefore, an interference into the right to freedom of association of foreign associations which also operate under the jurisdiction</p>	
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	<p>of Azerbaijan. This limitation of the right to freedom of association requires a justification based upon a legitimate aim and requires proportionality between the limitation and that aim. However, the blanket nature of this limitation hinders any proportionality assessment in the particular circumstances of each case.</p> <p>58. The amended Article 7(5) of the Law on NGOs stipulates that <i>“Deputies of heads of non-governmental organizations established by foreigners or stateless persons, as well as by foreign legal entities, as well as of branches and representations of non-governmental organizations of foreign states must be citizens of the Republic of Azerbaijan.”</i> This provision which applies to deputy heads and not to heads of foreign NGOs appears to be arbitrary as there is no justification for this distinction. Also, Article 9(1)1, as amended, requires that foreigners and stateless persons who act as legal representatives of an association, have permanent residency in Azerbaijan. Such requirements constitute a limitation of the right of associations to freely establish their own structure and appoint or elect the persons who may act on their behalf. They need a justification based upon a legitimate aim and proportionality between the limitation and that aim, in the absence of which, those requirements may amount to discrimination against non-citizens under Article 14 ECHR and constitute also a breach of Article 1 ECHR which has been incorporated into the Azerbaijani domestic law. However, as in the previous case, the blanket nature of these requirements prevents any proportionality assessment and the requirements appear to be in breach of the principle of equal treatment of all individuals regardless of their nationality. The same observations hold good for the requirement that the term of</p>	
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	<p>office of the head of a branch or representation of a foreign association be indicated in the appointment document (last sentence of the amended Article 7(5)).</p> <p>59. The amended Article 12(3) states that <i>“the term of validity of the agreements (concluded between foreign NGOs and the Azerbaijani authorities) shall be indicated in the agreement”</i>. This amendment suggests that the agreements should be concluded for a specific period of time. This constitutes yet another hindrance in the activities of branches and representations of foreign NGOs, as they would operate under the risk of non-prolongation of the agreement.[...]”</p> <p>pp. 18-19</p> <p>“80. Other changes are more problematic. First, the amended provision foresees several grounds for the suspension of the activities of an NGO for the period up to one year. These grounds include: creating obstacles to the elimination of the situation which caused emergency (Article 31(3)1 as amended); the failure to eliminate the violations for which the NGOs was held liable and which were indicated in a notification or a direction of the relevant executive body (Article 31(3)2 as amended); and the establishment of a violation of rights of the members by the executive body (Article 31(3)3 as amended). These grounds, which have been broadened in the amended law, with the exception of most extreme cases, do not justify suspension of the activities of an NGO, although, according to Article 31(7) as amended, associations have the right to ask the court to review the suspension decision on the basis of reasons set forth in Article 31(3)3. Moreover, the wording – at least as provided for in the translation – is quite confusing. For instance, the meaning of “creating obstacles to the elimination of the</p>	
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situation which caused emergency” is unclear and may lead to misuse.

81. Secondly, according to Article 31(4) as amended, NGOs that receive, within one year, more than two written notifications or directions from the relevant executive body relating to the elimination of violations, may be liquidated by a court on the basis of an appeal by the relevant executive body. Although the liquidation can only be effected by court decision, the general character of the provision offers insufficient guarantee that the sanction of liquidation will be proportionate. In fact, it appears from the wording of this provision that the courts are obliged to decide to liquidate in case the NGO receives more than two notifications within a year. Therefore, the provision does not leave any scope for a proportionality assessment to the court concerned in the circumstances of a given case. So drastic a sanction shall be reserved to the most severe misgivings and accompanied by appropriate guarantees.

82. The chilling effect of those amendments is evident as the scope for discretion of executive scrutiny over associations’ activities seems unlimited and not precisely defined.”

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FIDH (2015), p. 3

<https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/17056-addressing-the-human-rights-situation-in-azerbaijan-at-the-28th-session-of>

“Limitations on freedom of association

Recent changes to Azerbaijan's laws governing the activities of CSOs, in combination with targeted persecution of critical

HRDs, have effectively ended the work of many independent activists in the country. Since May 2014, authorities have frozen the bank accounts of at least 50 independent organizations and, in many cases, of their staff members, while numerous others have been interrogated and otherwise harassed, forcing them to suspend their activities. In addition, several international CSOs operating in Azerbaijan, with longstanding partnerships with local CSOs in the country, have been forced to leave Azerbaijan or suspend operations.

Restrictive amendments were introduced to the Law on Grants, the Law on Non-governmental Organizations, the Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offense. Amendments to these laws systematically impede access to domestic and foreign funding, including by requiring government licensing of all foreign donors, and approval of each funded project, which cuts off practically all funding for CSOs that work to hold the government accountable. The amendments also provide the government with enormous discretion to dissolve, impose financial penalties on, and freeze the assets of CSOs for minor infractions of existing laws. Of particular concern are provisions which prevent national organizations from accessing local cash donations, and allow the government to freeze or deny international funding to domestic CSOs if an activity is determined to "undermine the interests of the state."

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HRW (2013), pp. 61 - 63

<http://bit.ly/1brdcRG>

	<p>“Difficulties of Registration: Case of Human Rights Club</p> <p>On December 10, 2010, several human rights defenders decided to establish a new NGO dedicated to protecting human rights and freedoms in Azerbaijan.²²¹ Three founding members of the club submitted all the required documents to the Ministry of Justice. Since that time, the Ministry of Justice returned the documents three times, each time claiming new errors, and the case has been through four court hearings. The club remains unregistered.”</p> <p>[...]</p> <p>“In March 2012 the Appeals Court overturned the trial court ruling and returned it for reconsideration to the Administrative-Economic Court. In July 2012 the Administrative-Economic Court ruled against the complainants, allegedly because they failed to appear to the hearings. However, Jafarov told Human Rights Watch that neither he nor the other founders ever received the notification about the hearing.²²³ The judge overruled the previous decision and scheduled a new hearing in November 2012. After several postponements, on February 19, 2013, the court decided to not satisfy Human Rights Club’s complaint, a decision that Jafarov and others appealed in April 2013.</p> <p>In May the Appeals Court upheld the decision of the Administrative-Economic Court. As of this writing the Supreme Court hearing was pending.</p> <p>Suspension of Registration: Case of the Azerbaijan Human Rights House</p> <p>The suspension of another human rights group is an example of arbitrary government action against a critical NGO. In March 2011 the Ministry of Justice suspended the work of the Azerbaijan Human Rights House (AHRH), a member of the</p>	
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International Human Rights House Network and a registered organization that served as a training and resource center and conference venue for local groups. The Ministry of Justice ordered the organization to cease all work, claiming it was in breach of a law introduced in June 2009 that requires all international groups or their local affiliates in Azerbaijan to sign separate agreements with the government allowing them to operate.²²⁴ The group had been registered and operating since 2007, and the amended law does not state whether the requirement applies retroactively to groups already registered, nor does it define the nature of such an agreement or what provisions it should contain.”

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EITI Validation Report (2015), pp. 18-19

“However, the document [Venice Commission Opinion] notes that subsequent amendments to the NGO law (and in parallel, the law on registration) have led to criticism, in terms of registration of NGOs and specifically registering local branches of international NGOs. This view tallies with the reality: that international NGOs such as OSF, Oxfam, the European Endowment for Democracy and some foreign embassies have all faced challenges and some organisations have had to close [...]

Following on from this national and international legal framework analysis, the Opinion comments (both generally and specifically) on the amendments to the NGO law, noting that they raise barriers to the establishment of NGOs through additional administrative requirements and checks as well as more problematic registration procedures. The amendments also introduce more severe penalties for non-compliance and

	<p>therefore fail to address significant recommendations made by the Venice Commission in its earlier 2011 Opinion. Among the specific observations, the Opinion notes that the third set of amendments, adopted by Parliament in October 2014 and signed by the President on 14th November, potential NGO donors are limited to citizens or legal persons of Azerbaijan, thus preventing donations from foreign organisations funding NGOs directly. The Opinion comments that, “The Venice Commission reiterates that, while foreign funding might give rise to some legitimate concerns, it shall not be prohibited unless there are specific reasons to do so. Even then, foreign funding should never be object of an outright ban.”</p> <p>--</p> <p>Interview with Azeri rule of law expert, currently working in the commercial sector (April 2015)</p> <p>“While it is very easy for businesses to register with the government (it usually takes just one day at a “one-stop shop”), for NGOs, registering is extremely difficult and can take an indefinite amount of time, if it happens at all. Typically, registration documents are sent back to the applicant multiple times (for reported “gaps” in the documentation) with requests for additional information.”</p>	
<p>Government control over NGO finances</p>		
<p>Laws give authorities extensive powers over NGO finances</p> <ul style="list-style-type: none"> • They mandate the 	<p>Amnesty International (2015), pp. 8-9 https://www.amnesty.org/en/documents/eur55/1077/2015/en/ “‘The most significant changes have related to restrictions on</p>	<p>Response letter from the Government of Azerbaijan (April 15, 2015), p. 2 “Legislation of Azerbaijan</p>

<p>registration of all grants (both organizational and individual grants; and subgrants and amendments to grants)</p> <ul style="list-style-type: none"> • The old registration process was very bureaucratic <ul style="list-style-type: none"> ○ Requirements for registration ○ Approval as “expedient” • MOJ frequently refuses to register grants, denying organizations access to funding • Rules governing INGOs providing grants to local organizations have been considerably tightened • Serious consequences for violating rules, including freezing of accounts 	<p>NGO funding. In 2009, amendments to the Law on Non-Governmental Organizations (Law on NGOs) required registered NGOs to register grants with the Ministry of Justice before using them for any transactions.</p> <p>In practice, this requirement left many of the most prominent human rights NGOs untouched, as they were not registered in first place. Many of these NGOs had their registration denied or revoked arbitrarily and continued to operate as unregistered entities. [...] To get around these restrictions these NGOs either received donations in the names of their founders or chairpersons (in privately held bank accounts) or established partnerships with other registered NGOs since according to Article 3 of the Law on Grants, an individual “may be recipient of a grant.”</p> <p>Fresh amendments to the Law on NGOs introduced in February and December 2013 sought to close these loopholes. The February 2013 amendments limited cash donations to AZN 200 (USD 250) and required all donations of a greater amount to be made by bank transfer to an account held by the organisation itself and for these donations to be registered with the Ministry of Justice in order to qualify for tax exemption. Without proof of such registration banks were not authorised to disburse monies held on account. This new requirement effectively excluded unregistered NGO’s from receiving grants via personal bank accounts belonging to their founders.</p> <p>The amendments introduced in December 2013 explicitly extended the grant registration requirement to unregistered NGOs by requiring individual recipients of grants to register received grants with the Ministry of Justice in the same way</p>	<p>does not prohibit receiving any kind of grant from international organizations, their subsidiaries and other foundations. Amendments made into several regulations governing NGO activities in December 2013, which took effect in February 2014, serve the purpose of bringing more clarity, transparency, accountability into the activities of NGOs’ and they should not be interpreted as a means of pressure.</p> <p>Before the relevant amendments took effect in February, 2014, NGOs had to register received grants with the Ministry of Justice (designated central executive power for registering grants) and any operations with non-registered grants were forbidden. However, most organizations were violating this legal requirement and were implementing projects without submitting this</p>
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	<p>as registered organizations.¹¹ Before these amendments came into effect on 3 February 2014, there was no clear requirement for individuals receiving grants for the work of unregistered NGOs to register these grants with the Ministry of Justice.</p> <p>The Azerbaijani authorities have since used these new regulations to prosecute NGO leaders (of both registered and unregistered NGOs) for a string of purported financial irregularities flowing from the failure to register grants with the Ministry of Justice that have alleged embezzlement and tax avoidance at their core. In all the cases mentioned below the NGOs or their leaders either registered the grants as required or concluded the grant agreements prior to the introduction of the relevant registration requirements. None had received any notification from the Ministry of Justice or relevant tax authorities informing them of any administrative or financial breach or change to their tax status. The legal arguments are complex and turn in large measure on the apparent retroactive application of new registration requirements and highly contested interpretations of tax status of grants and donations. But the bigger picture is much simpler. It is one in which a series of labyrinthine legal requirements have been introduced with the aim of restricting the work of NGOs and facilitating the selective prosecution of those critical of the government.</p> <p>On 15 December 2014, the Venice Commission, an advisory body of the Council of Europe, recommended that Azerbaijan repeal the amendments to the Law on Amendments to the Law on Non-Governmental Organizations (Public Unions and Foundations), on account of the threat they posed to the full</p>	<p>information to the Ministry of Justice. Furthermore, there was also increased number of NGOs that did not submit their annual financial reports to the Ministry of Finance regarding their activities. Hence, low level of transparency lead to violations of tax and other regulations and helped to convert NGOs from being an organization that serves the benefit of the public to being a business tool. The number of investigations and amount of tax evasion cases were signs and clear examples of deteriorating environment. This situation eventually made it necessary to make amendments into the legislation to increase transparency in this area. Reform process has not yet been completed as the rules for registering grants are in the process of drafting. Three weeks ago, the first public hearing of the rules proposed in draft was carried out with broad</p>
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	<p>enjoyment of the freedom of association.”</p> <p>p. 10</p> <p>“On 13 May 2014, the Prosecutor General’s Office launched a criminal investigation in connection with the activities of dozens of NGOs on charges of tax evasion, abuse of power and forgery claiming that they had found “irregularities ... in the activities of a number of NGOs of Azerbaijan Republic, and branches or representative offices of foreign NGOs.” All these allegations of financial impropriety related, in one way or another, to alleged irregularities flowing from the restrictions on NGO registration and grant reporting requirements. In the context of this investigation NGOs have been subjected to numerous measures that have interfered with their work. Their offices have been raided, their equipment and documents confiscated, their bank accounts arbitrarily blocked or frozen and their representatives summoned for interrogation and subjected to travel bans. The authorities have frozen the personal bank accounts of the leaders of several unregistered NGOs, leaving them unable to pay for their projects, operational costs or activities. These included leading human rights organizations such as the Media Rights Institute; the Democracy and Human Rights Centre; the Human Rights Union; the Azerbaijani Lawyers Association; the Institute for Reporters’ Freedom and Safety (IRFS). The IRFS’ premises were also raided and sealed off by the authorities on 11 August, without explanation or a court order.”</p> <p>--</p> <p>UN Human Rights Council (2014), p. 8</p>	<p>participation of civil society organizations, international organizations and foreign embassies. These rules, when adopted, will bring more justice into the process, eliminate many loopholes and ensure that every organization functions under the same transparency requirements.”</p> <p>--</p> <p>Letter of concern (March 2nd, 2015), p. 4</p> <p>The letter of concern notes that “The details for the new grant registration procedures have not yet been adopted.” (p. 4)</p>
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http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-55-Add3_en.doc

“The Special Rapporteur is also concerned that the legislative amendments to the Code of Administrative Offences, the law “On non-governmental organizations” and the law “On grants” could be used to hinder the work of non-governmental organisations (NGOs) in Azerbaijan. These amendments have increased the penalties in cases where organisations do not register with the Ministry of Justice and have defined what constitutes a “donation” for the purposes of grants legislation. Therefore, only those organisations whose causes are approved by the Government via registration are legally entitled to receive funds for their cause. The Special Rapporteur believes that this constitutes an undue restriction to the right to associate freely, which further narrows the space for peaceful and independent work by human rights defenders.” MOVE?

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The International Center for Not-for-Profit Law (2015)

<http://www.icnl.org/research/monitor/azerbaijan.html>

“Lack of clarity in the process of registration of grant agreements makes it difficult for NGOs to register their grants and receive them.

The requirement for individuals to register their grants with the MoJ on the same grounds and rules as registered NGOs makes it difficult for non-registered NGOs to receive grants.”

[...]

“With the changes to NGO legislation introduced on February 3, 2014 individual recipients of grants are now required to register grants with the MoJ in the same way as

	<p>organizations; branches and representative offices of foreign NGOs must provide information to the MoJ about the chief of party as well as his/her deputy (including the name, surname, citizenship, and place of residence); the agreement which foreign NGOs must sign with the MoJ as part of its registration must have the expiration date; and an NGO's activity can be suspended by court on the basis of a lawsuit filed by its members.”</p> <p>[...]</p> <p>“Barriers to entry</p> <p>“A February 2014 change to Article 5.4.4-1 of the Registration Law requires that the legal representative of a foreign NGO have permanent residence in Azerbaijan. In accordance with Article 52.1 of the Migration Code of Azerbaijan, permanent residence is issued only to foreigners and stateless persons who reside temporarily in Azerbaijan for no less than 2 years. The application for permanent residence is considered within 2 months of submission. Azerbaijani legislation does not have a specific definition of ‘legal representative.’ The head of a representative office or a branch of a foreign NGO may be considered a legal representative of a foreign NGO. Registration is available only in the capital Baku, which creates problems for NGOs that are founded in rural areas, as they must travel to Baku to apply for registration and/or submit missing documents.”</p> <p>[...]</p> <p>“Barriers to Resources</p> <p>While there are no special permits required to receive foreign funding, NGOs are required to provide an application letter and notarized copy of any grant agreement to the Ministry of</p>	
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	<p>Justice (MoJ) within 30 days of the date of the grant agreement. In practice, the failure to apply to the Ministry does not limit NGO access to the foreign funding, but may subject NGOs to administrative penalties of up to 7,000 AZN (\$8,970), in accordance with Article 223-1.1 of the Administrative Code.</p> <p>Furthermore, according to changes to the Law on Grants and Administrative Code in February 2013, receiving any financial or material aid that is not a donation without a grant contract is punishable by the confiscation of the unregistered grant or assets from the recipient NGO. In addition, such NGOs will be subject to a fine of 8,000-15,000 AZN (\$10,200-19,100), and NGO managers will be subject to fines of 2,500-5,000 AZN (\$3,185-6,370). These penalties apply to local NGOs as well as to representative and branch offices of foreign NGOs.</p> <p>In addition, a practical problem arises when an NGO signs a grant agreement with foreign donors. Such agreements are usually in English and usually do not bear a seal. In order to submit a copy of the agreement to the Ministry, however, the agreement must be officially translated and notarized.</p> <p>Notaries in Azerbaijan usually refuse to notarize a document that lacks a seal.”</p> <p>[...]</p> <p>“In March 12, 2013, amendments to the NGO law entered into force. The amendments to the NGO law define what constitutes donations with regard to the NGOs. Donations are defined as an “aid in the form of funds and (or) other material form given to a non-governmental organization in accordance with this law without a condition to achieve any purpose.”</p> <p>[...]</p> <p>“The amendments to the Law on Grants and Administrative Code in February 2014 also restrict the types of financial aid</p>	
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	<p>that can be received by NGOs to donations (according to conditions explained above) and grants registered by the MoJ by prohibiting any other “financial or material assistance”. This provision is also applicable to representative and branches of foreign NGOs operating in Azerbaijan.</p> <p>On February 3, 2014 new changes affecting NGO legislation entered into force. They introduced many obligations for organizations, including new registration requirements, and rules regarding receiving and using grants and reporting to the government. With the changes, the Rules on Registration of Grants of 2004 (Rules) are now applied to individuals, in addition to registered NGOs. The new penalty for individuals that receive grants but fail to register them grant with the MoJ enforces the provision of the Rules for individuals (a change to Article 223-1.1 of the Code of Administrative Offenses). Previously, according to the Law on Grants, individuals had the right to receive grants. Many non-registered NGOs in Azerbaijan used this right to receive grants in the name of their founder or chairperson. While individuals had the right to receive grants, there was no clear requirement in the law that individuals should register their grants with the MoJ. Now with the new change, they must register their grants with the MoJ on the same grounds and rules as registered NGOs.</p> <p>Furthermore, the NGO Law prohibits NGOs from receiving cash donations, with a few exceptions stipulated in the NGO Law. As a general rule, donations must be received “as a bank transfer to the bank account of a non-governmental organization”, with the exception of cash donations of up to 200 AZN for NGOs that indicate charity as a primary purpose in its charter.</p> <p>On October 17, 2014, Milli Majlis adopted amendments to</p>	
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the Laws on NGOs and on Grants. On November 16, 2014, the changes made to the Laws on NGOs and on Grants were published in an official newspaper and entered into force. According to the changes, local NGOs can receive donations from foreign donors only if the foreign donor has an agreement with the Ministry of Justice (MoJ) of the Republic of Azerbaijan. An NGO recipient of a donation, including branches or representations of foreign NGOs, shall submit information on the amount of the received donations and on the donors to the MoJ and the Ministry of Finance (MoF). No bank operations or any other operations on donations can take place without submitting information about such transactions.

In regards to local donors, the list of local public donors was extended. All state bodies who want to provide grants to NGOs must coordinate with the NGO Support Council. According to the November 2014 changes, foreign legal entities may provide grants to Azerbaijani NGOs if they have an agreement with the MoJ and a registered branch or representation in Azerbaijan, and they have obtained the right to give a grant in the Republic of Azerbaijan. An opinion on the financial-economic expediency of the grant issued by the relevant executive state body is required for obtaining the right to give a grant.”

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FIDH (2015)

<https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/17056-addressing-the-human-rights-situation-in-azerbaijan-at-the-28th-session-of>

“Restrictive amendments were introduced to the Law on Grants, the Law on Non-governmental Organizations, the Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offense. Amendments to these laws systematically impede access to domestic and foreign funding, including by requiring government licensing of all foreign donors, and approval of each funded project, which cuts off practically all funding for CSOs that work to hold the government accountable.”

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Amnesty International (2013)

<http://www.amnestyusa.org/research/reports/annual-report-azerbaijan-2013-0>

- The Baku branch of the Human Rights House, an international NGO, remained closed after authorities forcibly shut down the organization on 7 March 2011 on the grounds that they had failed to comply with registration requirements.

European Commission for Democracy through Law; Venice Commission (2014), pp. 15-16

<http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282014%29053-e>

“C. Receipt of Donations and Grants by NGOs

62. The recent amendments introduced a rather detailed regulation relating to the receipt of donations by NGOs. This regulation encompasses a new Article 24(1) as well as a set of

	<p>other provisions. Article 24(1) defines donation as <i>“an assistance given in the form of funds and (or) other material form provided by a citizen of the Republic of Azerbaijan or legal person, as well as branches or representations of foreign legal persons (...) registered in Azerbaijan and not being aimed at profit to a non-governmental organization, as well as branches or representations of foreign NGOs in accordance with this law without a condition to achieve any purpose”</i> (par. 1).</p> <p>63. The definition originally covered only donations provided to non-governmental organizations and not to branches and representations of foreign NGOs. Later on, with the amendments adopted on 17 December 2013, the scope was extended to encompass the latter category as well, which in itself is not objectionable. However, the third set of amendments, adopted by Parliament on 17 October 2014 and signed by the President on 14 November, limited the circle of potential donors to <i>“a citizen of the Republic of Azerbaijan or legal person, as well as branches or representations of foreign legal persons (...) registered in Azerbaijan and not being aimed at profit to a non-governmental organization”</i>, thus excluding donations from foreign sources. The Venice Commission reiterates that, while foreign funding might give rise to some legitimate concerns, it shall not be prohibited unless there are specific reasons to do so. Even then, foreign funding should never be object of an outright ban.</p> <p>64. Further obligations relating to the receipt of donations</p>	
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	<p>and grants stem from the 2014 amendments to the Law on Grants. According to Article 2(5), as amended in October 2014, branches and representations of foreign legal persons registered in Azerbaijan may act as donor after obtaining the right to give a grant. Obtaining the right to give a grant requires an opinion on financial-economic responsibility of the grant by the relevant domestic authority. The provisions do not provide for any criteria for such authorization. It is furthermore left to the discretion of the relevant authority to define the procedure for obtaining the right to give a grant. It is thus recommended that the relevant authority competent to authorize the grant as 16 CDL-AD(2014)043 well as the procedure to be followed and the criteria on the basis of which the authorization is given be clearly indicated in the law.</p> <p>[...]</p> <p>67. The amendments adopted on 17 October 2014 introduced the obligation for NGOs to report all donations to relevant authorities (the amount of the received donation and the identity of the donor). The amended Article 24(1)5 does not specify whether such reports shall be made separately for each and every donation or be part of the annual financial report. The latter option is clearly preferable, as the former one would be administratively demanding for NGOs and could again dissuade them from accepting donations (especially smaller donations).</p> <p>68. Moreover, the reporting obligation now applies not only to grants as such but also to sub-grants, other forms of</p>	
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	<p>assistance and amendments to grants, thus adding substantively to the administrative burden of NGOs, while the amendments also provide for sanctions for undertaking banking and other operations in relation to unregistered grants (2013 Amendments to the Code of Administrative Offences). These rules have made it impossible for NGOs that have been denied registration, to access funding in the form of sub-grants through registered organizations, a practice that has previously been used.</p> <p>The Azerbaijan authorities argue that it is necessary to register the grants as, according to their information, some donors allocate funds to the NGOs in cash and hence the NGOs are not paying taxes from the received assets. However, the wide discretion given to the executive authorities in assessing the reasonableness of donations is such that consistency in the implementation of the laws regarding NGOs seems improbable.”</p> <p>--</p> <p>Azerbaijan Press Agency (2014) http://en.apa.az/news/214809</p> <p>“By the decisions of the district courts, bank accounts of a number of non-governmental organizations (NGO) were frozen upon the application of the General Prosecutor’s Office.</p> <p>APA reports that Media Rights Institute chaired by Rashid Hajili, Democratic Institutions and Human Rights Public Union chaired by Elchin Abdullayev, Democracy and Human Rights Resource Center chaired by Asabali Mustafayev, Azerbaijan Lawyers Association chaired by Annagi Hajibayli, Center for</p>	
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	<p>National and International Studies chaired by Leyla Aliyeva, the Public Association for Assistance to Free Economy headed by Zohrab Ismail are among those NGOs.</p> <p>Applications of the General Prosecutor's Office to the court regarding the NGOs are mainly in the same context. According to the applications, the criminal case is investigated with the Criminal Code's articles #308.1 and #313 on the facts of the violation of law in the activities of Azerbaijan's some NGOs and branches and representative offices of foreign NGOs. As the representations of the German Marshall Fund of the United States, International Research & Exchanges Board (IREX), Open Society Institute Assistance Foundation of the Principality of Liechtenstein in Azerbaijan and the U.S. Embassy in Azerbaijan transferred large amount of funds to the bank accounts of these NGOs and there are evidences that those funds are subject of crime, it was demanded to arrest these bank accounts within the criminal procedure course to ensure complete, comprehensive and objective investigation, further confiscation of criminally obtained funds and to prevent the alienation. District courts also made judgment on the arrest of these bank accounts within the criminal procedure course. Personal accounts of R.Hajili, E.Abdullayev and Z.Ismayil were also frozen.</p> <p>Head of Legal Education Society, Intigam Aliyev whose bank account was frozen earlier and Z.Ismayil confirmed to the APA that banks accounts of the mentioned NGOs and persons have been frozen.</p> <p>Bank account of the IREX Azerbaijan office has been frozen unilaterally, lawyer of the IREX Alasgar Mammadli told APA. According to him, it became impossible to withdraw funds out of the bank account. Mammadli said the company's</p>	
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activities are transparent. He also said he hopes investigations will come to an end by November: “The IREX Azerbaijan office states that all their activities have been carried out within the country’s legislation and still continue. And all their activities in the country are closely coordinated with the Republic Commission on International Humanitarian Aid chaired by Ali Hasanov and have been continued through interaction, giving them all necessary information. Moreover, the IREX Azerbaijan office has always respected the requirements of Azerbaijani laws and set up its work in line with the legislation as well as the requirements of the law on approving the contract “On Cooperation Agreement on Facilitation of Aid between the Government of Azerbaijan and the Government of the United States of America” (approved on 18 July 2000)”.
Note that, arrest warrants had also been imposed on the bank accounts of the Oilman Rights Protection Committee (ORPC) chaired by Mirvari Gahramanli, the Legal Enlightenment Society chaired by Intigam Aliyev, the Legal Defense and Education Society chaired by Rasul Jafarov, and the Institute for Reporters Freedom and Safety chaired by Emin Huseynov.”

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EITI Validation Report (2015), p. 18

“By the time of the July 2014 (32nd) MSG meeting – emerging difficulties for CSOs were raised (however, the detailed discussion is not represented in the minutes). This was against a background of amendments to the NGO law (which had previously been amended in 2009, and followed by a

	<p>decree in 2011). In March 2013, a new amendment (number 24-1) was made on donations and grants which had the consequence (at least for some NGOs) of making access to foreign funds very challenging.”</p> <p>pp. 20-21 “A commonly held civil society view is that the clampdown on EITI outreach activities began around the second quarter of 2013. In terms of specific issues, civil society representatives point first to the facts: 20 organisations involved in the coalition have had their accounts frozen, including the organisation whose account runs the coalition’s affairs – the Economic Research Centre.”</p> <p>--</p> <p>Interview with Azeri rule of law expert, currently working in the commercial sector (April 2015) “As a consequence of all these changes, a number of international organizations had to leave the country including IREX and NDI.”</p>	
Harassment of civil society		
<p>The letter of concern claims that Azerbaijan’s government has combined different strategies in an effort to silence and put pressure on civil society leaders and organizations. These strategies include</p> <p>1) Putting pressure on private</p>	<p>Amnesty International (2013) http://www.amnestyusa.org/research/reports/annual-report-azerbaijan-2013-0 “On 18 April, several journalists were violently assaulted when they tried to film illegal house demolitions on the outskirts of Baku. Among them, journalist Idrak Abbasov was beaten unconscious by police and state employees. On 13 June, trumped-up charges of hooliganism were</p>	<p>Response letter from the Government of Azerbaijan (April 15, 2015), p. 2 “NGOs are free to act in the regions and there is no pressure, legal harassment and discretionary action on civil society in Azerbaijan.”</p>

<p>actors to inhibit the work of civil society,</p> <ol style="list-style-type: none"> 2) Asking for notifications to organize events outside of Baku; these permissions are often denied. 3) Repeated lengthy interrogations, which are threatening because charges have been laid on activists 4) A campaign to discredit NGOs and their leaders. 	<p>brought against pro-democracy activist Mehman Huseynov apparently in retaliation for his journalism and campaigning activities before the Eurovision song contest. He was later released from pre-trial detention, but remained under investigation.</p> <p>[...]</p> <p>On 7 February, Democracy Development Resource Centre, an NGO operating in Nakhchivan Autonomous Republic, and the Institute for Reporters' Freedom and Safety received a letter from the Ministry of Foreign Affairs, which warned them against "spreading inflammatory information" through their websites Nakhchivan Human Rights and Media Monitor. Aftandil Mammadov, co-ordinator of the Guba branch of Election Monitoring and Democracy Studies Centre, reported being summoned to the local police station on 27 July and again on 27 August, and warned against organizing any activities without the knowledge and permission of the local police. He previously reported being persistently followed by the police and prevented from holding group meetings. Torture and other ill-treatment remained widespread amid a prevailing climate of impunity.</p> <p>On 17 March, activists Jamal Ali and Natig Kamilov alleged that they were beaten and otherwise ill-treated in police custody and later in detention.</p> <p>On 6 March, activists Jabbar Savalan, Dayanat Babayev, Majid Marjanli and Abulfaz Gurbanly alleged that they were beaten and otherwise ill-treated in detention, after police broke up another peaceful protest in central Baku and arrested 16 participants.</p> <p>Hilal Mamedov, the editor of newspaper Tolyshi sado alleged that he had been tortured while in police custody following his arrest on 21 June. The photo evidence of bruising on his</p>	
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feet and ankles was sent to the Nizami District Prosecutor, who initiated an investigation but there was no outcome published at the end of the year.”

FIDH (2015)

<https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/17056-addressing-the-human-rights-situation-in-azerbaijan-at-the-28th-session-of>

“Since May 2014, [...] numerous others [independent organization staff members] have been interrogated and otherwise harassed, forcing them to suspend their activities.”

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HRW (2013), pp. 64 – 65

<http://bit.ly/1jz7llj>

“One NGO leader explained that for years NGOs have needed to obtain official permission in order to hold trainings and other events but that what used to be a mere formality turned into an extralegal obligation [...] Hotels in these cities refused to provide a venue for the seminars without the letter of approval from the authorities. [...] Also in March, a human rights photography exhibition was closed 30 minutes after it opened. The director of the arts center where the exhibition was being held told the exhibition organizer that permission had been given “in error.”

Eastern Partnership Civil Society Forum (2014)

http://eap-csf.eu/assets/files/Azerbaijan_Declaration_Nov.pdf

“The authorities must also drop their campaign against Azadlig (Freedom) newspaper, a rare independent media voice in Azerbaijan. Its editor-in-chief, Ganimat Zahid, and satirist, Mirza Sakit, have been arrested, and other staff have been physically intimidated and even forced to leave the country. At the same time, the publication is suffering cyber-attacks and economic pressure, which threatens its existence.”

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International Center for Non-for-Profit Law (2015)

<http://www.icnl.org/research/monitor/azerbaijan.html>

“In the regions outside the capital, NGOs are expected to seek approval of the regional executive authorities in order to conduct their events, despite there being no such requirement in the law.”

Open Society Foundation (2015)

<http://www.opensocietyfoundations.org/press-releases/statement-open-society-crackdown-rights-azerbaijan>

“In April, the authorities targeted Open Society’s foundation in Baku, the Open Society Institute–Assistance Foundation. They froze the foundation’s local bank account and seized its computers, as well as questioned former employees. The Open Society Foundations dismiss any allegations of

wrongdoing.”

Natural Resources Governance Institute (2014)

<http://www.resourcegovernance.org/node/70210>

Quoting Gubad Ibadoglu: “The attacks on NGOs in Azerbaijan started with an "intention" to increase transparency and accountability. In reality, the main reason was to weaken independent NGOs funded by foreign donors and terminate their relations with international organizations.

The government officials think that independent NGOs that are funded by foreign donor organizations threaten their power [by expressing views against government policies]. Thus, attempts to "neutralize" these organizations were even on the daily agenda of the president.

In this regard, attacks on NGOs are being realized in several stages. Several NGO leaders were arrested. Others were to leave the country. And the bank accounts of many were blocked. As a result, civil society has all but stopped functioning. At present, many of those NGOs are in a holding pattern. They are silent, with a hope that everything will get better.”

Freedom House (2014)

https://freedomhouse.org/article/azerbaijans-violent-crackdown-human-rights-activists#.VRMmP_mG9fc

“The horrific physical assault on Ilgar Nasibov, a journalist, is the latest trauma in a rapidly and radically deteriorating human rights situation in Azerbaijan," said David J. Kramer,

president of Freedom House. "The Government of Azerbaijan seems determined to intimidate human rights activists and any critic of its actions, whether by arrest on false charges or beating, as has happened August 21 to Nasibov. President Ilham Aliyev is entirely wrong if he believes his government can go after its critics without consequences while the world's attention is focused on other hot spots."

Freedom House (2004)

https://freedomhouse.org/report/freedom-press/2014/azerbaijan#.VRMm5_mG9fc

"Other types of harassment occur regularly. The pro-government media pursued their smear campaign against investigative journalist Khadija Ismayilova in 2013. Ismayilova, a contributor to RFE/RL whose reports have focused on government corruption—particularly within the presidential family—had been a victim of attempted blackmail in 2012 when she received an anonymous letter threatening the release of a video of her having sex with her boyfriend if she did not stop her investigative reporting on the secret business dealings of president's family. The video was released after Ismayilova went public with the threat. The police launched an investigation that, according to the journalist, focused more on her private life than on a genuine search for the perpetrators. Her own research, meanwhile, revealed that the video had been filmed with hidden cameras installed inside her apartment with the help of a phone company. In July 2013, a second intimate video of Ismayilova—apparently recorded at a different time—was published on another pro-government website. In August, a newspaper associated with

the ruling Yeni Azerbaijan Party (YAP) published a slanderous article revealing personal details about her family and making false claims that she has ethnic Armenian heritage, apparently attempting to characterize her as a national traitor.”

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EITI Validation Report (2015), p. 21

“In 2014 the Coalition made a film about EITI for the AzEITI’s 10th anniversary, however hotels and conference halls in Baku refused to hire out to the Coalition for the event because they had received instructions not to host. For the same reason, all sub-national level events and roundtables could not take place [...]

- The European Endowment for Democracy (EED) funded a research project through the Oil Workers' Rights Protection Organisation on best practices in extractive sector transparency. The project account was frozen and the EED was labelled a “suspect donor”.
- Civil society representatives stated that with increasingly more civil society actors and activists imprisoned, self-censorship has become a critical issue. CSO representatives report being very concerned about intimidation and reprisals. [...]
- The [EITI] Coalition “was forced” to vacate an office located in the “Life Center” in February 2014, where it had been operating for three years.” (<http://eiti-ngo-azerbaijan.org/?p=627>)

Criminal and tax cases		
<p>Tax and criminal cases have been initiated against NGO leaders and independent NGOs</p> <ul style="list-style-type: none"> • cases are usually based on trumped up charges, for example of tax evasion • other cases rest on unclear provisions in the laws, for example illegal entrepreneurship and abuse of authority • this creates a chilling effect on those who are targeted 	<p>FIDH (2015) https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/azerbaijan/17056-addressing-the-human-rights-situation-in-azerbaijan-at-the-28th-session-of “In July and August 2014, Leyla Yunus, Director of the Institute for Peace and Democracy, and her husband, Arif Yunus, were arrested and charged with state treason, large-scale fraud, forgery, tax evasion and illegal entrepreneurship under the Criminal Code of the Republic of Azerbaijan. In August, Rasul Jafarov, a human rights defender behind the "Sing for Democracy" campaign, and Intigam Aliyev, President of the Legal Education Society, who assisted in bringing at least 130 cases to the European Court of Human Rights, were charged with tax evasion, illegal entrepreneurship, and abuse of authority.”</p> <p>---</p> <p>HRW (2013) http://bit.ly/1jz7llj “On December 16, 2013, police in Baku arrested Mammadli, chairman of the Election Monitoring and Democracy Studies Centre (EMDS), a leading independent election monitoring group in Azerbaijan that has been observing elections in the country for more than 12 years. The same day, a court sent Mammadli to pretrial custody for three months while he is</p>	<p>Response letter from the Government of Azerbaijan (April 15, 2015), p. 2 “NGOs are free to act in the regions and there is no pressure, legal harassment and discretionary action on civil society in Azerbaijan.”</p>

being investigated on charges of tax evasion, illegal entrepreneurship, and abuse of office.”
(The report also details a number of examples).

Eastern Partnership Civil Society Forum (2013)

<http://bit.ly/1aYROOP>

“The Steering Committee of the Eastern Partnership Civil Society Forum protests strongly about the three months’ detention order imposed on Anar Mammadli, the head of the Election Monitoring and Democratic Studies Center (EMDS) in Azerbaijan, and his subsequent imprisonment on 16 December 2013. The investigation being carried out against Anar Mammadli does not warrant his detention as he has until now answered every summons to appear as a witness in the case, and the fact that he has had his passport taken away means that he is unable to leave Azerbaijan.”

European Union Delegation to the United Nations (2013)

http://eu-un.europa.eu/articles/en/article_14422_en.htm

“The High Representative and the Commissioner are very concerned at the arrest of Mr. Anar Mammadli, Chairman of the Election Monitoring and Democracy Studies Centre, on 16 December and by the Court's decision to sentence Mr. Mammadli to three months' pre-trial detention in the absence of his lawyer.

The High Representative and Commissioner Füle call upon the Azerbaijan authorities to ensure a speedy, fair, transparent and independent investigation of the charges against Mr.

Mammadli, free of political influence and prejudice while fully respecting due process.”

Amnesty International (2015), pp. 5 - 6

<https://www.amnesty.org/en/documents/eur55/1077/2015/en/>

“One after another, prominent human rights activists Leyla and Arif Yunus, Rasul Jafarov, Intigam Aliyev and Khadija Ismayilova were put behind bars on trumped up and politically motivated charges. Human rights defender Emin Huseynov faced similar trumped- up charges and was forced to go into hiding in August 2014. At least 22 people⁴ are in prison for lawfully exercising their freedom of expression, association or peaceful assembly. They are prisoners of conscience. Several face trumped-up charges of fraud, financial irregularities and abuse of power while others have been falsely accused on drug-related offences. The effect has been to significantly squeeze the already small space in which civil society, whether in the form of internationally renowned Azerbaijani experts or local Facebook activists, could freely discuss, organize or criticize government policies.”

(footnote: 4) “They are: Leyla Yunus, Arif Yunus, Rasul Jafarov, Intigam Aliyev, Khadija Ismayilova, Orkhan Eyybzade, Elvin Karimov, Faraj Karimov, Siraj Karimov – whose cases are covered in the present document – as well as Mammad Azizov, Rashad Hasanov, Rashadat Akhundov, Ilkin Rustamzade, Omar Mammadov, Hilal Mammadov, Abdul Abilov, Rashad Ramazanov, Ilgar Mammadov, Tofiq Yagublu, Yadigar Sadigov, Anar Mammadli, Bashir Suleymanli,

whose cases have been covered in Amnesty International's previous publications."

p. 8

"In a complex and uncertain legal landscape Azerbaijani NGOs have been obliged to find ways round these restrictions to secure and disburse funding and continue with their legitimate work. In recent years, the Azerbaijani authorities have progressively sought to close these loopholes through further onerous registration, reporting and tax requirements that have also provided the basis for a string of arbitrary arrests and prosecutions of prominent NGO leaders."

p. 28.

"The authorities have used a variety of methods to deter activists and silence criticism, from trumped-up criminal charges to repressive laws and bureaucratic regulations governing NGOs. Reports of interference with the right to legal counsel, confessions extracted under duress and ongoing ill-treatment in detention reinforce the message that the government is prepared to disregard all human rights protections in pursuit of its aim."

BBC (2014)

<http://www.bbc.com/news/world-europe-29559009>

"The list records 98 individuals in detention, among them human rights activists, opposition members, journalists and bloggers. The charges against them range from espionage and drugs and weapons possession to hooliganism and tax evasion. Mrs Yunus, a veteran human rights campaigner and

an advocate of reconciliation with neighbouring Armenia, won one of France's most prestigious awards, the Legion of Honour, last year. Her husband, Arif Yunus, is a respected historian. Both were charged with high treason.”

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Institute for War and Peace Reporting (2014)

<https://iwpr.net/global-voices/activists-arrested-azeri-crackdown>

“On August 8, veteran human rights activist Intiqam Aliyev was charged with tax evasion, abuse of office and illegal entrepreneurship, allegations he denied. On July 30, police arrested Leyla Yunus, Azerbaijan’s most prominent human rights activist, on a treason charge relating to alleged espionage for Armenia. On August 5, her husband Arif was also charged with treason. Other recent arrests have included blogger and social media activist Faraj Karimov, detained on July 23 and charged with possession of drugs. He faces a five to 12 year sentence. His brother Siraj had previously been arrested on the same charges on July 17, and their lawyer Nemat Karimli said the government was acting illegally. [...]Natiq Jafarli, executive director of REAL, an opposition movement, said Baku was trying to remove dissenting voices before it decided whether to develop its alliance with Moscow or make a strategic shift towards Brussels.”

Human Rights House Network (2014)

<http://humanrightshouse.org/noop/file.php?id=20558>

“Leader of the Legal Education Society, human rights lawyer

Intigam Aliyev was sentenced on 8 August 2014 to pre-trial detention for 3 months on the same charges as those held against human rights defenders Rasul Jafarov, who was arrested on 2 August 2014 for tax evasion, illegal business and abuse of authority. On similar charges, Leyla Yunus, and her husband, Arif Yunus, were arrested on 30 July and 5 August 2014 respectively. Charges of State treason are additionally held against Leyla Yunus. Furthermore, the lawyers of Leyla Yunus and Intigam Aliyev were called as witnesses against their clients and hence bared from being their defendants. Very few lawyers agree to take up politically charged cases in Azerbaijan, a country in which the Bar Association is controlled by the Ministry of Justice and has disbarred lawyers such as Intigam Aliyev himself. On 6 November 2014, the lawyer of Leyla Yunus, Alaif Hasanov, was sentenced to 240 hours of community service due to his public statements about the detention conditions of his client. Leyla Yunus has indeed faced psychological and physical abuses in detention, from detainees and from prison officials. Earlier this year, the regional civil society leader Hasan Huseynli was sentenced to 6-years imprisonment² and the leaders of the only independent election monitoring organisation in the country, Anar Mammadli and Bashir Suleymanli, were sentenced to respectively 5 years and 6 months and 3 years and 6 months imprisonment.”

World Movement for Democracy (2014)

<http://www.wmd.org/statements/critically-deteriorating-conditions-civil-society-azerbaijan>

“The Steering Committee of the World Movement for

Democracy expresses its profound concern over the continuing deterioration of conditions for civil society in Azerbaijan, particularly the arrests and imprisonment of the country's leading members of civil society. [...] the World Movement for Democracy has repeatedly alerted the international community to Azerbaijan's continuing slide into abject authoritarianism. We also note the long-term imprisonment of Anar Mamedli, Ilgar Mammadov, and a list of others much too long to provide here. We will continue to support actions to address the expanding persecution of human rights and democracy activists in the country and to urge the government to respect the democratic principles to which the country has committed itself as a member of the Council of Europe.”

Freedom House (2014)

<https://freedomhouse.org/report/nations-transit/2014/azerbaijan#.VRMlovG9fc>

“Over the last decade, the regime has steadily increased its control over civil society activities through a variety of legal and extralegal means. New restrictions adopted in 2013 created onerous reporting requirements for NGOs, limited cash donations, and imposed high fines for administrative offenses. Authorities also continued to suppress public protests throughout the year, cracking down on demonstrations, targeting youth movements, and prosecuting the regime’s critics on bogus charges.”

Freedom House (2015)

<https://freedomhouse.org/report/freedom-world/2015/azerbaijan#.VRL7uvmG9fe>

“A number of prominent rights activists were jailed or attacked in 2014 as part of the broader crackdown. Anar Mammadli, head of the Election Monitoring and Democracy Studies Center, was sentenced to five and a half years in prison in May for alleged financial crimes. Hasan Huseynli, head of an educational charity, was sentenced to six years in prison in July for a stabbing incident that he said was fabricated. Leyla Yunus, director of the Institute for Peace and Democracy, and her husband were charged the same month with treason and fraud, and both were subsequently put in pretrial detention. In August, activist Rasul Jafarov was arrested on suspicion of financial crimes, legal expert Intigam Aliyev was detained on similar charges, and activist and former journalist Ilgar Nasibov was severely beaten by unknown attackers.”

Open Society Foundation (2015)

<http://www.opensocietyfoundations.org/press-releases/statement-open-society-crackdown-rights-azerbaijan>

“Over the past few months, Azerbaijan’s government has arrested dozens of political activists, human rights defenders, journalists, bloggers, and lawyers and falsely charged them with crimes ranging from misappropriation of funds to treason. Some have already received lengthy prison sentences.

Among those arrested are:

- Leyla Yunus, a prominent human rights activist, arrested together with her husband (July 2014);
- Intiqam Aliyev, a leading lawyer working in the field of human rights (August 2014);
- Rasul Jafarov, a well-known youth activist (August 2014); and
- Khadija Ismayil, a leading investigative journalist (December 2014).”

UN Special Rapporteur on the rights to freedom of peacefully assembly and association (2015), p. 6

http://freeassembly.net/wp-content/uploads/2015/01/UNSR-FOAA-2014-annual-report_r.pdf

“In Azerbaijan, Hasan Huseynli, head of the “Intelligent Citizen” Awareness Center, was arrested on charges of hooliganism for allegedly stabbing another person. Azerbaijani civil society groups denounced the charges as trumped up and part of a crackdown on civil society, and called for Huseynli’s release.”

pp. 7 - 8

“On May 26, a court in Azerbaijan sentenced three Azeri human rights defenders – Anar Mammadli, Bashir Suleymanli and Elnur Mammadov – to prison, apparently for their role in monitoring Azerbaijan’s 2013 presidential elections. The official charges included “conducting business without registration” and “abusing official powers” – which civil society groups called “far-fetched.” Maina Kiai and fellow UN expert Margaret Sekaggya had called upon the government

to drop the charges in early May, but the men were sentenced to prison terms ranging between 3½ and 5½ years.” [...]

“Azerbaijan: “a wave of politically-motivated repression”

A broad and vicious crackdown on civil society in Azerbaijan prompted Maina Kiai and other UN experts to issue a statement in August calling on the government halt its “wave of politically-motivated repression.” The experts highlighted the specific cases of Leyla Yunus, director of the Azerbaijani Institute of Peace and Democracy; Arif Yunus, head of Conflict Studies in the Institute of Peace and Democracy; Rasul Jafarov, coordinator of Art of Democracy and head of Human Rights Club; and Intigam Aliyev, chair of Legal Education Society. Yunus and others published in August a list of nearly 100 Azeri political prisoners. Earlier in 2014, Azerbaijan also sentenced three human rights defenders - Anar Mammadli, Bashir Suleymanli and Elnur Mammadov - for their work related to monitoring the country’s 2013 presidential elections. The vote was marred by allegations of serious irregularities, including ballot-box stuffing, harassment of monitors, and – most infamously – the announcement of results via a smartphone app before voting had even started. “The State’s primary responsibility should be to protect its civil society activists from intimidation, harassment, threats or attacks,” the experts said.”

UN Special Rapporteur on the rights to freedom of peacefully assembly and association (2014)

<http://freeassembly.net/rapporteurpressnews/persecution-rights-activists-must-stop-un-experts-call-government->

[azerbaijan/](#)

“We are appalled by the increasing incidents of surveillance, interrogation, arrest, sentencing on the basis of trumped-up charges, assets-freezing and ban on travel of the activists in Azerbaijan,” they said. “The criminalization of rights activists must stop. Those who were unjustifiably detained for defending rights should be immediately freed.”

The experts highlighted the specific cases of Leyla Yunus, director of the Azerbaijani Institute of Peace and Democracy; Arif Yunus, head of Conflict Studies in the Institute of Peace and Democracy; Rasul Jafarov, coordinator of Art of Democracy and head of Human Rights Club; and Intigam Aliyev, chair of Legal Education Society.

“We are alarmed at the wave of politically-motivated repression of activists in reprisal for their legitimate work in documenting and reporting human rights violations,” they noted, reiterating their grave concerns about the deteriorating situation in the country for the third time in less than a year.”

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EITI Validation Report (2015), p. 23

“In feedback on the draft version of this validation report at a NGO Coalition Council meeting on February 25th, the NGO Coalition noted that “With more and more civil society actors and activists being put in jail, self-censorship is an issue. People are very concerned about intimidation and reprisals.” Freedom of expression among civil society on extractive sector issues (and EITI implementation specifically) is clearly not guaranteed at present in Azerbaijan.”

	<p>--</p> <p>Interview with Azeri rule of law expert, currently working in the commercial sector (April 2015) “The government has become increasingly repressive through the NGO Law and by detaining civil society leaders - including Intigam Aliyev, Khadija Ismayilova, Leyla Yunus, and Rasul Jafar - on fake charges such as tax evasion and misuse of power.”</p> <p>--</p> <p>The Council of Europe, Human Rights Europe (2014) “Unjustified and selective criminal prosecution of people expressing dissenting views, including journalists, bloggers and activists, continues unabated. This is unacceptable. All those who are detained because of the views they expressed must be released.”</p>	
Consultation failures		
<p>The government has failed to consult with civil society, including around development and implementation of OGP Action Plan.</p>	<p>IRM (2014), p. 3 http://www.opengovpartnership.org/country/azerbaijan “Most commitments to improve public participation in government remain unfulfilled.” [...] “The Commission on Combating Corruption posted a draft version on its website in May 2012 and organised two public hearings in May and June 2012. Some of the</p>	<p>Response letter from the Government of Azerbaijan (April 15, 2015), p. 1 “Azerbaijan is one of the first countries that joined to OGP in 2011. In 2012, National Action Plan on Open Government was adopted.</p>

	<p>recommendations received from CSOs through this outreach were reflected in the final action plan.</p> <p>However, overall, only a few CSOs participated in the consultation process. Public awareness of OGP is low in Azerbaijan, and not all stakeholders perceived the OGP process to contribute substantially to policy-making. The government only sought input from a small segment of civil society and did not include private sector stakeholders. Those CSOs that participated were provided with only limited information about the government’s plans and timelines. Consultations concentrated mostly in the capital city of Baku. After implementation of the national action plan, there was no regular forum for consultation with the public.”</p> <p>p. 20</p> <p>“Quality and Breadth of Consultation</p> <p>Only a few civil society networks, including the Anti-Corruption Network, the Multimedia Centre, and the National Budget Group expressed interest in the formal consultation process and submitted their recommendations. Some of these recommendations were reflected in the national action plan.</p> <p>Generally, a lack of a platform to discuss open government and the action plan, as well as the low level of public awareness, limited the involvement of civil society. Not all stakeholders perceived the consultations as a very substantial element of policy-making and decision making on open government. Civil society groups that participated in the consultations were provided with only limited information about the government’s plans and timelines. Consultations</p>	<p>Action Plan was transparently developed in consultation with many institutions and with the participation of numerous civil society organizations including Transparency Azerbaijan, “Constitution” Research Foundation, Economic Research Centre and our international partners such as CoE, OSCE and USAID. This information can easily be obtained from online resources (reports, media articles, press releases, etc).</p> <p>Action Plan tasks all state bodies to increase public participation in their activities and carry out public awareness measures in OGP. There has not been any failed attempt in carrying out public hearings and consultations neither at the stage of development nor during the implementation of OGP Action Plans. Several institutions and agencies such as Anti-Corruption Coalition of NGOs (which unites more than 25 NGOs</p>
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	<p>were concentrated mostly in the capital city of Baku, and they only covered a few segments of the wide range of civil society organisations in the country. Private sector representatives were not included in the official consultation process. Furthermore, a summary of public consultations was not made available online, and there was no official press release about the results of the consultations.</p> <p>Some civil society organisations conducted their own outreach on the national action plan. The National Budget Group organised a public hearing on open government issues and sent a representative to the global summit in Brazil. At the same time, with the support of the Council of State Support to NGOs, two civil society coalitions—the “Youth Coalition” and the Coalition for Promotion of Open Government—actively operated in regions to increase citizens’ involvement and public awareness to improve the implementation of the national action plan.”</p> <p>p. 22 “As indicated in Table 1, there was no regular forum for consultation with non---state actors or public participation during implementation of the national action plan on open government.”</p> <p>European Commission for Democracy through Law; Venice Commission (2014), p. 10 http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF%282014%29053-e Apparent failure to consult CSO in other contexts - drafting of the Law on NGOs,</p>	<p>specialized in governance and combating corruption issues), “Azerbaijan Partnership for Transparency” platform (which supports Azerbaijan’s anticorruption strategy and commitments to OGP), “Transparency Azerbaijan” and “Constitution” Research Foundation carried out monitoring and assessment of the Acton Plan in recent years. Findings of these reports are public, and they indicate that implementation of the Action Plan has already accomplished some of its key missions, and that there have been many positive developments in this field including increased public participation and awareness of OGP in the regions.</p> <p>Combating corruption and promoting open government were defined as a priority area by the Council on State Support to NGO’s in its grant programs. Numerous NGOs received grants to carry out</p>
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	<p>for example.</p>	<p>public awareness projects in this field. Month ago, the Council completed its next grant program and awarded 387 NGOs. 16 projects that were supported specifically covered the theme of OGP in public awareness activities. More than 50 projects covered the human rights and democracy issues. NGO Coalition for “Increasing Transparency in Extractive Industries” (EITI NGO Coalition) and separately its members received funding for their projects”</p> <p>pp. 1-2 “In 2013, a unique law by its nature, “Law on Public Participation” was adopted in Azerbaijan. This law provides a new platform to facilitate and to increase the participation of civil society in public decision making process, and it requires state bodies to act in a proactive manner. The Law ensures public control over activities of state bodies by involving</p>
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		<p>representatives of media, trade unions, NGOs into the work of public councils established with state bodies.</p> <p>It also provides the necessary mechanism which ensures that public hearings and consultations have been implemented on all pieces of draft legislation submitted to the parliament According to the Law, public councils have already been established under numerous state bodies and they are designed to function very effectively. This reform has been considered a significant development and milestone in the field of civil participation by many international organizations.”</p> <p>--</p> <p>IRM (2014), p. 3 http://www.opengovpartnership.org/country/azerbaijan “Azerbaijan’s government adopted its action plan in September 2012 after discussions with a limited</p>
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		<p>number of CSOs. The Commission on Combating Corruption posted a draft version on its website in May 2012 and organised two public hearings in May and June 2012. Some of the recommendations received from CSOs through this outreach were reflected in the final action plan.”</p> <p>p. 20 “Advance Notice of Consultation</p> <p>Drafts of the national action plan on open government and the national action plan on combating corruption were adopted by decree of the President of the Republic of Azerbaijan on 5 September 2012, after discussions with a limited number of civil society organisations. The national action plan on combating corruption was a continuation of anti--- corruption measures in the State Programme on</p>
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		<p>Combating Corruption for the 2004---2006 and the Action Plan for the Implementation of the National Strategy for 2007---2011.</p> <p>In May 2012, the draft version of the national action plan on open government was uploaded to the website of the Commission on Combating Corruption, to collect early feedback from civil society groups and ordinary citizens.</p> <p>As a leading organisation and main coordinating body within government, the Commission on Combating Corruption also organised two public hearings to discuss the draft national action plan on open government in March and June 2012. The public hearing in March was organised together with the Council of Europe. Additionally, the National Budget Group and</p>
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		<p>the Multimedia Centre initiated a few other public events on open government in May 2012 and on the national action plan in June 2012.”</p> <p>pp. 47-54 Mixed progress on public participation. “On 22 November 2013, the Azerbaijani Parliament (Milli Majlis) adopted the Law on Public Participation, which was drafted by the Council on State Support to Non---Governmental Organisations under the auspices of the President of the Republic of Azerbaijan. The ultimate purpose of the law is to establish legal assurances for citizen participation in public administration and decision making processes of the country. The law consists of five chapters and 21 articles, in which it defines organisational and legal forms of public participation such as public councils, public</p>
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		<p>debates, public hearings, public opinion polls, public consultations, and official written communications. [...] If fully implemented, this commitment has the potential to fundamentally change the institutional environment in the country and push forward other related initiatives towards greater public participation. This could open up new dialogue channels between state and non-state actors.”</p> <p>--</p> <p>EITI Validation Report (2015), pp. 19-20 “In response to the draft version of this Validation report, the government EITI Commission noted, “Civil Society actively participates in the EITI process in Azerbaijan, there are no restraint, coercion and nothing restricts the right to speak freely. The government ensured the existence of</p>
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		<p>enabling environment for participation of companies and Civil Society in EITI process of Azerbaijan with regard to relevant laws, regulations and administrative rules. During last 5 years 34 Multi-Stakeholder Group (MSG) meetings with participation of Civil Society representatives (protocols available) were held (some of meetings were initiated by the Coalition of NGOs), several Working Groups consisting from all 3 constituencies including Civil Society were established, numerous other events and activities with active involvement of Civil Society representatives took place. During that period of time MSG in common and its constituencies separately conducted and participated in a number of outreach activities through: radio, press-releases, local conferences, seminars, trainings, round tables, face</p>
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		to face meetings, EITI Reports and etc.”
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Interviews

- **Dr. Gubad Ibadoghlu**
Reagan-Fascell Democracy Fellow
International Forum for Democratic Studies
National Endowment for Democracy
April 6, 2015
- **Azeri rule of law expert currently working in the commercial sector who asked to remain anonymous**
April 13, 2015

Annex 4: Letter of Concern from CIVICUS, Publish What You Pay, Article 19

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Open Government Partnership
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United States

2 March 2015

Dear Members of the OGP Steering Committee,

Letter of Concern

We are writing to you as civil society organizations which actively monitor the situation in Azerbaijan to ask you to take action in relation to Azerbaijan under the *Policy on Upholding the Values and Principles of OGP, as articulated in the Open Government Declaration* (OGP response policy), which you adopted on 25 September 2014. The aims of the OGP response policy are “to help re-establish an environment for government and civil society collaboration” and to “[s]afeguard the Open Government Declaration and mitigate reputational risks to OGP”. We believe that the situation in Azerbaijan engages both of these aims.

Over the last few years, the climate for civil society in Azerbaijan has deteriorated to the point where it seriously threatens the ability of civil society organizations (CSOs) to engage effectively in the OGP process. The situation thus raises important concerns about the Azeri government’s commitment to the values and principles expressed in the Open Government Declaration, which it endorsed in 2011 when it joined the OGP. As you know, these include a commitment to “protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion.” Unfortunately, the actions of the Azeri government have signally failed to translate this commitment into practice.

Problems have been documented for some time, but have become particularly acute since February 2014, when new amendments to a number of pieces of legislation which regulate civil society activities in Azerbaijan came into force and when the government instituted what can only be described as a crackdown on independent non-governmental organizations (NGOs), especially those which dared to be critical of the authorities. This has been wide ranging in nature, but it has particularly targeted groups which promote government transparency and accountability. This includes members of the NGO Coalition for “Increasing Transparency in Extractive Industries” (EITI NGO Coalition), many of which are the same groups which have been engaged in the OGP process in the country.

Together, the rules subject NGOs to extensive government control, contrary to guarantees of freedom of association, including over their registration, governance, receipt of funding (including blocking new funding) and banking operations (including freezing bank accounts). International NGOs (INGOs) have increasingly been subjected to similar controls. The formal rules have been accompanied by various forms of harassment of NGOs, which range from a smear campaign against NGO leaders and groups which criticize the government to interrogations of activists to actual

physical attacks in some cases. Criminal cases and tax investigations – either entirely trumped up or based on the politically-motivated application of excessively flexible legal rules – have been launched against a number of NGOs and activists, as well as a number of INGOs.

These tactics have exerted a powerful intimidating effect on independent NGOs and their leaders. Some activists have censored themselves, withdrawn from NGO work or left the country altogether because they fear retaliation. Many NGOs have stopped operating, in some cases permanently, while others struggle to continue their activities.¹

This letter outlines the key problems in the current environment, while the accompanying Annex, *Closing the Civic Space in Azerbaijan: Actions that Undermine the Values and Principles of the Open Government Partnership*, sets out in more detail the specific measures and cases which underlie those problems. Both the letter and the Annex are divided into the following substantive sections: Government Control over Registration and Operations of NGOs; Government Control over NGO Finances; Harassment of Civil Society; Criminal and Tax Cases; and Consultation Failures. Due to the sensitivity of some of the information it contains, we ask the Steering Committee to keep the Annex confidential.

Background

From a legal perspective, important amendments to the Law on Grants, Law on Non-governmental Organizations, Law on Registration of Legal Entities and State Registry and the Code on Administrative Offenses were enacted by the Azeri Parliament on 17 December 2013 and signed into law by the President on 3 February 2014 (February 2014 Amendments). A number of local groups working on open government issues criticized these legal changes when they were presented in draft form.² The Laws on Grants and on NGOs were further amended on 17 October 2014, and signed into law by the President on 14 November 2014 (November 2014 Amendments).

The situation was already difficult prior to the adoption of the February 2014 Amendments. A wave of arrests of journalists, youth activists, opposition figures and NGO leaders began in 2013. In many cases, those arrested were criminally prosecuted on trumped-up charges, followed by unfair convictions and long sentences. These problems were chronicled in a 100-page report published by Human Rights Watch on 2 September 2013, called *Tightening the Screws: Azerbaijan's Crackdown on Civil Society and Dissent*, which the organization describes as documenting “the dramatic deterioration of the government’s record on freedom of expression, assembly, and association in the past 18 months”.³ The problems were also highlighted in more than a dozen of cases involving Azerbaijan in all of which the European Court of Human Rights found it to be in breach of its obligations under Article 11 of the European Convention on Human Rights, specifically for a failure to respect the right to freedom of association (of which the most recent was decided on 13 March 2014) and mostly for failures by the MoJ to register NGOs.⁴ In many of these cases, the problem was

¹ A majority of the organizations which belong to the EITI NGO Coalition have been negatively affected by these restrictions. See the Coalition statement of 15 July 2014, available at: <http://eiti-ngo-azerbaijan.org/?p=627>.

² See, for example, the “Statement on draft amendments to the legislation regulating the activities of NGOs and civil society organizations in Azerbaijan”, available at: http://www.eap-csf.eu/assets/files/News/Azerbaijan%20CSOs-Statement-%20Februaru_12_2013.pdf.

³ Available at: <http://www.hrw.org/node/118310>.

⁴ See, for example, *Ramazanov and others v. Azerbaijan*, 1 February 2007, Application No. 44363/02, *Ismayilov v. Azerbaijan*, 17 January 2008, Application No.4439/04 and *Islam-Ittihad Association and others v. Azerbaijan*, 13 March 2014, Application No. 5548/05. See also European Commission For Democracy Through Law (Venice Commission) Opinion 787/2014 On the Law on Non-Governmental Organisations (Public Associations and Funds) As Amended of the Republic of Azerbaijan, 12-13 December 2014, para. 38. Available at: http://www.coe.int/t/ngo/Source/Venice_Comm_opinion_787_2014_amendments_NGO_law_Az_en.pdf.

that restrictions on freedom of association failed to meet the requirement of being prescribed by law, which is usually engaged where laws are unduly vague or vest excessive discretion in officials.

In response to the repression prior to February 2014, a number of NGOs had found different ways of coping. Some groups which had been denied registration, and thus could not receive funds directly, arranged for their funds to be received through individuals, typically their leaders or through partner NGOs, which served as financial intermediaries. These indirect approaches to accessing funds need to be understood in light of the situation that pertained at the time, whereby government was abusing its power and exercising undue control over NGOs. The February and November 2014 Amendments were inspired, in part, by a desire on the part of government to close the loopholes that effectively allowed critical NGOs to continue to operate.

Government Control over Registration and Operations of NGOs

The rules, including as a result of the recent amendments, give the government, and the Ministry of Justice (MoJ) in particular, extensive control over the operations of NGOs, which is inconsistent with the right to freedom of association. This, in turn, allows the authorities to stifle the operations of NGOs which are critical of government, which call for greater transparency and accountability, and/or which are otherwise deemed to be a hindrance. NGOs are required to register as legal entities with the MoJ which, in Azerbaijan, is an excessively bureaucratic process with ample opportunities for officials to interfere, not only at the initial point of registration but also over time, in the form of compliance checks. The MoJ has extensive powers to monitor compliance with the law and, after it has issued two warnings to an NGO for alleged breaches of the law, it can file a case in court to have the NGO closed down.

In practice, many NGOs which have applied have been unable to register.⁵ A number of examples of other forms of interference are provided in the Annex. A 2012 study conducted by the NGO Democracy Learning Public Union found that registering an NGO took a year or longer for 57% of those surveyed.⁶ Since then, things have gotten considerably worse.

A number of these measures directly target the work of INGOs in Azerbaijan. Given the dependence of many local groups on funding and other forms of support from INGOs, these measures have a direct impact on local civil society. The February 2014 Amendments extended all of the rules in the NGO law to INGOs, whereas previously only selected rules applied to them. As a result, a significant number of INGOs have been forced to leave the country.⁷ While most do not wish to have this fact publicized, media reports indicate that the US National Democratic Institute ceased operations in March 2014 and formally closed in July, reportedly after the authorities accused it of financing youth subversion against the government.⁸

Among other changes, the February 2014 Amendments established higher penalties for violating various laws, including banning or suspending an NGO and imposing heavy fines for breach of the many onerous administrative obligations facing NGOs. These include vague actions such as violating their members' rights, creating obstacles to addressing emergency situations and "illegal entrepreneurship", all of which would be unlikely to pass the 'provided by law' part of the test for

⁵ See USAID, *The 2013 CSO Sustainability Index for Central and Eastern Europe and Eurasia* which states, at p. 27: "The registration process continues to be complicated, preventing CSOs from registering even after years of applying". Available at: <http://www.usaid.gov/sites/default/files/documents/1863/E%26E%202013%20CSOSI%20Final%2010-29-14.pdf>.

⁶ See USAID, *The 2012 CSO Sustainability Index for Central and Eastern Europe and Eurasia*, p. 32. Available at: http://www.usaid.gov/sites/default/files/documents/1863/2012CSOSI_0.pdf.

⁷ We are refraining from mentioning these groups by name because many INGOs who have not been able to register do not want to be identified publicly.

⁸ See a media report on this at: http://www.contact.az/docs/2014/Politics/070200083172en.htm#.VAh4lvI_tqV.

assessing the legitimacy of restrictions on freedom of association. In the former case, a complaint by two members is enough to trigger a court action.

Government Control over NGO Finances

The rules also give the authorities extensive powers over NGO finances. According to the new rules, both organizational and individual recipients of grants must register those grants with the MoJ. Sub-grants and any amendments to grants also need to be registered. The old procedure for registering grants was very bureaucratic and, among other things, required grants to be translated into Azeri, and both the donor and grantee to sign each page, which also needed to be notarized. The details for the new grant registration procedures have not yet been adopted.

Each individual grant needs to be approved, which requires an opinion by the relevant State body (i.e. the State body with responsibility in the proposed area of work of the grant) to the effect that the grant is expedient for Azerbaijan, which provides State actors with almost unlimited discretion to block grants. Since May 2014, the MoJ has in practice very frequently refused to register grants thereby denying the affected NGO access to funding.

The rules governing INGOs providing grants to local organizations have been considerably tightened and local groups are only allowed to receive grants if the INGO providing it complies with the rules. These require the INGO to have a local, legally registered office, to be registered with the government as a potential grant maker, and for specific grants to be individually approved as being 'expedient' by the relevant State body. There are reports of INGOs having their bank accounts frozen for alleged infractions of the rules,⁹ and there have also been a number of unwarranted criminal investigations of INGOs (as outlined in the Annex). Another problem is that the legislation requires the head of the branch or representative office of INGOs to have permanent residence in Azerbaijan, which is difficult to obtain.

Breach of these and other financial rules can lead to significant financial penalties and official warnings, which can in turn lead to the freezing of the bank accounts of not only the relevant NGO but also the personal accounts of its leaders. Bank accounts can, for example, be frozen if NGOs do not have a grant registration letter showing that the funds have been approved. As detailed in the Annex, there have been numerous cases of both NGO and personal bank accounts being frozen. Taken together with the ongoing criminal investigations of key transparency and accountability donors, the new rules have made it extremely difficult, and in many cases effectively impossible, for NGOs to obtain, access and use outside funding. This is the major reason for the closure of growing numbers of NGOs which work on open government issues.

Harassment of Civil Society

The authorities have engaged in a number of forms of informal or non-legal harassment of NGOs. These range from cases where the government appears to have put pressure on private businesses not to offer services to NGOs – for example office rental or conference services, which are necessary for them to carry out their activities, including holding public debates on open government issues – to even more serious matters. Although this is not legally required, in practice NGOs must send a notification to the Presidential administration as well as to the Head of the local administration if it wants to organize an event outside of Baku, failing which it may face police harassment during the event. Such permissions have regularly been denied to independent groups since 2014. The NGO

⁹ See International Center for Not-for-Profit Law, NGO Law Monitor: Azerbaijan. Available at: <http://www.icnl.org/research/monitor/azerbaijan.html>.

EITI Coalition has reported that it has been completely unable to conduct activities outside the capital due to these factors.¹⁰

A number of civil society activists have been subjected to lengthy and sometimes repeated interrogations relating to criminal cases in which they are considered to be potential witnesses. In several cases, NGO offices and leader's homes have been searched, with colleagues, neighbors or family members being asked questions. Given the fact that criminal charges have been laid against a number of NGO activists, these searches and questioning are very threatening.

There have also been strong and unwarranted accusations leveled at independent NGOs and their leaders, for example in the public media. Pejorative terms have been used to discredit these NGOs, such as calling them traitors or accusing them of attempting to harm the interests of Azerbaijan or being disloyal or unfaithful to the country due to accepting foreign funds or allegedly working for foreign interests. Given the difficult climate, these attacks are very disturbing. Indeed, at least one civil society activist was brutally attacked in circumstances which suggest that this was related to his civil society work. NGO leaders have also received threatening phone calls and have been harassed when re-entering the country after travel abroad and threatened with travel bans.

Criminal and Tax Cases

A number of tax and other criminal cases have been initiated against both NGO leaders and independent NGOs. In some cases these are based on trumped up charges, for example of tax evasion, while in others they rest on unclear provisions in the laws, such as the prohibition on "illegal entrepreneurship" (which essentially relates to a failure to follow the complex, bureaucratic rules relating to grant approvals) or "abuse of authority" (which often relates to a breach of the rules relating to NGOs), both of which are more properly seen as administrative matters. The very serious implications of these cases – which can lead not only to fines but also potentially to more serious criminal penalties – mean that they create a serious chilling effect on those who are targeted.

Consultation Failures

These problems have already resulted in failures by Azerbaijan to meet its OGP obligations in the area of consultation with civil society, in particular to ensure that the manner in which the Action Plan is developed and implemented is as open, consultative and participatory as possible. This is reflected in the OGP Independent Reporting Mechanism: Azerbaijan Progress Report 2012-2013,¹¹ which highlights the fact that only a limited number of CSOs and no private sector stakeholders were consulted on the original Action Plan, adopted in September 2012, that public awareness about the OGP was low in the country and that no platform for ongoing discussions about OGP and the Action Plan was ever established.

Recommendations

In light of the above, we ask for swift action by the OGP Steering Committee to re-establish the necessary space for civil society actors to operate freely and independently in Azerbaijan, including so as to be able to participate in and influence Azerbaijan's OGP Action Plan. In particular, we urge the Committee to call on the Azeri government to take the necessary actions to implement the following points:

¹⁰ EITI NGO Coalition statement, 11 July 2014, available at: <http://eiti-ngo-azerbaijan.org/?p=627>.

¹¹ Available at:

http://www.opengovpartnership.org/sites/default/files/Azerbaijan_OGP_IRM_Public_Comment_%28English%29_0.pdf.

- Azerbaijan’s second Action Plan should include commitments to significantly improve the ability of not-for-profit and civil society organizations to operate freely and independently.
- The government should take steps to remove the legal and bureaucratic hurdles outlined above that currently undermine freedom of association. This implies that relevant laws should be amended to bring them into line with international standards, that implementation of those laws should respect international standards, including the idea that CSOs should not be subject to discretionary actions by government that limit their ability to function, and that extra-legal harassment of CSOs should end.
- The government should allow CSOs to access and use resources freely, including those provided from abroad, and, to this end, it should take the necessary steps to lift the court-ordered freezes of the bank accounts of civil society organizations and activists, limit or abolish the requirements regarding registration of individual grants, and revoke excessive restrictions on foreign donors being allowed to make grants to local CSOs.
- The government should take steps to restore an environment in which civil society actors feel free to speak out openly, including about government transparency and accountability. This should include releasing civil society activists and journalists who have been imprisoned for their work and expressions, and ending the harassment of NGO leaders by the Prosecutor General’s office and tax authorities.
- The government should implement the recommendations of the OGP Independent Reporting Mechanism relating to public participation when developing and implementing its second Action Plan.

We thank the OGP Steering Committee for its prompt attention to this urgent and important matter. We sincerely hope that you can, in the case of Azerbaijan, do exactly what the OGP response policy aims for, namely help establish a positive environment for government and civil society collaboration. We are ready to provide any additional information or support that the OGP may need to achieve this overriding goal.

Yours sincerely,

Dr Danny Sriskandarajah,

**Secretary General, CIVICUS
World Alliance for Citizen
Participation**



Marinke van Riet,

**International Director,
Publish What You Pay**



Thomas Hughes,

**Executive Director, Article
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