

CSO METER

Assessing the civil
society environment in the
Eastern Partnership countries

Azerbaijan

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ABBREVIATIONS

ASAN	State Agency for Public Service and Social Innovations CSO Civil Society Organisation
CoE	Council of Europe
EaP	Eastern Partnership
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EWMI	East-West Management Institute
FATF	Financial Action Task Force
ICCPR	International Covenant on Civil and Political Rights
ICNL	International Center for Not-for-Profit Law
IDP	Internally Displaced Persons
MoF	Ministry of Finance of the Republic of Azerbaijan
MoJ	Ministry of Justice of the Republic of Azerbaijan
NGO	Non-governmental organisation
NGO Support Council	Council on State Support to NGOs under the President of Azerbaijan
OGP	Open Government Partnership
OSCE	Organisation for Security and Co-operation in Europe
UN	United Nations
USAID	United States Agency for International Development

I. EXECUTIVE SUMMARY

Methodology

The CSO Meter has been developed by a core group of experts from ECNL and local partners from the six EaP countries and is based on 10 areas, 30 standards and 161 indicators (for law and practice). The current report analyses the situation in Azerbaijan based on the CSO Meter standards and indicators and has used the following methods for collecting information:

- *Desktop research*, including review of legal/normative documents, other existing indexes or analyses in the areas of the CSO Meter;
- *Surveys among CSOs* to evaluate primarily attitudes and practice (with 52 responses);
- *Interviews with selected stakeholders* (including CSOs, government officials, etc.); and
- *Focus groups* to study specific aspects of the CSO environment and verify certain findings, etc.

Authors

The CSO Meter Azerbaijan report has been prepared by a team of experts from MG Consulting LLC, an entity specialising in CSO legislation.

Summary of context

Azerbaijan has a relatively small number of CSOs compared to former USSR countries such as Georgia and Ukraine. As of February 2019, there are 4,350 registered CSOs in Azerbaijan. Since 2017, there has been a thaw in the government's attitude to CSOs. This has resulted in an increased number of registered foreign grants¹ that has positively affected the overall operational environment of CSOs in Azerbaijan.

Limited foreign funding during the last five years made local CSOs dependent on the various public funding mechanisms and forced them to diversify their sources of income to reduce their dependency on foreign grants to stay operational. As a result, some organisations switched to business models, provided more fee-based services and paid more attention to local fundraising.

The country's extremely high number of refugees and IDPs (totalling around 10 percent of the total population), as well as the increasing gap between development in urban and rural areas dictate the need for CSOs to provide services supplementary to those provided by the government.

¹ Letter from The MoJ, at file with author. Also information from focus groups.

Key findings of the report

Restrictive legislation introduced in 2014-2015 deprived local CSOs of access to foreign funding until the practice started to change in mid-2017. During this period, CSOs survived mostly due to various public funding mechanisms but their capacity has been seriously diminished due to lack of financial resources.

During the reported period, several legislative developments contributed to improving the overall operational and legal environment for CSOs (new changes in the Tax Code, etc.). At the same time, CSOs have had more opportunities for cooperation with various state bodies, including through public councils.

Key recommendations

The report identifies a total of 37 recommendations in 10 areas.

For **freedom of association**, the report emphasises the issues pertaining to registration of CSOs, simplifying CSOs' reporting obligations, simplifying the procedure for obtaining a new excerpt from the state registry of legal entities, abolishing the requirement to obtain permission to hold events in the regions, etc.

For **access to funding** the recommendation is to simplify registration of grants and donations; abolish the requirement to register service contracts; develop a mechanism for disbursement of 10 percent income tax from commercial companies to CSOs, etc.

For the **right to participation in decision-making**, the report highlights the importance of mandating all national level agencies and local executive authorities to publish draft legal acts for review by the public and CSOs.

For the **state duty to protect**, the suggestion is to revise the obligations on CSOs related to the fight against extremism, terrorism, money laundering or corruption and for them to only apply to CSOs with a certain income threshold (for example, an annual turnover exceeding 50,000 AZN).

For **state support**, the report underlines the importance of introducing tax benefits for individual and corporate donors, as well as abolishing the requirement to have a written contract with volunteers for ad hoc work that does not exceed one day.

For **state-CSO cooperation**, the report suggests ensuring that consultations with CSOs are conducted at the Cabinet of Ministers, particularly on decisions affecting CSOs as well as to organise training for public officials on CSO-government cooperation.

II. INTRODUCTION

What is the CSO Meter?

The CSO Meter is a tool developed to support the regular and consistent monitoring and assessment of the environment in which civil society organisations (CSOs) operate in the Eastern Partnership (EaP) countries. It consists of a set of standards and indicators in 10 different areas to measure both law and practice. It is based on a review of international standards and best regulatory practices.

The CSO Meter was developed through a highly consultative and collaborative process, supported by the European Center for Not-for-Profit Law (ECNL). It was co-drafted by a core group of local experts and consulted in three rounds with more than 807 CSOs across the region. A local partner in each of the six Eastern Partnership countries supported the process - Transparency International Anti-Corruption Center (Armenia); MG Consulting LLC (Azerbaijan); the Civil Society Institute (Georgia); Promo-Lex Association (Moldova);

and the Ukrainian Center for Independent Political Research (Ukraine).

What are the key elements of an enabling environment for CSOs?

For the purposes of the tool, the term “CSO” is used to define voluntary self-governing bodies or organisations established to pursue the non-profit-making objectives of their founders or members. CSOs encompass bodies or organisations established both by individual persons (natural or legal) and by groups of such persons. They can be either membership or non-membership based. CSOs can be either informal bodies or organisations, which have legal personality. They may include, for example, associations, foundations, nonprofit companies and other forms that meet the above criteria. The CSO Meter does not consider the environment for political parties, religious organisations or trade unions.

The CSO Meter is split in two main parts:

- **Fundamental rights and freedoms** are essential for the existence of civil society and include: (1) freedom of association, (2) equal treatment, (3) access to funding, (4) freedom of peaceful assembly, (5) right to participation in decision-making, (6), freedom of expression, (7) right to privacy and (8) state duty to protect.
- **Necessary conditions** ensure additional support for the development of civil society (though their existence without fundamental rights and freedoms is not sufficient to ensure an enabling environment) and include: (1) state support and (2) state-CSO cooperation.

How was the report developed?

The report has been prepared by the local partner of the project in Azerbaijan – MG Consulting, following a joint methodology for all six Eastern Partnership countries. The authors conducted seven interviews, three focus groups (two for Baku-based CSOs and one for regional

CSOs – in total, 27 CSOs) and received official data from three state bodies (NGO Support Council, Youth Foundation and the Ministry of Justice).

The development of the report has been monitored by an Advisory Board that consists of representatives of key local stakeholders to ensure that the findings and recommendations reflect the overall situation in the country.

The report reviews the 30 standards that are part of the CSO Meter and provides recommendations for improvement in each of the 10 areas covered. At the end, the most important findings and recommendations are outlined. The recommendations could serve as a basis for future reforms that the government can undertake to improve the environment for civil society in Azerbaijan.

III. CONTEXT & BACKGROUND

GDP per capita (2017, WB)²: 4135.1

Population (as of April 2019): 10,000,000³

Press Freedom Index: 164 out of 180⁴

Number of CSOs (as of February 2019): 4,350⁵

During the reporting period, presidential elections were held in April 2018 and the incumbent President Aliyev was re-elected for a period of seven years. Successful economic reforms have strengthened the local economy and in particular the non-oil sector which was seriously affected by the two-fold devaluation of the national currency in 2015.

At the level of legislation, a number of changes occurred and CSOs have taken time to adapt. Examples include the changes to the Tax Code, the termination of exemption of humanitarian organisations from payroll tax for local staff, changes to the bar legislation, new accounting rules for CSOs, changes to the social protection law, new criteria for the non-oil sector and others.

These changes were accompanied with an improved attitude from the government towards CSOs which in particular resulted in an increased number of registered foreign grants and service contracts, the lack of which was the key problem for the sector in the period 2015-2017.

While a total of 4,350 CSOs are registered in Azerbaijan, the situation with the media is often criticised by the international community. In particular, this is relevant to criminal persecution for defamation. Democratisation processes continue in Azerbaijan and during the reporting period in particular the government increased the number of state bodies that can issue grants to CSOs⁶ as well as more frequently conducted public consultations with CSOs.

Pursuant to the crackdown on the civil society in 2014-2015⁷ and legislative changes that made the receipt of foreign grants practically impossible, the government's position with regards to CSOs improved in 2017-2018. This occurred partly in response to pressure from the international community and partly due to the realisation that CSOs can render some useful social services and provide input to important government programmes and legal reforms. Thus, the research did not identify cases of penalties being imposed in 2017-2018 on local or foreign CSOs, including travel bans.

Despite these improvements, CSOs' capacity is still seriously undermined by a permanent

² <https://data.worldbank.org/country/azerbaijan>.

³ <http://www.yap.org.az/az/view/news/32999/azerbaycan-ehalisinin-sayi-10-milyon-nefere-chatib>.

⁴ <https://rsf.org/en/ranking/2018#>.

⁵ USAID CSOSI 2018.

⁶ <https://sputnik.az/life/20181211/418345596/prezident-grant-verenlerin-siyahisini-deyishdi.html>.

⁷ <https://www.hrw.org/world-report/2015/country-chapters/azerbaijan>.

lack of funds. Despite the increase in the number of government donors to 12,⁸ the available grants are still too small to ensure CSO sustainability and professional development. The organisational capacity of regional CSOs continues to be weaker than that of those in Baku. Also, “permission” from the authorities required for organisation of public events in the regions interferes with CSO operation.

The most viable and professional CSOs opted to work through affiliated business companies or individual service contracts⁹, as business registration in Azerbaijan is easier than the regime for CSOs. This interim measure contains significant risks for CSOs associated with its transparency and accountability, as well as affecting CSO grant history with donors. In addition, some foreign donors are less flexible than others and do not agree to this business format. This has resulted in a situation when de facto CSOs de jure operate as business entities and their activities (apart from tax payment) fall outside of the government’s control, which was exactly the motivation for the CSO crackdown in 2014-2015.

The public image of CSOs improved during 2017-2018 along with the government’s positive attitude towards CSOs. Successful media coverage through CSO-oriented media such as: Civil Society Journal, www.qht.az and www.qhtxeber.az portals, as well as the newly-launched online NGO TV (www.qhttv.az), which regularly posts videos and news related to CSOs, contributed to this as well. There is also a website, www.qhtfilm.az, that posts films developed by CSOs related to various topics such as youth, social issues, IDPs, and the disabled. Nevertheless, CSOs in Azerbaijan could further improve their public image if they publish their annual reports, establish organisation websites and work more closely with the media. The NGO Support Council made an enormous contribution to the public image of CSOs through, inter alia, financing a total of 107 television programmes, 20 social videos, 34 films and 11 websites of CSOs in 2018¹⁰. Most of these statistics reflect increases on 2017.

The level of volunteering in CSOs is not very high and this does not seem to be an attractive occupation for gifted young people.¹¹ Engaging foreign volunteers became difficult after the recent tightening amendments to the migration regulation.

Donations to civil society are not widespread, apart from charity campaigns that raise funds for a public cause. In addition, donations in cash are limited to 200 AZN and have to be reported along with details of donors. Non-cash transactions pose a difficulty for a substantial proportion of the population. The membership base of CSOs is not broad and many organisations are represented only by their leaders and, at best, a part-time accountant.

8 <https://sputnik.az/life/20181211/418345596/prezident-grant-verenlerin-siyahisini-deyishdi.html>.

9 Focus groups.

10 Annual report of NGO Support Council for 2018, www.cssn.gov.az.

11 Focus groups.

IV. KEY FINDINGS

ON ENABLING ENVIRONMENT

1. Freedom of association

STANDARD 1: EVERYONE CAN FREELY ESTABLISH, JOIN, OR PARTICIPATE IN A CSO

The right to establish, join or participate in a CSO is guaranteed for the citizens of Azerbaijan and registration of CSOs is voluntary. The same rights are somewhat restricted to foreigners and stateless persons due to the requirement of permanent residency in Azerbaijan.

Azerbaijan is a member of the United Nations (UN) and the Council of Europe (CoE) and thus is bound by obligations stemming from the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the jurisdiction of the European Court of Human Rights (ECtHR).

The Constitution of Azerbaijan (1995)¹² recognises freedom of association (Article 58) and states: a) Everyone is free to associate with other people; b) Everyone has the right to establish any union, including a political party, trade union and other public organisation or to enter existing organisations. Unrestricted activity of all unions is ensured; c) Nobody may be forced to join any union or remain its member.

To ensure these freedoms a number of laws were adopted: the Law on State Registration of Legal Entities and the State Registry; the Law on Non-governmental Organisations; the Civil Code; the Law on Grants; the Law on Voluntary Activity, etc.

Azerbaijani legislation does not prohibit un-registered CSOs¹³ but they cannot directly participate in state grant competitions or be plaintiffs or defendants in litigation, own property, open a bank account in their own name, or receive a tax identification number. The legislation of Azerbaijan does not regulate associating online, nor does it restrict it.

There are no major issues with establishing, joining or participating in a CSO for citizens of Azerbaijan. However, according to the International Center for Not-for-Profit Law (ICNL), “guaranteeing the right to found an association only to those foreign citizens and persons without citizenship who permanently reside in Azerbaijan is a violation of international law”.¹⁴ There are no limitations for foreign citizens and persons without citizenship to join CSOs as members. However, the requirement of permanent residency applies to founders and also to legal representatives (i.e. chairpersons) of CSOs. On a similar note, CSOs in Azerbaijan cannot ensure residency for their foreign volunteers as the migration legislation does not see voluntarism as a ground for temporary or permanent residency in Azerbaijan.¹⁵ Despite this, the Law on Voluntary Activity grants CSOs the right to have foreign volunteers.

¹² Constitution of the Republic of Azerbaijan (1995) with modifications introduced as a result of a Referendum held on 24 August 2002 and 26 September 2016 (hereinafter referred to as “the Constitution”).

¹³ Article 15 of the NGO Law.

¹⁴ Assessment of the Legal framework for NGOs in Azerbaijan, 2017, ICNL.

¹⁵ Focus group Baku, #5.

Legal entities can also establish or join CSOs. CSOs can freely form coalitions or any other types of platforms. The government does not force CSOs to join coalitions, nor does it force coalitions to be registered. Under the law, coalitions can act as free unregistered associations.¹⁶

During 2017-2018 several important legislative developments affecting CSOs took place:

- a. in 2017, the grant registration procedure was simplified with the introduction of 'single-window' in 2016 (see below)¹⁷;
- b. changes to the Tax Code approved in November 2018 created better conditions for social entrepreneurship and exempted salaries of staff of CSOs from income tax (for foreign grants or contracts); and introduced 10 percent income tax deduction for commercial companies making donations to CSOs in the sphere of science, education, health, sports and culture;¹⁸
- c. New accounting rules were introduced for CSOs (in force since 2019).

STANDARD 2: THE PROCEDURE TO REGISTER A CSO AS A LEGAL ENTITY IS CLEAR, SIMPLE, QUICK, AND INEXPENSIVE

Registration of CSOs remains a challenge. Despite the fact that the procedure is clear, the registration body is subjectively selective in whom it registers.

Local CSOs complain of lengthy proceedings (sometimes lasting several years), numerous rejections on various grounds, the unwritten requirement to submit support letters from various state bodies or local Executive Powers, etc¹⁹. In previous years, Azerbaijan lost a number of cases in the ECtHR for problems related to CSO registration²⁰. However, for 2017-2018 there have not been any ECtHR decisions on this matter.

In addition to the standard registration procedures, foreign CSOs need to reach an agreement with the Ministry of Justice (MoJ)²¹ in order to register an office in Azerbaijan. In 2017-2018 there were no reported cases of a registered foreign CSO in Azerbaijan.

In 2015, the government made changes in the legislation to enable registration of CSOs with the regional branches of the MoJ. However, CSOs report that this mechanism did not work during 2017-2018 and they had to travel to Baku to apply for registration with the MoJ²².

The registration fee for CSOs is small (5 EUR), but the foundations need to have a capital of 10,000 AZN (5,000 EUR) to be registered.

CSOs have the right to appeal to the courts against the decisions of the registration body. In practice, the courts usually do not annul the decisions of the registration body.

¹⁶ Focus Group 2, # 3.

¹⁷ Introduced by Presidential Decree in October 2016.

¹⁸ Article 106.1.18, Tax Code, in force since 1 January 2019.

¹⁹ All focus groups.

²⁰ See Ismayilov v. Azerbaijan, 17 January 2008, Application no. 4439/04, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84461>. Ramazanova and Others v. Azerbaijan, Eur. Ct. H.R. (application no. 44363/02, February 1, 2007).

²¹ Section 2.2 of the Decree of the President of the Republic of Azerbaijan On implementation of the Law of the Republic of Azerbaijan 'On making changes and amendments to some legislative acts of the Republic of Azerbaijan' dated August 27, 2009.

²² Focus Group 1, #2

The list of documents required from a CSO for registration is longer than that of a commercial entity. The registration authority also asks for support letters from relevant state bodies or local authorities for CSOs' registration.²³

A system of "permissions" is applied in all regions when CSOs want to hold events in the regions. For businesses, no permission to hold events is needed.

Because of a favourable environment for businesses, many CSOs in Azerbaijan have set-up affiliated business entities and operate through them. In this case, the founder(s) of this business entity is/are either the founder(s) or chairperson(s) of the CSO, or a CSO itself.

Registration of commercial entities in the regions is possible including through one-stop shops, but a similar procedure for CSOs does not exist and travel to Baku is necessary. Similarly, online registration of CSOs is not possible, whereas local businesses can register online.

From the perspective of country coverage, commercial entities are not divided into administrative territorial units of the country and can do business in any and all of them. However, CSOs have to identify in their charter whether they intend to operate in one, several or in all regions of Azerbaijan.

STANDARD 3: CSOS ARE FREE TO DETERMINE THEIR OBJECTIVES AND ACTIVITIES AND OPERATE BOTH WITHIN AND OUTSIDE THE COUNTRY IN WHICH THEY WERE ESTABLISHED

One of the major issues in Azerbaijan is the informal requirement to obtain permission from the authorities for conducting events outside of the capital Baku. This creates certain problems for CSOs.

The freedom of CSOs to determine their objectives and activities is stipulated in the NGO Law. However, a number of CSOs participating in the Focus Groups indicated that the registration body does create problems if the organisation wants to revise its objectives²⁴ (for example, including the word 'youth' in its charter in order to be eligible for grants from the Youth Fund). At the same time, there are hundreds of CSOs registered with objectives such as: human rights, IDPs, refugees, women's rights, children's rights, social welfare, education, health, sports, etc.

The operation of CSOs within the country and abroad is also stated as a right and there have not been any problems reported on this matter during 2017-2018. There are successful cases when Azerbaijani CSOs set up branches in Georgia.²⁵ In 2018 there were no reported cases of travel bans for CSO representatives.²⁶

However, there is an unwritten procedure for CSOs to seek permission to hold events in the regions from the President's Office. Many regional CSOs complained that though the confirmation from the President's Office can be rather quick, on the level of local Executive Powers, they have difficulties. This restricts their ability to interact with their beneficiary, and to conduct well-planned, high-quality events. At the same time, a number of regional CSOs con-

²³ All focus groups.

²⁴ Focus Group 1. #11

²⁵ Focus Group 2, #1.

²⁶ Focus Group.

firmed that often the government allows them to use luxurious public venues for their events pro bono or at a special rate.²⁷

STANDARD 4: ANY SANCTIONS IMPOSED ARE CLEAR AND CONSISTENT WITH THE PRINCIPLE OF PROPORTIONALITY AND ARE THE LEAST INTRUSIVE MEANS TO ACHIEVE THE DESIRED OBJECTIVE

There are numerous penalties for CSOs that are harsh and disproportionate. Luckily, there is no wide practice of applying those penalties.

CSOs are subject to penalties for violations of tax, social insurance, licensing and other legislation, as are all legal entities. At the same time, CSOs are subject to additional penalties for violations such as: failure to register grants, donations or service contracts; failure to submit annual financial reporting; failure to sign a contract with volunteers; exceeding the threshold for cash donations, etc. In many cases, the penalty for such offences is very high. For example, the failure of a CSO to register a grant is punishable with a fine of up to 5,000-7,000 AZN (approximately 2,600-3,700 EUR)²⁸ and failure to include information about the amount of the donation and the donation's source in financial reports submitted to the Ministry of Finance (MoF) is punishable with a fine of 5,000-8,000 AZN (approximately 2,600-4,200 EUR).²⁹ Any person or entity that provides a cash donation to a CSO in excess of a 200 AZN threshold is subject to a penalty of 250-500 AZN (approximately 130-260 EUR) for natural persons, 750-1,500 AZN (approximately 400-800 EUR) for managers of legal entities, and 3,500-7,000 AZN (approximately 1,800-3,700 EUR)³⁰ for legal entities. The submission of false information for the state registration of legal entities is punishable with a penalty of 700 AZN (approximately 400 EUR) for individuals and 4,000 AZN (approximately 2,100 EUR) for legal entities, etc.³¹ Moreover, there is no warning issued prior to imposing these sanctions.

CSOs are unhappy with such high penalties and this undoubtedly discourages their operation. At the same time, many CSOs confirmed that those penalties are not usually imposed against CSOs.³² For example, in 2018 there was only one case of a penalty for failure of a CSO to submit an annual financial report, but this decision of the MoF was quashed in the courts.³³

Involuntary dissolution can only take place after a court procedure. This can be, for example, when a CSO failed to rectify the deficiency indicated by the MoJ and there were more than two warnings issued to the organisation in a year. There is also a possibility to suspend the activity of a CSO. According to official statistics by the MoJ, in 2017-2018 there were no cases of involuntary dissolution of a CSO.³⁴ The legislation on involuntary legislation was revised following the case of *Tebieti Muhafize Cemiyeti v. Azerbaijan* in 2009 and at present does not pose a major issue for CSOs.

27 Focus Group 2, #7

28 Article 432 of the Administrative Code.

29 Article 465 of the Administrative Code.

30 Article 466.1 of the Administrative Code.

31 Article 403 of the Administrative Code.

32 Focus group 2, #1, # 2, #3, etc.

33 Information provided by one of the Advisory Board members.

34 Letter from The MoJ of 25 April 2019, at file with author.

STANDARD 5: THE STATE DOES NOT INTERFERE IN THE INTERNAL AFFAIRS AND OPERATION OF CSOS

CSOs determine their internal governance and operations as per their charters. Their operations are subject to inspections by the MoJ and imply heavy reporting to different state bodies.

The operations of CSOs are hindered by the requirement to obtain a new excerpt from the state registry of legal entities every time there is a change of board or elections of the chairperson. Some CSOs complained of difficulties in obtaining this document during 2017-2018.³⁵ The MoJ has stated that it is considering introducing an online procedure to address this deficiency.

Inspections at CSOs are usually conducted by the MoJ and are covered by the regulations on studying the activity of CSOs³⁶ as well as the legislation on money-laundering.³⁷ Apart from the MoJ, the power to investigate CSOs is also vested with the Tax Ministry, the Prosecutor's Office and the State Employment Agency. The MoJ annually approves the list of CSOs to be inspected and it usually checks registration of grants, registration of service contracts and donations, validity of the excerpt and other matters. As a result of such inspections, the MoJ can issue a warning to a CSO or apply a penalty. In 2017, the MoJ issued 33 warnings to CSOs but in 2018 only issued 2 warnings.³⁸

CSOs in general complain of a huge reporting burden. Due to limited financial resources and the difficulty of registering foreign grants, CSOs cannot hire permanent staff (i.e. lawyers, accountants, compliance officers, etc.) to ensure that all of their reporting obligations are fulfilled.³⁹ As a result, they become vulnerable to inspections and subsequent penalties which can lead to the termination of their operations.

With the changes made to tax legislation in November 2018, the two separate quarterly reports for social deductions and taxes are merged into one and submitted through a 'single window' mechanism online. 'In general, it became much easier to submit financial reporting' as a result.⁴⁰

SPECIFIC RECOMMENDATIONS UNDER AREA 1:

- Ensure rights of foreigners and stateless persons to found CSOs and manage them;
- Simplify the registration procedure for CSOs by reducing timelines and eliminating subjective treatment by the MoJ;
- Provide a mechanism for foreign volunteers to obtain the relevant residency permit;
- Simplify reporting obligations of CSOs depending on their size and turnover;

³⁵ Focus Group 1, #11.

³⁶ The Rules on Studying the Activities of Non-governmental Organisations, Branches or Representative Offices of Foreign Non-governmental Organisations, adopted by the Collegium of the Ministry of Justice (The MoJ) of the Republic of Azerbaijan on December 28, 2015.

³⁷ Law 'On fight against laundering of money or other assets obtained by criminal means and funding of terrorism', 2009.

³⁸ Letter from The MoJ of 25 April 2019, at file with author.

³⁹ In-depth interview, #4.

⁴⁰ Focus group 2, #3.

- Simplify the procedure for obtaining a new excerpt from the state registry of legal entities;
- Abolish the requirement to obtain permission to hold events in the regions.

4.2 Equal treatment

STANDARD 1: THE STATE TREATS ALL CSOS EQUITABLY WITH BUSINESS ENTITIES

The CSO registration procedure is slower, more complicated and less accessible than for commercial entities. Similarly, the burden of reporting for CSOs is much heavier than that of businesses.

From the perspective of a state fee, the state treats CSOs equally with business entities. However, the registration of a business is with the Ministry of Taxes and takes 1-3 days, whereas the registration of CSOs is with the MoJ and by regulations takes up to 30 days (in practice, though, this can last for years). Refusals in registration of businesses happen only in rare cases (when, for example, there is already an entity with a matching legal title). However, for CSOs the reasons for denial of registration are endless (issues with the formation of the board, the CSO's mission, its sources of income, etc.).

From the reporting perspective, the burden of reporting for CSOs is much heavier than that of businesses (for example, unlike businesses, CSOs are required to register service contracts or submit an annual financial report to the MoF). At the same time, businesses cannot receive donations and cannot use the services of volunteers, whereas CSOs can enjoy both.

Inspections for CSOs are usually more frequent compared to that of businesses. Also, CSOs are deprived of loan access and some banks do not issue business bank cards (debit or credit) for CSOs, whereas for businesses there is no limitation.

⁴¹CSOs can participate in public procurement on equal terms with businesses. In practice, due to limited financial resources, CSOs are unable to make a deposit⁴² which is a requirement for participation in public procurement tenders.

Exemption from income tax of staff applies to CSOs if they do not receive government grants. However, if businesses provide services to the government, their staff are exempt from 14 percent income tax on their salaries.⁴³

Fines for CSOs are substantially higher compared to fines for similar offenses for businesses and individuals, as provided in the Administrative Code. The high penalties against CSOs appear to be excessive and disproportionate, compared to the nature of the offences. They also appear to be discriminatory when compared with penalties for similar offences committed by business entities and individuals.

⁴¹ Focus Group 2.

⁴² Information provided by one of the Advisory board members.

⁴³ Decision of the Cabinet of Ministers of the Republic of Azerbaijan "On Approval of Criteria On Activities in Oil and Gas and Non-Government Sector", February 19, 2019

The establishment of CSOs by foreigners and stateless persons is restricted by the requirement for permanent residency in Azerbaijan. For businesses, there is no such restriction. Foreign funding in the form of a donation from a foreigner to a CSO is prohibited, whereas any foreign citizen can invest in businesses.

STANDARD 2: THE STATE TREATS ALL CSOS EQUALLY WITH REGARD TO THEIR ESTABLISHMENT, REGISTRATION, AND ACTIVITIES

Social service providers and youth organisations receive better treatment by the government than human rights CSOs. Such favourable treatment is not so much visible in the case of foreign CSOs, compared to local CSOs. This may be explained by the fact that there are very few foreign CSOs operating in Azerbaijan.

Certain CSOs are more popular with the government than others. As a result, this group is more often invited to consultations with the government or encounter less problems in holding events in the regions.⁴⁴

SPECIFIC RECOMMENDATIONS UNDER AREA 2:

- Ensure equal treatment of CSOs compared to businesses during their registration process and operation;
- Ensure the equal participation of a wide variety of CSOs in consultation processes.

4.3 Access to funding

STANDARD 1: CSOS ARE FREE TO SEEK, RECEIVE, AND USE FINANCIAL AND MATERIAL RESOURCES FOR THE PURSUIT OF THEIR OBJECTIVES.

The legislation of Azerbaijan provides for various types of income for CSOs: grants, donations, membership fees, income from economic activity, public funding, etc. Some of these are easier to access and register than others.

A positive development in 2018 was the extension of the list of government donors to three new bodies (the Ministry of Labour and Social Protection of the Population, the Ministry of Health, and the Ministry of Agriculture). Thus, as of March 2019, there are 12 government donors to CSOs in Azerbaijan. The largest include the NGO Support Council⁴⁵, the Youth Fund⁴⁶, the Fund for Support to Mass Media⁴⁷ and the Science Development Fund.⁴⁸ Other government donors include, for example, the Ministry of Education, the Ministry of Communication, the Ministry of Culture, etc. The NGO Support Council's grant procedures were marked as the most transparent.⁴⁹

⁴⁴ Focus Group 2.

⁴⁵ It financed 576 projects in 2018, at <http://cssn.gov.az/news.php?id=3648&lang=az>.

⁴⁶ It provided 99 grants for CSOs (grants to individuals are not counted herewith) in 2018, with total budget of 683,500 AZN, at <https://youthfoundation.az/42251>.

⁴⁷ <http://kivdf.gov.az/>.

⁴⁸ <http://www.sdf.gov.az/az/generic/news/Detail/238>.

⁴⁹ CSOSI, USAID, Azerbaijan 2017.

The Ministry of Labour and Social Protection of the Population continues to issue the 'social order' for CSOs which is basically outsourcing some social services to CSOs. In 2018 there were 18 such contracts signed with CSOs.

In December 2018, the parliament approved the changes to the Tax Code (which entered into force in January 2019) which led to an enabling environment for the establishment and operation of social enterprises by CSOs. For example, social enterprises producing agricultural products are exempted from income tax for 5 years from 2018. Another income channel for CSOs is a new provision in the Tax Code that provides 10 percent income tax deductions from commercial companies for CSOs engaged in science, education, health, sports and culture. The mechanism for distribution of these funds is yet to be approved by the Cabinet of Ministers.

Public unions can generate income from membership fees but they rarely use this despite exemption of membership fees from income tax.

Some CSOs suffer from the restrictions related to donations: a) anonymous donations are prohibited; b) donations from foreigners and stateless persons are prohibited; c) cash donations exceeding 200 AZN are prohibited; d) the passport details of each donor, even for a donation of 20 cents, have to be recorded and submitted to the Ministry of Finance; and e) only charities can receive cash donations,⁵⁰ despite there being no clear procedure in the law for obtaining the status of a charity.

On a positive note, the Tax Code exempts membership fees, donations and grants from income tax. To be eligible for this exemption, donations and grants must be registered with the MoJ. There is no adequate regulation of in-kind donations in the legislation.

Legislation does not regulate collection of funds through cash-boxes and crowdfunding, which is mostly unknown to CSOs in Azerbaijan. There are no provisions such as percentage philanthropy or income from lotteries in Azerbaijan.

Legislation does not prohibit CSOs or their managers/representatives from opening bank accounts abroad. Local banks verify the grant registration before allowing CSOs to access their grant funds.

Penalties for receiving cash donations exceeding 200 AZN are disproportionate to the amounts CSOs collect through such donations (the penalty is up to 10,000 AZN, approximately 5,000 EUR).⁵¹ Luckily during 2017-2018 there were no cases of penalties applied for this.

STANDARD 2: THERE IS NO DISTINCTION IN THE TREATMENT OF FINANCIAL AND MATERIAL RESOURCES FROM FOREIGN AND INTERNATIONAL SOURCES COMPARED TO DOMESTIC ONES.

Any income from a foreign source requires registration with the MoJ. This applies also to service contracts of CSOs with a foreign client, which is a unique practice for Azerbaijan.

Since 2014, the legislation has introduced a number of restrictive provisions (i.e. a donor must

⁵⁰ Article 24-1 of the NGO Law, Article 465 of the Administrative Code.

⁵¹ Code of Administrative Offences, 2015, Article 466.2.

have representation in Azerbaijan, must sign a special agreement with the MoJ, must prove the economic-financial expediency of the project) that seriously limits CSOs' access to foreign grants, donations and service contracts. All of these require registration and from mid-2014 until mid-2017, very few foreign grants were registered in Azerbaijan. The situation started to improve from mid-2017 and in 2018. As a result, the MoJ registered at least twelve grants from the Japanese Embassy, several from the EU, UN, contracts from the Eurasia Foundation and at least one grant from the United States Agency for International Development (USAID).

The legislation also requires the registration of CSOs' foreign service contracts. In practice, the registration of a service contract is easier than for a grant, but the whole amount is taxable.

There is no criminal prosecution in the legislation for receiving foreign funding. At the same time, recipients of foreign grants are not usually labelled with a negative connotation. During 2017-2018 there were no incidents of foreign-funded organisations being stigmatised or attacked in state-supported media or by the government.

SPECIFIC RECOMMENDATIONS UNDER AREA 3:

- Simplify the registration of grants and donations;
- Abolish the requirement to register service contracts;
- Provide foreigners and stateless persons with the right to make donations to CSOs;
- Provide a legal framework for the regulation of cash-boxes and allow the use of other mechanisms through which identification of the donor might be hard or impossible;
- Eliminate the need to report on small donations.
- Abolish the prohibition of anonymous donations for small donations.

4.4 Freedom of peaceful assembly

STANDARD 1: EVERYONE CAN FREELY ENJOY THE RIGHT TO FREEDOM OF PEACEFUL ASSEMBLY BY ORGANISING AND PARTICIPATING IN ASSEMBLIES

There is a constitutional guarantee for peaceful assembly in Azerbaijan. Despite this, the issue remains a sensitive topic from the perspective of international organisations.

The right to freedom of peaceful assembly is guaranteed without discrimination to individuals and groups, including CSOs, by the Constitution of Azerbaijan (Article 49), as well as by the country's commitments through its membership of the UN, the CoE, the Organisation for Security and Co-operation in Europe (OSCE) and accession to major international and re-

gional human rights treaties⁵², as well as by the Article 1 of the Law on Freedom of Assembly.⁵³

According to Article 49 of the Constitution of the Republic of Azerbaijan⁵⁴ everyone has the right, with the prior notification of the relevant public authorities, to hold peaceful, unarmed assemblies, gatherings, rallies, demonstrations, street marches and pickets, without prejudice to public order or public morality. The requirement of the Article stipulating that public assembly should not violate public order and social morality was included in the Constitution by a referendum amendment on 11 October 2016.⁵⁵ However, there are no legal norms defining “public order” and “public morality”. Moreover, according to Article 6 of the Law on Freedom of Assembly, persons under 18 without written consent of their parents or other legal representatives, as well as persons whose capability is restricted by a court decision that entered into legal force, without written consent of their custodians, may not be organisers of a peaceful assembly.

Article 7 of the Law on Freedom of Assembly⁵⁶ states that “no restrictions shall be placed on the exercise of the right to freedom of assembly other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. Articles 7 and 8 of the Law on Freedom of Assembly clearly define the grounds for restriction, prohibition or suspension of an assembly. Article 5 of the Law on Freedom of Assembly provides that submission of a written notification is not required for spontaneous assemblies, however, in accordance with the requirements specified in Articles 7 and 8 of the Law, spontaneous assemblies can be restricted or suspended.

In practice, freedom of assembly is a sensitive issue in Azerbaijan and a subject of concern for international organisations, including the UN Human Rights Committee⁵⁷ and the UN Special Rapporteur on human rights defenders,⁵⁸ which have reported cases of arbitrary refusals and dispersals of peaceful assemblies. However, these primarily concern political parties and civil society only to a much lesser degree, although CSOs are still not free of technical problems.

STANDARD 2: THE STATE FACILITATES AND PROTECTS PEACEFUL ASSEMBLIES

CSOs enjoy their right to peaceful assembly in the capital Baku more than in the regions. This is connected with the informal requirement to seek permission to hold events in the regions.

Article 5 of the Law on Freedom of Assembly requires that organisers of peaceful assemblies notify the authorities 5 working days in advance, which, in practice, is interpreted as the need

52 Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified on December 25, 2001, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

53 The Law on Freedom of Assembly, November 13, 1998, <http://www.e-qanun.az/framework/3229>.

54 Constitution of Azerbaijan November 12, 1995 with last amendments by Referendum of September 26, 2016, <http://e-qanun.az/framework/897>.

55 The order of the Central Election Committee on conclusions and announcements of conclusions of the Referendum of September 26, 2016, <http://e-qanun.az/framework/33891>.

56 The Law on Freedom of Assembly, November 13, 1998, <http://www.e-qanun.az/framework/3229>.

57 Concluding observations of the Human Rights Committee on the fourth periodic report of Azerbaijan (CCPR/C/AZE/CO/4), November 2016.

58 Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan (A/HRC/34/52/Add.3), February 2017.

to obtain permission (which is often denied in practice).⁵⁹ The same law provides for grounds to deny permission (Articles 7-9), violation of which is a criminal offence and punishable by up to two years of imprisonment.⁶⁰ Article 180 of the Code of Administrative Violations⁶¹ entails imposition on natural persons of a penalty in the amount of 500-3,000 AZN (approximately 270 to 1,600 EUR), and on legal entities from 15,000 to 30,000 AZN (approximately 7,900 to 15,800 EUR) for prevention of the holding of meetings, rallies, demonstrations, street protests and pickets authorised by the state in accordance with the Law on Freedom of Assembly. The decisions of state authorities regarding peaceful assemblies can be subject to further judicial review (Article 11 of the Law on Freedom of Assembly). However, due to slow operation of the judiciary, the probability that the review will take place prior to the planned date is very low. Besides, the Administrative Procedure Code of the Republic of Azerbaijan also sets out different legal mechanisms to challenge the decisions of state authorities on matters of peaceful assembly.⁶²

In practice, the right of CSOs to assemble is interpreted differently in big cities and in the regions where assembly is an extremely complicated procedure,⁶³ (see below under Standard 3). Nevertheless, many regional CSOs confirmed that permission from the President's Office on holding an event in the regions is issued rather promptly, whereas on the level of its enforcement by the local authorities there are still issues.

STANDARD 3: THE STATE DOES NOT IMPOSE UNNECESSARY BURDENS ON ORGANISERS OR PARTICIPANTS IN PEACEFUL ASSEMBLIES

There is a practice of renting out government venues to CSOs pro bono or at discounted rates. However, the informal requirement to seek authorisation for holding events in the regions creates problems for CSOs in Azerbaijan.

Though the law does not require notification to the government of CSO-organised events (apart from public rallies described above, which CSOs are not engaged in), the system of informal "permissions" from executive authorities is applied in all regions. Moreover, CSOs are forced to apply to a national agency or, in some cases, to the President's Office, that subsequently informs local executive authorities of their consent to the organisation of a CSO event.⁶⁴ These applications can be denied at the discretion of the authorities. Thus, 24 percent of those surveyed reported that their applications have been turned down. The most devastating effect of the system of "permissions" is that sometimes the response comes too late which jeopardises CSO activities and affects the quality of their work.⁶⁵ CSOs also have concerns about mistrust of public agencies towards other state bodies, as in the regions this practice is applied similarly to the grants awarded by government donors and duly registered by the MoJ.⁶⁶

59 Focus group 3, #1 and #2.

60 Criminal Code, Article 169.1.

61 Code of Administrative Violations, December 29, 2015, <http://e-qanun.az/code/24>

62 Administrative Procedures Code, last changes April 7, 2017, <http://e-qanun.az/code/20>

63 Focus group 1, # 2; Focus group 1, # 7..

64 Focus group 3, # 9.

65 Focus group 3, # 2.

66 Focus group 3, # 12.

As permissions are not set forth by the law, there are no costs associated with obtaining them, nor are any legal sanctions applicable. Still, unsanctioned events can result in undue pressure on the organisers. This practice is not however applied in the capital city of Baku⁶⁷ and some other major towns, such as Mingachevir and, more recently, Ganja⁶⁸ where CSOs are free to arrange public events using targeted invitations or social media.

Recently, cases have been reported in which government agencies offer their premises to CSOs free of charge to hold events (such as Olympic complexes, H. Aliyev centres, youth centres and women's resources centres under the State Committee for the Affairs of Women, Children and Family), which can be interpreted either as an act of good will and desire to cooperate with the civil society or as a tool to keep CSOs' activities under control.

STANDARD 4: LAW ENFORCEMENT SUPPORTS PEACEFUL ASSEMBLIES AND IS ACCOUNTABLE FOR THE ACTIONS OF ITS REPRESENTATIVES

The Law on Freedom of Assembly (Article 14) has clear regulations on the use of force during peaceful assemblies. Nevertheless, some surveyed CSOs reported cases when in the past CSO events without due "permission" have been dispersed by law enforcement bodies.⁶⁹

SPECIFIC RECOMMENDATIONS UNDER AREA 4:

- Make amendments to the law and introduce the practice of prior notification rather than authorisation of peaceful assemblies.
- Expedite the court review process to enable CSOs to contest quickly the decisions of authorities disallowing peaceful assemblies.

4.5 Right to participation in decision-making

STANDARD 1: EVERYONE HAS THE RIGHT TO PARTICIPATION IN DECISION-MAKING

There are multiple channels for CSO participation in decision making in Azerbaijan. The most common forms are the participation of CSOs in working groups, public councils and public discussions. Nevertheless, there are cases when CSOs are not consulted on the decisions that directly affect them.

The right of citizens to participate in the decision-making process directly and through elected representatives is set forth in the Constitution.⁷⁰ According to Article 54.1, citizens "shall have the right to participate without hindrance in the political life of the society and the state"⁷¹ and this constitutes an integral part of the international obligations of the country.⁷²

⁶⁷ Focus group 3, # 1.

⁶⁸ Focus group 1, # 3.

⁶⁹ Focus group 3, #1 and FG 3, #2.

⁷⁰ Constitution of the Republic of Azerbaijan, Articles 1, 2, 50, 54, 55, 57, 58, 94, 96 and 130, November 27, 1995, last amendments by Referendum of September 26, 2016, <http://e-qanun.gov.az/framework/897>.

⁷¹ Constitution, Article 54.1.

⁷² The Law on Joining the UN Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention), November 9, 1999, <http://e-qanun.gov.az/framework/5205>.

Furthermore, the right is detailed in the Law on Non-governmental Organisations⁷³ and, in particular, in the more recent Law on Public Participation.⁷⁴ The legal framework sets forth a number of mechanisms for citizens and CSOs to participate in the decision-making process, including public councils, public hearings and discussions, public discussion on draft legislation, the provision of written comments on draft legislation, as well as the study of public opinion. Public discussion of draft laws is organised by the parliament (Milli Majlis) as per Article 18 of the Law on Public Participation. This law was broadly discussed by civil society prior to its adoption.⁷⁵ Other legal acts envision more specific mechanisms, such as referenda, opinion polling, mahalla (district) committees (operating at the local level), and citizen petitions⁷⁶, though no instances of CSO–government cooperation through these instruments are known.

The Law on Public Participation of 22 November 2013 provides the right of and mechanisms for the public to discuss and provide input on draft laws before their enactment and, importantly, provides consequences for violations of this right. The Law on Public Participation provides citizens and civil society institutions with the right to participate in government decision-making by such means as 1) preparing and implementing state policy in different fields of state and social life; 2) decision-making on a nationwide and local level; 3) organising public control over the activities of central and local executive authorities and self-government bodies; 4) consultation of state bodies with society; 5) consideration of public opinion; 6) studying public opinion; 7) public discussion of draft legislation; and 8) written consultations.

Public participation declined dramatically in 2014 but saw some revitalisation since the second half of 2018 along with the government's more enabling approach towards CSOs.⁷⁷ Thus, 80 percent of those surveyed did not participate in the decision-making process at the national level; still, around half (48 percent) were consulted at the local level in drafting policies and legislation. The law gives public agencies a right to establish a public council rather than mandates it; thus, to our best knowledge, only 10 national agencies have established public councils⁷⁸ so far in addition to a few in the regions under local executive authorities.⁷⁹

Some public agencies are more open than others⁸⁰ and arrange broad discussions, including through the well-tested mechanism of the Azerbaijan Government and Civil Society Dialogue Platform on Promoting Open Government (OGP Platform), established in September 2016

73 The Law on Non-governmental Organisations (Public Associations and Foundations), June 13, 2000 <http://e-qanun.az/framework/511>.

74 Law on Public Participation, entered into force on June 1, 2014, <http://e-qanun.gov.az/framework/26879>.

75 National conference on "Public Participation: Legal and Practical Issues, by EWMI's Socio-Economic Development Activity in Azerbaijan (SEDA) and the Council for State Support to NGOs, Ganja, November 13, 2014, <https://ewmi.org/News/SEDANov2014>; Conference "Citizen Participation in Public Policies: Why does it matter?", by ECNL and National NGO Forum of Azerbaijan, ICNL and Counterpart International, Baku, November 24, 2014, <http://ecnl.org/conference-on-citizen-participation-held-in-azerbaijan-2/>.

76 The Law on referendum, December 30, 1997, <http://www.e-qanun.az/framework/4604>; The Law on approval of sample statutes for the mahalla committee under municipalities, May 8, 2001, http://www.e-qanun.az/alpdata/framework/data/3/f_3547.htm; The Law on Citizens' applications, September 30, 2015, <http://www.e-qanun.az/framework/31281>.

77 In-depth interview # 5.

78 Ministries of Justice, Labour and Social Protection of Population, Youth and Sports, Interior Affairs, Health, Ecology and Natural Resources, State Committees on Affairs of Women, Children and Family, State Migration Committee, State Examination Centre and ASAN.

79 Focus Group 1 #3.

80 Focus Group 1 #8

and uniting 10 government agencies and 44 CSOs,⁸¹ for example, the State Customs Committee⁸² and State Property Committee.⁸³ Still, the majority of public agencies treat CSOs with suspicion, especially in the regions, unless cooperation with CSOs is directly endorsed from 'above' by central government.⁸⁴ There are no repercussions against CSOs that participate in decision-making processes as these are selected at the discretion of the authorities.⁸⁵

There were cases when legislation was adopted without consultations with stakeholders⁸⁶ and was subsequently annulled as its application in practice was barely possible.⁸⁷

STANDARD 2: THERE ARE CLEAR, SIMPLE, AND TRANSPARENT MECHANISMS AND PROCEDURES IN PLACE THAT FACILITATE REGULAR, OPEN, AND EFFECTIVE PARTICIPATION OF CSOS IN DEVELOPING, IMPLEMENTING AND MONITORING PUBLIC POLICIES

CSO participation in the decision-making process is not a widely used practice. However, successful examples exist, for example with the Council for State Support to NGOs.

Article 18 of the Law on Public Participation and supporting legal acts⁸⁸ mandates the parliament (Milli Majlis) to collect input through its website from all interested parties for the period of three months before the first parliamentary review of the draft law. The same law also provides for establishment of CSO involvement in policy implementation, monitoring, and evaluation through consultative bodies. However, this law includes some provisions that reduce the effect of public participation and this, along with lack of many supporting legal acts to ensure viable mechanisms, creates many problems in the application of public participation in practice.⁸⁹ Most of the few public agencies that do cooperate regard CSO participation as a mere formality and assign CSOs a ceremonial rather than consultative role⁹⁰, and instances of CSO participation in the decision making process are extremely rare.⁹¹ Nevertheless, there are some successful mechanisms where CSOs manage to make some limited impact, such as participation of CSO representatives in ad hoc legislative working groups under the National Anti-Corruption Commission⁹² and National Preventive Group under the Office of the Om-

81 The OGP Platform Accepted New Members, posting January 3, 2019 <http://ogp.org.az/az/index.php/2019/01/03/azerbaycan-aciq-hokumet-platformasina-yeni-uzvler-qebul-edilib/>.

82 Public debate on Transparency and Accountability in the Performance of Customs Authorities, May 22, 2018, <http://ogp.org.az/index.php/2018/05/22/transparency-and-accountability-in-the-performance-of-customs-authorities/>.

83 Round table on Transparency, Accessibility and Innovations in Registration of Real Estate, October 2, 2018, Trend New Agency https://az.trend.az/business/2959445.html?fbclid=IwAR3AheoEH1jdPMAHqGI_VRjZURUXp4NwqHGFJH0HUsJajXBh-dSwVYq18qE.

84 In-depth Interview #2.

85 Focus group 2, #2.

86 Focus Group 4, #3.

87 Thus, Cabinet of Ministers decision on approval of the rules of financial responsibility for damage to the forests, No 30, January 31, 2019 <http://www.e-qanun.az/framework/28863> was annulled by a respective decision of the Cabinet of Ministers No 41, February 6, 2019, <http://www.e-qanun.az/framework/41385>.

88 Rules on Elections of CSOs to Public Councils approved by order of Cabinet of Ministers No 171, May 30, 2014, <http://e-qanun.az/framework/27803>; Rules on Organisation of Public Hearings and Discussions approved by order of Cabinet of Ministers No 172, May 30, 2014, <http://e-qanun.az/framework/27804>; The rules for conducting Public Hearings on draft laws are defined by the Internal Regulations of Milli Majlis.

89 Sahib Mammadov, Public Participation, Monitoring Report, Baku, 2017, <http://ogp.org.az/wp-content/uploads/2017/02/PUBLIC-PARTICIPATION.pdf>.

90 Sahib Mammadov, Public Participation, Monitoring Report, Baku, 2017.

91 Focus Group 2, #10.

92 National Anti-Corruption Commission, <http://www.antikorrupsiya.gov.az>.

budsman⁹³; an efficient E-Services Public Council monitoring introduction of e-services by public agencies⁹⁴ under ASAN⁹⁵, and the Public Committee under the MoJ monitoring penitentiary institutions.⁹⁶ Also, the Council for State Support to NGOs provides a good discourse platform for CSOs to impact governmental decisions. Thus, in 2018 the Council organised broad discussions⁹⁷ with CSOs on the draft Law on Social Order and draft Law on Professional Associations, which is yet to be adopted.⁹⁸ Though other CSOs can participate in the public consultation on the given subject matter, their views are seldom acknowledged and feedback rarely provided.⁹⁹

STANDARD 3: CSOS HAVE ACCESS TO INFORMATION NECESSARY FOR THEIR EFFECTIVE PARTICIPATION

Generally it is not easy for CSOs to access drafts of laws unless government bodies make them public or share them with CSOs. Experience also varies from one government body to another.

In 2005, Azerbaijan ratified the UN Convention against Corruption¹⁰⁰ and committed to ensure transparency of the public administration system. Under the law, central and local executive authorities shall allocate a special section on their websites to post draft regulatory and legal acts for public discussion and ensure that there is a link to the single “e-government” portal.¹⁰¹ The legislation also includes terms and timelines for state bodies to publish all information related to the decision-making process (60 days to collect public feedback).¹⁰² However, these provisions are seldom implemented,¹⁰³ except sometimes for the Milli Majlis. Also, there is not a single online platform to collect citizens’ opinions. Though originally the Law on Access to Information¹⁰⁴ envisioned the appointment of an Information Ombudsman as a separate entity, the 2011 amendments delegated these powers to the Human Rights Commissioner (Ombudsman).¹⁰⁵ Even if formally the Ombudsman has broad powers, all observers agree that the Office of the Ombudsman is practically not able to effectively ensure access to information – mostly because the institution lacks specific competence.¹⁰⁶

Though access to information has considerably improved in 2017-2018 due to the fact that

93 National Preventive Group under office of Ombudsman <http://www.ombudsman.gov.az/en/view/pages/70/members-of-national-preventive-group>.

94 E-Services Promotion Public Council under ASAN, www.egov.org.az.

95 State Agency for Citizens Services and Social Innovations, www.asan.gov.az. This Council differs from the general public council established under the same agency in 2013.

96 Public Committee under the Ministry of Justice, <http://www.justice.gov.az/categories/196>.

97 Letter from the Council on State Support to NGOs, April 22, 2019, at file with author.

98 Draft Laws on Social order and Professional Skills are in the Making, January 23, 2019, <http://www.aztv.az/readnews.php?lang=az&id=34726>.

99 Focus Group 2, #1 and #2.

100 United Nations Convention Against Corruption. Doc. A/58/422. December 14, 2005. http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

101 Law on Access to Information, September 30, 2005, Article 29.1.10, <http://www.e-qanun.az/framework/11142>.

102 Rules on Organisation of Public Hearings and Discussions.

103 Focus Group 2, #1.

104 Law on Access to Information, September 30, 2005, Article 29.1.10, <http://www.e-qanun.az/framework/11142>.

105 Constitutional Law on Amendments (June 24, 2011) to the "Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan" (December 28, 2001), <http://www.e-qanun.az/framework/22060>.

106 In-depth interview # 3.

public agencies began to download huge chunks of information on their websites, including detailed annual reports,¹⁰⁷ the government agencies hold discretionary power as to what information to disclose.¹⁰⁸ In practice, it is very difficult to obtain information upon a written request¹⁰⁹ as the Article 21.2.3 of the Law on Access to Information contains a loophole that allows authorities to justify refusal to provide information on technical grounds.¹¹⁰ Thus, only about a half of respondents (56 percent) stated that they found it easy to access drafts. In addition, the request forms require redundant personal information in an obvious attempt to discourage requestors.¹¹¹ It should also be noted that in many cases CSOs do not show much interest either. 62 percent of respondents stated that they did not request any information from public agencies in the near past.

STANDARD 4: PARTICIPATION IN DECISION-MAKING IS DISTINCT FROM POLITICAL ACTIVITIES AND LOBBYING

In general, Azerbaijani legislation does not limit CSO participation in framing and debating issues of public policy, though in practice, critical CSOs face pressure

Cases of pressure against critical CSOs have been reported by local and international organisations.¹¹² However, the Law on Grants (Article 1.4) does not recognise financial support as a grant (and thus lifts the tax exemption on income for CSOs applicable to grants) if used for the following purposes: (1) pursuit of political power; (2) lobbying laws and other normative acts; (3) political advertising; or (4) financing of politician(s) or political party(s).¹¹³ Also, Article 2.4 of the CSO Law prohibits CSO participation in presidential, parliamentary and municipal elections, as well as the provision of financial and other material assistance to political parties. In practice, CSOs are free to engage in advocacy activities without the need to register as lobbyists or professional advocates, or any other additional administrative or financial burdens. Still, CSO public advocacy potential is limited by CSO funding restrictions for face-to-face advocacy events (such as round tables, meetings and other public events) and in practice is connected with activity in big cities¹¹⁴ usually by use of relatively free social media¹¹⁵. Some political parties raise funding through affiliated CSOs and thus both violate the law and dilute the borderline between political parties and civil society in the eyes of the authorities.¹¹⁶

107 Focus Group 1, #5 and #2.

108 In-depth interview #2.

109 Focus Group 1, #3.

110 Law on Access to Information, September 30, 2005, Article 21. Refusal to execute the request due to the large volume of the requested information; the execution of the request impedes the implementation by the information owner of his/her public duties or causes unreasonably heavy expenses, <http://www.e-qanun.az/framework/11142>.

111 Focus Group 3, #1.

112 Key Concerns and Recommendations on the Protection of Fundamental Rights in Azerbaijan, Briefing Paper For EU-Azerbaijan Human Rights Dialogue, by International Partnership for Human Rights, October 2017, www.iphronline.org.

113 Law on Grants, Article 1.4, April 17, 1998.

114 Thus, Facebook penetration level in Azerbaijan is at about 20%, according to Asia Internet Use, Population Data and Facebook statistics - June 30, 2018, <https://www.internetworldstats.com/stats3.htm>.

115 Azerbaijan Internet Freedom score is assessed at 60 of minimum 100 by Freedom on the Net 2018, <https://freedomhouse.org/report/freedom-net/2018/azerbaijan>.

116 Focus Group 2, #1, #10, #5.

SPECIFIC RECOMMENDATIONS UNDER AREA 5:

- Mandate national level agencies and local executive authorities to set up public councils, as well as to conduct public reporting on the activities of the Council.
- Eliminate technical grounds to refuse access to information.
- Create a single online resource and mandate all national level agencies and local executive authorities to publish draft supporting legal acts for review by public and CSOs, in addition to mandatory public discussion of draft laws organised by the parliament (Milli Majlis).
- Amend the Law on Access to information to mandate the executive authorities to justify grounds for refusal to provide information, as well as to introduce a penalty for unjustified refusal to the Code of Administrative Violations.
- Ensure that consultations with CSOs are conducted at the Cabinet of Ministers, particularly on decisions affecting CSOs.

4.6 Freedom of expression

STANDARD 1: EVERYONE HAS THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

There is a constitutional guarantee for freedom of thought and expression in Azerbaijan. Nevertheless, civil society enjoys much more freedom of speech compared to journalists due to possible sanctions.

The right to freedom of thought and expression is guaranteed without discrimination to individuals and groups, including CSOs, by the Constitution of Azerbaijan (Article 47), as well as by the country's commitments through its membership of the UN, the CoE, and OSCE and accession to major international and regional human rights treaties.¹¹⁷ The right of CSOs and citizens to seek, receive, and impart information is also endorsed under the Constitution (Article 50) and further elaborated in several dedicated laws.¹¹⁸ Advocacy of hatred containing incitement to discrimination, hostility, or violence is expressly prohibited by the law and is punishable by imprisonment from two up to 12 years under several articles of the Criminal Code (101, 214-2, 220.2 and 281).¹¹⁹

In practice, freedom of expression for the media is a sensitive issue in Azerbaijan,¹²⁰ both according to local and foreign observers. Thus, the 2017 Parliamentary Assembly of the CoE expressed its concern about the “arbitrary application of criminal legislation to limit freedom of

117 Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified on December 25, 2001, https://www.echr.coe.int/Documents/Convention_ENG.pdf; Protocol No. 15 to the European Convention on Human Rights, ratified in 2014, https://www.echr.coe.int/Documents/Protocol_15_ENG.pdf.

118 Law on procedures for review of citizen applications, June 10, 1999, <http://www.e-qanun.az/framework/31281>; Law on access to information, September 30, 2005, <http://www.e-qanun.az/framework/11142>.

119 Criminal Code, of Azerbaijan Republic, December 30, 1999, www.e-qanun.az.

120 Focus Group 3, #2.

expression”.¹²¹ Also, the main state media regulatory body, the Press Council,¹²² regularly publishes a “black list” of newspapers engaged in so-called “racketeering” activities or violation of professional journalistic ethics. Racketeering is a criminal act under the law. Civil society, in contrast, enjoys much more freedom of speech and is free to express its views. Thus, 86 percent of those surveyed reported that they have not been subject to any pressure for speaking up publicly in the past two years. Most CSOs conduct self-censorship and do not cross “the red line”, therefore for the most part CSOs do not encounter problems for expressing their opinions.¹²³

Sanctions imposed for hate speech are set forth in the Criminal Code (Article 283) with the broad range of punishment from a fine from 1,000 to 2,000 AZN (approximately 500 to 1,000 EUR), or correctional labour for up to two years, or imprisonment from two to four years.

STANDARD 2. THE STATE FACILITATES AND PROTECTS FREEDOM OF OPINION AND EXPRESSION

CSOs in Azerbaijan broadly use Facebook, Instagram and YouTube for their activities. At the same time, CSOs took an active part in drafting the article on whistleblower protection. Nevertheless, defamation remains a criminal offence.

The law sets no limitation on the free use of the internet, though amendments in March 2017 incorporated online and social media into defamation and slander laws.¹²⁴ YouTube is the most widely-used social media platform (used by 97 percent of those surveyed in Azerbaijan, according to the survey conducted in October 2018, followed by Instagram (84 percent) and Facebook (81 percent)¹²⁵ for public discourse on burning social matters, including by CSOs. Social networks offer a relatively free discourse platform in Azerbaijan;¹²⁶ for example, setting up an account or making publications on the internet does not require special permission or compliance with specific administrative regulations. It should be acknowledged, however, that from time to time some public officials come up with suggestions to introduce limitations,¹²⁷ such as registering with a national ID number to enable making comments on Facebook.¹²⁸ There were no cases of formal prosecution for posts on social media in 2017-2018. The positive side is that sometimes high-profile incidents that gain momentum on Facebook attract the attention of the authorities and even spur action from them. Thus, a 2018 case of

121 Parliamentary Assembly, Resolution 2184 (2017), The functioning of democratic institutions in Azerbaijan, adopted on October 11, 2017, available at <http://assembly.coe.int/nw/xml/XRef/XrefXML2HTML-en.asp?fileid=24188&lang=en>.

122 Azerbaijan Press Council, <https://www.presscouncil.az/az/>.

123 In-depth interview # 6.

124 Presidential decree of March 16, 2017 on approval of changes to the Presidential decree of June 19, 1998 on changes to application of the Law on Information, Informatization and Information Protection <http://e-qanun.az/framework/35125>.

125 Survey by Moscow-based Kaspersky Lab cyber security company, October 2018 through a secondary source by Gunay Hajiyeva, Which Social Networks are most popular in Azerbaijan?, Caspian News, December 22, 2018, <https://caspiannews.com/news-detail/which-social-media-networks-are-most-popular-in-azerbaijan-2018-12-22-30/>.

126 Azerbaijan Internet Freedom score is assessed at 60 of minimum 100 by Freedom on the Net 2018, <https://freedomhouse.org/report/freedom-net/2018/azerbaijan>.

127 Hadi Rajabli, Social Networks shall be Taken under Control, July 17, 2018 <http://azpress.az/index.php?lang=az§ionid=news&id=82065>.

128 Nika Musavi, Social media in Azerbaijan: the cradle of the protest movement, a nest of debauchery or a champion of the oppressed? Jamnews, October 17, 2018, <https://jam-news.net/social-media-in-azerbaijan-the-cradle-of-the-protest-movement-the-nest-of-debauchery-or-the-champion-of-the-oppressed/>.

harassment of a hostel owner by a neighbour supported by the police¹²⁹ led to an amendment in the Housing Code (Articles 13.1.4, 3.5 and 20.5) that explicitly states that no permissions are required to set up a hotel in private residential places.¹³⁰

In March 2017, Azerbaijani legislation was amended to provide a legal basis for blocking online resources.¹³¹ Cases have been reported in which the blocking of conventional and online media was performed, violating procedural norms. Under the recent changes to legislation,¹³² the Ministry of Telecommunications and High Technologies shall give a warning to the site administration to delete offensive material within eight hours, or face the site being blocked; but in practice sites are blocked straight away.¹³³

Article 50 of the Azerbaijan Constitution prohibits censorship which was formally abolished in 1998.¹³⁴ Also, Article 7 of the Law on Mass Media¹³⁵ clearly forbids any act of censorship, except for temporary restrictions on media activities in emergency situations.

Azerbaijan assumed obligations to protect whistle blowers at ratification of the United Nations Convention against Corruption¹³⁶ and through amendments to the Law on Combat against Corruption (Articles 11-1 and 11-2).¹³⁷ The article on whistle blower protection was prepared with the close involvement of civil society¹³⁸ through an ad hoc working group under the National Anti-Corruption Commission.¹³⁹ In practice, cases of pressure on journalists remain of big concern.¹⁴⁰ Therefore, according to the Press Freedom Index 2019, Azerbaijan was ranked number 166 among 180 countries surveyed.¹⁴¹

Defamation remains a criminal offence. Thus, Articles 147, 148-1 and 323 of the Criminal Code set forth criminal responsibility for dissemination of information that damages the honour and dignity of a person.¹⁴² The delay of the decriminalisation of defamation is often explained by officials¹⁴³ as being due to the failure of journalists to act in accordance with ethical stan-

129 Scandal over a closed hostel in Baku, Jamnews, April 12, 2017, <https://jam-news.net/scandal-over-a-closed-hostel-in-baku/>.

130 Amendments to Housing Code, April 25, 2017, <http://e-qanun.az/framework/35766>.

131 Presidential decree of March 16, 2017 on approval of changes to the Presidential decree of June 19, 1998 on changes to application of the Law on Information, Informatization and Information Protection, <http://e-qanun.az/framework/35125>.

132 Presidential decree of March 16, 2017 on approval of changes to the Presidential decree of June 19, 1998 on changes to application of the Law on Information, Informatization and Information Protection, <http://e-qanun.az/framework/35125>.

133 Focus Group 3, #1.

134 Presidential Decree on "Additional measures for providing for freedoms of expression thought and information in the Republic of Azerbaijan" dated August 6, 1998, www.president.az.

135 Law on Mass Media, December 7, 1999 <http://www.e-qanun.az/framework/30>.

136 United Nations Convention against Corruption, ratified on November 1, 2005, <https://www.unodc.org/unodc/en/treaties/CAC/>.

137 Law on combat against corruption, with amendments of October 14, 2016, <http://e-qanun.az/framework/34021>.

138 Concept paper on whistle blower publication by Transparency Azerbaijan, April, 2015, http://transparency.az/alac/files/Paper_on_whistleblowers_en.pdf.

139 National Anti-Corruption Commission, www.antikorrupsiya.gov.az.

140 A comprehensive analysis of Azerbaijan's media landscape, by Institute for Reporters' Freedom and Safety, June 2017, www.irfs.org, <https://www.irfs.org/wp-content/uploads/2018/02/2017-A-COMPREHENSIVE-ANALYSIS-OF-AZERBAIJAN%E2%80%99S-MEDIA-LANDSCAPE.pdf>.

141 Press Freedom Index 2019, by Reporters without Borders, https://rsf.org/en/ranking_table.

142 Criminal Code of Azerbaijan Republic, December 30, 1999, www.e-qanun.az.

143 In-depth interview #4.

dards.¹⁴⁴ In practice, civil society was not subject to undue pressure in 2017-2019. Thus, 90 percent of surveyed CSOs reported that they had not been subject to any attacks or illegal pressure.

SPECIFIC RECOMMENDATIONS UNDER AREA 6

- Ensure that blocking of online media resources is performed strictly in accordance with the law.
- Amend the law to decriminalise defamation and make it an administrative rather than a criminal offence.
- Eliminate censorship in practice and stop pressure on journalists and CSO activists with critical voices.

4.7 Right to privacy

STANDARD 1. THE RIGHT TO PRIVACY IS PROVIDED TO ALL WITHOUT DISCRIMINATION

The legislation of the Republic of Azerbaijan guarantees the right to privacy for everyone, including CSOs and CSO members, and there is no discrimination against CSOs in this regard. There were no cases of illegal interference with the right to privacy of members of the CSO sector in 2017-2018.

The basis of the right to privacy is stipulated under Article 32 of the Constitution of the Republic of Azerbaijan. According to the Article, everyone has the right to the inviolability of private life. Everyone has the right to confidentiality of his/her private and family life. Except in cases prescribed by law, interference with private or family life is prohibited. Everyone is entitled to protection against unlawful interference with his/her private or family life. The collection, storage, use and dissemination of information concerning a person's private life is not permitted without his/her consent. Except in cases prescribed by law, no one may be followed, filmed, photographed, recorded, or subjected to any other similar actions without his/her knowledge. The state guarantees everyone's right to confidentiality with respect to correspondence, telephone communications, post, telegraph messages and information sent by other communication means. This right might be restricted, as prescribed by law, in order to prevent crime or to determine the facts in the course of investigation of a criminal case.¹⁴⁵

According to the Law of the Republic of Azerbaijan "On Access to Information" of 30 September 30 2005, a range of personal and family life information, such as political views, religious beliefs, ethnic origin or race, person's criminal conviction, health conditions, sexual life, adoption, etc. are considered private information and access to this information is restricted.

A number of legal mechanisms, such as administrative sanctions and criminal liability, have been employed in the legislation of the Republic of Azerbaijan to guarantee the right to privacy.

¹⁴⁴ The defamation law adopted in many countries, Interview of Mushvig Aleskerli, deputy chair of Press Council to Ses newspaper, January 10, 2018 <http://sesqazeti.az/news/interview/656694.html>.

¹⁴⁵ Article 32 of the Constitution of the Republic of Azerbaijan.

Article 155 of the Criminal Code of the Republic of Azerbaijan stipulates criminal liability for infringement of privacy of correspondence, telephone conversations, mail, telegraph or other messages. Article 156 of the Criminal Code sets criminal liability for infringement of the inviolability of private life (illegal collection, as well as the sale or transfer of documents such as videos, or sound recording materials containing information on personal and family life).

In addition, according to Article 23.1 of the Civil Code of the Republic of Azerbaijan, a natural person is entitled to a court order declaring to be untrue any information which discredits his or her honour, dignity or business reputation, discloses a secret of his or her private and family life or his or her personal or family immunity, provided that the person who disseminated such information fails to prove that such information was true.

In addition, the right to compensation for any material or moral damage caused to a physical person or legal entity as a result of the violation of the right to privacy can be exercised pursuant to Article 21 of the Civil Code.

At the same time, the Law of the Republic of Azerbaijan “On Personal Data” of 11 May 2010¹⁴⁶ defines the legislative basis and general principles of collection, processing and protection of personal data.

The Republic of Azerbaijan signed and ratified the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data via a law dated 30 September 2009 (No. 879-IIIQ).¹⁴⁷

Most CSO members use social media to advocate for various issues and promote pluralism, although they take a more careful approach since the 2016 criminalisation of “online defamation or derogation of the honour and dignity” of the president.¹⁴⁸

Article 148-1 of the Criminal Code provides for criminal responsibility in the form of imprisonment for up to two years, starting with a fine of 1,000 AZN (approximately 500 EUR) for public insults or using a fake user name, profile or account online. The sanctions of the Article have been further toughened by the Law of 31 May 2017.¹⁴⁹

In contrast to previous years, there have been no cases of illegal interference with the right to privacy of members of the CSO sector in 2017-2018.

Focus group participants stated that local mobile operators are transmitting information about subscribers to third parties (for example, for sending advertisements or notices) without the consent of subscribers.¹⁵⁰

146 <http://www.e-qanun.az/framework/19675>.

147 <http://www.e-qanun.az/framework/18625>.

148 CSO Sustainability Index, 2017, Azerbaijan.

149 Article 148-1 of Criminal Code.

150 Focus group 2, #1.

STANDARD 2. THE STATE PROTECTS THE RIGHTS OF CSOS AND ASSOCIATED INDIVIDUALS

In 2017-2018, no interference by the state that violated the protection of the private data of CSOs and CSO representatives, as well as access to CSO offices (both in law and practice), was detected.

The legislation of Azerbaijan requires CSOs to inform the MoJ about new members of the board including the chairperson within 40 days of board elections. CSOs are not required to provide the MoJ with personal information on their members and associated individuals. The reports submitted by CSOs to the Ministry of Taxes, the State Social Protection Fund, the Ministry of Labour and Social Protection, the MoF and the State Statistics Committee mainly relate to financial reporting, tax and social payments. However, CSOs are obliged to provide the MoF with passport information of individuals who donated to them during the year.

Under the law, all legal persons, including CSOs, should be informed in advance of inspections by state bodies. During such inspections, the state body (the MoJ, Tax Ministry, etc) studies relevant CSO documents and makes a decision on the results of the inspection, which the CSO can appeal in court. For example, pursuant to Article 38.1 of the Tax Code, mobile tax audits (regular, planned or extraordinary), including electronic audits, are carried out on the basis of the decision of the tax authority which sends a written notification to the taxpayer at least 15 days in advance. Access of state bodies to personal data during the investigation is limited by legislation. For example, pursuant to Article 199.2 of the Criminal Procedure Code of the Republic of Azerbaijan, in the course of procedural activities, it is prohibited to unnecessarily collect, disseminate or use information relating to the private life of any person and other information of a personal nature which is intended to be kept secret. At the request of the investigator, prosecutor or court, the participants in investigations and court procedures shall be obliged not to disseminate such information and shall give a written undertaking to this effect.¹⁵¹ During the criminal prosecution, the right to privacy (one's own and one's family's) and the confidentiality of information sent via correspondence, telephone conversations and other means of communication, and of other information, may be limited only by the Criminal Procedure Code. Interception and checking of mail delivered by post, telegraph and other communications, and interception of conversations via telephone or other means of communication, information sent via other communication and technical channels and other information shall be permitted only by court order and in accordance with the Criminal Procedure Code.¹⁵²

SPECIFIC RECOMMENDATIONS UNDER AREA 7:

- Azerbaijan shall sign the CoE Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and trans-border data flows which requires the establishment of an independent state body for the monitoring and supervising of personal data.
- Decriminalise the use of fake profiles in social networks and ensure that any sanctions are proportionate.

¹⁵¹ Article 199.2 of the Criminal Procedure Code of the Republic of Azerbaijan.

¹⁵² Article 16 of the Criminal Procedure Code of the Republic of Azerbaijan.

4.7 State duty to protect

STANDARD 1. THE STATE PROTECTS CSOS AND INDIVIDUALS ASSOCIATED WITH CSOS FROM INTERFERENCE AND ATTACKS

Everyone, including CSOs and their members, has the right to represent themselves in the courts and defend their rights (Article 60 of the Constitution of the Republic of Azerbaijan). There have not been any negative media campaigns against CSOs or public statements by government officials against CSOs in the reporting period.

Everyone may appeal against the actions and inaction of state bodies, political parties, legal entities, municipalities, and their officials in an administrative manner or in the courts.

Like other physical persons, the CSO members are also protected from hate speech as the Criminal Code of the Republic of Azerbaijan prescribes criminal liability for slander and insult.¹⁵³

The Decree of the President “On the establishment of Appeal Councils in the central and local executive authorities of the Republic of Azerbaijan” dated 3 February 2016 determined Appeal Councils as a collegial organ acting on a public (free) basis for reviewing complaints of natural and legal persons, including CSOs, from the decisions and actions of state bodies. Thus, the alternative appellate mechanism was created for legal entities and CSOs. The decisions of Appeal Councils are also subject to further judicial review.

Generally, the duration of an appeal from the decisions of the courts is reasonable and varies from 20 days to two months from the time of its delivery to parties and the decisions do not come into force unless the appeal is submitted.

According to the article 77.2¹⁵⁴ (burden of proof) of the Civil Procedure Code of the Republic of Azerbaijan, in order to declare legal acts of state authorities as void, the burden of proof of grounds for the adoption of such acts shall be placed on the authority which adopted the disputed act.

Although Azerbaijani legislation allows for the establishment and existence of informal associations, they are not eligible for certain rights as they are not legal entities. For example, they cannot be plaintiffs in court, own property, open a bank account or receive a tax identification number. The state cannot protect the name of an unregistered CSO unless it is registered with the MoJ.

Compensation for moral injury and property damage for everyone is ensured by the Civil Code and the relevant legislation.

Online survey respondents were not aware of any instances of harassment or attacks on CSOs and their members (90 percent). There were no recorded indications of state pressure or unlawful state interference in internal matters of CSOs participating in the online survey.

¹⁵³ Articles 147 and 148 of the Criminal Code.

¹⁵⁴ http://www.e-qanun.az/code/9_

STANDARD 2. MEASURES USED TO FIGHT EXTREMISM, TERRORISM, MONEY LAUNDERING OR CORRUPTION ARE TARGETED AND PROPORTIONATE, IN LINE WITH A RISK-BASED APPROACH, AND RESPECT HUMAN RIGHTS STANDARDS ON ASSOCIATION, ASSEMBLY, AND EXPRESSION

Legislative requirements relating to fighting extremism, terrorism, money laundering or corruption are burdensome for CSOs and most organisations have no resources to comply with them. For this reason, the laws are almost not implemented in relation to CSOs in Azerbaijan.

The main law in this area is the ‘Law on the fight against the laundering of money or other assets obtained by criminal means and funding of terrorism’ adopted in 2009. This Law: a) treats CSOs as well as branches and representative offices of foreign CSOs in Azerbaijan as ‘participants of monitoring’ (Article 4.0.9); and b) obliges them to ‘prepare and enforce internal control system against laundering of money or other assets obtained by criminal means and funding of terrorism’ (Articles 5 and 12). The said Law also requires CSOs to assign a responsible person, appoint an internal auditor, conduct customer identification and verification, provide information to the Financial Monitoring Service about suspicious transactions and conduct appropriate training. The mentioned requirements are burdensome for CSOs and are beyond the financial capabilities of most organisations. Currently, the Law is almost not implemented and most CSOs are not aware of it.¹⁵⁵

Moreover, Article 598.2 of the Code on Administrative Offences of the Republic of Azerbaijan imposes penalties specifically on CSOs, branch offices or representations of foreign CSOs in the Republic of Azerbaijan, religious organisations and officials in the amount from 800 to 15,000 AZN (approximately 400 to 7,900 EUR) for ‘violation of legislation on the fight against money laundering or other assets obtained by criminal means and funding of terrorism’. Financial Action Task Force (FATF) Recommendations emphasise that ‘Actions taken for this purpose should, to the extent reasonably possible, avoid any negative impact on innocent and legitimate beneficiaries of charitable activity.’¹⁵⁶ Furthermore, at present, the legislation of Azerbaijan does not contain any specific guidelines for the establishment of ‘internal control systems’ by CSOs.¹⁵⁷ The MoJ has set-up a working group composed of independent CSO law specialists and the NGO Support Council to develop guidelines for CSOs on how to comply with legislation on money laundering and the financing of terrorism.

SPECIFIC RECOMMENDATIONS UNDER AREA 8:

- Penalties against CSOs shall be revised, reduced and applied proportionately to the offence.
- Obligations of CSOs related to the fight against extremism, terrorism, money laundering or corruption shall be revised and applied to CSOs following the risk-based approach and above a certain threshold (for example, annual turnover exceeding 50,000 AZN (approximately 26,400 EUR)).

¹⁵⁵ Focus group 3, all participants.

¹⁵⁶ See p. 95 at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

¹⁵⁷ Overview of obligations of NGOs as to fight against terrorism and money-laundering in Azerbaijan, May 17, 2016, ICNL.

4.8 State support

STANDARD 1: THERE ARE A NUMBER OF DIFFERENT AND EFFECTIVE MECHANISMS FOR FINANCIAL AND IN-KIND STATE SUPPORT TO CSOS

There are a number of public financing mechanisms in Azerbaijan (subsidies, public funding, social services, etc.). The most common form is grants and each funder has its own grant rules. Some are more transparent and accessible for CSOs than others.

According to the Law on State Procurement, the government can procure goods and services from any organisation, including CSOs.¹⁵⁸ However, Azerbaijani law places burdensome financial prerequisites on participation in government procurement that make it essentially impossible for CSOs to bid for government contracts. Specifically, the Law on State Procurement requires that a legal entity or natural person pays both a bid security and performance security in order to participate in procurement bids. A bidding entity must provide the government with up to 0.5 percent of the total price of the procurement or the equivalent of 1.5 percent of the costs to cover tender expenses.¹⁵⁹ In practice, even large CSOs are unable to provide the minimum bid security required by the current law.

Moreover, according to the Law on Grants, the government can provide grants to CSOs.¹⁶⁰ The Council for State Support to NGOs is the main mechanism for government grants to CSOs at the national level. The NGO Support Council supports CSO activities in areas including human rights, refugee rights, assistance to internally displaced persons, children, women, youth, health, science, education, culture, human trafficking, corruption, terrorism, CSO legislation, and the integration of Azerbaijan into the world community. Since its establishment in 2007, the NGO Support Council has provided support for over 2,500 projects, with a value over 20,000,000 USD. Grants competitions are held several times a year. In 2017, 487 CSO projects were supported in two grant competitions with a total value of 3,049,900 AZN (approximately 1.6 million EUR) in financing.¹⁶¹ In 2018, 576 projects were supported in two grant competitions with a total of 3,999,105 AZN (approximately 2.1 million EUR) in financing.¹⁶² The average size of a grant is 3000–10,000 AZN (approximately 1,500–5,000 EUR) per project. Rarely, these grants are for institutional support.

As a state body, the NGO Support Council plays an important role of a bridge between CSOs and the government and is often used to communicate CSOs' concerns to the government. At the same time there is an internal Appeal Council at the NGO Support Council which deals with project proposals that were not successful.

Generally the funding for CSOs received from the state is not subject to additional scrutiny or inspection(s) except for the general reporting (financial, tax, etc.), project monitoring by the donor and other obligations for all legal entities and physical persons stated in the legislation.

¹⁵⁸ The Law of the Republic of Azerbaijan on State Procurement dd. December 27, 2001, N 245-IIQ (hereinafter referred to as the "Law on State Procurement").

¹⁵⁹ Article 29.1 of the Law on State Procurement.

¹⁶⁰ Article 2 of the Law on Grants.

¹⁶¹ Letter from NGO Support Council, April 2019, at file with author.

¹⁶² Ibid.

Subsidies are a less popular mechanism for public financing of CSOs in Azerbaijan compared to grants. In practice, only a few CSOs receive direct subsidies from the state budget (for example, the Union of Composers, Union of Writers, or Union of Artists).

Implementing social services for the government is another source of local funding for CSOs. The law “On Social Service” allows state bodies to use state budget funds to purchase social services from CSOs.¹⁶³ On 30 December 2012, the Cabinet of Ministers adopted two decisions: 1) the Rules of Provision of Social Services at Homes and State Social Service;¹⁶⁴ and 2) the Rules on Approving Rules of Providing State Orders in the Area of Social Services.¹⁶⁵ The Rules on State Orders for Social Services were also accompanied by a “sample contract on social order in the area of social service”. These Rules cover issues, including budgeting for social orders, the procedure for tender commissions, membership in such commissions, participation of CSOs in tenders, and designation of responsibility and supervision over the process. The value of social contracts is usually under 20,000 AZN per project (approximately 10,500 EUR) and they cover care centre operation and provision of various social services to vulnerable groups, etc.

Other government bodies that provide grants to CSOs include: the Youth Fund under the President, the Ministry of Education, the Ministry of Culture, the Ministry of Youth and Sports, etc.

Most of the online survey participants (91 percent) indicated that they have not applied for state in-kind support. Those who applied for state in-kind support considered the application procedure easy, transparent and clear. In practice, a limited number of CSOs receive free office space (for example, sports associations, organisations working with the disabled, etc.).

STANDARD 2. STATE SUPPORT FOR CSOS IS GOVERNED BY CLEAR AND OBJECTIVE CRITERIA AND ALLOCATED THROUGH A TRANSPARENT AND COMPETITIVE PROCEDURE

Transparent grant competition procedures exist with few funding mechanisms. The concerns of CSOs relate to the overall number and amount of grants rather than their procedural aspects.

Focus group participants stated that most of the funding mechanisms of state bodies are not transparent, except for a few government bodies such as the NGO Council and the Youth Fund under the President.¹⁶⁶ The participants of focus groups also complained about the small amount of awarded grants which are not enough to implement and fulfil the goals of CSOs.

The NGO Support Council’s grant competition is normally announced one month prior to the date of submission of project proposals and contains detailed competition rules. Applications must be submitted online. The evaluation of projects submitted to the NGO Support Council is carried out in 3 stages:

¹⁶³ Article 26 of the Social Service Law.

¹⁶⁴ Cabinet of Ministers Decision № 328 on Rules of Provision of Social Services at Homes and State Social Service Institutions on a Paid and Partially Paid Basis” (December 30, 2012); http://e-qanun.az/alpidata/framework/data/25/f_25059.htm.

¹⁶⁵ Cabinet of Ministers Decision № 330 on Approving Rules of Providing State Orders in the Area of Social Services to Municipalities, Physical and Legal Entities, Including Non-Governmental Organisations (December 30, 2012) (Cabinet of Ministers Decision № 330) <http://www.e-qanun.az/framework/25063>.

¹⁶⁶ Focus group 2, #3.

1. Preliminary selection of the project proposals. The Council's Secretariat reviews the conformity of the proposed project with the competition rules.
2. Evaluation of project proposals by contracted experts. The experts evaluate the projects on a score-based system according to the evaluation sheet approved by the NGO Support Council. Each project is codified by the NGO Council and evaluated by independent experts online.
3. Final decision of the NGO Support Council on the project proposals. The 11 members of the Council discuss each project proposal individually and make a decision based on the experts' opinions. The Secretariat then places information about winning organisations on its webpage and notifies them individually by mail. This is not done by all funding agencies.

Those CSOs whose project proposals were not successful can appeal to the NGO Support Council within 10 days from the time the decision is made. Appealing CSOs are invited to the Council to familiarise themselves with the expert opinions on their project proposal. The results of the competition are published online. In practice, very few CSOs use this appeal mechanism. For example, in 2017, 27 CSOs submitted appeals on decisions of the NGO Support Council on grant awards under the recent call. Out of these appeals, nine were considered well-grounded and, as a result, eight of them received awards.¹⁶⁷

Overall, the NGO Council's procedure for conducting competitions for grants has been impartial and transparent.¹⁶⁸ CSOs interested in this source of funding have been closely monitoring the work of the NGO Support Council.

On 21 October 2015, the President of the Republic of Azerbaijan approved the Rules on Coordination with the NGO Support Council of Grant Giving to CSOs by the State Bodies,¹⁶⁹ which requires that the state bodies seek the NGO Support Council's opinion about the topics of their grant competitions, as well as on the project proposals submitted by CSOs in response to these calls. In 2018 three more state bodies were added to this list and in total 12 state bodies can now issue grants to CSOs. Each of these bodies develops its own monitoring and evaluation mechanism.

The online survey respondents considered the application procedure for state funding to be easy, transparent and clear and the results of applications to be published in due time.

STANDARD 3. CSOS ENJOY A FAVOURABLE TAX ENVIRONMENT

The tax environment for CSOs cannot be called 'favourable', despite the fact that grants, donations and membership fees are exempt from taxation. The issues relate to registration of foreign funding with the MoJ.

CSOs are complaining of an unfavourable tax environment in Azerbaijan, as they are subject to different taxes with high rates, such as profit tax (at 20 percent), income tax of employ-

¹⁶⁷ Assessment of the Legal Framework for Non-Governmental Organisations in the Republic of Azerbaijan, 4th edition, July 2017, ICNL.

¹⁶⁸ USAID CSO Sustainability Index, Azerbaijan, 2017.

¹⁶⁹ Presidential Decree № 652, October 21, 2015, <http://www.e-qanun.az/framework/31055>.

ees (at 14 percent), property tax, land tax, value added tax (VAT), etc. According to the recent changes to the Tax Code, salaries up to 8,000 AZN (approximately 4,200 EUR) are free of income tax within 7 years, if there is no government funding to the CSO.

Grants are exempt from profit tax. In addition, revenues received by a non-commercial organisation from gratuitous transfers, membership fees, and donations are exempt from profit tax.¹⁷⁰ Charities are not required to pay tax on the donations they collect. However, there is no procedure for obtaining the status of a charitable organisation so in reality the organisations are hesitant to benefit from this exemption.

Under the Tax Code, income from entrepreneurial activities by CSOs, including charitable organisations, is taxed with the exception of social enterprises producing agricultural products which are released from income tax for 5 years from 2018.

The NGO Law requires CSOs to conduct separate accounting for revenues and costs for entrepreneurial activity. Besides, CSOs are required to register grant agreements, donations and service contracts of foreign stakeholders.

STANDARD 4. BUSINESSES AND INDIVIDUALS ENJOY TAX BENEFITS FOR THEIR DONATIONS TO CSOS

The system of tax benefits for businesses and individuals who want to donate to a CSO is underdeveloped in Azerbaijan. Nevertheless, the legislator recently introduced a provision which can in future address this issue.

According to the new article 106.1.18 of the Tax Code,¹⁷¹ a part of a legal entity's profit that does not exceed 10 percent of the profit of the reporting year is free of taxation from January 1, 2019 for a period of 10 years if it is transferred to enterprises, institutions and organisations involved in science, education, health, sports and culture. This rule applies to non-cash payments and the mechanism for it has yet to be adopted by the Cabinet of Ministers of Azerbaijan. There are no other tax benefits for businesses and individuals that donate to CSOs.

All online survey participants stated that more people will donate to their CSOs if tax benefits are increased.

STANDARD 5. LEGISLATION AND POLICIES STIMULATE VOLUNTEERING

The legislation encourages volunteering in Azerbaijan, although there are some difficulties in obtaining residency permits for foreign volunteer and a written contract must be signed with each volunteer, even for minor assistance.

The Law on Voluntary Activity dated 9 June 2009 clarifies the legal status of volunteers and makes it easier for them, especially for volunteers who are foreign or stateless persons, to protect their rights with both host organisations and the state. According to the Law on Voluntary Activity, a volunteer can carry out voluntary works/services in state bodies, organisations financed from the state budget, local self-governed bodies and NGOs. Voluntary activity can be carried out in the following areas: rendering of assistance to invalids, lonely people, elderly persons, low-income families, refugees and IDPs; legal and cultural education; education and

¹⁷⁰ Article 106.1.2 of the Tax Code.

¹⁷¹ Adopted on November 30, 2018 and entered into force since January 1, 2019.

upbringing of children and youth, and their physical and mental development; development of sports; provision of assistance to persons released from penitentiary institutions, drug addicts, and victims of domestic violence; and other areas of activities which are not in contradiction to the requirements of the legislation of the Republic of Azerbaijan.

The relationship between the volunteer and the host organisation is regulated by means of a written contract.¹⁷² The law does not permit verbal agreements, even for a minor and short-term volunteer assignment. Article 579 of the Code of Administrative Offences imposes penalties for legal entities from 2,500 to 3,000 AZN (approximately 1,300 to 1,600 EUR) for using volunteer assistance without signing a contract with the volunteer.

Both the volunteer and host organisation have certain rights and responsibilities under the law. For instance, volunteers have, inter alia, the right to demand provision of a safe and healthy work environment; obtain information about the conditions and nature of the voluntary activity; demand compensation for daily travel expenses; receive compensation for damages caused to his/her life and health while carrying out voluntary activity; and receive compensation for usage of his/her own property, among others. There are no obstacles in engaging volunteers for CSO activities according to the online survey. 97 percent of online survey participants indicated that they utilise volunteer support.

The legislation enables CSOs to have foreign volunteers, however, the Migration Code does not grant residency permits merely on the grounds of having a voluntary activity contract.

Currently, the State Agency for Public Service and Social Innovations (ASAN) and some other state bodies benefit from volunteers in their day to day activity.

SPECIFIC RECOMMENDATIONS UNDER AREA 9:

- Introduce meaningful tax benefits for individual and corporate donors;
- Abolish the requirement to have a written contract with a volunteer for ad hoc works that do not exceed one day;
- Increase the amount of grants issued to CSOs so that they build their institutional capacity;
- Develop a mechanism for disbursement of 10 percent of income tax from commercial companies to CSOs;
- Take measures to increase practices on renting out government-owned venues to CSOs for free or at a symbolic fee for events organised by CSOs;
- Increase the amount of funding for social contracting and their areas of application.

¹⁷² Article 9.1 of the Law on Voluntary Activity, June 9, 2009.

4.9 Government-CSO Cooperation

STANDARD 1: STATE POLICIES FACILITATE COOPERATION WITH CSOS AND PROMOTE THEIR DEVELOPMENT

Policy documents on CSO development and cooperation between the state and CSOs are adopted and incorporated into legislation.

One of the key documents in this sphere is the Decree of the President on approving a Concept on State support to NGOs (2007). The concept envisages the following types of state support to CSOs: information, consultation, methodical, organisational-technical, financial and other forms.

In 2018 the list of government donors that can finance CSOs was enlarged by three new bodies (the Ministry of Labour and Social Protection of the Population, the Ministry of Health, and the Ministry of Agriculture). Thus, there are currently 12 government donors in Azerbaijan.

The policy documents including action plans and programmes in various spheres envisage government cooperation with CSOs.

STANDARD 2: THE STATE HAS SPECIAL MECHANISMS IN PLACE FOR SUPPORTING COOPERATION WITH CSOS

There are various mechanisms to support cooperation with CSOs. In 2017-2018 these mechanisms were utilised more than compared to previous years.

The Law on Public Participation which was developed with the assistance of CSOs and adopted in 2015 envisaged a number of mechanisms for cooperation with CSOs: public councils, public hearings and discussions, public discussion on draft legislation, the provision of written comments on draft legal acts and study of public opinion. For example, some 10 national agencies have established public councils¹⁷³ in addition to a few in the regions under local executive authorities.¹⁷⁴ Detailed procedures for operation and transparency of public councils were further elaborated in the Rules on Elections of CSOs to Public Councils approved by order of Cabinet of Ministers No 171,¹⁷⁵ and the Rules on Organisation of Public Hearings and Discussions approved by order of the Cabinet of Ministers.¹⁷⁶ However, CSOs report that the election of CSOs in consultative bodies of certain state agencies is not transparent.

The Ministry of Agriculture established a separate unit on work with associations (i.e. farmer associations, beekeepers associations, etc). CSOs are also involved as experts in consultations with the Center for Economic Reforms.

Certain cooperation takes places under the OGP Platform where a number of state bodies are participating alongside dozens of CSOs.

During 2017-2018, CSOs were invited to attend a number of events organised by state bodies

173 Ministries of Justice, Labour and Social Protection of Population, Youth and Sports, Interior Affairs, Health, Ecology and Natural Resources, State Committees on Affairs of Women, Children and Family, State Migration Committee, State Examination Centre and ASAN.

174 Focus Group 1, #3.

175 May 30, 2014 <http://e-qanun.az/framework/27803>.

176 May 30, 2014 <http://e-qanun.az/framework/27804>.

(for example, the State Property Committee, ASAN, etc). Cooperation is however very weak, for example with the Cabinet of Ministers and in the regions.

In 2018, the NGO Support Council held a public discussion of the draft laws “On Social Order” and “On Professional Associations”. The recommendations of the participating CSOs were taken into consideration for the final draft which was submitted to the parliament. The NGO Support Council has a Memorandum of Understanding with the parliament on cooperation with CSOs which makes access for CSOs to the legislator easier.

SPECIFIC RECOMMENDATIONS UNDER AREA 10:

- Take measures to facilitate cooperation between state bodies and CSOs on central as well as local levels as per the mechanisms envisaged in the Law on Public Participation;
- Increase efficiency in enforcing the public participation mechanisms envisaged in the Law on Public Participation.
- Organise training for public officials on CSO-government cooperation.¹⁷⁷

¹⁷⁷ In-depth interview # 4.

V. CONCLUSIONS & RECOMMENDATIONS

The overall CSO environment in Azerbaijan has improved compared to 2014-2016. Transparent government funding mechanisms such as the NGO Support Council or the Youth Fund gained the trust of the sector despite the amount of individual grants issued by these bodies remaining rather low. This gap started to be filled-in by improved statistics of registration of foreign grants and service contracts which had almost been reduced to zero in 2015-2016.

CSOs have potential to contribute to the process of democratisation, legal and economic reform, social welfare, as well as protection of the human rights of women, children, the disabled, IDPs and refugees in Azerbaijan. To make this possible, the government shall at least: a) simplify the procedure for registration of CSOs; b) simplify access of CSOs to foreign funding; c) introduce the possibility to obtain excerpts from the state registry online; d) authorise CSO events in regions; e) reduce the reporting burden on CSOs; and f) ensure closer consultation with CSOs.

The public image of CSOs improves year by year and is mostly connected with successful media cooperation by national donors rather than CSOs' relations with the media.

The present report identified a total of 37 recommendations in 10 areas. The priority recommendations are listed below. They all target the government or parliament (in case legislative amendments are needed):

- Simplify the registration procedure for CSOs;
- Ensure equal treatment of CSOs compared to businesses during their registration process and operation;
- Provide a mechanism for foreign volunteers to obtain the relevant residency permit;
- Ensure the rights of foreigners and stateless persons to found CSOs and manage them;
- Simplify reporting obligations on CSOs;
- Simplify the procedure for obtaining a new excerpt from the state registry of legal entities;
- Abolish the requirement to obtain permission to hold events in the regions;
- Simplify the registration of grants and donations;
- Abolish the requirement to register service contracts;
- Develop a mechanism for disbursement of 10 percent of income tax from commercial companies to CSOs;
- Provide foreigners and stateless persons with the right to make donations to CSOs;
- Provide for a legal framework for regulation of cash-boxes and allow the use of

other mechanisms for anonymous donation;

- Create a single online resource and mandate all national level agencies and local executive authorities to publish draft legal acts for review by the public and CSOs;
- Revise the obligations of CSOs related to the fight against extremism, terrorism, money laundering or corruption and apply these only to CSOs following the risk-based approach with a certain monetary threshold (for example, an annual turnover exceeding 50,000 AZN);
- Introduce tax benefits for individual and corporate donors;
- Abolish the requirement to have a written contract with a volunteer for ad hoc works that do not exceed one day;
- Ensure that consultations with CSOs are conducted at the Cabinet of Ministers, particularly on the decisions affecting CSOs;
- Organise training for public officials on CSO-government cooperation.

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