

CSO METER

A compass to conducive
environment and
CSO empowerment

AZERBAIJAN 2021 COUNTRY REPORT

BAKU





European Center for
Not-for-Profit Law



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MG Consulting LLC is a registered consulting company in Azerbaijan specialising in not-for-profit law and providing various legal services to its local and foreign clients, including diplomatic missions and international organisations. MG Consulting provides technical expertise in improving NGO legislation and legislation related to agriculture and business, including social enterprises. It has extensive experience in providing training, preparing country reports and various publications explaining the law in a reader-friendly manner. It also administers a Facebook page and group titled *QHT qanunverciliyi* (NGO legislation) with more than 1,400 NGO activist followers.

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ABBREVIATIONS

AI	Artificial intelligence
AML/CTF	Anti-money laundering and counter-terrorism financing
ASAN	State Agency for Public Service and Social Innovations
AZN	Azerbaijani Manat
CoE	Council of Europe
CSO	Civil society organisation
CSR	Corporate social responsibility
EaP	Eastern Partnership
ECHR	European Convention on Human Rights
ECSOFT	Empowering Civil Society Organisations for Transparency
ECtHR	European Court of Human Rights
EU	European Union
EUR	Euro
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 person
MoF	Ministry of Finance of the Republic of Azerbaijan
MoJ	Ministry of Justice of the Republic of Azerbaijan
NGO Support Agency	Agency on State Support to NGOs
NGO Support Council	Council on State Support to NGOs under the President of Azerbaijan
OGP	Open Government Partnership
OSCE	Organization for Security and Co-operation in Europe
UN	United Nations
USAID	United States Agency for International Development
USD	United States Dollar
VAT	Value Added Tax

I. EXECUTIVE SUMMARY

In 2021, both positive and negative developments affected civil society organisations (CSOs) in Azerbaijan. From March 2020, a special quarantine regime was applied in Azerbaijan and a ban on public events and travel to certain regions was introduced. These restrictions curtailed freedom of peaceful assembly and association for CSOs but were justified in light of the Covid-19 pandemic.

Similarly, during the Nagorno-Karabakh War with Armenia from September to November 2020, certain internet restrictions were put in place. Overall, however, CSOs improved their visibility during this time with rapid assistance given to those in need for support in war-affected areas.

Another important development was the establishment in April 2021 of the Agency on State Support to NGOs (NGO Support Agency) which replaced the former NGO Support Council.¹ To increase the levels of transparency in the new Agency, an Advisory Board was formed which included independently-minded CSOs.

Despite the existence of multiple state donors, local CSOs in Azerbaijan suffer from a lack of funding which mainly originated from the restrictions on foreign funding introduced in 2015. Local donors are only able to offer meagre amounts of funding that do not allow NGOs sustainability.

Despite several packages of recommendations to existing legislation being developed and submitted to the National Assembly by local experts,² there were no major legislative improvements affecting CSOs in Azerbaijan in this reporting period.

During December 2021, two important legislative developments that will impact civil society were adopted. Firstly, changes to the Tax Code that entered into force on 1 January 2022 provided for, among other things, an eight year tax exemption for donations to foundations established by the state that have social and public benefit goals, the requirement to have accounting in place for CSOs who provide consultancy contracts and more detailed information to be provided in bank payment orders. Secondly, the new Media Law has led to various discussions in the CSO community, including a fear that the new law could be used to control online media.

¹ Azerbaijan Press Agency, 'The charter of the State Support Agency for NGOs has been approved', <https://apa.az/az/xeber/III-sektor/QHT-lr-Dovlt-Dsty-i-Agentliyin-nizamnamsi-tdiqnib-638921>.

² For example, Constitutional Research Foundation and Erkin Qadirli MP.

Key findings of the report

Restrictive legislation introduced in 2014-2015 continues to deprive local CSOs of access to foreign funding. The practice started to change since mid-2017 when the government introduced “single window” CSO registration procedure, reduced required documents list and simplified some of the reporting obligations for CSOs. During this period, CSOs survived mostly due to various public funding mechanisms, but their capacity has been seriously diminished due to consistent lack of financial resources.

During the current reporting period, several legislative developments contributed to improving the overall operational and legal environment for CSOs (e.g., changes in the Tax Code of 2020). At the same time, CSOs have had more opportunities for cooperation with various state bodies, including through public councils.

In the current reporting period the major developments that affected CSOs in Azerbaijan included the following:

- a meeting of President’s Assistant with 300+ CSOs;
- a draft Law on Charity discussed in the Parliamentary Committee;
- the new NGO Support Agency replaced the NGO Support Council;
- the Ministry of Justice (MoJ) introduced an e-services platform for CSOs; and
- the European Court of Human Rights (ECtHR) found violations of the rights of 25 CSOs in Azerbaijan.

These developments were accompanied by an improved attitude from the government towards CSOs (currently a total of 4,766 CSOs are registered in Azerbaijan) which, in particular, resulted in an increased number of registered foreign grants and service contracts, as well as the establishing of new Public Councils composed of CSOs.

The Azerbaijani media’s relationship with CSOs is underdeveloped, and there is lack of interest on the side of the media to cover CSOs activities. Democratisation processes continue in Azerbaijan and, during the reporting period, the government increased the number of state bodies that can issue grants to CSOs,¹⁰ as well as more frequently conducted public consultations with CSOs. The government adopted certain decisions to enable digitalization of CSOs’ grant registration, service contract registration and donation registration, as well as registration of changes to the registry data (e.g., change of chairperson or board).

Pursuant to the crackdown on civil society in 2014-2015¹¹ 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 worthwhile input to important government programmes and legal reforms. Thus, the research for this reporting period did not identify any cases of penalties being imposed in 2021 on local or foreign CSOs, including travel bans.

Despite these improvements, CSOs' general capacity is still seriously undermined by a permanent lack of funds. Despite the increase in the number of government donors to eighteen,¹² the available grants are still too small in value to ensure CSO sustainability and professional development. The organisational capacity of regional CSOs continues to be weaker than that of those located in the capital, Baku. Also, the permissions from the authorities required for the organisation of public events in the regions interferes with CSO operation.

The most viable and professional CSOs have opted to work through affiliated business companies or individual service contracts,¹³ as business registration in Azerbaijan is easier than the regime for CSOs. This switch from CSOs to business companies contains significant risks for CSOs associated with transparency and accountability, as well as potentially affecting a CSO's grant history with donors. In addition, some foreign donors are less flexible than others and do not agree to this business entity format. This has resulted in a situation where *de facto* CSOs operate as business entities *de jure* and their activities (apart from tax payments) 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 2021 along with the government's positive attitude towards CSOs. Successful media coverage through CSO-oriented media such as Civil Society Journal (until 2021), the NGO website (www.qht.az) and NGO News website (until 2021, at www.qhtxeber.az), as well as the online NGO TV channel (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, internally displaced persons (IDPs) and the disabled. Another important online CSO-related resource is <http://ictimaishura.az/> (PublicCouncil.az) with information about public councils, including news, reports, and contacts.

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.

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 (around 110 EUR) and have to be reported along with details of the donor(s). 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.

Key recommendations

The report identifies a total of 38 recommendations in 11 areas. Some activities included in the Open Government Partnership (OGP) Action Plan adopted in February 2020 were recommended by the previous CSO Meter Report. The following are seven priority recommendations out of the eleven focus areas, some of which are the same as in previous years:

1. Simplify the registration procedure for CSOs by reducing timelines and eliminating subjective treatment by the MoJ;
2. Ensure equal treatment of CSOs compared to businesses during their registration process and operation;
3. Simplify reporting obligations on CSOs according to their size and turnover;
4. Abolish the requirement for CSOs to obtain permission to hold events in the regions;
5. Simplify the registration of grants and donations (for example, eliminate subjectivity on decisions for registration and digitalize the process so it can be easily accessible and swift, etc); and
6. Abolish the requirement for CSOs to register service contracts; and
7. Eliminate the need to report on small donations (for example, the 200 AZN/110 EUR per donor per year requirement).

II. AZERBAIJAN – IN NUMBERS

Basic data

Population (as of 1 January 2021): 10,119,100³ | GDP per capita (as of 2020): 4,214.3 USD⁴ | Number of CSOs (as of August 2021): 4,766⁵ | CSOs per 10,000 inhabitants: 4.7 | Registration fee for a CSO (as of September 2020): 11 AZN⁶ (around 6 EUR) | Freedom in the World (as of 2021): 10 (Not free)⁷ | World Press Freedom Index (as of 2021): 41.23 (167 out of 180 countries)⁸



Country score: 4.2
Legislation: 4.5
Practice: 3.8

The scores range from 1 to 7, where 1 signifies the lowest possible score (extremely unfavourable – authoritarian - environment) and 7 signifies the highest possible score (extremely favourable environment).

Areas	Overall	Legislation	Practice
Freedom of association	4.0	4.5	3.5
Equal treatment	3.6	3.8	3.4
Access to funding	3.0	3.2	2.8
Freedom of peaceful assembly	3.9	4.4	3.3
Right to participation in decision making	4.6	5.0	4.1
Freedom of expression	4.3	5.0	3.6
Right to privacy	4.4	4.9	3.8
State duty to protect	4.6	5.0	4.2
State support	4.3	4.6	4.0
State-CSO cooperation	4.5	4.7	4.3
Digital rights	4.7	4.9	4.4

³ The State Statistical Committee of the Republic of Azerbaijan, <https://www.stat.gov.az/source/demography/ap/>.

⁴ The World Bank, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=AZ>.

⁵ Report.az, <https://report.az/daxili-siyaset/azerbaycandaki-siyasi-partiya-qht-ve-kiv-lerin-sayi-aciqlanib/>.

⁶ Law of the Republic of Azerbaijan on State Duty, <http://www.e-qanun.az/framework/2860>.

⁷ Freedom House, <https://freedomhouse.org/country/azerbaijan/freedom-world/2021>.

⁸ Reporters Without Borders, World Press Freedom Index 2021, <https://rsf.org/en/azerbaijan>.

III. FINDINGS

3.1 Freedom of Association

Overall score per area: **4** / 7

Legislation: **4.5** / 7

Practice: **3.5** / 7

Freedom of association is guaranteed in Azerbaijan at the level of the Constitution. The relevant legislation provides clear registration rules for CSOs and sets out the required documents, but at the same time this registration process is lengthy, bureaucratic and discriminatory compared to the one for commercial organisations. Added to this, in practice, the MoJ creates illegal obstacles to registration and often refuses to register CSOs. According to official statistics, there are 4,766 registered CSOs in Azerbaijan. No major improvements in the legal environment relating to freedom of association have been observed in this reporting period. Similarly, the heavy reporting burdens and harsh penalties on CSOs for failure to follow the regulations have not been revised. Hence, the recommendations from the previous CSO Meter report remain valid.

Standard I. Everyone can freely establish, join, or participate in a CSO.

As a signatory to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), Azerbaijan is bound by obligations stemming from these instruments, including the obligations related to freedom of association.

Hence, the Constitution of Azerbaijan (1995)⁹ 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); and c) Nobody may be forced to join any union or remain its member.

Several laws were adopted to ensure these freedoms, including 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 and the Law on Voluntary Activity.

⁹ Constitution of the Republic of Azerbaijan (1995) with modifications introduced as a result of a Referenda held on 24 August 2002 and 26 September 2016 (hereafter referred to as 'the Constitution').

In line with international standards and practice, the legislation of Azerbaijan does not prohibit unregistered CSOs,¹⁰ however 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. Online association is not regulated, nor restricted.

For citizens of Azerbaijan, in principle there are no major issues with establishing, joining, or participating in a CSO. However, according to the International Center for Not-for-Profit Law (ICNL), ‘guaranteeing the right to establish an association only to those foreign citizens and persons without citizenship who permanently reside in Azerbaijan is a violation of international law.’¹¹ In the meantime, there are no limitations for foreign citizens and persons without Azerbaijani citizenship to join CSOs as members. 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 residence in Azerbaijan.¹² Despite this, the Law on Voluntary Activity grants CSOs the right to engage foreign volunteers. When it comes to the right of CSOs to associate online, there are no obstacles for this and CSOs are free to choose the territorial boundaries of their operations.

The relevant legislation also allows legal entities to establish or join CSOs. Likewise, CSOs can freely form coalitions or any other type of platform. The government does not force CSOs to join coalitions, nor does it force coalitions to be registered. Coalitions can act as free unregistered associations.¹³

Standard II. The procedure to register a CSO as a legal entity is clear, simple, quick, and inexpensive.

Although the official registration fee for registering a CSO is inexpensive, the registration procedure itself in law and in practice is not quick. Similarly, it is not easy for CSOs to update their registry data or change their charter, and this may impede their operation in general.

CSOs complain of lengthy registration proceedings (sometimes lasting several years), numerous rejections on various grounds, and the unwritten, informal requirement to

¹⁰ Article 15 of the NGO Law.

¹¹ ICNL, Assessment of the Legal Framework for NGOs in Azerbaijan, 2017.

¹² Focus Group.

¹³ Focus Group.

submit support letters from various state bodies or local executive authorities, etc.¹⁴ In recent years, Azerbaijan has lost a number of cases in the ECtHR for problems related to CSO registration.¹⁵ The most recent ECtHR decision on this matter was in May 2021, when Azerbaijan was found to be in violation of 25 CSOs' right to freedom of association.¹⁶ Violations were recognised for the refusal to register 12 CSOs in the case of *Mehman Aliyev and others v. Azerbaijan* (Application No. 46930/10) and to register 13 CSOs in the case of *Abdullayev and others v. Azerbaijan* (Application No. 69466/14). As of December 2021, these decisions have not been enforced in Azerbaijan.¹⁷

In addition to the standard registration procedures, foreign CSOs need to reach an agreement with the MoJ in order to register an office in Azerbaijan.¹⁸ During the period 2017-2021 there were no cases of a foreign CSO registering in Azerbaijan.

The government enables registration of CSOs with the regional branches of the MoJ. However, CSOs still report that this mechanism does not work, with travel to Baku to apply for registration with the MoJ being necessary in such cases.¹⁹

The registration fee for CSOs is low (11 AZN; around 6 EUR), but they must have a capital of 10,000 AZN (around 5,600 EUR) to be registered.

Based on the constitutional right to court process, CSOs have the right to appeal to the courts against the decisions of the registration body. In practice, however, the courts do not usually annul the decisions of the registration body.

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

Many CSOs in Azerbaijan have set-up affiliated business entities and operate through these entities because of the favourable environment for businesses. In such cases, the founder(s) of the business entity is/are either the founder(s) or chairperson(s) of the CSO, or a CSO itself.

CSO registration in the regions is not possible despite registration of commercial entities in the regions being a common practice. Similarly, online registration of CSOs is not possible, whereas businesses can register online.

¹⁴ Focus Group.

¹⁵ 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>. *Ramazanov and Others v. Azerbaijan*, Eur.Ct.H.R. (Application no. 44363/02, 1 February 2007).

¹⁶ ECNL, 'Azerbaijan: European Court of Human Rights declares the refusal to register 25 NGOs illegal', <https://csometer.info/updates/azerbaijan-european-court-human-rights-declares-refusal-register-25-ngos-illegal>.

¹⁷ Advisory Board Discussion, 19 January 2022.

¹⁸ 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 27 August 2009.

¹⁹ Focus Group.

Standard III. CSOs are free to determine their objectives and activities and operate both within and outside the country in which they were established.

CSOs are free to determine their objectives and activities as per the NGO Law. In practice, the registration body is not always supportive of this (for example, when a CSO wants to add the word ‘youth’ in its charter in order to be eligible for grants from the Youth Fund). Such objectives as, for instance, human rights, IDPs, refugees, women’s rights, children’s rights, social welfare, education, health, and sports are rather common with hundreds of registered CSOs.

There are no issues with the operation of CSOs within the country and abroad. There are successful cases when Azerbaijani CSOs have set up branches in Georgia.²⁰ Also, in 2021 there were no reported cases of travel bans for CSO representatives.²¹

One of the major problems CSOs have is an unwritten, informal procedure to seek permission to hold events in the regions from the President’s Office. According to regional CSOs, the confirmation from the President’s Office can be rather quick, but they may still face difficulties from local executive authorities. Undoubtedly, this procedure restricts CSOs’ ability to interact with their beneficiaries, and to conduct well-planned, high-quality events. On a positive note, a number of regional CSOs confirmed that often the government allows them to use luxurious public venues for their events pro bono or at a special rate.²²

Standard IV. 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 certain penalties which apply to CSOs equally with commercial legal entities: penalties for violations of tax laws, social insurance, licensing and other legislation. Other penalties are rather specific for CSOs, for instance: failure to register grants, donations or service contracts; failure to submit annual financial reports; failure to sign a contract with volunteers; and exceeding the threshold for cash donations. Usually, 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 between 5,000-7,000 AZN (around 2,800-3,900 EUR)²³ and failure to include information about the amount of a 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 (around 2,800-4,400 EUR).²⁴ Any person or entity that provides a cash donation to a CSO in excess of a 200 AZN (around 110 EUR) threshold is subject to a penalty of 250-500 AZN (around 140-280 EUR) for natural persons, 750-1,500 AZN (around 420-830 EUR) for managers of

²⁰ Focus Group.

²¹ Focus Group.

²² Focus Group.

²³ Article 432 of the Administrative Code.

²⁴ Article 465 of the Administrative Code.

legal entities and 3,500-7,000 AZN (around 1,950-3,900 EUR) for legal entities.²⁵ The submission of false information to the state registry of legal entities is punishable with a penalty of 700 AZN (around 390 EUR) for individuals and 4,000 AZN (around 2,200 EUR) for legal entities.²⁶ There is no warning issued prior to these sanctions being imposed on a CSO.

CSOs are dissatisfied with such high penalties and this undoubtedly discourages their operations. At the same time, many CSOs have confirmed that these penalties are not usually imposed against CSOs.²⁷ Since one case in 2018 of an appeal by a CSO of the MoF's penalty imposed for failure to submit an annual financial report being quashed in the courts,²⁸ the MoJ has not penalised any CSO in the current reporting period.²⁹

The legislation envisages certain grounds for involuntary dissolution which has to follow a court procedure. These grounds include, for example, when a CSO has failed to rectify a deficiency indicated by the MoJ and there have been more than two warnings³⁰ issued to the organisation in a year. According to official statistics by the MoJ, in the period from 2017-2021 there were no cases of involuntary dissolution of a CSO.³¹ Also, there were no reported cases on suspension of CSO activity by the MoJ (for example, for violations of the rights of its members should the latter complain). The legislation on involuntary dissolution was revised in 2009 following the case of *Tebieti Muhafize Cemiyyeti v. Azerbaijan* and, at present, does not pose a major issue for CSOs.

CSOs may decide voluntarily to suspend their activity by submitting the relevant decision to the MoJ. This would then release them from the obligation to submit routine reports to various state bodies.

Standard V. The state does not interfere in the internal affairs and operation of CSOs.

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 continues to hinder the operations of CSOs due to the difficulty of obtaining this document. Since July 2021 the MoJ has introduced an online procedure to address this deficiency through an online e-window for CSOs, but the system is still under modernisation as of December 2021.

²⁵ Article 466.1 of the Administrative Code.

²⁶ Article 403 of the Administrative Code.

²⁷ Focus Group.

²⁸ Information provided by one of the Advisory Board members.

²⁹ CSO Sustainability Index for 2019 and 2020; Letter from the MoJ to MG Consulting dated 3 December 2021, held by the Authors.

³⁰ Warnings can be issued by the MoJ in cases where a CSO violates the requirements of the legislation, such as a failure to inform the MoJ about a change of address, failure to hold an annual assembly of the organisation, etc.

³¹ Letter from the MoJ of 25 April 2019, held by the Authors; also CSO Sustainability Index 2020.

The MoJ has the power to conduct inspections of CSOs which are covered by the regulations on studying the activities of CSOs³² as well as the legislation on money-laundering.³³ Other state bodies that have the power to investigate CSOs include 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. Following such inspections, the MoJ can issue a warning to a CSO or apply a penalty. In 2020, the MoJ issued only one such warning,³⁴ the lowest number on record. No data is yet available for 2021.

Another serious impediment to the operation of CSOs is a heavy reporting burden. Due to limited financial resources and the difficulty of registering foreign grants, CSOs are not always in a position to hire permanent staff (i.e. lawyers, accountants, compliance officers, etc.) to ensure that all of their reporting obligations are fulfilled.³⁵ As a result, CSOs are vulnerable to inspections and subsequent penalties which can lead to the termination of their operations.

Specific recommendations under Area 1:

- Ensure the 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;
- Simplify the reporting obligations on CSOs depending on their size and turnover; and
- Abolish the requirement for CSOs to obtain permission to hold events in the regions.

³² 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 of the Republic of Azerbaijan on 28 December 2015.

³³ Law 'On fight against laundering of money or other assets obtained by criminal means and funding of terrorism', 2009.

³⁴ CSO Sustainability Index for 2019 and 2020.

³⁵ In-depth Interview No. 4.

3.2 Equal Treatment

Overall score per area: **3.6 / 7**

Legislation: **3.8 / 7**

Practice: **3.4 / 7**

Equal treatment continues to be a problematic area. There were no changes in this area during the reporting period and the situation is the same as in the previous period. There is discrimination against CSOs in both legislation and practice. For example, the CSO registration procedure is slower, more complicated and less accessible than the one for commercial entities. Similarly, the burden of reporting for CSOs is much heavier than that of businesses.

Standard I. The state treats all CSOs equitably with business entities.

The state treats CSOs equally with business entities as it comes to the fee charged for state registration. Unfortunately, there is no equal treatment when it comes to the duration of the registration process. For a business this takes one to three days with the Tax Service, but for CSOs it takes up to thirty days with the MoJ (in practice, though, it can last for years). Refusals to register a business happen only in rare cases (when, for example, there is already an entity with a matching legal name). However, for CSOs the reasons for denial of registration are seemingly endless (for instance, issues with the formation of the board, the CSO's mission, its sources of income, etc.).

Another example of inequality is in reporting: 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. It should be noted, however, that CSOs are eligible to receive donations and enjoy the services of volunteers, whereas businesses are not.

The frequency of inspections for CSOs during the reporting period has been equal with that of businesses. At the same time, CSOs are deprived of loan access and some banks do not issue business bank cards (debit or credit) for CSOs, whereas for businesses there are no limitations.³⁶

When it comes to public procurement, CSOs can participate in public procurement on equal terms with businesses. However, in practice, due to limited financial resources, CSOs are sometimes unable to make a deposit³⁷ which is a requirement for participation in public procurement tenders.

Another issue of concern is that, according to the Administrative Code, the fines for CSOs are substantially higher compared to the fines for similar offences for businesses and individuals. The high penalties against CSOs appear to be excessive

³⁶ Focus Group.

³⁷ Information provided by one of the Advisory Board members.

and disproportionate when compared to the nature of the offences. Undoubtedly, such penalties appear to be discriminatory when compared with the more lenient penalties for similar offences committed by business entities and individuals.

Foreigners and stateless persons can be founders of business entities, but founders of CSOs are required to have permanent residency in Azerbaijan. Likewise, any foreign citizen can invest in a businesses, whereas foreign funding in the form of a donation from a foreigner to a CSO is prohibited. Similarly, CSOs are required to register all of their income from a foreign source, whereas businesses are only required to register grants.

Standard II. 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 favoured by the government than others. As a result, this group of CSOs is more often invited to consultations with the government and encounter less problems in holding events in the regions.³⁸ Some CSOs are represented in multiple Public Councils established under state bodies, whereas other CSOs are not represented in any.

Specific recommendations under Area 2:

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

³⁸ Focus Group.

3.3 Access to Funding

Overall score per area: **3** / 7

Legislation: **3.2** / 7

Practice: **2.8** / 7

There has been no significant change in this area compared to previous years. Access to foreign funding remains limited for CSOs. There are excessive requirements in legislation and practice for the registration of financial resources. Any income from a foreign source requires registration with the MoJ. This also applies to CSOs' service contracts with foreign clients, a requirement which is unique to Azerbaijan.

A number of public financing mechanisms exist in Azerbaijan, including direct subsidies, social contracts and grants from various state bodies. Also, CSOs are permitted to generate income from economic activities and receive donations and membership fees.

Standard I. CSOs are free to seek, receive, and use financial and material resources for the pursuit of their objectives.

As of October 2021, there are eighteen government donors to CSOs in Azerbaijan (the new ones include the Ministry of Labour and Social Protection of the Population, the Ministry of Health and the Ministry of Agriculture). Among them, the largest include the NGO Support Council³⁹ (except for in 2021 when it was reformed by Presidential Decree which changed its legal status, expanded its obligations and rights⁴⁰ and hence put its grant-making on hold until December 2021), the Youth Fund,⁴¹ the Fund for Support to Mass Media⁴² and the Science Development Fund.⁴³ Other government donors include, for example, the Ministry of Education, the Ministry of Digital Development and Transportation and the Ministry of Culture.

'Social orders' for CSOs are only issued by the Ministry of Labour and Social Protection of the Population which is in effect outsourcing the operation of some social services to CSOs. In 2020 there were at least three offers to sign social service contracts in this regard. A limited number of CSOs benefit from such contracts which usually focus on one area (for example, care centres). The amounts of these 'orders' were usually higher than the average grant from the former NGO Support Council.

³⁹ The NGO Support Council financed 576 projects in 2018, 568 in 2019, and 505 in 2020 at <http://cssn.gov.az/news.php?id=3648&lang=az> (last accessed on 02 November 2021) and CSO Sustainability Index 2019 and 2020.

⁴⁰ President of the Republic of Azerbaijan, <https://president.az/articles/51178>.

⁴¹ The Youth Fund provided 99 grants for CSOs (grants to individuals are not counted) in 2018, with a total budget of 683,500 AZN (around 381,000 EUR), <https://youthfoundation.az/42251>.

⁴² Media Development Agency of the Republic of Azerbaijan, <http://kivdf.gov.az/>.

⁴³ Science Development Fund, <http://www.sdf.gov.az/az/generic/news/Detail/238>.

The changes to the Tax Code that entered into force in January 2019 led to an enabling environment for the establishment and operation of social enterprises by CSOs. For example, social enterprises producing agricultural products have been exempted from income tax for five years starting in 2018. Another income channel for CSOs is a new provision in the Tax Code that provides 10 per cent income tax deductions from commercial companies for CSOs engaged in science, education, health, sports and culture. The Cabinet of Ministers approved the mechanism for distribution of these funds without consultation with CSOs on 12 March 2020 (Decision No. 88).⁴⁴ As a result, only CSOs in the sphere of culture will be able to receive the funds from businesses, as the criteria for CSOs in the social, science, education, and sports fields are burdensome and mainly oriented towards state-owned enterprises which makes it impossible for most of such CSOs to comply with.⁴⁵

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

Restrictions related to donations seriously impede the operation of some CSOs since: (i) anonymous donations are prohibited; (ii) donations from foreigners and stateless persons are prohibited; (iii) cash donations exceeding 200 AZN (around 110 EUR) are prohibited; (iv) the passport details of each donor, even for a donation of, say, 20 cents, have to be recorded and submitted to the MoF; and (v) only charities⁴⁶ can receive cash donations,⁴⁷ despite there being no clear procedure in the law for obtaining the status of a charity. Although a working group was established by the Parliamentary Committee in 2020 to draft a law on charitable activities, the public was not aware of the subsequent discussions, the draft law was not open to the public and no further decision was made on it.⁴⁸

Membership fees, donations and grants are exempt from income tax as per the Tax Code. In order to be eligible for this exemption, donations and grants must be registered with the MoJ which is not easy, especially in relation to foreign grants. At the same time, there are high penalties for failure to register such donations and grants. There is no adequate regulation of in-kind donations in the legislation.

Donations through cash-boxes and crowdfunding are not regulated in the legislation and these mechanisms are mostly unknown to CSOs in Azerbaijan. CSOs can collect funds on foreign crowdfunding platforms, but there is no guarantee that they will be able to register them locally to use because of uncertainties that lead to practical

⁴⁴ Cabinet of Ministers of the Republic of Azerbaijan, <https://nk.gov.az/az/document/4325/>.

⁴⁵ ECNL, <https://csometer.info/sites/default/files/2020-11/CSO-Meter-Country-Update-Azerbaijan-2020-English.pdf>.

⁴⁶ There is no procedure for obtaining the status of charity in Azerbaijan. In practice, CSOs whose statutory purposes include 'charity' are referred to as 'charitable organisations'.

⁴⁷ Article 24-1 of the NGO Law; Article 465 of the Administrative Code.

⁴⁸ Azerbaijan Press Agency, <https://apa.az/az/xeber/daxili-siyaset/Xeyriyycilik-faliyyeti-haqqinda-haqqinda-qanun-layihisinin-hazirlanmasi-ucun-lsci-Qrupu-yaradilib-604584>.

problems and lack of interest. Also, charity donations made via SMS are extremely rare. There are no available provisions such as percentage philanthropy or income from lotteries in Azerbaijan.

There are no barriers to CSOs opening bank accounts abroad. As to local banks, they verify the grant registration before allowing CSOs to access their grant funds. This applies to all grants, and not just foreign grants.

It should be emphasized that the penalties for receiving cash donations exceeding 200 AZN (around 110 EUR) are disproportionate to the amounts CSOs collect through such donations (the penalty is up to 10,000 AZN, around 5,600 EUR).⁴⁹ Over the last three years, however, there have been no cases of penalties applied for this.⁵⁰ Registered CSOs have no issues with opening bank accounts in their own names. In practice, however, some private banks do charge higher fees for CSOs compared to businesses.⁵¹ Another difficulty is a limit for cash operations of 15,000 AZN per month (around 8,300 EUR) which applies to all legal entities.⁵²

Standard II. There is no distinction in the treatment of financial and material resources from foreign and international sources compared to domestic ones.

CSOs' access to foreign grants, donations and service contracts has been seriously impeded since 2014 when the legislation introduced a number of restrictive provisions (i.e., a donor must have representation in Azerbaijan, must sign a special agreement with the MoJ, and must prove the economic-financial expediency of the project). In the current reporting period only, a few foreign grants were registered in Azerbaijan including grants from the Japanese Embassy, the EU, the UN, and the United States Agency for International Development (USAID).

Despite the registration of a service contract being easier than for a grant, such a requirement is rather unusual in Europe. In such contracts, only the amount after the evidenced expenditures is taxable. Donations from foreign citizens or foreign legal entities without a registered office in Azerbaijan are banned.

It should be noted that there is no criminal prosecution in the legislation of Azerbaijan for receiving foreign funding. At the same time, however, recipients of foreign grants are not usually tarnished with a negative connotation. During 2017-2021 there were no incidents of foreign-funded organisations being stigmatised or attacked in state-supported media or by the government.

⁴⁹ Code of Administrative Offences, 2015, Article 466.2.

⁵⁰ Letter from the MoJ to MG Consulting dated 3 December 2021, held by the Authors.

⁵¹ Advisory Board discussion, 19 January 2022.

⁵² Ibid.

Specific recommendations under Area 3:

- Simplify the registration of grants and donations (for example, eliminate subjectivity on decisions for registration, digitalize the process so it can be easily accessible and faster);
- 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 (200 AZN (around 110 EUR) or more per donor per year); and
- Abolish the prohibition on anonymous donations for small donations (200 AZN (around 110 EUR) or more per donor per year).

3.4 Freedom of Peaceful Assembly

Overall score per area: **3.9 / 7**

Legislation: **4.4 / 7**

Practice: **3.3 / 7**

There is a constitutional guarantee for peaceful assembly in Azerbaijan. Despite this, the issue remains a sensitive topic from the perspective of international organisations. Although CSOs' freedom of assembly is not restricted by law, they face serious obstacles to doing so in practice. CSOs enjoy their right to peaceful assembly in the capital Baku more freely than in the regions. This is connected with the informal requirement to seek permission to hold events in the regions. At the same time, there is a practice of renting out government venues to CSOs pro bono or at discounted rates both in Baku and in the regions.

Standard I. Everyone can freely enjoy the right to freedom of peaceful assembly by organising and participating in assemblies.

The right to freedom of peaceful assembly is guaranteed without discrimination to individuals and groups, including CSOs, by the Constitution of the Republic of Azerbaijan (Article 49), as well as by the country's commitments through its membership of the UN, the Council of Europe (CoE), the Organization for Security and

Co-operation in Europe (OSCE) and its accession to major international and regional human rights treaties,⁵³ as well as by Article I of the Law on Freedom of Assembly.⁵⁴

The Constitution⁵⁵ guarantees everyone 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 (Article 49). Since 2016, there is a requirement stipulating that public assembly should not violate public order and public morality.⁵⁶ However, there are no legal norms defining 'public order' and 'public morality'. At the same time, persons under eighteen years of age without the written consent of their parents or other legal representatives, as well as persons whose capability is restricted by a court decision that has entered into legal force without written consent of their custodians, may not be the organisers of a peaceful assembly.⁵⁷

In accordance with Article 7 of the Law on Freedom of Assembly,⁵⁸ '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.

In relation to spontaneous assemblies, submission of a written notification is not required (Article 5 of the Law on Freedom of Assembly), but such assemblies can be restricted or suspended in accordance with the requirements specified in Articles 7 and 8 of the Law.

In practice, freedom of assembly is a sensitive issue in Azerbaijan and a subject of concern for international organisations, including the UN Human Rights Committee⁵⁹ and the UN Special Rapporteur on Human Rights Defenders,⁶⁰ which have reported cases of arbitrary refusals and dispersals of peaceful assemblies. However, these primarily concern political parties. CSOs are affected to a much lesser degree, although they are still not free of technical problems. People who attend unauthorised

⁵³ Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified on 25 December 2001, https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁵⁴ The Law on Freedom of Assembly, 13 November 1998, <http://www.e-qanun.az/framework/3229>.

⁵⁵ Constitution of Azerbaijan, 12 November 1995 with last amendments by Referendum of 26 September 2016, <http://e-qanun.az/framework/897>.

⁵⁶ The Order of the Central Election Committee on conclusions and announcements of conclusions of the Referendum of 26 September 2016, <http://e-qanun.az/framework/33891>.

⁵⁷ Article 6 of the Law on Freedom of Assembly.

⁵⁸ The Law on Freedom of Assembly, 13 November 1998, <http://www.e-qanun.az/framework/3229>.

⁵⁹ Concluding observations of the Human Rights Committee on the fourth periodic report of Azerbaijan (CCPR/C/AZE/CO/4), November 2016.

⁶⁰ 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.

rallies can be brought to the police station for questioning, but in practice this occurs only in relation to a limited number of activists.

Standard II. The state facilitates and protects peaceful assemblies.

Organisers of peaceful assemblies are required to notify the authorities five working days in advance, which, in practice, is interpreted as the need to obtain permission (which is often denied).⁶¹ The same law provides for grounds to deny permission (Articles 7-9), violation of which by holding the assembly without permission is a criminal offence and punishable by up to two years' imprisonment.⁶² 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 may lead to imposition on natural persons of a penalty in the amount of 500-3,000 AZN (around 280 to 1,600 EUR), and on legal entities from 15,000 to 30,000 AZN (approximately 8,300 to 16,600 EUR) in accordance with Article 180 of the Code of Administrative Violations.⁶³ The decisions of state authorities regarding peaceful assemblies can be subject to further judicial review (Article 11 of the Law on Freedom of Assembly). As the court proceedings take some time, there that the review will take place prior to the planned date is low. There are different legal mechanisms to challenge the decisions of state authorities on matters of peaceful assembly.⁶⁴

As discussed under Standard 3 below, the right of CSOs to assemble is interpreted differently in big cities and in the regions where assembly is an extremely complicated procedure. Indeed, many regional CSOs confirmed that permission from the President's Office on holding an event in the regions is issued rather promptly, whereas at the level of its enforcement by the local authorities there are still issues. During the Nagorno-Karabakh War, there were temporary restrictions placed on the internet through which assemblies are often organised and coordinated.

Standard III. The state does not impose unnecessary burdens on organisers or participants in peaceful assemblies.

Apart from public rallies described above (which CSOs are not engaged in), the law does not require notification to the government of CSO-organised events. In spite of this, the system of informal 'permissions' from executive authorities is applied in all regions. 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 organising of a CSO event. These applications can be denied at the discretion of the authorities. An immediate effect of the system of 'permissions' is that

⁶¹ Article 5 of the Law on Freedom of Assembly.

⁶² Criminal Code, Article 169.1.

⁶³ Code of Administrative Violations, 29 December 2015, <http://e-qanun.az/code/24>.

⁶⁴ Administrative Procedures Code, last amended 7 April 2017, <http://e-qanun.az/code/20>.

sometimes the response comes too late which jeopardises CSO activities and affects the quality of their work.⁶⁵ It has also been reported by CSOs that there is a mistrust of public agencies towards other state bodies, as in the regions the informal practice of ‘permissions’ is also applied to the grants awarded by government donors and duly registered by the MoJ.⁶⁶

There are no costs associated with obtaining ‘permissions’ for holding CSO events, nor are there any legal sanctions applicable for failure to follow it. Still, unsanctioned events can result in undue pressure on the organisers. In the capital Baku, and some other major cities, such as Mingachevir or Ganja, this practice is not applied and CSOs are free to arrange public events using targeted invitations or social media.

Prior to the introduction of the Covid-19 restrictions, cases were reported in which government agencies offered 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 goodwill and a desire to cooperate with civil society, or as a tool to keep CSOs’ activities under control. With the lifting of the pandemic regulations, this practice is being resumed.

Standard IV. 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. There were no new cases during this reporting period when CSO events without due ‘permission’ were dispersed by law enforcement bodies. Usually, law enforcement bodies are identifiable to the public, but there are also police officers in civilian clothing.

Specific recommendations under Area 4:

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

⁶⁵ Focus Group.

⁶⁶ Focus Group.

3.5 Right to Participation in Decision-Making

Overall score per area: **4.6** / 7

Legislation: **5** / 7

Practice: **4.1** / 7

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 decisions that directly affect them. Generally, it is not easy for CSOs to access drafts of laws unless government bodies make them public or share them with CSOs. Experiences also vary from one government body to another. A particular problem exists with involving CSOs in the decision-making processes of the Cabinet of Ministers as the latter almost never consults CSOs.

Standard I. Everyone has the right to participation in decision-making.

The Constitution of Azerbaijan guarantees its citizens the right to participate in the decision-making process directly and through elected representatives.⁶⁷ Citizens 'have the right to participate without hindrance in the political life of the society and the state'⁶⁸ (Article 54.1) and this constitutes an integral part of the international obligations of the country.⁶⁹ Furthermore, the right to participate in decision-making is detailed in the Law on Non-Governmental Organisations⁷⁰ and, in particular, in the more recent Law on Public Participation.⁷¹ The legal framework sets forth a number of mechanisms for citizens and CSOs to participate in the decision-making process, including via public councils, public hearings and discussions, public discussion on draft legislation, through 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 National Assembly as per Article 18 of the Law on Public Participation. This law was broadly discussed by civil society prior to its adoption.⁷² Other legal acts envision

⁶⁷ 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>.

⁶⁸ Constitution, Article 54.1.

⁶⁹ 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>.

⁷⁰ The Law on Non-governmental Organisations (Public Associations and Foundations), June 13, 2000 <http://e-qanun.gov.az/framework/511>.

⁷¹ Law on Public Participation, entered into force on June 1, 2014, <http://e-qanun.gov.az/framework/26879>.

⁷² 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/>.

more specific mechanisms, such as referenda, opinion polling, district committees (operating at the local level), and citizen petitions,⁷³ though no instances of CSO–government cooperation through these instruments are known.

The Law on Public Participation provides citizens and CSOs with the right to participate in government decision-making by such means as (i) preparing and implementing state policy in different fields of state and social life; (ii) decision-making on a nationwide and local level; (iii) organising public control over the activities of central and local executive authorities and self-government bodies; (iv) consultation of state bodies with society; (v) consideration of public opinion; (vi) studying public opinion; (vii) public discussion of draft legislation; and (viii) written consultations.

The law gives public agencies a right to establish a public council rather than mandates it; thus, twenty national agencies have established public councils⁷⁴ to date in addition to about a dozen in the regions under local executive authorities.⁷⁵ The most recent examples of state bodies that have started the process of establishing Public Councils include the State Advertising Agency and the Ministry of Culture.

The practice of involving CSOs in consultations is gradually increasing. Some public agencies are more open to cooperation than others⁷⁶ and arrange broad discussions, including through the well-tested mechanism of the Azerbaijan Government–Civil Society Dialogue Platform on the Promotion of Open Government, established in September 2016 and uniting ten government agencies and forty-four CSOs,⁷⁷ for example, the State Customs Committee and the State Migration Service.

There have been cases when legislation has been adopted without consultation with stakeholders and was subsequently annulled as its application in practice was barely possible.⁷⁸

⁷³ The Law on Referendums, 30 December 1997, <http://www.e-qanun.az/framework/4604>; The Law on Approval of Sample Statutes for the Mahalla Committee Under Municipalities, 8 May 2001, http://www.e-qanun.az/alpidata/framework/data/3/f_3547.htm; The Law on Citizens' Applications, 30 September 2015, <http://www.e-qanun.az/framework/31281>.

⁷⁴ For example, the Ministries of Justice, Labour and Social Protection of Population, Youth and Sports, Interior Affairs, Health, Ecology and Natural Resources and State Committees on the Affairs of Women, Children and Family, State Migration Committee, State Examination Centre, ASAN, etc.

⁷⁵ Public Council, www.ictimaishura.az.

⁷⁶ Focus Group.

⁷⁷ OGP, 'The OGP Platform Accepted New Members', 3 January 2019, <http://ogp.org.az/az/index.php/2019/01/03/azerbaycan-aci-q-hokumet-platformasina-yeni-uzvler-qebul-edilib/>.

⁷⁸ The Cabinet of Ministers' decision on approval of the rules of financial responsibility for damage to the forests, No. 30, 31 January 2019, <http://www.e-qanun.az/framework/28863> was annulled by a decision of the Cabinet of Ministers, No 41, 6 February 2019, <http://www.e-qanun.az/framework/41385>.

Standard II. There is regular, open and effective participation of CSOs in developing, implementing and monitoring public policies.

The National Assembly has a duty to collect input through its website from all interested parties for the period of three months before the first parliamentary review of a draft law.⁷⁹ CSOs' involvement in policy implementation, monitoring, and evaluation through consultative bodies is also provided for in the Law on Public Participation. However, this law includes some provisions that reduce the effect of public participation and these, along with the lack of many supporting legal acts to ensure viable mechanisms, creates many problems in the application of public participation in practice.⁸⁰ 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 Commission⁸¹ and National Preventive Group under the Office of the Ombudsman,⁸² an efficient E-Services Public Council monitoring introduction of e-services by public agencies⁸³ under ASAN,⁸⁴ and the Public Committee under the MoJ monitoring penitentiary institutions.⁸⁵ There are cases when CSOs monitor implementation of state policies or Action Plans, but this usually takes place under a donor-funded project. For example, under the USAID-funded ECSOFT project, local CSO representatives monitored implementation of the OGP Action Plan.

Standard III. CSOs have access to information necessary for their effective participation.

Azerbaijan is committed to ensuring transparency of the public administration system.⁸⁶ According to the legislation, 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.⁸⁷ It is also a requirement to include terms and timelines for state bodies to publish all information related to the decision-making process (there is a sixty day period in

⁷⁹ Article 18 of the Law on Public Participation. Also, Rules on Elections of CSOs to Public Councils approved by order of the Cabinet of Ministers No. 171, 30 May 2014, <http://e-qanun.az/framework/27803>; Rules on Organisation of Public Hearings and Discussions approved by order of Cabinet of Ministers, No. 172, 30 May 2014, <http://e-qanun.az/framework/27804>; The rules for conducting Public Hearings on draft laws are defined by the Internal Regulations of the National Assembly.

⁸⁰ Sahib Mammadov, Public Participation, Monitoring Report, Baku, 2017, <http://ogp.org.az/wp-content/uploads/2017/02/PUBLIC-PARTICIPATION.pdf>.

⁸¹ National Anti-Corruption Commission, <http://www.antikorrupsiya.gov.az>.

⁸² National Preventive Group under the Office of Ombudsman, <http://www.ombudsman.gov.az/en/view/pages/70/members-of-national-preventive-group>.

⁸³ E-Services Promotion Public Council under ASAN, www.egov.org.az.

⁸⁴ 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.

⁸⁵ Public Committee under the Ministry of Justice, <http://www.justice.gov.az/categories/196>.

⁸⁶ United Nations Convention Against Corruption, Doc. A/58/422, 14 December 2005. Ratified in 2005, http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁸⁷ Law on Access to Information, 30 September 2005, Article 29.1.10, <http://www.e-qanun.az/framework/11142>.

which to collect public feedback).⁸⁸ In practice, however, this is not often implemented,⁸⁹ except sometimes for the National Assembly. Also, there is not a single online platform to collect citizens' opinions.

The powers of Information Ombudsman are vested with the Human Rights Commissioner (Ombudsman).⁹⁰ Even if formally the Ombudsman has broad powers, all observers agree that the Office of the Ombudsman is not practically able to effectively ensure access to information, mostly because the institution lacks specific competence.⁹¹

During the reporting period, issues pertaining to access to information continued to improve as many public agencies placed a lot of information on their websites, including detailed annual reports. Nevertheless, the government agencies hold discretionary power as to what information to disclose.⁹² In practice, it is very difficult to obtain information upon a written request⁹³ as 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.⁹⁴ Another discouraging element is a requirement to provide personal information in the standard request forms.⁹⁵ It should also be noted that in many cases CSOs do not show much interest in accessing information in any case.

The OGP Action Plan for 2020-2022 included amendments to the Law on Access to Information. According to the document, the Cabinet of Ministers, the MoJ, and the State Agency for Citizen Services and Social Innovations under the President of the Republic of Azerbaijan must prepare proposals on amendments to the Law on Access to Information and other legislative acts in connection with the improvement of information disclosure procedures in 2020-2021, as well as the establishment of appropriate mechanisms and conditions to ensure access to public information.⁹⁶

⁸⁸ Rules on Organisation of Public Hearings and Discussions.

⁸⁹ Focus Group.

⁹⁰ Constitutional Law on Amendments (24 June 2011) to the 'Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan' (28 December 2001), <http://www.e-qanun.az/framework/22060>.

⁹¹ In-depth interview No. 3.

⁹² Focus Group.

⁹³ Focus Group.

⁹⁴ Law on Access to Information, 30 September 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>.

⁹⁵ Focus Group.

⁹⁶ Order of the President, 'On approval of the National Action Plan for the Promotion of Open Government for 2020-2022', <http://www.e-qanun.az/framework/44619>.

Standard IV. Participation in decision-making is distinct from political activities and lobbying.

In law, CSOs are limited in accessing tax exemptions if engaged in lobbying. 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: (i) pursuit of political power; (ii) lobbying laws and other normative acts; (iii) political advertising; or (iv) financing of politician(s) or political party/parties.⁹⁷ CSOs cannot participate in presidential, parliamentary and municipal elections, or provide financial and other material assistance to political parties (Article 2.4). 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. Undoubtedly, CSOs' public advocacy potential is limited by CSO funding restrictions for face-to-face advocacy events (such as round tables, meetings, and other public events). This is aggravated by the requirement to seek permission to hold events/conduct activities in the regions. Nevertheless, this is somewhat balanced by the use of relatively free social media as Azerbaijan improved its 'Freedom on the Net' score from 60 in 2018 to 35 in 2021.⁹⁸ Local and international organisations did not report any instances of pressure against CSOs critical of the government in 2021.

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 councils;
- Eliminate technical (formal) 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 the public and CSOs, in addition to mandatory public discussion of draft laws organised by the National Assembly;
- 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; and
- Ensure that consultations with CSOs are conducted at the Cabinet of Ministers, particularly on decisions affecting CSOs.

⁹⁷ Law on Grants, Article 1.4, 17 April 1998.

⁹⁸ Freedom House, Freedom on the Net Report for 2021, at https://freedomhouse.org/sites/default/files/2021-09/FOTN_2021_Complete_Booklet_09162021_FINAL_UPDATED.pdf.

3.6 Freedom of Expression

Overall score per area: **4.3 / 7**

Legislation: **5 / 7**

Practice: **3.6 / 7**

Certain problems exist with freedom of expression. The activities of CSOs in this area are mainly limited to online social networks, and CSOs are very careful of criticising the government. 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.

Standard I. Everyone has the right to freedom of opinion and expression.

The Constitution of Azerbaijan guarantees the right to freedom of thought and expression to individuals and groups, including CSOs (Article 47). This right is also guaranteed by the country's international commitments through its membership of the UN, the CoE, the OSCE and its accession to major international and regional human rights treaties.⁹⁹ The Constitution, in particular, guarantees the right of CSOs and citizens to seek, receive, and impart information (Article 50) which is further elaborated in several dedicated laws.¹⁰⁰ The law expressly prohibits the advocacy of hatred including the incitement of discrimination, hostility, or violence and envisages a punishment of imprisonment from two up to twelve years under several articles of the Criminal Code (101, 214-2, 220.2 and 281).¹⁰¹

Freedom of expression continues to be a sensitive issue in Azerbaijan.¹⁰² Most CSOs even though in practice enjoy more freedom of speech compared to journalists, still conduct self-censorship and do not cross 'the red line', therefore they do not encounter problems for expressing their opinions.¹⁰³

Sanctions imposed for hate speech are set out in the Criminal Code (Article 283) and these range from a fine from 1,000 to 2,000 AZN (around 550 to 1,100 EUR), or correctional labour for up to two years, or imprisonment from two to four years. There are no known prosecuted cases of hate speech, however.

⁹⁹ Article 10, European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified on 25 December 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.

¹⁰⁰ Law on Procedures for Review of Citizen Applications, 10 June 1999, <http://www.e-qanun.az/framework/31281>; Law on Access to Information, 30 September 2005, <http://www.e-qanun.az/framework/11142>.

¹⁰¹ Criminal Code of Azerbaijan Republic, 30 December 1999, www.e-qanun.az.

¹⁰² Focus Group.

¹⁰³ Focus Group.

On 17 March 2020, the amendments to the Law of the Republic of Azerbaijan ‘On Information, Informatization, and the Protection of Information’ were adopted.¹⁰⁴ As a result, the newly-added Article 13-2.3.10-1 was introduced which states that:

The owner of the internet information resource and its domain name or the user of the information-telecommunication network must not allow in that information resource (information-telecommunication network) the placement of false information threatening to harm human life and health, causing significant property damage, mass violation of public safety, disruption of life support facilities, financial, transport, communications, industrial, energy and social infrastructure facilities or other socially dangerous consequences.

Some CSO members¹⁰⁵ raised concerns that the newly added amendments can be interpreted broadly and play a role in preventing freedom of expression on social networks by the government.

Standard II. The state facilitates and protects freedom of opinion and expression.

Despite online and social media being incorporated into defamation and slander laws in March 2017, the law sets no limitation on the free use of the internet.¹⁰⁶ Social networks offer a relatively free discourse platform in Azerbaijan; for example, setting up an account or making publications on the internet does not require special permission or compliance with specific administrative regulations.

There were no cases of formal prosecution related to posts on social media in 2017-2021. Perhaps for this reason, the Freedom on the Net Report for 2021 attributed an improved score (of 35) to Azerbaijan.¹⁰⁷

Azerbaijani legislation provides for a legal basis for blocking online resources. The Ministry of Digital Development and Transportation has to give a warning to the site administration to delete material deemed to be offensive within eight hours, or the site will be blocked.¹⁰⁸ Cases have been reported in which the blocking of conventional and online media was performed, violating procedural norms.

¹⁰⁴ On amendments to the Law of the Republic of Azerbaijan ‘On information, informatization and protection of information,’ <http://e-qanun.az/framework/44788>.

¹⁰⁵ Turan.az, ‘For a free media to exist, state regulation and interference in the media must be minimized’, <http://www.turan.az/ext/news/2020/3/free/Interview/az/122579.htm>.

¹⁰⁶ Presidential Decree of 16 March 2017 on approval of changes to the Presidential Decree of 19 June 1998 on changes to application of the Law on Information, Informatization and Information Protection, <http://e-qanun.az/framework/35125>.

¹⁰⁷ Freedom House, Freedom on the Net Report for 2021, at https://freedomhouse.org/sites/default/files/2021-09/FOTN_2021_Complete_Booklet_09162021_FINAL_UPDATED.pdf.

¹⁰⁸ Presidential decree of 16 March 2017 on approval of changes to the Presidential decree of 19 June 1998 on changes to application of the Law on Information, Informatization and Information Protection, <http://e-qanun.az/framework/35125>.

Censorship was formally abolished in Azerbaijan in 1998 and Article 50 of the Constitution specifically prohibits it.¹⁰⁹ At the same time, Article 7 of the Law on Mass Media¹¹⁰ forbids any act of censorship, except for temporary restrictions on media activities in emergency situations.

Whistle-blowers are protected through Azerbaijan's ratification of the UN Convention against Corruption¹¹¹ and through amendments to the Law on Combat Against Corruption (Articles 11-1 and 11-2).¹¹² Since there are still certain issues with media freedom, in the Press Freedom Index 2021, Azerbaijan was ranked number 167 out of 180 countries surveyed.¹¹³

Articles 147, 148-1 and 323 of the Criminal Code stipulate criminal responsibility for dissemination of information that damages the honour and dignity of a person.¹¹⁴ The process of decriminalising defamation does not seem to be in the government's priorities. On a positive note, civil society was not subject to undue pressure in this respect in the reporting period.

Specific recommendation 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; and
- Eliminate censorship in practice and stop pressure on journalists and CSO activists with critical voices.

¹⁰⁹ Presidential Decree on 'Additional measures for providing for freedoms of expression thought and information in the Republic of Azerbaijan' dated 6 August 1998, www.president.az.

¹¹⁰ Law on Mass Media, 7 December 1999, <http://www.e-qanun.az/framework/30>.

¹¹¹ United Nations Convention against Corruption, ratified on 1 November 2005, <https://www.unodc.org/unodc/en/treaties/CAC/>.

¹¹² Law on Combat Against Corruption, with amendments of 14 October 2016, <http://e-qanun.az/framework/34021>.

¹¹³ Reporters without Borders, Press Freedom Index 2021, <https://rsf.org/en/ranking/2021>.

¹¹⁴ Criminal Code of Azerbaijan Republic, 30 December 1999, www.e-qanun.az.

3.7 Right to Privacy

Overall score per area: **4.4** / 7

Legislation: **4.9** / 7

Practice: **3.8** / 7

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 2017-2021. Similarly, 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 reported.

Despite the fact that CSOs are required to inform the MoJ about new members of their boards, including the chairperson, within forty days of board elections, providing personal data on their members and associated individuals is not required.

Standard I. Everyone enjoys the right to privacy and data protection.

The right to privacy is guaranteed in the Constitution of Azerbaijan (Article 32) as the right to the inviolability of private life. Everyone has the right to confidentiality of their private and family life and interference with private or family life is prohibited, except in cases prescribed by law. Everyone is entitled to protection against unlawful interference with their private or family life. Moreover, the collection, storage, use and dissemination of information concerning a person's private life is not permitted without that person's consent. Except in cases prescribed by law, no one may be followed, filmed, photographed, recorded, or subjected to any other similar actions without their knowledge. The state guarantees everyone's right to confidentiality with respect to correspondence, telephone communications, post, telegraph messages and information sent by other means of communication. 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.¹¹⁵

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

There are administrative sanctions and criminal liability in the legislation of the Republic of Azerbaijan to guarantee the right to privacy. For example, Article 155 of

¹¹⁵ Article 32 of the Constitution of the Republic of Azerbaijan.

the Criminal Code of the Republic of Azerbaijan stipulates criminal liability for infringement of privacy of correspondence, telephone conversations, mail, telegraph or other messages. Similarly, Article 156 of the Criminal Code imposes criminal liability for infringement of the inviolability of private life (the 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).

Certain guarantees are also envisaged in the Civil Code of the Republic of Azerbaijan. For example, a natural person has the right 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 (Article 23.1). In addition, Article 21 of the Civil Code provides for 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.

At the same time, the Law of the Republic of Azerbaijan "On Personal Data" of 11 May 2010¹¹⁶ defines the legislative basis and general principles of collection, processing and protection of personal data. Moreover, the Republic of Azerbaijan signed and ratified the CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and trans-border data flows via a law dated 30 September 2009 (No. 879-IIIQ).¹¹⁷

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 560 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 2017.¹¹⁸

There have been no cases of illegal interference with the right to privacy of members of the CSO sector between 2017 and 2021.

Standard II. The state protects the right to privacy of CSOs and associated individuals

CSOs are required to inform the MoJ about new members of the board including the chairperson. However, CSOs are not required to provide the MoJ with personal information on their members and associated individuals.

CSOs are also obliged to provide the MoF with passport information of individuals who donated to them during the year. Other reports submitted by CSOs to the Tax Service, the State Social Protection Fund, the Ministry of Labour and Social

¹¹⁶ Law of the Republic of Azerbaijan "On Personal Data" of 11 May 2010, <http://www.e-qanun.az/framework/19675>.

¹¹⁷ Law of the Republic of Azerbaijan on ratification of the Convention on the Protection of Persons Related to the Automated Processing of Personal Data, <http://www.e-qanun.az/framework/18625>.

¹¹⁸ Article 148-1 of the Criminal Code.

Protection, the MoF and the State Statistics Committee mainly relate to financial reporting, tax and social payments and do not infringe in itself the right to privacy.

During inspections at CSOs, the relevant 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 fifteen days in advance. Under the law, all legal persons, including CSOs, should be informed in advance of inspections by state bodies.

The legislation contains additional limitations on state bodies' access to personal data during investigations. 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.¹¹⁹

The 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.¹²⁰ 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.

There have not been any reported cases of the authorities breaking into CSOs' offices or of surveillance on CSOs.

Specific recommendations under Area 7:

- Azerbaijan has to 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; and

¹¹⁹ Article 199.2 of the Criminal Procedure Code of the Republic of Azerbaijan.

¹²⁰ Article 16 of the Criminal Procedure Code of the Republic of Azerbaijan.

- Abolish the requirement for CSOs to submit passport information of donors to the MoF.

3.8 State Duty to Protect

Overall score per area: **4.6 / 7**

Legislation: **5 / 7**

Practice: **4.2 / 7**

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

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, these laws are in effect not implemented in relation to CSOs in Azerbaijan.

Standard I. The state protects CSOs and individuals associated with CSOs from interference and attacks.

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

Since 2016, Appeal Councils have been established as collegial bodies acting on a free, public basis for reviewing complaints made by natural and legal persons, including CSOs, against the decisions and actions of state bodies.¹²¹ Thus, an alternative appellate mechanism is available for legal entities and CSOs. The decisions of the Appeal Councils are also subject to further judicial review.

Generally, an appeal period from the decisions of the courts is reasonable and varies from twenty days to two months beginning from the time the parties of the court case get the decision(s) officially. The decisions are not enforceable unless the appeal period is ended.

Like other physical persons, members of CSOs are also protected from hate speech as the Criminal Code of the Republic of Azerbaijan prescribes criminal liability for slander and insult.¹²²

¹²¹ 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.

¹²² Articles 147 and 148 of the Criminal Code.

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

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

During the Covid-19 pandemic, the government introduced a number of limitations for legal entities, including CSOs. At different times, these included a lockdown, a ban on travel to certain regions, compulsory working from home, etc. As a result, dozens of CSO activities had to be cancelled or delayed until the restrictions were lifted.

Standard II. Measures used to fight extremism, terrorism, money laundering or corruption are targeted and proportionate, in line with the risk-based approach, and respect human rights standards on association, assembly, and expression.

This area is mainly regulated by the ‘Law on the fight against the laundering of money or other assets obtained by criminal means and the funding of terrorism’ adopted in 2009. This Law: (i) treats CSOs, as well as branches and representative offices of foreign CSOs in Azerbaijan, as ‘participants of monitoring’ (Article 4.0.9); and (ii) obliges them to ‘prepare and enforce internal control systems against laundering of money or other assets obtained by criminal means and the funding of terrorism’ (Articles 5 and 12). CSOs are also required 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. Due to financial difficulties, CSOs are not normally in a position to meet these requirements. Most CSOs are not aware of this law,¹²³ despite the high penalties for non-compliance which comprise fines from 800 to 15,000 AZN (around 450 to 8,400 EUR).¹²⁴ This requirement and respective penalty also applies to branch offices or representations of foreign CSOs in the Republic of Azerbaijan and religious organisations.

The recommendations of the Financial Action Task Force (FATF) 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.’¹²⁵ Furthermore, at present, the legislation of Azerbaijan does not contain any specific

¹²³ Focus Group.

¹²⁴ Article 598.2 of the Code on Administrative Offences of the Republic of Azerbaijan.

¹²⁵ See p. 95 at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf. (last accessed on 02 November 2021)

guidelines for the establishment of ‘internal control systems’ by CSOs.¹²⁶ At the initiative of the MoJ, a working group comprised of independent CSO legal specialists and the former NGO Support Council developed guidelines for CSOs on how to comply with legislation on anti-money laundering and counter-terrorism financing (AML/CTF).

Specific recommendations under Area 8:

- Penalties against CSOs shall be revised, reduced and applied proportionately to the offence; and
- The 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 should only apply to certain CSOs, for example, only those with an annual turnover exceeding 50,000 AZN (around 27,900 EUR).

3.9 State Support

Overall score per area: **4.3 / 7**

Legislation: **4.6 / 7**

Practice: **4 / 7**

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. The concerns of CSOs relate to the overall number and amount of grants rather than their procedural aspects.

Due to issues related to the registration of foreign funding with the MoJ, the tax environment for CSOs is not favourable, despite tax exemptions on grants, donations, and membership fees.

Volunteering in Azerbaijan is popular, although there are some difficulties in obtaining residency permits for foreign volunteers and a written contract must be signed with each volunteer, even for minor assistance.

Standard I. There are a number of different and effective mechanisms for financial and in-kind state support to CSOs

Despite the government being able to procure goods and services from any organisation, including CSOs,¹²⁷ Azerbaijani law places burdensome financial prerequisites on participation in government procurement that make it essentially

¹²⁶ ICNL, ‘Overview of obligations of NGOs to fight against terrorism and money-laundering in Azerbaijan’, 17 May 2016.

¹²⁷ The Law of the Republic of Azerbaijan on State Procurement dd. 27 December 27 2001, N 245-IIQ.

impossible for CSOs to bid for government contracts. In particular, it is required that a legal entity or natural person pay both a bid security and performance security in order to participate in procurement bids. A bidding entity must provide the government with up to 0.3 per cent of the total price of the procurement or the equivalent of 1.2 per cent of the costs to cover tender expenses.¹²⁸ This makes even large CSOs unable to provide the minimum bid security required.

Various state bodies in Azerbaijan can provide grants to CSOs.¹²⁹ The Council for State Support to NGOs was the main mechanism for government grants to CSOs at the national level till 2021 when it was replaced with the NGO Support Agency. The former NGO Support Council supported CSO activities in areas including human rights, refugee rights, assistance to IDPs, children, women, youth, health, science, education, culture, human trafficking, corruption, terrorism, CSO legislation, and the integration of Azerbaijan into the international community. Since its reform in July 2021, the NGO Support Agency has prepared the grant competition rules and submitted to the Cabinet of Ministers for approval. In December 2021, the President gave powers to the NGO Support Agency to approve its temporary grant-making rules which led to the first grant award by the Agency in December 2021.

As a state body, the NGO Support Council (and now the NGO Support Agency) plays an important role acting as a 'bridge' between CSOs and the government and is often used to communicate CSOs' concerns to the government.

Government grants to CSOs are not subject to additional scrutiny or inspections except for the general reporting requirements (financial, tax, etc.), project monitoring by the donor and other obligations for all legal entities and physical persons stated in the legislation.

Only a few specific CSOs receive direct subsidies from the state budget (for example, the Union of Composers, Union of Writers, or Union of Artists) which evidences that subsidies are a less popular mechanism for public financing of CSOs in Azerbaijan compared to grants.

The Law on Social Service allows state bodies to use state budget funds to purchase social services from CSOs.¹³⁰ Two decisions of the Cabinet of Ministers (the Rules on the Provision of Social Services at Homes and State Social Service¹³¹ and the Rules on Approving Rules of Providing State Orders in the Area of Social Services)¹³² regulate

¹²⁸ Article 29.1 of the Law on State Procurement.

¹²⁹ Article 2 of the Law on Grants.

¹³⁰ Article 26 of the Social Service Law.

¹³¹ Cabinet of Ministers Decision No. 328 on Rules of Provision of Social Services at Homes and State Social Service Institutions on a Paid and Partially Paid Basis (30 December 2012), http://e-qanun.az/alpidata/framework/data/25/f_25059.htm.

¹³² Cabinet of Ministers Decision No. 330 on Approving Rules of Providing State Orders in the Area of Social Services to Municipalities, Physical and Legal Entities, Including Non-Governmental Organisations (30 December 2012) (Cabinet of Ministers Decision No. 330), <http://www.e-qanun.az/framework/25063>.

issues, including budgeting for social orders, the procedure for tender commissions, membership in such commissions, the 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 (around 11,200 EUR) per project and they cover care centre operation and the 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 and the Ministry of Youth and Sports. In spite of this, the funding provided by various government mechanisms never replaced the amount provided by foreign donors and hence has not met the demands of the CSO sector in Azerbaijan.

In practice, a limited number of CSOs receive free office space (for example, sports associations and organisations working with the disabled). Some CSOs occasionally receive other in-kind support from the government, including free transportation, use of venues, assistance in reaching out to communities, etc.¹³³

Standard II. State support for CSOs is governed by clear and objective criteria and allocated through a transparent and competitive procedure.

The participants of focus groups complained about the small amount of awarded grants which are not enough to implement and fulfil the goals of CSOs. The situation has worsened since the NGO Agency's rules for issuing grants were put on hold at the Cabinet of Ministers for many months.¹³⁴

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,¹³⁵ which requires that 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 competitions. In 2018-2021, five more state bodies (the Ministry of Labour and Social Protection of the Population, the Ministry of Health, the Ministry of Agriculture, the State Service for Mobilization and Conscription and the State Agency for Mandatory Medical Insurance) were added to this list and in total thirty state bodies can now issue grants to CSOs. Each of these bodies develops its own monitoring and evaluation mechanisms.

¹³³ Focus Group.

¹³⁴ Focus Group.

¹³⁵ Presidential Decree, No. 652, 21 October 2015, <http://www.e-qanun.az/framework/31055>.

Standard III. CSOs enjoy a favourable tax environment.

The tax environment for CSOs is not favourable in Azerbaijan. CSOs are subject to different taxes with high rates, such as a profit tax (at 20 per cent), income tax on employees (at 14 per cent), property tax, land tax, value added tax (VAT), etc. According to the 2019 changes to the Tax Code, salaries up to 8,000 AZN (around 4,470 EUR) are free of income tax within seven years, if there is no government funding to the CSO.

When grants are duly registered, they are exempt from profit tax. Revenues received by CSOs from gratuitous transfers, membership fees, and donations are also exempt from profit tax.¹³⁶ Charities are not required to pay tax on the donations they collect, despite there being no legal procedure for obtaining the status of a charitable organisation.

CSOs, including charitable organisations, have to pay tax on income from entrepreneurial activities. This does not apply to social enterprises producing agricultural products as these have exemption from income tax until 2023. At the same time, CSOs are required to have separate accounting for revenues and costs for entrepreneurial activities. CSOs are also required to register grant agreements, donations and service contracts with foreign stakeholders.

Following the Decree of the President of the Republic of Azerbaijan dated 21 March 2020,¹³⁷ the procedure for VAT refunds was approved. According to the Decree, individual consumers only (physical persons), citizens of the Republic of Azerbaijan, as well as foreigners and stateless persons who hold an Azerbaijani bank account, can benefit from a VAT refund of 10 per cent for cash payments and 15 per cent for card payments. The rules apply to goods purchased from retailers engaged in the retail trade and catering and do not apply to oil and gas products. The law allows employees of CSOs to use their small revenue from this mechanism to cover the CSO's expenses (electricity, mobile phone expenses, stationery, etc.).

Standard IV. 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. The legislator recently introduced a provision to address this issue but the criteria is so narrow that only CSOs in the area of culture might be eligible for it.

According to the new article 106.1.18 of the Tax Code,¹³⁸ a part of a legal entity's profit that does not exceed 10 per cent of the profit of the reporting year is free of taxation

¹³⁶ Article 106.1.2 of the Tax Code.

¹³⁷ President of the Republic of Azerbaijan, <https://president.az/articles/36239>.

¹³⁸ Adopted on 30 November 2018 and entered into force on 1 January 2019.

from 1 January 2019 for a period of ten years if it is transferred to enterprises, institutions and organisations involved in science, education, health, sports or 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. On 12 March 2020, the Cabinet of Ministers adopted Decision No. 88 to introduce a mechanism for corporate social responsibility (CSR) for businesses to distribute the aforementioned ten per cent of profits. Unfortunately, the Cabinet of Ministers adopted this decision without consultation with CSOs and other stakeholders and, as a result, only CSOs in the sphere of culture will be able to receive funds from businesses, as the criteria for CSOs in the social, science, education, and sports fields are impossible for such CSOs to comply with.¹³⁹

Standard V. Legislation and policies stimulate volunteering

The legal status of volunteers, protection of their rights with both host organisations and the state are regulated by the Law on Voluntary Activity dated 9 June 2009. A volunteer can carry out voluntary works/services in state bodies, organisations financed from the state budget, local self-governing bodies and CSOs. Also, the Law allows voluntary activity in the following areas: the giving of assistance to persons with disabilities, lonely people, elderly persons, low-income families, refugees and IDPs; legal and cultural education; the education and upbringing of children and youth, and their physical and mental development; the development of sports; the 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 of the requirements of the legislation of the Republic of Azerbaijan.

The volunteer and the host organisation are required to have a written contract.¹⁴⁰ Unfortunately, there is no exception to this for a minor or 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 1,400 to 1,700 EUR) for using volunteer assistance without signing a contract with the volunteer.

Volunteers have a broad list of rights, including the right to: demand provision of a safe and healthy work environment; to obtain information about the conditions and nature of the voluntary activity; to demand compensation for daily travel expenses; to receive compensation for damages caused to his/her life and health while carrying out voluntary activity; and to receive compensation for usage of his/her own property, among others.

¹³⁹ ECNL, CSO Meter Azerbaijan Country Report 2020, <https://csometer.info/sites/default/files/2020-11/CSO-Meter-Country-Update-Azerbaijan-2020-English.pdf>.

¹⁴⁰ Article 9.1 of the Law on Voluntary Activity, 9 June 2009.

CSOs can theoretically have foreign volunteers. In practice, however, since the Migration Code does not grant residence permits merely on the grounds of having a voluntary activity contract, it is not easy for CSOs to obtain a residency permit for foreign volunteers.

Currently, the State Agency for Public Service and Social Innovations (ASAN) and some other state bodies benefit from volunteers in their day-to-day activities. The year 2020 was announced as a 'Year of Volunteerism' in Azerbaijan.

Specific recommendations under Area 9:

- Introduce meaningful tax benefits for individual and corporate donors to CSOs;
- 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 individual grants issued to CSOs so that they build their institutional capacity (for example, 10,000 AZN);
- 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;
- The total amount of funding provided for social contracting per year should be at least doubled and the amount per CSO should be increased by at least fifty per cent;
- Provide a mechanism for foreign volunteers to obtain the relevant residence permit; and
- Expand the application of the 10 per cent profit tax exemption to new areas.

3.10 State-CSO Cooperation

Overall score per area: **4.5** / 7

Legislation: **4.7** / 7

Practice: **4.3** / 7

State-CSO cooperation mainly happens via the NGO Support Agency which is limited and does not involve CSOs in decision-making processes at the level of the Cabinet of Ministers. The situation in this area has not changed in the current reporting period.

Standard I. 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, among others: information, consultation, methodical, organisational-technical and financial. Another important policy is the OGP Action Plan for 2020-2022 (see below). According to a monitoring report, as of December 2021 some 73 per cent of the Plan has been implemented.¹⁴¹

Policy documents including action plans and programmes (for instance, National Action Plan to Combat Human Trafficking in the Republic of Azerbaijan for 2020-2024) in various spheres envisage government cooperation with CSOs.

Standard II. The state has special mechanisms in place for supporting cooperation with CSOs.

There are various mechanisms to support cooperation with CSOs. In 2017-2021 these mechanisms were utilised more compared to previous years.

Public councils, public hearings and discussions, public discussion on draft legislation, the provision of written comments on draft legal acts and the study of public opinion are examples of the mechanisms for cooperation with CSOs as provided for by the Law on Public Participation of 2015.

¹⁴¹ Monitoring report on implementation of OGP National Action Plan, prepared under ECSOFT. Held by the Authors.

In line with this Law, twenty national agencies have established public councils¹⁴² in addition to a dozen in the regions under local executive authorities.¹⁴³ 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 the Cabinet of Ministers No. 171,¹⁴⁴ and the Rules on Organisation of Public Hearings and Discussions approved by Order of the Cabinet of Ministers.¹⁴⁵ However, CSOs report that the election of CSOs in consultative bodies of certain state agencies is not transparent and hence the activity of a public council is not so effective.

Certain cooperation takes places under the OGP Platform where a number of state bodies are participating alongside a range of CSOs. On 27 February 2020, President Aliyev signed the Decree 'On approving the Action Plan for 2020-2022 on the promotion of Open Government'. The OGP Action Plan was developed with the close participation of CSOs and individual experts and some 90 per cent of recommendations by CSOs were taken into consideration. The OGP Action Plan is a 13-page document covering activities in such areas as fighting corruption, increasing transparency, simplification of grant registration, simplification of CSO registration, simplification of legislation on AML/CTF, improving state services, increasing the efficiency of public councils composed of CSOs, holding regular meetings with CSOs, etc.

During the reporting period, CSOs were invited to attend a number of events organised by state bodies (for example, the State Migration Service, ASAN, etc). Cooperation is however very weak, for example with the Cabinet of Ministers and in the regions.

In 2021, the NGO Support Agency replaced the NGO Support Council and the new body obtained the status of a public law entity with an Advisory Board composed of independent CSOs, the MoJ, the MoF and the President's Office. The Agency will continue to benefit from the Memorandum of Understanding previously signed with the National Assembly on cooperation with CSOs.

The most recent examples of state-CSO cooperation include: (i) in Autumn 2020, the Assistant to President Aliyev held a series of online meetings with 300+ CSOs to listen to their concerns and collect recommendations; (ii) the Training Centre of the Tax Service signed a Memorandum of Understanding with CSOs; (iii) three female human

¹⁴² Including the 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.

¹⁴³ Public Council, www.ictimaishura.az and Focus Group.

¹⁴⁴ Decision of the Cabinet of Ministers of the Republic of Azerbaijan on approval of the 'Regulations on the election of the Public Council by civil society institutions', 30 May 2014, <http://e-qanun.az/framework/27803>.

¹⁴⁵ Decision of the Cabinet of Ministers of the Republic of Azerbaijan about approval of 'Rules of carrying out public hearings and public discussions on drafts of legal acts prepared by central and local executive authorities and local self-government bodies', 30 May 2014, <http://e-qanun.az/framework/27804>.

rights defenders received an award from the President; (iv) the Karabakh Revival Fund met with dozens of CSOs to discuss their role in development in Nagorno-Karabakh; and (v) 20+ state bodies joined the online oversight platform www.enezaret.az which enables submission of complaints from citizens and CSOs on community-related infrastructure issues.

Specific recommendations under Area 10:

- Measures should be taken 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; and
- Organise training for public officials on CSO-state cooperation.

3.11 Digital rights

Overall score per area: **4.7** / 7

Legislation: **4.9** / 7

Practice: **4.4** / 7

The relevant legislation does not provide a wide scope of protection of digital and human rights for CSOs such as, for instance, a basic legal environment in the area of artificial intelligence (AI). However, the digital rights of CSOs are mainly protected. Cybercrime laws or other criminal laws related to the digital sphere are mostly limited to illegal acts that are clearly prescribed.

Standard 1: Digital rights are protected, and digital technologies are compliant with human rights standards

The legislation of the Republic of Azerbaijan provides certain guarantees for the existence of a safe and enabling online environment and the protection and exercise of digital rights. However, it does not cover all aspects of digital rights; for example, it does not cover laws that regulate AI.

Cybercrime laws or other criminal laws related to the digital sphere are mostly limited to illegal acts that are clearly prescribed. Illegal access to a computer system,¹⁴⁶ illegal seizure of computer data,¹⁴⁷ illegal intrusion into a computer system or computer data,¹⁴⁸ the circulation of means designed to commit cybercrime,¹⁴⁹ and the falsification of computer data¹⁵⁰ are all criminal acts under the Criminal Code of the Republic of Azerbaijan.

The main law concerning digital rights of citizens is the law of the Republic of Azerbaijan 'On information, informatization and information protection' (hereafter, the Data Protection Law).¹⁵¹ The Law defines the bases of state policy in the legal regime of information resources, and the fields of the creation and registration of internet information resources, the dissemination of information in internet information resources or information-telecommunication networks, the prevention of placement of information prohibited in internet information resources and responsibility for their dissemination. In addition, according to the Law 'On access to

¹⁴⁶ Article 271 of the Criminal Code of the Republic of Azerbaijan.

¹⁴⁷ Article 272 of the Criminal Code of the Republic of Azerbaijan.

¹⁴⁸ Article 273 of the Criminal Code of the Republic of Azerbaijan.

¹⁴⁹ Article 273-1 of the Criminal Code of the Republic of Azerbaijan.

¹⁵⁰ Article 273-2 of the Criminal Code of the Republic of Azerbaijan.

¹⁵¹ Dated April 3, 1998, see <http://www.e-qanun.az/framework/3525>.

Information', personal information is a collection of information about personal and family life.¹⁵² Information on personal life, access to which is restricted, is as follows: information reflecting political views, religious beliefs, convictions, information on ethnic origin or racial affiliation; information collected in the course of criminal or other offences, information about sexual life; information on various aspects of family life.¹⁵³ Dissemination or illegal use of such information without the consent of the person is subject to legal liability.¹⁵⁴ Committing slander,¹⁵⁵ insult,¹⁵⁶ and defamation or insult using fake usernames, profiles or accounts on Internet information resources¹⁵⁷ can lead to criminal liability under the Criminal Code of the Republic of Azerbaijan.

There are no restrictions on the operation of social networks in the Republic of Azerbaijan and citizens do not need the consent of authorities in advance for posting anything on social media.

Although in different laws of the Republic of Azerbaijan there are defined principles of information use and modes of access of both government bodies and citizens to that information, in practice, citizens face violations of these laws and their digital rights.¹⁵⁸

One of the main principles of access to information according to Article 6.1.10 of the Law on Access to Information, is that the restriction on access to information should be proportionate to the cause for this restriction. Article 5 of the Law on Freedom of Information defines the legitimacy of the search, acquisition, use, dissemination and protection of information, the protection of the confidentiality of an individual's private and family life and the security of the individual, society and the state as the basic principles of freedom of information.

According to the Article 13-2 of the Data Protection Law, the owner of the internet information resource and its domain name or the user of the information-telecommunication network must not allow in that information resource the placement of information on the promotion of violence and religious extremism, forcible seizure or retention of power, organisation of mass riots, information on propaganda and the financing of terrorism, information constituting a state secret, information on pornography, information of an insulting or defamatory nature, information that violates the inviolability of private life, information that infringes

¹⁵² Article 38 of the Law On Access to Information, 30 September 2005.

¹⁵³ Article 38 of the Law On Access to Information.

¹⁵⁴ Article 38 of the Law On Access to Information.

¹⁵⁵ Article 147 of the Criminal Code of the Republic of Azerbaijan.

¹⁵⁶ Article 148 of the Criminal Code of the Republic of Azerbaijan.

¹⁵⁷ Article 148-1 of the Criminal Code of the Republic of Azerbaijan.

¹⁵⁸ See for example, <https://freedomhouse.org/country/azerbaijan/freedom-net/2021>.

intellectual property rights and other information prohibited by the laws of the Republic of Azerbaijan. According the Article 13-3 of the Data Protection Law, the relevant executive authority shall notify the owner of the internet information resource and its domain name and the host provider in writing if it directly discovers cases of placement of prohibited information in the internet information resource or identifies it on the basis of substantiated information received from individuals, legal entities or government agencies. If the prohibited information is not removed from the internet information resource within eight hours from the date of notification, the relevant executive authority shall apply to the district or city court at the location of the body to restrict access to the internet information resource. In urgent cases when the legally protected interests of the state and society are threatened, or there is a real threat to the life and health of people, access to the internet information resource is temporarily restricted on the basis of the decision of the relevant executive authority.¹⁵⁹

If the relevant executive authority determines the placement of information in the internet information resource, the dissemination of which is prohibited in accordance with the Law of the Republic of Azerbaijan ‘On Information, Informatization and Information Protection’, it applies to the court to restrict access to the internet information resource.¹⁶⁰

During the military conflict in Nagorno-Karabakh, internet access was restricted by blocking social media platforms and ‘bandwidth throttling’ of the internet.¹⁶¹

There is no dedicated law on AI in Azerbaijan or data available on the use of AI systems.

Standard 2: The state creates conditions for the enjoyment of digital rights

The internet is free for everyone to use; however, the state does not have a specific guarantee in law. Citizens have the right to take court action if internet providers discriminatively refuse to service a particular person or entity. In terms of other violations of different aspects of digital rights, people can remedy the violations with the relevant state body in an administrative manner or through the courts.

The digital literacy of the population as a whole is rather low but the government takes certain measures to address this by preparing and sharing short videos on TV and online and by engaging the assistance of volunteers.

¹⁵⁹ Article 13-3 of the Law ‘On information, informatization and information protection’.

¹⁶⁰ Article 355-20.1 of the Civil Procedural Code of the Republic of Azerbaijan.

¹⁶¹ Freedom House, Freedom on the Net 2021, <https://freedomhouse.org/country/azerbaijan/freedom-net/2021>

When it comes to digital rights related to state policies and strategic documents, the state has still not developed an inclusive process of formulation and adoption that includes all stakeholders, including civil society.

The state uses digital technology to engage with its citizens. The main e-government portal¹⁶² is where most government agencies provide numerous services electronically - using an ASAN signature or electronic signature systems. For example, CSOs also use this system for various purposes, including for some online reports.

Specific recommendations under Area 11:

- The adoption of a policy or regulations to encourage and enable digital tools, and e-democracy; and
- The adopting of laws or regulations on conducting human rights due diligence, including impact assessments and providing transparency into the design, development and deployment of digital technologies and engaging in meaningful consultation with CSOs and potentially-affected groups before and after deploying digital technologies.

¹⁶² Decree of the President of the Republic of Azerbaijan dated 5 February 2013 on the approval of the 'Regulations on the e-government portal' and measures to expand e-services.

IV. KEY PRIORITIES

CSOs still operate in a difficult environment in Azerbaijan due to restricted foreign funding, heavy reporting obligations, high penalties and other challenges stemming from both legislation and practice. These issues shape the key priorities which include improving the legislation on registration and operation of CSOs, increasing the capacity of CSOs as well as ensuring their efficient participation in the decision-making process.

CSOs have the potential to contribute to the process of democratisation, the rebuilding of Nagorno-Karabakh, legal and economic reforms, 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 should at least: (i) simplify the procedure for registration of CSOs; (ii) simplify access of CSOs to foreign funding; (iii) introduce the possibility to obtain excerpts from the state registry online; (iv) authorise CSO events in regions; (v) reduce the reporting burden on CSOs; and (vi) ensure closer consultation with CSOs.

This report identifies a total of 38 recommendations across 11 areas. The priority recommendations are listed below. They all target the government or National Assembly (in cases in which legislative amendments are needed):

1. Simplify the registration procedure for CSOs by reducing timelines and eliminating subjective treatment by the MoJ;
2. Ensure equal treatment of CSOs compared to businesses during their registration process and operation;
3. Simplify reporting obligations on CSOs depending on their size and turnover;
4. Abolish the informal requirement to obtain permission to hold events in the regions;
5. Simplify the registration of grants and donations (for example, eliminate subjectivity on decisions for registration, digitalize the process so it can be more easily accessible and faster);
6. Abolish the requirement to register service contracts;
7. Eliminate the need to report on small donations (for example, 200 AZN per donor per year);
8. Ensure that consultations with CSOs are conducted at the Cabinet of Ministers, particularly on decisions affecting CSOs;

9. Provide foreigners and stateless persons with the right to make donations to CSOs;
10. 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; and
11. Obligations on 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, an annual turnover exceeding 50,000 AZN (approximately 27,900 EUR).

V. METHODOLOGY

The CSO Meter supports regular and consistent monitoring of the environment in which CSOs operate in the Eastern Partnership (EaP) countries. It consists of a set of standards and indicators in 11 different areas to measure both law and practice. It is based on international standards and best practices. The CSO Meter was developed by a core group of experts from ECNL and local partners from the six EaP countries.

ECNL worked with the methodology experts RESIS since 2020 on adapting the CSO Meter methodology package to enable both qualitative and quantitative comparison of the different areas of the enabling environment across the EaP countries and years. The proposal for the model was consulted and tested with the extended regional CSO Meter Hub via email and online events. With the updated comparison model, we aim to: (i) assess the environment for civil society in each of the 11 areas; (ii) enable tracking of developments/progress throughout the years per country; and (iii) compare the environments regionally.

The country partners, together with other CSOs part of the CSO Meter Hub, conducted the monitoring process and drafted the narrative country report. They also established Advisory Boards in each country, composed of expert representatives of key local stakeholders. The members of the boards have two main tasks: to review the narrative reports and assign scores for every Standard based on the narrative reports.

The current report covers the period of September 2020 – December 2021.

Monitoring process

The monitoring process was conducted by collecting expert opinions on CSOs, studying the experiences of individual CSOs in this field, conducting focus groups, interviews and following the media, social networks, and analysing laws and draft laws.

The report has been prepared by the local partner of the project in Azerbaijan – MG Consulting, following a joint methodology for all six EaP countries. The authors conducted eight interviews, two focus groups (one for Baku-based CSOs and one for regional CSOs – in total, 46 CSOs). Footnotes referring to the focus groups are coded as ‘Focus Group’.

Important developments for civil society that occurred between the period of data collection and finalization of the report were included in the executive summary of the report. However, these developments were not considered when assigning scores.

The draft country narrative report was reviewed by the Advisory Board members in Azerbaijan via online communication and at the in-person meetings on 19 January 2022 and 22-24 February 2022. Based on the recommendations of the Advisory Board members, the findings and recommendations were further revised and finalised.

Scoring process

The Advisory Board members in Azerbaijan assessed each **Standard of the 11 areas of the CSO Meter tool in Legislation and Practice**. For the scoring procedure a 7-point scale is used. The extreme values of the scale are conceived as the extreme/ideal situations or environment. For example, (1) is an extremely unfavourable (authoritarian) environment, while (7) is an extremely favourable (ideal democratic) environment for CSOs. For more information on the CSO Meter tool, the scoring process and calculation please visit <https://csometer.info/>. The presented scores in this 2021 report will serve as baseline scores and, in the coming years, progress will be measured against them.

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