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2 March 2015

Dear Members of the OGP Steering Committee,

Letter of Concern

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

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

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

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

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

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

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

Background

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

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

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

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

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

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

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

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

Government Control over Registration and Operations of NGOs

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

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

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

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

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

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

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

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

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

Government Control over NGO Finances

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

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

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

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

Harassment of Civil Society

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

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

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

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

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

Criminal and Tax Cases

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

Consultation Failures

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

Recommendations

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

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

¹¹ Available at:

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

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

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

Yours sincerely,

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Participation**



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