

An assessment report on the implementation of OGP recommendations for the Government of Azerbaijan



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On June 28, 2017, the OGP Steering Committee (SC) resolved to extend Azerbaijan's inactivity status for a period of one year, due to unresolved constraints on the civic space for civil society organizations.¹ The Steering Committee further mandated the Criteria and Standards Subcommittee (C&S), in consultation with civil society and government, to develop an updated set of recommendations to improve the unresolved issues by September 15, 2017.

Ahead of the Steering Committee decision, the C&S and Support Unit drafted a report with the support of third party analysis, external reports, mission reports and interviews with key stakeholders in Azerbaijan. The report summarized the Azerbaijan Response Policy process and assesses how the Government of Azerbaijan has addressed the original recommendations put forward by C&S as part of the 2016 inactivity decision. The C&S recommendation highlighted that noticeable efforts have been made in order to address the recommendations under the response policy, particularly those regarding OGP processes. However, it also concluded that there remain unresolved constraints on the operating environment for civil society organizations, which, through the updated recommendations, the C&S hopes will help remedy the concerns outlined.

The process to develop updated recommendations to address the unresolved constraints on the operating environment for civil society organizations included two rounds of consultations to enable all stakeholders to provide input. This included a three-week period (July 24 to August 11) where several stakeholders provided input and proposals for C&S to draft an updated set of recommendations, and a two-week period (August 29 - September 13) for a round of public comments on the draft recommendations before being finalized and endorsed by the C&S.

¹ <https://www.opengovpartnership.org/about/news-and-events/azerbaijan-maintain-its-inactive-status-open-government-partnership>

The recommendations put forward only address the unresolved constraints on the operating environment for civil society organizations identified in the report, namely the CSO registration process and access to funding by CSOs. The recommendations do not include proposals received regarding the OGP process and the implementation or development of the current, or future, National Action Plan. Furthermore, following on the agreed upon resolution, they do not include proposals related to alleged politically motivated legal proceedings against civil society activists and journalists.

The Government of Azerbaijan had one year, beginning on September 25, 2017 ends September 25, 2018 to address these recommendations in order to regain active status in the Partnership.

An independent assessment report was prepared by Public Initiatives Center, Azerbaijan, in the framework of the project on “Civil society for combating corruption and promotion open governance in the EaP countries” by cooperation EaP CSF with support to the activities of the Eastern Partnership Civil Society Forum II with the European Commission. Publications funded from Forum’s regranting.

This report consist of 2 parts: an assessment of each recommendation on the legal and practical context (presented as a compratable table format) and result of survey conducted via SurveyMonkey tool among the 51 members of National Platform of Civil Society Forum (CSF) of the Eastern Partnership Program and selected leaders, lawyers and regional representative of International Organization (presented as an appendix).

This report have been prepared by Gubad Ibadoghlu, chair of Public Inititaives Center. For future questions and comments, please contact via email: gubad.ibadoghlu@gmail.com

'This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of Public Initiatives Center and do not necessarily reflect the views of the European Union.

October 2018

Number of recommendation	1. Simplify registration process for Civil Society Organizations (CSOs)	
	Law	Practice
<p>Recommendation 1.1 <i>1.1 Simplify the procedures for establishing and registering CSOs in Azerbaijan and remove discretionary actions that limit their ability to operate. Some concrete proposals to do this are:</i></p> <ul style="list-style-type: none"> ● <i>Enable the online registration of CSOs, including the ability to amend registration documents.</i> ● <i>Fulfill the registration of CSOs within set time limits.</i> ● <i>Registration of CSOs should only be denied on clear grounds that are legitimate under international law.</i> 	<p>1.The Registration Law² and the NGO Law are the primary laws regulating registration procedures for NGOs.</p> <p>2.The Registration Law provides that registration is carried out by the Head Office for Registration and Notarization within the Ministry of Justice (MoJ) registered NGOs.</p> <p>3.The Registration Law establishes a timeframe for registration of NGOs of up to 40 working days. The Registration Law allows for the extension of the deadline for an additional 30 days in exceptional cases when the MoJ identifies the need for additional review of documents. In contrary, the Registration Law defines a two-day registration period for commercial entities. The registration of NGOs and commercial entities are both regulated under a single Registration Law and the application for registration of both types of entities comprises the same documents under Article 5 of that Law.</p>	<p>1. The responsible state authority, namely MoJ imposed practical obstacles to the possibility register of NGOs. Registration procedures are problematic, precisely due to the exercise of government discretion in denying applications. Many groups applying for registration are denied such registration. In many instances, the shortcomings identified in letters of rejection could have been corrected during the process of the MoJ’s consideration of the application and should not have been considered valid reasons for rejecting registration. In the Ramazanova and Others v. Azerbaijan case, for example, the MoJ denied the applicants’ documents for reasons such as not including a provision on the territorial area of the association's activity.</p> <p>2. The registration process is burdensome and time-consuming. There are no clear and justifiable grounds for the denial of registration. The application is rejected in</p>

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http://www.mfa.gov.ir/uploads/%D9%82%D8%A7%D9%86%D9%88%D9%86_%D8%AB%D8%A8%D8%AA_%D8%A8%D8%B1%D8%A7%DB%8C_%D8%A7%D8%B4%D8%AE%D8%A7%D8%B5_%D8%AD%D9%82%D9%88%D9%82%DB%8C.pdf

	<p>4. The Registration Law provides that “if within the term established under this article, no refusal will be submitted on state registration, these structures shall be deemed as registered by the State. In this case, the relevant executive authority of the Republic of Azerbaijan, no later than within 10 days, shall issue the certificate on state registration to the applicant.” However, we are not aware of any instances when this provision has been applied in practice.</p> <p>5. A legal entity (including an NGO), representative office or an affiliate of a foreign legal entity must register changes to its charter and other founding documents that are already registered with the MoJ. To register a change, an NGO must file a written application with the MoJ, within 40 days from the moment the change is made. If the change is in compliance with the law, the MoJ shall register the change within 5 days. The changes become effective from the moment they are registered.</p> <p>6. State registration of NGOs may be rejected only if: (1) there is another NGO registered under the same name; (2) the documents submitted for state registration are inconsistent with the Constitution, the</p>	<p>case of minor deficiencies. The legal provision allowing the MoJ to prolong the periods for consideration of documents for up to 30 days, as well as the fact that such delays are implemented “without showing any grounds.”</p> <p>3. There is no practice of an independent and impartial judicial review within a reasonable time in case of rejection of the CSO’s registration application. Complaints regarding a decision to reject state registration of an NGO may be lodged in court.</p> <p>4. Certain provisions of the law about the registration procedure are not always properly implemented or subject to broad interpretation. For example, the MoJ occasionally misses the timelines for decision making in regards to registration of an NGO. An important ECtHR case, <i>Ramazanova and Others v. Azerbaijan</i>, concerned a complaint submitted by four Azerbaijanis whose requests to register an association was repeatedly deemed technically insufficient for varying reasons and the decision on registration was delayed beyond the time frames established</p>
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	<p>Registration Law, or other laws of Azerbaijan, (3) the NGO's goals, duties or activities are inconsistent with Azerbaijani law, or (4) the registration documents contain false information.</p> <p>7. On 26 January 2017, the Cabinet of Ministers issued new regulations for establishing a "Single Window" mechanism to streamline the grant registration process. According to the new procedures, obtaining grant registration processes for multiple agencies were merged.</p> <p>8. On 17 October 2017, President Aliyev signed changes to the These changes have significantly simplified the registration of legal entities with foreign investment. These entities can undergo the registration process electronically within 2 days. Unfortunately, there were no changes as to the registration of non-commercial entities.</p>	<p>in the Registration Law. Multiple appeals to Azerbaijani courts were unsuccessful.</p> <p>4. The difference in processing registration of commercial and non-commercial legal entities raises questions as there is no legal rationale to justify it.</p> <p>5. The new procedures of "Single Window" mechanism was not implemented yet. Despite the fact that 1 year and 9 months have passed since the changes made in the law on the establishment of a new online shop service platform in January 2017, no progress has been carried out in this direction. The Ministry of Justice responsible for this matter has not declared any timeline in regard to the development of an on-line platform yet. Therefore, there is not any expectation on the launch of such platform in the near future.</p>
<p><i>References:</i></p>	<p>1.The U.S. State Department's Country Reports on Human Rights Practices 2017 notes: A number of legal provisions allow the government to regulate the activities of political parties, religious groups, businesses, and NGOs, including requiring NGOs to register with the Ministry of Justice if they seek "legal personality" status. Although the law requires the government to act on NGO registration applications within 30 days of receipt (or within an additional 30 days, if further investigation is required), vague, onerous, and nontransparent registration procedures continued to result in long delays that limited citizens' right to</p>	

	<p>associate. Other laws restrict freedom of association, for example, by requiring deputy heads of NGO branches to be citizens if the branch head is a foreigner. Authorities routinely rejected the registration applications of NGOs whose names contained the words “human rights,” “democracy,” “institute,” and “society.” Laws affecting grants and donations imposed a de facto prohibition on NGOs receiving cash donations and made it nearly impossible for them to receive anonymous donations or to solicit contributions from the public.³</p> <p>2. According to the Civic Freedom Monitor: Azerbaijan, prepared by ICNL, dated 21 March 2018⁴, registration still remains a challenge for NGOs. It is very difficult to register as either a domestic or foreign NGO in Azerbaijan. The Government of Azerbaijan has lost at least five cases before the European Court of Human Rights, which has found denials of registration to violate the freedom of association.</p>
<p><i>Summary</i></p>	<p>The current legislation grants the Ministry of Justice a wide discretion in denying NGO applications for state registration, especially in terms of human rights NGOs. This has led to a huge number of NGOs denied of registration and acting as unregistered groups in Azerbaijan. The Ministry of Justice registers only organizations that receive support or letter of assurance from central and local executive authorities. This document, which is not envisaged by law, plays an essential role in the registration process. For instance, youth organizations should receive support or letter of assurance from the Ministry of Youth and Sport, the organizations promoting culture from the Ministry of Culture, organizations dealing with ecological issues from the Ministry of Ecology and Natural Resources, and organizations that desire to operate in the regions should receive letter of assurance from Local Executive Committees and submit it to the Ministry of Justice along with the registration documents. Thus, the recent years, an average of 120-130 organizations are registered</p>

³ <https://www.state.gov/documents/organization/277385.pdf>

⁴ <http://www.icnl.org/research/monitor/azerbaijan.html>

	<p>annually. By October 2018, Azerbaijan’s 4289 NGOs for a 9,8 million inhabitants cannot effectively represent the population’s civic initiatives⁵. While there are 221,000 formally registered non-commercial organizations in Russia, the country with the largest population covered by this edition of the Index, there are fewer than 5,000 registered organizations in Montenegro, the country with the smallest population.⁶</p> <p>There has been neither legal nor practical change in the direction of simplifying the registration process over the last year. This has also been confirmed by the results of the survey conducted among 51 leading NGOs. It should be noted that about 86, 27 percent of survey respondents answered” No” the question “Has the simplify the procedures for establishing and registering and have been removed the discretionary actions that limit their ability to operate of CSOs in Azerbaijan?” and 90,2 percent of survey respondents answered” No” the question “Is the deny of the registration of CSOs on clear grounds that are legitimate under international law?”.</p>		
<p><i>1.2 Eliminate requirement for CSOs to obtain an extract (registration certificate) every two years. Registration should be a one-time procedure; CSOs should not have to periodically re-register, or even re-register under a newly enacted law.</i></p>	<table border="1"> <tr> <td data-bbox="590 792 1262 1255"> <p>1. According to the amendments to the Law on “State Registration and State Registry of Legal Entities” of 17 December 2013 (<i>Article 9. Registration of changed, introduced into charter documents and following change of registered facts. Article 9.1. Each change to the charter documentation of legal entities, representations and braches of foreign legal entity, as well as each following change of registered facts shall be subject to registration. Article 9.2. For registration of</i></p> </td> <td data-bbox="1262 792 1913 1255"> <p>1. NGOs are obliged to register every single change to founding documents or factual prerequisites with the Ministry of Justice and obtain an extract of a registration certificate to continue operation. It is prohibited to operate without such an extract. A failure to comply with the regulation leads to administrative liability. NGOs are forbidden to operate by non-registered facts or information. Only upon</p> </td> </tr> </table>	<p>1. According to the amendments to the Law on “State Registration and State Registry of Legal Entities” of 17 December 2013 (<i>Article 9. Registration of changed, introduced into charter documents and following change of registered facts. Article 9.1. Each change to the charter documentation of legal entities, representations and braches of foreign legal entity, as well as each following change of registered facts shall be subject to registration. Article 9.2. For registration of</i></p>	<p>1. NGOs are obliged to register every single change to founding documents or factual prerequisites with the Ministry of Justice and obtain an extract of a registration certificate to continue operation. It is prohibited to operate without such an extract. A failure to comply with the regulation leads to administrative liability. NGOs are forbidden to operate by non-registered facts or information. Only upon</p>
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⁵ https://www.usaid.gov/sites/default/files/documents/1863/2010complete_document.pdf

⁶ http://actngo.info/wp-content/uploads/2018/10/CSOSI-2017-Regional-Report.pdf?fbclid=IwAR1eqpxSZmjdTmfjjOCRA2jSPthTvwVW09Q11npKOMltROtqGs_WTup6mQa0

	<p><i>change no later than within 40 days from the date of change, it is necessary to apply with application to the relevant executive authority of the Azerbaijan Republic. The application shall indicate the change and submit documents, verifying such change. In the event of compliance of the change with requirements of Article 11.3 of this Law, relevant executive authority shall register such change within 5 days.</i>), all NGOs in Azerbaijan are required to register all changes to the founding documents or prerequisites with the Ministry of Justice (MoJ) and to obtain an extract of their registration certificate from the in order to be able as legal entity. The law stipulates that any changes such as change of address, change of number of members, change of chairperson, change of phone numbers NGOs shall be presented for registration. NGOs should submit all documentation for registration of changes in their founding documents no later than 40 days of those changes in the founding documents or facts. Registration departments shall register the changes in 5 days if no deficiencies identified. A failure to do so leads to administrative penalty.</p>	<p>confirmation of registration of such changes, NGOs can freely enjoy the benefits of its legal entity status, such as the use of bank accounts or signing grant agreements. The several amendments have already severely hampered the effective operation of some of the NGOs.</p> <p>2. If the authorities reveal any of such unregistered changes (e.g., during inspections, review of the application of registration of other changes), NGOs will automatically receive a monetary penalty without an opportunity to rectify the shortcomings. The new regulation has a punitive aspect rather than the one to promote regulatory compliance with the NGO law.</p> <p>3. Such a new rule creates a complicated procedure for NGOs to follow and is not compatible with the self-governing nature of NGOs. In practice, it results in NGOs having to apply for registration of various facts recorded during registration, such as many members, actual address and other factual changes multiple times.</p>
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<p><i>Reference:</i></p>	<p>Public Association for Assistance to Free Economy (PAAFE) has been denied registration of its changes 7 times during 8 months in 2014 under arguments such as the application being wrongly signed by a founder and not a chairperson who has been given authorization in the documents enclosed to the application.⁷ PAAFE appealed such denials to the domestic courts, which further upheld the position of MoJ. In that way, PAAFE has been prevented from acting as a legal entity, including signing grant agreements, receiving grants or conduct bank operations for over 2 years now as it has not been able to obtain an extract of a registration certificate from MoJ since then.⁸</p>	
<p><i>Summary</i></p>	<p>At the moment, the number of organizations that haven't received an extract from the register by the Ministry of Justice is higher than the number of registered ones. In case of issuing this document, the Ministry's exclusive jurisdiction discourages independent NGOs from applying for receipts on a timely basis, since they are afraid of an official rejection. On the other hand, inactive NGOs are not interested in acquiring this document. Regardless of such obstacles, this requirement is still valid given to previous terms of conditions. Those organizations that receive grants from the Council on State Support to Non-Governmental Organizations mostly seek to obtain this document. The reason is those organizations that didn't receive the extract from register from the Ministry of Justice are unable to pass technical inspection the calls for grants announced by the Council on State Support to Non-Governmental Organizations.</p>	
<p><i>1.3 Revise the Code of Administrative Offences to reduce the number of penalties and prevent excessive harshness for CSOs.</i></p>	<p>1. According to Article 432.1 of the Code of Administrative Offenses, a failure to submit information about grants on time in the form established in the law by legal or natural persons or representatives and branches of</p>	<p>Last four years have witnessed the gradual increase of responsibilities for NGOs by the authorities. Amendments to the laws regulating NGO registration and their activities, including grant and donation</p>

⁷ <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>

⁸ <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>

	<p>legal entities registered in Azerbaijan is subjected to administrative penalties of up to 2000 AZN (\$1,176) for natural persons, 1500-2500 AZN (\$ 882-1,430) for persons holding official position and 5000-7000 AZN (\$ 882-1,430) for persons holding official position and 5000-7000 AZN (\$2,860-4,118) for legal entities.</p> <p>2. According to Article 582 of the Code of Administrative Offenses, branches and representatives of foreign NGOs operation in Azerbaijan without state registration leads to an administrative penalty in the amount of 2000-3000 AZN (\$1,176- 1,764) for individuals and 5000-8000 AZN (\$ 2,941-4,705) for legal entities.</p> <p>3. Another amendment establishes a substantial administrative penalty for receiving grants or any other kind of financial assistance without grant agreements or grant decisions. Article 432.3 of the Code of Administrative Offenses provides for confiscation of all objects of material and financial assistance and an administrative penalty in the amount of 2500-5000 AZN</p>	<p>regulations were made, established overly huge administrative penalties for actions of NGOs not compliant with the new legal regulations. Furthermore, certain violations may also lead to suspension of NGO activities for one year upon a court decision by a request of the MoJ.</p> <p>All bank or any other operations on sums received as grants are banned unless the NGO registers such grant agreements with the Ministry of Justice. Legal entities violating this prohibition are subject to a penalty of 5000-8000 AZN (\$ 2,941-4,705). The law defines serious financial penalties for violation of provisions of NGO legislation, such as failure to adjust constituent documents of NGOs (including foreign NGOs) to local legislation, conducting any activity based on changes made to the constituent documents where such changes have not yet been registered, failure to register grant agreements, failure of NGOs to maintain registry of members, failure to conclude contracts with volunteers, etc. It is unclear when and why the maximum amount of these penalties</p>
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	<p>(\$1,430-2,860) for persons holding official positions and 8000-15000 AZN (\$4,570-8,570) for legal entities. Furthermore, Article 432.4 of the Code of Administrative Offenses establishes administrative penalty for banks in the amount of 2500-5000 AZN (\$1,430-2,860) for persons holding official positions and 5000-8000 AZN (\$ 2,941-4,705) for legal entities in case of carrying out any kind of bank operations or other operations without grant agreements or decisions not registered in accordance to the Law on Grants.</p> <p>4. Furthermore, according to changes to the Law on Grants and, receiving any financial or material aid without a grant contract (if not a donation) is punishable by the confiscation of the unregistered grant or assets from the recipient NGO. Besides, such NGOs will be subject to a fine of 8,000-15,000 AZN (\$4,570-8,570), and NGO managers will be subject to penalties of 2,500-5,000 AZN (\$1,430-2,860). These penalties apply to local NGOs as well as to representative and branch offices of foreign NGOs.</p>	<p>would be imposed. For example, the failure to register a grant agreement with the Ministry of Justice may be penalized in an amount ranging from 1000-2500 AZN; the margin is very broad and is applied in a discretionary manner.</p> <p>The law entrusts the Ministry of Justice with broad powers to supervise NGOs and to issue warning letters. According to the law, if an NGO receives more than two warnings within a year, the Ministry may initiate involuntary dissolution through the court.</p>
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	<p>5. New amendments to Article 579 of the Code of Administrative Offenses establish substantial administrative penalties for all NGOs operating in Azerbaijan without the registration of any kind of changes to their founding documents or subsequent changes after registration, without existence of a registry of members of the organization, without the signing of volunteer agreements with volunteers, without spending funds generated via entrepreneurial NGO activities, for carrying out activities not compatible with NGO's charter. Administrative penalties vary from 1000 AZN to 2000 AZN for persons holding official posts and from 500 AZN to 3000 AZN for legal entities.</p> <p>6. One of the latest amendments relates to studying of activities of NGOs and representative and branches of international NGOs in Azerbaijan. Article 580 of the Code of Administrative Offenses establishes up to 2000 AZN (\$1,176) administrative penalty for persons holding official posts and from 2500 AZN up to 3000 AZN for legal entities in case of occurrence of barriers for MoJ officials to conduct inspections into NGOs' activities. In</p>	
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	<p>practice, this means that such a law can lead administrative penalties for NGOs for a failure to introduce documents to MoJ or to organize a meeting with the MoJ officials for them to carry out inspections in the NGO's office. According to Article 582 of the Code of Administrative Offenses, representative and branch offices of foreign NGOs are subjected to administrative penalties in case of operation without registration in Azerbaijan. Administrative penalties amount to 1000 AZN-2000 AZN for physical persons, 2000-3000 AZN for persons holding official posts and 5000-8000 AZN for legal entities.</p> <p>7. Furthermore, NGOs and representative and branch offices of foreign NGOs can be suspended for one year by a court decision³⁵. Grounds for suspension of NGOs' activities for one year include the creation of problems in the situations of emergency, failure to eliminate violations identified by the authorities and in cases of violations of rights of the members carried out by the executive bodies of NGOs.</p>	
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<i>Reference</i>	Along the criminal prosecution of NGOs, a large number of domestic and foreign NGOs have been subjected to tax proceedings leading to heavy fines imposed under the domestic tax legislation. The tax investigations stem from same alleged failure of NGOs to register grants with the Ministry of Justice. At least 10 foreign and 17 domestic organizations were handed huge financial penalties by the tax authorities. ⁹	
<i>Summary</i>	The law defines harsh penalties for violation of provisions of NGO legislation, such as failure to adjust constituent documents of NGOs (including foreign NGOs) to local legislation, conducting any activity on the changes made to the constituent documents if such changes were not yet registered, failure to register grant agreements, failure of NGOs to maintain registry of members, and failure to conclude contracts with volunteers, etc. This has also been confirmed by the results of the survey conducted among 51 leading NGOs. It should be noted that about 88 percent of survey respondents answered “No” the question “Has the revise the Code of Administrative Offences to reduce the number of penalties and prevent excessive harshness for CSOs?”	
2. Simplify regulations to access funding		
	Law	Practice
<i>2.1 Introduce changes to limit the discretion to arbitrarily deny grant registration or, ideally, eliminate this procedure.</i>	Last time, on 11 January 2017 the Cabinet of Ministers of Azerbaijan made some changes to the Rules on Registration of Grant Agreements (Decisions) of the Republic of Azerbaijan. Overall, the changes aim to simplify the process, but have mostly technical nature. Below we provide a short summary of the changes:	To this date, a handful of organizations were able to register their grants funded by foreign donors. When making such a decision, an intimate involvement with, and loyalty to the government are taken as a key indicator. At the same time, an identity of a donor is also crucial during the decision-making process. For instance, the registered grant contracts

⁹ <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>

	<ol style="list-style-type: none"> 1. The deadline for submission of a grant registration application to the Ministry of Justice (MoJ) has been extended from 15 to 30 days. This change is a positive, as the previous deadline was too short for proper preparation of documents issued abroad, which includes obtaining them apostille, translation and mailing of originals. 2. The list of documents which a donor shall submit to MoJ has been shorted. Donors do not need to submit the following documents which were requested before: <ol style="list-style-type: none"> a. Proof of submission of annual financial report to the Ministry of Finances (MoF); b. Opinion of the Ministry of Finance; c. Copies of donor's registration documents with MoJ; d. Power of attorney. 3. There is no need to submit notarized copies of the translations. NGOs can translate these documents themselves, which may save them time and financial resources. 4. The grant agreements can be registered as service agreements, which exempts donors from additional registration with the MoF, if 	<p>are mainly the winners of the latest EU and UN competition, however, some of them have failed to register their grants. Furthermore, several agencies have had additional registration over previous contract with USAID. The grants of other donors, especially the NED, the EED were last registered in 2013. Therefore, some organizations continue their work secretly without registering their grants using the bank account of the third country or by cash financing. There are also some organizations, which act not as NGO, but partners on behalf of a new commercial organization with the status of a limited liability company. However, the number of this kind of organizations is very few. According to the results of the anonymous survey conducted among the 20 leading NGOs who participated in the consultation meeting held by the European Union on August 30, five of them informed that they had a registered grant contract, 4 had service contacts, whereas 7 have established limited liability companies.</p>
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	grant agreements envision provision of services and works.	
<i>Reference:</i>		
<i>Summary</i>	<p>As the legislation governing grants registration stands now, the multi-step complex registration procedure for grants and donors remains in place, and the government represented in the process by MoJ still has unlimited discretion to decide whether to register a grant or to deny such registration.</p> <p>This has also been confirmed by the results of the survey conducted among 51 leading NGOs. It should be noted that about 86 percent of survey respondents answered “No” the question “Has the law been amended to restrict the powers of the Ministry of Justice during the registration of grants?”.</p>	
<p>2.2 Introduce changes related to the obligation for foreign donors to obtain the right to provide grants. Some concrete proposals to do this are:</p> <ul style="list-style-type: none"> • Eliminate the necessity for foreign donors to obtain the right from the Government of Azerbaijan to provide each individual grant and service contract. 	<p>Last time, on 25 January 2017 the Cabinet of the Cabinet of Ministers made important changes to the donor registration rules in Azerbaijan. Below is a short summary of the changes:</p> <ul style="list-style-type: none"> - The ban on signing grant contracts with a foreign donor that did not obtain the right to provide grants in Azerbaijan has been lifted. 	<p>While the regulations for foreign donors have been relatively relatively simplified, however, there is not any record of data on those applied for registration. It is worth to note that only the European Union and the representation of Council of Europe in Azerbaijan conduct regular consultations with local civil society.</p>

<ul style="list-style-type: none"> ● <i>Eliminate the necessity for a foreign donor to have an agreement with the Ministry of Justice and register its representative office in Azerbaijan, in order to be a grantor.</i> ● <i>Exclude foreign donors that operate on the base of bilateral and multilateral agreements from the obligation to obtain the right to provide grants.</i> 	<ul style="list-style-type: none"> - The donor registration and grant registration processes are merged into one process. - The opinion of the Ministry of Finances about the financial economic expediency of the grant shall not be requested by the Ministry of Justice (MoJ) from the donor or recipient within a grant registration application. Donor does not have to obtain this opinion in advance. - MoJ has only 1 working day to check the grant/donor registration package and inform the donor/applicant if it is complete. - MoJ shall send documents to the MoF for its opinion, including by electronic submission. - MoF now has 7 days to provide its opinion and not 15 as before. - MoF can extend this period for 7 days not and 15 days as before. - Donor's registration documents are no more required as part of the grant registration package. - Notarized translation of the documents is not required. 	
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	- If MoJ's opinion on the grant is negative, the donor or recipient has to be informed within 3 working days.	
<i>Summary</i>	According to the Law, NGOs in Azerbaijan can receive foreign funding only from foreign donors that have an office in Azerbaijan, signed an agreement with MoJ and have Ministry of Finance's opinion on financial-economic expediency of a grant. But there is no progress on this matter. This has also been confirmed by the results of the survey conducted among 50 leading NGOs. It should be noted that about 86,27 percent of survey respondents answered "No" the question "Are changes in requirements related to the obligation for foreign donors to obtain the right to provide grants and simplification of procedures for using funding opportunities?". Additionally, 90.2 percent of survey respondents answered "No" the question "Has been eliminated the necessity for foreign donors to obtain the right from the Government of Azerbaijan to provide each individual grant and service contract?" and 91,67 per cent survey respondents answered "No" the question of "Has been excluded foreign donors that operate on the base of bilateral and multilateral agreements from the obligation to obtain the right to provide grants?". Besides, 95,92 per cent survey respondents answered "No" the question of "Has been eliminated the necessity for a foreign donor to have an agreement with the Ministry of Justice and register its representative office in Azerbaijan, in order to be a grantor?"	
<i>2.3 Eliminate the need to obtain the opinion on 'financial-economic expediency' in order to issue or receive a foreign grant.</i>	According to the amendment of the Cabinet of Ministers on January 25, 2017, a grant recipient (and not only a grantor) can submit documents 'financial-economic expediency' in order to issue or receive a foreign grant to the Ministry of Justice (MoJ) has one working	However, these changes do not eliminate government discretion on whether to approve or deny registration of a grant. These changes also do not eliminate the burdensome two-stage process of registering a grant, as well as the need to obtain the

	<p>day to check the grant/grantor registration package and inform the grantor or recipient (whichever is the applicant) if it is complete; if the package is complete, the MoJ shall send it to the MoF to obtain an opinion on the financial – economic expediency of the grant agreement.</p> <p>The Ministry of Finance (MoF) now has seven calendar days from the day it receives the package from the MoJ to provide its opinion (instead of 15 days), and the MoF can extend this period for an additional seven calendar days (instead of 15 days as before);</p> <p>The grantor’s registration documents are no longer required as part of the registration procedure. A notarized translation of the documents is not required and if the MoF’s opinion on the grant is negative, the MoJ must inform the grantor or recipient (whichever is the applicant) within 3 working days from receipt of the MoF’s opinion.</p>	<p>opinion on ‘financial-economic expediency’ in order to issue or receive a foreign grant.</p>
<p><i>Summary</i></p>	<p>Despite some of the improvements above, the government is still yet to dismantle the overall complex and burdensome legal environment for NGOs in the country. The last changes, dated on January 25, 2017, do not eliminate the need to obtain the opinion on ‘financial-economic expediency’ in order to issue or receive a foreign grant. This has also been confirmed by the results of the survey conducted among 51 leading NGOs. It should be noted that about 87,76 percent of survey respondents answered” No” the question “Has</p>	

	<p>been eliminated the need to obtain the opinion on ‘financial-economic expediency’ in order to issue or receive a foreign grant?”.</p>	
<p><i>2.4 Simplify financial operations for NGOs. In particular, bank operations related to grants and donations should remain independent and not be subject to any state interference.</i></p>	<p>Banking transactions shall be carried out on the basis of notification confirming registration of agreements. With the new rules, banks in Azerbaijan were instructed not to carry out any bank operations regarding grant amounts in bank accounts of NGOs. NGOs willing to instruct banks to conduct operations have to provide a confirmation of the Ministry on the registration of a grant. Article 432.4 of the Code of Administrative Offenses establishes administrative penalty for banks in the amount of 2500-5000 AZN for persons holding official positions and 5000-8000 AZN for legal entities in case of carrying out any kind of bank operations or other operations without grant agreements or decisions not registered in accordance to the Law on Grants.</p>	<p>Azerbaijani NGOs have difficulty complying with reporting requirements. Many NGOs have limited capacity to comply with such requirements and are under threat of being punished for non-compliance.</p>
<p><i>Reference</i></p>	<p>The results of the survey conducted among 51 leading NGOs shown that 92,16 percent of survey respondents answered “ No” the question “Does simplify financial operations for NGOs. In particular, bank operations related to grants and donations should remain independent and not be subject to any state interference?”.</p>	

Additional comments:

During the reporting period (September 25, 2017- October 15, 2018), on October 31, 2017, the Parliament of Azerbaijan adopted changes to the Civil Procedure Code¹⁰ (hereinafter – “changes to the CPC”) which introduced new requirements for all entities, including non-governmental organizations (NGOs), to hire a licensed “advocate” (litigator, i.e., member of the Bar Collegium) to act on their behalf in domestic courts. NGOs are not allowed to choose their representatives in court at their discretion (other than their managers, staff, or advocates). NGOs are also not allowed to represent their beneficiaries in court. Justice in court will be denied to many NGOs, since they will not be able to afford expensive licensed advocates.

If an NGO’s management or staff do not have the capacity to represent their NGO in court efficiently (for example, if he/she is not a lawyer and/or experienced litigator), and if an NGO does not have funds to hire an advocate, the NGO cannot properly protect its rights. Most NGOs do not have lawyers on staff and many NGOs do not have funds to hire advocates. Prior to this law, they would have had an opportunity to engage a private lawyer or activists on a pro bono basis, for example, those working for a legal NGO, who might not necessarily possess an advocate’s license.

The amended CPC contradicts article 60 of the Constitution of the Republic of Azerbaijan, which states that it guarantees protection of rights and freedoms of everyone in court. If an NGO does not have qualified staff to efficiently represent it in court and if it does not have funds to hire an advocate, its rights in court might not be protected, in contradiction to the Constitution. The amended CPC also restricts another constitutional guarantee, under article 61, which states that everyone has the right to receive qualified legal assistance. An NGO without funds to hire an advocate is deprived of this right.

¹⁰ Law of the Republic of Azerbaijan on making changes to the Civil Procedure Code of the Republic of Azerbaijan, October 31, 2017, № 853-VQD, published in Azerbaijan newspaper on November 9, 2017. Available in Azerbaijani at <http://meclis.gov.az/?/az/law/1546/1>

Appendix # 1.

Brief information about survey

This survey conducted via survey monkey tool among the members of National Platform of Civil Society Forum (CSF) of the Eastern Partnership Program and selected leaders, lawyers and regional representative of International Organization.
(Answers 51 CSOs, the list of respondents is attached)

'This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of Public Initiatives Center and do not necessarily reflect the views of the European Union'.

Date and Duration

Possession of survey started in 11 September 2018 and ends 8 October 2018 and finalized during the 4 weeks.

Design

Questionnaires have been developed on the base of updated Recommendations for the Government of Azerbaijan made by Criteria and Standards Subcommittee of Steering Committee (SC) of OGP dated on September 25, 2017. The questions provided the respondent with a defined set of answers on the base of multiple choices.

Objective

An objective of this survey is to provide policy makers with data that can be used to better understand of the level of implementation of Recommendations produced by OGP SC for the Government of Azerbaijan on September 25, 2017.

Survey method of data collection

The survey has been created on "survey monkey tool" and mailed questionnaires to respondents. Response time was four weeks. Email invitations and reminders were sent regularly to 3 NGO Coalition:

- 1) National Platform of CSF
- 2) Government and Civil Society Dialogue Platform on Open Government Partnership Initiatives
- 3) EITI NGO Coalition
- 4) Media experts
- 5) International organizations

Despite the voluntary responds and stagnation period of CSOs in Azerbaijan, the rate of answers was higher than expected. Thus, more than half of members of the National Platform of CSF has been responded. The members of the national platform reached 63 organizations.

Also, nine members of Government and Civil Society Dialogue Platform on Open Government Partnership Initiatives were among the respondents.

Besides, eight members of EITI NGO Coalition, two media experts and two representatives of international organizations have been responded to the questions. Most of the prominent lawyers have been responded to the questions by email.

Results of Survey

- 1) Has the simplify the procedures for establishing and registering and have been removed the discretionary actions that limit their ability to operate of CSOs in Azerbaijan?

Answered: 51 Skipped: 0

Responses	respondents	
	in per cent	number
Yes	3,92	2
No	86.27	44
Partially	9.80	5

2) Is the deny of the registration of CSOs on clear grounds that are legitimate under international law?

Answered: 51 Skipped: 0

Responses	respondents	
	in per cent	number
Yes	1.96	1
No	90.20	46
Partially	7.84	4

3) Has the revise the Code of Administrative Offences to reduce the number of penalties and prevent excessive harshness for CSOs?

Answered: 50 Skipped: 1

Responses	respondents	
	in per cent	number
Yes	4.00	2
No	86.00	44
Partially	10.00	5

4) Has the law been amended to restrict the powers of the Ministry of Justice during the registration of grants?

Answered: 50 Skipped: 1

Responses	respondents	
	in per cent	number
Yes	0.00	0
No	86.00	43
Partially	14.00	7

5) Are changes in requirements related to the obligation for foreign donors to obtain the right to provide grants and simplification of procedures for using funding opportunities?

Answered: 50 Skipped: 0

Responses	respondents	
	in per cent	number
Yes	1.96	1
No	86.27	44
Partially	11.76	6

6) Has been eliminated the necessity for foreign donors to obtain the right from the Government of Azerbaijan to provide each individual grant and service contract?

Answered: 51 Skipped: 0

Responses	respondents
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	in per cent	number
Yes	0.00	0
No	90.20	46
Partially	9.80	5

- 7) Has been eliminated the necessity for a foreign donor to have an agreement with the Ministry of Justice and register its representative office in Azerbaijan, in order to be a grantor?

Answered: 49 Skipped: 2

Responses	respondents	
	in per cent	number
Yes	0.00	0
No	95.92	47
Partially	4.08	2

- 8) Has been excluded foreign donors that operate on the base of bilateral and multilateral agreements from the obligation to obtain the right to provide grants?

Answered: 48 Skipped: 3

Responses	respondents	
	in per cent	number
Yes	0.00	0

No	91.67	44
Partially	8.33	4

9) Has been eliminated the need to obtain the opinion on 'financial-economic expediency' in order to issue or receive a foreign grant?

Answered: 49 Skipped: 2

Responses	respondents	
	in per cent	number
Yes	0.00	0
No	87.76	43
Partially	12.24	6

10) Does simplify financial operations for NGOs. In particular, bank operations related to grants and donations should remain independent and not be subject to any state interference?

Answered: 50 Skipped: 0

Responses	respondents	
	in per cent	number
Yes	0.00	0
No	92.16	47
Partially	7.84	4