




ALTERNATIVE REPORT ON IMPLEMENTATION OF AZERBAIJAN'S NATIONAL ACTION PLAN FOR OPEN GOVERNMENT



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The Alternative Report was conducted by experts of the Public Association for Assistance to Free Economy on a voluntary basis.

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The government report on the implementation of the state budget for 2016 and the review of the Chamber of Accounts in this regard, and other related documents and data have been analyzed and evaluated in this Alternative Report.

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Summary

After joining the Open Government Partnership (OGP) in 2011, Azerbaijan adopted a National Action Plan twice. The second action plan for 2016-2018, the National Action Plan (NAP) for the promotion of Open Government, was adopted on April 27, 2016.

The Dialogue Platform, which was considered a dialogue mechanism between government and civil society, was established in 2016 in Azerbaijan. The Government - Civil Society Dialogue Platform for the promotion of Open Government was established by the State Council for the Support of NGOs under the President of Azerbaijan and with few exceptions the members of the Platform are mainly pro-government NGOs. Eight state agency representatives, two MPs and 31 NGO members are represented in the Platform. The criteria for selecting the NGOs is unclear.

There had been communication between the OGP Steering Committee and the Azerbaijani government for a year prior to the decision to give Azerbaijan membership in the OGP. The OGP Review Team issued a report on the implementation of OGP obligations in the country in May 2015. It has been specifically mentioned in the report that the registration process for NGOs is complicated, there are large-scale tax inspections of independent NGOs, prosecution and criminal cases against the leaders of civil society. They are also freezing NGO bank accounts with court decisions and the failure of consultations with civil society in developing and implementing OGP-related steps have been reflected in the report.¹

The Criteria and Standards Subcommittee of OGP made several recommendations regarding dialogue with the government of Azerbaijan in July 2015. According to those recommendations, the government was supposed to prepare a new Action Plan by December 30, 2015 and the implementation of the new Action Plan was supposed to start on January 1, 2016. In their resolution on Azerbaijan in February 2016, the Criteria and Standards subcommittee of OGP mentioned that the government of Azerbaijan has failed to fulfill the obligations put forward eight months earlier and has

¹ https://www.opengovpartnership.org/sites/default/files/Azerbaijan_Final-Report_Concerns-Filed_May2015.pdf

only partially fulfilled the obligations regarding their partnership with OGP Steering Committee.²

On May 4, 2016, a resolution designating Azerbaijan's status as inactive in the OGP was adopted at the meeting of the OGP Steering Committee in Cape Town, South Africa.³ It was mentioned in the decision that although the government of Azerbaijan had made several positive steps including adopting the Action Plan, the core issues of concern, raised by the Criteria and Standards subcommittee, remain unresolved, specifically regarding restrictions in the operating environment of Non-Governmental Organizations.

In late 2016 and early 2017 certain changes were made to the legislation regarding the issuance of grants and donations by foreign donors. Unfortunately, it is terribly significant that no decisive legal or practical steps have been made towards solving the problems of civil society during the past three years. On the contrary, after applying restrictions to the legislation, the operating environment for the civil society has been severely constrained.

Changes to the rules regarding "Registration of grant contracts (decisions)" of January 11, 2017 and "Foreign donors gaining the right to make grants in the territory of the Republic of Azerbaijan" of January 24, 2017 issued by the Cabinet of Ministers failed to eliminate the limitations imposed on NGO activities.

The latest changes to the rules for foreign donors to obtain the right to give grants on the territory of the Republic of Azerbaijan failed to eliminate two important problems: 1) again, foreign organizations do not have the right to give grants without getting donor status from the government; 2) again, even if foreign donors get donor status, they are obligated to receive an opinion from the Ministry of Finance about the expediency of the grants they have allocated.

The development process of the second NAP in Azerbaijan has been carried out without a Permanent Dialogue Mechanism, where government organizations and civil society are represented. Discussions on the second NAP have not been carried out in accordance with the pre-defined plan and their intensity and scope have been limited. The development and discussion of the plan have been conducted with the facilitation and organization of the Anti-Corruption Commission of the Republic of

² <http://www.opengovpartnership.org/sites/default/files/CS%20resolution%20on%20Azerbaijan.pdf>

³ <https://www.opengovpartnership.org/stories/media-briefing-azerbaijan-made-inactive-open-government-partnership>

Azerbaijan and the pro-government Anti-Corruption NGO Network. Overall, three round-table discussions have been carried out with the participation of civil society during the discussions period. An announcement and draft NAP was published on the website of the Commission while the plan was being discussed.

Although certain technical recommendations, such as adopting a single action plan and the two-year duration of the NAP, were adopted during the development of the NAP, recommendations related to financial transparency, the accountability of state-owned companies, and eliminating the conflict of interests in the governance were not included in the document.

Despite a certain novelty, the second NAP does not fully address OGP standards, because the obligations are merely listed without details and the points are very vague. However, as it can be seen from the leading experience of member countries, timeframes and goals for the implementation of each obligation must be well-defined.

The pressure on the civil society has not decreased and restrictions on freedom of speech have not declined in the country during the implementation stage of the Action Plan, on the contrary several additional restrictions have been put in place. First and foremost, one of the amendments the government proposed in the referendum for the changes to the constitution on September 26, 2016 further limited the already restricted access to information for media and civil society. Pressure against the civil society activists and their families significantly increased during the implementation of NAP, on the eve of the referendum of September 26, 2016 and after that. Examples of this are the two-year imprisonment of Mehman Huseynov, the blogger and chairman of the Institute for Reporter's Freedom and Safety; pressures against the previous political prisoner Bashir Suleymanli and his family; and the unjustified 30-days administrative arrest and later detention for four months of Aziz Orujov, the chairman of the Baku office of Kanal 13 internet television; and the recent abduction of the investigate journalist Afgan Mukhtarli from Tbilisi, Georgia to Azerbaijan. Later the local court issued a sentence of three months pre-trial detention of Afgan Mukhtarli.

In addition, blocking access to the websites of Radio Liberty, "Azadliq" newspaper, "Meydan TV", "Turan TV" and "Azerbaijan saati" in Azerbaijan also coincide with the implementation period of NAP.

1. Introduction

Azerbaijan was one of the first countries to announce their intention to join the Open Government Partnership Declaration. A year after the establishment of the initiative, in 2012, the government adopted two documents – the Action Plan for the promotion of Open Government for 2012-2015 and the National Anti-Corruption Action Plan for 2012-2015. The second action plan – the National Action Plan for the Promotion of Open Government in 2016-2018 was adopted on April 27, 2016.

One of the main ideas of the OGP is that governments must involve civil society in the development and implementation of their national action plans with regard to governments' transparency and accountability. In fact, the participation of countries in the partnership with no actual civil society or where civil society is not recognized as an equal partner is impossible. The main reasons for making Azerbaijan's status inactive in OGP in 2016 were restrictions on the activities of independent civil society groups in the country. Despite this, the government of Azerbaijan did not change their policy regarding civil society in the past period.

At the direction of the President of Azerbaijan a referendum for the changes and amendments to the constitution was held on September 26, 2016. The society could not debate any suggested changes or amendments during the pre-referendum period. The government has done its best to block any such attempt. 14 of the 29 amendments in the Referendum Act, which the Venice Commission had commented negatively on, were aimed at restricting human rights and fundamental freedoms.⁴

On March 10, 2017, Azerbaijan withdrew from another international transparency platform – Extractive Industries Transparency Initiative (EITI). The Board of EITI suspended the status of Azerbaijan for failure to fulfill the corrective actions for creating an enabling environment for civil society.⁵ Following this, Shahmar Movsumov, the representative of the Azerbaijani government at EITI and the Executive Director of SOFAR, stated that Azerbaijan, considering the decision unjust, had withdrawn from the Initiative.⁶

⁴ <http://opengovernment.az/en/blog/referendum-act-endangers-freedom-of-expression>

⁵ <https://eiti.org/BD/2017-15>

⁶ <https://eiti.org/news/azerbaijan-withdraws-from-eiti>

This Alternative Report has been compiled using research materials, analyses of official documents and information, and interviews. All interest groups, including several MPs and representatives of civil society have been interviewed, statements of government officials and amendments to the legislative acts have been analyzed. At the same time, OGP criteria and recommendations have been studied and an evaluation of how the Azerbaijani government has implemented them has been conducted.

2. Situation prior to the designation of Azerbaijan's status as inactive

The OGP Steering Committee and the government had been communicating for one year prior to the decision to designate Azerbaijan as inactive in the OGP in Cape Town, South Africa on May 4, 2016. Yet in May 2015, the OGP Review Team had prepared a report on the processes related to OGP in the country and an evaluation of the implementation of the Azerbaijani government's OGP obligations.⁷ It was particularly stressed in that report that a few steps that the Azerbaijani government took in 2013-2014 violated the obligations defined by the OGP Declaration and principles established by the response policy document of the subcommittee on Criteria and Standards. The OGP Review Team cited as its main concerns, changes to the legislation in 2013-2014, narrowing the opportunities for independent actions by non-commercial organizations and civil society institutions; prescribing firm restrictions on the use of both foreign and domestic financial resources, freedom of association and expression; and complicating the legislative basis for foreign donor organizations to get donor statuses and to gain the right to issue grants.

The complicated NGO registration process was also emphasized in the report. Large-scale tax investigations of independent NGOs, criminal cases and prosecutions against civil society leaders, frozen bank accounts of NGOs with court decisions and failure to consult civil society in development and implementation of OGP related steps are mentioned in the report. It should be stated that, when we speak about the changes and additions to the legislation that limit civil society activities we mean the 26 different restrictive amendments to the laws on "Nongovernmental organization (public unions and foundations)" adopted on December 17, 2013 and October 17, 2014. As a result of these changes, only after obtaining donor status and signing relevant agreements with the government to get the right to issue grants are foreign donor organizations allowed to cooperate with local NGOs.

⁷ http://www.opengovpartnership.org/sites/default/files/Azerbaijan_Final-Report_Concerns-Filed_May2015.pdf

In July 2015 the OGP Criteria and Standards Subcommittee made recommendations for dialogue with the government of Azerbaijan. According to these recommendations, the government was supposed to complete the new Action Plan by December 30, 2015 and start its implementation on January 1, 2016. At the same time, the recommendations suggested that the government should cooperate with the Independent Reporting Mechanism (IRM) so that an effective evaluation by independent evaluators could be possible. Starting deep consultations with civil society on the development of the new Action Plan, issuing grants to improve the environment for the work of NGOs, and making changes to the legislation regulating the work of NGOs were among the recommendations of the Subcommittee. The Criteria and Standards Subcommittee proposed that the government of Azerbaijan should institute these changes within a maximum of 6 months after starting the implementation of the new Action Plan (before June 2016). During the implementation of these steps, the government of Azerbaijan was supposed to cooperate with the OGP Steering Committee and get the necessary support from the Criteria and Standards Subcommittee when needed.

In February 2016 the OGP Criteria and Standards Committee adopted a resolution related to Azerbaijan. According to the document, the government of Azerbaijan only partially fulfilled the recommendation to cooperate with the OGP Steering Committee and failed to implement recommendations proposed eight months ago, particularly the completion and implementation of the new Action Plan before the proposed deadline, active cooperation with civil society in this process and improvement of the situation in which NGOs operate. Addressing the current situation, the Criteria and Standards Subcommittee sent a recommendation to OGP Steering Committee to make of Azerbaijan's status inactive.⁸

The government of Azerbaijan sent a justification letter reflecting its position about the implementation of the recommendations of the Criteria and Standards Committee to OGP Steering Committee in early May 2016. Information about several public meetings aimed at involving civil society to the development process of the new Action Plan, releasing of civil society activists and unfreezing of bank accounts of several NGOs were mentioned in the letter.

At a meeting in Cape Town, South Africa on May 4, 2016, the Steering Committee of OGP decided to make Azerbaijan's status in OGP inactive.⁹ According to the decision, although the government of Azerbaijan had made a few positive steps, including adoption of a new Action Plan, however the problems mentioned in the resolution

⁸ <http://www.opengovpartnership.org/sites/default/files/CS%20resolution%20on%20Azerbaijan.pdf>

⁹ <https://www.opengovpartnership.org/es/node/9206>

of Criteria and Standards Subcommittee about improving the operation environment of civil society were still unsolved. The decision gave the government of Azerbaijan one year to solve these problems. Full membership of the country was to be restored if the Criteria and Standards Subcommittee observed that the recommendations were being followed and a report was sent to the OGP Steering Committee during the following one year period. According to the decision, no additional recommendations would be addressed to the country during the period of inactive membership and Azerbaijan would have the opportunity to receive any necessary support from the relevant structures of the OGP for solving its problems.

3. Enabling environment for civil society after designation of Azerbaijan's status as inactive

Following the decision of the OGP Steering Committee about the designation of Azerbaijan's status as inactive on May 4, 2016, an EITI International Secretary mission visited Azerbaijan (July 3-9, 2016) to compile a validation assessment report. The main purpose of the report was to assess the implementation status of corrective actions adopted on April 15, 2015 at the 29th meeting of the International Board of Extractive Industries Transparency Initiative (EITI) in Brazzaville, Congo. The status of Azerbaijan in EITI was downgraded from full membership to "candidacy" at that meeting. According to the decision, the government could restore its full EITI membership status if the recommendations from the Corrective Actions Plan were fulfilled by April 2016. A part of the recommendations of the corrective actions was directly related to allowing the participation of civil society in EITI processes without barriers, the government of Azerbaijan was supposed to let the members of civil society work independently in accordance with the terms of Article 1.3 of EITI Standards (Participation of Civil Society) and the Civil Society Protocol during the allocated period. For this, the government was supposed to provide the right environment for civil society groups involved in EITI processes to get access to grants for organizing their work, register the newly signed grant contracts without barriers, freely organize activities related to extractive industries and express their thoughts without any fear of repression.

The status of compliance with the recommendations indicated in the corrective actions was evaluated based on the reviews of all stakeholders in the assessment report carried out in July-August 2016¹⁰. The next decision about the status of Azerbaijan in the initiative was made based on that report at the meeting of the EITI Board in

¹⁰ https://eiti.org/sites/default/files/documents/eng_azerbaijan_draft_report_on_initial_data_collection_and_stakeholder_consultations.pdf

Astana, Kazakhstan on October 26, 2016. According to this decision, the “candidacy status” of Azerbaijan was extended, as considerable progress was observed on several specific requirements of EITI standards in reporting compared to the validation of 2015. However, Azerbaijan was given additional time until March 2017 because of the lack of satisfactory progress regarding the involvement of civil society. A decision on the suspension of the country’s membership based on EITI Standards in the case the corrective actions were not fulfilled to the degree necessary to satisfy the Board was presented to the government of Azerbaijan. According to the decision, although the continuous and timely reporting of Azerbaijan was praiseworthy, this practice still failed to sufficiently involve civil society in the process. The current difficulties related to civil society limit the potential of increasing public awareness about the revenues of extractive industries and standards of transparency and accountability. Finally, a decision about the termination of Azerbaijan’s membership in the Initiative for failure to fulfil the obligations was adopted in the following meeting of the Board of EITI in Bogota, Columbia on March 9, 2017¹¹. Some key reasons for making this decision about Azerbaijan were the assessment report on the implementation level of the corrective actions by the EITI International Board of Directors and the legal assessments about the state of civil society in the country. It was noted in the final decision that three important recommendations in the corrective actions were not implemented, although the government had made certain amendments to the legislation regulating NGO activities and the issuance of grants. According to the plan, it was recommended to eliminate the need for civil society to obtain an extract every two years in order confirm their registration, for civil society to register grants with the Ministry of Justice and for foreign donors to register individual grants with the authorities and obtain approval on the purpose of the grant.¹² The government of Azerbaijan considered the decision unjust and made a statement about its withdrawal from the initiative during the meeting¹³. The main argument of the government was that “EITI has significantly deviated from its first mandate – ensuring transparency and accountability in extractive industry and consequently turned into a pressure mechanism for Azerbaijan by supporting the interests of NGOs.”

The government of Azerbaijan made some changes to the rules on the issuance of grants and the grant activities of foreign donors in late 2016 and early 2017. It should be noted with regret that no decisive legal and practical steps have been made towards

¹¹ https://eiti.org/sites/default/files/documents/board_paper_36-5-a_azerbaijan_assessment_of_progress_with_corrective_actions_-_updated_6_march_2017-web.pdf

¹² <https://eiti.org/BD/2017-15>

¹³ <https://eiti.org/sites/default/files/documents/2017-03-10-statement-az-leaving-eiti.pdf>

the resolution of civil society problems during the last 3 years after the implementation of the changes to the legislation limiting the activities of civil society.

The Cabinet of Ministers adopted a decision to make changes to the legislation about “Registration of Grant Contracts (decisions)”¹⁴ on January 11, 2017 and “foreign donors” gaining the right to issue grants in the territory of the Republic of Azerbaijan”¹⁵ on January 24, 2017. However, these changes have not contributed to removing the following restrictions, which cause problems to the work of NGOs:

- Regulations prescribing the registration of grants remain in force; (Paragraphs 7 and 4¹⁶, Article 4¹⁷)
- The term of getting registration notification during the registration of grants remains in force; (Paragraph 4¹⁶, Article 4¹⁷)
- Presenting a notification required for grant related operations in banks remain in force; (Paragraph 1.8¹⁶, Article 4¹⁷)
- When sub-grants are considered within the grant, the term about the separate registration of the sub-grant remains in force; (Paragraph 1.2¹⁶, Article 4¹⁷)
- The ban on bank operations and any other operations on contracts (decisions) about issuing or receiving unregistered grants and the legal liability for this remain in force; (Paragraph 1.7¹⁶, Article 4¹⁷)
- Severe administrative penalties (up to 15,000 AZN) for donors and recipients for issuing and receiving grants remain the same as in the Article 432 of the Code of Administrative Offenses.¹⁸

In fact, even the rules adopted under decision¹⁹ number 216 of the Cabinet of Ministers on June 5, 2015 had more restricting value than the restricting norms in the legislation and had no legitimate legal purpose. Now with the recent changes to the rules the number of required documents has technically been reduced, but essential, fundamental problems remain. For example, according to the new Paragraph 1.10 in the rules: “If the purpose of the grant contract (decision) is providing services

¹⁴ <http://www.e-qanun.az/framework/30212>

¹⁵ <http://www.e-qanun.az/framework/34706>

¹⁶ Rules on registration of grant contracts (decisions) <http://www.e-qanun.az/framework/30212>

¹⁷ Law about grants <http://www.e-qanun.az/framework/3527>

¹⁸ <http://www.e-qanun.az/code/24>

¹⁹ <http://www.e-qanun.az/framework/34689>

or implementation of works, this contract can be registered as a service contract”. The latter expression of “can be registered as a service contract” is dependent on the discretion of the agency. Thus, if the registration agency defines that there is “implementation of work” or “service” in the grant contract, then it will change its designation from grant to service and immediately impose simplified tax and VAT for the implemented work. Thus, a serious part of the grant will be directed not to the goals, but to the budget. On top of this, all these can take place based on the consideration of the registration agency.

According to another amendment: “Addition of number 6 to the Rule” - “The notification about the registration of contracts (decisions) about receiving (issuing) grants shall be annulled.” This item is introduced in a way as if the notification is cancelled, however, it is only the form number 6 that is annulled, but the term of presenting the notification remains. In practice, the appealing side will be told that a notification is supposed to be issued, but since the form of the notification has been annulled with the decision of the Cabinet of Ministers, then one needs to wait for the new form. This had happened before. Grant registration was annulled in July 2014 and no new form was issued until June 2015. The Ministry of Justice was not registering any grant contracts during this period because the rules had been cancelled and new ones were not yet adopted.

Another change to the rules presented as positive is the one regulating the periods. In fact, these changes serve to delay the start of the implementation of the grants. As it is not allowed to start operating without registration, contracts must be registered. Extended periods of time will cause issuing notifications even later and thus, delay the start of implementation. For example, according to Article 4.1 of the Rules, a decision must be made within 15 days after appealing to the Ministry of Justice and within additional 15 days, if further research is required. According to the recent changes, the flow of the period will stop from the day that the Ministry of Justice sends the documents to the Ministry of Finance for appropriateness and continues after receiving a response from the Ministry of Finance. Thus, the time passed at the Ministry of Finance, which is supposed to be a maximum of 30 days, will also be extended and possibly reach 45 days.

The latest changes to the rules about giving the right to issuing grants in the territory of the Republic of Azerbaijan to foreign donors failed to resolve two important issues:

- 1) Foreign donors cannot have the right to issue grant contracts without getting a donor status from the government;

2) Even when foreign donors get donor status, they must still receive approval from the Ministry of Finance about the expediency of their allocated grants.

The only thing that changed in these rules is that if the foreign donor gets the opinion of the Ministry of Finance about the expediency of their allocated grants, then they will not need to appeal to the Ministry of Justice for the registration of their contracts and the responsibility of registering grant contracts at the Ministry of Justice will be on the organizations receiving these grants.

Thus, the latest changes to the decision of the Cabinet of Ministers did not result in any progress towards the recommendations of international organizations (EITI and OGP) for improving the environment for civil society in Azerbaijan.

4. Development and approval of National Action Plan

According to Open Government Partnership standards, preparations for the new Action Plan go on during the last 6 months of the ongoing implementation of the National Action Plan. The main tasks of the government are to involve civil society in the development of the National Action Plan, carry out consultations and discussions with them, listen to their voice and consider their recommendations in the Plan.

In the process of developing NAP in OGP member countries, consultations and discussions are carried out in the Permanent Dialogue Organization, in which state organizations and civil society are represented. There was no such organization in 2012-2016 when Azerbaijan was an OGP member and therefore, discussions of the second NAP were not held according to a pre-defined plan and the intensity and scope of discussions were limited.

The development and discussion of the second NAP was facilitated by the Anti-Corruption Commission and the Anti-Corruption Network of NGOs, which mainly consists of pro-government groups. Three round table discussions with the participation of a limited number of independent NGOs were organized in the discussions period. An announcement and draft NAP were published on the Commission's website during discussions. The first discussion²⁰ took place on November 27, 2015 and recommendations about creating a new NAP were discussed. The second draft NAP was discussed at the second meeting²¹ that took place on February 11, 2016. Issues that were previously proposed but not considered were revised at that meeting. The third discussion meeting²² had a larger composition. A conference with the participation of local and foreign organizations, as well as representatives of state organizations took place on March 14, 2016. The focal point for OGP in Azerbaijan, parliamentarian Vusal Huseynov, participated in all three meetings.

The website of the Anti-Corruption Commission provided both the draft NAP as

²⁰ <http://antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=433>

²¹ <http://antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=446>

²² <http://antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=453>

well as contact information for sharing recommendations. These recommendations received various levels of acceptance according to the results of the interviews with organizations that sent their recommendations for the development of NAP. In some organizations, the level of acceptance was 50-70% and in others this varied between 10-20%. Recommendations those were not accepted cover such areas as financial transparency, accountability of state-owned companies, elimination of conflict of interests in governance and the declaration of assets of officials.

On April 27, 2016, presidential order Nr. 1993 announced the adoption of the National Action Plan (NAP) of 2016-2018 for the Promotion of Open Government. The previous Action Plan had covered 2012-2015 and consisted of two different programs (National Action Plan about promotion of civil society and the National Anti-Corruption Action Plan).

The following actions were proposed for increasing transparency and promotion of open government during the implementation period of the new National Action Plan:

- improving electronic services
- providing access to information
- improving the functioning of a single internet electronic database of normative legal acts
- expansion of the activities of civil society and increasing public participation
- providing financial transparency of local government institutions
- increasing transparency in extractive industry
- taking measures and improving the legislation for preventing corruption
- increasing transparency and responsibility in the private sector
- education and cooperation

In the second NAP, the government took more responsibilities for providing electronic services, taking measures and improving the legislation to prevent corruption and provide financial transparency. 22 state agencies and companies including the Cabinet of Ministers, the National Council, the General Prosecutor's Office, and the State Oil Fund were involved in the implementation of the responsibilities. The Commissioner for Human Rights, the Council of State Support to Non-Governmental Organizations and municipalities were also involved in the implementation of the plan.

According to the decree of the president, central and local executive bodies must present an annual report regarding the implementation of NAP actions to the Cabinet of Ministers and the Anti-Corruption Committee of the Republic of Azerbaijan every year by December 30.

In comparison to the first NAP, the second NAP seems less ambitious. 59 responsibilities on a total of 10 directions were added to the new National Action Plan. There were 162 responsibilities on 37 directions in the previous National Action Plan. The number of both directions and responsibilities dropped by three times and the timeframes were reduced from 3 to 2 years. Nevertheless, neither the first, nor the second National Action Plans fully address OGP standards. This is because the obligations are simply listed without explication and the purposes are very vague. However, as can be seen from the leading experience of the member countries, timeframes and goals for the implementation of each obligation must be well-defined.

5. Implementation of National Action Plan

During the implementation stage of the Action Plan, the pressure on civil society and the restrictions on free speech were not only lifted but on the contrary, the situation seems to be developing in the opposite direction.

Firstly, one of the amendments to the Constitution proposed by the government in the referendum of September 26, 2016 further limited the already restricted access to information for media and civil society. Thus, according to Addendum 6 to Article 32 of the Constitution, with the exception of special cases defined by the law, access to both electronic and on-paper information sources for getting third party information is banned. According to Addendum 7 to Article 32 of the Constitution, information technologies cannot be used to disclose information about someone's personal life ideology, religion or ethnicity with the exception of cases when the person clearly states his or her consent, for the processing of anonymous statistical data in a way to avoid any discrimination and under other circumstances allowed by law. In fact, with these changes the government has developed a legal basis to develop penalty mechanisms for collecting vital information through various resources to investigate any behavior contrary to public interest by both the officials and people in their close circle, and then spreading this information through internet, digital and printed media.

Pressures against civil society activists and their families significantly increased during the implementation of NAP, on the eve of the referendum of September 26, 2016 and after that.

On July 29, 2016 the Baku Appeal Court revoked the license of ANS Television in compliance with the National Television and Radio Broadcasting Council.²³

On August 22, 2016 the director of "Azadliq" Newspaper, Faiq Amirli, was arrested

²³ http://www.amerikaninsesi.org/a/ans_mtrs/3439886.html

due to the decision of the Nasimi District Court of Baku.²⁴ After that “Azadliq” Newspaper stopped its publication.

On February 18, 2017 the Ministry of Justice refused to issue an extract from the registry to the Public Association for Assistance to the Free Economy for the ninth time.

On May 3, 2017, Mehman Huseynov, the chairman of the Institute for Reporters’ Freedom and Safety and blogger who made videos about corruption and the wealthy properties of high ranking officials, was charged with defamation and jailed for two years.²⁵

The parents of Bashir Suleymanov, the human rights activist who was a political prisoner in 2014-2016, were pressured in early 2017 by the local police of Shaki and Yevlakh, where they live, over their son’s activities. On May 2, 2016 Bashir Suleymanov was kidnapped and taken to the Main Organized Crime Department of the Ministry of Internal Affairs and released after 6 hours of questioning.²⁶

On May 2, 2017 Aziz Orujov, cofounder of Caucasus Media Investigation and head of the Baku office of Channel 13 Internet Television, was detained on the street next to his wife and colleague. He was accused of resisting police and on the same day, the Nasimi District Court sentenced him to 30 days of administrative arrest.²⁷ Later, on June 1, 2017, Mr. Orujov was charged with illegal entrepreneurship and abuse of power and detained for four months. As a result, all the equipment of the internet television station were seized and several freelance journalists cooperating with Channel 13 were summoned to the prosecutor’s office and their travel was banned.

On May 29, 2017, an opposition journalist Afgan Mukhtarli was abducted in Tbilisi and the next day detained in Azerbaijan on the charges of the illegal crossing of state borders and smuggling.

Access to the websites of Radio Liberty, Azadliq Newspaper, Meydan TV, Turan TV and “Azerbaijan hour” have been blocked in Azerbaijan. The Baku Sabail District Court made this decision based on the claim of the Ministry of Transport,

²⁴ <http://transparency.az/cnews/faiq-%C9%99mirlinin-h%C9%99bsi-r%C9%99smil%C9%99sib>

²⁵ <https://www.azadliq.org/a/28344976.html>

²⁶ <https://www.azadliq.org/a/28462017.html>

²⁷ <http://www.kanal13.tv/az/portal/xeber/3602/Kanal13-%C3%BCn-direktoru-30-sutkal%C4%B1q-h%C9%99bs-edildi-%C6%8Fziz-Orucov-polis%C9%99-m%C3%BCqavim%C9%99td%C9%99-ittiham-edilir.htm>

Communications and High Technologies on May 12, 2017.²⁸

At the same time, the bank accounts of the following NGOs remain seized:

- i. Legal Education Society (Intigam Aliyev)
- ii. Institute of Reporters' Freedom and Safety (Mehman Huseynov)
- iii. National and International Research Center (Leyla Aliyeva)
- iv. Recourse Center for Democracy and Human Rights (Asabali Mustafayev)
- v. Institute of Media Rights (Rashid Hajili)
- vi. Society of Human Rights and the Enlightenment (Elchin Sadigov)

As for the implementation of the specific obligations intended in NAP, the first year of the two-year NAP is already over. During this period, 59 obligations have been implemented as follows:

Several steps have been made towards *improving electronic services*. Examples of this include the payment of local taxes and other payments through the Centralized Information System on the Central Bank's Mass Payments and electronic terminals, the integration of new services to the "Electronic Government" portal and simplification of the mobile interface, mobile application and payment possibilities.

No significant improvement towards *access to information* has been observed. Developing mobile versions of government organizations' websites, starting their social media pages and updating them regularly and forming a single information basis for legal documents of apartments in multi-apartment buildings have not happened. At the same time, the latest changes to the Constitution have brought new restrictions on access to information, as mentioned earlier.

On the expansion of the activities of civil society and increasing public participation:

- Establishment of the "Open Government Partnership" civil society platform and supporting its work

The Government – Civil Society Dialogue Platform about the promotion of Open Government was established on September 9, 2016. (www.ogp.org.az) The platform was created with the organization of the Council of State Support to Non-Governmental Organizations under the direction of the President of the Republic of Azerbaijan. According to the charter of the platform, the purpose is to comprehensively support

²⁸ <https://www.azadliq.org/a/28482448.html>

the implementation of the “Open Government Partnership” initiative in Azerbaijan, applying transparency and open government principles in the work of government agencies, maintaining public control over the application of this initiative in Azerbaijan, as well as developing dialogue between government and civil society.

Selected organizations were invited to become members when the platform was created. The platform gave preference to GONGOs and NGOs which keep silent on the policies of the government. In 2015, independent civil society representatives initiated the development of the platform, which is a consultative mechanism with the government of Azerbaijan. The independent platform conducted round table discussions²⁹ in 2016 and applied to the government several times to join. At the same time, 23 civil society representatives³⁰ stated the importance of accelerating the formation of the Open Government Partnership Platform with a massive participation of civil society representatives in their appeal to the government on August 1, 2016. However, when the Dialogue Platform was initiated under the support of the Council of State Support to Non-Governmental Organizations only three of the persons who signed the aforementioned statement were invited to the event.

The platform was established during a period when civil society groups were harshly persecuted in Azerbaijan. Starting from 2014, pressures on civil society paralyzed many leading organizations and resulted in the suspension of their activities and closure of many offices. Considering this, the number of organizations who wanted to join the platform given this situation were also low. If this initiative had taken place when Azerbaijan was an OGP member, the number of organizations that would have wanted to join would have been several hundred. It is not by chance that the number of NGO coalition members on Increasing Transparency in Extractive Industries is more than 150.

Procedures for the management of the Dialogue Platform have yet to be adopted. Also, the rules for electing the coordinator and his or her term, frequency of meetings and decision-making mechanisms have not been defined. At the same time, discussions in the Dialogue Platform so far show that no collegial management type (Board, Council, etc.) is being considered there.

Currently eight representatives of government agencies, two MPs and 31 NGO members

²⁹ <http://www.sei.az/news-1170.html>

³⁰ <http://opengovernment.az/en/latestnews/ogp-toolbox-hackathon-civic-tech-for-open-government-1>

are represented in the platform. Membership to the platform was carried out through invitations. Thus, representatives of independent civil society are underrepresented in the platform and most independent organizations are not members.

- Prioritizing the support of Non-Government Organizations' projects and initiatives in promoting open government principles and fighting corruption

The Council of State Support to Non-Governmental Organizations, responsible for the implementation of this activity, has considered Open Government Partnership a criteria in the grant competitions it has announced.

It has supported the initiatives related to the promotion of open government and increasing transparency in extractive industries, as well as the initiatives from “the National Action Plan on 2016-2018 for the Promotion of Open Government” in the four project competitions announced in 2016 and 2017. For supporting open government initiatives, the Council allocated 135 thousand AZN to 15 organizations in 2016 and 107.8 thousand AZN to 16 organizations in the first quarter of 2017. In the second grant competition, announced in April 2017, the Council considered open government initiatives not as its only goal, but as one of several for *supporting initiatives for public control and transparency issues*. It is notable that many of these organizations are members of the abovementioned Dialogue Platform and that most of them do not have a website. Most projects consist of monitoring and informational activities on general issues. Despite this, it has been impossible to access any monitoring reports.

- Compiling recommendations about the development of an enabling environment for non-governmental organizations

Although the Cabinet of Ministers, the Ministry of Justice and the Council of State Support to Non-Governmental Organizations are responsible for making recommendations about the development of an enabling environment for NGOs, these organizations have not made any recommendations. Only the Dialogue Platform presented a recommendation to the National Council prescribing changes to the Law about grants. At the same time, these recommendations have been discussed only within the Platform and there is no public access to them.

It could be implied from the government representatives' speeches, as well as the chairman of the Council of State Support to NGOs in the conference held on April 28, 2017 in Baku as part of the “Civil Society Dialogue in Azerbaijan” project, a

joint project of European Union and Council of Europe, that the government does not intend to soften the existing NGO legislation.³¹

Although public councils have been established and attached to a number of government organizations based on the sub-direction of *expansion of civil society activities*, the selection criteria and procedures for these councils are not obvious. Moreover, no dedicated section in the official internet resources about the composition and work of public councils has been created.

Seven obligations under the direction of *providing financial transparency* are under consideration and intended to be implemented in 2016-2018. No significant work for providing financial transparency took place during the report period. The previous experience related to both discussing the state budget with civil society and publishing quarterly and annual reports on budget implementation remain in force.

No progress has been achieved toward the development of mechanisms for preventing conflicts of interest in taking actions, improving the legislation around fighting corruption and the presentation of financial information by officials. The Ethical Behavior Rules of National Council members is undergoing discussions in the National Council now.

³¹ <http://aztv.az/readnews.php?lang=az&id=29007>

6. Recommendations

To the government of Azerbaijan:

- Start the development of a new National Action Plan with the participation of all stakeholders from the second half of 2017. In the following stage, the primary part of the NAP should include increasing transparency and accountability in public administration, actually fighting corruption and significant expansion of public participation in those processes.
- An enabling environment for independent and unrestricted activities of civil society should be ensured. Legislation regulating the operation of NGOs should be improved to such a level that the registration of these organizations would be as simple as possible and without any bureaucratic obstacles. All barriers to the operation of international donors, including obstacles to the contract-based lawful cooperation of local organizations with international organizations should be eliminated. The grant registration system must be completely simplified and pursue a declarative quality. Furthermore, high penalties for NGOs must be removed from the Administrative Offenses Code.
- In order to reshape the permanent dialogue mechanism between the government and civil society on Open Government Partnership, a dialogue with all stakeholders should be established with the participation of international organizations as observers. The new institution, which will represent the permanent dialogue mechanism, should have clear goals, a clear mission as well as efficient and transparent management tools.
- The government of Azerbaijan should return to Extractive Industries Transparency Initiative and implement the recommendations of EITI Board.

To the Steering Committee of Open Government Partnership:

- The inactive status of Azerbaijan in the OGP should be extended for another year and the OGP Steering Committee should issue an action plan with specific recommendations to the government of Azerbaijan. A package of conditions for improving the National Action Plan of Azerbaijan for promoting of open government should be put forth based on the OGP criteria and standards and for providing for the free participation of civil society in the process.



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