



THE ADDRESS ¹

of the NGO Coalition for Increasing Transparency in Extractive Industries to the International Board of Extractive Industries Transparency Initiative

Dear members of the Board,

In the run-up to the 36th Meeting of the EITI Board, Azerbaijan's NGO Coalition has surveyed its member organisations, and analysed and systematised existing challenges faced by them based on the responses provided. It has transpired from the responses that:

- 1) Over 30 member organisations of the NGO Coalition have yet to be officially registered by the Government;
- 2) Twelve grant agreements signed since 2014 could not have been implemented because the agreements or variations thereto have not been officially registered;
- 3) Four persons among the members of the Coalition are still profiled for border checks when travelling abroad or returning to the country;
- 4) Tax penalties remain in force for two member organisations, and funds of three member organisations were written off their bank accounts without prior notice under orders from the Ministry of Taxation;
- 5) One member organisation has not been able to receive a notice of registration from the Ministry of Justice, despite repeated requests (formally called "an extract from the State Registry of Legal Persons", it is needed for NGOs, inter alia, to be able to use grant funds sitting in their bank accounts);

¹ The Address was adopted at the 171st Meeting of the NGO Coalition Council on 4 March 2017.

- 6) Two persons among the members of the Coalition are unlawfully imprisoned: one received a sentence incommensurate with the offence, and the second one was severely penalised simply for a Facebook post. The two together are sentenced to 16 years of imprisonment;
- 7) A criminal case opened against one member of the Coalition has still not been closed; a criminal file of another has been closed, but he is not issued a foreign passport and is forbidden to leave the country;
- 8) Although the Coalition Council elected civil society representatives to the Multi-Stakeholder Group, they have not been given opportunity to commence their term.

Furthermore, the State Council for Supporting Non-Governmental Organisation under the President of the Republic of Azerbaijan ('the NGO Support Council' for short) made a decision to allocate AZN 15,000 (about USD 9,000) to the NGO Coalition for Increasing Transparency in Extractive Industries for institutional and programme support in the frame of the 1st competitive selection for financial support in the financial year of 2016, but then reversed this decision and unilaterally terminated the agreement with the NGO Coalition, depriving the latter of the only remaining source of funds. Currently, the NGO Coalition is challenged to sustain itself. Additionally, the NGO Support Council excluded EITI-related activities from competitive selection topics for the current year.

The status of implementation of the corrective action plan adopted at the 35th Meeting of the EITI Board (held on 26 October 2016 in Astana) was assessed by lawyers represented in the NGO Coalition. It was concluded that despite technical simplifications introduced to relevant by-laws, specifically in the regulations governing obtaining a right to provide financial grants for foreign donors and in the grant registration procedures, no changes were made to the primary legislation, and thus none of the three requirements of the EITI Board have been met.²

The Regulations for Registration of Grant Agreements (Decisions) and the Rules for Obtaining a Right by Foreign Donors to Provide Grants within the Territory of the Republic of Azerbaijan were recently amended by Ordinances of the Cabinet of Ministers of 11 January 2017 and 24 January 2017, respectively. However, according to the Constitution of the Republic, presidential decrees, cabinet ordinances and other regulations have lower legal force than statutory laws. As long as restrictive provisions in the latter remain in full force, changes in by-laws alone are unable to improve legal or practical circumstances of NGOs. Unless the Law on

² A legal brief on the status of implementation of the corrective action plan on civil society is attached hereto.

Grants, the Law on Non-Governmental Organisations (civic unions and foundations), and the Law on State Registration and Maintaining the State Registry of Legal Persons are amended to remove these restrictive provisions, it is impossible to reach a conclusion about change in the legal environment or practical situation of NGOs.

In addition to that, Resolution 11 of the Collegium of the Ministry of Justice of 28 December 2015, which approved the Rules for Examining Activities of Non-Governmental Organisations and Branches and Representative Offices of Non-Governmental Organisations of Foreign Countries, remains in force. The Rules empower the administration with a scope for extensive meddling in NGO activities.

Given the current situation as described above, the NGO Coalition calls on the EITI Board to act in accordance with the EITI Standard and avows that a decision concerning Azerbaijan, if taken in conformity with the EITI Standard requirements and procedures, would be acceptable to us.

PROBLEMS

of Extractive Industry Transparency Initiative [EITI] Coalition Members

Extractive Industry Transparency Initiative Coalition has over 160 members. The survey conducted among them has revealed that at present the organizations included in the Coalition face the following problems. However, it should be noted that not all Coalition members reveal their problems.

Problem with registration of Coalition member NGOs

About 30 Coalition member Non-Government Organizations have not been officially registered by the Ministry of Justice; also, 4 Coalition Council member organizations - Institute for Democratic Initiatives [chairman Akif Gurbanov], Education Research Center Public Union [chairman Alovzat Sadigli], Center for Initiation of Rights and Development of Democracy [chairman Azer Rasul] and Society for Democratic Reforms [chairman Ogtay Gulaliyev] have not been officially registered in spite of their repeated requests to the Ministry of Justice

Although 17 Coalition member NGOs are reported as having been registered, according to the data we have acquired 9 NGOs have been registered officially in total on condition that changes are made in their names and charter. Government's behavior shows that they are not interested in registering independent NGOs acting in the area of democracy. Although the Coalition Council has submitted an inquiry to the Ministry of Justice requesting an information about the NGOs registered during 2016 in order to bring further clarity to the data, the Ministry has refused to respond to the inquiry as opposed to the law. Because the organizations have been registered under different names. Since the organizations registered under different names have become a completely different legal entity, they cannot be considered Coalition members. Such situation, in fact, clearly indicates the reason for failure to openly announce official information.

Problem with registration of grants

Starting from 2013, international and independent donors were obliged to suspend their activities in the country and provision of grants for local NGOs due to restrictive additions to and modifications in legislation. The representative offices of many international donors were closed and representatives left the country.

The government has refused to register the projects of several Coalition member NGOs, suspended execution of concluded grant agreements and appropriated the amounts in the bank accounts of some NGOs under various excuses. Thus:

The Ministry of Justice refuses to register and provide an appropriate notice for the grant agreement executed between the Coalition member, chairman of **Institute for Democratic Initiatives Public Association Akif Gurbanov** and the US Embassy. Although negative response was given to repeated requests, still no response has been given to the latest request made on November 2016. The illegal action of the Ministry of Justice has been brought before a court.

The grant agreement titled "Promotion of the EITI implementation in Azerbaijan" executed between **the Center for Economic Researches** and **the USA Embassy on November 11, 2016** remains unregistered. Amount of the grant was USD 760 and the execution period was from 01 December 2016 till 01 March 2017. Purpose of the grant is to conduct a half-day conference with the participation of the Multi-Stakeholder Group on the EITI. Although the grant agreement was translated into the Azerbaijani language, certified at the notary and submitted to the Ministry of Justice on December 02, 2016 together with other required documents in accordance with the requirements of law, no response has been received from the Ministry of Justice till present.

As the grant agreement executed between **"Law and Development" Public Association** and the European Endowment for Democracy (EED) was not registered, the donor terminated it in June 2014. In spite of repeated requests made to AB Binagady Branch to refund the amount transferred to the account of "Law and Development" PA under the grant agreement, it has not been returned to the donor till present.

Punishments of Coalition members

According to the information received from **Support to Free Economy Public Association** no extract is provided from the registry for the organization and the illegal tax penalty in the amount of AZN 9300 remains unpaid. Also, AZN 11.097 has been deducted from the organization's account. No action is being taken in spite of the repeated appeals made to relevant authorities with regard to this matter.

According to the information provided by **a Coalition Member, Democratic Institutions and Human Rights**, the organization has the following problems:

- 1) Conducting bank operations is not possible in spite of the bank accounts opened.
- 2) An amount in the personal account of the head of the organization as well as AZN 1000 within the completed project unrelated to these processes have been deducted. Dissolution of Zamin Bank is offered as an excuse.
- 3) Although notice was given for the grant agreement executed by the German Marshall Fund, it is not possible to execute this project
- 4) The agreement for the project offered by the European Commission was cancelled as no notice as given
- 5) Tax penalty of the organization in the amount of 22 thousand has grown to 50 thousand. It keeps growing every day.
- 6) The legal proceedings against the organization and head of the organization are sustained and not terminated knowingly so that it is used as a means to exert pressure against the head of the organization.

According to the information provided by the Coalition member “**Legal Support**” **Pubic Association** operating in the region the problem associated with registration of the organization’s grant agreement dating back to 2014 and refund of the residual amount in its bank account remain unsolved.

Problems at the border points

Coalition members Ilgar Huseynli, Zaur Akbar, Mehriban Vezir, Hasan Huseynli undergo groundless inspection while crossing the national border. Coalition members Azad Mursaliyev and Ogtay Gulaliyev are not allowed to leave the country.

Imprisoned Coalition members

Fuad Gahramanli, a former Extractive Industry Transparency Initiative Coalition member has been illegally imprisoned for over one year. He was jailed for the status written on Facebook social network on December 8, 2015 and for his views. He was indicted for a period of 10 years by the decision of Baku Court of High Crimes, although the charges made against him were not substantiated.

Another Coalition member, former member of the Monitoring Group **Asif Yusifli** has been illegally imprisoned for more than 2 years. His punishment in the form of a 6 year imprisonment is not adequate. In fact, he has served the sentence more than enough according to the latest changes in law.

Although the legal proceedings taken against **Ogtay Gulaliyev, another Coalition member** in April 2012 under paragraph 220.2 of the Criminal Code was ended in October 2016 after 5 years, no passport is given to him in spite of his repeated official requests and he is not allowed to leave the country. He has been repeatedly called by the police and prosecution agencies for right protection activities and warned officially for being active.

Problems encountered by the Coalition

In the person of the State Oil Fund, the government intervenes into the internal affairs of the Coalition. Although the Coalition Council elected new members to the Multi-Stakeholder Group in 2017, no opportunities have been provided for their activities yet. Although official requests were made several times, chairman of the Government EITI Commission has not met and conducted discussions with the members of the Coalition Council, irrespective of the requirement of the EITI Action Plan. At the same time, although a decision was made on allocation of AZN 15,000 (USD 9,000) for provision of institutional and program support to the EITI NGO Coalition within the 1st competition for 2016 financial funding of the Council of State Support to Non-Governmental Organizations under the President of the Republic of Azerbaijan, later that agreement was unilaterally terminated by the Council of State Support to Non-Governmental Organizations. It has already been 1 year that the EITI Coalition is functioning with difficulty without financial support. Furthermore, the Council of State Support to Non-Governmental Organizations has removed the subjects on the EITI from the list of topics for this year’s competition.

MEMORANDUM OF LAW

On Status of Execution of the Corrective Action Plan on Civil Society adopted at the Astana Meeting of the EITI Board on October 25-26, 2016

According to the decision of the EITI Board, the government should have taken the next steps in order to ensure a satisfactory progress with the requirements regarding involvement of the Civil Society (SC) (1.3.b-d). Particularly, the government should have ensured favorable environment for legal and practical activities in order to fully involve the SC in the EITI process subject to paragraph 2.2 of the SC Protocol. This should particularly cover legal and regulatory changes by removing the following:

1. Acquisition of an extract confirming registration of the SC once in two years

This requirement originated following the change made to the law on *“State registration of legal entities and state registry”*. Thus, paragraphs 9.3 and 9.4 were added with the law of the Azerbaijan Republic **848-IVQD**, dated December 17, 2013. Prohibition of the activity of the branch offices or representative offices of legal entities and foreign legal entities and therefore, bringing into accountability in pursuance of the Code of Administrative Offences came about with these additions, if registration of the modifications in the articles of incorporation and later modifications in registered facts does not become into force.¹ Besides the law, there are also, *“Procedures of carrying out state registration of non-commercial entities and educational establishments”* adopted by the Collegium of the Ministry of Justice of the Azerbaijan Republic and the issues regarding state registration of the changes in the articles of incorporation and later changes in the facts entered into the registry are regulated by its Section VII. As is seen from those procedures, the changes also, concern the NGO management authorities, including the cases involving election of competent persons. Since reelection of elective body is stipulated once in two years in the NGO statute, such NGO shall form this body via a general meeting [conference, congress] once in two years and submit information to the registration authority [Ministry of Justice] about it by filling out the application form specified in appendix No. 4 and attaching required documents. The requirement regarding obtainment of an extract confirming registration once in two years is just connected with this practical reason. If previous composition remains unchanged [reelected], when NGO management authority is reformed, relevant data should be submitted, because reelection itself is regarded as a change by the Ministry.

It is not mere chance that in its 2014 competition Council of State Support to Non-Governmental Organizations under the President of the Republic of Azerbaijan made changes in acceptance of documents as distinct from previous years. Since then, it is required from the Ministry of Justice to add the new extract from state registry to the application form in competitions. (<http://www.cssn.gov.az/news.php?id=1704&lang=az>)

No modifications have been made either in the law or specified procedures since that period. This being the case, requirement of the NGOs to obtain an extract approving registration once in two years is not eliminated. A visual example: Council of State Support to Non-Governmental Organizations declares a grant competition for NGOs. One of the requirements for NGOs in that announcement is *“In accordance with legislation, data regarding state registration of legal entities [extract from state registry] should be submitted”*

¹<http://www.e-qanun.az/code/24> **Article 579. Beach of the legislation on non-government organizations**
...officials will be fined in the amount varying from a thousand manats up to two thousand manats and legal entities will be fined from two thousand five hundred manats up to three thousand manats.

(<http://www.csn.gov.az/news.php?id=2146&lang=az>). In other words, requirement remains valid both from legal and practical point of view.

Thus, requirement of the Board remains unfulfilled.

2. Registration of the SC grants at the Ministry of Justice

It should be noted with regret that no decisive legal and practical steps have been taken towards settlement of the civil society problems during the post-Astana period. Resolutions were adopted by the Cabinet of Ministers on changes to the Procedures “On registration of grant agreements (decisions)”, dated January 11, 2017 and “On acquisition of the right to issue grant by foreign donors at the territory of the Azerbaijan Republic”, dated January 24, 2017. However, as the Presidential decrees and resolutions of the Cabinet of Ministers are inferior to the laws according to the Constitution of the country, it is not possible to talk about the changes in legal and practical conditions, as the restrictive cases have not been eliminated in the “Law on Grant”. Unfortunately, the changes made by the latest resolutions of the Cabinet of Ministers does not entail changes towards solution of 3 requirements regarding Azerbaijan as stipulated in the decision of the EITI International Board, dated October 26, 2016. Procedures regarding registration of grants and donors are still maintained. Thus, the aforementioned resolution does not change 18 various restrictive norms introduced via 4 interventions to the “Law on Grant” in December 2013 and 2014. Because pursuant to article 147 of the Constitution of the Azerbaijan Republic, the resolutions of the Cabinet of Ministers are inferior to the laws and decrees (Presidential decrees being inferior to the laws) and they serve to regulate the execution of the laws. The resolutions are not capable of changing restrictive norms in laws and or alleviate them in any form.

Particularly, no norms becoming effective from December 2013 and restricting normal activity of NGOs and winning a grant from any source are eliminated by the latest resolution. Thus:

1. The norms stipulating grant registration remain in force; (*paragraphs 1.7 and 4*)², (*Article 4*)³
2. The condition regarding issuance of a notice on registration during grant registration relatively remains in force; (*paragraph 4*)², (*Article 4*)³
3. Issuance of a notice required for conducting a grant related operation in banks remain in force; (*paragraph 1.8*)², (*Article 4*)³
4. If a sub-grant is envisaged within a grant, the condition on separate registration of the sub-grant remains in force; (*paragraph 1.2*)², (*Article 4*)³
5. Bank operations in relation to the agreements (decisions) on issuance or receipt of unregistered grant or any other operations are prohibited. Therefore, the legal accountability specified in that regard remains in force; (*paragraph 1.7*)² (*Article 4*)³
6. The donors regarding issuance and receipt of grants, heavy administrative penalty sanctions stipulated for recipients (up to AZN 15,000) remain as envisaged in Article 432 of the Code of Administrative Breaches.⁴

In fact, the procedures approved by the Resolution of the Cabinet of Ministers No. 216, dated June 5, 2015⁵ were of more restrictive nature in comparison with restrictive norms in the laws and carried no legitimate legal purpose. Although the documents required technically have been reduced due to the modifications in the procedures, there are still problems in the essence. For example,

² Procedures of registering grant agreements (decisions) <http://www.e-qanun.az/framework/30212>

³ Law on grant <http://www.e-qanun.az/framework/3527>

⁴ <http://www.e-qanun.az/code/24>

⁵ <http://www.e-qanun.az/framework/34689>

- a) Paragraph 1.10 added to the Procedure is as follows: “If the purpose (subject matter) of a grant agreement (decision) is to provide services or perform work, in that case such agreement can be registered as a service agreement”. The last portion “can be registered as a service agreement” is connected with the conclusion of the registering authority. If the registering authority determines that a grant agreement involves “performance of work” or “service” in that case it shall change its designation as service, not as a grant and simplified tax and VAT will be deducted from this resource immediately. Thus, a serious portion of the grant shall be directed to the budget, not to the purpose. Additionally, all these can be realized at the discretion of the registration authority.
- b) Another change is as follows: “Appendix No. 6 to the Procedure - "Form of notice on registration of the agreements (decisions) on receipt (issuance) of grant" shall be abolished”. This item is introduced as if the notice is already abolished, whereas form No. 6, not the notice is abolished. However, the condition on giving a notice remains in the law. In practice the applicant shall be told that we need to issue a notice, but form of the notice has been abolished by the resolution of the cabinet of Ministers and you have to wait, as there is no new form. This has also, happened earlier. Grant registration procedure was abolished in July 2014 and no new procedure was applied until June 2015. No grant agreement was registered by the Ministry of Justice during this period of time, as the procedures had been abolished and no new procedure had been adopted.
- c) One of the changes introduced as a positive change in the procedures are so-called changes with regard to periods. However, these changes serve to delay the period specified for grant execution. As no activity is permitted without registration, agreements must be registered. From this point of view, extended periods will further delay notices and thus, late start of execution in the end. For example, pursuant to item 4.1 of the Procedure, a final decision shall be adopted within 15 days following the application to the Ministry of Justice, which will be extended 15 days further, if additional investigation is required. With current changes period shall stop effective from the date on which the Ministry of Justice delivers the documents to the Ministry of Finance for expediency and this period shall continue following receipt of a response from the Ministry of Finance. Thus, the period spent at the Ministry of Finance shall be added to maximum 30 day period, which may be prolonged up to 45 days.

3. Registration of individual grants of foreign donors in government authorities and obtainment of an opinion on expediency of a grant

The problem has not been essentially eliminated following the latest changes in the procedures. Thus:

1. The conditions on the donors, which are branch offices or representatives of non-government organizations of foreign countries, being residents in the country (having their representative office registered) and conclusion of an agreement with the government in order to be registered in the country remain in force; (*paragraph 1.2*)⁶, (*Article 2.5*)⁷
2. The right of foreign donors to issue a grant at the territory of the Azerbaijan Republic should be obtained under each grant agreement (decision); (*paragraph 2*)⁶, (*Article 2.5*)⁷
3. An opinion of the Ministry of Finance on financial-economic expediency of grant is required, in order to acquire the right to issue grant. (*paragraph 2*)⁶, (*Article 2.5*)⁷
4. Acquisition of the right by a foreign donor to issue grant subject to the opinion of the Ministry of Finance on financial-economic expediency of a grant cannot be considered registration of the grant. Registration of the grant agreements executed (decisions adopted)

⁶ Procedures of acquiring the right by foreign donors to issue grant at the territory of the Azerbaijan Republic <http://www.e-qanun.az/framework/31488>

⁷ Law on Grant <http://www.e-qanun.az/framework/3527>

by foreign donors, which have acquired the right to issue grant, shall be carried out in accordance with “Procedure of registering grant agreements (decisions)” only. (*paragraph 4*)⁶, (*Article 2.5*)⁷

5. The requirement on registration of service agreements during provision of services by NGOs with the resources obtained from foreign sources remain in force in paragraph 24.2 (*Provision of services and performance of works by non-government organizations*) of the law on non-government organizations (public associations and foundations)⁸ and the procedures adopted by the Cabinet of Ministers regarding regulation of this issue.⁹

Separately, “Procedures of studying the activities of the branches and representative offices non-government organizations and non-government organizations of foreign countries” approved by the Collegial Decision No. 11 of the Ministry of Justice, dated December 28, 2015, envisaging inspection of the activities of NGOs and bringing the restrictions more extensive than the requirements of law are in force. These procedures provide an opportunity for an administrative authority to intervene more extensively to the activities of NGOs.

All the above listed show that the adjustments in aforementioned decisions are not capable of changing the legal and practical environment. Therefore, the problems will not be eliminated without eliminating the restrictions in legislation and providing legal and practical grounds for normal activity of NGOs and civil society. It is not possible to talk about the changes in legal and practical conditions unless restrictive provisions in the Laws “On Grant”, “Non-Government Organizations (Public Associations and Foundations)” and “State Registration of Legal Entities and State Registry” are eliminated.

⁸ Law on non-government organizations (public associations and foundations) <http://www.e-qanun.az/framework/511>

⁹ Procedure of registering the agreements on provision of services or performance of works by non-government organizations as well as the branches and representative offices of the non-government organizaions of foreign countries from foreign sources of funding <http://www.e-qanun.az/framework/31456>