

Assessment of the Legal Framework for  
Non-Governmental Organizations in  
the Republic of Azerbaijan

**International Center for Not-for-Profit Law**

Civil Society Project<sup>1</sup>

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## Table of Contents

### Introduction

## **1. Protection of Freedom of Association**

### Azerbaijani Law

- 1.1. Freedom of Association under Azerbaijan's International Obligations and Constitution
- 1.2. Restrictions on Freedom of Association
- 1.3. Governmental Guarantees in Cases of Alleged Violations of Freedom of Association
- 1.4. NGO without Legal Personality

### Analysis

## **2. Legal Existence of NGOs**

### 2.1 Registration (Incorporation) of NGOs

#### Azerbaijani Law

- 2.1.1. Rules for Registering (Establishing) NGOs
- 2.1.2. Territorial Status
- 2.1.3. Government Body in Charge of Registration
- 2.1.4. Timelines for Consideration of Registration
- 2.1.5. Registration of Amendments to Founding Documents and Re-registration
- 2.1.6. Registration of Foreign NGOs
- 2.1.7. Branches and Representative Offices of NGOs
- 2.1.8. Reasons for Denial of Registration
- 2.1.9. Appeals Procedure
- 2.1.10. Reorganization
- 2.1.11. Public Registry

### Analysis

### 2.2 Termination and Liquidation

#### Azerbaijani Law

- 2.2.1. Voluntary Liquidation
- 2.2.2. Involuntary Liquidation

### Analysis

## **3. Structure and Internal Governance**

### 3.1 Mandatory and Optional Provisions for Governing Documents

#### Azerbaijani Law

### Analysis

### 3.2 Internal Governing Structure

#### Azerbaijani Law

- 3.2.1. Governing Bodies in Public Associations
- 3.2.2. Governing Bodies in Foundations

### Analysis

### 3.3 Distribution of Profits and Other Private Benefits

#### Azerbaijani Law

### Analysis

### 3.4 Conflicts of Interest

Azerbaijani Law

Analysis

## **4. Activities of NGOs**

### 4.1. General Legal Capacity

Azerbaijani Law

Analysis

### 4.2. Advocacy and Political Activities

Azerbaijani Law

Analysis

### 4.3. Economic Activities

Azerbaijani Law

Analysis

## **5. Sustainability**

### 5.1 Foreign Funding

Azerbaijani Law

Analysis

### 5.2 Government Funding

Azerbaijani Law

Analysis

### 5.3 Tax Exemptions for NGOs and Their Donors

Azerbaijani Law

#### 5.3.1. Income Tax for NGOs

- Generally Exempt Types of Income
- Taxation of Income from Entrepreneurial (Business) Activities
- Availability of Exemptions for Passive (Investment) Income

#### 5.3.2. Deduction of Charitable Contributions

#### 5.3.3. VAT for NGOs and Donors

- Threshold for Registration
- Tax Exempt Transactions
- VAT Rebate Procedure

#### 5.3.4. Social payments, Land, and other Taxes Affecting NGOs

Analysis

### 5.4. Volunteers

Azerbaijani Law

Analysis

## **6. Government Oversight**

### 6.1. Supervision

Azerbaijani Law

Analysis

### 6.2. Sanctions

Azerbaijani Law

Analysis

**7. Transparency and Accountability**

7.1 Transparency and Accountability

Azerbaijani Law

Analysis

**II. Conclusion: ICNL Recommendations**

**III. List of Materials Used in the Assessment**

**IV. Appendices**

1. Procedure and Documents Required to Register an NGO

2. *Ramazanova and Others v. Azerbaijan*

## Introduction

The purpose of this Assessment is to help familiarize interested persons with the Azerbaijani legislation relating to non-governmental organizations (NGOs) and to identify the shortfalls in that legislation in comparison with international law and good practices. We hope that this Assessment will provide the foundation for the development of future strategies for legal reforms in Azerbaijan.

This Assessment focuses on the following seven areas of the legal framework for NGOs:

1. Protection of the Freedom of Association in Azerbaijan;
2. Legal Existence of NGOs;
3. Structure and Internal Governance;
4. Activities;
5. Financial Sustainability;
6. Government Oversight; and
7. Transparency and Accountability.

We are aware that a broader set of issues has impact on the civil society, including an independent judiciary system, corruption, mass media, access to information about the government's work, and citizens' participation mechanisms in the government's decision-making process. Each of these issues affects not only NGOs, but the society as a whole, and requires its own analysis. Therefore, we will not address them in this Assessment. This Assessment focuses on the areas of legislation which have specific implications for NGOs.

Each section in this Assessment begins with a statement of international good practices for the relevant topic. The good practice statements are based on the Fundamental Principles on the Status of Non-governmental Organisations in Europe,<sup>2</sup> (hereinafter referred to as "Fundamental Principles") the European Convention on Human Rights<sup>3</sup> (hereinafter referred to as "ECHR"), the European Court of Human Rights case *Ramazanova and Others v. Azerbaijan*, which was decided on February 1, 2007;<sup>4</sup> and Guidelines for Laws

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<sup>2</sup> The Fundamental Principles on the Status of Non-governmental Organisations in Europe (adopted by the participants at the multilateral meetings held in Strasbourg, November 19-20, 2001, March 20-22, 2002 and July 5, 2002).

<sup>3</sup> The European Convention on Human Rights (adopted by the Council of Europe in Rome November 4, 1950,) and its Five Protocols (adopted in Paris March 20, 1952; Strasbourg May 6, 1963; Strasbourg May 6, 1963; Strasbourg September 16, 1963; and Strasbourg January 20, 1966).

<sup>4</sup> *Ramazanova and Others v. Azerbaijan* (February 1, 2007) (application no. 44363/02), available at: <http://www.legislationline.org/legislation.php?tid=1&lid=7478>. A press release on the decision is available at: <http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/2422ec00f1ace923c1256681002b47f1/27145ba9c1b3e7c4c1257275003164af?OpenDocument>.

Affecting Civil Organizations<sup>5</sup> (hereinafter referred to as “Guidelines”). Each international good practice statement is followed by a brief overview of the Azerbaijani legislation addressing the relevant issue, and by a comparative analysis of the Azerbaijani legislation and corresponding international good practice.

The main body of this Assessment addresses issues relating to all NGOs. The Azerbaijani Law on Non-governmental Organizations (Public Associations and Foundations)<sup>6</sup> [(hereinafter referred to as “NGO Law”) regulates the establishment, activities of and other relationships involving public associations and foundations. Therefore, for the purposes of this Assessment, “NGOs” are understood as public associations and foundations. Article 2 of the NGO Law defines “a public association” as “a voluntary self-regulating organization, which does not envisage receipt of income as the primary purpose of its activity and which does not distribute its income among its members, established by the initiative of several physical and/or legal persons, who united based on common interests, defined in its founding documents.” A Foundation is defined as “a non-governmental organization pursuing social, charitable, cultural, educational and other public benefit purposes, which does not have members, founded by one or several physical and/or legal persons based on a voluntary contribution of property”.

In addition to associations and foundations, the Civil Code<sup>7</sup> recognizes a third legal form of organization - a union of legal entities. Both commercial and non-commercial entities may set up a union of legal entities to coordinate their activities as well as represent and protect their interests. The Civil Code allows legal entities (except for bodies of state power and local governments) to be founders of unions of legal entities. It is worth noting that even though this legal form exists, the NGO Law does not include any separate provisions with procedures for establishing and governing unions of legal entities.

Throughout the Assessment we usually refer to “NGOs,” since most provisions in the referenced Azerbaijani legislation affect both public associations and foundations. We only discuss “public associations” or “foundations” in those cases where a particular provision relates only to the identified legal organizational form.

This Assessment does not address the peculiarities of regulating political parties, labor unions, religious organizations, or other types of associations which are governed by special laws.

We rely in this Assessment on unofficial translations into English of Azerbaijani legislation, and regret any technical imprecision that may result.

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<sup>5</sup> Guidelines for Laws Affecting Civil Organizations, Open Society Institute in cooperation with the International Center for Not-For-Profit Law (2004).

<sup>6</sup> The Law on Non-governmental Organizations (Public Associations and Foundations) with changes and amendments, (October 28, 2005).

<sup>7</sup> Articles 117.1, 117.2 of the Civil Code of the Republic of Azerbaijan with changes and amendments, (February 1, 2007) (hereinafter “Civil Code”).

## 1. Protection of Freedom of Association

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his or her interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.<sup>8</sup>

NGOs can be either informal bodies or organisations which have legal personality. They may enjoy different status under national law in order to reflect differences in the financial or other benefits which they are accorded in addition to legal personality.<sup>9</sup> Any person, whether legal or natural, national or foreign national, or any group of such persons, should be free to establish an NGO.<sup>10</sup>

### **Azerbaijani Law**

#### *1.1. Freedom of Association under Azerbaijan's International Obligations and Constitution*

Azerbaijan is a signatory to the Universal Declaration of Human Rights;<sup>11</sup> to the International Covenant on Civil and Political Rights (hereinafter referred to as “ICCPR”)<sup>12</sup>; and to the ECHR, including its five protocols, subjecting Azerbaijan to the competence of the European Court of Human Rights.

Article 58 of the Constitution of Azerbaijan<sup>13</sup> states that:

*I. Everyone is free to associate with other people.*

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<sup>8</sup> Article 11 of the ECHR.

<sup>9</sup> Section 5 of the Fundamental Principles.

<sup>10</sup> Section 15 of the Fundamental Principles.

<sup>11</sup> Universal Declaration of Human Rights, U.N.G.A. Res. 217 (December 10, 1948).

<sup>12</sup> International Covenant on Civil and Political Rights, 999 U.N.T.S. 171 (December 16, 1966, entered into force March 23, 1976).

<sup>13</sup> Constitution of the Azerbaijan Republic with modifications introduced as a result of a Referendum held on 24 August 2002 (hereinafter referred to as “the Constitution”).

*II. Everyone has the right to establish any union, including a political party, trade union and other public organization or to enter existing organizations. Unrestricted activity of all unions is ensured.*

*III. Nobody may be forced to join any union or remain its member.*

It is remarkable that the Azerbaijani Constitution guarantees those same rights to all individuals, citizens and non-citizens.<sup>14</sup> Therefore, foreigners can be founders, members of managing bodies, regular members, or participants of NGOs in Azerbaijan.

### 1.2. Restrictions on Freedom of Association

According to the Constitution, the only restrictions on the freedom of association apply to “activity of unions intended to bring about the forcible overthrow of legal state power over the whole territory of the Azerbaijan Republic or a part thereof.” “Activities of unions which violate the Constitution and laws may be stopped by court order.”<sup>15</sup>

The rights of foreign citizens and stateless persons permanently living or temporarily staying in the territory of Azerbaijan may be restricted only according to international legal standards and the laws of Azerbaijan.<sup>16</sup> This is another significant provision meaning that no ministerial act or discretionary decision of a government official can impose a restriction on a foreign citizen.

The Law of the Azerbaijan Republic on State Registration and the State Registry of Legal Entities, with subsequent amendments, (hereinafter referred to as the “Registration Law”) provides an exclusive list of reasons for denial of registration of a legal entity, including NGOs: when another organization has been registered under the same name; when documents submitted for registration of an NGO contradict the Constitution, the Registration Law, and other Azerbaijani laws; when the goals, purposes and forms of activities of the NGO contradict legislation; or when an NGO does not correct all deficiencies in its submitted registration documents within 20 days after the Ministry of Justice returns them.<sup>17</sup> While this list is exclusive, it is used with broad discretion by government officials considering documents for registration. This has caused undue denials of registration of NGOs in the past. (*See infra*, Section 2.1, “Registration (Incorporation) of NGOs.”)

Activities of NGOs may only be involuntarily terminated by court order if an NGO receives two warnings within a year requesting it to correct or stop activities that violate the law.<sup>18</sup>

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<sup>14</sup> Articles 25, 26, and 69 of the Constitution.

<sup>15</sup> Article 58 of the Constitution.

<sup>16</sup> Article 69 of the Constitution.

<sup>17</sup> Article 11.3 of the Law of the Azerbaijan Republic on the State Registration and State Register of Legal Entities with subsequent amendments, (December 12, 2003, amended December 30, 2005).

<sup>18</sup> Article 31 of the Registration Law.

Azerbaijan's Administrative<sup>19</sup> and Criminal Codes<sup>20</sup> do not contain provisions which would explicitly limit rights to establish and/or operate an NGO.

### 1.3. Governmental Guarantees in Cases of Alleged Violations of Freedom of Association

Azerbaijani laws provide recourse to individuals who contend that their right to associate has been violated. The Constitution guarantees the right of citizens of Azerbaijan to appeal personally and also to submit individual and collective written appeals to state bodies. Each appeal should be responded to in an established format and timeframe.<sup>21</sup> It is significant that Azerbaijani citizens have the right to criticize the work of State bodies, political parties, trade unions and other public organizations and also individuals who work for those entities.<sup>22</sup> Interestingly, foreigners and stateless persons are not explicitly guaranteed the rights to appeal or to criticize the actions of State bodies. While the Constitution provides for equal rights of foreigners, it is unclear how those rights might be asserted or enforced if foreigners lack the right to appeal government determinations.

Article 154 of the Criminal Code establishes criminal liability for those who infringe upon the equality of citizens on the basis of race, nationality, or membership in a political party, trade union or other public associations, with resulting harm to the rights and legitimate interests of citizens. This crime is punished by a monetary penalty or corrective works.

### 1.4. NGOs without Legal Personality

Azerbaijani legislation allows for the establishment and existence of informal association.<sup>23</sup> It is important to note that legal capacity of informal associations is different from legal capacity of registered NGOs. Informal associations do not have the status of legal entities, and therefore, they cannot be plaintiffs or defendants in litigation, own property, open a bank account in the association's own name or receive a tax identification number. Activities of informal associations are regulated by the Civil Code; liability of association founders and members is not limited and it is not separate from the liability of the association. An informal association may use a name, but that name is not protected unless it is patented by a founder or member. Its activities will not benefit from tax exemptions applicable to registered NGOs because only legal entities and natural persons are legally recognized as taxpayers.

According to the 2006 NGO Sustainability Index Report,<sup>24</sup> there were about 1,200 informal NGOs in Azerbaijan.

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<sup>19</sup> Code on Administrative Torts of the Republic of Azerbaijan with subsequent amendments, (December 9, 2003) (hereinafter referred to as the "Administrative Code").

<sup>20</sup> Criminal Code of the Republic of Azerbaijan (as of January 31, 2005) (hereinafter referred to as "Criminal Code").

<sup>21</sup> Articles 57 and 65 of the Constitution.

<sup>22</sup> Article 57.11 of the Constitution.

<sup>23</sup> Article 15 of the NGO Law.

<sup>24</sup> The 2006 NGO Sustainability Index Report for Central and Eastern Europe and Eurasia, 10<sup>th</sup> Anniversary Edition (May 2007); developed by United States Agency for International Development, Bureau for Europe and Eurasia, Office of Democracy, Governance and Social Transition, available at:

## **Analysis**

The Azerbaijani Constitution's provisions on the freedom of association are in compliance with international law and meet international standards of good practice. The restrictions placed in the Constitution related to the freedom of association are limited and legitimate. However, a significant gap seems to exist between the content of the Constitution and the law and their implementation. For example, while the list of reasons for denial of registration is exclusive, it is used with broad discretion by government officials considering documents for registration, and many NGOs face difficulties in obtaining registration. (*See infra* Section 2 on "Registration (Incorporation) of NGOs.")

While many countries provide grounds for denial of NGO registration that are similar to Azerbaijan's,<sup>25</sup> registration of an NGO in the majority of European countries remains a mere formality. The rare NGO registration denials reflect European country officials' very limited discretion in interpreting permissible reasons for denial.<sup>26</sup> Similarly, while Azerbaijan is in compliance with good international practices in allowing persons to appeal denial of registration to courts, the perceived lack of independence of the courts from the executive branch has resulted in very few instances of appeals.<sup>27</sup> Consequently, the value of appeal rights to courts in guaranteeing the freedom of association may be more illusion than reality.

It is important to recognize that Azerbaijani legislation does not restrict the ability to establish and operate informal NGOs. This is consistent with the practices of all western European countries. On the other hand, Azerbaijan does not provide foreigners and stateless persons with the same rights as citizens to appeal State actions regarding applications to form an association. Many foreign laws give citizens and non-citizens the same rights with regard to the ability to form an association; this is the case in all Western European countries and most countries of Central and Eastern Europe, for example in Albania, Bulgaria, Hungary, Lithuania, and Romania.

## **2. Legal Existence of NGOs**

**2.1. *Registration (Incorporation) of NGOs.*** NGOs come into being through the initiative of individuals or groups of persons. The national legal and fiscal framework applicable to them should therefore permit and encourage this initiative.<sup>28</sup> NGOs with legal personality

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[www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex) (hereinafter referred to as the "2006 NGO Sustainability Index Report").

<sup>25</sup> *See Comparative Study of the Concept of a Draft Law Suggesting New Restrictions as a Ground for Denial of Registration of NCOs*, Fabrice Suplisson, ICNL (December 19, 2006).

<sup>26</sup> *See Denial of Registration and Involuntary Liquidation of Associations: Overview of French Case Law*, Fabrice Suplisson, ICNL.

<sup>27</sup> The 2006 NGO Sustainability Index Report, at 54-55.

<sup>28</sup> Section 6 of the Fundamental Principles.

should have the same capacities as are generally enjoyed by other legal persons and be subject to the same administrative, civil and criminal law obligations and sanctions generally applicable to them.<sup>29</sup> Where legal personality is not an automatic consequence of the establishment of an NGO, the rules governing the acquisition of such personality should be objectively framed and not subject to the exercise of discretion by the relevant authority.<sup>30</sup> The rules for acquiring legal personality should be published together with a guide to the process involved. This process should be easy to understand, inexpensive and expeditious. In particular, an NGO should only be required to file its statutes and to identify its founders, directors, officers and legal representative and the location of its headquarters. A foundation, fund or trust may be required to prove that it has the financial means to accomplish its objectives.<sup>31</sup>

## **Azerbaijani Law**

### **2.1.1. Rules for Registering (Establishing) an NGO**

The Registration Law and the NGO Law are the primary laws regulating registration procedures for NGOs. Once a group decides to form a public association, it has 30 days to officially apply for registration of an NGO to the Ministry of Justice (hereinafter referred to as the “MoJ”). Prior to registration, a public association may engage in limited activities without the benefit of any special civil rights or duties. On the day that the MoJ receives notice of establishment of a public organization it shall provide written acknowledgment of that notice. An application for registration must include a cover letter, organizational charter, power of attorney, notification of legal address, copy of an ownership certificate of the property where the legal address will be located, minutes of the first general meeting, a draft of the stamp and seal of the NGO, and information on the founders including their names, addresses, passport numbers, and telephone numbers.<sup>32</sup> Foreign citizens or legal persons, persons without citizenship or Azerbaijani citizens or legal persons may be founders, members or participants of public associations and founders and supporters of foundations.<sup>33</sup> A non-governmental organization shall receive legal entity status only after it receives State registration.

The recently decided ECHR case, *Ramazanova and Others v. Azerbaijan*, concerned a complaint submitted by four Azerbaijanis whose requests to register an association were repeatedly deemed technically insufficient for varying reasons after delays that exceeded the time frames established in the Registration Law, and whose multiple challenges before

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<sup>29</sup> Section 8 of the Fundamental Principles.

<sup>30</sup> Section 26 of the Fundamental Principles.

<sup>31</sup> Section 28 of the Fundamental Principles.

<sup>32</sup> In 2006 a minor positive change to the Registration Law eliminated the requirement that groups provide the signatures of all of the NGO’s founders. See Appendix A for a complete description of the procedures and documents required at each stage of the registration process.

<sup>33</sup> Articles 8-10 of the NGO Law.

Azerbaijani courts were unsuccessful.<sup>34</sup> In this recent example of NGO registration procedures and appeal rights the Court considered the MoJ to have de facto refused to register the association based on its repeated failures to issue a definitive decision of the complainants' registration application.<sup>35</sup>

After analyzing the Registration Law and also the government's rationales for not complying with its timelines, the Court honed in on technical deficiencies in the Registration Law: "[A]s to the quality of the law in question, the Court considers that the law did not establish with sufficient precision the consequences of the Ministry's failure to take action within the statutory time-limits. In particular, the law did not provide for an automatic registration of a legal entity or any other legal consequences in the event the Ministry failed to take any action in a timely manner, thus effectively defeating the very object of the procedural deadlines. Moreover, the law did not specify a limit on the number of times the Ministry could return documents to the founders 'with no action taken,' thus enabling it, in addition to arbitrary delays in the examination of each separate registration request, to arbitrarily prolong the whole registration procedure without issuing a final decision."<sup>36</sup> Accordingly, the Court held that Article 11 of the European Convention had been violated.<sup>37</sup>

In May 2005 the Organization for Security and Cooperation in Europe (OSCE) issued a report on NGO registration in Azerbaijan, identifying problems and offering recommendations.<sup>38</sup> Similar to the later *Ramazanova and Others v. Azerbaijan* opinion, the OSCE concluded that the government procedurally evaded NGO registration by taking an excessive amount of time to discover shortcomings, unduly prolonging processing times for NGO registration applications. While the report acknowledged that many of the shortcomings in applications cited by authorities were valid, most of them were correctable during the registration process and should not have been grounds for final rejection.

The 2006 NGO Sustainability Index Report documents that this practice continues, but also highlights another troubling characteristic of the registration process: "the MoJ is formally obliged to respond to registration applications within 30 days; however, this timeline is often prolonged.... Many NGOs are unable to obtain registration without intervention of 'influential forces' or paying a bribe. However, once registered, there are no legal obstacles that can prevent their operation."<sup>39</sup>

According to the U.S. State Department's Country Reports on Human Rights Practices 2006, "Although a new law requiring the government to act on registration applications within 30 days of receipt was implemented in 2005, vague, cumbersome, and nontransparent registration procedures continued to result in long delays that effectively

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<sup>34</sup> *Ramazanova and Others v. Azerbaijan*, see *supra* note 4.

<sup>35</sup> *Id.*, at paragraph 58.

<sup>36</sup> *Id.*, at paragraph 66.

<sup>37</sup> *Id.*, at paragraph 67.

<sup>38</sup> Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations*, available at: [www.osce.org](http://www.osce.org).

<sup>39</sup> The 2006 NGO Sustainability Index Report, pp. 54-55.

limited citizens' right to associate. ... During 2006, the ministry registered 548 NGOs, which it reported was more than the number registered in 2005. However, the ministry did not provide information on the total number of NGO applications received or the number of NGO applications rejected during the year.”<sup>40</sup>

### 2.1.2. Territorial Status

NGOs may be established and operate with all-Azerbaijan, regional, and local status. The area of operations shall be independently determined by the NGO. Operations of all-Azerbaijan NGOs shall apply to the whole territory of Azerbaijan. Operations of regional NGOs shall cover two or more administrative-territorial units of the country. Local NGOs shall operate within one administrative-territorial unit. International NGOs are public associations that have areas of operations covering the entire territory of Azerbaijan and at least one foreign state.

Provisions of the NGO Law on all-Azerbaijan, regional and local NGOs are merely declared in documentation submitted for registration, and have limited practical impact on registration or activities of NGOs. While we are not aware of any instances when the MoJ has audited activities of a registered NGO to determine its compliance with the territorial status indicated in its charter, we do know that the government reviews an NGO's territorial status as part of the registration process. Specifically, in the *Ramazanova and Others v. Azerbaijan* case the MoJ relied on the association's failure to specify in its charter the territorial area in which it would operate as justification for rejecting its registration application “

### 2.1.3. Government Body in Charge of Registration

In Azerbaijan, NGOs are only able to submit applications for registration to the MoJ headquarters in Baku.

The Registration Law provides that registration is carried out by the relevant office of the executive branch. As a matter of procedure, the President, by decree, determines which Ministry is authorized to register legal entities. Registration of commercial legal entities and NGOs is vested with the MoJ pursuant to the relevant decree of the President. The MoJ has ten regional branches throughout the country that could conduct registrations consistent with this decree.<sup>41</sup> An internal MoJ order, however, requires that NGO registration applications may only be filed in the main MoJ office in Baku.

The requirement that NGOs only apply for registration in Baku is burdensome, more restrictive than the President's Decree, and discriminatory. This practice, along with the

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<sup>40</sup> Country Reports on Human Rights Practices 2006, U.S. State Department, Bureau of Democracy, Human Rights, and Labor (March 6, 2007), available at: <http://www.state.gov/g/drl/rls/hrrpt/2006/78801.htm>.

<sup>41</sup> Charter of the Regional Branches of the Ministry of Justice of the Republic of Azerbaijan. (approved by the President of the Azerbaijan Republic, April 1997) #571.

fact that MoJ officials are far more responsive to in-person communications by NGOs,<sup>42</sup> significantly increases the registration costs for NGOs that are located outside of Baku. These NGOs often have extremely limited resources, and the added cost of travel and accommodation in Baku while submitting registration documents, answering requests for additional information by the registration authority, or checking on the status of a registration application, is both a significant hardship and potentially a deterrent to some modest groups considering applying for legal status. A newly-adopted Presidential Decree set up a new department within the MoJ, the Head Office for Registration and Notarization,” that should unify registration of legal entities and notarization and registration of citizens’ status (marriage, birth, death, etc.).<sup>43</sup> These functions used to be handled in two separate MoJ departments, each with a main office and multiple regional or district offices throughout Azerbaijan. The effect of this Decree on the registration process is not yet clear because other legislation must be brought into compliance with its provisions and budgetary issues must be resolved. Nevertheless, the capacity and structure now exists to enable MoJ to handle registration of all legal entities in each district of Azerbaijan.

#### 2.1.4. Time lines for Consideration of Registration

The Registration Law establishes a timeframe for registration of NGOs of up to 40 working days.<sup>44</sup> The same Law defines a five-day registration period for commercial entities.<sup>45</sup> The Registration Law allows for extensions of these deadlines in exceptional cases and for the purpose of conducting additional review of documents. However, OSCE monitoring describes a “prolongation of periods for consideration of documents for up to 30 days without showing any grounds” as one of the significant problems with registration of NGOs.<sup>46</sup>

In the *Ramazanova and Others v. Azerbaijan* case, the applicants had to submit and re-submit their NGO registration application five times, with almost four years between the first and the last registration requests. In its decision, the Court observed, “[T]here was no basis in the domestic law for such significant delays. The Government’s argument that the delays were caused by the Ministry’s heavy workload cannot extenuate the undisputable fact that, by delaying the examination of the registration requests for unreasonably long periods, the Ministry breached the procedural requirements of the domestic law. It is the duty of the Contracting State to organize its domestic state-registration system and take necessary remedial measures so as to allow the relevant authorities to comply with the time-limits imposed by its own law....”<sup>47</sup> The Court also criticized the quality of the laws in failing to protect the applicants from these arbitrary actions by MoJ, concluding that

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<sup>42</sup> Neither the NGO Law nor the Registration Law requires in-person visits. It is rather a customary practice. Theoretically, documents may also be sent by mail, but due to well-grounded concerns that the submitted documents might not be considered if mailed, applicants choose to submit them in-person.

<sup>43</sup> The Decree of the President of the Azerbaijan Republic on Development of Justice Organs (entered into force, August 18, 2006).

<sup>44</sup> Article 8 of the Registration Law.

<sup>45</sup> Article 7-1 of the Registration Law.

<sup>46</sup> *Id.*

<sup>47</sup> *Ramazanova and Others v. Azerbaijan* at paragraph 65.

under these circumstances, MoJ's interference with the rights of the applicants to associate was not "prescribed by law," as required by Article 11 of the European Convention.<sup>48</sup>

#### 2.1.5. Registration of Amendments to Founding Documents and Re-Registration

A legal entity, representative office or an affiliate of a foreign legal entity must register changes to its charter and other founding documents, already registered with the MoJ, and these changes become effective from the moment they are registered.<sup>49</sup> To register a change, an NGO must file a written application to the relevant executive body of Azerbaijan, 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.<sup>50</sup>

When a legal entity or representative office or affiliate of a foreign legal entity changes its legal address from one administrative territory to another, or in other cases as provided by legislation, the entity shall be re-registered by MoJ and provided with a new registry number.<sup>51</sup> Article 10.2 of the Registration Law does not specify what such "other cases" are. We believe that this constitutes an open gap in the law.

#### 2.1.6. Registration of Foreign NGOs

There are two primary ways for a foreign organization to establish an NGO in Azerbaijan: (1) as a co-founder of an association or founder of a foundation; and (2) by opening a representative office or a branch of a foreign NGO, with or without humanitarian organization status.

In order for foreign humanitarian and charity organizations to be registered in Azerbaijan, the organization should receive a consent letter from the Cabinet of Ministers.<sup>52</sup> Only after receiving such consent may the foreign humanitarian or charity organization be registered as an NGO, a branch, or a representative office. Unfortunately, the legislation does not provide a detailed procedure and timeframe for obtaining the consent letter. As a matter of practice, the organization should send a letter and constituent documents to the Cabinet of Ministers.

With regard to representative offices or affiliates of foreign NGOs, in general the registration requirements are the same as for Azerbaijani NGOs, with the addition of the following documents: (1) the by-law of the foreign organization; (2) its certificate of incorporation; (3) documentation of its decision to set up an organization in Azerbaijan; (4) power of attorney to a person representing the organization in Azerbaijan; (5) if the founder is a foreign or stateless person, a copy of his or her identification or other document verifying that he or she is a citizen of or resides or performs activities in any third country, and documentation confirming that this person may engage in business activities (usually

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<sup>48</sup> *Id.*, at paragraphs 66-67.

<sup>49</sup> Article 14 of the NGO Law.

<sup>50</sup> Article 9 of the Registration Law.

<sup>51</sup> Article 10 of the Registration Law.

<sup>52</sup> Decision # 376 on International Humanitarian Organizations and their representative offices (approved by the Cabinet of Ministers, November 2, 1994).

from tax authorities). The above-mentioned documents must be certified at an Embassy of Azerbaijan or legalized in accordance with Hague Convention on apostilles.

According to some foreign NGOs who have tried to register in Azerbaijan, however, the registration process is long and the results are unpredictable. We have heard anecdotally, for example, that MoJ officials sometimes request additional documents not listed in the Registration Law (such as a letter of reference from a foreign government agency confirming the activities of the foreign NGOs in Azerbaijan.) Most importantly, foreign NGOs complain that MoJ decisions on whether to allow them to register are made on a case-by-case basis at the discretion of government officials in charge. One organization shared its experience of waiting for more than a year after submitting its registration application documents with no reply.

#### 2.1.7. Branches and Representative Offices of NGOs

Registered NGOs may establish branches and representative offices in Azerbaijan and abroad. A branch of an NGO may be established outside the place of residence of that organization and may fully or partially carry out the same activities as the organization. Branches and representative offices of NGOs are not legal entities, but they represent and protect the interests of the main organization. They receive a share of the property of the organization that established them and operate in accordance with regulations approved by that organization. Chiefs of branches and representative offices are appointed by an NGO and operate within the scope of powers given to them by that NGO.

#### 2.1.8. Reasons for Denial of Registration

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 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. A decision to reject an NGO's application for state registration shall be submitted to a representative of that NGO in writing, identifying the reasons for rejection along with the specific law or laws that the NGO failed to comply with. Rejection of state registration of an NGO shall not be an obstacle for resubmission of documents after the deficiencies are addressed.<sup>53</sup>

In practice, many groups applying for registration are denied. 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.<sup>54</sup> In the *Ramazanova and Others v. Azerbaijan* case, for example, the MoJ rejected the applicants' documents for reasons such as not including a provision on the territorial area of the association's activity.

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<sup>53</sup> Article 11.3.2 of the Registration Law.

<sup>54</sup> Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations*, supra note 38.

### 2.1.9. Appeals Procedure

In Azerbaijan, complaints regarding a decision to reject state registration of an NGO may be lodged in court.<sup>55</sup> The procedures for appealing to the courts are governed by the Civil Procedure Code.<sup>56</sup>

Due to the lack of public information on the numbers of NGOs that appeal registration denials to courts, we are unable to state affirmatively how frequently this practice occurs and whether any NGOs have been successful in such appeals.

In justifying its award of damages to the applicants in the *Ramazanova and Others v. Azerbaijan* case, the Court stresses the facts of the applicants' many appeals to the Azerbaijani courts: "The Court notes that, up to December 2006, neither the domestic courts nor any other domestic authorities have expressly acknowledged that there was an interference with the applicants' Convention rights. Although the Constitutional Court quashed the earlier judgments and decisions of the courts of general jurisdiction, the Constitutional Court itself did not find a violation of the applicants' right to freedom of association. It merely ordered a new examination of the issue of whether this right of the applicants had been violated. Finally, on 6 December 2006, the Court of Appeal acknowledged a breach of the domestic procedural requirements by the relevant official of the State Registration Department of the Ministry of Justice and ordered him to pay moral compensation to the applicants. ... [H]aving regard to the fact that the state registration of the association had been delayed for a period of almost four years and that the applicants had to defend their rights at numerous court hearings in several sets of judicial proceedings, the Court finds that the amount of EUR705 awarded collectively to three applicants cannot be considered as a full redress for the breach of the applicants' Convention rights."<sup>57</sup>

The European Court of Human Rights is indeed becoming a powerful authority in regards to appeals by individuals and NGOs. For example, the NGO "Karabah Veterans" was registered by the MoJ only after the Court issued an order on admissibility of the case for court hearing<sup>58</sup>. The NGO had already been through several appeals in the national courts before submitting the case to the European Court of Human Rights. As reported in a recent article, the Court had received 1,478 appeals of cases from Azerbaijan prior to 2007, covering all articles of the ECHR, though the majority are related to Article 6 (right to a fair trial), Article 8 (right to respect for private life), Article 11 (right to freedom of assembly and association) and Article 1 of the First Protocol (right to property).<sup>59</sup>

### 2.1.10. Reorganization

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<sup>55</sup> Article 17.4 of the NGO Law.

<sup>56</sup> Civil Procedure Code of the Republic of Azerbaijan (adopted December 28, 1999; effective September 1, 2000).

<sup>57</sup> *Ramazanova and Others v. Azerbaijan*, at paragraphs 37-38.

<sup>58</sup> <http://www.day.az/news/society/49602.html>.

<sup>59</sup> <http://www.today.az/news/politics/36752.html>.

Re-registration of NGOs is required when the highest body in the organization or other body authorized by the charter of organization makes a decision to reorganize the NGO.<sup>60</sup> NGO reorganization can be carried out in the form of a merger, division, separation, or transformation.<sup>61</sup> When a legal entity reorganizes, it liquidates the original legal entity for the purpose of reorganization and registers a new entity. Re-registration is not only required for organizational changes, but also in cases of logistical changes (see discussion in 2.1.5, *supra*).

#### 2.1.11. Public Registry

The Registration Law requires the MoJ to maintain a State Registry that contains information about all legal entities in Azerbaijan as well as branch and representative offices of foreign legal entities.<sup>62</sup> The State Registry is updated based on uniform forms, methods and principles.<sup>63</sup> It is maintained both in hard copy and electronically, and contains information about the set-up, registration, reorganization and liquidation of those entities. In addition, it contains amendments made to constituent documents and information about branches, representative offices and of the legal entities already registered in Azerbaijan.<sup>64</sup>

The Registration Law explicitly grants public access to information in the State Registry as well as extracts and copies of documents submitted for registration. The MoJ is required to provide any interested party with information on whether or not an organization is registered.<sup>65</sup> The Law also requires that information on the registration of legal entities be published in the official state newspaper.<sup>66</sup>

Notwithstanding these public access requirements, currently, this Registry is only easily available to the staff of the MoJ. Information about NGOs is available to the public only upon request by written application. Not having publicly available databases causes several problems for NGOs and others who are interested in the activities of NGOs. For example, anyone who is interested in obtaining information about NGOs in Azerbaijan is likely to encounter difficulties accessing related official information and will mostly rely on databases created by an international organization such as ISAR-Azerbaijan, the National NGO Forum or others. Another problem caused by not having this registry available to the public, is that persons attempting to set up new NGOs have difficulty finding out whether an organization with a similar name already exists.

#### **Analysis**

*Rules for registering:* The overall registration process as defined in the NGO Law and the Registration Law meets the international standard of good practice. The documents

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<sup>60</sup> Article 10 of the Registration Law.

<sup>61</sup> Article 19.2 of the NGO Law.

<sup>62</sup> Article 15.1 of the Registration Law.

<sup>63</sup> *Id.*

<sup>64</sup> Article 12.8 of the Registration Law.

<sup>65</sup> Article 18.1 of the Registration Law.

<sup>66</sup> Article 18.2 of the Registration Law.

required to apply for registration are similar to those traditionally requested for such a process, the limited list of reasons for denial of registration, the ability of both legal and physical persons to set up an NGO and many other rules in the laws are in compliance with positive and common international practices addressing similar matters. Unfortunately, in reality, Azerbaijani NGOs do not benefit from such positive provisions. In practice, many NGOs face significant difficulties going through the registration process and often fail to register, as documented in the 2006 NGO Sustainability Index Report and the OSCE report on the Registration Procedure of NGOs in Azerbaijan.<sup>67</sup>

As the Court concluded in *Ramazanova and Others v. Azerbaijan*, these failures of Azerbaijani government authorities to implement the law restrict freedom of association by preventing NGOs from gaining legal entity status, and thus violate the spirit and provisions of the ECHR<sup>68</sup>. Aside from the positive laws that are not implemented properly by the MoJ, there are significant gaps in Azerbaijani laws related to registration. These gaps were highlighted by the Court in *Ramazanova and Others v. Azerbaijan*: “the law did not provide for automatic registration or any other legal consequences in the event the Ministry failed to take any action in a timely manner, thus effectively defeating the very object of the procedural deadlines. Moreover, the law did not specify a limit on the number of times the Ministry could return documents to the founders ‘with no action taken.’”<sup>69</sup>

*Territorial status:* It is not clear what the government’s goal is in requiring NGOs applying for registration to define their areas of operations. To our knowledge, there is no such requirement for commercial entities, which, once registered, are not bound by any geographical limitations. Requiring an NGO to designate its area of operations also lacks coherence with regard to the registration process, which is currently centralized in Baku. Consequently, even an NGO that decides to remain a local organization a district far from the capital still has to go through the registration process with the central administration in Baku. There is no trace of such segmentation of an NGO’s zone of activity in Western European countries. Some countries, like Spain and Italy, establish a different role in the registration process for the registering agency’s central office depending on whether the geographical scope of a NGO’s activities is inter-provincial (Italy) or whether the budget of the organization exceeds certain limits (Spain). However, no Western European countries, even those with a federal structure like Germany, require NGOs to specify at registration whether it will have a local, regional or national area of operations.

Note also that this regulatory limitation on an NGO’s area of operations creates a disincentive for NGOs to register, as the limitation cannot be enforced on non-registered NGOs. NGOs in Azerbaijan should therefore not only be able to register locally where they are formed, but they should also be able to operate without geographical boundaries in the entire territory of Azerbaijan.

*Registration body:* The centralization of the registration process with the MoJ in Baku, especially if in-person visits are required for that purpose, does not meet the standards of

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<sup>67</sup> See *supra* notes 38 and 40.

<sup>68</sup> See *Ramazanova and Others v. Azerbaijan*, at paragraph 66.

<sup>69</sup> *Id.*

inexpensiveness and expeditiousness for NGO registration dictated by international good practice. All Western European countries and a majority of Central and Eastern European Countries allow NGOs to be registered by local administrative offices or local courts. Moreover, as discussed above, there is no connection in those countries between the place of registration and the geographical scope of the organization's operations. The local registration option is offered for sheer practical reasons and does not impair the ability of an NGO to conduct its activities throughout the territory of a given country. Registration of NGOs in Azerbaijan should be allowed at local level, and any limitations on the geographical scope an NGO's activities should be abandoned.

*Timeline for consideration of registration:* The process for registering an NGO in Azerbaijan (up to 40 days) is substantially longer than that for a commercial entity (five days).<sup>70</sup> The difference in processing registration of those two types of entities raises questions as there is no legal rationale to justify it. 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. Why, then, should more time be needed to carry out the registration of an NGO than a commercial entity?

Moreover, good NGO registration practices imply little administrative discretion, so that any extension of the registration timeline should not be required and should therefore not be allowed. For example, under French law, the local administration is compelled to acknowledge receipt of a registration filing within five days unless the documentation is incomplete.<sup>71</sup> Only one court decision was identified in which acknowledgement of receipt was appropriately denied because information required by law - the profession of one of the NGO's officers - was missing. In addition, the French Constitutional Council in 1971 held that because the freedom of association is guaranteed by the constitution, the registration process cannot be an authorization process.<sup>72</sup> Consequently, in France, the registration body does not have the legal power to deny registration when an application is formally complete, and assessment of the lawfulness of an NGO's purpose is left to the interpretation of the courts. Such a mechanical approach to NGO registration prevails in Western Europe and should be implemented in Azerbaijan as well.

*Registration of amendments to founding documents and Re-registration:* First, it is interesting to note that the NGO Law and the Registration Law do not refer to the same documents with regard to an NGO's obligation to register changes. Under the NGO Law, only changes to the *charter* are to be registered, whereas the Registration Law requires the registration of amendments to the *founding documents* (*i.e.* documents that constitute the legal basis for the establishment and activities of a legal entity as defined in Article 2.0.6.) According to Article 5.4.1 of the Registration Law, the founding documents include the charter, the decision to establish the NGO, and verification of its charter. Documentation of the decision to establish an NGO may include information such as the name of the legal representative and his/her responsibilities, when the representative was appointed, and

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<sup>70</sup> Article 7-1 of the Registration Law.

<sup>71</sup> Article 5 of the Law on Associations (July 1, 1901).

<sup>72</sup> Decision n° 71-44 DC (July 16, 1971).

other issues considered relevant by the founders. In order to avoid any confusion for the executive body in charge of registration or the NGOs, it would be better for both laws to refer to identical documents.

Second, the current requirement that “any amendments to founding documents” or “changes to the charter” be registered is too broad in light of the general principles in international law protecting freedom of association. Minor changes in the charter should not require such registration. The Fundamental Principles suggest that registration of changes only be required where an organization's name or objectives are affected,<sup>73</sup> and that such a change should not entail an NGO being required to establish itself as a new entity.<sup>74</sup> For example under French Association Law, only the following changes listed in the law must be registered: a change of directors and officers, creation of a new branch, a change of legal address,<sup>75</sup> and the acquisition or sale of buildings.<sup>76</sup> In Slovakia, associations are allowed to simply notify the registration authority in writing of any changes to their statutory documents within 15 days.<sup>77</sup> Most importantly, as with the initial registration of any NGO, the process should involve minimal bureaucracy and discretion.

Regarding the re-registration process, it is only consistent with international law and good practice to require re-registration in certain cases where entirely new legislation has been passed or where substantive changes are made to existing legislation, or where an organization makes a fundamental change such as to its mission or organizational form. The current requirement under the Registration Law that an NGO should be re-registered with a new registry number when its legal address changes from one administrative territory to another is not in compliance with the good practice standard. A change of legal address even in those circumstances is a minor change that traditionally requires at best notification or registration of the amendment with the registration body, not a re-registration. Note that in as much as any re-registration process potentially impairs the exercise of the freedom of association, the NGO Law or the Registration Law should clearly state all the cases under which NGOs could face re-registration. In that respect, Article 10.2 of the Registration Law, which currently states, “Re-registration can be carried out in other cases provided for in the legislation,” should be replaced by a limited list of circumstances in which re-registration is required.

Most legal systems provide for review of adverse registration decisions, either directly in the legislation governing NGOs or as part of their general rules for appeal of judicial or administrative acts.<sup>78</sup> Most systems provide for appeal to a court. For example, Croatia and Bosnia provide for special administrative proceedings in administrative courts.

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<sup>73</sup> Article 42 of the Fundamental Principles.

<sup>74</sup> Article 3.3 of the Guidelines.

<sup>75</sup> The detailed address does not have to be stated in the charter. The statement of the city or even the administrative territory is valid. Therefore if the organization's address changes within the city or territory, no registration is needed.

<sup>76</sup> Article 3 of the Decree of August 16, 1901 (amended. April 24, 1981), available at: [http://abo.refasso.com/refassogb/Dev2Go.web?Anchor=Textes\\_de\\_loi\\_decret16&rnd=292](http://abo.refasso.com/refassogb/Dev2Go.web?Anchor=Textes_de_loi_decret16&rnd=292).

<sup>77</sup> Article 11 of the Law of Slovakia Concerning the Right of Association, (March 27, 1990).

<sup>78</sup> Serbia is the only example in Central and Eastern Europe of a country which does not preserve a right of appeal for foundations.

Romanian law not only allows NGOs to appeal adverse decisions, it also allows the public prosecutor or the activity-area ministry to appeal decisions in the NGO's favor.

*Registration of foreign NGOs:* The practical difficulties encountered by many foreign organizations seeking registration in Azerbaijan demonstrate that the related provisions of the law do not offer a reliable legal framework to achieve that goal.

*Branches and representative offices of NGOs:* Azerbaijani law seems to meet the standards of good practice on this issue.

*Reasons for denial of registration:* The provisions relating to denial of registration of NGOs are of special concern. The reasons listed in the Azerbaijani NGO Law are broad, but similar to laws in many European countries. However, unlike in other countries, where such reasons are applied very rarely, in Azerbaijan it is a common practice to deny registration based on vague statutory interpretations. As described in the overview of Azerbaijani legislation, in many instances, the shortcomings in documents submitted for registration and listed in the letters of rejection could have been corrected through the process of the MoJ's consideration of the applications and should not have been considered valid reasons for rejecting registration.<sup>79</sup>

The facts of the *Ramazanova and Others v. Azerbaijan* case were slightly different, because rather than officially denying registration, the MoJ repeatedly, and after long delays, returned application documentations for ever-changing technical corrections. Under those circumstances, the Court explained: "Although the return of documents for rectification of deficiencies may not be regarded as a formal and final refusal to register the association under the domestic law, the Court ... considers that the repeated failures by the Ministry of Justice to issue a definitive decision on state registration of the association amounted to *de facto* refusals to register the association."<sup>80</sup> Thus, whether by repeated and untimely demands for technical changes to application documents or by formal denials, the MoJ's practices in handling NGO applications for registration may violate Azerbaijan's obligations under international law to protect freedom of association.

The right to form an NGO to pursue common goals has been recognized under international law as well as the laws of many countries as protected by the right to free association.<sup>81</sup> This right may not be limited except where prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Only "convincing and compelling" reasons can justify restrictions on the right to associate and restrictions must be "construed strictly."<sup>82</sup>

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<sup>79</sup> Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations*, *supra* note 38.

<sup>80</sup> *Ramazanova and Others v. Azerbaijan* at paragraph 58.

<sup>81</sup> See *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998).

<sup>82</sup> See *id.*; see *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998).

The European Court of Human Rights has specifically addressed the application of grounds to deny registration in Greece, and in that case found that they were not “necessary in a democratic society.” In *Sidiropoulos v. Greece*, a Greek court denied the registration of an association on the grounds that its purpose was not, as claimed, the promotion of local culture, but rather, “the promotion of the idea that there is a Macedonian minority in Greece, which is contrary to the country’s national interest and consequently contrary to law.”<sup>83</sup>

The Greek government asserted that denial of registration was necessary to uphold “Greece’s cultural traditions and historical and cultural symbols.” The Court found that this rationale did not constitute a legitimate state aim which could be used to restrict the right to associate under Article 11, noting that “[e]xceptions to freedom of association must be narrowly interpreted, such that the enumeration of them is strictly exhaustive and the definition of them necessarily restrictive.”<sup>84</sup>

The Court went on to consider whether denial of registration was necessary to protect one of the state aims enumerated in Article 11 – the protection of national security and prevention of disorder. It found:

*Territorial integrity, national security and public order were not threatened by the activities of an association whose aim was to promote a region’s culture, even supposing that it also aimed partly to promote the culture of a minority; the existence of minorities and different cultures in a country was a historical fact that a “democratic society” had to tolerate and even protect and support according to the principles of international law.*<sup>85</sup>

The Court accordingly found that denial of the association’s registration violated Article 11 of the ECHR.

Despite the fairly clear interpretation by the European Court of Human Rights of permissible reasons for denial of registration and the almost identical restatement of those reasons in the NGO Law, Azerbaijani civil society is justifiably concerned due to the practical exercise of broad discretion on the part of government officials implementing the Law. As was found in the *Ramazanova and Others v. Azerbaijan* case, the officials’ broad interpretation of the grounds for limiting freedom of association, resulting in denials of registration of NGOs, may violate Azerbaijani obligations under Article 11 of the ECHR. Azerbaijan’s record of implementing the NGO and Registration Laws must be taken into consideration in evaluating whether Azerbaijan complies with international law and good practices for regulating NGOs, even if certain provisions of the laws are similar to the provisions of other countries, especially those countries considered “old democracies.”<sup>86</sup>

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<sup>83</sup> *Sidiropoulos and Others v. Greece* at 10.

<sup>84</sup> *Id.* at 37, 40.

<sup>85</sup> *Id.* at 41.

<sup>86</sup> Denial of Registration and Involuntary Liquidation of Associations: Overview of French Case Law, Fabrice Suplisson, ICNL.

*Appeals procedure:* Azerbaijan's Civil Procedure Code allows for court appeals of denied NGO registration applications. However, the 2006 NGO Sustainability Index calls attention to the lack of independence of the Azerbaijani courts, and this issue is also illustrated in the *Ramazanova and Others v. Azerbaijan* opinion.. This perception of a lack of judicial independence may explain why there have been so few cases of appeals of NGO registration denials. This, unfortunately, is a much broader problem in Azerbaijan, which cannot be resolved through simple amendments to the NGO Law, the Registration Law, or even the Civil Procedure Code. The issue of a judicial system's efficiency and independence must be addressed through comprehensive reform.

*Public registry:* Public access to information about NGOs continues to be an issue in Azerbaijan. Consequently, despite features that are similar to those of many other countries, the public registry does not achieve properly serve its ultimate purpose, which is to provide public information on the registered NGOs in Azerbaijan.

**2.2. Termination and Liquidation.** The legal personality of an NGO should only be terminated pursuant to the voluntary act of its members - or, in the case of a non-membership NGO, its management. An NGO created through the merger of two or more NGOs should succeed to their rights and liabilities.<sup>87</sup> In exceptional circumstances and only with compelling evidence, the conduct of an NGO may warrant its dissolution.<sup>88</sup> An NGO may designate a successor to receive its assets, in the event of its termination, but only after its liabilities have been cleared and any rights of donors to repayment have been honoured. Such a successor should normally be an NGO with compatible objectives, but the state should be the successor where either the objectives, or the activities and means used by the NGO to achieve those objectives, are found to be unlawful. In the former case, and in the event of no successor being designated, the property should be transferred to another NGO or legal person that conforms most to its objectives or should be applied towards them by the state.<sup>89</sup> The highest governing body of a civic organization, upon application, should be permitted to terminate the organization's activities voluntarily, go through legal dissolution proceedings, and liquidate the organization's assets pursuant to the decision of a court. Determinations to involuntarily terminate or dissolve a civic organization should be ordered by or be appealable to independent courts. A reasonable time period should be available for such appeals. Where necessary, the civic organization law should specifically reinforce these rights.<sup>90</sup> All acts or decisions affecting formal civic organizations should be subject to appropriate administrative and judicial review.<sup>91</sup>

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<sup>87</sup> Article 25 of the Fundamental Principles.

<sup>88</sup> Article 71 of the Fundamental Principles.

<sup>89</sup> Article 55 of the Fundamental Principles.

<sup>90</sup> Section 3.7 of the Guidelines.

<sup>91</sup> Section 2.2 D of the Guidelines.

## **Azerbaijani Law**

### **2.2.1. Voluntary Liquidation**

In Azerbaijan, the NGO Law provides for both voluntary and involuntary termination. NGOs are considered terminated by reorganization (amalgamation, merger, division, separation, or transformation) or dissolution/liquidation.<sup>92</sup> Both reorganization and liquidation of public associations are carried out pursuant to a decision by the association's highest governing structure, the general meeting.<sup>93</sup> Foundations, which are not membership based organizations and do not hold general meetings, can be liquidated by a decision of the Board of Trustees.<sup>94</sup> According to the Civil Code, the decision to liquidate a foundation should be made by the courts based on the application of an interested party (i.e. a board of trustees or a registration body).<sup>95</sup> Therefore, the decision of a board of trustees to dissolve a foundation would require a court's formal approval in order to be carried out.

Liquidation of NGOs is governed by the Registration Law. Legal entities, representative offices or branch offices of foreign legal entities submit an application with attached documents required by law to the MoJ (or its regional branches) for exclusion from the registry.<sup>96</sup> Within seven days of complete submission of the documents necessary for liquidation, the MoJ (or its regional branch) will officially exclude the organization from the registry.<sup>97</sup> Note that while the law permits NGOs to process liquidations through regional MoJ offices, in practice, as with NGO registrations, such matters are handled by the MoJ headquarters in Baku.

### **2.2.2. Involuntary Liquidation**

Article 58. IV of the Azerbaijani Constitution provides, "The activities of associations which violate the Constitution and laws can be stopped solely by the court's order."

Where the MoJ determines an NGO has violated a provision of the Law on NGOs or other legislation, it must formally notify the organization in writing, instructing it to correct the violations. The NGO may appeal the notification in court. If an NGO is cited more than twice in one year for violations, the MoJ may initiate an action in court for dissolution of

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<sup>92</sup> Article 18 of the NGO Law.

<sup>93</sup> Article 25.5.6 of the NGO Law.

<sup>94</sup> Article 27.2 of the NGO Law.

<sup>95</sup> Article 116.2 of the Civil Code.

<sup>96</sup> Applications for liquidation must be accompanied by the following documentation: the official decision to liquidate, financial balance and tax returns, acceptance of which is verified by the relevant executive authority of Azerbaijan; results of the entity's last tax audit by the relevant executive authority of Azerbaijan; the original certificate of state registration and charter of the structure and its seal; and verification of publication in the media of a notice informing the public of the entity's intent to liquidate.

<sup>97</sup> Article 16.5 of the Registration Law states, "In the event an application is incomplete, the Ministry of Justice shall provide written notification and the organization will amend or resubmit its application. Official exclusion from the registry will occur within 7 days of a complete application."

the NGO.<sup>98</sup> We are not aware of any instances of involuntary termination or appeals of such cases. However, it is quite possible that this has happened.

### **Analysis**

Azerbaijani law provides little guidance on the issue of liquidation of NGOs. The final disposition of the NGO's property is mostly left to the initiative of the founders, who are required to address the issue in the charter under Article 13 of the NGO Law and must comply with the related provisions of the Civil Code. The requirements of the Civil Code itself are limited as well, offering two alternatives for disposing the property of the liquidated association or foundation. The first option is that the property be directed to the goals stipulated in the charter. Only in those cases where this first option is impossible, the property will be directed to the state budget.

A similar limited approach may be found in the NGO laws of other countries.. For example the French Law on Associations only states that in cases of voluntary and involuntary dissolution, the association's property is to be distributed according to the provisions of the charter, and in absence thereof by the vote of the general assembly.<sup>99</sup> However, France has enacted separate and detailed bankruptcy legislation which is applicable to associations. The German Civil Code, which is the main source of legislation for associations and foundations, comprises no less than 20 articles detailing the procedure and consequences of an NGO's liquidation, covering issues like the procedures of distribution, the designation, mission, and responsibility of the liquidators, and publication of liquidation and bankruptcy notices.<sup>100</sup>

In Azerbaijan, the NGO Law also allows the MoJ to initiate the liquidation of an NGO when its actions "contradict the objective of the law."<sup>101</sup> The NGO Law requires the MoJ to provide at least two warnings to the NGO prior to applying to court for the initiation of a liquidation procedure. However, the broadness and vagueness of the term, "contradict the objective of the law," (instead of the narrow "provisions" of the law) would permit the State to restrict the freedom of association in violation of international law. Good legislative practice would restrict the government's ability to initiate termination of an NGO to limited and clearly stated circumstances. Most NGO Laws therefore identify the situations under which involuntary termination may be sought. Under the Belgian Law on Associations, for example, involuntary termination may be sought in court when an association is unable to fulfill its obligations uses its assets or income from its assets for a purpose other than that for which the entity was created; seriously violates its charter, the law or public order; fails to file its annual financial statement for three years in a row; or does not have at least three members.<sup>102</sup> Under the French Law on Associations,

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<sup>98</sup> Article 33 of the NGO Law.

<sup>99</sup> Article 9 of the Law on the Contract of Association, (July 1, 1901, with subsequent amendments, as of June 12, 2001), available at:  
[http://abo.refasso.com/refassogb/Dev2Go.web?Anchor=Textes\\_de\\_loi\\_loi1901&rnd=11465](http://abo.refasso.com/refassogb/Dev2Go.web?Anchor=Textes_de_loi_loi1901&rnd=11465).

<sup>100</sup> German Civil Code, Articles 41 to 54, 74 to 79, available at:  
[http://www.law.ed.ac.uk/file\\_download/courses/handouts/LLM/119/1730\\_germancivilcode.pdf](http://www.law.ed.ac.uk/file_download/courses/handouts/LLM/119/1730_germancivilcode.pdf).

<sup>101</sup> Article 31 of the NGO Law.

<sup>102</sup> Article 28 of the Law on Non-profit Associations, International Associations and Foundations (May 2, 2002), available in French at: [http://www.juridat.be/cgi\\_loi/legislation.pl](http://www.juridat.be/cgi_loi/legislation.pl).

involuntary termination may be sought in court against any association whose purpose is illegal or which damages good morals, the integrity of the national territory, or the republican form of government.<sup>103</sup>

Two positive aspects of the Azerbaijani provisions on liquidation are the involvement of the courts in involuntary termination as well as the requirement of prior warnings to an NGO before any termination is sought in court. Nevertheless, in order to comply with international law and good practices, the Azerbaijani law should adopt a limited list of specific circumstances under which involuntary termination may be sought in court.

### 3. Structure and Internal Governance

**3.1 Mandatory and Optional Provisions for Governing Documents.** The "statutes" of the NGO shall mean the constitutive instrument or instrument of incorporation and, where they are the subject of a separate document, the statutes of the NGO. These statutes generally specify: its name; objectives; powers; the highest governing body; the frequency of meetings of this body; the procedure by which such meetings are to be convened; the way in which this body is to approve financial and other reports; the freedom of this body to determine the administrative structure of the organisation; the procedure for changing the *statutes* and dissolving the organisation or merging it with another NGO.<sup>104</sup>

#### Azerbaijani Law

According to Article 13 of the NGO Law, the charter of an NGO shall define: (1) the name and address of the organization; (2) the objectives of operation and method of management; (3) the rights and responsibilities of members; (4) the conditions and rules for joining and leaving the membership of a public organization; (5) the sources of the NGO's assets; (6) the rules for adoption and amendment of the charter; and (7) the rules for liquidation of an NGO and for the utilization of its property in case of liquidation.

The charter of a foundation shall include the following information: (1) the entity's name with the word "Foundation" in it; (2) its address; (3) its objectives; (4) its bodies, including a Custody Board, as well as rules for establishment of those bodies; (5) the rules for appointment and dismissal of foundation officials; and (6) the future disposition of the foundation's property in case of liquidation.

In addition to these mandatory provisions, NGOs may include in their charters any other provisions not contrary to the laws of Azerbaijan. For example, an association may choose to have a director who runs day-to-day activities or a board of directors, or it may have both a director and a board of directors<sup>105</sup>. The NGO Law in this case allows the general meeting of the association to vest the director and/or board with power to run the NGO's day-to-day activities. The Law only lists the attributions of the general meeting; it does not

<sup>103</sup> Article 3 of the Law on the Contract of Association, July 1, 1901, *see supra* note 99.

<sup>104</sup> Section 18 of the Fundamental Principles.

<sup>105</sup> Article 26 of the NGO Law.

specify the powers of the governing structures for associations. Regarding foundations, the governing structure is more complicated and unclear. The Law does not specify the procedures for appointment and dismissal of the governing bodies of a foundation.<sup>106</sup> Moreover, the NGO Law allows the Board of Trustees of a foundation to adopt a decision on liquidation of the foundation<sup>107</sup>, while the Civil Code provides that a foundation may be liquidated in courts only based on petitions of interested persons.<sup>108</sup>

## **Analysis**

The Azerbaijani NGO Law imposes limited requirements on the overall content of an NGO's charter.<sup>109</sup> It is a good approach shared by most countries, as the internal organization of NGOs should be adaptable to a very large variety of situations and remain flexible. For example, under the German Civil Code, the charter of an association seeking registration must also provide a limited amount of information, including: the purpose of the organization and its the name, its legal address, the conditions required to acquire and lose membership status, the membership fees, information on the designation of the board of directors, the modalities under which the general assembly is gathered, and how its resolutions are approved. The charter must also state that the association is registered.<sup>110</sup>

**3.2 Internal Governing Structure.** The bodies for management and decision-making of NGOs should be in accordance with their statutes and the law, but NGOs are otherwise sovereign in determining the arrangements for pursuing their objectives. In particular, the appointment, election or replacement of officers, and the admission or exclusion of members, are a matter for the NGO concerned.<sup>111</sup> No external intervention in the running of NGOs should take place until and unless a breach of the administrative, civil or criminal law, the insurance obligations, the fiscal or similar regulations occurs or is thought imminent. This does not preclude the law requiring particular supervision of foundations and other institutions.<sup>112</sup>

Founders, officers, members of the governing or management boards, and employees of a formally established civic organization should not be personally liable for the obligations of the civic organization. Officers and board members should ensure that the organization operates within the requirements of the law and should be liable to the organization and/or to injured third parties for wilful or negligent performance and omission.<sup>113</sup>

## **Azerbaijani Law**

### **3.2.1. Governing Bodies in Public Associations**

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<sup>106</sup> Article 27 of the NGO Law.

<sup>107</sup> *Id.*

<sup>108</sup> Article 116 of the Civil Code.

<sup>109</sup> Article 13 of the NGO Law.

<sup>110</sup> Articles 57 and 58 of the German Civil Code, *see supra* note 100.

<sup>111</sup> Section 45 of the Fundamental Principles.

<sup>112</sup> Section 47 of the Fundamental Principles.

<sup>113</sup> Section 4.3 of the Guidelines.

The charter of a public organization shall – in accordance with the NGO Law and other laws – define the structure and composition of that public organization, the powers of its management bodies, rules for establishment of such bodies and their term in office, as well as the rules for adoption of decrees and acting on behalf of the public organization. The supreme management body of a public organization shall be the general meeting, to be convened not less than once a year. The general meeting shall be convened by the executive body of a public organization, by one of its founders, or by one-third of its members. The main function of the general meeting is to review the activities of the organization.

The scope of powers of the general meeting includes the following: (1) adoption of and amendments to the charter; (2) determination of principles for the formation and use of the organization's property; (3) creation of executive bodies and the conditions for the premature termination of their powers; (4) adoption of an annual report; (5) participation in other organizations; and (6) conditions for reestablishment and liquidation. Founders and members of a public organization shall receive information about the place and time of the general meeting at least two weeks in advance. The general meeting may make changes to the charter only if more than half of the members of a public organization participate in the meeting. A decree of the general meeting shall be adopted by the majority of votes of the members participating in the meeting. Each member shall have one vote. Written minutes shall be kept of the general meeting, and shall be signed by the chairman and secretary of the general meeting. If necessary, the minutes of the meeting shall be distributed to all members.<sup>114</sup>

The executive body of a public organization may be collegial and/or single. It shall exercise management of the operations of a public organization, and shall report to the general meeting of members. The executive body of a public organization may establish branches and representative offices of that public organization. The executive body of a public organization shall deal with all of the issues that are not exclusively delegated to other bodies as determined by the NGO Law, other laws, or the charter of that public organization.<sup>115</sup>

### 3.2.2. Governing Bodies in Foundations

Management of a foundation shall be carried out by the president of that foundation or its governing board, under the supervision of a custody board. The NGO Law defines the exclusive competence of the custody board as follows: supervise activities of the foundation; supervise the adoption and implementation of decrees by other bodies of the foundation; supervise utilization of the foundation's resources; adopt changes to the foundation's charter; and adopt decrees on liquidation or reestablishment of the foundation. The members of the custody board shall implement their activities on a voluntary gratuitous basis. Rules for establishment and operations of the custody board of a

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<sup>114</sup> Article 25 of the NGO Law.

<sup>115</sup> Article 26 of the NGO Law.

foundation shall be determined in the charter of that foundation and approved by its founders<sup>116</sup>.

It is important to note that there are few foundations in Azerbaijan, and we are not aware of any which operate endowments (i.e., generate investment income for the purpose of financing charitable activities).

### **Analysis**

Article 25 of the NGO Law provides little room for organizational discretion regarding the meeting of the general assembly. Although none of the provisions of the Law diverts from traditional practices of associations on those matters, some of the very practical aspects of the meeting and attributes of the general assembly could have been left to the initiative of each organization to be set forth in its charter. Such is the case regarding the general meeting convocation timeline and the rules establishing minimum thresholds for votes to establish or amend a charter. Nevertheless, these standards are minimal and protective of members' rights, and should act mostly as default provisions. Therefore, the fact that they are imposed by law on the associations should not have a significant negative impact.

The NGO Law gives very little guidance on the role and structure of the executive body of public organizations under Article 26, or foundations under Article 27. Flexibility regarding the organization of the internal bodies of an association is a good thing. However, the Law could have been more specific on the roles and responsibilities of the individuals designated to those executive bodies. For example, it is appropriate to address the liability of the officers, directors, members and employees. Traditionally, those individuals are not personally liable for the obligations of the organization. At the same time, officers and directors usually bear fiduciary duties (or a mandate under civil law) towards the organization and its members or founders, and must ensure that the organization operates within the requirements of the law. If the Civil Code does not provide guidance on the nature and extent of these related duties, the NGO Law could appropriately address the issue. Similarly, guidance should be provided on the prevention and management of conflicts of interest.<sup>117</sup>

**3.3. Distribution of Profits and Other Private Benefits.** NGOs do not have the primary aim of making a profit. They do not distribute profits arising from their activities to their members or founders, but use them for the pursuit of their objectives.<sup>118</sup> In order to ensure the proper management of their assets, NGOs should preferably act on independent advice when selling or acquiring any land, premises or other major assets.<sup>119</sup> The funds of an NGO can be used to pay its staff. All staff and volunteers acting on behalf of an NGO can also be reimbursed for reasonable expenses which they have thereby incurred.<sup>120</sup> The

<sup>116</sup> Article 27 of the NGO Law.

<sup>117</sup> See Section 6, *infra*.

<sup>118</sup> Section 4 of the Fundamental Principles.

<sup>119</sup> Section 53 of the Fundamental Principles.

<sup>120</sup> Section 56 of the Fundamental Principles

officers, directors and staff of an NGO with legal personality may be liable to it and third parties for misconduct or neglect of duties.<sup>121</sup>

### **Azerbaijani Law**

The only restriction on distribution of profits and other private benefits in the NGO Law is found in the definition of a public association, which is: “not aimed at profits as a major objective and does not distribute generated profit among its members.”<sup>122</sup>

The Tax Code provides a definition of “a non-commercial activity,” and of a “non-commercial organization.” A non-commercial activity is defined as a “not-prohibited by law activity, which does not pursue the purpose of obtaining profit, and, in case of gaining profit, designates it only for non-commercial purposes, including for the organization’s own charter purposes. Otherwise activity is considered commercial.”<sup>123</sup>

A non-commercial organization is defined as a legal person, performing non-commercial activity, not distributing profit among founders (shareholders) and participants, and not using gained profit for commercial purposes. Otherwise an organization is considered a commercial organization.<sup>124</sup>

It is important to note that this non-distribution constraint is only stated in the Tax Code, and is not addressed at all in the NGO Law. Therefore, it would be applicable to NGOs only for tax purposes, but would not apply for good governance purposes.

The NGO Law does not address at all the related issue of compensation of the persons in charge of the administration and management of an NGO.

### **Analysis**

Azerbaijani law covers the basic aspects of the non-distribution constraint *i.e.* the prohibition of distribution of profits among founders and members of an NGO. It also addresses the extent to which an NGO may be involved in commercial activities (*i.e.* only if the profits generated are not distributed among members).

It is, however, legitimate for employees, whether in the for-profit or in the non-profit sector, to be paid a reasonable salary and related employee benefits as well as reimbursement of expenses incurred on behalf of the NGO. For example, it would be legitimate for an NGO to have a hired manager to take care of its day-to-day operations if the activities and size of the organization require it.

Regarding the officers and members of the board of directors, there is a strong tradition of volunteer work for official duties. However, in some NGOs those duties may become more

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<sup>121</sup> Section 73 of the Fundamental Principles.

<sup>122</sup> Article 2 of the NGO Law.

<sup>123</sup> Article 13-2-27 of the Tax Code.

<sup>124</sup> Article 13-2-28 of the Tax Code.

demanding and time consuming so that it becomes legitimate to allow those executives to be paid a reasonable compensation as well.

The issue of compensation of executives in the non-profit sector has been addressed in different ways in most “old democracies,” though usually through tax law provisions. For example, in France, tax exemptions are only accessible to NGOs with a “disinterested administration.”<sup>125</sup> It requires, *inter alia*, that the compensation of directors and officers not go beyond a given cap defined by the tax law. In the USA, the system is more flexible as no cap is imposed by law, but it is the responsibility of the organization itself to prove that compensation is reasonable with regard to the practice of other comparable organizations in the same sector of activity and the same level of responsibility. Excess compensation gives rise to taxation. Note that the non-profit sector itself is highly involved in those countries in setting guidelines and self-regulation on compensation issues that are very sensitive to their main contributors, especially compensation related to fundraising campaigns. However, such detailed guidelines and regulations relating to compensation of executives always relate to substantial tax benefits and do not apply to the majority of NGOs which do not enjoy such substantial tax benefits. As a matter of common practice, the issue of compensation of executives of NGOs is left to discretion of NGOs themselves.

The Azerbaijani NGO Law generally complies with the common practices described above by leaving the issue of compensation to the discretion of NGOs themselves.

The issue of personal liability is another important issue with regard to protecting the interests of NGOs and preventing any self-dealing by the management of NGOs, and an area where the Azerbaijani laws could be improved. As a general rule, founders, officers, members of governing bodies and employees shall not be personally liable for the obligations of the NGO.<sup>126</sup> The officers and board members shall not be liable if they act reasonably and in good faith; however, they shall be liable to the organization and to third parties for wilful or negligent performance or omission. The same rules usually apply to officers of businesses and NGOs, with the definitions of crimes and omissions provided in the criminal code and code of administrative procedure.

**3.4. Conflicts of Interest.** Officers and board members of a civic organization should be required by law to exercise loyalty to the organization, to execute their responsibilities to the organization with care and diligence, and to maintain the confidentiality of non-public information about the organization.<sup>127</sup> The law and internal regulations should require that officers, board members, and employees of a civic organization avoid any actual or potential conflict between their personal or business interests and the interests of the civic organization.<sup>128</sup> Personal conflicts should at minimum be disclosed.<sup>129</sup>

<sup>125</sup> Article 261-1-7 of the Tax Code, available at:  
<http://www.usig.org/countryinfo/laws/France/France%20General%20Income%20Tax%20Code%20Article%20261.pdf>.

<sup>126</sup> Section 4.3 of the Guidelines.

<sup>127</sup> Section 4.4 of the Guidelines.

<sup>128</sup> Section 4.5 of the Guidelines.

<sup>129</sup> *Id.*

## **Azerbaijani Law**

The Azerbaijani legislation does not require NGOs to enact internal governance mechanisms which reflect international good practices and prevent conflicts of interest. NGOs have not adopted mechanisms for self-regulation and many do not employ conflict of interest policies which are consistent with international good practices.

## **Analysis**

Countries generally adopt one of two approaches regarding conflicts of interests. A global approach consists of a regulation preventing and sanctioning conflict of interest situations for all persons bearing fiduciary duties (officers, directors, managers, etc.) whether in the for-profit sector or the not-for-profit sector. Under this approach, it is left to the courts to determine on a case-by-case basis whether there has been a violation. Note that in civil code countries, the duties and responsibilities of fiduciaries are addressed through provisions regarding the contract of mandate. We are not aware of any such provisions in the Azerbaijani Civil Code. An alternative approach consists of designing specific rules for NGOs, notably by requiring those organizations to adopt internal conflict of interest rules in light of their particular facts and circumstances.

International good practices vary depending on the local circumstances. It is fair to say, for example, that in the USA, regulation of conflict of interest has been triggered first in the context of big public companies and then adapted to the NGO sector. In France, attention to those issues was more specifically triggered by the practices of NGOs.

Legislative reform in this area should be informed by the following basic principles, which are usually central to preventing and sanctioning conflicts of interest:

- Any individual, especially a director, officer or manager of an NGO, who faces a conflict between his own interests and those of the organization he or she represents on a given issue, should recuse him or herself from any decision-making regarding that issue.
- Potential conflicts of interest should, at minimum, be disclosed.
- NGOs should have a procedure designed to deal with conflicts of interest.
- In those cases where an individual may have a conflict of interest in a particular transaction, the NGO should receive the benefit of the bargain.

## **4. Activities of NGOs**

**4.1. General Legal Capacity.** NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and be subject to the same administrative, civil and criminal law obligations and sanctions generally applicable to them.<sup>130</sup>

<sup>130</sup> Section 8 of the Fundamental Principles.

## **Azerbaijani Law**

According to Azerbaijani law, NGOs registered as legal entities enjoy the same capacity as other legal entities. For example, as a legal entity, an NGO can be a plaintiff or defendant in court, and can possess property in its own name. NGOs obtain the rights and responsibilities of a legal entity from the date of their official registration and can carry out any activities not prohibited by the law or their charters.<sup>131</sup>

Azerbaijani NGOs have the same capacity as all other legal entities to found another legal entity, including a business, unilaterally or jointly with other entities and persons. The only limitation of an NGO's capacity as compared to other legal entities is that it can carry entrepreneurial activity only as long as the activity promotes achieving the NGO's statutory purposes.

Under Azerbaijani law, NGOs are permitted to engage in fundraising activities by telephone, mail, television, and similar campaigns. The law does not require any licenses or permits for these activities. There are no laws governing charity balls, auctions, or similar occasional activities.

Theoretically, NGOs may take out loans; in practice NGOs do not borrow because they lack collateral.

Azerbaijani NGOs do not engage in lotteries because the Law of the Republic of Azerbaijan on Lotteries, dated May 2004 (hereinafter referred to as "the Law on Lotteries"), limits the permissibility of implementing lotteries to only those organization designated by the President's Commission on Securities. At present, all lotteries are conducted exclusively by the Open Stock Company, Azerlottery.<sup>132</sup>

## **Analysis**

The general legal capacity of an NGO in Azerbaijan is similar to that of NGOs in most countries of Western, Central and Eastern Europe. It is legitimate to subordinate the conduct of entrepreneurial activities to the achievement of the NGO's statutory purpose. However, the income generated by NGOs through carrying economic activities should be exempt from income tax, at least in those cases where the activity is related to the organization's nonprofit purpose.

In order to collect donations from general public, NGOs in other countries are often required to:

1. Act in their own name,;

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<sup>131</sup> Article 22 of the NGO Law.

<sup>132</sup> Article 3.3 of the Law on Lotteries.

2. Inform the public of the purpose of fundraising and of the NGO's activities; and
3. Inform the public of the amount of compensation to collectors and the percentage of funds raised that was spent on fundraising;

In some countries, NGOs are not allowed to raise funds from the public unless they obtain a license to collect public donations and display this license to donors when engaging in door-to-door fundraising, or specify the number, date of issue, and issuing authority for such license in direct mail fundraising letters. Whatever the requirements for fundraising are, care should be taken to limit the resulting burden on NGOs.

It is commendable that Azerbaijani law allows NGOs to engage in fundraising activities without onerous bureaucratic burdens. It is now necessary to create the required normative framework in order to promote efficient fundraising while still protecting the public from possible corruption. Licenses for lotteries are typically required because this activity is often subject to manipulation and fraud. However, there must be a reasonable balance between protecting the public and the tendency to create too many bureaucratic obstacles. Lotteries, charity balls, auctions, and other occasional activities undertaken for the purposes of fundraising should not be considered commercial activities.

Like commercial entities, NGOs may face financial difficulties jeopardizing the continuity of the organization. Consequently, it is important for the law to determine whether NGOs are subjected to bankruptcy law. Under French law, for example, bankruptcy procedures are expressly applicable to associations. This also appears to be the case in Azerbaijan under Article 2 (2) of the Bankruptcy Law, which is applicable to all commercial and non-commercial organizations.<sup>133</sup>

**4.2. Advocacy and Political Activities.** Civic organizations are key participants in framing and debating issues of public policy, and just as is true for individuals, they should have the right to speak freely on all matters of public significance, including existing or proposed legislation, state actions and policies. Likewise, civic organizations should have the right to criticize (or praise) state officials and candidates for political office. There should be no restrictions on the right of civic organizations to carry out public policy activities, such as education, research, advocacy, and the publication of position papers<sup>134</sup>

It may be appropriate to limit civic organizations with respect to activities such as fundraising to support candidates for public office or establishing candidates to qualify for public office.<sup>135</sup>

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<sup>133</sup> Law of the Azerbaijan Republic on Insolvency and Bankruptcy (June 13, 1997, with subsequent amendments as of April 23, 2002).

<sup>134</sup> Section 6.2 of the Guidelines.

<sup>135</sup> *Id.*

An NGO which supports a particular candidate or party in an election should be transparent in declaring its motivation. Any such support should also be subject to legislation on the funding of political parties. Involvement in political activities may be a relevant consideration in any decision to grant an NGO financial or other benefits in addition to legal personality.<sup>136</sup>

### **Azerbaijani Law**

In general, Azerbaijani legislation does not limit NGO participation in framing and debating issues of public policy. However, Article 1 (4) of the Law on Grants<sup>137</sup> provides that financial support should not be considered a grant if used for the following purposes: (1) pursuit of political power; (2) lobbying laws and other normative acts; (3) political advertising; or (4) financing of politician(s) or political party(s).

Currently, Azerbaijani legislation lacks mechanisms for engaging the public and NGOs in the process of policy-making, and NGOs complain that they do not have access to government decision-makers. At the national level, NGOs are often not aware of key draft legislation until it is already being put to a vote. The recently enacted Law on Obtaining Information requires public officials to release “draft legal acts as of the date of submission for review and adoption.”<sup>138</sup> This provision may assist NGOs in obtaining notice of key draft legislation, although the effectiveness of this Law must be judged based on its implementation, which thus far appears minimal.

NGOs enjoy limited access to officials at the local government level. The *rayons*, or local territorial entities, are governed by an *Excom* and *Baladiiya*. The *Excom* is the local executive authority, which is an organ of the Presidential apparatus. Chairmen of the *Excoms* are appointed by and solely responsible to the President. The *Baladiiya* is an elected municipal council. *Baladiiyas* were only established with elections in 1999, and are largely unpaid positions with relatively limited authority.<sup>139</sup>

Each *Excom* has a deputy for social and political affairs who oversees the activities of NGOs and political parties in the region. The deputies for social and political affairs generally see their main purpose relating to NGOs as ensuring that NGOs function according to their charter and do not engage in political activities.<sup>140</sup> They do not look to NGOs for advice or information during the development or formation of policy.<sup>141</sup> *Excom* officials are considered to view NGOs as not having sufficient capacity to carry out their missions. NGO leaders comment that *Excoms* generally ignore their advice and discriminate against those NGOs they perceive as not being pro-government.<sup>142</sup>

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<sup>136</sup> Section 12 of the Fundamental Principles.

<sup>137</sup> The Law of the Azerbaijan Republic on Grants (April 1998, with subsequent amendments as of May 2002) (hereinafter referred to as the “Law on Grants”).

<sup>138</sup> Article 29.1.10 of the Law on Obtaining Information (September 30, 2005) (hereinafter referred to as the “Information Law”).

<sup>139</sup> For more information on the structure of local government see Jerome Gallagher and Vagif Hasanov, *Local Civic Engagement Assessment for Azerbaijan* (March 2006).

<sup>140</sup> See *id.* at 15.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

*Baladiiyas* do not have staff designated to handle interactions or policies relating to NGOs. In some areas of Azerbaijan, *Baladiiyas* see NGOs as a resource to their community and a potential implementing partner.<sup>143</sup> Because they are elected and have less political power than the *Excoms*, there is the potential for closer cooperation on the part of the *Baladiiyas* with NGOs than seems to currently exist for the *Excoms*.

Azerbaijan permits NGOs to engage in political activities, with limitations described below. Article 2.3 of the NGO Law simply provides, “A non-governmental organization may be established and operated for purposes that are not prohibited by the Constitution and laws of the Azerbaijan Republic. The only restriction established in the Constitution is in article 58. IV, which states, “The activity of associations which pursue the aim of overthrowing the legitimate State power in the whole territory of the Republic of Azerbaijan or in any part of it shall be banned. The occupation of unions which violate the Constitution and laws can be stopped solely by specific court order.”

According to Article 2.4 of the NGO Law, “A non-governmental organization may not participate in presidential, parliamentary and municipal elections of the Azerbaijan Republic, and it may not provide financial and other material assistance to political parties.” This restriction on “participation in elections” should be interpreted as preventing NGOs from nominating and campaigning for a certain candidate. These restrictions are meant to be applied to the official conduct of NGOs, but not to their individual employees. In practice, some members and leaders of NGOs have been criticized for supporting, serving or lobbying for the interests of political parties, even though it is within their rights to do so (as long as they do not act in their capacity of representatives of their NGO).

Until recently, Azerbaijani election law prohibited foreign organizations and local NGOs that receive more than 30 percent of their funding from foreign entities from observing presidential elections, elections to the *Milli Majilis* (the Parliament), and municipalities.<sup>144</sup> In an emergency session, on October 28, 2005, the *Milli Majilis* approved an Executive Order lifting the restriction on election observation by foreigners and foreign funded entities.<sup>145</sup> This represented a significant improvement in the ability of NGOs to participate in the elections process; unfortunately, the change took place so close to an election that many NGOs were unable to take advantage of the change to register in time. It remains to be seen how this change might affect the ability of NGOs to monitor future elections.

## **Analysis**

Azerbaijani law meets the standards of good practice regarding the protection of freedom of expression, as no legal limits are placed on the participation of NGOs in framing and debating issues of public policy. Nevertheless, the country would benefit from improving the cooperation and dialog between the state and local authorities and the NGO sector on public policy issues.

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<sup>143</sup> *Id.* at 16.

<sup>144</sup> The Law of the Azerbaijan Republic on Non-Governmental Organizations (Public Associations and Foundations) (June 13, 2000, with subsequent amendments as of October 28, 2005).

<sup>145</sup> See *President of Azerbaijan Issues Executive Order on Elections*, ICNL (October. 25, 2005) available at: <http://www.icnl.org/knowledge/news/2005/10-25.htm>.

It appears legitimate for the NGO Law to prevent NGOs from providing financial and material support to political parties, providing that separate laws govern political parties, political fundraising, elections and political campaigning. Examples of such restrictions can be found, especially in common law democracies like the USA and in civil code democracies” like France, where the involvement of an NGO in the funding of political campaign is prohibited, except for associations created specifically for political campaign funding. Poland goes further to prohibit donations to political parties by any corporate bodies, foundations, and associations.<sup>146</sup>

Nonetheless, the restrictions placed by Azerbaijani law on the participation of NGOs in any elections are ambiguous and too broad. At a minimum, the the term “participation” should be clearly defined and limited in scope. We found no equivalent restriction in any “civil code democracy.” In France, for example, there are no restrictions on the ability of a large majority of French NGOs to be involved in political activities. Only associations and foundations seeking public interest recognition from the state (carrying substantial tax and other preferences) are restricted from such political involvement. In the USA, restrictions on the participation of NGOs in lobbying and political activities are simply a tax issue, as only organizations which are not involved in substantial lobbying and do not support political campaigning may benefit from the 501(c)(3) exempt status.

**4.3. Economic Activities.** An NGO with legal personality may engage in any lawful economic, business or commercial activities in order to support its non-profit-making activities without any need for special authorisation, but always subject to any licensing or regulatory requirements applicable to the activities concerned.<sup>147</sup>

### **Azerbaijani Law**

According to Article 22 of the NGO Law, an NGO may carry out an entrepreneurial activity that is consistent with and is “aimed at reaching objectives of the creation” of the organization, so long as income generated is not distributed among the founders or members. The production and sale of goods for profit, as well as acquisition of securities, property and non-property rights, as well as participating in businesses, are all allowed activities for NGOs as long as they advance the organization’s objectives. An NGO shall keep records of its income and expenditures related to its entrepreneurial activities. Restrictions on the types of activities an NGO can be engaged with may be determined only by law.

The tax regime for Azerbaijani organizations does not depend on their organizational form or statutory purpose, but rather on the types of activities they carry out. All economic activities in Azerbaijan are taxable. The profits earned by “enterprises” are taxed under the Tax Code.<sup>148</sup> “Enterprises,” as defined in the Tax Code, are legal entities established under

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<sup>146</sup> *Funding of Political Parties and Election Campaigns*, International Institute for Democracy and Electoral Assistance – IDEA Handbook Series 71-75 (2003).

<sup>147</sup> Section 13 of the Fundamental Principles.

<sup>148</sup> Article 103 of the Tax Code. Profit is defined as the difference between the income of a taxpayer (less exempt types of income) and deductions allowed by the Tax Code. Profits are currently taxed at a rate of 27 percent.

the laws of Azerbaijan that conduct *entrepreneurial activities*,<sup>149</sup> and are established for such activities.<sup>150</sup> The Tax Code defines entrepreneurial activity as an activity of a legal person, independently conducted by the person at the person's own risk, the primary purpose of which is derivation of profits from the use of property, provision of goods, performance of works or provision of services.<sup>151</sup> While this may suggest that organizations created for non-commercial purposes are not taxpayers, in practice, non-commercial organizations (NCOs) engaging in *any sale of good or services* are subject to a tax on profits. For example, a museum that generates income from ticket sales would be taxed on those sales, even if the full amount generated was used for the upkeep of the museum and installation of new exhibits. This system of taxation discourages NGOs from engaging in fee-for service activities that could help them to become self-sufficient and sustainable.<sup>152</sup>

Certain economic activities are subject to licensing requirements whether performed by NGOs or other entities,<sup>153</sup> but only a few activities subject to licensing are likely to be relevant to NGOs (e.g., medical activities.) Most types of activities can be carried without any license, however, and we are not aware of any instances of NGOs applying for such licenses.

### **Analysis**

It can be inferred from Article 22 of the NGO Law that only “related” economic activities may be carried out by NGOs, as the activities must be “aimed at reaching objectives of the creation” of the organization. In other terms, economic activities can only be legally carried out when they are in direct furtherance of the NGO's statutory goals. Consequently economic activities that would be undertaken only for the purpose of raising revenue are not legally available to NGOs in Azerbaijan.

It is also important to note that many countries, even those distinguishing between “related” activities advancing the statutory objectives of an NGO and “unrelated” entrepreneurial activity, like the USA, permit NGOs to engage in all kinds of economic activities. The distinction is usually made for the purpose of taxation, where income generated from “related” activities is usually tax exempt, while income from unrelated activities is subject to taxation. Under French law, all kinds of economic activities are permitted as long as the conduct of a steady economic activity (as opposed to exceptional fundraising events involving the provision of services or sale of goods, like raffles, lotteries, flea markets, etc.) is expressly stated in the charter. Non-compliance with this requirement may lead to action in courts on the grounds of unfair competition.

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<sup>149</sup>Entrepreneurial activities may encompass different types of activities in different countries, depending upon any definition provided in the relevant tax code. Generally, they refer to activities which are conducted in exchange for money, the most common being sales of goods or services.

<sup>150</sup>Article 13(2)(29) of the Tax Code. Enterprises also include non-resident legal entities established under foreign law, their branches and permanent establishments, and structural sub-divisions of resident enterprises.

<sup>151</sup> Article 3.13.2.36 of the Tax Code.

<sup>152</sup> See *infra* Section 5, on indirect financing for more information on the extent to which NGO activities are taxed.

<sup>153</sup>Decree No. 782 of the President of the Republic of Azerbaijan (September 2, 2002).

The Azerbaijani requirement that economic activities carried out by an NGO be related to its statutory purposes is not unusual. A similar approach may be found in some Western European countries, for example, in Belgium, where commercial and industrial activities may be carried out by NGOs as long as they support the organization's non-profit statutory purpose, or in Germany, through the existence of the "non-economic association," which cannot be involved in economic activities aside from those in direct furtherance of the association's statutory goals.

Countries such as the USA that have chosen the "related activities" test have found it challenging to administer. Unfortunately, in practice it is often extremely difficult to distinguish "related" economic activities from "unrelated" economic activities. For example, if a museum sets up a shop on its premises to sell copies of the outstanding works of art in its collection, or perhaps books that picture them or postcards that replicate them, this can easily be argued to be "related" to the museum's purpose. But what should happen if the museum opens a chain of retail stores that sell books related to art and culture, most of which have no connection to the museum's collection? Is it engaging in an "unrelated" activity, or has it simply broadened its purpose and chosen to pursue this broader purpose using economic means?<sup>154</sup> The challenge for governments and NGOs in applying this distinction between related and unrelated economic activities is demonstrated by the fact that, in general, very little revenue is raised by a tax that is imposed only on "unrelated" activities.<sup>155</sup>

One alternative, at one time adopted in Poland, would exempt an NGO from taxes on profit from any economic activities (both purpose-related and regular business activities) as long as that profit was spent for statutory purposes within one year of receipt or the next succeeding tax year. Although this may be a useful modification of the "pure" destination of income test, it nevertheless requires distinguishing between related and unrelated activities if income is retained and not spent.<sup>156</sup>

Currently in Azerbaijan, income from any economic activity, whether related or unrelated, is subject to taxation. Therefore, the experiences described above may be useful only if the Azerbaijani government chooses to consider additional incentives for NGOs to engage in economic activities, for example in social, cultural, or health care fields.

Ultimately, as the matter of right, not taxation, NGOs should enjoy maximum freedom in carrying any kind of lawful economic activities.

## 5. Sustainability

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<sup>154</sup> See Tax Preferences for Nongovernmental Organizations by the International Center for Not-for-Profit Law (ICNL), [www.icnl.org](http://www.icnl.org).

<sup>155</sup> See Henry B. Hansmann, *Unfair Competition and the Unrelated Business Income Tax*, 75 *Va. L. Rev.* 605 (1989).

<sup>156</sup> Poland has now gone to a pure destination of income test. See Polish Tax Law (1995). Germany also has a rule similar to the former rule in Poland, and it was retained and amplified during the last round of tax changes in 2000.

**5.1. Foreign Funding.** NGOs may solicit and receive funding - cash or in-kind donations - from another country, multilateral agencies or an institutional or individual donor, subject to generally applicable foreign exchange and customs laws.<sup>157</sup>

### Azerbaijani Law

Foreign funding is an important source of support to Azerbaijani NGOs; according to the NGO Sustainability Index Report for 2006, a majority of NGOs have difficulty with local financing and rely solely on foreign donors. No special permits are required to receive foreign funding. NGOs are, however, required to provide an application letter and notarized copy of a grant agreement to the MoJ within 30 days of the date of the grant agreement.<sup>158</sup> In practice, not applying to the MoJ does not limit NGO access to foreign funding, but NGOs that fail to submit the documents may face administrative penalties in accordance with the Administrative Code.<sup>159</sup>

The main law regulating foreign assistance to NGOs in Azerbaijan is the Law on Grants. In practice, however, in many cases foreign government assistance is predominantly governed by bilateral agreements. For example, the Agreement between the Government of the United States of America and the Government of the Republic of Azerbaijan Regarding Cooperation to Facilitate the Provision of Assistance was signed on May 11, 2000 and ratified by Azerbaijan on July 18, 2000.<sup>160</sup>

A substantial amount of foreign assistance is provided in the form of grants. Under Article 1 of the Law on Grants, a grant is defined as “assistance rendered pursuant to this Law in order to develop and implement humanitarian, social and ecological projects, works on rehabilitation of destroyed objects of industrial and social purpose, of infrastructure in the territories damaged as a result of the war and disaster, programs in the field of education, health, culture, legal advice, information, publishing, sport, scientific research and design programs as well as other programs being important for the state and public. A grant shall only be provided for a specific purpose (or purposes).”

Article 2 (5) of the Law on Grants provides that the following entities may act as donors: “International organizations and their representative offices, foreign governments and their representatives, international organizations of charitable, humanitarian and other social directions, financial or credit institutions, foreign public organizations including foundations, associations, federations and committees carrying out activities in the field of development of education, science, health, culture and sport, and not being aimed at profit generation, as well as foreign natural entities.”

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<sup>157</sup> Section 50 of the Fundamental Principles.

<sup>158</sup> Presidential Decree on approval of procedures of registration of grant agreements (February 12, 2004).

<sup>159</sup> Article 223-1.1 of the Administrative Code.

<sup>160</sup> “Presidential Decree on approval of the agreement between the USA and the Government of the Republic of Azerbaijan regarding cooperation to facilitate the provision of assistance,” “Azerbaijan” Newspaper (August 17, 2000) # 186.

The Law on Grants further states that a “Donor shall be fully independent in the provision of a grant and in the selection of a grant beneficiary, projects and programs for whose benefit the grant is provided. On behalf of the Azerbaijan government, the grant shall be provided to legal and natural entities of the Azerbaijan Republic based on a tender.”<sup>161</sup>

Material assistance used directly for generation of profit shall not be considered a grant. Material assistance shall not be considered a grant should it be used directly for the purposes of a political or lobbying activity for the adoption of a law or other legislative act, for political promotion, or for financing the election campaign of any political organization(s) or political figure(s).

In 2005, some 46 NGOs applied to the MoJ for registration of their grant agreements. The total value of registered grants that year was about US\$2,724,570.<sup>162</sup> As reported by the former head of MoJ’s department of registration of legal entities, only about two percent of NGOs registered their grant agreements with the MoJ in 2004-2005.<sup>163</sup>

Unfortunately, there is no definition of “humanitarian assistance” in the Law on Grants. However, there is some legislation that provides a framework for coordination of humanitarian aid (for example, the 1994 Order of the Cabinet of Ministers on distribution, delivery and strengthening such activities for humanitarian aid delivered to Azerbaijan).<sup>164</sup>

Another very practical problem arises when an NGO signs a grant agreement with foreign donors. Such agreements are usually in English and do not bear a seal. However, in order to submit a copy of an agreement to the MoJ, it must be officially translated and notarized. An Azerbaijani notary usually refuses to notarize a document if it lacks a seal and if all pages of the agreement are not bound. Donors that are currently in Azerbaijan are aware of this issue and generally provide agreements in both Azerbaijani and English and which bear a seal and are bound. However, foreign donors do not know about these customary requirements.

### **Analysis**

The Azerbaijani law meets the standards of good practice as it does not require any prior authorization for NGOs to receive foreign funding. Nevertheless, the necessity of NGOs filing every foreign assistance grant agreement with the MoJ is questionable, as it is not clear what interests are protected in requiring such a filing. This is especially true because NGOs are already subject to separate reporting and filing requirements of their financial statements, which will make the related information available to the administration and the public.

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<sup>161</sup> Article 2(6) of the Law on Grants.

<sup>162</sup> See <http://www.day.az/news/politics/42434.html>.

<sup>163</sup> See *id.*

<sup>164</sup> Order #248 of the Cabinet of Ministers (June 24, 1994). At that time, humanitarian aid was considered to consist of goods delivered to Azerbaijan for distribution among refugees, internally displaced persons (IDPs) and others.

**5.2. Government Funding.** Civic organizations should be entitled to participate in open, fair, and nondiscriminatory procurement processes carried out by state bodies for the acquisition of goods and services (whether through grants, contracts, or purchase orders).<sup>165</sup>

### Azerbaijani Law

According to Azerbaijani law, the government has authority to provide funding to NGOs. For example, according to the Law on State Procurement, the government can procure goods and services from any organization, including NGOs.<sup>166</sup> Moreover, according to the Law on Grants, the government can provide grants to NGOs.<sup>167</sup> In Azerbaijan, however, government funding to NGOs is not common and does not constitute a significant source of funding to the sector.

According to the NGO Sustainability Index Report for 2006, many NGOs created under the umbrella of different ministries and by members of the Parliament are avenues for misappropriation of public funds for procurement and/or grants.

Azerbaijani law places strict financial prerequisites on participation in government procurement that make it essentially impossible for NGOs to bid on government contracts. Specifically, the Law on Procurements requires that a legal entity or natural person pay both a bid security and performance security in order to participate in procurement bids. A bidding entity must provide the government with up to 0.5 percent of the total price of the procurement or the equivalent of 1.5 percent of the costs to cover tender expenses.<sup>168</sup> The Law also requires a security deposit of one to five percent of the total price of the procurement. There is an additional requirement that the contract recipient pay a deposit to guarantee completion of the contract. Guarantees by banks, letters of credit, securities, cash, deposits and any other financial assets can be used as deposits. In practice, even large non-commercial organizations are unable to provide the minimum bid security required by current law.

With regard to grants, there are no provisions in current legislation which would permit the government to distribute funds among NGOs in an efficient manner. The recently-adopted Law on Youth Policy introduced the first comprehensive Ministry-level grants program to NGOs in Azerbaijan.<sup>169</sup> The Law on Youth Policy specifically obligates the state to serve the needs of youth and youth organizations. State obligations under this Law include: adopting laws and programs related to youth policy and conducting youth activities centered on education and training; physical, intellectual and cultural development; and the

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<sup>165</sup> Section 11.2 of the Guidelines.

<sup>166</sup> The Law of the Republic of Azerbaijan on State Procurement, with subsequent amendments (2002) (hereinafter referred to as the “Law on State Procurement”).

<sup>167</sup> Article 2 of the Law on Grants.

<sup>168</sup> Article 29.1 of the Law on State Procurement.

<sup>169</sup> The Law of the Azerbaijan Republic on the National Youth Policy (April 2002) (hereinafter referred to as the “Law on Youth Policy”).

health of young people. The government is committed to preparing young people for military service, financing projects in the field of youth policy, and organizing scientific research related to analyzing and resolving problems facing young people. In addition, the Law on Youth Policy mandates creating opportunities for Azerbaijani young people to participate in international events and to develop relationships with young people around the world, including making contact with the young Azerbaijani Diaspora.

The Law on Youth Policy allows for government financing of NGOs to implement the goals and activities described in the Law. The funds necessary to cover such programs are included in the budget of the Ministry of Youth and Sports. These programs should be awarded based on competitive procurement.

Beginning around the end of 2006, it has become apparent that the government of Azerbaijan is more interested in developing mechanisms to provide funding to NGOs. However, the legislation does not provide detailed mechanisms for such funding.

### **Analysis**

It appears that the lack of legislation establishing procedures and criteria for government financing of NGOs is an important impediment for government authorities. The implementation of youth policy is one area where Azerbaijani NGOs have been successful in partnering with the government on state programs, and provides a good base from which to further broaden government–NGO cooperation and improve mechanisms for financing NGOs.

There are many models in international practice of mechanisms for government financing of NGOs which might be utilized in Azerbaijan. The most common mechanisms include subsidies, grants, contracts, normative support, and vouchers.<sup>170</sup>

Subsidies are government funds providing general support of an NGO's activities, and are not linked to a specific project.<sup>171</sup> They can be used to cover general operating expenses as well as specific project implementation of NGOs whose contribution to governmental policy implementation is often considerable. Funding through subsidies is not open to all NGOs; usually potential beneficiaries include interest representation groups (see the examples above), service-providing organizations, and very few, if any, advocacy organizations. Subsidies distributed through ministries or other governmental institutions normally go to NGOs working in the area of activity of that government entity. For example, the Ministry of Youth and Sports in Romania is authorized to allocate funds to organizations engaged in the area of sports and youth. Theoretically, a ministry could provide a subsidy to an advocacy organization.

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<sup>170</sup> We provide below a summary of these mechanisms. For further information, see *A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation*, Final Report (Provisional) Nilda Bullain and Radost Toftisova, European Center for Not-for-Profit Law (ECNL) (March 18, 2004); *Legal Mechanisms of Public Financing of NGOs*, ICNL, and others (August 2001).

<sup>171</sup> *Preliminary study of the legal frameworks for public financing of NGO activities in Bulgaria, Croatia, Hungary, Romania and Slovakia*, ICNL, at 1 (2001) available at: [www.icnl.org/journal/vol3iss4/prelimstudy3.htm](http://www.icnl.org/journal/vol3iss4/prelimstudy3.htm).

According to the USAID Glossary of the Automated Directives System (ADS)<sup>172</sup>

Terms, *grants* are legal instruments used where the principle purpose is the transfer of money, property, services or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by statute and where substantial involvement by the state is not anticipated.<sup>173</sup>

Considering that grants are regulated in the Law on Grants, we just mention that grants, unlike subsidies, are awarded through an open tender-type grant application process and not by an individual administrative decision of a central or local government officer or by Parliament. Grants may provide funding for the delivery of social services (as in the examples of Germany, Croatia, or the UK) or the implementation of programs from the country's international development aid obligations (as in the examples of Sweden, Denmark, or Germany). Funding to NGOs provided in the form of grants is also evidence of the government's recognition of the third sector's public role; often it is essentially compensation for an NGO's performance of tasks or enhancement of objectives that would otherwise have to be addressed by public authorities.

*Procurement* is the purchase by public authorities of goods and services delivered by NGOs. Usually the legislative mechanism for procurement is established for all potential participants including business entities and NGOs. The latter are most likely to be funded by the government for the delivery of social services. In Germany, NGOs are the default providers of social services. In the UK, the second stage of the process of restructuring the welfare state, initiated in the 1980s and 1990s has resulted in the break-up of the previous public services administration system, the introduction of management of social welfare, and "quasi-markets." Under the new system, supply and demand of public services functions like economic markets. Therefore, NGOs, as potential providers, must compete on equal footing with for-profit institutions and public sector institutions.<sup>174</sup> In Croatia, local authorities are specifically empowered to assign "public utility" services to natural and legal persons based on a written agreement. In Poland, NGOs have been given a chance to compete with public providers in the newly adopted Law on Public Benefit Activities.

The main problems that NGOs encounter in accessing this form of government funding is that the majority of projects open to procurement are high-value projects and it is often very difficult for NGOs to comply with the requirements placed on bidders. In addition, procurement is often considered inconsistent with the not-for-profit nature of NGOs. Indeed, very few procurement procedures allow for access and successful bids by non-profits (essentially only smaller projects in the area of social services or local public benefit services). The Slovak Public Procurement Act of 1999 expressly excludes NGOs from tenders for public services.

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<sup>172</sup> *Glossary of ADS Terms*, United States Agency for International Development, Washington, DC: USAID (2001), available at: <http://www.usaid.gov/policy/ads/>.

<sup>173</sup> *Id.* at 81.

<sup>174</sup> *Social Policy in the UK*, available at: <http://www2.rgu.ac.uk/publicpolicy/introduction/uk.htm>.

Hungary provides a potential solution: a special form of contract called a “public benefit contract.” This type of contract may be executed with “outstanding public benefit organizations” for the provision of state services. In Hungary, there are two categories, or two levels, of public benefit status: the “normal” public benefit organization and the outstanding public benefit organization. This second category covers organizations that have a special contract with a state agency commissioning them to provide public services. Such a contract brings special public benefit status and the additional tax and other benefits that accompany it. While only six percent of NGOs have such status, it represents an important element in the development of the relationship between the state and civil society because it provides a transparent legal form for NGOs to provide state services (when NGOs would otherwise have difficulties obtaining contracts under the procurement laws).

Normative financial support to NGOs has certain similarities to the system of procurement of social services. It is a reimbursement to NGOs that deliver services in areas such as healthcare or education, and the level of state funding is determined on the basis of the services actually provided. Through this mechanism, physical persons have the right to choose their service-provider, possibly an NGO, which then seeks reimbursement from the government. Normally, normative funding is preceded by a contract with and/or a permission to operate issued by a public authority which thus authorizes an NGO’s access to the funding mechanism. This type of system exists, for example, in Hungary and in Croatia.

Finally, the use of vouchers reflects the tendency towards modernization and market-oriented mechanisms in public services delivery and has been particularly successful in the Scandinavian countries. Under this system, municipalities provide vouchers for services that fall within their obligation to deliver to all citizens, who then choose their provider. The use of vouchers provided by municipalities eliminates the theoretical dispute over who is the best service-provider by strengthening the role of citizens and by giving them the responsibility to select the service-provider. Therefore, the process has a twofold purpose: expanding the freedom of choice of the service-user and raising the quality of the service by maintaining competition. Vouchers are an instrument to develop demand-driven service provision, whereby the market rather than the state is expected to develop and to offer services. The individual citizen, given the entitlement by the state or the municipality to a subsidized service, is able to make use of this subsidy by means of a service voucher, which is valid as mean of payment. Recipients of service vouchers can be an individual, or a group of individuals with particular needs. Vouchers have been introduced in childcare, education, and home services for the elderly. This means, for example, that a day-care center or a school receives a fixed sum for every child that is enrolled (similar to the normative system).

Service-providers that have succeeded in attracting customers are thus primarily funded by revenues through the voucher system. The municipality exercises control over the providers by, among other means, setting up quality standards for service delivery, requiring proof of the quality of service, admission rules, taxes charged, and other forms of control. For example, a person who needs nursing and general assistance services in his own home first applies to the social board, which decides how much help the person should

have. A home-help service secretary helps assess this judgment. It can be a matter of, for example, personal nursing, purchasing, cleaning and care of clothing. The person in need receives a voucher, which is equivalent to a month's worth of services, describing which services are included. Along with the voucher the customer receives a list of different nursing companies to choose from. Thereafter, the customer decides who shall perform the service -- the municipality's home help services or a private nursing company.

The current Azerbaijani legislation in the area of government funding of NGOs does not quite meet the standards of good practice in as much as the bid security and performances security requirements deter most NGOs from competing for government contracts for lack of sufficient financial guarantees.

Note that it may be appropriate in some situations to limit eligible bidders for government contracts or beneficiaries of governments funding to so-called public benefit (charitable) NGOs. It is also important to keep in mind that any mechanism will prove effective only if the procedures are clear and available to the public, and the competition process, when applicable- is competitive, fair and transparent.

With regard to NGOs established under the auspices of government agencies and by the members of parliament, the mere practice is not problematic. Parliamentarians, like all other citizens, should enjoy the freedom of association and the right to establish NGOs. The ECHR permits lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. It is important to keep in mind, however, that extortion of bribes to be transferred to a designated organization (including an NGO), money laundering, and misappropriating government funds, including through grants or contracts to designated NGOs, are all usually defined as crimes in the criminal code and code of administrative penalties, but not in the NGO legislation.

**5.3. Tax Exemptions for NGOs and for their Donors.** There should be clear, objective standards for any eligibility of NGOs for any form of public support, such as cash and exemption from income and other taxes or duties on membership fees, funds and goods received from donors or governmental and international agencies, income from investments, rent, royalties, economic activities and property transactions, as well as incentives for donations through income tax deductions or credits.<sup>175</sup> In granting such support, relevant considerations may be the nature of activity that the NGO undertakes and whether or not it exists for the benefit of its membership or for the benefit of the public (or a section of this). Such support may also be contingent on an NGO having a particular status and be linked to specific requirements for financial reporting and disclosure.<sup>176</sup>

<sup>175</sup> Section 57 of the Fundamental Principles.

<sup>176</sup> Section 58 of the Fundamental Principles.

Property acquired by an NGO on a tax-exempt basis should not be used for a non-exempt purpose.<sup>177</sup>

## **Azerbaijani Law**

### *5.3.1. Income Tax for NGOs*

Many Azerbaijani NGOs do not pay profits tax due to exemptions from income tax on all revenues received from grants. (The primary income for many NGOs is foreign grants.) In addition, NCOs are exempt from the profits tax on income derived from gratuitous transfers, membership fees, and charitable contributions.<sup>178</sup>

The NCO is defined as “a legal person, carrying out non-commercial activities, and not distributing received profit among founders (shareholders) or participants, and not using received profit for commercial purposes. Otherwise, it is considered a commercial organization.”<sup>179</sup> This definition of an NCO supports the conclusion that if an organization begins to use profits for commercial purposes (for example, paying for or re-investing in any sales of goods and services) an NCO falls into the category of a commercial organization. Such commercial organization is not eligible for exemption of the profits tax on income derived from gratuitous transfers, membership fees, and charitable contributions. We are not aware, however, of any instance in practice when an NCO was treated as a commercial organization once it initiated economic activities. Nevertheless, this potential interpretation could hamper NGOs’ engagement in economic activities.

The Tax Code provides that “charitable organizations” are exempt from the profits tax, except with respect to income received from entrepreneurial activities. There is, however, no procedure for obtaining the status of charitable organization; hence it is practically impossible to take advantage of this exemption.<sup>180</sup> Moreover, unfortunately, no other laws in Azerbaijan address this “charitable organization” status which appears in the Tax Code. In addition, no objective procedures exist in the Tax Code or elsewhere for identifying an organization as “charitable” on the basis of its intended and/or actual activities. This makes it quite difficult to determine with any certainty which NCOs might be eligible for this benefit, or how an NCO might go about claiming the benefit. It is also important to note that, because of the lack of a definition in the Tax Code, it is unclear whether an organization must conduct only charitable activities in order to be entitled to this benefit, or, alternatively, whether any NCO which conducts charitable activities (in addition to other non-charitable activities) may qualify.

### *Generally Exempt Types of Income*

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<sup>177</sup> Section 54 of the Fundamental Principles.

<sup>178</sup> Please recall that the Tax Code uses the term “non-commercial organization” (NCO), and not non-governmental organization, the term which appears in the NGO Law. *See supra* Section 4.3.

<sup>179</sup> Article 13.2.28 of the Tax Code.

<sup>180</sup> Article 106.1.1 of the Tax Code.

As noted above, three types of income received by NCOs are exempt from taxation under the Tax Code: gratuitous transfers of assets, membership fees, and donations. These types of income are not defined within the framework of the Tax Code. In addition, Azerbaijan's Civil Code does not define "donations."

A fourth type of income -- grants -- is, in practice, exempted from profits taxation, although the Tax Code does not specifically exempt grants. Under the Law on Grants,<sup>181</sup> a "grant" is described as purpose-oriented, gratuitous, non-repayable assistance provided under the procedure in the Law on Grants for preparation and implementation of projects beneficial to state and society.<sup>182</sup> To qualify as a recipient of a grant, a domestic legal entity must have as its primary statutory purpose either of the following: (1) charitable activity; or (2) the implementation of projects and programs eligible for a grant that do not pursue the direct derivation of profit from the grant.<sup>183</sup>

A prior version of the Law on Grants exempted grants from profits taxation,<sup>184</sup> but the current law notes that "issues of taxation, connected with the obtaining ... of a grant or of other monetary or material assistance are regulated by the Tax Code of the Republic of Azerbaijan." Since the Tax Code does not specifically exempt grants, (and precludes inclusion of issues concerned with taxation and tax control into other legislative acts),<sup>185</sup> we may conclude that the practice of exempting grants is based on an understanding that "donations,"<sup>186</sup> as used in the Tax Code, includes grants.

#### *Taxation of Income from Entrepreneurial (Business) Activities*

Entrepreneurial activity is defined by the Tax Code as activity independently conducted by a person at the person's own risk, the primary purpose of which is derivation of profits from the use of property, provision of goods, performance of works or provision of services.<sup>187</sup>

Under the Tax Code, income from entrepreneurial activities by NCOs, including charitable organizations, is taxed. No distinction is made between income arising from activities related to and those unrelated to the statutory purposes of the NCO.

Under the broader NGO legislation, however, NGOs are permitted to engage in entrepreneurial activities only if they are related to their statutory purpose.<sup>188</sup> The NGO

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<sup>181</sup> Section 1 of the Law on Grants.

<sup>182</sup> E.g., humanitarian, social, and ecological projects; restoration projects aimed at repairing industrial and social facilities and infrastructure damaged as a result of war or natural disaster; programs in support of education, healthcare, culture, legal advising, information, publishing, sports, scientific, research and design and other programs of great importance for the state and society.

<sup>183</sup> Section 3 of the Law on Grants.

<sup>184</sup> The Law on Grants used to provide in its Section 5(1) that monetary and other material assistance obtained in accordance with the stipulated procedure shall be exempted from all types of taxes, duties and obligatory payments to the state budget.

<sup>185</sup> Article 2(4) of the Tax Code.

<sup>186</sup> Article 106.1.2 of the Tax Code

<sup>187</sup> Article 13.2.37 of the Tax Code.

<sup>188</sup> Article 22 of the NGO Law.

Law requires NGOs to conduct separate accounting for revenues and costs of entrepreneurial activity.<sup>189</sup>

Revenues from charity balls, auctions, and from similar activities undertaken for the purposes of fundraising are presently considered donations if the NGO properly records it as such.

#### Availability of Exemptions for Passive (Investment) Income

Regardless of whether or not passive income is exempt for the recipient of such income, dividends<sup>190</sup> and interest<sup>191</sup> are subject to a ten percent tax withheld at the source. Dividends of a resident legal entity taxed at the source are not subject to any further taxation when received by the legal entities and individuals.

When a resident legal entity receives an interest payment that has been taxed at the source, the amount of interest is included in the entity's taxable income. In this case, the amount of tax withheld at the source can be deducted from the aggregate income tax obligation of the legal entity for the reporting period, provided withholding of interest tax is confirmed by appropriate documents.<sup>192</sup>

#### 5.3.2. Deduction of Charitable Contributions

Neither legal entities nor individuals are entitled to any deductions for their contributions to charitable organizations or NCOs.

#### 5.3.3. VAT for NGOs and Donors

Threshold for Registration. Organizations conducting entrepreneurial activity are obligated to register as value-added tax (VAT)-payers if the volume of their taxable operations in any preceding three-month period exceeds 1,250 times the "monthly non-taxable minimum income."<sup>193</sup> Organizations must register within ten days of the expiration of such period. Entities with income below this threshold may voluntarily register as VAT-payers.<sup>194</sup>

Tax Exempt Transactions. Article 164 of the Tax Code establishes a list of supplies and imports that are exempt from VAT, regardless of whether they are performed by commercial or non-commercial entities. Those exemptions are linked to the nature of services, which, *inter alia*, include the following:

- acquisition of goods, performance of works, provision of services, and imports funded from loans and credits from international organizations, foreign

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<sup>189</sup> Article 22(3) of the NGO Law.

<sup>190</sup> Section 122 of the Tax Code.

<sup>191</sup> Section 123 of the Tax Code.

<sup>192</sup> This applies only to interest, not dividends. In the latter case, 10 percent withholding is final.

<sup>193</sup> Article 155.1 of the Tax Code.

<sup>194</sup> Article 156 of the Tax Code.

governments, and foreign physical and legal persons in accordance with international and intergovernmental agreements;<sup>195</sup>

- turnover related to the sale and purchase of mass media products including editorial, publishing and printing activities (except for advertisement services);<sup>196</sup>
- editorial, publishing, and printing activities connected with production of schoolbooks for middle-schools, children’s literature and publications of national importance, subsidized from the budget;<sup>197</sup> and
- ritual services by funeral bureaus and cemeteries.<sup>198</sup>

VAT Rebate Procedure. Under Article 164.2 of the Tax Code, appropriate executive bodies of executive authorities may provide exemptions for other types of imports (in addition to those listed in Section 164 of the Tax Code).

A special procedure has been established for persons acquiring or importing<sup>199</sup> goods, works or services funded by “gratuitous monetary transfers” from an international organization or foreign legal entity or individuals pursuant to an international agreement to which Azerbaijan is a party. The recipients must claim from the tax authorities any VAT they paid within the calendar month following the month in which the taxable operation or taxable import occurred. Reimbursement is due within 45 days of receipt of the application. This procedure is also available for purchases made with grant funds (all grant-funded transactions meeting certain requirements are subject to a zero VAT tax rate) if the VAT is included in the price, as described above.

#### 5.3.4. Social payments, Land and other Taxes Affecting NGOs.

Azerbaijan assesses a property tax, a social insurance payment, and a land tax. For the purposes of the property tax, taxpayers are all enterprises and individuals that own taxable objects.<sup>200</sup> The tax base for assessing the property tax is, in the case of physical persons, the value of buildings and motor vehicles owned by them; in case of enterprises, the tax base for assessing property tax is the annual average balance sheet value of fixed assets and balance sheet value of motor vehicles. The property tax on fixed assets of enterprises is one percent.

NGOs must pay 22 percent of their consolidated payroll towards the Social Insurance Fund, but those NGOs (local and foreign) that are coordinated by the Cabinet of Ministers and engaged in provision of aid to refugees and IDPs for the period of implementation of

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<sup>195</sup> Article 164.1.7 of the Tax Code.

<sup>196</sup> Article 164.1.8 of the Tax Code.

<sup>197</sup> Article 164.1.9 of the Tax Code.

<sup>198</sup> Article 164.1.10 of the Tax Code.

<sup>199</sup> Apparently, *imports* are also covered, though this is only mentioned once in the VAT Instruction, and not in the Tax Code itself.

<sup>200</sup> In practice, this tax is imposed on NCOs regardless of their engagement in entrepreneurial activities.

the State program to improve the living conditions of those populations are exempt,<sup>201</sup> paying only income tax. In addition, under the bilateral agreement between the Azerbaijan government and the US government, grants provided by the latter or its agents are exempted from the 22 percent payroll payment.

For the purposes of the land tax, taxpayers are enterprises and individuals who own or use land plots in the territory of Azerbaijan. The land tax is paid on an annual basis at various rates (ranging from 0.005 to 0.3 percent of non-taxable monthly income per square meter of land), based on the size of the land plot owned or used by the taxpayer.

Entities exempt from property tax include, *inter alia*, public organizations of the handicapped and publicly financed institutions. The property tax is also not levied on buildings used as artists' workshops. The tax base for assessing the amount of property tax is reduced by the value of buildings (objects) used by institutions of education, health care, culture and sports, if used for their primary purpose. No benefits with respect to the land tax are applicable to NCOs.

The excise tax, road tax and certain other taxes apply irrespective of an organization's status as commercial or non-commercial.

## Analysis

*Income Tax:* Regarding income taxation of NGOs, the "clear and objective exemption eligibility" standard is not quite met, as there is no procedure for obtaining the status of charitable organization in Azerbaijan.

It is common practice that NGOs engaging in public benefit activities (charities) are granted more tax benefits than other classes of NGOs. The scope of activities deemed publicly beneficial or charitable, the particular requirements regarding the income and expenditures of charitable organizations, and their internal governance system and transparency requirements, vary from country to country, as do the procedures for granting and withdrawing preferential status. In some countries this status is granted by the tax authorities; in other countries, it is granted by the courts, while others use a commission composed of representatives of relevant governmental agencies and NGOs. The scope of this assessment does not allow delving into greater details on these aspects (except that basic approaches to treatment of income from economic activities will be touched upon below), though ICNL would be glad to assist Azerbaijan in structuring a sound fiscal regulatory regime.

Unfortunately, no other Azerbaijani laws address this "charitable organization" status which appears in the Tax Code. In addition, no objective procedures exist in the Tax Code or elsewhere for identifying an organization as "charitable" on the basis of its intended and/or actual activities. This makes it quite difficult to determine with any certainty which NCOs might be eligible for this benefit, or how an NCO might go about claiming the

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<sup>201</sup> Article 15 (18) of the Law of the Azerbaijan Republic on Social Insurance (February 1997, with amendments through October 24, 2000) (hereinafter referred as the "Insurance Law").

benefit. Hence it is practically impossible to take advantage of the related exemption.<sup>202</sup> It is also important to note that, under the definition in the Tax Code, it is unclear whether an organization must conduct only charitable activities in order to be entitled to this benefit, or, alternatively, whether any NCO which conducts charitable activities (in addition to other non-charitable activities) may qualify.

Gratuitous money transfers, membership fees, and donations are traditionally not considered as taxable income under the tax laws of most European countries. Azerbaijani law has chosen a different approach by providing an exemption for related types of income (which otherwise would be taxable). This approach nevertheless meets the standard of international practice on this issue by diverting the taxation of the related sources of income. Nevertheless, the implementation of those exemptions would be improved by the introduction of clear definitions. This is especially needed for income from government grants -- an exemption that is not expressly provided for in the Tax Code.

The circumstances under which an NGO engages in entrepreneurial activities under Azerbaijani law raise questions. The non-distribution of profits is a valid requirement for maintaining tax exempt status, and as such it is typically contained in a country's tax regulations. However, the Azerbaijan Tax Code's second limitation, "the inability to use profits for commercial purposes" may in practice hamper the ability of NCOs to engage in entrepreneurial activity. If interpreted literally, this requirement could be viewed as a prohibition on the reinvestment of profits in an NCOs' entrepreneurial activity, which would undermine the ability of an NCO to pursue entrepreneurial activities by utilizing the organization's own funds. In other words, under a conservative interpretation, any commercial undertaking may be started or expanded only with borrowed funds. Otherwise, the profits could be deemed "used for commercial purposes" and non-exempt. This problem is aggravated by the lack of a definition of the term "commercial purposes" in the Tax Code. We believe that in practice this provision is not construed by the tax authorities as totally prohibiting reinvestment.

*Taxation of Passive (Investment) Income:* International good practices generally provide for exemptions on all forms of passive income of public benefit (charitable) organizations, including dividends, interest, royalties, gains from the sale of assets, and rent. The intent of this policy is to support those NGOs which provide socially beneficial services to the general public. The tax exemption of passive income is of particular importance for foundations, which rely on passive earnings to preserve and build upon their endowments.

Oftentimes, not only charities but also other NGOs, such as those established for the benefit of their own members (sometimes referred to as "mutual benefit organizations") also enjoy this exemption, as is generally true in Ukraine (with the exception of rental earnings).

Arguably, passive income of a charitable organization should be tax free even by virtue of the present Tax Code, as long as the distinction for individuals between the income from

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<sup>202</sup> Article 106.1.1 of the Tax Code.

entrepreneurial and non-entrepreneurial activities is applied universally. In that case, all that would be needed is consistent implementation of its provisions.

The fiscal regime of passive income of NGOs in Azerbaijan needs to be clarified. While the current interpretation of the provisions of the Tax Code permits a fairly broad exemption from taxation for the passive income of NGOs, this could be more clearly stated in the law. The French Tax Code, for example, distinguishes in two subsections of the same provisions,<sup>203</sup> the income from entrepreneurial activities, which are taxed at the standard corporate tax rate, and the passive income (rents, interest payments, and specific types of dividends), which are either taxed at a reduced rate or exempt like the dividends paid by French for-profit companies. Similar provisions could opportunely be introduced in the Azerbaijani Tax Code.

*Tax Incentives for Donors:* Allowing tax deductions for charitable giving is an exceedingly important incentive for encouraging philanthropy and should be introduced in the Azerbaijani Tax Code.

*VAT:* The Tax Code appropriately sets a threshold for NGOs to enter VAT payer status. Thus, small organizations or organizations with limited taxable activities may avoid additional filings and accounting requirements. The list of tax-exempt transactions could be extended for certain activities of public interest, along the lines of the European Union's 6<sup>th</sup> Directive on VAT,<sup>204</sup> (which exempts the supply of services and goods closely linked to welfare and social security, including those supplied by old people's homes, for the protection of children and young people, for the benefit of members of organizations of a political, trade union, religious, patriotic, philosophical, philanthropic, or civic nature, for the organization of fundraising events, etc.) The use of reduced rates for certain taxable activities offered by NGOs could also generate significant support to the nonprofit sector. In France, for example, cultural services are taxed at rates of between 2.2 and 5.5 percent and NGOs may deduct VAT paid on expenses, usually at the rate of 19.6 percent, thus generating cash flow for the tax payer through the subsequent VAT credit).

*Payroll and Social payments:* Azerbaijani legislation requiring employees of NGOs to pay social payments is in compliance with international good practice. Despite the fact that NGO employees typically expect and receive a lower level of compensation than that which is paid for comparable work in the for-profit sector, there is no justification for exempting them from the usual social security and related employment taxes that are exacted from workers in the governmental or for-profit sector.

Social security and similar payments are exacted on the basis of actuarial estimates of what is required in order to meet the state's obligations to retired workers over the long term. It seems unfair to other workers to exclude those who are employed in the NGO sector from

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<sup>203</sup> Articles 206-1 and 206-5 of the French Tax Code.

<sup>204</sup> European Union's 6<sup>th</sup> Council Directive on the Harmonization of the Laws of the Member States relating to Turnover Taxes (17 May 1977). *See*, for example, Article 13.

bearing their share of providing health and pension benefits.<sup>205</sup> On the other hand, workers in the NGO sector should not be excluded from the benefits provided under these state schemes. In short, employees of NGOs should not suffer the double disability of working for a lower wage and being excluded from basic employee benefit programs provided to other employees in that society.

A government donating foreign assistance might negotiate with the recipient state for special exemptions tied to its aid. Usually, special tax exemptions for the donor country's aid, including exemptions from employment or payroll payments, are negotiated and stated in a bilateral agreement. The recipient government in this scenario must balance the "being socially unfair" argument with the possibility of obtaining aid which might otherwise not become available to satisfy people's needs.

It is notable that while the rates of employment or payroll payments are high in Western and Central European countries, NGO employers and workers are not exempt from those payments. For example, in Hungary, the employer's share of the social contributions is 35.5 percent due on the monthly gross salary of the employee and the employee's share is 12.5 percent, including salaries paid out of foreign grants. In all of Western Europe, taxes are due on salaries paid out of any grants.

Of course, in Azerbaijan, as well as in some other countries in transition, the situation might differ from that described above. In some countries, the major foreign donors might decide not to make grants unless the receiving government provides additional tax benefits, including payroll tax exemptions. In this situation, the government must make a political decision, taking into consideration a variety of factors including national and international NGOs advocacy.

**5.4. Volunteers.** An NGO should observe all applicable employment standards and insurance obligations in the treatment of its staff.<sup>206</sup> All staff and volunteers acting on behalf of an NGO can also be reimbursed for reasonable expenses which they have thereby incurred.<sup>207</sup>

### **Azerbaijani Law**

The legislation of Azerbaijan does not include a definition of volunteers or volunteerism. The legislation does not, however, prohibit volunteering. Any individual can perform any lawful activity voluntarily without compensation. In practice, some NGOs use volunteers and, as far as we know, they do not encounter any problems. One issue which comes up from time to time relates to taxation. For example, the reimbursement of expenses related to carrying out work for an NGO is subject to income tax for a volunteer, and the income

<sup>205</sup> In Australia, however, NGOs involved in social welfare work pay reduced sales taxes and, if their payroll is over A\$10,000 a month, a reduced payroll tax as well, depending on the state in which they are located. Similar preferences are available in Brazil for a special group of social welfare NGOs.

<sup>206</sup> Section 48 of the Fundamental Principles.

<sup>207</sup> Section 56 of the Fundamental Principles.

generated by the organizer of a volunteer activity is considered taxable income for an organizer (even if an NGO).

The second set of issues relating to volunteers concerns protection of the volunteers' rights. It is not clear from the Azerbaijani legislation whether the volunteer's relationship with the NGO falls under labor law or under civil law. This is a critical matter, however, because if volunteers' relationships are labor relationships, by default they are regulated by provisions of the labor code. This would mean that all rules relating to workplace safety and the like apply to organizers and to volunteers. At the same time, this would mean that both organizers and volunteers must follow often burdensome requirements in formalizing their relationships and in mutual obligations, which are often not practical and might discourage volunteerism in general. Some examples of potential burdens for NGOs include obligatory payments for work-related injuries or illnesses, even if the employer is not at fault, or obligatory health insurance, or required payments for vacation and sick leave.

### **Analysis**

To avoid these problems, Azerbaijani law must at least define the status of volunteer, and either list all of the articles in the labor code which do not apply to volunteers, or list (or restate in separate legislation with proper modifications) all of the articles from the labor code which do apply if volunteerism is recognized as a civil relationship.

It is important to note that many countries do not have any stand-alone law which regulates the status and activities of volunteers. Volunteer relationships are usually regulated by a broad variety of laws, including civil codes (Ukraine), legislation on charities (Poland), and tax and labor codes. In addition, there is no unified approach on whether to treat volunteerism as a labor or civil law relationship. There is no right or wrong approach on the matter of regulating volunteerism. Therefore, while considering improvement of legislation relating to volunteers in any particular country what is really important is to try to resolve practical problems, rather than crafting some abstract stand-alone legislation on volunteers which might not address real needs.

Even a stand-alone law in Azerbaijan by itself would not address problems of taxation of volunteers. For example, a business might use the labor of illegal immigrants, paying them less than the legally required minimum wage, but claiming the work volunteerism and the payment compensation of expenses rather than salaries. It is important that the legislation (1) distinguish between such slavery and real volunteerism, and (2) punish violators. Of course, it is important to consider these practical problems, even if the laws they touch upon may not be implemented. For example, just because the Ministry of Labor does not have the capacity to confirm work place safety does not mean that such criteria shall not be applied to employees or volunteers.

In summary, in order for Azerbaijani legislation to comply with international good practices, it shall provide for: (1) recognition of volunteer legal status; (2) legal protection and benefits for volunteers comparable to those for employees; (3) differentiation of

volunteerism from other forms of labor; and (4) limits on illegal practices stemming from diverse understandings of volunteer labor.

## 6. Government Oversight

**6.1. Supervision.** NGOs with legal personality should have the same capacities as are generally enjoyed by other legal persons and be subject to the same administrative, civil and criminal law obligations and sanctions generally applicable to them.<sup>208</sup> NGOs may be regulated in order to secure the rights of others, including members and other NGOs, but they should enjoy the benefit of the presumption that any activity is lawful in the absence of contrary evidence.<sup>209</sup> NGOs should not be subject to any power to search their premises and seize documents and other material there without objective grounds for taking such measures and prior judicial authorisation.<sup>210</sup> Administrative, civil and/or criminal proceedings may be an appropriate response where there are reasonable grounds to believe that an NGO with legal personality has not observed the requirements concerning acquisition of such personality.<sup>211</sup> Relevant books, records and activities of NGOs may, where specified by law or by contract, be subject to inspection by a supervising agency. NGOs can also be required to make known the percentage of their funds used for fundraising purposes.<sup>212</sup> (All reporting and inspection shall be subject to a duty to respect the legitimate privacy of donors, beneficiaries and staff, as well as the right to protect legitimate business confidentiality.<sup>213</sup>

### Azerbaijani Law

Article 31 of the NGO Law provides that “In cases where actions are taken which contradict the objectives of this law, the relevant executive authority may warn a non-governmental organization in written form or instruct it to eliminate the violations. A non-governmental organization shall have the right to lodge a complaint about such warning or instruction in court. If a non-governmental organization is given a written warning or instruction to eliminate violations more than two times within one year, such non-governmental organization may be liquidated by court decision.” The authority to issue a warning letter is vested with the MoJ by the decision of the President of the Republic of Azerbaijan<sup>214</sup> Remarkably, neither the NGO Law nor the Registration Law provides the registration body, the MoJ, with authority to audit NGOs.

All legal entities, including Azerbaijani NGOs, are required to submit identical reports under tax and social insurance legislation. These various reports are filed monthly, quarterly and annually, including:

- Income tax on salaries- quarterly;<sup>215</sup>

<sup>208</sup> Section 8 of the Fundamental Principles.

<sup>209</sup> Section 66 of the Fundamental Principles.

<sup>210</sup> Section 67 of the Fundamental Principles.

<sup>211</sup> Section 68 of the Fundamental Principles.

<sup>212</sup> Section 62 of the Fundamental Principles.

<sup>213</sup> Section 63 of the Fundamental Principles.

<sup>214</sup> Decree of the President of the Republic of Azerbaijan on implementation of the Law on NGOs, approved on October 04, 2000, #401, published in official newspaper Azerbaijan on October 10, 2000, #232.

<sup>215</sup> Article 150 of the Tax Code.

- VAT- monthly;<sup>216</sup>
- Simplified tax- quarterly;<sup>217</sup> and
- Social Insurance – quarterly.<sup>218</sup>

In addition, NGOs are required to register their grants with the MoJ.<sup>219</sup> The legislation requires that a registration application for a grant include an application letter, a notarized copy of the grant agreement, or award notification the grant.<sup>220</sup> Though the legislation does not prohibit the spending of an unregistered grant, the MoJ may impose administrative sanctions for failure to register grants.

There are additional requirements for humanitarian organizations involved in the dissemination of humanitarian aid to refugees and IDPs. The State Program on Improving Living Conditions and the Employment of Refugees and IDPs empowers the State Commission on International Humanitarian Aid to coordinate efforts among humanitarian organizations. For the purposes of coordination, the Commission requires organizations to complete forms describing the humanitarian activities of their organizations. This is typically done at the end of each year, and a letter is usually sent to humanitarian organizations with the required forms.

## Analysis

In international practice, reporting requirements usually vary depending on whether an NGO is deemed a mutual benefit organization (MBO) or a public benefit organization (PBO).

The reporting standards in place in Azerbaijan, apart from those additional requirements applicable to humanitarian organizations, are similar to those generally in place in international practice for MBOs. The reporting obligations of MBOs are usually limited to updating the information required to be available in the public registry, unless the MGO is involved in taxable economic activities or uses paid staff. PBOs are more likely to receive substantial benefits from the state (tax-exemption, public funding, etc.), operate under a license or permit or engage in substantial public fundraising campaigns, and are therefore usually subjected to more substantial reporting requirements aimed at informing and protecting the public from fraud and abuse. The basic tools for achieving accountability and transparency are a variety of reports required to be filed with government agencies. These reporting requirements must of course be protective of the freedoms of association and expression, and should be commensurate with the benefits obtained from the state.

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<sup>216</sup> Article 178 of the Tax Code.

<sup>217</sup> Article 221.2 of the Tax Code.

<sup>218</sup> Article 46 of the Guidance of the Social Insurance Fund on collecting mandatory social insurance payments, Ministry of Justice (August 17, 2006), #3235.

<sup>219</sup> Article 4(5) of the Law on Grants.

<sup>220</sup> According to Article 2(1) of the Decree of the President of the Azerbaijan Republic on Registration of Agreements on Receipt of Grants (2004), the registration documents should be submitted within one month of the execution of the grant agreement. The MoJ should provide notification to the NGO of grant registration within seven days.

The requirement under Azerbaijani law for NGOs to file for the registration of grants is not a common practice under international standards. Such a specific filing obligation might become unnecessary if standards of accountability and transparency are set in place to make the related information available directly to the public.

According to the 2006 NGO Sustainability Index Report, an especially hostile stance towards the NGO sector is evident in the regions of Azerbaijan. Though the law limits state involvement in NGO operations, in practice in the regions even conducting a meeting requires permission of the local executive authority. Recently, however, authorities have taken a softer stance towards NGO activity.

**6.2. Sanctions.** In most instances the appropriate sanction against an NGO will merely be the requirement to rectify its affairs and/or the imposition of an administrative, civil or criminal penalty on it and/or any individuals directly responsible. Penalties shall be based on the law in force and observe the principle of proportionality.<sup>221</sup>

### **Azerbaijani Law**

In addition to the penalties all legal entities are subject to for violations of the tax, social insurance and licensing legislation, NGOs may face administrative penalties for failing to provide the Ministry of Justice with proper registration of grants.<sup>222</sup> Penalties for not registering grants are generally equal to 20-50 standard financial units, which is currently approximately 1.10 Manats (one Manat equals roughly US\$0.95).

According to Article 31 of the NGO Law, “In case of a violation of requirements arising from provisions of this law, a non-governmental organization shall bear responsibility in accordance with the legislation of the Azerbaijan Republic.” As explained above, Article 31 also provides that an NGO may be involuntarily liquidated by court decision for taking actions “that contradict the objectives of this law” on two occasions in one year, but only after written notice and with the right to appeal. The head of MoJ’s coordination department, Mr. Azer Cafarov, reported that some seven NGOs were sanctioned by the court for not providing information on grants to the MoJ, and approximately six NGOs were notified of wrongdoing.<sup>223</sup>

### **Analysis**

The most troublesome concern with the sanctions regime relates to the broad standard, “taken actions that contradict the objectives of this law,” in which case the relevant authority can issue a notification potentially leading to liquidation of an NGO. Action contradictory to the objectives of the law is far broader a standard than good international practices dictate, potentially leaving too much discretion to government officials to decide when to take action.

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<sup>221</sup> Section 70 of the Fundamental Principles.

<sup>222</sup> Article 4.5 of the Law on Grants requires grants recipients to register all grants with the relevant body of the executive power.

<sup>223</sup> See <http://www.day.az/news/politics/42434.html>.

Admittedly, notification may lead to liquidation only through a court's decision. However, considering the lack of judicial independence, highlighted in several reports cited above in section 2.1, we see the need to define the potential violation in more narrow terms.

## **7. Transparency and Accountability.**

**Transparency and Accountability.** NGOs should submit an annual report to their members or directors on their accounts and activities. These reports can also be required to be submitted to a designated supervising body where any taxation privileges or other public support has been granted to the NGOs concerned.<sup>224</sup> NGOs should make a sufficiently detailed report to any donors who so request on use made of donations to demonstrate the fulfilment of any condition which was attached to them.<sup>225</sup>

### **Azerbaijani Law**

According to Article 29 of the NGO Law, “A non-government organization shall maintain accounting in accordance with the legislation. Information about amount and structure of an NGO's income, as well as information about its property, expenses, number of staff, and salaries, shall not be a state or commercial secret. Foundations shall be obliged to publish annual reports about their use of property.”

In practice the provision of the law demanding openness from NGOs is rarely observed, as the law does not provide for how the information should be made public. Although, NGOs themselves should be interested in openness to increase public support, they do not practice such transparency for several reasons. For example, NGO's do not consider the public (local natural and legal persons) to be a serious source of support, as most aid is received from foreign donors and the State.

NGOs submit reports on their activities and finances to their donors, primarily foreign organizations providing grants, and to tax authorities. However, it is not a common practice for an NGO to publish an annual report, which would make public basic information about the NGO's activities, property, expenses, employees, and salaries.

Azerbaijani legislation does not provide mechanisms ensuring that NGOs enact internal governance mechanisms which reflect international good practices and prevent conflicts of interest. NGOs have not adopted mechanisms for self-regulation, and many do not employ conflict of interest policies which are consistent with international good practices.

### **Analysis**

The NGO Law requires that NGOs disclose information on their activities to the public. In general, this requirement conforms to international good practices. The lack of implementation of the requirement is most detrimental to the NGOs themselves.

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<sup>224</sup> Section 60 of the Fundamental Principles.

<sup>225</sup> Section 61 of the Fundamental Principles.

In many countries, the public plays an important supervisory role over NGO activities. The public's trust is reflected in its support to NGOs. State authorities usually conduct inspections only when the public reports violations either through mass media or by other means. Consequently, the public should receive information on organizations' activities from the state, news media, and from the organizations themselves. It appears that in Azerbaijan, none of these information sources are effective.

Consideration might be given to making NGO reports on their finances and activities, which are already being submitted to the government authorities, available to the public in part or in whole. In addition, donors and NGOs themselves might consider encouraging transparency and openness to the public.

In some countries public benefit not-for-profit organizations (NPOs) are required to publish reports in a newspaper; in others, governmental authorities make these reports available to the public, and in others any citizen is entitled to ask to see a report of a public benefit NPO. If this type of NGO is established in Azerbaijan, it might be useful to consider such reporting as well.

Azerbaijani laws should not address the specific issue of reporting to donors. This issue is usually subject to a civil agreement between the donor and the recipient of aid. The law, however, should provide possibilities for both parties to defend their civil rights in court.

## **II - Conclusion: ICNL Recommendations**

As written, the Azerbaijani legislation generally provides a sound basis for exercising the freedom of association through formally-established and informal entities. The legislation permits the establishment and activities of the two traditional legal organizational forms of NGOs: public associations and foundations.

Despite our generally positive impression of the Azerbaijani NGO Law, ICNL has identified a number of issues relating to NGO legislation in Azerbaijan which require immediate attention. These issues can be divided into three categories: 1) improvements in implementation of existing laws; 2) amendments to existing laws; and 3) required new laws.

We address below issues in each of these three categories.

### 1. Improvements in implementation of existing laws:

The most important issue within this category relates to the restrictive implementation of existing legislation, in particular those laws governing registration of NGOs. Such implementation is inconsistent with certain provisions of the ECHR and undermines the well-written provisions of the NGO Law. Improving implementation of existing legislation might require comprehensive reform, including, for example:

- reform of Azerbaijan's judicial system to make the courts independent of the government's executive authorities;

- increased transparency in the process of government authorities' decision-making on whether to register an NGO (publishing or otherwise making information available on the status of submitted applications might help to discipline the officials in charge of registration);
- measures relating to fighting corruption should have a positive effect on the registration process for NGOs, as well as more generally in the government's work and public life; and
- consideration of personal liability (either administrative or even criminal) for government officials failing to meet their legal requirements related to registration applications and implementing the law in a manner contrary to the spirit of the European Convention.

We recognize that the above-mentioned measures are challenging and would require political will and complex changes in numerous legislative acts. ICNL stands ready to assist with these longer term reforms. We also propose below, as immediate and intermediary measures, specific amendments to improve existing legislation affecting NGOs:

## 2. Amendments to legislation related to the registration process for NGOs:

### 2.1. Decentralization of the registration process

The current centralization of the registration process with the MoJ in Baku creates undue administrative and financial burdens for regional and local NGOs which must come to the capital to complete the registration process, often several times. ICNL recommends that the registration process be decentralized for local and regional organizations.

### 2.2. Clear and limited definition of reasons for denial of registration

While the current statutory list of reasons for denial of registration (Article 17 of the NGO Law) is consistent with common practices in other countries, it is clear that this list is not suitable for Azerbaijan because it provides government officials with too much discretion. In practice, this great discretion has resulted in many undue denials of registration. ICNL recommends that the reasons for denial be limited to those substantive flaws which cannot be eliminated during the registration process.

### 2.3. Reforms in territorial status

Registering an NGO which is authorized to engage in activities throughout Azerbaijan is more burdensome than registering an NGO which only operates locally. At the same time, limiting an NGO's activity to a particular region of the country impedes its development, since expanding its range of operations to another area requires re-registration with government authorities. ICNL recommends that all NGOs be permitted to carry out activities throughout the territory of Azerbaijan and abroad, similar to the rules for business entities.

#### 2.4. Uniform timelines for consideration of registration applications

The registration period for commercial entities is five days as opposed to 40 working days for NGOs. Stricter requirements for NGOs as compared with other entities may generally be justified due to special tax benefits enjoyed by NGOs. However, under current Azerbaijani law, there is no discernable relationship between the tax benefits granted to NGOs and the delayed registration period for these entities. ICNL thus recommends that identical registration periods be introduced for all legal entities.

#### 2.5. Reduced re-registration requirements

The current statutory requirements are too broadly defined regarding the circumstances under which an NGO must re-register with the MoJ. Required re-registration should be limited to significant changes in the charter or organizational form of an NGO, and these changes should be explicitly listed in the law (*e.g.* name and purpose). An NGO should be able to simply notify the administration of minor changes (*e.g.* address), without having to go through a re-registration process. ICNL recommends the review of the NGO Law's Article 14.

### 3. Required new laws:

In addition, Azerbaijani legislation for NGOs is lacking important rules traditionally included in legislation related to NGOs in other developed countries.

#### 3.1. Special charitable (tax exempt) status for NGOs

In Azerbaijan, all NGOs, whether a private club benefiting only its own members, or an ecological organization defending the public interest, are treated the same for tax purposes. Moreover, no class of NGO receives substantial benefits with regard to income from local sources (*i.e.* economic activities of NGOs or donations from local sources). The lack of a distinct class of charitable organization explains and justifies the lack of significant tax incentives for public benefit NGOs, and their supporters, which in turn limits charitable social activities. Introduction of such status by defining criteria for charitable organizations, procedures of granting such status, and related obligations, could result in new tax incentives and facilitate charitable activities in Azerbaijan

#### 3.2. Tax incentives for Azerbaijani businesses and individuals to support charitable activities

The current tax structure provides no incentives for businesses and individuals to support charitable activities. It should be revised to provide incentives.

#### 3.3. Limited exemptions for NGO income generated from economic activities

Income of NGOs generated through any economic activity is subject to taxation, even if the activity directly relates to the NGO's statutory purposes and the income is used for

charitable purposes (i.e. a museum selling admission tickets and using revenues to fix the museum's roof.) Granting exemptions on income from economic activities under defined circumstances would increase opportunities for sustainability for NGOs and limit their reliance on foreign funding.

#### 3.4. Procurement of social services

Azerbaijani legislation, *de facto*, does not allow NGOs to participate in state procurement of social services. NGOs are traditionally the main social services providers and the main driving forces behind privatization and energizing of the social services sector, and the Azerbaijani government has a problem addressing the deficit of social services. Amending procurement legislation to remove existing obstacles for NGOs to participate in state procurement would be an important step towards resolution of the deficit of social services.

#### 3.5. Government support to NGOs

The legislation of Azerbaijan does not provide for a transparent and competitive mechanism of distributing government support amongst NGOs. NGOs may serve as important partners of the government in resolving important social and economic issues only if the government invests in developing their capacity, especially in the area of social services. Appropriate legislation expanding the authority of governments (both local and national) to give grants or subsidies to NGOs, establishing a transparent and competitive procedure for distribution of grants, and establishing a mechanism for monitoring NGOs' use of grants, is essential for the development of Azerbaijani civil society.

#### 3.6. Volunteerism

ICNL recommends that the Azerbaijani government provide the legal framework necessary for NGO's to accommodate and support volunteer contributions to their work.

#### 3.7. Legal framework for foundations

Azerbaijan lacks a tradition of foundations similar to the practices of other countries. This is partially explained by the lack of legislation on foundations and on endowments. Unlike public associations, the concept of a foundation is relatively new in Azerbaijani law, and the few provisions currently found in the Civil Code do not provide an adequate understanding of this association form. In light of the informal legal tradition in Azerbaijan of prohibiting everything that is not explicitly permitted, Azerbaijan requires more detailed basic legislation on foundations, including internal governing structures, permitted activities (in particular related to grant-making and re-investment of income), and rules which would ensure that a foundation's original designation of appropriate uses for its assets (endowment) is preserved.

#### 3.8. Lack of good internal governance rules

Azerbaijani legislation does not provide mechanisms for ensuring that NGOs enact internal governance mechanisms which prevent conflicts of interest and otherwise reflect international good practices. It would be legitimate for the government to introduce new provisions in the legislation meant to promote accountability and transparency within the NGO sector, as long as those measures are commensurate with the public benefits granted to the NGOs on which the obligations are imposed.

ICNL and the Civil Society Project stand ready to assist all interested stakeholders in addressing the obstacles preventing the full and effective participation of civil society in Azerbaijani public life.

### III. List of Materials Used in the Assessment

#### INTERNATIONAL LAWS, AGREEMENTS, AND DOCUMENTS:

1. The Universal Declaration of Human Rights (1948).
2. The European Convention on Human Rights, adopted by the Council of Europe in Rome (November 4, 1950) with its Five Protocols (adopted in Paris March 20, 1952; Strasbourg May 6, 1963, Strasbourg May 6, 1963, Strasbourg September 16, 1963, and Strasbourg January 20, 1966).
3. The International Covenant on Civil and Political Rights (1976).
4. The Agreement between the Government of the United States of America and the Government of the Republic of Azerbaijan regarding cooperation to facilitate the provision of assistance (May 11, 2000; ratified by Azerbaijan July 18, 2000).
5. Partnership and Cooperation Agreement with the European Union and the EU member countries, with the Republic of Azerbaijan, #837IIQ (March 1, 2005; published in the official newspaper of Azerbaijan March 29, 2005).
6. The European Convention on Recognizing the Legal Personality Status of International NGOs (April 24, 1986; effective January 1, 1991).
7. European Union Council Directive No. 6 on the VAT (May 17, 1977).
8. Fundamental Principles on the Status of Non-governmental Organisations in Europe, adopted by the participants at the multilateral meetings held in Strasbourg (November 19-20, 2001, March 20-22, 2002, and July 5, 2002).
9. *Ramazanova and Others v. Azerbaijan* Eur. Ct. H.R. (application no. 44363/02) (February 1, 2007).
10. *Sidiropoulos and Others v. Greece*, 4 Eur. Ct. H.R. 500 (1998).
11. *United Communist Party v. Turkey*, 4 Eur. Ct. H.R. 1 (1998).
12. Press release on *Ramazanova and Others v. Azerbaijan*.

#### LAWS AND LEGISLATIVE ACTS:

1. The Constitution of the Azerbaijan Republic (November 12, 1995, with subsequent amendments as of August 24, 2002).

2. The Civil Code of the Azerbaijan Republic (December 28, 1999, with subsequent amendments as of February 1, 2007.)
3. The Tax Code of the Azerbaijan Republic (July 11, 2000, with subsequent amendments as of January 15, 2007).
4. Code on Administrative Torts of the Republic of Azerbaijan (July 11, 2000).
5. Criminal Code of the Republic of Azerbaijan (January 31, 2005).
6. The Law of the Azerbaijan Republic on Non-Governmental Organizations (Public Associations and Foundations) (June 13, 2000, with subsequent amendments as of October 28, 2005).
7. The Law of the Azerbaijan Republic on the State Registration and State Register of Legal Entities (December 12, 2003, with subsequent amendments as of December 30, 2005).
8. The Law of the Azerbaijan Republic on Grants (April 1998, with subsequent amendments as of May 2002).
9. The Law of Azerbaijan Republic on State Procurement (December 2001, with subsequent amendments as of November 2002).
10. The Law of the Azerbaijan Republic on the National Youth Policy (April 2002).
11. The Law of the Azerbaijan Republic on Obtaining Information (September 30, 2005).
12. The Law of the Azerbaijan Republic on Insolvency and Bankruptcy (June 13, 1997, with amendments through April 23, 2002).
13. The Law of the Azerbaijan Republic on Social Insurance (February 1997, with amendments through October 24, 2000).
14. The Law of the Republic of Azerbaijan on Lotteries (as of March 5, 2004).
15. The Order of the Cabinet of Ministers of the Azerbaijan Republic # 376 on International Humanitarian Organizations and Their Representatives Offices in the Republic of Azerbaijan (November 02, 1994, with subsequent amendments as of October 2002).
16. The Decree of the President of the Azerbaijan Republic on Procedures of Registration of Grant Agreements (February, 2004).

17. Charter of the Regional Branches of the Ministry of Justice of the Republic of Azerbaijan (approved by the President of the Azerbaijan Republic on April 7, 1997) #571.
18. The Decree of the President of the Azerbaijan Republic on Implementation of the Law on State Registration of Legal Entities and State Registry” (April 12, 2004).
19. The Decree of the President of the Azerbaijan Republic on Development of Justice Organs (came into force August 18, 2006).
20. The Decree of the President of the Azerbaijan Republic on Approval of the Agreement between the USA and the Government of the Republic of Azerbaijan Regarding Cooperation to Facilitate the Provision of Assistance (published in the official newspaper of Azerbaijan, August 17, 2000).
21. The French Law on the Contract of Associations (July 1, 1901 with subsequent amendments as of 12 June 2001).
22. The French Decree of August 16, 1901 (with subsequent amendments as of 24 April 1981).
23. The Belgian Law on Non-profit Associations, International Associations, and Foundations (May 2, 2002).
24. The German Civil Code.
25. The French Tax Code.

## **BIBLIOGRAPHY**

1. Guidelines for Laws Affecting Civil Organizations, Open Society Institute in cooperation with the International Center for Not-For-Profit Law (2004).
2. The 2006 NGO Sustainability Index Report for Central and Eastern Europe and Eurasia, 10<sup>th</sup> Anniversary Edition; developed by United States Agency for International Development, Bureau for Europe and Eurasia, Office of Democracy, Governance and Social Transition (May 2007) available at: [www.usaid.gov/locations/europe\\_eurasia/dem\\_gov/ngoindex](http://www.usaid.gov/locations/europe_eurasia/dem_gov/ngoindex).
3. Leon Irish and Douglas Rutzen, *Re-Registration Revisited IJNL*, Issue 3 (1999), available at [www.icnl.org/journal/journal.html](http://www.icnl.org/journal/journal.html).

4. Anar Kazimov and Hafiz Hasanov, *Report on the Registration Procedures of Non-Governmental Organizations* available at: [www.osce.org](http://www.osce.org).
5. The 2006 Country Reports on Human Rights Practices, Bureau of Democracy, Human Rights, and Labor (March 6, 2007) available at: <http://www.state.gov/g/drl/rls/hrrpt/2006/78801.htm>.
6. Jerome Gallagher and Vagif Hasanov, “Local Civic Engagement Assessment for Azerbaijan” (March 2006).
7. Survey of Tax Laws Affecting NGOs in the Newly Independent States, ICNL (February 2004).
8. Survey of Tax Laws Affecting NGOs in Central and Eastern Europe, Second Edition, ICNL (October 2003).
9. Fabrice Suplisson, *Denial of Registration and Involuntary Liquidation of Associations: Overview of French Case Law*, ICNL.
10. Nilda Bullain and Radost Toftisova, *A Comparative Analysis of European Policies and Practices of NGO – Government Cooperation, Final Report* (Provisional), European Center for Not-for-Profit Law (ECNL) (March 18, 2004).
11. ICNL, *Legal Mechanisms of Public Financing of NGOs* (August 2001).