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THE CHALLENGES OF GRANT AND NGO LAWS IN AZERBAIJAN'S CIVIL SOCIETY: PROSPECTS FOR A VIABLE PATH FORWARD

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The policy brief analyses the implications of the in 2013-2015 revised legislation governing the activities of the non-governmental organizations (NGOs) in Azerbaijan. These changes subjected many aspects of the NGOs' operations to bureaucratic fiats and significantly reduced the relative freedom they had previously. The EU should put efforts into reversing the restrictions. To improve its leverage in Azerbaijan the EU should capitalize on the momentum for policy reforms prompted by Azerbaijan's deepening economic woes.

INTRODUCTION

Azerbaijan's civil society underwent dramatic tribulations over the last three years. Hastily amended NGO and grant regulations radically reshaped the operational space for local and international civil society organizations (CSOs). This was followed by a purge initiated by the government against its critics—journalists, human rights activists and advocacy groups.

Through a series of legislative changes made from 2013 to 2015, the government

tightened its control over the local and international NGOs and the foreign funding of non-governmental activities in Azerbaijan. The new legislation introduced, inter alia, a new set of rules for registering the NGOs' grant agreements financed from abroad (including sub-grant agreements and service contracts), obtaining the right as a foreign donor to give a grant in Azerbaijan and submitting information about the donations received by the

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NGOs. The new rules apply to all NGOs operating in Azerbaijan, including the foreign NGOs' branch or representation (hereinafter "local branch").

Altogether, there were 26 amendments, which imposed additional responsibilities

THE RULES ON GRANTS

The harshest among the amendments involve the NGOs' access to foreign grants. The complex rules require both the foreign donor and the local NGO to go through a number of procedures to register their grant agreement.

The government's overhaul of the grant regulations proved to be a long process. The Cabinet of Ministers approved the new rules of registering grants more than a year after the previous rules were abolished. In the meantime, the registration of new grant agreements was put on hold. As will be further discussed later, the work on the rules dealing with foreign donors is still unfinished. As a result, many grant agreements remain unresolved to this day. The new rules include two separate

on the NGOs and harshened the penalties for their failure to comply with the flood of new requirements. Together, these changes subjected many aspects of the NGOs' operations to bureaucratic fiats and significantly reduced the relative freedom they had previously enjoyed.

procedures: one for foreign donors, who must obtain the right to give a grant in Azerbaijan, and the other for the local NGO, which must register the grant. Only after the NGO receives a notification from the Ministry of Justice confirming the registration can it engage in grant-related activities.

The NGOs may face heavy fines for failing to comply with the new grant rules. For example, an NGO may be required to pay up to 3,800 euros for the failure to submit the new grant agreement to the Ministry of Justice for registration in a timely manner. The NGO may be fined up to 8,200 euros if it receives funds without registering the grant agreement. In addition to the NGOs, officials and natural persons involved in these violations are separately fined.

THE FOREIGN DONOR MUST OBTAIN THE RIGHT TO GIVE A GRANT IN AZERBAIJAN

Under the existing regulations, the foreign donor financing an NGO operating in Azerbaijan is required to apply to the Ministry of Finance to obtain the right to provide a grant. If the donor in question is a foreign NGO, then it is additionally required to sign an agreement with the Ministry of

Justice to establish their local branch. In other words, only the foreign NGOs that have formally registered their local presence may give a grant to their local counterparts in Azerbaijan.

The amended Law on Grants states

that foreign institutions must obtain an authorization (hereinafter “donor’s permit”) for each grant they plan to provide in the territory of Azerbaijan. In order to obtain a donor’s permit, the foreign donor must submit a financial and economic justification for that grant. After having consulted other relevant state agencies, the Ministry of Finance decides whether the proposed grant qualifies as financially and economically expedient.

The rules fail to create a clear set of criteria which the Ministry of Finance would be required to use when evaluating grants. The rules thus allow the agency considerable latitude in judging a grant’s merits. Further limiting the chances of a successful application, the rules stipulate that the ministry shall consider the grant proposal as financially or economically not expedient if “the government is addressing the needs in the area of the grants.” Judging by the statements of the officials, this rule could imply that a grant may not be registered on the grounds that the state spends enough through development programs or public grants in the area of concern to the grant. For instance, Ali Huseynli, a member of parliament who has authored the amendments in question, sees no need for foreign donors’ involvement in areas such as legal reforms, anti-corruption policies, public services currently performed under ASAN service centers (a one-stop-shop for public services), etc. Mr. Huseynli argues that the government allocates sufficient resources for nonprofit activities in these areas and that there is no need for additional grants from abroad.

Needless to say, this obscure provision gives

the government almost limitless flexibility in filtering out politically unwelcome grants on the questionable grounds of the state’s involvement in areas of relevance to public policy. This provision raises the stakes for civil society by curtailing the ability of the NGOs and donors to attend to the problems on a need basis that is informed by the real concerns of the society. This stipulation may well give a glimpse of the role the country’s NGO community will be expected to play in the future.

The donor’s permit requirement applies to all organizations based abroad, including international organizations, foreign governments and public organizations as well as the locally registered branches of foreign legal entities. The latter also include the branches of the foreign NGOs which have signed the agreement with the government (the agreement with the Ministry of Justice mentioned earlier).

By 2016, the government realized that the new rules on donor’s permits were not a viable path forward. The growing backlash from international organizations and initiatives such as the Extractive Industries Transparency Initiative (EITI) and Open Government Partnership, of which Azerbaijan is a member, forced the government into rethinking the framework of the new rules. In October 2016, President Aliyev signed a decree introducing the “single window” principle into the procedures of Azerbaijan’s foreign grant making. This step was taken just before the Astana Board meeting of EITI, during which the question about the suspension of Azerbaijan’s membership in the Initiative was high on the agenda. Since the decree is

a directive rather than a blueprint by itself, any attempt to predict the scope of its likely impact is guesswork but one can presume from the wording and the statements of the officials that it shall revise the cumbersome guidelines for the donor's legislation to

facilitate the process of grant issuance. In particular, the Ministry of Justice will now be a liaison between the NGOs and the other regulatory bodies which will deal with the registration of foreign grants.

THE FOREIGN NGOS MUST SIGN A SEPARATE AGREEMENT WITH THE GOVERNMENT TO BE ABLE TO FUND THEIR LOCAL COUNTERPARTS

A seemingly obscure clause of clarification inserted into Law on Grants has redefined the scope of the international, non-governmental donors' funding of the local NGOs. The passage states that nonprofit organizations working in Azerbaijan may receive grants only from those international NGOs that have signed the agreement with the government. The agreement mentioned here is the one that the foreign NGOs are required to sign with the Ministry of Justice to establish their local branch.

Obviously, one of the challenges is the infeasibility of the idea that every international NGO interested in doing a project in Azerbaijan would be willing to set up a local office. However, even if that was the case, there is no guarantee that their readiness to sign the agreement would be reciprocated by the government. The central problem is the extensive discretionary powers that have been granted to state authorities in picking and choosing which foreign NGOs may work in Azerbaijan. The terms for their eligibility to operate a local branch are restrictive, and the success of any such intentions by the foreign NGOs depends on the goodwill of the government.

The Cabinet of Ministers approved Rules on Negotiating and Signing the Agreement, which requires that the NGO in question must justify the need for its work and explain its value to Azerbaijani society in its application to the Ministry of Justice. Furthermore, the organization, if it succeeds in registering its branch in Azerbaijan, must satisfy a number of broadly defined conditions during its term of operation; the organization must "respect the national-moral values of Azerbaijani people," "not (to) engage in political and religious propaganda," etc. Amendments to the Law on NGOs, which evidently aim to limit the scope of the NGOs' activities in the country, limit the number of the foreign NGOs' branches in Azerbaijan to one.

Moreover, the deputy manager(s) of the foreign NGOs' branch, along with the NGOs founded by foreigners (or stateless persons) and other foreign legal entities, must be Azeri nationals. Although the officials offer a patriotic line of reasoning for the inclusion of the latter provision into the law, it was presumably meant to keep better control of these organizations. If the organization for which the Azeri nationals work falls from grace with the government, they would be in

a more vulnerable position than foreigners and could be held accountable.

It had long been on the government's agenda to establish a degree of control over the international NGOs operating in Azerbaijan. As the country entered a period of spontaneous protests in the post-Arab Spring fervor, more and more voices from within the government attributed this rise of discontent to attempts from abroad to destabilize politics in the country. The foreign NGOs working in Azerbaijan, such

as the National Democratic Institute which for a while enjoyed relative freedom in its day-to-day operations, were increasingly targeted and denounced for allegedly being the lead instigators of the unrest. It was in this context that the prerequisite of the agreement to operate a local branch was made into law in 2011. A series of steps undertaken by the government to fill the loopholes from 2011 to 2013 gave way to a complete overhaul of the entire NGO/grant legislation after 2013.

THE NGOS MUST REGISTER THE INFORMATION ABOUT DONATIONS THEY RECEIVE WITH THE MINISTRY OF JUSTICE

As is the case with grants, the NGOs can use donated funds only after receiving the notification from the ministry confirming their registration. The amount of the donation and the name of the person who made the donation must be presented to the ministry for registration. The recipient must submit the same information

separately to the Ministry of Finance. As is the case with grants, the foreign NGOs may donate to local NGOs if they have signed the agreement with the government. Thus, the guidelines for all types of funding from abroad, including donations and service contracts, have been made difficult under the current legislation.

THE NGOS MAY FACE DISPROPORTIONATE PENALTIES FOR VIOLATING THE LAW

The amendments passed into law on December 17, 2013, also increased the financial and administrative penalties for the NGOs, and these penalties are disproportionately higher compared to sanctions for similar violations done by commercial organizations. These penalties pose a significant challenge to the NGOs

because many of them fail to effectively deal with the growing complexity of the rules and regulations, and the loopholes in the laws make them susceptible to sanctions of various kinds by the state authorities. In addition to hefty fines, some of which were mentioned earlier, the amended Law on NGOs now contains more grounds for

closing down an organization for the period of one year upon the Ministry of Justice's request to the court.

Previously, an NGO could be suspended for two reasons: first, if the Ministry of Justice had warned it more than twice a year (in writing) to address the shortcomings and, second, if the NGO "obstructed the elimination of the situation that has resulted in an emergency."

With regard to the first reason, it should be added that the complexity of the rules governing the NGOs' internal policies and procedures allows the ministry to

find deficiencies in their operations on a regular basis. In other words, the NGOs are constantly a hair's breadth away from being suspended. Regarding the second reason, it has presumably been included in the law as a punitive measure against the possibility of an NGO taking an active role in antigovernment activities. Now, an NGO may also be shut down if its executive body is found to have violated the rights of its members. Past experience shows that people affiliated with these organizations could face pressure from law enforcement agencies to implicate the NGOs in wrongdoing.

THE MINISTRY OF JUSTICE WILL BE ABLE TO CONDUCT INSPECTIONS OF THE NGOs' ACTIVITIES

Through another change to the Law on NGO, the Ministry of Justice has been granted the right to investigate the compatibility of an NGO's activities with its statutes and the national law. The procedures for these investigations are laid down in the rules adopted by the ministerial collegium on December 28, 2015. There are concerns that the Ministry of Justice has strayed beyond the law's scope by broadly formulating the grounds for launching an investigation and the procedures for conducting it. For example, one of the vaguely worded, yet potentially consequential provisions of the decision stipulates that the ministry may decide to probe into whether an NGO complies with relevant normative legal acts relevant to its activity. The wide array of gray areas in Azerbaijan's laws enables the ministry officials to cite this provision to conduct their investigations on a whim.

The inspections look into such questions as whether an NGO's operations conform to the organization's statutes and comply with the respective legislation, and the inspections also extend to issues related to the NGO's financial and administrative management. For instance, the inspections will ensure that the NGO's revenues are spent in agreement with the organization's goals, its annual financial reports are properly submitted to Ministry of Finance, it complies with the grant and accounting rules and its financial and economic activities are duly conducted.

These rules subordinate NGOs to onsite inspections (planned and random) that could last from 30 to 60 days. The ministry also instructs the NGOs to keep a separate record of the authorized copies of all internal documents for the ministerial inspections.

These rules serve as a quintessential example of regulatory overreach, and they risk curtailing the independence of

NGOs in many, often unpredictable, ways. The investigations could be used as an instrument of applying pressure to them.

FROM PAPER TO PRACTICE

After the first round of amendments was passed by parliament in late 2013, the Ministry of Justice essentially suspended the procedures for registering NGOs. The failure of the efforts by a group of CSOs to dissuade the president's office from signing these amendments into law and the subsequent approval of the amendments in February 2014 reinforced the growing anticipation of the government's tightened grip over the NGOs. This anticipation was soon proven right when a letter from the Central Bank to commercial banks allegedly banning the transfer of funds to the bank accounts of the NGOs which had not registered with the Ministry of Justice was leaked to the internet.

Specifically, the letter's instructions required the NGOs to submit an official notification confirming the legality of grant agreement from the Ministry of Justice to the commercial bank under which the banking transactions were performed. In practice, the injunction of the Central Bank led to a blanket refusal by commercial banks to perform any financial transactions for the NGOs, including the organizations which operated under previously registered grant agreements. In a clear breach of the law, the new regulations were retrospectively applied to this last category of organizations, too. The NGOs were asked to re-register their grants and present the new notification about the confirmation of the registry to the banks. Around the same time, the government's

tight control of the NGOs' activities in the regions of Azerbaijan was taken to the next level as it became an unofficial requirement that the NGOs receive an official authorization from the presidential administration before they could undertake any action in the regions. In practice, the local executive authorities of many regions simply denied permission for a wide array of NGO-performed activities, bringing the day-to-day activities of NGOs to a near halt. To this day, NGOs face insurmountable barriers to their basic operations outside of Baku.

In a parallel development, businesses began to distance themselves from the NGOs, with which they had a history of cooperation. For instance, hotels refused to host the NGO-organized events and, to this day, continue to remain indisposed to associate with the NGOs. There are fewer venues willing to serve the NGOs, especially the organizations which are engaged in politically sensitive areas. However, economic challenges and the somewhat softened political context have slightly changed the attitudes of businesses in the capital.

While, at a general level, a wide variety of nonprofit organizations saw their operations affected, it was a band of local and international organizations that were in the center of the political and judicial sanctions. The toughening of the laws

was accompanied by an unprecedented crackdown on the vocal representatives of the third sector. This crackdown included the representatives' arrests on criminal charges and the subsequent crippling sanctions on the NGOs with which they were affiliated. Democracy activists, lawyers, journalists, politicians and religious activists, whose common denominator is their critical stance on the government's policies, were put behind bars for what appeared to be politically motivated charges. The government has adamantly maintained that the regulations were not politically motivated and instead pointed to the problems of accountability and transparency in some Western-funded NGOs as the rationale for introducing the amendments. The government has also justified the punitive actions taken against the civil society activists on the basis of charges ranging from tax evasion, malfeasance and abuse of power to espionage and the unauthorized disclosure of state secrets.

The Civil Society Platform, a nascent civic initiative founded in February 2016 by a group of civic activists, researched the effects that the criminal investigations had on Azerbaijan's NGOs. The study found that criminal cases launched against NGOs had not been closed, and the substantial financial penalties imposed on these organizations were still in effect. According to the report, a group of local NGOs were fined over 1 million AZN in total (about 500,000 euros at current exchange rates) in the aftermath of the investigation. The amount of financial penalties imposed on the international NGOs (as well as private institutions such as Chemonics International) together added up to over 3 million AZN (over 1.5 million euros). The study found that, in all instances, the penalties were justified by the failure of these organizations to register their grants with the Ministry of Justice. The Ministry of Taxes considered the received funds as income rather than grants and subsequently claimed the recipients had failed to pay the 18% tax on these funds.

THE CIVIL SOCIETY'S DAY OF RECKONING

The measures made it harder, inter alia, for the NGOs to receive foreign grants and further tightened the regulations. The measures caught both the local NGOs and their international partners by surprise. This was not because the measures had been deemed implausible but rather because they seemed redundant in a society in which the political domain had already been strictly under the control of the state. While the government's change of heart regarding the NGOs was a shock for many observers,

it was not at all a secret that the country's politics had taken a new course after a set of international and domestic developments had aggravated the government's understanding of perceived threats to the political status quo.

The reverberations of the Arab Spring were felt in the upsurge of social-media-driven campaigns against human rights abuses, political repressions, corruption and other issues of social importance. The protests

against corruption and unemployment which emerged in Azerbaijan's regions were widely covered on such platforms as Facebook, Twitter, etc. The government's PR campaign abroad faced challenges, which cast a shadow on such high-profile pet projects as Eurovision and the European Games, from within the civil society. Perhaps the last straw was the monitoring of the activities of a local NGO which had called into question the legitimacy of the presidential elections held in the fall of 2013. Two activists from that same organization were later put behind bars, but now they are both free.

It soon came to the government's attention that some of these civic initiatives were funded through the projects financed by the international NGOs and quasi-state bodies. This fueled the narrative—or rather, the conspiracy theory—among the government's ideologues that there had been a concerted effort by Western governments, namely the US, and Azerbaijan's local critics to change the political status quo in Azerbaijan. Cherry-picking the anecdotal evidence of financial mismanagement, the law enforcement agencies scrambled to string together a conspiratorial narrative about the use of foreign grants for political activities, but lacking substantial proof, they instead brought charges of tax evasion and abuse

of power against the NGO representatives.

It is because of these underlying political motives that the government's attempts to justify the stricter measures by citing the need for transparency failed to impress the civil society activists and Western governments. Additionally, the scale of the changes was disproportionate to the stated objective of increasing transparency and accountability in the NGOs. In fact, soon after the government amended the law on the NGOs in February 2014, it imposed a blanket ban on the registration of foreign grants while it followed through with a series of punitive actions against the country's leading critical voices in the NGOs and changed the rules regulating the NGOs' operations. Needless to say, the transparency argument was met with skepticism by the civic activists, who pointed to the thick cobweb of rules already in place that had subjected the NGOs to close scrutiny by tax and financial authorities. The transparency argument was built on the claim that some of the local NGOs had spent their foreign grants on unrelated purposes or had evaded their taxes. This obscure claim was not fully corroborated in the course of the far-reaching investigations, and eventually, the government and the individuals accused of tax evasion reached a settlement regarding the alleged tax debt.

ACTIONS RESEMBLE A SHIFT OF PARADIGM FOR THE AZERBAIJANI GOVERNMENT

The sudden outburst of anti-NGO/anti-liberalism discourse represented a paradigm shift for the government of Azerbaijan, which

had always tried to project a semblance of democratic legitimacy to its Western audience. Azerbaijan's growing frustration

with the criticism from Western institutions and their local partners from among the NGOs, dovetailed well into the already prevalent anti-liberal discourse among the political elite. The key assumption of the balanced foreign policy—which boiled down to an aspiration to integrate with Western institutions while avoiding taking a side in the geopolitical rivalries between the West and Azerbaijan’s neighbors, in particular, Russia—was jettisoned as the political realities of Azerbaijan increasingly resonated with a similar trend in Russian politics. The argument of national sovereignty essentially asking the Western governments not to interfere with the political developments inside Azerbaijan featured ever strongly in the Azerbaijan’s discussions with the Western governments and strained the already tense relations between them, which led to a temporary shift in the country’s foreign policy in favor of Russia.

To be clear, the amendments to Azerbaijan’s laws on NGOs/grants were not an aberration in the country’s steadily declining democratic and human rights credentials over the past decade. Azerbaijan’s authoritarian model of government has always presented challenges to the feasibility of a functional civil society. While the NGOs and civic activists were not systematically targeted in the earlier years, the public’s exercise of the right to the freedom of association was hampered in numerous ways, not the least of which was through the burdensome procedures for the NGOs’ registration and operation (as evidenced by the ECHR’s decisions). The prevailing sentiment among the opposition and civil society activists was to the effect that the changing of the

rules for the civil society was another nail in the coffin of freedoms and rule of law in Azerbaijan. They believed the dissolution of “the last bastion of public space” would happen sooner or later as the government’s threshold for political tolerance continued to drop over the years.

As the country deepened its entrenchment in consolidated authoritarianism during the last decade, the last vestiges of Azerbaijan’s democratic institutions were dealt a final blow. In this generally bleak context, the NGOs became a somewhat “neutral” venue for former critics or opponents of the ruling regime to advocate for policy changes. As the boundaries of the political society shrank, the civil society became, of necessity, the sole platform that posed an ideological challenge to the political discourse. Coincidentally, the blurring of the boundaries between the political and civil spaces urged the government to resort to radical solutions in the name of political stability.

The NGOs had remained below the radar of the government as long as they stayed out of activities perceived as political. In the past, repressive measures had usually been reserved for the political opponents of the ruling regime who contested the country’s political status quo. As the limits of the political space narrowed, the line between politics and civic engagement became blurred. The key claim against these NGOs was that the NGOs funded by Western organizations had collaborated with the opposition and pursued a radical political agenda in the form of regime change in Azerbaijan. This line of reasoning manifested

itself quite clearly in the statements and interviews of senior officials. As a result, the introduction of anti-NGO measures along similar lines to those targeting the political opposition was warranted from the government's perspective by the changing dynamics in Azerbaijan's domestic affairs.

Analyses of the government's political discourse indicates that the government was driven by a strong impulse to extend its control of the political space to the civil society, which it had reason to assume had become politicized. The uneasy juxtaposition of the illiberal doctrine of state authority with the liberal concept of civil society proved too fragile to be sustained under the pressure of the rapidly changing domestic and international dynamics. Having achieved a fairly solid grip over the political space, the government set out to neutralize a more versatile group of potential "troublemakers": civic activists funded by Western donor organizations who effectively challenged the state discourse about democracy, public policy and corruption through social media at home and in collaboration with a global network of "partisan" human rights organizations abroad. It is this latter group

of international NGOs that received the harshest treatment during the course of the crackdown.

It is therefore important to refute the claims that the stricter rules were primarily motivated by the urge to make the civil society organizations (CSOs) more transparent and accountable. The context of these changes strongly suggests that it was a strategic move that had long been in the making. It was not the policy, per se, but rather its operationalization through changes to the law and the subsequent prosecution of civic activists that was mishandled and gave rise to the impression in the West and among local CSOs of overreaction on the government's part. In fact, it was quite possibly the next logical step in the consolidation of political power. Regime interests and the ideological lenses through which they are interpreted leave little room for a more lenient approach to alternative power groups. However, this is not to deny the likely impact of dramatic developments in the region and in domestic politics that might have had led to a high-handed use of power in relation to the NGOs.

THE RECENT SOFTENING AND PROSPECTS FOR CHANGE

There has been a growing realization inside the government that the anti-NGO measures have caused unnecessary damage to Azerbaijan's reputation abroad. The cost of this reputational harm is mainly understood in terms of the implications for the country's economy. For instance, the

Extractive Industries Transparency Initiative (EITI), of which Azerbaijan is a member, downgraded the country's membership in April 2015. This came as a response to the worsening conditions for the civil society in Azerbaijan. In the latest board meeting of the EITI in Astana, Azerbaijan was given four

months (until the next meeting in March 2017) to upgrade its regulations regarding the civil society or potentially face the suspension of its status in the initiative. As Financial Times reports, this has put billions of dollars in loans from the World Bank and European Bank for Reconstruction and Development (EBRD) for the Southern Gas Corridor project, bringing gas from the Caspian region to Europe, at risk. The project has strategic importance for Azerbaijan's economic development.

Moreover, three years later, the CSOs are still fighting to gain a modicum of breathing space amid the Gordian's knot of regulations. The government might have underestimated the backlash from within the ranks of the civil society regarding the tightened control. The reason for the NGOs' perseverance is the fact that they remain the last bastion of civic participation in the country. If the NGOs are effectively brought under the control of the government, civil society's last hopes for some degree of control over the state institutions will have been squandered.

That is why even if some of the victims of the crackdown left the country, the majority of the activists, lawyers and journalists stayed and pushed for the policy change. For instance, civic groups like the OGP Platform for Dialog between Government and Civil Society and the Civil Society Platform have advocated for changes to the NGO/grant rules. There is a consensus among Azeri NGOs (both pro-government and independent groups) that the restrictive provisions should be reversed, although this has not translated into effective cooperation to collectively

advocate for the overhaul. The key obstacle to cooperation is the difference of opinion as to how accommodating the NGOs should be to the government's political agenda.

The government has not shied away from proclaiming that the NGOs should throw in their lot with the Azerbaijani government and not their Western donors. These contesting political agendas have created fault lines in Azerbaijan's civil society.

The softening of the government's overall attitude to the NGOs in recent months has raised the public's expectations for the relaxation of rules on foreign grants. However, there is also general skepticism that there will be radical improvement of the situation anytime soon. This is because the rhetoric of change is influenced more by external than domestic considerations. There is strong temptation on the part of the government to maintain the environment of uncertainty when it comes to civic activities, especially in view of the uncharted territories the country's economy has entered in recent years.

The civil society can be a double-edged sword in these uncertain times. On the one hand, it may help the government to bring a modicum of openness to an otherwise closed political system. As a bridge between the society and state authorities, the CSOs may help the government to feel the pulse of the public's sentiments. On the other hand, as an effective force of grassroots mobilization, the NGOs may prove to be a challenging adversary to the government's monopolistic presence in the communities if the government fails in its commitment

to long-postponed public sector reforms. These reforms are necessary to improve the quality of the public services, combat corruption and restore trust in the political institutions. At the risk of pointing out the obvious, it should be added that if the government strengthens the institutions, the civil society may prove to be a blessing in the process, but if it plans the opposite, then the civil society may become a curse in the long run. Put differently, the NGOs could help in the process of translating

the reform-driven agenda into effective policy change in the face of resistance from various groups within the government, including local executive authorities. But if the government turns a deaf ear to the calls from the society, including the NGOs, to seriously address economic and social problems, the latter could take a more proactive role in challenging the failing government policies. The government will have to navigate through these conflicting needs and interests in the new reality.

THE EU'S LIKELY ROLE IN CHARTING A NEW COURSE FOR AZERBAIJAN'S CIVIL SOCIETY

There is little disagreement over the benefits of a vibrant civil society since it would lead to closer relations between the EU and Azerbaijan. Azerbaijan's NGO community, despite its contesting of political agendas and institutional flaws, serves as the conduit for a transfer of ideas and practices closely identified with good governance into Azerbaijan's context. The roots of important public policy reforms could be traced back to effective state-civil society partnerships often supported by various institutions of the EU and its member states. The NGOs also represent a bridge between the EU and Azerbaijan, helping the former to better articulate its core message about the importance of such norms and values as good governance, human rights and democracy to Azerbaijani society. Therefore, the success of the EU's engagement with Azerbaijan, to a significant degree, depends on Azerbaijan's ability to uphold civil liberties.

In view of the fact that (a) the advocacy of good governance—including democracy, rule of law and successful market economies—remains the backbone of the EU's regional clout, and (b) the political stability in Azerbaijan strongly depends on its successful adoption of these principles and values, Azerbaijan's NGO community represents the key domestic constituency advocating for the norms of good governance, so the EU should bolster its efforts to strategically engage the country's civil society. The engagement should be responsive in the short term to the challenges brought about by the restrictive regulations and should be proactive in the long term in changing the government's attitude to the role of the civil society in policy and decision-making.

IN THE SHORT TERM, THE EU SHOULD ADVOCATE FOR:

■ Simplifying the existing NGO/grant regulations: These include the requirement of (a) the foreign donors to receive authorization for each grant and justify the grant on economic-financial grounds and (b) the foreign NGOs to have a local branch to be able to give the grant.

■ Limiting the discretionary power of the Ministry of Justice over the NGOs: This means that the loopholes in the legislation governing the NGOs' activities should be addressed to reduce this regulatory body's excessive meddling in the NGOs' internal policies and operations. Also, the procedures for registering an NGO should be eased.

■ Eliminating bureaucratic barriers to the NGOs' operations outside of Baku in the regions of Azerbaijan: Currently, it is very difficult, if not impossible, for the NGOs to conduct any activities out of the capital city. This is due to the fact that heads of local authorities in many regions view any kind of independent civic activism in a negative

light. This is partly because they understand their responsibility to maintain political order as limiting community organizing and grassroots engagement. On the other side, local authorities want to avoid closer scrutiny of the problems in their operations, because corruption and myriad other problems are rampant in local administration. The government should respect the right of the citizens to work together to address social and economic problems in the regions outside of Baku.

■ Encouraging the European business community to respect human rights: In the heat of the crackdown, many businesses, including internationally co-owned and operated banks, hotels, etc., refused to cooperate with the NGOs. The refusal was usually justified with clumsy excuses and violated the national law. It is important that European businesses set the trend by being open to cooperation with the civil society and showing civil society's positive contribution to social progress.

IN THE LONG TERM, THE EU SHOULD AIM FOR:

■ Strengthening civil society's engagement in policy making and the oversight of state institutions: As a key piece of legislation, the law on public participation has laid down the framework for such involvement. The institutions of civil society should be given a chance to meaningfully contribute to the decision-making of state agencies and local governments.

■ Improving its strategic communication with the civil society to better respond to the challenges the civil society faces: The EU's institutions should build wider bridges with various non-state actors in Azerbaijan and extend their local partnerships beyond their project partners. There should be some soul-searching about why the EU

could not predict and take preemptive action against the drastic anti-NGO measures. Moreover, a trilateral platform in which the government, civil society and EU representatives could discuss issues of mutual concern could go a long way toward smoothing the communication among these actors.

■ Developing a more sophisticated and consistent approach to supporting human

rights and democracy in Azerbaijan: The EU's institutions should treat the problems of the civil society within the broader context of Azerbaijan's deteriorating democratic credentials. This requires that the EU bolster its efforts to improve the government of Azerbaijan's observance of its commitments under the European Convention on Human Rights.

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