

Letter to the Members of the Extractive Industries Transparency Initiative Board on the Working Conditions of Civil Society in Azerbaijan

Dear Members of the Extractive Industries Transparency Initiative Board,

In light of the upcoming review of Azerbaijan's status in the Extractive Industries Transparency Initiative (EITI) in October, the undersigned organisations call on the EITI Board to suspend Azerbaijan from participation in EITI, due to continuous breach of the initiative's requirements for fostering an enabling environment for civil society.

EITI downgraded Azerbaijan's status from 'compliant' to 'candidate' in April 2015, setting out corrective actions the Azerbaijani government must take to restore its status. During her visit to Azerbaijan last year, EITI Chairwoman Clare Short met with President Ilham Aliyev on 8 October 2015. At the meeting, President Aliyev acknowledged that restrictions were imposed on civil society's activities and promised to eliminate them¹.

Since then, the government has taken some limited positive actions to remedy the issues outlined in the EITI corrective action plan; however, persistent problems remain and the government has launched a renewed crackdown on civic space, including on cultural actors, during recent months. The attached annex provides further information on the current context for civil society in Azerbaijan; while this letter summarises problems that continue to prevent civil society from meaningfully participating in the EITI.

Persecution and harassment of members of the EITI NGO Coalition

The Azerbaijani government continues to harass representatives of the EITI NGO Coalition in Azerbaijan², preventing them from effectively contributing to EITI processes.

Two members of the EITI NGO Coalition, Asif Yusifli and Fuad Gahramanli, remain in prison on spurious charges. Mr Yusifli, a high-ranking member of Azerbaijan's opposition Popular Front Party, was arrested on 25 November 2014 and later convicted on charges of fraud and forgery. He is presently serving a six-year prison sentence. Mr Gahramanli, deputy chairman of the opposition Popular Front Party, was arrested on 8 December 2015 on charges of incitement to religious hatred in connection to comments he posted on Facebook. The comments constituted legitimate exercise of the right to freedom of expression and Amnesty International have named Gahramanli a prisoner of conscience. He is currently on pre-trial detention as the court proceedings in his criminal case are underway. The proceedings against both men are widely believed to be politically-motivated, aimed at preventing their activities as opposition politicians.

Furthermore, the wife of Fuad Gahramanli, Zumrud Yagmur has also faced reprisals as her novel *Country Name: 22* was effectively banned from sale by bookshops due to content critical of the government.

Another member of the Council of the EITI Coalition and chairman of the Public Association for Democratic Reform, Ogtay Gulaliyev, is currently under an international travel ban due to an ongoing criminal case dating back to 2012. On 23 June 2016, after applying for a new passport, he was taken to the police station where he

¹The extracts of the interview Ms Clare Short had with BBC Azeri on 13 October 2016. Original version:

http://www.bbc.com/azeri/azerbaijan/2015/10/151013_clare_short_int

English translation: <http://www.azhr.org/single-post/2015/10/12/Conversation-with-Ilham-Aliyev-about-pressure-on-civil-society>

²According to the website of the EITI Azerbaijan Coalition, the Coalition has some 138 members. The work of the coalition is governed by the Coalition Council, comprised of 10 members and one coordinator. http://eiti-ngo-azerbaijan.org/?page_id=155

was informed about the ban. Gulaliyev was originally sentenced to 12-day administrative imprisonment for minor hooliganism on 9 April 2012. However, a day before the expiration of his administrative detention, on 20 April 2012, Gulaliyev was sentenced to two-months of pre-trial detention and charged with “active disobedience to authorities’ legal orders” and “incitement to mass riots and to violence against citizens”. On 13 June 2012, Sabirabad Regional Court replaced Gulaliyev’s pre-trial detention with police supervision and he was consequently released. However, the criminal case against him remains open.

Other members of the Coalition, Zohrab Ismayil, chairman of Public Association for Assistance to Free Economy, Elchin Abdullayev, chairman of Democratic Institution and Human Rights Public Union, and Sabuhi Gafarov, chairman of "Free Person" Human Rights Protection Society, remain outside the country, having been forced to leave Azerbaijan in 2014, to avoid imminent arrest in relation to the criminal case launched against NGOs in 2014. Several other NGO leaders, including Rasul Jafarov and Intigam Aliyev, had been jailed as part of this case.

Meanwhile, those that remain in Azerbaijan face major obstacles to their activities, related to restrictive NGO legislation, explored below. The inability of these independent members to operate in Baku has led to an increase in the number of pro-government NGOs in the Coalition, which has enabled the government to control the activities of the NGOs in the framework of EITI.

Broader civil society environment

The harassment of members of the EITI coalition continues to occur against a broader back drop of persecution of civil society.

Restrictive amendments introduced to NGO legislation in 2014 render it almost impossible for independent NGOs to operate within Azerbaijan. The European Commission for Democracy through Law (Venice Commission) has raised concerns about the legislation, which they believe illegitimately restrict the activities of NGOs, making recommendations for reform, which the Azerbaijani government has ignored.³

The amendments made to the NGO legislation have hampered NGOs' ability to access foreign funding. If a foreign donor issues a grant to an NGO operating in Azerbaijan, the grant has to be approved by the Ministry of Justice. Given the current political climate, the Ministry refuses to approve foreign grants, particularly the grants allocated for human rights NGOs. In fact, the purpose of these amendments was to effectively ban access to foreign funding.

A criminal case launched against a number of NGOs by the Serious Crimes Investigation Department of the Prosecutor General’s Office in April 2014 is still ongoing.

Moreover, despite the unfreezing of bank accounts of EITI coalition members, the accounts of many other NGOs and their directors are still frozen. Foreign travel bans imposed on NGO leaders have not been lifted, while other members of civil society are subject to arbitrary checks by customs officers when leaving the country.

Lack of political will for reform

To successfully implement the corrective actions outlined by the EITI, the government must demonstrate political will to introduce genuine reforms and create the conditions for developing civil society in the country.

Although the government faces serious economic problems, it remains unwilling to cooperate with civil society, and continues to violate the rights to freedom of expression, association and assembly, preventing civil society from meaningfully operating within the country.

The government has signalled that, despite external pressure, it does not intend to reform its policies towards civil society. In May 2015, after Azerbaijan’s status in EITI was downgraded, the head of the State Oil Fund of

³ The Venice Commission opinion 787/2014. On the law on non-governmental organisations (public associations and funds) as amended of the Republic of Azerbaijan. Strasbourg, 15 December 2014.

Azerbaijan Shahmar Movsumov stated that EITI had lost its appeal to Azerbaijan. Movsumov, who is also the EITI programme coordinator in Azerbaijan, said that Azerbaijan was considering leaving the EITI, following a change in the initiative's strategy: "if earlier the EITI's strategy was aimed at ensuring transparency, now it fulfils the function of protecting the interests of NGOs⁴," he said.

We, the undersigned organisations, deeply appreciate the principled position demonstrated by the EITI last year, including during the visit of EITI Chairwoman Clare Short to Azerbaijan. The initiative's repeated emphasis on the need for Azerbaijan to reform offers some hope to independent activists in Azerbaijan.

We ask members of the EITI board to suspend Azerbaijan from membership in the initiative, until the government addresses the following issues:

- Abolish the NGO legislation restricting the activities of NGOs, in line with the 2014 opinion of the Venice Commission and introduce legislation enabling normal working environment for civil society;
- Abolish legislation and regulations imposing excessive requirements and approvals for access and using foreign funding.
- Immediately and unconditionally release all political prisoners held in Azerbaijan, including members of the EITI coalition: Asif Yusifli and Fuad Gahramanli;
- Discontinue the fabricated criminal proceedings launched as a means of pressuring independent NGOs and government critics, unblock the bank accounts of NGOs and their leaders, end arbitrary bans on the sale of books by authors critical of the government, and lift the foreign travel bans imposed on heads of NGOs and others;
- Simplify the registration procedures impeding the work of civil society organisations.

We thank the EITI Board for its commitment to addressing deteriorating civic space in Azerbaijan, and urge you to maintain this principled stance, in order to defend transparency in Azerbaijan and uphold the high standards required by the EITI.

Sincerely,

Article 19
CEE Bankwatch Network
Civil Rights Defenders
Crude Accountability
Freedom House
Freedom Now
Human Rights House Foundation
Index on Censorship
Institute for Reporters' Freedom and Safety
International Media Support
International Partnership for Human Rights
Netherlands Helsinki Committee
Norwegian Helsinki Committee
PEN America
PEN International
People in Need
Urgewald
World Organisation Against Torture (OMCT)

⁴ As commented during May 2015 press conference in Baku.

http://contact.az/search/document.php?id=65054&vr=en#.V_3fyY-LTIU

Annex

Briefing Note on Conditions of Civil Society in Azerbaijan

Introduction

Over a year since Azerbaijan's status at the Extractive Industries Transparency Initiative (EITI) was downgraded, the environment for independent civil society organisations (CSOs) remains highly problematic. According to Michael Forst, the UN Special Rapporteur on the situation of human rights defenders, who visited Azerbaijan on 14 - 22 September 2016, civil society in Azerbaijan is "facing the worst situation" since independence.⁵

In his statement on 22 September, the Special Rapporteur condemned the crippling pressure on journalists and human rights activists critical of the government, which has made it virtually impossible for non-governmental organizations to operate.⁶

The conditions created by the government of Azerbaijan make the work of the independent civil society organisations extremely difficult. Repressive legislation severely limits the operation of non-governmental organisations (NGOs), and criminal proceedings have been launched against numerous CSOs. A range of intimidation tactics place further substantial restrictions on NGO activities in Azerbaijan. Although in the past year the government of Azerbaijan has taken some limited steps in relation to NGOs participating in EITI activities, the overall situation in this sector remains deplorable.

Civil Society Actors Participating in EITI

In the past months, the government has taken some limited positive actions to remedy the issues outlined in the EITI corrective action plan. The bank accounts of EITI members were unfrozen. However, notwithstanding the aforementioned incremental improvements, there remain a vast number of unresolved issues.

Asif Yusifli and Fuad Gahramanli, two members of the EITI Coalition of Azerbaijan NGOs, are currently in prison. Asif Yusifli, a high-ranking member of the opposition party Azerbaijan Popular Front Party (APFP), was arrested in November 2014 on charges of fraud and forgery. Although the victim in the case had no complaints and was compensated for pecuniary damage, Asif Yusifli was convicted and sentenced to seven years and six months in prison by Baku Grave Crimes Court on 30 July 2015. On 4 May 2016, Supreme Court reduced Yusifli's sentence to six years.

Gahramanli, deputy chairman of the opposition Popular Front Party, was arrested on 8 December 2015 on charges of incitement to religious hatred, in connection to comments he posted on Facebook. The comments constituted legitimate exercise of his right to freedom of expression, and Amnesty International have named Gahramanli a prisoner of conscience. He is currently in pre-trial detention, as the court proceedings in his criminal case are underway. The proceedings against both men are widely believed to be politically-motivated, aimed at preventing their activities as opposition politicians.

Furthermore, the wife of Fuad Gahramanli, Zumrud Yagmur has also faced reprisals as her novel *Country Name: 22* was effectively banned from sale by bookshops due to content critical of the government.

Ogtay Gulaliyev, EITI Council member and chairman of the Public Association for Democratic Reform, is currently under an international travel ban in regard to an ongoing criminal case dating back to 2012. On 23 June 2016, after applying for a new passport, he was taken to the police station and informed of the ban. Ogtay Gulaliyev is a member of Kura Civil Society, a social body established to ensure transparency and combat corruption over the equitable distribution of public funds allocated for people affected by floods of Kura River. On 8 April 2012, Gulaliyev was arrested during a meeting with flood-affected residents based on allegation that he was swearing in public. Gulaliyev was originally sentenced to 12 days of administrative imprisonment for minor hooliganism on 9 April 2012. However, the day before the expiration of his administrative detention, on

⁵ End of mission statement by Special Rapporteur on the situation of human rights defenders. 22 September 2016 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20544&LangID=E>

⁶*Ibid*

20 April 2012, Gulaliyev was sentenced to two-months of pre-trial detention and charged with “active disobedience to authorities’ legal orders” and “incitement to mass riots and to violence against citizens”. On 13 June 2012, Sabirabad Regional Court replaced Gulaliyev’s pre-trial detention with police supervision and he was consequently released. However the criminal case against him remains open.

Another EITI NGO Coalition member, chairman of "Free Person" Human Rights Protection Society Sabuhi Gafarov, has been charged with tax evasion, illegal business and abuse of office in 2015 as part of the criminal case launched against NGOs by the Serious Crimes Investigation Department (SCID) of Prosecutor General's Office in 2014. After being interrogated and fearing his imminent arrest, he left Azerbaijan in 2015. The criminal case against him is ongoing and, as a result, he is unable to return to Azerbaijan.

Coalition members Zohrab Ismayil, chairman of the Public Association for Assistance to Free Economy (PAAFE) and Elchin Abdullayev, chairman of Democratic Institution and Human Rights Public Union were forced to leave Azerbaijan in 2014 to avoid their imminent arrest on spurious charges. They have been unable to resume their activities in Azerbaijan. Several leaders of the NGOs represented in the EITI NGO Coalition Council have also left the country as a result of governmental pressure and their inability to continue their work. Moreover, numerous members of the EITI Coalition have been denied registration by the Ministry of Justice. The government has failed to create an enabling environment for these individuals, and they remain unable to return to Azerbaijan to continue their work.

In addition, the Baku Tax Department, acting without a court order, withdrew a sum of money from the bank account of PAAFE, allegedly tax owed by a member of the PAAFE.

The inability of these independent members to operate in Baku has led to an increase in the number of pro-government NGOs in the Coalition, thus enabling the government to control the activities of the NGOs in the framework of EITI.

Overall Conditions for CSO in Azerbaijan

In 2014, the Government of Azerbaijan began a systematic crackdown on civil society. The amendments to the Law on Non-Profit Organisations and Law on State Registration and Registry of Legal Entities that introduced burdensome registration requirements increased administrative responsibility, and *de facto* prohibited access to foreign funding. These laws place severe limitations on NGOs' ability to work. The changes to legislation also made it impossible for foreign NGOs to operate in Azerbaijan.

The criminal case initiated by the Serious Crimes Investigation Department of the Prosecutor General's Office against several NGOs that had received foreign funding has been ongoing for over two years. Natig Jafarli, REAL Movement Executive Secretary and economist critical of government policy, was recently arrested and later conditionally released in connection to the case.

Criticism of the authorities is met with varying degree of repressions including criminal proceedings on trumped-up charges. For instance, Akram Aylisli, a prominent 78-year-old Azerbaijani author and outspoken critic of the government, was stopped at Baku's international airport and accused of assaulting and seriously injuring a significantly younger border guard. The criminal case against him on charges of "using violence against government representatives" remains ongoing.

Furthermore, the bank accounts of numerous NGOs remain frozen while travel bans imposed on their directors are still in place. The bank accounts of 10 NGOs and human rights defenders are frozen and several NGOs leaders are banned from leaving the country.

In general, the government does not consult with independent NGOs and disregards their proposals for the reform of NGO laws and other recommendations. Civil society representatives have prepared and disseminated a package of proposals on legislative amendments that are required for the effective functioning of civil society. Unfortunately, the government is not interested in opening a dialogue with civil society, nor in addressing the existing issues.

Moreover, the NGOs ability to organise public events has been curtailed by lack of resources and the fact that hotels refuse to provide venues for independent CSOs.

Civil society has been unable to participate in monitoring of governmental activities, particularly with respect to transparency, since the beginning of the crackdown and critical voices, including in the cultural sector, face persecution. There is no national plan on transparency and CSO contributions in this area are impossible unless the existing legal and political barriers are lifted.

Legislation Restricting NGO Operation

Since the EITI Board decided to downgrade Azerbaijan's status on 14 April 2015, the Azerbaijani government has adopted several restrictive amendments to legislation regulating NGO operation:

- (i) On 5 June 2015, the Cabinet of Ministers adopted new rules for the registration of grant agreements introducing numerous obligations for NGOs, including new registration requirements;
 - (ii) On 21 October 2015, the Cabinet of Ministers published rules for the registration of contracts on the provision of works and services that are covered by funds from foreign donors, introducing additional requirements for such contracts;
 - (iii) On 22 October 2015, the Cabinet of Ministers approved a new procedure according to which foreign donors may only issue grants in Azerbaijan with prior approval from the government;
- (iv) On 12 February 2016, the Ministry of Justice published Rules for Studying the Activities of Non-Governmental Organizations and Branches or Representative Offices of Foreign Non-Governmental Organizations. The rules granted broad powers to the Ministry to inspect and penalise NGOs in Azerbaijan.

Conclusion

The positive steps taken by Azerbaijan with respects to several members of the EITI Coalition are merely *ad hoc* improvements that fade in comparison to the overall situation for civil society. Several members of the EITI Coalition are imprisoned while others have been forced to flee the country. There have been no systemic changes to address the issues hindering the work of civil society since the 2014 crackdown. This has made it possible for the government to dominate the EITI processes through pro-governmental NGOs. It is evident that the government of Azerbaijan has fallen far short of its obligation to implement the remedial actions outlined by the EITI.

20 October, 2016