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- **IRFS STATEMENT ABOUT CHANGES PROPOSED TO THE AZERBAIJAN REPUBLIC LAW ON NON-GOVERNMENTAL ORGANIZATIONS**
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IRFS EXTREMELY CONCERNED ABOUT CHANGES PROPOSED TO THE AZERBAIJAN REPUBLIC LAW ON NON-GOVERNMENTAL ORGANIZATIONS

The Institute for Reporters' Freedom and Safety is severely concerned proposed changes the Azerbaijan Republic law on non-governmental organizations that will be discussed in the Milli Mejlis (parliament on 19 June). IRFS believes that if these proposed changes are approved, the work of non-governmental NGOs in Azerbaijan will be severely limited and restricted.

The proposed changes will make registration for NGOs difficult and is poised to ban the activities of many local and international NGOs in Azerbaijan. Proposed changes to Articles 4, 6.2, 7.7, 9.3, 9.4, 9.5, 10.4, 12.1.1, 12.3, 12.4, 12.5, 16.2, 16.3, 16.4, 16.5, 17.1, 20, 24.2, 29.4, 29.5 and 31.6* appear to be intended to ensure dependency on the government of Azerbaijan and will lead to the closure of independent NGOs.

These proposed changes will prevent people from exercising their right to freedom of association envisaged in Article 58 of the Republic of Azerbaijan's Constitution and right to freedom of assembly and association envisaged in Article 11 of the European Convention on Human Rights.

IRFS considers the proposal of such changes that were prepared without the participation of civil society to be latest authoritarian step against civil society and declares that acceptance of these changes will negatively affect Azerbaijan's already poor international image.

IRFS calls on the international community not to close their eyes to these proposed anti-democratic changes , to support NGOs working in Azerbaijan to develop civil society and, if these proposed changes are accepted, to enact severe sanctions against the government of Azerbaijan for failing to fulfill the obligations to develop democracy that it is has undertaken.

IRFS calls for Azerbaijan's government not to accept the proposed changes to the Azerbaijan Republic law on non-governmental organizations, to further liberalize legislation related to NGOs and to simplify the registration process for NGO through a "one window" system.

*For the full text of the proposed changes see "**PROPOSED CHANGES TO THE AZERBAIJAN REPUBLIC LAW ON NON-GOVERNMENTAL ORGANIZATIONS**" in this press release

PROPOSED CHANGES TO THE AZERBAIJAN REPUBLIC LAW ON NON-GOVERNMENTAL ORGANIZATIONS

On June 9, in two committees of Azerbaijan's Milli Mejlis (parliament), proposals to change Azerbaijan's law on non-governmental organization were considered and approved to be put up for discussion in an extraordinary session of Milli Mejlis that is scheduled to take place on 19 June.

Of particular concern are

- the proposed change to outlaw the activities of NGOs that have more than 50% of their resources from foreign sources (Article 24.2)
- the proposed ban on the activity of NGOs until they receive state registration (Article 16.4) – a process that can take months or even years

- the proposed prohibition against people who are not permanent residents of Azerbaijan and people without citizenship acting as founders of non-governmental organizations (Article 9.4)
- the proposed new criteria for classification NGOs that will require “nationwide” Azeri NGOs to have branches and/or representations in 1/3 of Azerbaijan’s 59 administrative-territorial regions
- the five year ban on founding a new NGO that can be placed on founders of non-governmental organizations that are closed on the basis of a court decision for law violations

The Institute for Reporters’ Freedom and Safety has obtained a copy of the proposed changes and translated them into English. The translation has been placed below. Note that the translation only includes articles of the Law on Non-governmental Organization that have proposed changes in them, not the entire law.

Article 1. Objective of this Law

1.1 This Law regulates the relations concerned with establishment and operation of public unions and foundations.

1.2 In this Law, the term "non-governmental organization" includes public unions and foundations.

1.3 This Law determines the rules for establishment, **obtainment of state registration as a legal entity**, operations, reestablishment and liquidation of non-governmental organizations **as a legal entity**, and defines their activities, administration, and relations with government bodies.

1.4 This Law shall not apply to political parties, trade unions, religious organizations, local government bodies, **structures created to carry out the functions of founding** and other non-governmental organizations that are regulated by other laws.

Article 2. Non-Governmental Organization

2.2 Foundation – a non-membership non-governmental organization that is founded by several individuals and/or legal entities on the basis of ~~voluntary~~ property shares, and is aimed at social, charitable, cultural, educational and other public activities.

Article 3. Name and Residence of Non-Governmental Organization

A non-governmental organization shall have a name that points out its organizational-legal form and nature of its activities. Names of Republic of Azerbaijan state agencies cannot be used in the names of non-governmental organizations. **The names of Azerbaijan's distinguished people cannot be used in the names of non-governmental organizations without permission from that person's close relatives or inheritor.**

Article 4. Organizational-Legal Forms of Non-Governmental Organizations

Non-government organizations may be established in any organizational-legal form **envisaged in legislation.**

Article 6. Area of Operations of Non-Governmental Organizations

6.2 Nationwide Azerbaijani non-governmental organizations shall apply to the whole territory of the Azerbaijan Republic. **For a non-governmental organization to be considered nationwide it must have branches and representations in at least 1/3 of the Republic of Azerbaijan's administrative-territorial units.** Operations of regional non-governmental organizations shall cover ~~two~~ **three** or more administrative-territorial units of the Azerbaijan Republic. Local non-government organizations shall operate within one administrative-territorial unit.

Article 7. Branches and Representative of Non-Governmental Organizations

7.1 Non-governmental organizations ~~with state registration~~ may **in the determined manner** establish branches and representations in the territory of the Azerbaijan Republic and abroad. **Non-governmental organizations' branches and representations do not have to receive government registration. The**

organization must within 10 days provide information about the creation of a branch and/or representation to the relevant executive authority. Branches and representations can only operate after being added to the state registry.

7.2 Branches of a non-governmental organization may be established beyond the place of residence of that organization and may fully or partially carry out such organization's activities. 7.3 Representation of a non-governmental organization shall be established beyond the place of residence of that organization, and shall represent and protect the interests of such organization. 7.4 Branches and representatives of non-governmental organization are not legal entities. They receive share of property of an organization that established them and operate in accordance with Regulations approved on behalf of such organization.

7.5 Chiefs of branches and representatives shall be appointed by non-governmental organization **from the ranks of citizens of Azerbaijan**, and shall operate within the scope of powers given to them by that non-governmental organization. **Public unions' branches and representations have the right to participate in the acceptance and removal of members by the public union and meetings of supreme self-regulation organs via their own representatives.**

7.6 **Once the public union's supreme self-regulation organ is given power, its branches and representations can participate via its representatives in the acceptance and removal of members by the public union and meetings of supreme self-regulation organs.**

7.7 **State registration of non-governmental organizations of foreign governments and their branches and representations is conducted on the basis of the opinion of the relevant executive authority, with the exception of the cases envisaged in Article 12.5 and 16.2 of this Law.**

Article 9. Founders of Non-Governmental Organizations

9.1 Legal entities (except for state and local government bodies) and individuals, who reached the age of 18 (16 for founders of public youth organizations), may become founders of non-governmental organizations.

9.2 Founders of non-governmental organizations shall have equal rights. The scope of their mutual rights and obligations shall be regulated by:

foundation contract (if contract is signed) - in respect to foundation of a non-governmental organization; and
charter - in respect to participation in operations of a non-governmental organization.

9.3 The founder (founders) of non-governmental organizations that are liquidated due to committed law violations can be banned from creating another non-governmental organization for up to five years through a court decision.

9.4 Foreigners without the right to permanently reside in the Azerbaijan Republic and people without citizenship cannot be founders of non-governmental organizations in the territory of the Azerbaijan Republic.

9.5 People convicted of inciting national, racial and/or religious hatred cannot found non-governmental organizations.

Article 10. Members of Public Unions

10.1 Any individual and legal entity (except for state and local government bodies) in the Azerbaijan Republic may become a member of a public organization.

10.2 Members of a public organization shall have equal rights. They may: elect and be elected to management bodies of public union; participate in operations of public union; supervise operations of management bodies of public union; exercise other rights provided by charters of public union; and members of public unions shall as well follow requirements stipulated in charters of public union.

10.3 Issues of acquiring and termination of membership of a public union are determined by its charter. Charter of a public union shall guarantee the right to lodge complaint within the organization and in court regarding termination of membership.

10.4 After a public union receives state registration, it must within 30 days ensure creation of registry of its members and present information about the registry of its members to relevant executive authority within 15 days. Public union must within 15 days provide information to the relevant executive authority about changes made to membership registry.

Article 12. Creation of Non-Governmental Organizations

12.1 A non-governmental organization may be created as a result of foundation of such organization, as well as reestablishment of existing non-governmental organization.

12.1-1 During the creation of a foundation, its authorized capital cannot be less than 50,000 AZN.

12.2 In foundation of a non-governmental organization its creation shall be implemented by decision of a founder (founders). In this case, foundation meeting shall be summoned and charter of an organization shall be adopted.

12.3 Non-governmental organizations that endanger the foundations and security of the state constitution or public safety, promote racial, national or religious discrimination, or insult morality cannot be created.

12.4 Non-governmental organizations with names that could confuse the population or that bear the name of other non-governmental organizations that already have state registration cannot be created.

12.5 In the Azerbaijan Republic, the opening of branches and representations of non-governmental organizations of foreign countries or non-governmental organizations that are permanently funded by foreign governments or foreign legal or physical entities is only allowed when there is a relevant international contract between these countries.

Article 13. Charter of Non-Governmental Organization

13.1 Charter of a non-governmental organization shall define: name and address of organization;
objectives of operation and method of management; rights and responsibilities of members; conditions and rules for joining and leaving the membership of public organization; sources for formation of property of a non-governmental organization; rules for adoption of the charter, and for making changes and additions to it; rules for liquidation of a non-governmental organization, and for utilization of its property in case of liquidation.

13.2 Charter of a fund shall include information about: its name with the word "Fund" in it;

address; objectives; bodies, including Custody Board, as well as rules for establishment of those bodies; rules for appointment and dismissal of fund officials; future of a fund's property in case of liquidation.

13.3 It is not permitted for non-governmental organizations to in their charter usurp the powers of state and local self-regulation agencies, to interfere in these powers, or to envisage state oversight and control functions.

Article 15. Notice of Establishment of ~~Public Union~~ Non-governmental Organization

~~15.1 Notification of establishment of a public union is conducted on the basis of presenting to relevant executive authority in a written form a notice about the founding of a public union no later than 30 days from the moment when decision on establishment of such public union is adopted.~~ **Notification of establishment of a non-governmental organization shall be presented (sent) to the relevant executive authority in the written form no later than 30 days from the moment when decision on establishment of such non-governmental organization is adopted.** The protocol of the founding is attached to the appeal signed by ~~the head of the public union~~ **all founders of the non-governmental organization.**

~~15.2 On the day when the relevant executive authority receives the notice of establishment of a public organization it shall hand acknowledgment of receipt of the notice to a representative of that public organization or send it by mail.~~ **Not sending notification on time is grounds for rejection of state registration. The format of the notification and manner in which this should be presented is determined by the relevant executive authority.**

Article 16. State Registration of Non-Governmental Organization

16.1 Within 30 days after sending notification of establishment, a non-governmental organization shall appeal to the state registration agency to receive state registration as a legal entity. State registration of non-governmental organizations shall be carried out by relevant executive authority, in accordance with the legislation of the Azerbaijan Republic on registration of legal entities.

16.2 ~~A non-governmental organization shall receive the status of legal entity only after it passes state registration.~~ **State registration for non-governmental organizations of foreign countries or non-governmental organizations that are permanently funded by foreign governments or foreign legal or physical entities is done on the basis of an international contract concluded between that government and the government of Azerbaijan.**

16.3 To receive state registration, the state registration agency sends inquiries to relevant executive authority to determine if the non-governmental organization that has applied conforms to Article 12.3 of this Law, and to inspect if any of the organization has legalized money or other property has been obtained through crime or if the organization has any connections to terrorism or funding of terrorism. The relevant executive authorities present their opinions to the state registration agency within 30 days. If in the opinion there is sufficient grounds indicating that the organization endangers the security and foundations of the state constitution, public safety or public order, promotes racial, national or religious discrimination, has legalized money or other property obtained through crime or has connections to terrorism or finances terrorism, that organization's is not given registration.

16.4 Non-governmental organizations can only start operating after they receive state registration as a legal entity.

16.5 Speaking out on behalf of and conducting activities for a non-governmental organization prior to that organization receiving state registration as a legal entity can be grounds for people being brought to administrative responsibility. After a person has been brought to responsibility for speaking out on behalf of and conducting activities for a non-governmental organization prior to that organization receiving state registration as a legal entity, if the organization continues to operate, on the basis of an appeal from a relevant executive authority, the operation of the non-governmental organization can be banned.

Article 17. Rejection of State Registration

State registration of non-governmental organizations may be rejected in the cases envisaged **in this Law and** the Azerbaijan Republic Law "About state registration of legal entities and state registry."

Article 20. Liquidation of Non-Governmental Organization

A non-governmental organization may be liquidated in the **cases and** manner stipulated in **this Law and** the legislation of the Azerbaijan Republic on registration of legal entities.

Article 22. Types of Activities of Non-Governmental Organization

22.1 A non-governmental organization may carry out in Azerbaijan or abroad any type of activity that is not prohibited by the legislation of the Azerbaijan Republic and does not contradict objectives provided in the charter of the non-governmental organization.

22.2 A non-governmental organization may only carry out entrepreneurship activity that is aimed only at reaching objectives of creation of that organization, without distribution of generated income among founders (members). Production and sales of profitable goods, as well as acquisition of securities and property and non-property rights, and acting as depositor with economic agents and partnerships shall be accepted as types of such activities corresponding to objectives of creation of a non-governmental organization.

A non-governmental organization shall keep record of income and expenditures related with its entrepreneurship activities. Restriction per each type of activity a non-governmental organization can be engaged with shall be determined only by law.

22.4 If over 50 percent of the resources that a non-governmental organization uses are obtained through commercial activities, that non-governmental organization must be turned into a commercial organization on the basis of a written appeal to the relevant executive authority.

24.0 Property of a non-governmental organization in cash and other forms shall be raised from the following sources:

24.01.1 regular or single-time membership fees by founders or members of social communities;

24.01.2 **voluntary** property shares and **voluntary** donations;

24.01.3 receipts from sales of goods, provision of works and services;

24.01.4 dividends and revenues generated from shares, bonds, other securities and savings;

24.01.5 income generated as a result of use or sales of its own property;

24.01.6 grants;

24.01.7 other income not prohibited by the legislation

24.2 Over 50% of an organization's property cannot be formed from foreign sources.

Article 29. Supervision of Non-Governmental Organization

29.1 A non-governmental organization shall maintain accounting in accordance with the legislation.

29.2 Information about amount and structure of income of a non-governmental organization, as well as information about its property, expenses, number of staff, and salaries shall not be a state or commercial secret.

29.3 Foundations shall be obliged to publish annual reports about use of its property.

29.4 Every year, by April 1, non-governmental organizations must present an annual financial report and auditor's report to the relevant executive authority of the Azerbaijan Republic. The format, content and manner of presentation for these reports are determined by the relevant executive authority of the Azerbaijan Republic.

29.5 The relevant executive authority of the Azerbaijan Republic carries out supervision of non-governmental organization activities for adherence to legislation. The realization of this supervision is determined by the executive authority of the Azerbaijan Republic.

Article 31. Responsibilities of Non-Governmental Organization

31.1 In case of 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.

31.2 In case if taken actions contradict the objectives of this law, the relevant executive authority may warn a non-governmental organization in a written form or instruct it to eliminate the violations.

31.2-1. For failure by legal entities to provide necessary information for the state registry or the presentation of incorrect information the non-governmental organization shall be warned.

31.3 A non-governmental organization shall have right to lodge complaint about such warning or instruction in court.

31.4 If a non-governmental organization is given a written warning or instruction to eliminate violations for more than two times within one year, such non-governmental organization may be liquidated by court decision.

31.5 The activities of non-governmental organizations that hinder the elimination of conditions that resulted in the declaration of a state of emergency can be ceased in the manner determined in legislation.

31.6 In the event that a non-governmental organization does not present an annual financial report and auditor's report within the stipulated timeframe, the relevant executive authority shall in the written form warn that non-governmental organization and order it to present the annual financial report and auditor's report within 30 days. If within this period the annual financial report and auditor's report are not presented, the relevant executive authority will appeal to the court for liquidation of that non-governmental organization.