

Criteria and Standards Subcommittee Recommendation on the Policy on Upholding the Values and Principles of the Open Government Partnership for the case of Azerbaijan

14 June 2017

On September 2014, the Open Government Partnership (OGP) Steering Committee (SC) adopted the [Policy on Upholding the Values and Principles of the OGP](#) (otherwise known as the “Response Policy”) in order to achieve two objectives: a) assist the country in question to overcome difficulties and to help re-establish an environment for government and civil society collaboration, and b) safeguard the Open Government Declaration and mitigate reputational risks to OGP.

On March 2015, three civil society organizations (CSOs) addressed a [letter of concern](#) to OGP’s Steering Committee under the Response Policy addressing several issues pertaining the operating environment for civil society in Azerbaijan and how it affected its ability to engage effectively in the OGP process. The letter urged the Steering Committee to call on the Azeri government to take necessary actions. The Criteria and Standards subcommittee (C&S) drafted a [report](#) informed by reviewing the Articles of Governance, the Open Government Declaration and IRM data. In addition, the information was cross-referenced with government, civil society, media and United Nations sources. Based on this research and analysis, the C&S deemed the concern relevant, true, and accurate.

The report triggered Response Policy Stage One actions, which included the drafting of five [recommendations](#) that would assist the Government of Azerbaijan address the concerns raised. These recommendations were published on July 7, 2015. Over the following months, C&S engaged with the Government of Azerbaijan with the aim to support the implementation of these recommendations. Regretfully, when the advances made were assessed during the February 23-24 2016 C&S meeting, the Subcommittee determined that the deadlines to implement such recommendations had expired without satisfactory resolution, and thus [recommended](#) to the full Steering Committee to move to Stage Two actions and to place Azerbaijan in inactive status.

On May 4, 2016, the Steering Committee [designated Azerbaijan as inactive](#) in OGP, due to unresolved constraints on the operating environment for Non-Governmental Organizations (NGOs). The inactivity resolution outlined that the Government of Azerbaijan would have one year to implement actions necessary to address the original concerns and with that fully re-engage with OGP and become active again.

This document drafted by the OGP Support Unit (SU) and C&S with the support of third party analysis, external reports, mission reports and interviews with key stakeholders in Azerbaijan aims to summarize the ongoing Azerbaijan Response Policy process and assess how the Government of Azerbaijan has addressed over the last year the recommendations put forward by C&S.

The evidence assessed shows that the Government of Azerbaijan has made noticeable efforts in order to address the recommendations under the Response Policy review, particularly regarding OGP process concerns, such as the consultation process to develop the 2016-2018 NAP, the establishment of a multi-stakeholder OGP forum and the creation of a “one stop shop” for grant registration.

Nevertheless, the core component of the response policy case and the OGP recommendations is and remains the need to lift the constraints on the operating environment for civil society organizations. Initial improvements are in place, including those facilitated by the early 2017 Cabinet Decisions to simplify grant processing and registration, yet it is too early to tell how these improvements will play out in practice. On the positive side, stakeholders have seen some grants being processed, some processes being simplified and the daily operations of some civil society actors being less complicated than they were a year ago. That said, it is safe to say that there are still substantial challenges in the overall operating environment for civil society. For example, donors are still required to register grants, and these are still subject to “financial expediency assessment” by the Ministry of Finance. Some personal and organizational bank accounts of NGO figures remain frozen; in at least one case, a bank account was unfrozen, but then taxed, rendering the NGO unable to undertake the activity for which the grant had been given. Changes to laws restricting NGOs have not been made. There have also been recent developments that could point to further problems for civil society.¹

Finally it is important to consider that all the stakeholders consulted by the SC and SU insisted that it is important for OGP to continue engaging with the government and civil society in Azerbaijan. This perspective was shared by government actors and a diverse set of civil society stakeholders, including the original filers of the complaint letter, as well as from representatives of international organisations and diplomatic missions in Baku.

For these reasons, the Criteria and Standards subcommittee hereby recommends to the Steering Committee to issue a resolution that: i) explicitly appreciates the progress made and the positive engagement to-date, ii) recommends extending Azerbaijan’s inactive status for a period of 12 months, iii) provides a [30-60] day period to outline an updated set of requirements to improve the operating environment based on recent developments and in consultation with the Azerbaijan government, local civil society, and external experts.

1. Complaint Letter and Initial Review Process

On March 2, 2015, the Response Policy was triggered for the first time. The OGP Steering Committee received a letter of complaint from CIVICUS, Publish What You Pay, and Article 19 regarding the threats they perceived civil society to face in Azerbaijan, and the way those alleged threats affected civil society’s ability to engage effectively in the OGP process. The letter raised concerns about five issues: government control over registration and operations of NGOs; government control over NGO finances; harassment of civil society; initiation of criminal and tax cases; and consultation failures. The Government of Azerbaijan was informed about the raised concerns and on April 15, 2015, the OGP Support Unit received a letter of response, which was considered during the review process.

After a thorough review of the claims made in the original letter, the Criteria and Standards subcommittee generated a report informed by credible third-party analysis of the situation in the country. Based on this research and analysis, the C&S deemed the concerns relevant, true, accurate, and an immediate and real

¹ Particularly the decision to uphold the sentence for Giyas Ibrahimov of 10 years imprisonment and the alleged kidnapping in Tbilisi and arrest of Azeri opposition journalist, Efgan Muhtarli, on 29 May, 2017.

threat to OGP's credibility. The C&S report also assessed that an OGP response could potentially "help establish a positive environment for government and civil society collaboration."

In order to address the situation described by the filers, C&S developed a set of five specific recommendations that the Government of Azerbaijan would need to undertake to meaningfully address the validated raised concerns. The C&S shared the following recommendations in a letter to the Government of Azerbaijan on July 6 2015:

1. **Timeline for the next National Action Plan.** In its July 6 letter, the C&S requested that the Government of Azerbaijan submit its National Action Plan (NAP) by December 30th 2015, to begin implementation on January 1st 2016. The recommendation called for an action plan that is 18 months in length, ending in June 2017. C&S also requested that the Government of Azerbaijan produce a timeline for the consultation period of the new NAP in time for a check-in call in August 2015.
2. **Consultation with civil society.** The Government of Azerbaijan was asked to meaningfully consult with civil society organizations and citizens in the creation of its new action plan according to OGP requirements. The C&S subcommittee offered to prepare recommendations on how to conduct an open and representative consultation process. C&S recommendations also called for an independent assessment of the consultation process to be reported back to the C&S following the conclusion of the NAP consultation process.
3. **Peer exchange and technical support.** C&S members offered to share lessons learned from their respective NGO cooperation work.
4. **Commitments to improve the operating environment for civil society.** C&S requested that the government of Azerbaijan consider including commitments in the new action plan that specifically address the functioning of the Law on Grants, Law on Non-governmental Organizations, Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offenses. C&S, in collaboration with NGO legal experts, deemed these commitments as best positioned to meaningfully address the barriers that NGOs currently face in registering and processing contracts and receiving funding, and worked together to develop recommendations on how implementation of these laws could help improve the operating environment for civil society organizations in Azerbaijan. C&S invited the Government of Azerbaijan to submit evidence on the progress made towards these reforms at the three and six-month marks of implementation following release of the new action plan in 2016. Those reports would be evaluated as part of the progress towards resolving the original response policy concerns, with the reports being sent to the full Steering Committee.
5. **Working with the OGP Steering Committee.** C&S invited the Government of Azerbaijan to participate in a teleconference in August 2015 to discuss the consultation process and be available for on-going support throughout the new action plan development process.

2. Stage One activities and interventions

In their response to the C&S recommendations, on August 28, 2015 the Government of Azerbaijan committed to conduct an open, participatory and wide consultation on a new action plan; use the resources and assistance of OGP and international partners; and to meet with members of the Criteria and Standards Subcommittee and discuss the specific issues on commitments during the OGP Summit in Mexico. The response noted that the drafting of the new NAP would begin "mid-October" and would be adopted either at the end of December 2015 or the beginning of January 2016.

On numerous occasions, C&S requested the Government of Azerbaijan to provide three key pieces of information:

1. The precise timeline to be followed during the National Action Plan drafting process.
2. The detailed steps and methodology to be followed in the National Action Plan drafting process.
3. The initial list of civil society organizations that would be involved in and consulted with during the National Action Plan drafting process.

While there was some communication with the Government of Azerbaijan, they were unable to come up with a precise timeline for the NAP development process. For example, on November 12, 2015, the C&S received notice that, “the Working Group on ‘Improvement of legislation’ (including government and civil society participation) had started drafting the new action plan, stating that “there is no strict deadline ..., the timing of [the] drafting process could easily be increased for a month or even more.”

In the last communication to C&S of 2015, dated December 4, the Government of Azerbaijan relayed that the first public discussion had taken place on November 27, 2015 with “members of civil society institutions and other stakeholders,” that no proposals to address the operating environment had been presented by civil society, and that the organizations participating in the process had requested “not to focus on January deadline and prolong the consultation period depending on the way [the] process develops with the aim to engage all stakeholders and provide enough time for well developed document”.

In light of this communication, the C&S granted an extension for delivering the new NAP to January 30 2016, noting that no further extensions would be granted. C&S also requested again that the Government of Azerbaijan provide a list of organizations participating in the action plan drafting process; the date, time and place of all public hearings at least 7 days in advance; and the minutes of all public hearings. These requests were communicated to the country on two separate occasions, via email on December 21, 2015 and in a formal letter on January 25, 2015. The letter also stated that: “If no National Action Plan, which clearly addresses the issues raised during the review process, is received by January 30, 2016, the Criteria and Standards Subcommittee will begin deliberations on whether to make a recommendation to the Steering Committee on Stage two actions, in accordance with the OGP Response Policy.”

On Saturday January 30, 2016, the Government of Azerbaijan submitted the list of organizations that had participated in the action plan drafting process to date, stated that during the initial hearings no minutes were taken, and that at the moment they could not “ensure that draft Action Plan will be ready for the end of January 2016.”

On February 23 and 24, 2016, C&S met in Washington D.C. for their yearly in-person meeting. Their assessment of the actions developed to that date showed that the Government of Azerbaijan had not effectively addressed the recommendations established by C&S or meaningfully addressed the issues raised in the original complaint and validated in the review process under the timeline established for Stage one actions. Therefore, C&S resolved that in light of the information collected and actions taken so far, C&S would recommend that the SC consider moving to Stage 2 and that the appropriate action would be for the country to be listed as inactive in OGP.

On March 13-16, the then Deputy Minister for Public Service and Administration (DPSA) of South Africa and OGP lead Co-chair, Ms. Ayanda Dlodlo, undertook an official visit to the Republic of Azerbaijan. During this visit, Ms. Dlodlo met with representatives of the Government of Azerbaijan (including the OGP National Focal Point, Mr. Vusal Huseynov, and the Chairman of Council of State Support to NGOs, Mr.

Azay Guliyev); as well as civil society representatives (including the Chairwoman of the Azerbaijan National Chapter of Transparency International, Ms. Rena Safaraliyeva, and the National Coordinator of NGO Coalition on Anti-corruption, Mr. Alimammad Nuriyev). The report's conclusion states that: "There is a collective sense of gradual improvements in the democratisation process and openness in Azerbaijan. Notwithstanding this, some civil society expressed concerns that more still needs to be done by the government in order to improve the democratic space and the environment in which civil society operates."

In April 27, 2016, the President of Azerbaijan approved the "National Action Plan on Promotion of Open Government in 2016-2018".

3. Stage Two actions

On May, 4th, 2016, the SC of OGP met in Cape Town, South Africa. During this reunion, they recognized positive steps taken by the Government of Azerbaijan, including the submission of a new NAP. However, the core issues of concern raised in the original letter, validated by C&S, remained unresolved, specifically regarding constraints in the operating environment of NGOs. Henceforth, after a vote was taken, the SC resolved to designate Azerbaijan as inactive in OGP under the terms of the Response Policy.

The resolution outlined that the Government of Azerbaijan would have a maximum of one year to address the concerns raised by civil society organizations. To ascertain that steps were taken to remedy the situation that triggered the Policy, the government in question would have to undergo a new Criteria and Standards subcommittee review process. The Steering Committee further resolved to offer all necessary support to the Government of Azerbaijan to address the concerns raised, and requests regular progress updates from the Criteria and Standards subcommittee.

This decision was informed to the filers of the letter of concern and the Government of Azerbaijan, followed by a press release.

On Friday, December 9th, 2016, representatives of the Government of Azerbaijan (Vusal Huseynov, Member of Parliament and OGP Point of Contact and Ayaz Gohayev, First Secretary of Cultural Affairs at the Embassy of Azerbaijan) met with SC representatives from the Government of France (Dylan Gerald, Ministry of Foreign Affairs and International Development; and Johann Uhres, Deputy Director of Central Asia and Georgia at Ministry of Foreign Affairs and International Development); the Government of Georgia (Zurab Sanikidze, Head of Analytical Department and Head of Strategic Development Unit at the Ministry of Justice); Civil Society representatives (Nathaniel Heller, Managing Director at the Results for Development Institute (R4D); and Suneeta Kaimal, Chief Operating Officer of the Natural Resource Governance Institute); and Support Unit Staff (Paul Maassen, Director of Civil Society Engagement; and Alonso Cerdan, Deputy Director of Government Support). During the meeting, the Government of Azerbaijan representatives updated the OGP SC members on the latest developments in Azerbaijan, particularly the OGP Forum and the "One Stop Shop" for grant registration. The OGP representatives welcomed the advancements and expressed their interest to organize a visit to Baku in order to learn more of these initiatives.

On February 7 to 10, 2017, the OGP government co-chairs, the Government of France and the Government of Georgia, traveled to Azerbaijan with the objective of assessing the progress made so far

by the Government of Azerbaijan on the recommendations laid out in the inactivity resolution of the SC, and to encourage the implementation of reforms. The French mission was represented by the Minister of State for State Reform and Simplification, Jean-Vincent Placé, and the Georgian Delegation consisted of Mr. Aleksandre Baramidze, First Deputy Minister of Justice, Mr. Zurab Sanikidze, Director of Analytical Department at the Ministry of Justice (MoJ) and the Co-chair of the National OGP Forum, and two additional officers of the MoJ. The Georgian delegation was headed by Thea Tsulukiani, Minister of Justice.

Between both delegations, meetings were held with a broad range of stakeholders from government and civil society, including members of the Government-Civil Society OGP Dialogue Platform. Based on the trip reports, the French delegation concluded that while measures have been taken to relax and simplify legislation on registering grants to NGOs, the civil society situation is still cause for concern. The Georgian delegation's report highlighted the progress made by the Government of Azerbaijan, including the establishment of the OGP Platform, the development of the 2016-2018 National Action Plan, and the "one-stop shop" mechanism for grant registration. In this regard, the Georgian delegation encourages the OGP SC to restore the full participation of the Government of Azerbaijan in the Partnership. In addition, both reports concurred in the expression of the government and civil society stakeholders' desire for Azerbaijan to continue engagement in OGP and regain active status.

4. Progress Assessment

In order to assess progress with the five recommendations put forward by the SC, this section will distinguish between two categories of recommendations: 1) OGP process and process related activities (i.e. action plan development, consultation and peer exchange activities); and 2) activities that the Government of Azerbaijan has carried out in order to improve the operating environment of civil society organizations.

4.a. OGP related activities

Four out of the five recommendations put forward by C&S are related to OGP process, namely: 1) Development of timeline for the next National Action Plan; 2) Consultation with civil society; 3) Peer exchange and technical support; and 5) Working with the OGP Steering Committee.

The development of the NAP should not ignore the challenges that civil society organization face in Azerbaijan and that lead to the Response Policy case. The IRM has determined that Azerbaijan consulted with a limited number of civil society organizations during the development of their 2012-2015 action plan. However, consultation was hampered by a restricted civic space characterized by (i) restrictions on the ability of NGOs to receive funding based on registration requirements laid out by the government to foreign agencies² and (ii) an environment of intimidation towards non-governmental organizations, as was the case of the NGO EITI Coalition. The Coalition reported that since 2014 it was unable to conduct activities outside the capital due to the denial of permits for organizing public events outside Baku.

² <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20554>

Furthermore, bank accounts of the majority of NGOs active in the Coalition were either blocked or seized.

3

On April 27, 2016, Azerbaijan's President, Mr. Ilham Aliyev, approved the "National Action Plan on Promotion of Open Government in 2016-2018". This action plan was developed in consultation with civil society organizations. Starting in November 2015, the Government of Azerbaijan held three public meetings to gather inputs for the development of the NAP.

A first public discussion was announced in October 2015 and held on November 27th, 2015. This event was organized with the Anti-Corruption Network. Proposed suggestions to be integrated in the action plan were noted and the Government acknowledged the presentation of a proposal for a new platform. Suggestions on structure and activity of the platform were scheduled for the next discussion.⁴

The second public discussion was announced on February 4th and subsequently held in the office of the Anti-Corruption Coalition on February 11th, 2016. A new draft of the action plan was prepared by a working group within the Anti-Corruption Commission ("the Commission") based on recommendations of CSOs and public institutions. Members of the Anti-Corruption Network, the Council of Europe and the US Embassy in Azerbaijan were present for the meeting. The Government invited all participants to send proposals online as well as to the Secretariat of the Commission or Coalition.⁵ There were thirteen organizations in the meeting, including government agencies, civil society organizations, multilateral organizations and foreign embassies.⁶

Finally, a third meeting was held on March 14, 2016. During the event, the OGP's Point of Contact informed the participants about the process of development and how measures were going to be taken into consideration in the Action Plan. The Government stated that measures envisioned in the drafts were discussed and comments and feedback were noted. The Commission requested participants to send all proposals and also provided an email address to receive proposals.⁷

The consultation process that was carried out by the Government gathered both CSOs and members of the State. According to the government, CSOs like the Economic Research Centre and Transparency International Azerbaijan were part of the discussions and drafted and sent individual suggestions to the action plan.

However, conflicting views on this consultation process emerged as some organizations that the government mentioned to have attended claim that participation in these consultations was by invitation only and that they were not invited. According to a letter sent by Dr. Gubad Ibadoghlu from the Economic Research Center, the Center was not invited to participate in the meetings, although a formal request for participation was sent to the State Council on Support to NGOs. The letter also states that the majority of the organizations that submitted proposals concerning the content of the new NAP were excluded from

³ <http://eiti-ngo-azerbaijan.org/?p=627>

⁴ <http://antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=438>

⁵ <http://antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=446>

⁶ "Learning Democracy" public union; Fund on fight against corruption; Transparency International Azerbaijan; Economic Research Centre; Development of relationships of society and citizen's public union; Council of Europe; Centre on Support to Economic Initiatives; Anti-Corruption Commission; Anti-Corruption NGO's coalition; U.S Embassy in Azerbaijan; "Media and civil public" public union; "Law and development" public union; and Media ve Social Initiatives Centre.

⁷ <http://antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=453>

participation. In that sense, the consultation process was not entirely open since several organizations were not included in the meetings, or their suggestions were not taken into account in the final drafts of the action plan⁸.

The Government has yet to inform how many inputs were received during the consultations and how were the suggestions received included in the action plan. Additionally, there is no evidence of what specifications were laid out to proceed in these consultations (e.g. timelines, how to make proposals, method for consultation, how (if at all) participants become formal members of panels, etc.). CSOs have acknowledged this series of formal consultations and the notifications that participants received on the next steps. Although consultations were conducted formally, the main conclusions of the discussions were not made public⁹.

The information that the SU currently possesses indicates that at least some recommendations sent to the government were included in the NAP, such as adopting a single action plan and the two-year duration of NAP. The Government included a set of commitments to provide support to the projects and initiatives aimed at the promotion of open government principles and prevention of corruption, and to prepare proposals on improving the civil society environment in the country. Nevertheless, the language of the commitments is vague which makes it difficult to determine what elements of NGOs proposals were included in the action plan. Recommendations about financial transparency, accountability of state-owned companies and eliminating the conflict of interests in state management were not included.

4.a.1 Multi-stakeholder forum

As part of their participation in OGP, governments commit to identify a forum to enable regular multi-stakeholder consultation on OGP implementation—this may be an existing entity or a new one. A multi-stakeholder forum is understood as a structured environment designed to maximize participation and cooperation between government and civil society by bringing relevant partners into the discussion and ensuring that all voices are heard. As part of the recommendations to the Government of Azerbaijan, the SC and SU highlighted the importance of establishing such a forum.

A Civil Society Dialogue Platform on Open Government in Azerbaijan (“the Platform”) was created in September of 2016. The Council of State Support to NGOs, housed under the President of Azerbaijan, held a closed assembly aimed at establishing the grounds for this Platform, along with state agencies and CSO representatives. The event was implemented under the “National Action Plan on Open Government Promotion in 2016-2018” dispositions and was constituted as a new forum created by the Government following their process with OGP. OGP guidance suggests that these fora should be an open space, however it is not clear which criteria were used to send invitations to CSOs. Ten state bodies, including the Anti-Corruption Commission and Ministry of Justice, Parliament and 34 CSOs established the platform¹⁰. Currently, the Platform holds 44 members, including the state agencies.

⁸ Letter sent by Mr. Gubad Ibadoghlu to the US Department of State.

⁹ “Does Open Government Work? Case of Azerbaijan” Shadow Report on the Implementation of Open Government Promotion National Action Plan 2012-2015. Available at: <http://erc.az/files/neshrler/Report-ENG.pdf>

¹⁰ <http://ogp.org.az/index.php/members/>

The Platform's statute calls for general meetings to be held once a month. In this regard, it has met in seven occasions since its creation in 2016. Most recently, the Platform met in February and April of 2017. In its February meeting, the platform discussed existing problems of CSO engagement in Azerbaijan and exchanged views on the implementation of their solutions. The meeting was attended by CSOs that were not members of the Platform, members of international organizations and embassies' officials. According to Mr. Alimammad Nuriyev, the Platform's coordinator, all statements made at the meeting were recorded and a proposal to establish a working group to have debates on specific issues was discussed,. Aside from the press release of the meeting¹¹, no further content was found on the Platform's website regarding this meeting. The Platform also held a conference in April with the Center for Analysis of Economic Reforms on national economy and the key sectors of the strategic road map of the economy which was also reported in a press release.¹²

Notes, minutes and press releases from every meeting are sent to all members of the Platform. Press releases are posted on the Platform's website and are shared with OGP's Civil Society Engagement team. In response to a questionnaire sent to Mr. Nuriyev for this report, it was noted that all information about the platform's meetings are open to all citizens and the media. The platform is also currently working on creating an online channel to post interviews and other related information about the activities of the Platform.

NGOs in Azerbaijan have criticized the Platform since its beginnings. The Economic Research Center denounced that they were not invited to participate in the assembly meeting since participants required a special invitation from the Council.¹³ On a letter submitted by 29 independent organizations in September of 2016, it was noted that out of 26 representatives who appealed for the establishment of OGP in the country¹⁴, only three were invited to the Dialogue Platform¹⁵. Furthermore, the letter addressed several organizational and procedural issues of this initiative:

- Criteria for the selection of representatives (and chair) to the dialogue is unknown;
- The platform is not self-regulated and has not defined a clear set of rules and procedures;
- Duties and terms of work for the platform's coordinator were not drafted;

Most importantly, it was noted that the platform was limited to monitoring the implementation of the NAP. For these organizations, the Platform's memorandum, as its main charter of principles, only reads that the platform will serve as an advisory council¹⁶. No clear decision-making mandates were put forward in this declaration.

The Government of Azerbaijan claims that the Platform is currently completely open. During an interview, one of the signatories of the aforementioned confirmed that she was able to join the platform in late 2016 and is currently a member.¹⁷

¹¹<http://ogp.org.az/index.php/2017/02/09/government-civil-society-dialogue-platform-discussed-the-problems-of-ngos-and-made-a-statement/>

¹²<http://ogp.org.az/index.php/2017/04/12/open-government-platform-will-be-closely-involved-in-the-implementation-of-strategic-road-maps/>

¹³ Shadow Report, <http://erc.az/files/neshrler/Report-ENG.pdf>

¹⁴ <http://opengovaz.org/en/latestnews/ogp-toolbox-hackathon-civic-tech-for-open-government-1/>

¹⁵<http://freeeconomy.az/news/dialog-platformas-v-t-nda-c-miyy-tinin-irad-sini-ks-etdirmir/?language=english>

¹⁶ Shadow Report, <http://erc.az/files/neshrler/Report-ENG.pdf>

¹⁷<http://ogp.org.az/index.php/shahla-ismayil-womens-association-for-rational-development/>

4.a.2 Assessment

Azerbaijan conducted a technically-defined *open consultation* in accordance to the consultation requirements set out by OGP and under the standards analyzed by the IRM in each action plan cycle. CSOs were consulted on the action plan, and proposals were received and put into consideration. Furthermore, some of those proposals were included in the action plan. However, there are conflicting views as to the level of participation, since there are claims that it was limited to pro-governmental organizations and involvement of independent organizations was restricted¹⁸. The Civil Society Dialogue Platform as the multi-stakeholder forum established for the OGP process in Azerbaijan, does meet regularly and consults the stakeholders involved, in accordance to the IAP2 spectrum on public participation¹⁹. Participants of the platform are positive about the space provided and indicate that proposals made by them are being picked up by the Government. However, the level of participation remains unclear, since some NGOs in Azerbaijan claim a lack of broad representation within the Platform.

4.b. CSO Operating environment

The main recommendation made by C&S to the Government of Azerbaijan has to do with improving the operating environment for civil society. C&S recommended that: “In the next National Action Plan commitments should be considered to address the functioning of the Law on Grants, Law on Non-governmental Organizations, Law on Registration of Legal Entities and State Registry and the Code on Administrative Offenses.[...] Implementation of these reforms is crucial, such as creating a real-time register of Ministry of Justice grant approval requests so that civil society can monitor progress of their applications.”

The following tables outline the improvements made in all of the mentioned legislation by referring to the situation in 2014 and in 2017. It also includes information on what remains to be done in order to correct the situation.

Law on Grants	
Situation in 2014:	The changes made to the Law on Grants introduced a requirement that the foreign donor must obtain the right to provide grant in Azerbaijan. The Ministry of Finances needs to issue a positive opinion on ‘financial-economic expediency’ of the grant. At the same time, if a foreign donor does not have a representative office in Azerbaijan and a special agreement with MoJ, its grant will not be registered.
Situation in 2017:	The right to provide grant has still to be obtained but now as a part of the grant registration process. All other requirements remain the same, on substance.

¹⁸ Summary Monitoring Report on the Application of Open Government Partnership Initiative in Azerbaijan. Report prepared by SEI with support of the National Resource Governance Institute.

¹⁹ https://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/files/iap-006_brochure_a3_internat.pdf

What is still needed to normalize the situation:	<p>At a minimum:</p> <ul style="list-style-type: none"> ● To eliminate the necessity for a foreign donor to have an agreement with MoJ and register its representation in Azerbaijan, in order to be a grantor. ● To eliminate the need to obtain the opinion on ‘financial-economic expediency’ ● To exclude foreign donors that operate on the base of bilateral and multilateral agreements with GOA from the obligation to obtain the right to provide grants.
--	---

Barriers that NGOs currently face in registering and processing contracts and grants.	
Situation in 2014:	In 2014 the Grant registration rules of 2004 were annulled and all requests of CSOs for grant registration were put on hold until new rules were adopted in 2016
Situation in 2017:	<p>With October 2016 Decree of the President, single-window in grant registration is applied. At the same time, the procedures for donor registration and grant registered are merged with the CabMin Decision of 11 January 2017. The list of documents for grant’s registration was shortened²⁰ and the period for submission of the documents was increased as per OGP’s recommendation. However, the few CSOs that tested the single-window registration did not confirm the effectiveness of the process (for example, the most recent changes require that MoJ comments on the shortcomings of the grant registration package within one working day – this was not the case in the test applications).</p> <p>On a positive note, grants of some OGP member organizations have been registered. Also their banking concerns have been solved. Also, some foreign funders indicate that grants are being processed again (whereas others indicate to not yet see the difference).</p> <p>At the same time, the changes approved in January 2017, allow grant contracts to be registered as service contracts which has a less cumbersome registration procedure.</p> <p>The Cabinet of Ministers also approved the changes to the so-called ‘donor registration rules’ on 27 January 2017. The changes simplified the procedure of donor registration by reducing the list of required documents and the timeframe for their consideration.</p>
What is still needed to	Serious efforts need to be made for ensuring effective implementation of the grant registration as well as registration of service contracts at the MoJ.

²⁰ Documents - on (i) state registry, (ii) charter of NGOs, (iii) right to give grants by donor organizations, (iv) submission of annual financial reports to Ministry of Finance by NGOs, (v) power of attorney in case of documents are not submitted by person who signed the contract or official representative of organization- are eliminated.

normalize the situation:	Since the regulatory changes do not eliminate the discretion of the authorities to arbitrarily deny grant registration, the legislation has to limit such discretionary powers.
--------------------------	---

Law on Non-governmental Organizations	
Situation in 2014:	No changes
Situation in 2017:	No changes
What is still needed to normalize the situation:	There were no changes to Law on NGOs in the recent time. Since the main issue for CSOs is an access to foreign funding, this area is not directly regulated by the Law on NGOs.

Law on Registration of Legal Entities and State Registry	
Situation in 2014:	There were problems with registration of CSOs at the MoJ
Situation in 2017:	The problem has not been addressed either on legislative level, or in practice at MoJ.
What is still needed to normalize the situation:	Simplify the registration process of CSOs at MoJ

Code on Administrative Offences	
Situation in 2014:	This Code contains a long list of penalties for CSOs in rather high amounts.
Situation in 2017:	Despite a new Code on Administrative Offences entered into force in 2016, all the penalties against CSOs remained the same.
What is still needed to normalize the situation:	Despite the fact that the GoA does not apply these penalties often, their mere existence have a chilling effect on CSOs in Azerbaijan. For this reason the penalties need to be revised.

The interviews conducted by the SC/SU mission in May 2017 conveyed an overall impression that in some aspects - and for some actors - the operation environment improved slightly over the last 12 months, especially around registering and processing of contracts and grants. However, a wide range of recent reports that look at the operating environment for civil society in Azerbaijan - including from the Council of Europe - clearly state that there are still serious challenges to the smooth functioning of civil society.

5. Criteria and Standards Subcommittee Recommendation

The evidence presented shows that while the Government of Azerbaijan has made noticeable efforts in order to address the recommendations under the Response Policy review, there are still substantial challenges in the overall operating environment for civil society, which was the core component of the Response Policy case and the letter of concern filed.

For these reasons, the Criteria and Standards subcommittee hereby recommends to the Steering Committee to issue a resolution that:

1. Explicitly appreciates the progress made and the positive engagement to-date;
2. Recommends extending Azerbaijan's inactive status for a period of 12 months;
3. Provides a [30-60] day period to outline an updated set of requirements to improve the operating environment for civil society. These requirements will take into account recent developments and be developed by the Criteria and Standards Subcommittee in consultation with the Government of Azerbaijan, local civil society, and external experts.

The Criteria and Standards subcommittee recalls that, under the OGP Response Policy, the inactive status of an OGP participating country, -- if designated as such by the full Steering Committee -- lasts until the concerns raised in the original complaint letter are resolved. To ascertain that steps were taken to remedy the situation that triggered the Response Policy, the Government of Azerbaijan would have to undergo a new Criteria and Standards subcommittee review process, which may or may not recommend to the Steering Committee that the country be reengaged in OGP as an active participant. The Criteria and Standards subcommittee continues to hope that these steps will be taken in the near term and that Azerbaijan can re-engage in OGP as an active participating government.