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

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.

The response policy considers two stages of action. Stage one is led by the Criteria and Standards Subcommittee (CS) and seeks to validate the complaint through a review process. Once the review process has established the relevance of the concern, the Criteria and Standards subcommittee develops a set of recommendations to address the original issues of concern including technical assistance, diplomatic outreach, and regular check-ins and a timeline for key actions to demonstrate progress. If the stage one actions do not meaningfully address the issues of concern validated in the report, "the Criteria and Standards subcommittee is to recommend to the full OGP Steering Committee that one or both of the following stage two actions take place:

1. Recommend that the OGP co-chairs invite the government principal to attend a special session of the Steering Committee to discuss the situation and consequences for the country's participation in OGP.
2. Recommend the OGP co-chairs author a letter to the country informing them they are to be temporarily listed as inactive in OGP until the concern is resolved."[1]

This document summarizes the ongoing Azerbaijan Response Policy process. The stage one deadlines have expired without satisfactory resolution, and thus the Criteria and Standards subcommittee has prepared this document to support its recommendation to the full Steering Committee to move to stage two actions. The subcommittee resolution, outlined in section 4, recommends to the full OGP Steering Committee that Azerbaijan be listed as inactive in OGP until such a time that the areas of concern have been adequately addressed.

The areas of concern are discussed in detail in sections 1 and 3 below. In recommending that the Steering Committee move to stage two actions, the CS is particularly troubled by the constraints in the operating environment for NGOs and the absence of efforts to address these constraints through the draft National Action Plan. Such constraints are evident in the laws on grants, non-governmental organizations, and registration of legal entities and state registry, and the Code on Administrative Offenses; the freezing of bank

[1] Open Government Partnership. Policy on Upholding the Values and Principles of the OGP. OGP Articles of Governance. Addendum F.

accounts of some NGOs promoting open government; and the incarceration of NGO activists and journalists promoting open government. The resulting environment has made it difficult if not impossible for a number of NGOs to operate. These developments are inconsistent with the OGP's core commitments and principles and pose a challenge to the institutional integrity of the OGP. CS continues to hope that the government will expeditiously address these concerns.

1. Complaint Letter and Initial Review Process

On March 2, 2015, the Response Policy was used for the first time.[2] 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.[3] The Government of Azerbaijan was informed about the raised concern and on April 15, 2015, the OGP Support Unit received a letter of response, which was considered during the review process.[4]

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 CS deemed the concern relevant, true, accurate, and an immediate and real threat to OGP's credibility. The CS report also assessed that an OGP response could potentially "help establish a positive environment for government and civil society collaboration."[5]

In order to address the situation described by the filers, CS developed a set of five specific recommendations that the government of Azerbaijan would need to address to meaningfully address the concerns raised and validated. The CS shared these recommendations in a letter to the Government of Azerbaijan July 6.[6] These items were:

1. **Timeline for the next National Action Plan**. In its July 6 letter, the CS requested that the government of Azerbaijan submit its new plan by December 30th 2015, to

[2] The Response Policy is triggered when the SC, the chair of the CS, or the OGP Support Unit receives a letter of concern regarding a situation of relevance to OGP in a participating country from: 1) a fellow SC member –either government or civil society--; 2) a multilateral partner or Working Group co-anchor; 3) or a civil society, not-for-profit organization, or media organization involved in OGP at the national or international level.
3 Danny Sriskandarajah, Marinke van Riet, and Thomas Hughes. Letter of concern. March 2, 2015. Letter.
4 Azay, Guliyev and Vusal Huseynov, Response to the Letter of concern by the Government of Azerbaijan, April 15, 2015, letter.
[5] Criteria and Standards Subcommittee. Summary of Review Team Findings.
[6] OGP Criteria and Standard Subcommittee Briefing: Proposal for dialogue with Government of Azerbaijan, July 6, 2015.

begin implementation on January 1st 2016. The recommendation called for an action plan that is 18 months in length, ending in June 2017. CS also requested that the Government of Azerbaijan produce a timeline for the consultation period of the new National Action Plan 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 CS subcommittee offered to prepare recommendations on how to conduct an open and representative consultation process. CS recommendations also called for an independent assessment of the consultation process to be reported back to the CS following the conclusion of the National Action Plan consultation process.
3. **Peer exchange and technical support.** CS members offered to share lessons learned from their respective NGO cooperation work.
4. **Commitments to improve the operating environment for civil society**. CS 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. CS, 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. CS invited the Government of Azerbaijan to submit evidence on progress toward these reforms at the three and six-month points 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**. CS 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.[7]

2. Action Plan Development Process

[7] OGP Criteria and Standard Subcommittee Briefing: Proposal for dialogue with Government of Azerbaijan, July 6, 2015.

In their response to the CS 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."[8] The response noted that the drafting of the new Action Plan would begin "mid-October" and would be adopted either at the end of December 2015 or the beginning of January 2016.

During the Mexico City Summit, the Government of Azerbaijan did not send a representative from Baku. The CS members therefore met with officials from the Embassy of Azerbaijan in Mexico. This meeting was scheduled to provide updates on Azerbaijan's commitments considered for its new action plan, including those under consideration to address the functioning of the NGO laws in the country, an issue at the heart of the original letter of concern.

In that meeting, the Subcommittee requested a public letter from the government of Azerbaijan that addressed the following issues:

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.

On November 12, 2015, the CS received notice from the Government of Azerbaijan 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."*[9]

In their next communication, dated December 02, 2015, the CS requested further information on the participating organizations, the themes to be included in the new action plan, and outlined that any extension of the previous action plan deadlines would depend "upon strengthening the consultation process by including other organizations and actors in the process and allowing them to suggest new commitments."[10]

In their last communication to CS in 2015, dated December 4, the Government of Azerbaijan relayed that the first public discussion had taken place on November 27, 2015

[8] Huseynov, Vusal. Response from Azerbaijan to Criteria and Standards Recommendations. August 28, 2015. Letter.
[9] Huseynov, Vusal. Update on consultation from the government of Azerbaijan. November 12, 2015. Email.
[10] Cerdan, Alonso- Request for further information by Support Unit. December 2, 2015. Email.

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" [sic].*[11]

In light of this communication, the CS granted an extension for delivering the new National Action Plan to January 30 2016, noting that no further extensions would be granted. CS 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.[12] The letter, signed by Joseph Powell, the acting OGP executive director, 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 2 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*."[13]

Since the passing of the January 30, 2016 deadline, the Government of Azerbaijan has submitted three emails to the OGP Support Unit. On February 4 they stated that the next public hearing would be held on February 11, noting the call for participation was posted in both Azerbaijani and English languages on the commission website[14] On February 5 they informed the OGP Support Unit that they had published a draft of the Action Plan on the Anticorruption Commission website, including recommendations from non-governmental organizations.[15] Finally, on February 12 the Government of Azerbaijan sent photographs and the list of persons that participated in the February 11 public hearing.[16]

3. Assessment of Current Activities

[11] Huseynov, Vusal. Response by Azerbaijan for further information. December 4, 2015. Email.
[12] Powell, Joseph. Letter from Joseph Powell, Acting Director, Support Unit. January 25, 2016. Letter.
[13] Jafarov, Kamal. Update on consultation from Azerbaijan. January 30, 2016. Email.
[14] Jafarov, Kamal. Update on consultation from Azerbaijan. February 4, 2016. Email.
[15] Jafarov, Kamal. Update on consultation from Azerbaijan. February 5, 2016. Email. Draft Action Plan available at: http://we.tl/O3atFu26AQ
[16] Jafarov, Kamal. Update on consultation from Azerbaijan. February 12, 2016. Email.

The following table compares the recommendations made to the Government of Azerbaijan as part of this Response Policy review process with the evidence available to this Subcommittee when the January 30 2016 deadline expired.

CS Recommendation	Documented Activities
1. Timeline for the next National Action Plan.	**Not completed.** On July 6, 2015, CS requested that the new Azerbaijan Action Plan be submitted by December 30, 2015. A one-month extension was granted and the Action Plan was due on January 30. No new extensions were granted and the Plan was not delivered. On July 6, 2015, CS also requested a timeline to develop the National Action Plan in time for the August check in call; CS has yet to receive it despite several requests. Timeline availability is the first of the requirements traditionally evaluated by OGP regarding the consultation process.
2. Consultation with civil society.	**Not completed** As part of the National Action Plan development process, the Government of Azerbaijan formed a Working Group that met once before the deadline and a second time after it. The CS had recommended the government of Azerbaijan "consult with civil society organizations and citizens according to the OGP requirements." This includes the following steps: 1. Availability of timeline. [Not delivered.] 2. Adequate notice 3. Awareness raising 4. Multiple channels 5. Breadth of consultation 6. Documentation and feedback 7. Consultation during implementation The consultation is not yet complete, so the independent assessment regarding the consultation process could not take place.
3. Peer exchange and technical	**Not completed.** The Government of Azerbaijan was not responsive once their

support.	public hearing began, which limited the chances to take advantage of peer exchange.
4. Commitments to improve the operating environment for civil society.	**Not completed**. None of the commitments included in the available draft action plan address the particular laws identified by CS in its July recommendations (Law on Grants, Law on Non-governmental Organizations, Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offenses), the recommendations made by third-party experts, or the barriers that NGOs currently face in registering and processing contracts and grants. The government has not taken steps to address any of these areas.
5. Working with the OGP Steering Committee	**Partially completed.** The Government of Azerbaijan was mostly responsive to the OGP Support Unit channeling of CS requests.

4. Criteria and Standards Resolution

The final communication to the Government of Azerbaijan outlined 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 2 actions."

The evidence gathered shows that the Government of Azerbaijan has not effectively addressed the recommendations established by the Criteria and Standards Subcommittee or meaningfully addressed the issues raised in the original complaint and validated in the review process under the timeline established for stage 1 actions. The OGP Criteria and Standards Subcommittee therefore resolves to:

1. Consider that this issue now exceeds the mandate of the subcommittee;
2. Recommend that the OGP Steering Committee move to stage two actions;
3. In light of the information collected and actions taken so far, recommend that the OGP Steering Committee consider that the appropriate stage 2 action is for the country to be listed as inactive in OGP.

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. Specifically, the four areas highlighted in the original set of Criteria and Standards subcommittee recommendations would need to be adequately addressed for the group to recommend to the Steering Committee that Azerbaijan's active status be restored. The Criteria and Standards subcommittee continues to hope that these steps will be taken in the near term and that Azerbaijan can reengage in OGP as an active participating government.

Annex: Overview of Communications

Document	Author	Date	Description
Letter of concern	· **Dr Danny Sriskandarajah**, Secretary General, CIVICUS · **Marinke van Riet**, International Director, PWYP · **Thomas Hughes**, Executive Director, Article 19	March 2, 2015	Letter of concern submitted to the Steering Committee.
Government of Azerbaijan response	· **Dr. Azay Guliyev**, Member of Parliament Chairman of the Council of State Support to NGOs under the Auspices of the President Republic of Azerbaijan · **Vusal Huseynov,** National point of Contact, Executive Secretary Anti-Corruption Commission of the Republic of Azerbaijan	April 15, 2015	Response to the Letter of concern by the Government of Azerbaijan.
Summary of review team findings	· Review Team named by the Criteria and Standards Subcommittee	May 18, 2015	Report by the review team that deems the Letter of complaint relevant and true.
OGP Criteria and Standard Subcommittee Briefing: Proposal for dialogue with Government of Azerbaijan	· Criteria and Standards Subcommittee	July 6, 2015	Summary of proposed actions that the government of Azerbaijan should follow as part of the Stage one actions.
OGP Criteria and Standard	· Support Unit	July 6, 2015	Annexes to the Proposal for dialogue with

Subcommittee Briefing: Proposal for dialogue with Government of Azerbaijan Annexes			Government of Azerbaijan: National Action Plan Guidance note, Consultation Guidance note, Guidance for Second National OGP Dialogue in Azerbaijan.
Response from Azerbaijan to Criteria and Standards Recommendations	· **Vusal Huseynov**, National point of Contact, Executive Secretary Anti-Corruption Commission of the Republic of Azerbaijan	August 28, 2016	Response from the government of Azerbaijan to Criteria and Standards Recommendations.
Update on consultation from the government of Azerbaijan	· **Vusal Huseynov,** National point of Contact, Republic of Azerbaijan	November 12, 2015	Update on development of the Azeri National Action Plan post-Summit and annex with list of Organizations participating in the consultation.
Request for further information by Support Unit (email)	· **Alonso Cerdan**, Program Manager, Support Unit	December 2, 2015	Based on a request by the Criteria and Standards Subcommittee the Support Unit requested further information.
Response by Azerbaijan for further information	· **Vusal Huseynov,** National point of Contact, Republic of Azerbaijan	December 4, 2015	Response by the government of Azerbaijan on the request for further information.
Letter from Joseph Powell	· **Joseph Powell**, Acting Director, Support Unit	January 25, 2016	Letter form Joseph Powell to inform requests and decisions made by the Criteria and Standards Subcommittee
Update on consultation from Azerbaijan (email)	· **Kamal Jafarov** Senior advisor of Secretariat Anti-Corruption Commission of the Republic	January 30, 2016	Email from Kamal Jafarov responding to information requests made by CS and informing that they will

	of Azerbaijan		not meet the January 30 deadline.
Update on consultation from Azerbaijan (email)	· **Kamal Jafarov** Senior advisor of Secretariat Anti-Corruption Commission of the Republic of Azerbaijan	January 30, 2016	Annex to Kamal's email, list of organizations participating.
Deadline established by Criteria and Standards Subcomittee			
Update on consultation from Azerbaijan (email)	· **Kamal Jafarov** Senior advisor of Secretariat Anti-Corruption Commission of the Republic of Azerbaijan	February 4, 2016	Email from Kamal Jafarov to inform that the next consultation meeting would take place on February 11.
Update on consultation from Azerbaijan (email)	· **Kamal Jafarov** Senior advisor of Secretariat Anti-Corruption Commission of the Republic of Azerbaijan	February 5, 2016	Email from Kamal Jafarov to inform that the draft National Action Plan is available on the Anticorruption Commission website.
Update on consultation from Azerbaijan (email)	· **Kamal Jafarov** Senior advisor of Secretariat Anti-Corruption Commission of the Republic of Azerbaijan	February 12, 2016	Email from Kamal Jafarov to give a brief update on the consultation meeting held on February 11.
Draft National Action Plan	· Government of Azerbaijan	February 5, 2016	Translation of the draft National Action Plan presented in the Anticorruption Commission Website.

The Criteria and Standards Subcommittee

Governments

Brazil
Chile
Croatia
United States

Civil Society

Mukelani Dimba	Open Democracy Advice Centre (ODAC)
Nathaniel Heller	Results for Development Institute (R4D)
Warren Krafchik	International Budget Partnership (IBP)
Suneeta Kaimal	Natural Resource Governance Institute (NRGI)