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29 April 2016

Dear Members of the OGP Steering Committee,

In March 2015, ARTICLE 19, Civicus and Publish What You Pay submitted a complaint under the *Policy on Upholding the Values and Principles of Open Government Partnership (OGP)*, as articulated in the Open Government Declaration (OGP Response Policy), calling on you to take steps to help re-establish an environment that would foster collaboration between government and civil society in Azerbaijan. The letter outlined a series of concerns regarding the deteriorating situation for civil society organisations in Azerbaijan, which prevents them from engaging meaningfully in the OGP process. We welcome recent developments in Azerbaijan, which may allow for greater participation of civil society in OGP; however, we are yet to see systemic change regarding the climate for civil society and remain concerned by the ongoing harassment of civil society.

We are therefore writing to you to express our full support for the recommendation, proposed by the Criteria and Standards Subcommittee of the OGP in February 2016, that Azerbaijan be listed as inactive in OGP. We call upon you, as members of the Steering Committee, to endorse this recommendation during the upcoming OGP meeting in Cape Town. We believe that this will allow the OGP to work with the Government of Azerbaijan to develop a clear, time-bound framework for reform in Azerbaijan, in order to create an enabling environment for civil society in Azerbaijan, allowing the country to participate in OGP as a full and active member.

Background

The three groups' initial letter of complaint in March 2015 included confidential annexes, which provided details about the restrictions imposed on civil society actors in Azerbaijan that prevent them from genuinely participating in the OGP process. In May 2015, the OGP Criteria and Standards Subcommittee concluded that the concerns raised in the complaint should be upheld. This triggered stage one of the OGP Response Policy. The subcommittee made a series of recommendations to the Government of Azerbaijan in July 2015 and gave the government until January 30, 2016, to complete the following steps to restore an enabling environment for civil society in Azerbaijan:

1. **Timeline for the next National Action Plan.** The Government of Azerbaijan was requested to submit its new plan by December 30, 2015, to begin implementation on January 1, 2016.
2. **Consultation with civil society.** The Government of Azerbaijan was asked to meaningfully consult with civil society organisations and citizens in the creation of its new action plan according to OGP requirements.
3. **Peer exchange and technical support.** The Government of Azerbaijan was invited to take advantage of peer exchange and lessons on questions relating to NGO cooperation work.

4. **Commitments to improve the operating environment for civil society.** The Government of Azerbaijan was requested to consider including commitments in the new action plan that specifically address concerns regarding the functioning of the Law on Grants, Law on Non-Governmental Organisations, Law on Registration of Legal Entities and State Registry, and the Code on Administrative Offenses. The Government of Azerbaijan was also asked to submit evidence on progress towards these reforms at the three and six-month points of implementation following the 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.** The Government of Azerbaijan was invited 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.¹

In February 2016, the Criteria and Standards Sub-committee assessed progress made towards completing the recommendations and found that *“the Government of Azerbaijan ha(d) not effectively addressed the recommendations (...) or meaningfully addressed the issues raised in the original complaint and validated in the review process under the timeline established for stage 1 actions.”*² In consequence, the subcommittee resolved that stage two of the Response Policy should now be applied to the case of Azerbaijan. It recommended that the OGP Steering Committee consider that the appropriate stage two action is for the country to be listed as inactive in OGP.

Current Situation

In recent weeks we have witnessed positive steps by the Government of Azerbaijan, demonstrating an acknowledgment of concerns raised by multilateral organisations that the government needs to do more to abide by international standards. We welcome the steps taken by the authorities towards addressing some of the concerns outlined in our March 2015 letter:

- Sixteen individuals who had been imprisoned on politically motivated charges, among them prominent human rights defenders, were released³.
- Several members of the Azerbaijani “Increasing Transparency in Extractive Industry” (ITEI) coalition, including those organisations involved in the national OGP Action Plan, have received official notice from the relevant district court that their organisational – and sometimes personal – bank accounts were released from seizure and could be accessed again.
- Most members of the ITEI coalition who had been implicated in a criminal investigation involving international donors and their grantees have seen encouraging signs—such as the authorities stating that the NGOs are witnesses (rather than suspects) in the investigation.
- The severe screening process at the border to which more than a dozen members of the ITEI coalition had been subjected when exiting and entering the country has stopped.
- The Government of Azerbaijan issued an OGP National Action Plan in April 2016, on which it conducted some consultation with civil society.⁴

¹ For more information, please consult the OGP Criteria and Standard Subcommittee Briefing: Proposal for dialogue with Government of Azerbaijan, July 6, 2015.

² Extract from the Minutes and Resolution of the February 2016 Criteria and Standards Subcommittee Meeting.

³ See for instance: <http://www.ft.com/fastft/2016/03/17/azerbaijan-releases-political-prisoners/>

⁴ See for instance: <http://antikorrupsiya.gov.az/view.php?lang=en&menu=3&id=453>

These steps could signify a willingness for reform, which should be fostered by the OGP Steering Committee and Support Unit over the next year. Yet within each positive step there are still outstanding concerns:

- The criminal records of the 16 recently released activists have not been expunged and some continue to face restrictions, including travel bans and frozen bank accounts.
- Other prominent activists and journalists arrested on politically motivated charges remain behind bars.
- Several members of the ITEI coalition still cannot use their bank accounts because they are unable to register their grant agreements as required by Azerbaijani law.
- The criminal investigation in which the Azerbaijani ITEI members are witnesses is ongoing, making the NGOs vulnerable again to travel bans, searches, and eventually becoming the targets of the investigation.
- The government has yet to commit to amending the restrictive legislation regulating NGOs and NGO funding. Indeed, the government adopted a new law authorising the Ministry of Justice to carry out extensive, invasive inspections of NGOs.
- The civil society consultation process on the OGP National Action Plan was limited to a few NGOs, many of whom had close ties to government. As such, it does not correspond to the OGP Guidelines for Public Consultation on Country Commitments, which require wide-ranging consultation with a breadth of actors.⁵

Next steps

On balance, the concerns raised in the March 2015 complaint remain because the Azerbaijani government has not made sufficient progress in responding to the recommendations set out by the Criteria and Standards Subcommittee. CSOs in Azerbaijan are still unable to operate freely and independently, and this affects their ability to participate in and influence Azerbaijan's OGP Action Plan. Significant reform is required to enable civil society to participate fully in the OGP process. The changes we have seen, while welcome, do not address the profound restrictions that civil society in Azerbaijan continues to face. They are discretionary in nature and limited in their scope of application, applying only to certain members of the ITEI coalition and not to broader civil society in Azerbaijan. Most importantly, they do not address the restrictive legislation and regulations introduced from 2013 through 2015, which created the legal and policy basis for the government's crackdown on civil society organisations.

This is why we urge you to list Azerbaijan as inactive in OGP, thereby upholding the OGP Response Policy, in accordance with the need "to help re-establish an environment for government and civil society collaboration" and to "[s]afeguard the Open Government Declaration and mitigate reputational risks to OGP". We believe that continued engagement with Azerbaijan in the OGP context should be pursued, through peer exchange and active engagement with the OGP Support Unit and Steering Committee. This should be accompanied by the development of a clear and time-bound road map for Azerbaijan, which would build on the government's initial efforts at reform, and listing concrete targets that must be achieved within a one-year period, to ensure for further, sustainable reform, resulting in Azerbaijan meeting the commitments articulated in the Open Governance Declaration.

In particular, we call for the following steps to be recommended to the Government of Azerbaijan in order re-establish the necessary space for civil society actors to function freely and to promote government transparency and accountability:

⁵ http://www.opengovpartnership.org/sites/default/files/attachments/OGP_consultation%20FINAL.pdf

- **Azerbaijan’s Second Action Plan should include commitments that ensure the ability of not-for-profit and civil society organisations, journalists and political opposition to operate freely and independently.**
- **The government should remove the legal and bureaucratic hurdles that currently undermine freedom of expression, assembly and association.**
 - The Law on Grants, Law on Non-Governmental Organisations, Law on Registration of Legal Entities and State Registry and the Code on Administrative Offenses should be amended and their implementation overseen to bring them in line with international standards regarding the rights to freedom of expression, association and assembly. In particular, the government should implement recommendations made by the Venice Commission in 2014.
 - In particular, the government of Azerbaijan should simplify procedures for establishing and registering NGOs and ensure that CSOs are not subject to discretionary actions by government that limit their ability to function.
 - The recently adopted Rules on Studying the Activities of Non-Governmental Organisations, Branches or Representative Offices of Foreign Non-Governmental Organisations, should be amended to prevent undue intrusion of the Ministry of Justice into the affairs of NGOs.
 - The government should refrain from extra-legal harassment of NGOs.
- **The government should allow CSOs to access and use financial resources freely, including those provided from abroad.**

To this end, it should take the necessary steps to lift the court-ordered freezes of the bank accounts of all civil society organisations and activists, limit or abolish the requirements regarding registration of individual grants, which prevent activists from accessing funds even where their accounts have been unfrozen, and revoke excessive restrictions on foreign donors being allowed to make grants to local CSOs.
- **The government should take steps to restore an environment in which civil society actors are able to speak out openly, including about government transparency and accountability.**
 - This should include the unconditional release of all remaining civil society activists and journalists imprisoned on politically motivated charges, including, but not limited to, Khadija Ismayilova, Ilgar Mammadov, Seymour Hezi and Ilkin Rustemzadeh.
 - All 16 prisoners released in late 2015 and 2016 should have their charges quashed, bank accounts unfrozen and travel restrictions lifted.
 - The government should refrain from further politically motivated arrests, end the harassment of NGO leaders by the Prosecutor General’s office and tax authorities, and quash tax penalties imposed on local CSOs.
- **In developing the action plan, the government should ensure a full and open consultation process with civil society.**

While Azerbaijan has recently announced a new National Action Plan, this should be subject to further, wide-ranging public consultation in line with OGP commitments. This should build on recent steps to engage civil society, described above, and involve a range of representative civil society actors from across the country, as well as including private stakeholders and involving greater public awareness-raising initiatives.

It is essential that Azerbaijan implements these reforms, in order to meet its commitments as an OGP member. If it fails to do so, the credibility of the OGP will be at risk, as civil society will remain unable to participate in the process, undermining one of the main tenements of the partnership.

We are ready to work with OGP stakeholders and partners in Azerbaijan to implement these steps in the near future so as to allow Azerbaijan to reengage in OGP as an active participating government and thank the Committee members for their continued and strong commitment to the Values and

Principles of OGP. We are ready to provide any additional information or support that the OGP may need to achieve this overriding goal.

Yours sincerely,

Thomas Hughes,

Dr Danny Sriskandarajah,

Elisa Peter,

Executive Director

Secretary General

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ARTICLE 19

**CIVICUS, World Alliance for
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Publish What You Pay



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