

Summary of review team findings

On March 2 2015, CIVICUS, Publish What You Pay, and Article 19 sent a letter of concern to the OGP Steering Committee regarding the threats faced by civil society in Azerbaijan and the way they affect its ability to engage effectively in the OGP process (see Annex 4). The letter claims that Azerbaijan's government is putting pressure on NGOs, and their leaders, through different means. It raises 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 letter asks OGP to “take action in relation to Azerbaijan under the Policy on Upholding the Values and Principles of OGP, as articulated in the Open Government Declaration (OGP response policy).” It refers in particular to two aims included in the OGP response policy: “to help re-establish an environment for government and civil society collaboration” and to “safeguard the Open Government Declaration and mitigate reputational risks to OGP.”

According to the OGP Response Policy, the criteria to establish the relevance of the concern are as follow:

1. Establish the relevance of the concern to the Open Government Declaration and OGP's Articles of Governance – i.e., is the matter being reported directly undermines fulfillment of the nation's commitment to OGP principles, thereby calling into question the process of its OGP participation. (Annex 1)
2. Check with previous OGP data points, such as cross-referencing with the findings of the most recent IRM report on the country, including the national context section. (Annex 2)
3. Establish the veracity of the information by cross-referencing concerns with government, civil society, IRM researchers and third parties, including UN bodies, according to the nature of the issue. (Annex 2)
4. Assess whether an OGP intervention could have the desired impact in a country or is necessary to protect the credibility of OGP.¹

The review team's process involved reviewing OGP's Article of Governance and the Open Government Declaration, cross-referencing the concern with the most recent IRM report for Azerbaijan, and establishing the veracity of the information by reviewing civil society, government, media, and United Nations sources, as well as the response letter submitted by the Government of Azerbaijan to the Support Unit on April 15, 2015. Having followed this process, the review team's findings are as follows.

Establishing the concern's relevance

A review of OGP's Articles of Governance and the Open Government Declaration, endorsed by the Government of Azerbaijan, confirms the relevance of the concerns raised by the letter submitted to the

¹ Open Government Partnership, *Articles of Governance*, p. 21.

OGP Steering Committee. The Declaration, for example, includes a commitment to “protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our commitment to freedom of expression, association, and opinion.”² Similarly, the types of issues that the OGP Response Policy defines as forming “a relevant concern” include the following:

- Introduction of new/revised policies or actions that significantly reduce the space for non-governmental organizations to work independently, voice critiques, and/or receive funding from domestic or international sources (e.g. new NGO laws)[...]
- Introduction of new/revised policies, laws, or practices, or actions that significantly reduce enjoyment of fundamental freedoms, notably freedoms of expression and peaceful assembly, and freedom to associate.³

Establishing the complaint letter’s veracity

While both the government of Azerbaijan and activists report that NGOs have been able to undertake monitoring efforts around the country’s 2012 National Action Plan, the Letter of Concern’s claim that the climate for civil society in Azerbaijan has significantly deteriorated since February 2014 is supported by a number independent sources. These include the United Nation’s Human Rights Council, the United Nation’s Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, the International Federation for Human Rights (FIDH), the European Commission for Democracy through Law (the Venice Commission), Amnesty International, Freedom House, the Open Society Foundation, Human Rights Watch, and the United States Department of State (See Annex 3 for a full list of sources, and Annex 2 for relevant citations). The 2012-13 IRM Progress Report also speaks to some of these concerns, particularly issues around consultation failures. In its response to the OGP Support Unit, the government of Azerbaijan does not disagree with the factual assertions made in the complaint letter and rationalizes them as necessary for compliance and regulatory reasons.

Government control over registration and operations of NGOs

While the Government of Azerbaijan argues that NGO registration law is in line with international best practice and that hundreds of organizations have successfully registered, a number of independent sources support the Letter of Concern’s claim that recent amendments to key laws provide the Azeri government excessive control over the registration and operations of NGOs, and allow the authorities to stifle the activities of NGOs they deem a hindrance. Specifically, independent sources confirm that NGOs are required to register as legal entities, an excessively bureaucratic process that provides ample opportunities for officials to interfere during registration, as well as in the form of compliance checks. Sources also support the letter’s claim that the amendments establish higher penalties for violating various laws and onerous administrative obligations, and that these violations are often described as excessively vague actions. In one of its opinions, the Venice Commission concludes that, “The chilling

² Open Government Partnership, *Articles of Governance*, p. 28.

³ Open Government Partnership, *Articles of Governance*, p. 30.

effect of those amendments is evident as the scope for discretion of executive scrutiny over associations' activities seems unlimited and not precisely defined."⁴

Government Control over NGO Finances

The Letter of Concern's assertion that the new amendments give authorities extensive powers over NGO finances – by mandating the registration of all grants (including individual grants, subgrants, and amendments to grants), tightening the rules governing INGOs and their provision of grants, and imposing serious penalties for violations – is similarly supported by independent sources. According to the International Federation for Human Rights (FIDH), "Restrictive amendments [...] to these laws systematically impede access to domestic and foreign funding, including by requiring government licensing of all foreign donors, and approval of each funded project, which cuts off practically all funding for CSOs that work to hold the government accountable."⁵ The Government of Azerbaijan considers new regulations around grant registration a necessary reform to bring more clarity, transparency, and accountability to non-governmental organizations' activities. The government's letter to the Support Unit is silent, however, on the willingness of the government to actually process and register grants to civil society organizations operating under the new regulations.

Harassment of Civil Society

The letter of concern claims that Azerbaijan's government uses a number of strategies to put pressure on civil society leaders and organizations. These strategies include pressuring private actors not to provide services to civil society, lengthy and repeated law enforcement interrogations of activists, and a campaign to discredit NGOs and their leaders. While the Government of Azerbaijan claims that NGOs in the country are free to act and free of pressure, legal harassment, and discretionary action, the complaint letter's arguments are supported by numerous independent sources, statements, communications, and reports. The most common forms of harassment that have been documented include denying requests to hold meetings and events, office raids and threatening interrogations, warnings from government officials (both formal and informal), smear campaigns, and blackmail. Additionally, there have been reports of physical intimidation, detentions, violent assaults, and torture while in official custody.

Criminal and Tax Cases

Concerns related to criminal and tax cases initiated by the government and mentioned in the complaint letter emphasize that these cases are often based on "trumped up charges" or on "unclear provisions in the laws"; in both cases, these investigations "create a serious chilling effect on those who are targeted." Many independent reports confirm these claims, citing detentions based on charges of tax evasion, fraud, drug-related offences, abuse of office and treason, and argue that these charges are

⁴ European Commission for Democracy through Law; Venice Commission. 2014. p. 19.

⁵ The International Federation for Human Rights (FIDH). 2015.

“trumped up,” “politically motivated,” or at best based on “grounds that raise serious concerns.”⁶ Moreover, some of the sources state that incarcerated activists have faced interference in their right to legal counsel with confessions being extracted under ongoing ill-treatment, and with lawyers being pressured not to take their cases due to fear of being disbarred or being interfered with in their work by calling them as witnesses in activist’s trials – so they cannot defend their clients.

Consultation Failures

Finally, the letter’s contention that the Azeri government has failed to consult with civil society, including around the development and implementation of the country’s OGP Action, is documented by and addressed in the IRM report. While the report recognizes that some steps were taken to notify and consult with civil society, it finds that these efforts were limited in quality, breadth, and duration.

Assessing the impact of an OGP intervention

We perceive an immediate and real threat to OGP’s credibility should OGP not take any action on the recently submitted letter of concern, in part because of the ongoing attention to the situation in Azerbaijan by the international community. Most recently, the Extractive Industries Transparency Initiative (EITI) downgraded Azerbaijan’s participation in EITI to that of a “candidate country” following “deep concern for the ability of civil society to engage critically in the EITI process in Azerbaijan.”⁷ Our review confirms that the matters reported in the letter of concern are factual and call into question Azerbaijan’s fulfillment of key OGP principles. We deem a formal response necessary to protect the credibility of OGP.

In addition, there may be some potential for an OGP response to “help establish a positive environment for government and civil society collaboration,” especially if coordinated with similar international initiatives, such as EITI. While we cannot guarantee that an OGP response will necessarily lead to an improvement in the operating environment for civil society in Azerbaijan, we do believe that diplomatic engagement and offers of technical assistance are warranted at this stage.

⁶ UN Special Rapporteur on the rights to freedom of peacefully assembly and association. 2015. p. 6; Amnesty International. 2015. p. 5; and U.S. Department of State. 2014.

⁷ See <https://eiti.org/news/azerbaijan-downgraded-candidate-country> (April 15 2015)