

## **Policy on Upholding the Values and Principles of OGP, as articulated in the Open Government Declaration (*Response Policy*)**

*Agreed by the Steering Committee, September 20, 2017*

*Defined terms used herein have the meanings set out in Section VII below.*

### **I. Rationale**

1. The purpose of the Response Policy is to maintain OGP's credibility - and safeguard its long-term future - by helping to ensure that all Participating Countries uphold OGP values and principles, as expressed in OGP's foundational documents, the Open Government Declaration and the Articles of Governance.
2. The Policy applies in exceptional circumstances only, when a Participating Country appears to be taking actions that undermine the values and principles of OGP in a way that demonstrates an egregious and blatant disregard for those values and principles.
3. The Policy enables OGP to react to conduct by Participating Countries that contradicts the Declaration.
4. The aim of actions OGP takes pursuant to the Policy will be to:
  - (1) Assist the Subject to overcome difficulties and to help re-establish an environment more conducive to government and civil society collaboration; and
  - (2) Safeguard the Declaration and mitigate reputational risks to OGP.

### **II. Triggering an Inquiry**

1. An inquiry may be triggered by one of the following persons or entities filing a Concern:
  - (1) An SC member - government or civil society.
  - (2) A Multilateral Partner or Working Group co-anchor.
  - (3) Any entity (other than an individual acting on his or her own behalf) which is, or has been, involved in OGP at the national or international level *and* in the country that is the subject of the concern (the Subject).
2. All Concerns should be addressed to the Steering Committee and submitted to the Support Unit for initial review.
3. All Concerns should include the information specified in Annex 1 to the Response Policy Procedures and Protocols (*Letter of Concern Requirements*).

### III. Establishing the Relevance of a Concern

#### A. Initial Review of the Eligibility of a Concern

1. Following its receipt of a Concern, the SU will send an acknowledgement to the filer(s), of the Concern and inform C&S and the Subject, in writing, that the Concern has been received.
2. The SU will conduct an initial review of all Concerns to determine whether they meet the eligibility criteria for a Response Policy inquiry. Specifically, the SU will determine:

##### *(a) Sufficiency of Information Provided in Concern*

Only Concerns that provide the information specified in Annex 1 to the Response Policy Procedures and Protocols (*Letter of Concern Requirements*) can trigger a Response Policy inquiry.

##### *(b) Filer Eligibility*

Only Concerns submitted by a person or entity listed in Section II (I) of the Response Policy as eligible to submit a Concern can trigger a Response Policy inquiry.

##### *(c) Subject Eligibility*

Only Concerns submitted in respect of countries that have not been designated by OGP as Inactive under a Procedural Review either at the time the Concern is submitted; or at any point during the Response Policy review process, can trigger a Response Policy inquiry and/or sustain a Response Policy review.

##### *(d) Inadequacy of Alternative Accountability Mechanisms*

Only Concerns that cannot or will not be addressed by the IRM or the Procedural Review mechanism may trigger a Response Policy inquiry.

3. The SU will dismiss Concerns that are, or become, ineligible under Section III.A.2 above; inform the filer(s) of the Concern and the Subject of the reasons for the dismissal; and inform C&S about the Concern's receipt and disposition.

#### B. Review of the Merits of a Concern

1. If the SU finds that the Concern is eligible to trigger a Response Policy inquiry, it will notify C&S, the filer(s) of the Concern, and the Subject that OGP is proceeding with a review of the Concern, and ask the government of the Subject for a formal response to the issue(s) raised in the Concern.

2. Following the notifications referred to in Subsection B (1) above, the SU will begin a review of the merits of the Concern in collaboration with, and under the oversight of, the C&S Co-Chairs, and the C&S Co-Chairs will inform the Governance and Leadership Subcommittee that the review is under way.
3. The review of the merits of a Concern will include the following steps:
  - (a) Establishing the veracity of the information provided in the Concern by cross-referencing Concerns with government, civil society, IRM researchers and third parties, including, but not limited to, UN bodies likely to have relevant information and informed views on the issue(s) under review.
  - (b) Establishing the degree to which the behavior that forms the basis of the Concern undermines the Subject's commitment to the principles of the Open Government Declaration and OGP's Articles, i.e., thereby calling into question the authenticity of the Subject's OGP participation.
  - (c) Checking previous OGP data points on the Subject, including, but not limited to, cross-referencing with the findings of the most recent IRM report on the Subject, including the national context section of that report.
  - (d) Assessing whether an OGP intervention could have the desired impact in the subject country (Subject) and whether such an intervention is necessary to protect the credibility of OGP.
  - (e) Consideration of whether a visit by the SU to the Subject to discuss the issues raised in the Concern with pertinent parties is appropriate.
4. The C&S Co-Chairs, with input from the SU, will secure external assistance with the review of Concerns, as needed, in accordance with procedures set out in Annex 2 to the Response Policy Procedures and Protocols (*Engaging External Assistance for Response Policy Cases*) for that purpose.
5. After the review referred to in Section 3 (a) - (e) above has been completed, and OGP has received a formal response from the Subject regarding the Concern or, failing receipt of a response from the Subject, allowed a reasonable time (as set by the Response Policy Procedures and Protocols) for such a response to be provided, the C&S Co-Chairs will prepare a review report on the Concern for C&S's consideration and adoption.
6. The review report will include the Subject's response, or notification that no response has been received, as the case may be, and a list of all sources of information used in the review process. The report will also include a set of findings resulting from the review, and a recommendation for how C&S should address the Concern.
7. The final decision on how to handle all Concerns that are eligible for Response Policy review will be C&S's responsibility.

8. If C&S does not agree with the conclusions of the review report with respect to a Concern, C&S may return the report to the C&S Co-Chairs for revision or further investigation, as C&S may decide. If C&S cannot reach consensus on the adoption of a review report, C&S will take a vote on whether to adopt the report. A two-thirds majority will be required in order for a report to be adopted. If a review report is not adopted, the Concern will be deemed closed.

9. If the review report concludes that the issue(s) raised in the Concern are being satisfactorily addressed domestically, and C&S agrees with the report's conclusion, C&S will adopt the review report. The SU will inform the filer(s) of the Concern, and the Subject, of C&S's conclusion, and provide them with a copy of the review report. OGP will take no further action regarding the Concern.

10. If the review report concludes that the issue(s) raised in the Concern have merit and are not being satisfactorily addressed domestically, the C&S Co-Chairs will include recommendations for Stage One Actions (as defined in Section V.A below) in the report. If C&S agrees with the report's conclusion, C&S will adopt the review report and inform the SC of the report's conclusion immediately upon adoption of the review report. The SU will inform the filer(s) of the Concern, and the Subject of C&S's conclusion and provide them with a copy of the review report.

11. If the Subject responds to the review report and informs OGP that it disagrees with the finding(s) and or conclusion(s) of the report, C&S may take the Subject's response into account in the final framing and implementation of Stage One Actions.

12. If the Subject fails to respond to the review report and such failure continues during the Stage One Action period, the C&S Co-Chairs will inform C&S to that effect and C&S will recommend to the SC that one or more Stage Two Actions be taken, specifying what form C&S believes such action should take.

#### **IV. Types of Issues that May Form a Relevant Concern**

1. The kinds of issues that have the potential to be sufficiently damaging to OGP values and principles to trigger a Response Policy review include, but are not limited to, the introduction of new or revised policies, practices or actions that significantly reduce any of the following:

(a) Access to information for citizens and civil society;

(b) 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);

(c) Enjoyment of fundamental freedoms, notably freedom of expression and peaceful assembly, and association; and/or

(d) Online or offline media freedom, or media ownership and independence.

## V. The Process of Acting on a Concern

### A. Stage One Actions

1. After C&S informs the SC that C&S has concluded in its review report that a Stage One Action is warranted, Stage One Actions will proceed.
2. Members of C&S, the Co-Chairs, the SU, and other interested SC members, may carry out one or more of the following without the approval of the full SC:
  - (1) Engage in or broker diplomatic outreach to the government of the Subject at the official and/or political level. Such efforts may include outreach and engagement by the C&S Co-Chairs. The SU will coordinate such outreach.
  - (2) Offer to broker technical assistance to help the Subject to address the issues raised in the Concern;
  - (3) Contact Multilateral Partners active in the Subject to help address the issues raised in the Concern;
  - (4) Invite the Subject to work with the SU and C&S to establish a work plan with regular check-ins and a timeline for the Subject to address the situation, where applicable.
3. After a Stage One Action is initiated, the Subject will be given a reasonable period of time to address the issues raised in the Concern and verified by the review report. The time period that qualifies as *reasonable* in this context will vary depending upon the agreed upon work plan and timeline (if applicable) for addressing the particular situation, but will generally range from a minimum of approximately six (6) months to a maximum of approximately two (2) years.
4. Throughout the period of a Stage One Action, the C&S Co-Chairs and the SU will endeavor to remain in communication with the Subject regarding the Subject's progress and will attempt to solicit feedback from the Subject.

### B. Stage Two Actions

1. At the end of the time period provided for in the Stage One Action, the C&S Co-Chairs will prepare a report for C&S's consideration, assessing whether the Subject has sufficiently addressed the issues raised, such report to be referred to as an *Assessment of Stage One Actions*. If the C&S Co-Chairs believe that the issues raised in the Concern have been adequately addressed by the Subject, the assessment will include a recommendation that the case be closed. If the C&S Co-Chairs believe that the issues raised in the Concern have not been adequately addressed by the Subject, the assessment will include recommended actions for a Stage Two Action.

2. The final decision on whether the issues raised in a Concern have been adequately addressed during the Stage One Actions will be C&S's responsibility. In discharging that responsibility, C&S may ask the C&S Co-Chairs for further information concerning the conclusions reached in the Assessment of Stage One Actions report, and to supplement and/or amend such assessment as C&S sees fit.

3. If C&S does not agree with the conclusions of the C&S Co-Chairs' Assessment of Stage One Actions report with respect to a Concern, C&S may return the assessment to the C&S Co-Chairs for revision or further investigation, as C&S may decide. If C&S cannot reach consensus on the adoption of an Assessment of Stage One Actions report, C&S will take a vote on whether to adopt the report. A two-thirds majority will be required in order for an Assessment of Stage One Actions report to be adopted. If a report is not adopted, the report will be returned to the C&S Co-Chairs to be revised to reflect conclusions for which a two thirds majority approval can be reached.

4. If C&S concludes that the issues in a Concern have been adequately addressed during the Stage One Action, the case will be closed and C&S will inform the SC to that effect, and instruct the SU to inform the Subject and the filer(s) accordingly. If C&S concludes that the Subject has not adequately addressed the issues raised in a Concern, C&S will so inform the Governance and Leadership Subcommittee and the SC, and recommend to the SC that one or more Stage Two Actions be taken. C&S will specify what form it believes such action should take.

5. A Stage Two Action may consist of one or more of the following actions:

(1) The SC Co-Chairs, on behalf of the SC, invites the government principal of the Subject to attend a special session of the SC to discuss the situation and its possible consequences for the Subject's participation in OGP.

(2) The SC Co-Chairs, on behalf of the SC, write a letter to the government principal of the Subject informing him/her that the Subject will be listed as suspended from OGP until the Concern is resolved. The letter will explain;

(a) what actions and what level of engagement OGP expects of the Subject in order to resolve the issues raised in the Concern to the point where the Subject is no longer suspended and returns *either* to Stage One Action status, or to regular Participating Country status, detailing which actions by the Subject will lead to which status, and the timeframe within which such actions and/or engagement must occur;

(b) that failing a response by the Subject that warrants a change of status under (a) above, the suspension of the Subject from OGP will become permanent and the Subject will be deemed to have ceased being a Participating Country.

6. While the C&S Co-Chairs are formulating recommendations regarding the most appropriate form of Stage Two Actions to take, and throughout the period of Stage Two

Actions, the C&S Co-Chairs and the SU will endeavor to remain in communication with the Subject and will attempt to solicit feedback from the Subject.

7. When a Participating Country is suspended from OGP pursuant to the Response Policy, such country;
  - (a) will not be entitled to recover dues paid to OGP covering the period of suspension. (Dues owed, but not paid, during the period of suspension, will be due and payable following termination of the suspension);
  - (b) will not be eligible to vote in SC elections;
  - (c) will only be allowed to attend OGP events as an observer for learning purposes; and
  - (d) will be designated as suspended on the OGP website and in all OGP public information materials concerning such country.

## **VI. Disclosure Policy**

1. To the greatest extent possible, and consistent with the need to make adjustments to protect all parties involved, as determined by C&S, upon the recommendation of the SU, the Response Policy process will be carried out in accordance with OGP's Disclosure Policy.

## **VII. Definitions**

- A. "*Articles of Governance*" or "*Articles*" are the terms and conditions that govern the Open Government Partnership approved and agreed by Participating Countries in June 2012, as most recently amended September 2017.
- B. *Assessment of Stage One Actions* report is a report the SU prepares for C&S assessing the outcome of Stage One Actions, as provided for in Section V (B) of the Response Policy.
- C. "*Concern*" or *Letter of Concern*" is a written submission (which may be in electronic form) that sets out how the actions of a Participating Country are undermining the values and principles of OGP. Annex 1 to the Response Policy Procedures and Protocols details the information required to be included in a Concern.
- D. "*C&S*" or "*Criteria and Standards Subcommittee*" is one of the Steering Committee's three standing subcommittees established pursuant to Article IV of the Articles of Governance.
- E. "*C&S Co-Chairs*" are a revolving two-member co-chairmanship team of C&S.
- F. "*Declaration*" or "*Open Government Declaration*" is the declaration of commitment to upholding the principles of open and transparent government, approved by the founding countries of OGP in 2011, and set out in Addendum D to the Articles of Governance, that Participating Countries are required to endorse pursuant to Article II of the Articles of Governance in order to participate in OGP.

- G. “*Disclosure Policy*” is OGP’s policy concerning the dissemination of information by OGP, approved by the SC, and set out in Addendum E to the Articles of Governance.
- H. *Governance and Leadership Subcommittee* is one of the SC standing subcommittees established pursuant to Article IV of the Articles of Governance.
- I. “*Inactive*” is a membership status that may result from a Procedural Review.
- J. “*Independent Reporting Mechanism*” or “*IRM*” is the independent accountability mechanism which is established and operates pursuant to the provisions of Addendum G to the Articles of Governance.
- K. “*Multilateral Partner*” is a multilateral organization that has pledged support to OGP member countries to promote open government and increase accountability.
- L. “*National Action Plan*” or “*NAP*” is a schedule of commitments that each Participating Country draws up and commits to carry out in accordance with the provisions of Addendum B to the Articles of Governance.
- M. “*Open Government Partnership*” or “*OGP*” is the voluntary, multi-stakeholder international initiative established pursuant to the Open Government Declaration that aims to secure concrete commitments from Participating Countries to their citizenry to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.
- N. “*Participating Country*” is a country that has indicated its intention to join OGP by submitting a letter of intent, committing to abide by OGP principles and processes by endorsing the Open Government Declaration, and initiating the process of developing a National Action Plan or NAP, all as provided for in Addendum A to the Articles of Governance.
- O. “*Point of Contact*” is the person identified by a Participating Country as the person with official responsibility for maintaining contact with OGP concerning the country’s obligations to OGP.
- P. “*Procedural Review*” mechanism is the review process provided for in Article II of the Articles of Governance.
- Q. “*Response Policy*” or “*Policy*” is the informal name of the Policy on Upholding the Values and Principles of OGP Policy, as articulated in the Open Government Declaration, approved and agreed by the Steering Committee, and set out in Addendum F to OGP’s Articles of Governance.
- R. “*Response Policy Procedures and Protocols*” are policies and procedures developed by the Support Unit, and amended from time to time, to supplement the Response Policy, as approved by the Criteria and Standards Subcommittee.
- S. “*Stage One Actions*” are actions OGP may undertake when investigation of a Concern reveals that the Subject is engaging in conduct that contradicts the Participating Country’s undertakings in signing the Declaration and undermines OGP’s principles and values, as provided for in Section V (A) of the Response Policy
- T. “*Stage Two Actions*” are actions OGP may undertake once it is determined that Stage One Actions have failed to adequately address the issue(s) raised in a Concern, as provided for in Section V (B) of the Response Policy.

- U. “*SC*” or “*Steering Committee*” is OGP’s executive, decision-making body established pursuant to Article IV of the Articles of Governance, and comprised of an equal number of government and civil society representatives.
- V. “*SC Co-Chairs*” are part of a revolving four-member co-chairmanship team which is elected by the entire SC and consists of a government chair, a support (or incoming) government chair, and two civil society chairs, as provided for in Article IV of the Articles of Governance.
- W. “*Subject*” means the Participating Country that is the target of a Concern.
- X. “*Support Unit*” or “*SU*” is the unit of OGP that provides a secretariat function for OGP, and also plays a significant role in implementing the Response Policy, as provided for, respectively, in Article V and Addendum F to the Articles of Governance.
- Y. “*Working Group*” means one of the thematic working groups that OGP has established, with the help of its partners, to contribute peer exchange and learning across OGP.