

Criteria & Standards Report and Recommendation on Azerbaijan Response Policy Case December 5, 2018

I. Background on the Azerbaijan Response Policy case

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”). The Response Policy aims 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 (which all countries endorse when joining OGP, albeit in a non-binding, voluntary manner), and the Articles of Governance. The Response Policy has two objectives: a) assist a country in question overcome difficulties and 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 SC under the Response Policy addressing several issues pertaining to the operating environment for civil society in Azerbaijan, and how these issues affected CSO’s ability to engage effectively in the OGP process. The letter urged the SC to call on the Azeri government to take necessary actions to reestablish the necessary space for CSOs to operate freely in the country. The Criteria and Standards subcommittee (C&S) drafted a [report](#) informed by review of the Articles of Governance and the Open Government Declaration, and sought to establish the veracity of the claim by cross-referencing the concern with IRM data, and reviewing government, civil society, media and United Nations sources. Based on this research and analysis, the C&S deemed the concern to be relevant, true, and accurate.

The findings of 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 to support the implementation of these recommendations. Regretfully, when the C&S assessed the advances during its February 23-24, 2016 meeting, the subcommittee determined that the deadlines to implement such recommendations had expired without satisfactory resolution, and thus [recommended](#) to the full SC to move to Stage Two Actions and place Azerbaijan in inactive status.

On May 4, 2016, the SC [designated Azerbaijan as inactive](#) in OGP due to unresolved constraints on the operating environment for CSOs. The inactivity resolution outlined that the government of Azerbaijan would have one year to implement actions necessary to address the original concerns in order to fully re-engage with OGP and regain its active participant status. In 2017, the C&S assessed the progress made on the recommendations ahead of the deadline, and drafted a brief report with the support of third party analysis, external reports, mission reports and interviews with key stakeholders in Azerbaijan. The report concluded that while Azerbaijan made noticeable efforts in order to address the recommendations under the Response Policy review, particularly regarding OGP process concerns, the core concerns regarding the operating space for CSOs were not fully addressed. Given the evidence of initial improvements, and that all stakeholders consulted by the SC and SU concurred in the importance for OGP to continue engaging with the government and civil society, the C&S recommended an extension of the inactivity status.

On June 28, 2017, [the SC resolved to extend Azerbaijan’s inactivity status for a period of one year](#). The SC further mandated the C&S, in consultation with civil society and government, to develop an updated set of recommendations to improve the unresolved constraints on the operating space for CSOs, namely the CSO registration process and access to funding by CSOs. The Government of Azerbaijan had one year, beginning on September 25, 2017, to address [these updated recommendations](#) in order to regain active status in OGP.

This document drafted by the SU and C&S with the inputs from the government of Azerbaijan, civil society actors and international experts aims to summarize the actions that the government of Azerbaijan has done to date in an attempt to address the updated recommendations. Section 1 outlines how the recommendations were drafted, and section 2 analyzes the evidence put forward by several actors.

The evidence assessed in this report shows that, although there has been sporadic improvements in the operating environment of civil society during the last 12 months, the government of Azerbaijan has not made systematic changes or reforms that would thoroughly address the updated recommendations. All non-governmental actors consulted highlighted that there remain substantial challenges in the overall operating environment for civil society in the main two issues addressed by the updated recommendations: registration and funding. However, it is important to consider that all local stakeholders also mentioned that, despite the challenges, they value the continued engagement and space for dialogue that the OGP forum in Azerbaijan creates.

II. Review of the C&S Updated Recommendations for Azerbaijan

The process to develop updated recommendations to address the unresolved constraints on the operating environment for civil society organizations included two rounds of consultations to enable all

stakeholders to provide input. This included a three-week period (July 24, 2017 to August 11, 2017) where several stakeholders provided draft that became updated set of recommendations, and a two-week period (August 29, 2017 - September 13, 2017) for a round of public comments on the draft recommendations.

The recommendations only addressed the unresolved constraints on the operating environment for civil society organizations identified in the report, namely CSO registration and access to funding. The recommendations did not include proposals received regarding the OGP process and the implementation or development of the current, or future, OGP action plan. The government of Azerbaijan had one year, beginning on **September 25, 2017**, to address the following recommendations in order to regain active status in the Partnership:

Updated Recommendations to the Government of Azerbaijan
<p>1. Simplify registration process for Civil Society Organizations (CSOs)</p> <p><i>1.1 Simplify the procedures for establishing and registering CSOs in Azerbaijan and remove discretionary actions that limit their ability to operate. Some concrete proposals to do this are:</i></p> <ul style="list-style-type: none"> • Enable the online registration of CSOs, including the ability to amend registration documents. • Fulfill the registration of CSOs within set time limits. • Registration of CSOs should only be denied on clear grounds that are legitimate under international law. <p><i>1.2 Eliminate requirement for CSOs to obtain an extract (registration certificate) every two years. Registration should be a one-time procedure; CSOs should not have to periodically re-register, or even re-register under a newly enacted law.</i></p> <p><i>1.3 Revise the Code of Administrative Offences to reduce the number of penalties and prevent excessive harshness for CSOs.</i></p> <p>2. Simplify regulations to access funding</p> <p><i>2.1 Introduce changes to limit the discretion to arbitrarily deny grant registration or, ideally, eliminate this procedure.</i></p> <p><i>2.2 Introduce changes related to donor registration. Some concrete proposals to do this are:</i></p> <ul style="list-style-type: none"> • Eliminate the need for foreign donors to register individual grants with the Government of Azerbaijan • Eliminate the necessity for a foreign donor to have an agreement with the Ministry of Justice and register its representative office in Azerbaijan, in order to be a grantor. • Exclude foreign donors that operate on the base of bilateral and multilateral agreements from the obligation to obtain the right to provide grants. <p><i>2.3 Eliminate the need to obtain the opinion on ‘financial-economic expediency’ in order to issue or receive a foreign grant.</i></p> <p><i>2.4 Simplify financial operations for NGOs. In particular, bank operations related to grants and donations should remain independent and not be subject to any state interference.</i></p>

III. Assessment of Recommendation Completion

This section includes analysis of the progress made to address each of the updated recommendations outlined above in section I. For each recommendation a table has been drafted which includes the text of the recommendation, a summary of the information provided by the government of Azerbaijan and the OGP Forum, and a summary of the information provided by other partners and international experts who have been engaged throughout this Response Policy case. The table includes a brief assessment of the completion of each recommendation based on the information provided.

NOTE: The analysis is based on third party analysis. It is important to note that in a few cases there is conflicting information about specific reforms or requirements, or conflicting interpretations of a specific regulation. In these cases, excerpts of the conflicting views were included. Still, there is enough information to assess the overall direction of the information received, and even conflicting interpretations yield the assessments outlined.

1. Simplify registration process for Civil Society Organizations (CSOs)

The elimination of artificial bureaucratic obstacles in the registration process for NGOs, by reducing the time of the official response to applications and setting up a transparent manner of regulations, has not been implemented. Online registration for NGOs and the option to modify registration documents have not been implemented either. The regulation, which stipulates that a rejection of registration is only to be denied based on a clear legal basis, has not been complied with. Although the number of documents

required for official permission for foreign donors to open a representative office and issue grants in Azerbaijan has been slightly reduced, at least 8 additional documents are still required. The calls for simplification of the registration for NGOs, along with abolishing the requirement for registration of grants and service contracts, remain unanswered.

<p><i>1.1 Simplify the procedures for establishing and registering CSOs in Azerbaijan and remove discretionary actions that limit their ability to operate. Some concrete proposals to do this are:</i></p> <ul style="list-style-type: none"> • Enable the online registration of CSOs, including the ability to amend registration documents. • Fulfill the registration of CSOs within set time limits. • Registration of CSOs should only be denied on clear grounds that are legitimate under international law. 	
Summary of inputs provided by the Government of Azerbaijan and the OGP Platform	Summary of inputs provided by partners and other experts
<ul style="list-style-type: none"> • During 2017-2018, the registration of 237 NGOs was fulfilled within set time limits, and currently there are more than 4,289 non-profit organizations operating in Azerbaijan. • Following recommendations of the OGP Platform in Azerbaijan, and in order to further simplify procedures regulating the activities of NGOs, a new one-stop shop e-service platform has been established. This digital platform includes all NGOs and relevant state bodies. • Currently, NGOs can send requests to and review requests of state bodies and can also interact with each other online. Furthermore, NGOs, through the new system, can review (i) their registry information, (ii) changes made to their statute and (iii) information on registry of grants received. 	<ul style="list-style-type: none"> • There has been neither legal nor practical change in the direction of simplifying the registration process over the last year. This has also been confirmed by the results of the survey conducted among 50 leading NGOs. It should be noted that about 86 percent of survey respondents answered "No" the question "Has the simplify the procedures for establishing and registering and have been removed the discretionary actions that limit their ability to operate of CSOs in Azerbaijan?" and 90 percent of survey respondents answered "No" the question "Is the deny of the registration of CSOs on clear grounds that are legitimate under international law?". • Online registration of NGOs with simplified procedures has not been resolved, neither on the level of the law on "State Registration and Registry of Legal Entities", nor in practice. According to Article 6 of the law on "State Registration and Registry of Legal Entities", eight additional documents are required to register a representation or an affiliate office of a foreign NGO. • The current legislation grants the Ministry of Justice a wide discretion in denying NGO applications for state registration, especially those working on human rights. The Ministry of Justice registers only organizations that receive support or letter of assurance from central and local executive authorities. This document, which is not envisaged by law, plays an essential role in the registration process. This has led to a huge number of NGOs to be denied of registration and acting as unregistered groups in Azerbaijan. • Registration, finances and operation of the NGOs in Azerbaijan remain problematic. First, the list of the NGOs, which is referred to as increased by the government, is not made public, therefore it is impossible to trace who makes up this list. Second, there is a discrepancy between the number of NGOs (237) the Azerbaijani government claims to have been registered between January 2017 and August 2018, and the information provided by experts and partners (172). Given that the law registers sport

	<p>federations, charity associations, professional associations as Public Unions, not all the registered organizations are truly civil society organizations. In addition, the phenomenon of GONGO creation has always been broad in Azerbaijan.</p> <ul style="list-style-type: none"> • While a new e-system platform was indeed introduced, it has not been tested broadly so far by NGOs. Reporting and communications also continued to be carried out in paper form at large. The degree to which the platform facilitates the registration of NGOs, and whether changes to the selection processes have indeed been implemented will be better known when the current registrations expire and NGOs go through the new process. • Regarding the e-service platform mentioned by the government, it is believed to not be working properly. Individual NGOs had to apply to the Ministry of Justice to get an access code to this platform. In theory, once an access code is obtained, NGOs could use it to send letters to the Ministry of Justice and receive replies electronically. Some of the problems encountered include lack of capacity on behalf of the government for NGOs to utilize this system, technical malfunctions in the system, and inability for correspondence to properly reach the MoJ as expected.
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Assessment: Not met.
Partners and international experts recognize that there are no major improvements to the NGO registration process, and there have not been changes in the registration legislation in the past months. The number of registered NGOs presented by the government of Azerbaijan seems to include a wide array of actors beyond NGOs, and the list of actors involved in the data provided could not be verified through public information. Finally, there seems to be limited knowledge and confusion about the e-service platform, coupled with technical problems preventing it from fulfilling its objectives.

1.2 Eliminate requirement for CSOs to obtain an extract (registration certificate) every two years. Registration should be a one-time procedure; CSOs should not have to periodically re-register, or even re-register under a newly enacted law.

Extracts from Government + OGP Azerbaijan Platform	Extracts from experts and others
<ul style="list-style-type: none"> • NGOs are not required to register every two years. Whenever the composition or members of the board of an NGO is changed according to their Statute, they have to submit the copy of their decision to the relevant authority in order to keep the latest information on current composition of an NGO. This does not imply that NGOs have to re-register their organization every two years. In practice, “extracts” have been issued to every applicant within set time enshrined in the legislation. The new one-stop shop e-service platform enables NGOs to amend registration documents through sending their decision in online form and receive extract through the e-platform. 	<ul style="list-style-type: none"> • No legislative changes have been made. While obtaining an extract does not represent registration or re-registration, it is difficult to obtain such an extract, and failure to do so could hinder an NGO’s activities (e.g. if an NGO’s chairman’s powers expire and there is no new extract, then s/he cannot sign any new contracts). • At the moment, the number of organizations that haven’t received an extract from the Ministry of Justice is higher than the number of registered ones.

Assessment: Not met.

No substantive change has happened in the last 12 months.

1.3 Revise the Code of Administrative Offences to reduce the number of penalties and prevent excessive harshness for CSOs.

Extracts from Government + OGP Azerbaijan Platform	Extracts from experts and others
<ul style="list-style-type: none"> • While there have been many cases of administrative violations by NGOs, as a matter of fact the Ministry of Justice has never applied any administrative penalty to NGOs for failing to submit required documents on time. • The Ministry of Justice has carried out several hundreds of individual consultations with NGOs and fully supported them to fulfill their obligations under national legislation. As a result of these consultations with NGOs, they have submitted all required documents. There have been only two cases where representatives of NGOs were unresponsive to the requests of the Ministry of Justice for one year and failing to submit required information for more than 5 years. 	<ul style="list-style-type: none"> • No public data on enforcement of penalties is available. It is possible that they are not being implemented often, as we are not aware of instances in the past year. However, since high penalties remain in the law, the government has full discretion to decide when and against whom to apply them. No legislative changes have been made. • No administrative penalties were indeed applied to NGOs by the Ministry of Justice (MoJ) for delayed submission of the documents. The penalties are mostly applied through other state agencies, such as Ministry of Taxes (MoT), and are regarded as financial irregularities. Moreover, these penalties are mostly applied to the individuals, e.g. leaders of NGOs, as de-jury NGOs are not able to receive foreign funding. Thus, any financial support, allocated by the foreign donors are mostly given through service contracts with the leaders of NGOs. Therefore, it is hard to trace the penalties to NGOs, as they are mostly made indirectly.

Assessment: Mixed.

While changes to the law have not been made in the last 12 months, there is also no evidence of administrative penalties being applied by the Ministry of Justice.

2. Simplify regulations to access funding

The amendments made to the regulation of rights for foreign donors to issue grants in Azerbaijan in 2017 did not eliminate two major problems: foreign organizations still have to obtain a donor status, and foreign donors who obtain such donor status, still have to obtain an opinion from the Ministry of Finances on the expediency of grants they issue.

2.1 Introduce changes to limit the discretion to arbitrarily deny grant registration or, ideally, eliminate this procedure.

Extracts from Government + OGP Azerbaijan Platform	Extracts from experts and others
<ul style="list-style-type: none"> • Following the application of the amendments to the Decisions of the Cabinet of Ministers on “Grant contracts registration regulations” and “Regulation on the right to give grants by foreign donors in the Republic of Azerbaijan”, (i) the deadline period for registration of foreign and local grants increased by two times, (ii) review period of the grant contracts reduced by two times, (iii) number of documents required for registration of grant contracts is reduced, (iv) working days for addressing 	<ul style="list-style-type: none"> • No legislative changes were implemented since January 24, 2017, when the Cabinet of Ministers made changes to the foreign grantor registration rules in Azerbaijan, generally simplifying them. • As the legislation governing grants registration stands now, the multi-step complex registration procedure for grants and donors remains in place, and gives the Ministry of Justice broad discretion in registering grants, without clear rationale for rejection. This has also been confirmed by the results of the survey

<p>deficiencies identified in the registration of grants are prolonged by two times, (v) the new institution of service contracts is established and made applicable both to foreign and local grants.</p> <ul style="list-style-type: none"> • The statistics on the amount of grants registered during 2017 – 2018 are the clear indication of simplified regulations to access funding in Azerbaijan. In 2017, 146.945.369,29 AZN (86 million USD) grants were registered and 42.253.392,80 AZN (24 million USD) of total amount represented foreign grants. The amount of grants registered in 2017 is three times more than those registered in 2015 (51.240.856 AZN in 2015) and 22 million AZN more than in 2016. • Only during the first half of 2018, 165.036.286,6 AZN (96 million USD) grants has been registered and of which 39 million USD were foreign grants. Above-mentioned statistics show steady and manifold increase in the amount of grants registered and indicate some concrete results on simplification of regulations for foreign donors to obtain the right to provide grants. 	<p>conducted among 50 leading NGOs. It should be noted that about 85,71 percent of survey respondents answered “No” the question “Has the law been amended to restrict the powers of the Ministry of Justice during the registration of grants?”</p> <ul style="list-style-type: none"> • While the list of grantors cannot be verified due to unavailability of a public database of registered grants, partners and experts recognized that several grants have been registered, including from the EU and USAID. This is an improvement from the previous year.
<p>Assessment: Not met. <i>While some grants have been registered, there have no been legislative changes implemented, still granting ample discretion to the government over the registration of grants.</i></p>	

<p>2.2 Introduce changes related to donor registration. Some concrete proposals to do this are:</p> <ul style="list-style-type: none"> • Eliminate the need for foreign donors to register individual grants with the Government of Azerbaijan • Eliminate the necessity for a foreign donor to have an agreement with the Ministry of Justice and register its representative office in Azerbaijan, in order to be a grantor. • Exclude foreign donors that operate on the base of bilateral and multilateral agreements from the obligation to obtain the right to provide grants. 	
<p>Extracts from Government + OGP Azerbaijan Platform</p>	<p>Extracts from experts and others</p>
<ul style="list-style-type: none"> • During 2017 – 2018, grant agreements and other contracts have been successfully registered between local NGOs and foreign donors including USAID, US Embassy in Azerbaijan, Japan Embassy in Azerbaijan, UNDP, EU Delegation to Azerbaijan, German Marshall Foundation, European Youth Foundation, Education, Audiovisual and Culture Executive Agency of European Commission, embassies of other foreign countries and etc. These registered grants are clear examples of successful measures carried out in this sphere. 	<ul style="list-style-type: none"> • No legislative changes have been made to the legislation in order to exclude foreign donors that operate on the base of bilateral and multilateral agreements from the obligation to obtain the right to provide grants. • According to the Law, NGOs in Azerbaijan can receive foreign funding only from foreign donors that have an office in Azerbaijan, signed an agreement with Ministry of Justice and have the Ministry of Finance’s opinion on financial-economic expediency of a grant. • Neither the law on grants nor the law on NGOs directly demand that foreign donors register their representations in Azerbaijan in order to get the right to issue grants in the country. This issue is open to various legal interpretations. • The procedure of grant registration remains complex and ambiguous. No legislative changes have been made. Please, note that donors are not required to apply for registration of their grants, if NGO-receipts do so, following the

	<p>presidential decree in October 2016. (Prior to October 2016, both a donor and an NGO were required to submit documents for registration of the same grant.)</p>
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Assessment: Not met.
No legislative changes were made and there is confusion about what are the precise requirements.

2.3 Eliminate the need to obtain the opinion on ‘financial-economic expediency’ in order to issue or receive a foreign grant.

<ul style="list-style-type: none"> • <i>There were no inputs provided by the government</i> 	<ul style="list-style-type: none"> • No legislative changes since January 24, 2018. The Ministry of Finance (MoF) is still required to provide an assessment of the vaguely defined “financial-economic expediency” of a grant. Previous issues remain, including inadequate direction on what to include in “financial-economic expediency” justifications, and vague rationale for rejecting such justifications. This provides the Ministry of Justice discretion on whether financial-economic expediency are sufficient to obtain a grant registration. • The last changes, dated on January 25, 2017, do not eliminate the need to obtain the opinion on ‘financial-economic expediency’ in order to issue or receive a foreign grant. • Although several additions and amendments have been made to the given regulations in January and July of 2017, the requirement for obtaining an opinion on a grant’s financial- economical expediency is still in practice.
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Assessment: Not met.
The “financial-economic expediency is still required and there is no clear information on the rational to reject or approve a proposal.

2.4 Simplify financial operations for NGOs. In particular, bank operations related to grants and donations should remain independent and not be subject to any state interference.

<ul style="list-style-type: none"> • Financial operations for NGOs have also been simplified and cash withdrawal limitations on bank operations to grants and donations has been extended by three times. Such as according to Article 3.4.7 of Law on “Cashless Settlements”, NGOs could only withdraw 5.000 AZN cash from banks and rest of the amount has to be carried out through cashless banking operations in order to ensure transparency and open government principles in the activity of NGOs. This issue caused some restraints on the work of small NGOs. After the recommendation of OGP Azerbaijan Platform, this limit has been increased to 15.000 AZN, which was highly welcomed by an NGO sector. 	<ul style="list-style-type: none"> • The information in government’s response regarding changes in cash withdrawal rules is correct. However, Article 34.7 of the law on "Non-Cash Settlements" regulates only "the use and expenditure of funds obtained through public procurement contracts", which cannot be applied to grants from foreign donors. • The results of the survey conducted among 50 leading NGOs show that 92% feel that bank operations related to grants and donations should remain independent and not be subject to any state interference.
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Assessment: Mixed.
The information provided by the government is correct. However, there is evidence that there are other legal obstacles that render the article referenced non-applicable to foreign grants.