



**REPORT OF THE LEAD CHAIR OF THE OPEN GOVERNMENT PARTNERSHIP
(OGP) STEERING COMMITTEE ON THE OFFICIAL VISIT TO BAKU, AZERBAIJAN,
13 – 15 MARCH 2016**

1. ABBREVIATIONS

CS - OGP Criteria and Standards Sub-Committee

OGP - Open Government Partnership

NAP – OGP National Action Plan

NSA – Non-State Actors

SC - OGP Steering Committee

SU – OGP Support Unit

2. EXECUTIVE SUMMARY

The Deputy Minister for Public Service and Administration (DPSA), Ms Ayanda Dlodlo, in her capacity as South Africa's Special Envoy to the Open Government Partnership (OGP) and the current Government Lead Chair of the OGP, undertook an official visit to the Republic of Azerbaijan on 13-16 March 2016.

The Lead Chair's visit to Azerbaijan was in response to a complaint submitted to the Criteria and Standards Sub-Committee in terms of the Policy on Upholding the Values and Principles of the OGP, commonly referred to as the Response Policy.

In early 2015 the OGP Criteria and Standards Sub-committee received a letter from international Non-Governmental Organizations (NGOs) submitting a complaint against the Republic of Azerbaijan for allegedly implementing legislation aimed at stifling civil society's space and freedom of association.

In response to the allegations against the government of Azerbaijan, the OGP Criteria and Standards Sub-committee (CS) processed the complaint in line with Response Policy. This process reached a final stage during a meeting of the CS Subcommittee held in Washington on 23 February 2016. At the meeting the subcommittee resolved to recommend to the Steering Committee the implementation of Stage 2 of the Response Policy. Stage 2 of the policy states that a country that has not complied with the requirements and obligations of the OGP be declared non-active and be suspended from the Partnership. Therefore, the meeting agreed to make a recommendation to the OGP Steering Committee that Azerbaijan be declared non-active and consequently suspended from participation in the OGP

At the same 23 February 2016 meeting, Deputy Minister Dlodlo made an undertaking to travel to Azerbaijan in order to engage directly with the Government of Azerbaijan with a view of finding an amicable solution to the impasse and avoid the suspension of the country.

During the official visit to Azerbaijan, the Lead Chair met with representatives of the government of Azerbaijan including the OGP National Focal Point, Mr. Vusal Huseynov, the Chairman of the State Agency for Public Services and Social Innovations, Dr. Inam Karimov, Chairman of Council of State Support to NGOs, Mr Azay Guliyev and the Deputy Minister of Foreign Affairs, Mr Mahmud Mammadguliyev.

Furthermore, meetings were held with members of civil society organizations that included the Chairwoman of the Azerbaijan National Chapter of Transparency International, Ms. Rena Safaraliyeva, the National Coordinator of NGO Coalition on Anti-corruption, Mr. Alimammad Nuriyev, Mr. Kanan Aslanli, the Chairman of the Protection Rights of Labourers, Mr. Sahib Mammadov, the chairperson of the Support to Economic Initiatives, Mr. Rovshan Agayev, the Law and Development Public Union Chairperson, Mr. Hafiz Hasanov, and Professor Israyil Isgandarov of the Social Support Centre.

The purpose of this report is to apprise the OGP Steering Committee of the outcomes of the OGP Lead Chairperson's official visit to Azerbaijan and inform the committee of the proposed recommendations aimed at an amicable resolution.

3. BACKGROUND TO THE OGP CASE AGAINST THE REPUBLIC OF AZERBAIJAN

3.1 OGP Response Policy and the case against the government of Azerbaijan

3.1.1 In May 2014, the Open Government Partnership (OGP) adopted a Policy on Upholding the Values and Principles of the OGP commonly referred to as the Response Policy. This policy was created by the OGP with the purpose of ensuring that the values and principles of the OGP are upheld and that the initiative maintains the highest level of integrity.

- 3.1.2 The first case to be dealt with by the OGP based on the Response Policy is the complaint against the Government of Azerbaijan filed by international civil society organizations namely: CIVICUS, Publish What You Pay, and Article 19. This complaint was submitted to the OGP on the 2nd of March 2015.
- 3.1.3 According to the complaint, the government of Azerbaijan is alleged to have introduced legislation aimed at stifling civil society space and freedom of speech.
- 3.1.4 The amendment to legislation regulating the registration and operations of CSOs by the Government of Azerbaijan is alleged to have introduced many obligations for civil society organisations that effectively prevent them to practice freely without hindrance.
- 3.1.5 These amendments include new registration requirements and rules regarding receiving and using grants, as well as reporting obligations. The perception of the amended law by civil society formations within the OGP is that the Government of Azerbaijan is assuming a paternalistic approach towards Non-Governmental Organizations.
- 3.1.6 On the 18th of May 2015, the Criteria and Standards Subcommittee resolved that the complaint as submitted against the Government of Azerbaijan was valid, as a result of this decisions the implementation of stage 1 of the Response Policy was proposed for implementation.
- 3.1.7 The CS report further directed the government of Azerbaijan to implement a set of recommendations to improve the situation in that country as outlined below:
- To ensure that the process to develop the Second National Action Plan is initiated with the aim of putting Azerbaijan implementation

cycle in line with other OGP countries. The National Action Plan could be adopted either by the end of December 2015 or beginning of January 2016.

- Facilitate consultation with civil society for the drafting of the new National Action Plan and ensure that the process is open, participatory and with broad engagement of civil society as it was practiced before.
- Anti-Corruption Commission to consider initiating the establishment of an OGP Coalition of NGO's and carry out all these processes in close cooperation with civil society institutions in case, by that time there won't be any other effective mechanisms.
- As soon as the process of compiling the National Action Plan is launched, civil society institutions will be invited to submit their proposals with no limit or circle of organizations to be consulted.
- Work in collaboration with the OGP network, support unit and all international stakeholders that have specific expertise, experience and success in this field to improve the OGP process.
- Commit to improving the operating environment for civil society through consultations and consideration of constructive proposals of all stakeholders including issues concerning NGO registration and grants.

3.1.8 However, since accepting the above recommendations, the Government of Azerbaijan is alleged not to have met the deadlines *set out* and agreed with CS. The last deadline set by the CS was on 31 January 2016. Following the failure to meet this deadline, the OGP Criteria and Standards Sub-committee convened a

meeting in Washington on the 23rd of February 2016; in which South Africa was invited to participate as the Lead Chair of the OGP.

3.1.9 During the February 2016 meeting, the Criteria and Standard Sub-committee informed the Co-Chair that it had resolved to recommend to the full Steering Committee scheduled for May 2016 to relegate Azerbaijan membership into a non-active member status as a sanction for their alleged failure to address the recommendations of the OGP.

3.1.10 The above proposed sanction is in line with the Stage 2 phase of the Response Policy and entails one of the two:

- 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 the OGP; and
- Recommend that the OGP co-chairs author a letter to the country informing them they are to be temporarily listed as inactive in OGP.

3.1.11 In line with the above and as part of the Response Policy sanction, the government concerned remains inactive; until such time that the concern is resolved. If a government becomes temporarily inactive it is not entitled to claim back its dues to the OGP for the current financial year.

3.2 Engagement by the Lead Chairs with the Criteria and Standards Sub-committee on the Azerbaijan case

3.2.1 On 23 February 2016, South Africa participated in the meeting of Criteria and Standards, where the case of Azerbaijan was discussed and a possible recommendation was shared with the co-chairs.

3.2.2 After reviewing the case as presented by Criteria and Standards the Lead Chair observed that in the stages followed by the subcommittee, a number of actions

as envisaged in Stage 1 of the Response Policy had not been fully explored or implemented by the Steering Committee; these include diplomatic outreach and an offer to broker technical support etc.

- 3.2.3 Furthermore, in view of the seriousness of the recommendation of CS and its implications to that country, the Lead Chair requested the meeting to allow the co-chairs to undertake a visit to engage directly with the government of Azerbaijan.
- 3.2.4 This request was discouraged by the CS subcommittee based on concerns for security of the civil society organisations that submitted the complaint. The Civil Society Co-chair further recused himself from being part of a visit to Azerbaijan.
- 3.2.5 The CS further informed the Lead Chair that it would not be willing to review its recommendation based on any outcomes of the proposed engagement with Azerbaijan, because in its opinion such would have meant a deviation from the prescripts of the Response Policy.
- 3.2.6 South Africa as the Lead Chair committed to undertake the official visit to engage the Government of Azerbaijan on behalf of the OGP as a process separate to the CS processes as envisaged in the Response Policy.
- 3.2.7 This decision was taken by the Lead Chair in anticipation of the Steering Committee scheduled for the 4th of May 2016 after careful consideration of the following:
- a. A conviction that the OGP should not be seen to be punitive in its approach to dealing with countries that show signs of weakness, but rather be viewed to be supportive and citizen centric in its approach;

- b. The OGP was conceptualised to be a mechanism through which citizens derive greater benefit from good governance to access services that improve their lives;
- c. The OGP was intended to be a mechanisms that provides countries with direct support so that they are able to improve their performance and progressively achieve open government objectives;
- d. The citizens of Azerbaijan would experience the greatest disadvantage if the OGP is no longer able to have influence in promoting open government in Azerbaijan as a result of the suspension;
- e. The Government of Azerbaijan had been fully engaged in the process and had made positive attempts to implement the recommended corrective measures which meant that the government respected and attached significance to the role of the OGP.

3.2.8 On several occasions in the Governance and Leadership Subcommittee and in the Steering Committee South Africa reported on its engagement with the Government of Azerbaijan through its embassy in South Africa. In these reports it was submitted that the Government of Azerbaijan was willing to cooperate with the OGP in trying to address the complaints raised by civil society and that this was an opportunity for the SC to ensure an amicable resolution of the problem. These reports however were not followed up on by the Steering Committee.

4. SOUTH AFRICA'S ENGAGEMENTS WITH STAKEHOLDERS BASED IN SOUTH AFRICA

- 4.1 In preparation for the official visit to Azerbaijan, the Lead Chair consulted extensively within the South African government and civil society stakeholders that have working knowledge and operate in Azerbaijan.
- 4.2 The meeting with government experts provided a diplomatic and security briefing (internal to government), both of which came out positive and encouraged the

official visit to Azerbaijan. The Lead Chair relied on this information in preparation for the trip.

- 4.3 On 08 March 2016, the office of the current Lead Chair, met with the representatives of the Jehovah's Witness (JW) in South Africa (more details of the meeting are available on request). The meeting was prompted by the fact that the Jehovah's Witness group had formally approached the South African government with a formal complaint against the government of Azerbaijan.
- 4.4 During discussions with the JW team they raised the following issues of concern to them:
- i. Government's Law on Freedom of Religious Beliefs (Article 12);
 - ii. Right to Conscientious Objection to Military Service
 - iii. Law on Freedom of Religious Beliefs
 - iv. State censorship of Religious Literature
- 4.5 Jehovah's Witness Demands to the government of Azerbaijan were expressed as the following:
- Immediate release of all Jehovah's Witnesses currently imprisoned for their religious beliefs;
 - Stop interfering with religious worship and manifestation of belief;
 - Recognize the right to conscientious objection and provide an alternative service program, conforming to international standards;
 - Recognize the right to religious freedom and fully register Jehovah's Witnesses; and
 - Allow Jehovah's Witnesses the unhindered use of their religious literature.
- 4.6 On Monday 14 March 2016, the Lead Chair was already in Baku and received a letter from the Chair of the Criteria and Standards providing advice and information to assist her with the visit to Azerbaijan. The reason for this letter was

not clear because the CS had already indicated that the visit fell outside the Response Policy process. The letter is copied herein as **Annexure A**.

5. OGP LEAD CHAIRPERSON'S ENGAGEMENTS IN AZERBAIJAN

5.1. Attendance at the Azerbaijan OGP National Action Plan Activities

- 5.1.1. On 14 March 2016 Lead Chair briefly attended a stakeholders meeting organised by the Government of Azerbaijan to consult with civil society and strategic partners on the draft OGP National Action Plan (list of attendees to be supplied).
- 5.1.2 The Lead Chair was given a platform to address the gathering. She informed the meeting that she was on an official visit as Lead Chair of the OGP and that the visit was necessitated by the fact that Azerbaijan on the verge of losing its membership in the OGP and be declared in-active unless the country complies with all its undertakings and obligations under the OGP.
- 5.1.3 The Lead Chairperson further informed the meeting that she was in Azerbaijan to perform her role of Lead Chair, that of protecting the integrity of the initiative and also ensuring that the country is given the necessary support.
- 5.1.4 The Lead Chair informed the gathering that she would do her best to ensure an objective assessment of the situation and give all stakeholders, including civil society, a fair hearing on the state of the OGP in the country.
- 5.1.5 The Lead Chair emphasised that the OGP is not only about government and civil society, and that citizens should be encourage to participate in the OGP processes.
- 5.1.6 She concluded by expressing her hope that remedial action will be taken before the meeting of the OGP Steering Committee scheduled for May 2016 in Cape Town, South Africa, and that such action will ensure that Azerbaijan remains within the family of the OGP.

5.2. Meeting with the OGP National Focal Point, Mr. Vusal Huseynov

5.2.1. On the morning of 14 March 2016, the Lead Chairperson met with the Azerbaijan OGP National Focal Point and Member of Parliament, Mr. Vusal Huseynov. The Focal Point welcomed the Deputy Minister and expressed gratitude to her for undertaking to visit Azerbaijan in order to assess for herself whether or not the situation warrants the proposed sanction and to engage with all parties in order to develop a comprehensive and balanced perspective on issues.

5.2.2. During the meeting Mr Huseynov indicated that even though he has since left the Anti-corruption Commission, during which time he participated in the drafting of anti-corruption legislation and has been involved with the OGP since the beginning, he was aware of all changes to laws that are in dispute under the OGP's Response Policy. An account of the changes to law from a government point of view as presented by Mr Huseynov is as follows:

- a) Amendments made to the Law on Registration of Grants in 2014 make it a requirement that recipients of foreign donations register with the Ministry of Justice. After registration with the Ministry of Justice organizations then receive a notice from the bank and are also expected to register with the Ministry of Finance.
- b) Prior to the amendments on the Law on Registration of Grants, organizations receiving grants were able to avoid scrutiny and accountability and more often than not some NGO officials transferred money into their personal accounts. This resulted to cases of embezzlement against these individuals. The government of Azerbaijan does have records of these incidents and cases of self-enrichment in their possession.

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- c) Prior to the new laws, CSO's often undertook activities without registration.
- d) The amendment to the law introduced applied to foreign and not local donors or NGOs.
- e) Over and above registration with the Ministry of Justice, NGOs receiving donations from foreign sources are also required to register with the Ministry of Finance. The intention of the latter registration requirement is to minimize tax evasion and the prevalent syphoning of donor funds and their diversion for illegal activities and self-enrichment.
- f) Prior to the amendments of registration law, there were arrests for embezzlement and banks had to freeze these funds and this made it difficult for foreign donors to access the funds.
- g) The challenge with accessing the frozen funds by foreign donors is the main reason that prompted Civicus and the other two international NGOs to write a letter to the OGP CS alleging that Azerbaijan was restricting space for the operation of NGOs.

5.2.3. An account on Azerbaijan's interaction with the OGP also presented by Mr. Huseynov is the following:

- a) Azerbaijan officials responsible for the OGP responded to the letter from the CS indicating how the government planned to effect the recommendations of the CS report;
- b) A meeting took place between the government of Azerbaijan and the Support Unit representatives in Tbilisi in June/July 2015. This meeting attempted to reach consensus with Azerbaijan on how resolve the situation and the government of

Azerbaijan promised to ensure that remedial interventions aimed at resolving the situation will be included in the new OGP National Action Plan that was being developed;

- c) On the Country Action Plan timelines that have been raised by the CS as part of the reasons for proposed suspension due to non-compliance, the Azerbaijan government informed the OGP in writing that the country needed to review the previous action plan, a process envisaged to be completed in December 2015 and that the country would be in a position to submit a new Action Plan in January 2016.
- d) The government of Azerbaijan committed to include new commitments in the Country Action Plan to address matters of concern in relation to the amendments made on the Grants Laws and other related issues.
- e) The government of Azerbaijan informed the SU that in October 2015 they were starting to draft the new Action Plan before the Global Summit held in Mexico, even though they had not completed the assessments and consultations.
- f) In response the SU requested engagements between CS and the Government of Azerbaijan in Mexico. The request was accepted and the Azerbaijan sent its Ambassador in Mexico to represent the country at the meeting.
- g) The Government of Azerbaijan took exception to the fact that the Global Summit platform was used by some members of the Steering Committee to make pronouncements on the cases of incarceration of civil society members in Azerbaijan especially because this matter was still being processed by the appropriate body in the OGP. This led the government of Azerbaijan to think that this was the position of the Steering Committee and therefore a decision had already been taken against the government of Azerbaijan irrespective of its efforts.

- h) In further engagements between the government of Azerbaijan and the SU they were requested to submit video evidence of people that participated in the consultations for the new National Action Plan a week before so as to enable the SU to upload it on the website.
- i) As part of continued engagements on the matter the Azerbaijan Focal Point met with the Ambassador of Croatia and some officials from the SU in the USA in order to attempt to find an amicable solution to these issues.
- j) Despite previous correspondence between the government of Azerbaijan and the OGP SU on process of the drafting of the new Action Plan (including engagements on feasible deadlines), the Government of Azerbaijan was surprised to receive a letter from the Executive Director of the SU informing them that the deadline for the submission of the National Action Plan (with remedial commitments and adequate consultations reflected), was January 2016 and that there will be no further extension.
- k) The letter from the SU further stated that they were requested to send all the evidence of consultations including pictures before the deadline, notwithstanding the on-going consultations with the view of reaching consensus on commitments aimed at addressing concerns raised with the SC.
- l) After this letter the Government to Azerbaijan was then informed that the CS had recommended that Azerbaijan be declared non-active and be suspended from the Partnership.

5.2.4 The following were concerns raised by the government of Azerbaijan in relation to the OGP and the process:

- a) Azerbaijan was not treated fairly since there was no peer learning and support assistance provided to that country before this drastic recommendation was made.
- b) The Government of Azerbaijan had only agreed with the SU and the CS on one recommendation for inclusion in the new Country Action Plan which related to the “operating environment for CSOs” and not the other five (5) on which they are now being suspended for failing to implement (refer to paragraph 4 in **Annexure B**)
- c) The OGP did not practice parity in dealing with deadlines to countries and adherence to policies, since the same strict deadlines on country action plans have not been applied to countries such as Turkey, Australia, Kenya, Malawi, and Montenegro for non-compliance.
- d) The government of Azerbaijan has been placed at a disadvantage for insisting that there be regulations of financial flows into the country despite global concern on illegal flow of funds to Non-State Actors (NSA) such as “terrorist” groups.
- e) The Azerbaijan government will furnish the Lead Chairperson with the information and details on cases of those that have been detained in relation to illicit activities of laundering donor funds (see **Annexure C**).

5.3. Meeting with members of OGP participating Civil Society

5.3.1 On 15 March 2016, the Lead Chair met with representatives of civil society organizations participating in the OGP in Azerbaijan. These organizations were represented by the Chairwoman of the Azerbaijan National Chapter of Transparency International, Ms. Rena Safaraliyeva, the National Coordinator of NGO Coalition on Anti-corruption, Mr. Kanan Aslanli, the Chairman of the

Protection Rights of Labourers, Mr. Sahib Mammadov, the chairperson of the Support to Economic Initiatives, Mr. Rovshan Agayev, the Law and Development Public Union Chairperson, Mr. Hafiz Hasanov, and Professor Israyil Isgandarov of the Social Support Center.

5.3.2 The Lead Chair informed civil society representatives that the visit was prompted by alleged non-compliance to the OGP values and principles by the government of Azerbaijan. She informed civil society of the decision by the CS to recommend to the SC that Azerbaijan be declared non-active as per the provisions of the Response Policy.

5.3.3 The Lead Chair further indicated that the intention of her visit was to engage both government and civil society and that she came with an open mind to solicit views and possible solutions in response to the issues raised by the CS sub-committee since these go beyond the two parties and affect the lives of the people of Azerbaijan.

5.3.4 The summary of inputs by the civil society delegation is capture herein as follows:

- i. The civil society delegation welcomed intervention by the Lead Chair and expressed their collective appreciation of her efforts to ensure that she has firsthand experience on the issues raised instead of relying on third party reports via emails.
- ii. Azerbaijan was amongst the countries that joined the OGP in 2011 and immediately embarked on its National Action Plan process and that civil society has since been part of the Partnership in the country.

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- iii. The civil society in Azerbaijan wanted the Lead Chair to take a message back to the Steering Committee that civil society participating in the OGP in Azerbaijan was against the suspension of the country from the Partnership.
- iv. The civil society observed that the complaint filed with the OGP did not come from inside Azerbaijan and did not emanate from internal NGOs involved with the Partnership but came from outside actors.
- v. Civil society in Azerbaijan felt that the OGP was a good instrument for transformation as that it gives them a chance to monitor government and hold it accountable to its citizens.
- vi. The civil society delegation stated that they have participated in all processes of the country action plan, although this participation has not always been smooth and easy, but it has always been done in good faith and collaboration on the part of government.
- vii. Furthermore, in relation to Azerbaijan's latest Country Action Plan, civil society organizations have participated in three (3) public consultations during its development. During these consultations civil society has seen concrete evidence that the suggestions and inputs they have made have been acceptable to government and have made their way into the Plan.
- viii. However, civil society stated that they feel that there are still major challenges around areas of financial transparency, general transparency and public participation in the country.
- ix. The civil society delegation expressed a concern that there is a lack of urgency on the part of government in improving legislation around transparency and the participation of CSOs in the country's body politic. They further indicated that they hope that the current Country Action Plan will

include changes such as the harmonization of Grants registration legislation as well as make provision for a creation of an OGP Platform for a Network of NGOs.

- x. The delegation informed the Lead Chair that there have been civil society members who have been arrested by the government. Some have been sentenced to seven years, some a few months and others have been released but put under house arrest.
- xi. There was hope that the Presidential decree recently signed by the Head of State will lead to the release of civil society members remaining in custody. They stated that two have already been released but they are part of those remaining under house arrest.
- xii. The civil society members indicated that although they understand that adherence to timelines is part of the obligations and policy requirements of the OGP, the stringent nature of these timelines limits the deepening and depth of public engagements with government on the final commitments to be included in the Country Action Plan.
- xiii. They viewed this limitation as important to address since it impacts on the country's ability to ensure that the Country Action Plan is consulted with all stakeholders of society including sub-national levels. Although civil society has seen some positive action from government, they did not think that these interventions were adequate. *The delegation felt that it was important for them to remain in the OGP in order to effect the necessary change needed in Azerbaijan.*
- xiv. Some members of the delegation informed the Deputy Minister that Azerbaijan was a small country in a neighbourhood surrounded by regional powers such as Turkey and Russia. This coupled with the history of the

country and the developments of more than twenty (20) years since the disintegration of the Soviet Union have largely influenced the evolution of state – civil society relations

- xv. The delegation felt that Azerbaijan's National Action Plan should go beyond the numbers and be more specific and transparent on the intended action aimed at addressing issues of mutual discord. These should include improvement of e-services by ensuring that, beyond the application and registration phase, these e-services are accessible and people do not need to travel distances in order to receive services they have applied for.
- xvi. In addition, the delegation felt that Azerbaijan should improve the business climate and make provision for benchmarking information in order to enable the country to measure inputs and outcomes as well as impact so that the government does not remain the only source of information in assessing performance on commitments.
- xvii. The delegation expressed a firm view that the people of Azerbaijan will benefit from transformation if the country stays in the OGP and is not suspended. They expressed conviction that the OGP has contributed significantly to the climate of engagement and collaboration between government and civil society in the country.
- xviii. The delegation stated that there are noticeable changes that can be seen in the country's body politic since the time the country joined the OGP. There was evidence that government's attitude towards civil society has improved and was more positive. Therefore, civil society felt that if Azerbaijan stays in the Partnership it affords the country an opportunity to improve and change legislation that is contentious as well as enhance civil society's access to government held information. Remaining in the OGP is further viewed by civil

society as providing a platform for engagement with a broader community of CSOs, globally.

- xix. In relation to the requirements for registration under the amended laws on Grants I, the delegation felt that the process is cumbersome and long, sometimes taking up to six (6) months for people or organizations to register to be a donor.
- xx. The delegation stated that in October 2014 when amendments were made it was envisaged that the process will take three (3) months but in some instances it has been taking up to a year to finalize the application and registration process.
- xxi. This, they argued, technically means that during this long process, sometimes up to two years in exceptional cases, civil society organizations cannot access funds for their operations. This is because procedures for registration are too complicated and require a substantial overhaul, something the new OGP National Action Plan should prioritize. Therefore, civil society will effect changes to laws if they stay within the OGP because both actors need each other for the benefit of their country.
- xxii. Concerns were raised with regard to public participation in the OGP in Azerbaijan. The civil society organizations were of the view that there is insufficient representation and participation of parliament in the OGP.
- xxiii. They proposed that a representative of the OGP should enhance interaction with parliament. In addition, they raised concerns around the legal framework, especially as it relates to the need to ensure that Presidential decrees are widely distributed through e-services and are online as provided for legally.

- xxiv. The delegation stated that there are other parts of the legislative framework that prohibit effective journalists participation in courts since they are not allowed to take notes during proceedings whilst the Presidential decrees require that information must be online. These provisions are a contradiction and require harmonization of legislation regulating electronic online legal information.
- xxv. Civil society organizations agreed that the Presidential decree effecting the release of civil society members that were jailed is in itself a sign of gradual change and responsiveness on the part of the government of Azerbaijan. They agreed on the need to harmonize and simplify the grant system.
- xxvi. The delegation asked the Lead Chairperson to engage the government of Azerbaijan and lobby for the release of civil society members still in jail.
- xxvii. Additional positive developments on the part of government beyond the Presidential decree such as the resumption of the registration of grants, suspension of criminal cases against some civil society members, and the freezing of assets has been lifted.
- xxviii. On their part the civil society representatives acknowledged that although the government has made mistakes and initially perceived them as a threat to national security, it has made some strides towards change and transformation such as reforming policies and legislation in relation to the business environment and attempt to limit the country's dependence on oil and energy, in addition to readiness to reform legislation affect NGO operations.

5.4 Meeting with the Deputy Minister of Foreign Affairs for the Republic of Azerbaijan

- 5.4.1. On 15 March 2016 the OGP Lead Chairperson met with the Deputy Minister of Foreign Affairs of Azerbaijan. The Deputy Minister thanked the Lead Chair for her visit and approach in getting the situation resolved in a balanced and amicable way.
- 5.4.2 The Deputy Minister stated that the prospect of suspension was not a comfortable situation for the government of Azerbaijan. This was made more unfortunate due to the long time that the country has participated in the Partnership. He further stated that Azerbaijan is a member of the Council of Europe and that government versus civil society tensions were natural and everywhere.
- 5.4.3 The Deputy Minister confirmed what was expressed by other government officials that the arrests that have taken place were due to tax evasion by some CSOs. He stated that the government continues to support and provide resources for the participation of civil society in the country's political life.
- 5.4.4 He informed the lead Chair that although his Ministry of Foreign affairs had not been directly involved with the drafting of the Action Plan, it was time for more active involvement and assistance to those directly involved in the OGP. He committed his Ministry in ensuring that the new deadlines agreed are met and to further strengthen engagements on resolving the outstanding issues.

6. OBSERVATIONS AND RECOMMENDATIONS

- 6.1 There is a collective sense of gradual improvements in the democratisation process and openness in Azerbaijan. Notwithstanding this, some civil society expressed concerns that more still needs to be done by the government in order to improve the democratic space and the environment in which civil society operates.

- 6.2 The OGP Lead Chair met with both government and civil society in Azerbaijan. The willingness on both sides to be frank whilst working collaboratively was encouraging and made it possible to conclude that there was an opportunity for the OGP to contribute positively towards the Azerbaijan's democratisation process.
- 6.3 Whilst the Azerbaijan civil society had concerns about the government's progress in implementing OGP, these concerns are not extreme to necessitate a call for the suspension of the country for the OGP.
- 6.4 Civil society in Azerbaijan is mainly concerned with the lack of harmonization of the legislation and the lengthy and tedious process of registration where both the Ministry of Justice and the Ministry of Finance are involved in the application process.
- 6.5 There is an acknowledgement by civil society that the government of Azerbaijan is responding to issues raised by the OGP. They cited an example of the recent Presidential decree aimed at releasing jailed members of civil society.
- 6.6 There is a collective acknowledgement between both government and civil society that the suspension of Azerbaijan from participation in the OGP would be counterproductive. Civil society is of the view that their country's participation in the OGP has provided them with much needed and productive space to engage government and monitor their delivery on obligations they have made under the Partnership.
- 6.7 All stakeholders involved in the drafting of the OGP National Action Plan agreed to extended and public engagement and participation through, inter alia, community radio stations and citizen participation forums in the regions beyond the capital in order to ensure consensus building and enhance involvement and ownership. There was consensus that all parties involved should prioritize this

and a proposal was made that this process takes two weeks after the visit of the Lead Chair and be completed by end of March 2016.

- 6.8 Having engaged with the government of Azerbaijan as the first case under the Response Policy, it is reasonable for Azerbaijan government to conclude that the country was not treated fairly.
- 6.9 The public statements made in OGP platforms by the members of the Steering Committee on Azerbaijan whilst this process was unfolding further reinforces the perception that the OGP is inconsistent in the application of rules and that the outcome of Azerbaijan case was predetermined.
- 6.10 Having reviewed the information provided by the government on records of those members of CSOs accused of illicit activities and money laundering. (This list of action undertaken in response to the concerns raised by the CS and the related criminal cases is appended in this report as **Annexure C**), it is clear that the diplomatic outreach was effective in this case.
- 6.11 In view of these observations, the Lead Chair recommends that the Steering Committee should invite the government of Azerbaijan to attend a special session of the SC to discuss the situation. This recommendation is in line with Stage 2 actions of the Response Policy.

ANNEXURE A

Dear Deputy Minister Dlodlo:

In my capacity of chair of the Criteria and Standards (CS) subcommittee of the Open Government Partnership (OGP), I wanted to provide you with some reading materials ahead of your trip to Baku this week. While your trip falls outside of the official CS Response Policy process concerning the country, I felt the attached materials (drawn from our Response Policy procedures) might serve as useful framing for your meetings and conversations.

I have attached the following key documents:

- 1) **The condensed Summary of Findings from the original CS Response Policy report** prepared on the situation in Azerbaijan following receipt of the original complaint letter.
- 2) **A September statement from the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein** condemning the ongoing crackdown on civil society and independent voices in Azerbaijan. While there are many such statements in recent years from a myriad of respected international observers, this particular statement provides a good example of the degree of international concern being paid to civic space issues in the country.
- 3) **The full decision unanimously agreed by CS at its February 2016 meeting recommending that the full OGP Steering Committee place Azerbaijan in inactive status at the May steering committee meeting in Cape Town.** The recommendation contains an important timeline and summary (Annex 1) laying out the actions CS originally requested from the government to avoid stage 2 actions under the Response Policy, and the government's unfortunate failure to meet those requests. A central unresolved issue which has forced CS to move forward with its recommendation of inactivity is the country's inability to include meaningful reforms in its forthcoming (and very delayed) OGP National Action

Plan concerning the implementation of the laws and regulations that govern NGOs in the country. The current NGO laws are being implemented in such a way that cuts off virtually all third-party (e.g. non-government) funding of NGOs in the country, forcing the closure of many prominent organizations and deeply undermining the OGP co-creation process in Azerbaijan.

My civil society colleagues on the subcommittee have also provided the following advice on how best to navigate any interactions you might have with Azeri civil society while on your trip.

- 1) Azerbaijan was an original pioneer of the “GONGO” construct. **Government-controlled NGOs** are designed to provide the appearance of an independent civil society to outsiders but are in fact controlled and influenced (often through a reliance on funding) by the government. While some organizations you meet with will appear to be “regular” NGOs as we would expect to find them in South Africa, Brazil, or the United States, they may in fact be illegitimate GONGOs. Following your trip, the civil society members of the steering committee are happy to vet the background of any third-party organizations you meet with to verify their bona fides.
- 2) As discussed during our session in Washington in February, Azerbaijan is a surveillance state with persistent physical and digital surveillance. To maintain the integrity of your visit, assume that any meetings with government interlocutors will include members of the intelligence apparatus regardless of official title. Similarly, we would advise against discussing the Response Policy case or other sensitive matters over non-encrypted digital channels; hotel, government office, and airport wireless access points are almost certainly compromised.
- 3) Given the short notice of your meetings, it will be difficult to safely arrange meetings with non-GONGO civil society organizations. Those organizations and individuals take a risk by meeting with high-profile visitors such as yourself and would be questioned by the authorities following your trip. After your trip, we are

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happy to arrange for virtual conversations with groups and organizations we consider more legitimate representatives of Azeri civil society and public interest issues. Please do let us know if those conversations would be helpful.

ANNEXURE B

To: Open Government Partnership Criteria and Standard Subcommittee

Dear members of OGP Criteria and Standard Subcommittee

Please note below developments which planned to be initiated and carried out concerning submitted proposals.

1. Timeline for the next National Action Plan Considering the fact that the current Action Plan ends at the end of December and drafting of a new plan takes time with consultations, expertise and etc. it's planned to initiate the drafting of New Action Plan in mid-October for 18 month period with the purpose of putting Azerbaijan implementation cycle in line with other OGP countries. Action Plan could be adopted either end of December or beginning of January.

2. Consultation with civil society Consultation process for the drafting of New Action Plan will be open, participatory and with broad engagement of civil society as it was practiced before. Anti-Corruption Commission may initiate the establishment of OGP Coalition of NGO's and carry out all these processes in close cooperation with civil society institutions in case if by that time there won't be any other effective framework/platform to carry out this process. As soon as the process is launched civil society institutions will be invited to submit their proposals. There is no limit or circle of organizations we intend to consult. It will be open to everyone and any organization including our international partners who also can contribute and be part of a process.

3. Peer exchange and technical support We also intend and rely on resources and assistance of OGP network, OGP support unit and all international stakeholders that have specific expertise, experience and success in this field and ready to consider all constructive proposals.

4. Commitments to improve the operating environment for civil society We believe Action Plan developed under such framework will reflect needs of all stakeholders, recommendations by IRM and OGP and will be another indication of political will in strengthening civic participation in Azerbaijan. Open process and strong intention to implement OGP principles will create effective platform for discussions and result in agreed commitments. Concerning raised concerns on operating environment for civil society, as we noted in one of previous correspondence the aim of introduced reforms in NGO legislation was to bring more clarity and transparency into the activities of NGO's especially grant related issues. Ministry of Justice will be involved into the process as their representative is the member of Anti-Corruption Commission's working group on improvement of legislation. Apart from that its representatives will be invited to public hearings and discussions of new Action Plan. At this point we can't say which commitments or measures will be reflected in new Action Plan as this need to be discussed and agreed with all stakeholders. Officials from respective government bodies have their views on the situation and consider it in line with international practice. We aim to develop commitments and reach the situation in which there is no room for concerns. Therefore we'll consult and take into consideration constructive proposals of all stakeholders including issues concerning NGO registration and grants.

5. Working with the OGP Steering Committee We are keen on to meet with members of the Criteria and Standards Subcommittee and discuss the specific issues on commitments during OGP summit in Mexico. We highly appreciate the support offered by Support Unit and Criteria and Standards Subcommittee members and are looking forward to work together for better results.

Best Regards, V.Huseynov Vusal Huseynov National Point of Contact Executive Secretary Anti-Corruption Commission Azerbaijan Republic

ANNEXURE C

To: Open Government Partnership Steering Committee

Dear members of OGP Steering Committee

Please note below developments in regard to existing concerns.

1. Timeline and availability of drafting process of National Action Plan

Drafting process of new Action Plan on Open Government started on 21st October 2015. All information regarding the development process and public consultations were made publicly in English and Azerbaijani languages in the website of Anti-Corruption Commission of the Republic of Azerbaijan. Citizens, representatives of relevant state bodies, civil society institutions and other stakeholders were informed proactively through multiple channels including internet pages, NGOs' networks, Working Group near Anti-Corruption Commission and direct invitations. Details of public consultations, format for input, materials for discussions and contact details were published in the webpage of Anti-Corruption Commission 7 days prior to each consultation. Findings of each public discussion, list of participants, pictures of meetings and summary of responses through online submissions were made publicly available as well. This information was submitted to OGP Secretariat as well based on previous recommendation and communication.

Initially it is planned to finalize drafting process of new action plan by the end of December 2015 and submit for adoption on January 2016. But the number of proposals and active involvement of civil society preconditioned that more time is needed to finalise the process. By request and with consultation with Anti-Corruption Network of NGOs, it was agreed and accepted by all stakeholders to extend drafting process in

order to prepare a Action Plan with numerous commitments, which reflects needs and concerns of all stakeholders. Drafting Process of action plan is almost finalised and is expected to be submitted for signing next week by 24th of April. It is expected that new Action Plan will be adopted in the beginning of May. Draft Action Plan includes 11 directions and more than 50 commitments including commitments on NGO activities and in general operating environment.

2. Consultation with civil society

Consultation process of drafting of new action plan was transparent, open for everyone and any organization including our international partners. In the first announcement, Anti-Corruption Commission has kindly asked all interested parties to actively participate in drafting process and submit their proposals electronically. Multiple channels were provided for all stakeholders to reflect their views and concerns regarding measures envisaged in draft action plan. Drafting process was carried out by mainly representatives of civil society institutions within framework of Anti-Corruption Network of NGOs and Working Group near Anti-Corruption Commission together with several public hearings and expert level meetings.

National chapter of Transparency International and Anti-Corruption Network of NGOs have submitted package of measures, which encompass main part of draft action plan. Furthermore three public discussions were held on draft action plans and all recommendations of non-governmental organizations were noted, published in the website of Commission and integrated to new action plan. In latest public discussion more than 80 participants including mostly representatives of NGOs, international organizations, foreign embassies and public institutions attended. Beside the public discussions, several working-level meetings were carried out with representatives of NGOs, state bodies, citizens and international partners. Further internet links provide information, pictures and details (names of participants and organizations attended) on implementation of public discussions.

- 1) Third public discussion: <http://goo.gl/zmdUf8>
- 2) Announcement of third public discussion: <http://goo.gl/yfvwsp>
- 3) Second public discussion: <http://goo.gl/16xU1V>
- 4) Announcement of second public discussion: <http://goo.gl/XRkiXq>
- 5) First public discussion: <http://goo.gl/W5dyJQ>
- 6) Announcement of first public discussion: <http://goo.gl/FKphlf>

During the latest public discussion, representatives of several NGOs and international organizations have expressed their view that consultation process was open, participatory and inclusive. Delegates from South Africa chaired by her Excellency Deputy Minister visiting Azerbaijan for the purpose of submitting a report to OGP Steering Committee also attended the event. There was an open environment, all proposals were collected and considered and most of proposed measures were reflected in final draft document.

3. Peer exchange and technical support

Working Group functioning near Anti-Corruption Commission has researched past and current Action Plans of all member states of OGP from the webpage of OGP, and other sources of member countries, concluded main findings and integrated best practices of other countries to new Action Plan. Furthermore, the issue was discussed with diplomatic representative of Croatia in Azerbaijan last year before starting the drafting process. The office of Deputy Minister for Public Service Administration of South African Republic has given several recommendations regarding the drafting process of new action plan. The draft version of new action plan was also independently evaluated, legal expertise and proposals were provided by Council of Europe within the project “Strengthening the capacities of fight against corruption in Azerbaijan”.

4. Commitments to improve the operating environment for civil society

Ministry of Justice of the Republic of Azerbaijan conducts the registration of NGOs in a transparent and open format. List and format of all required documents for the registration of NGOs are publicly available in electron service portal of the ministry and citizens could send those documents through post office or in person. During the years of 2013-2015, 500 NGOs have been registered and in general more than 4000 NGOs are functioning in Azerbaijan. Adoption and implementation of Law on Public Participation, establishment of public councils near the state bodies, regular public discussions and hearings ensured the close participation of civil society institutions in the activity of state bodies.

Furthermore, projects and initiatives of NGOs on open government partnership are being regularly supported and financed by public institutions.

Recent legislative reforms on financial activities of NGOs are implemented in order to ensure clarity, accountability, transparency and openness in the financial activity of NGOs. Cabinet of Ministers recently adopted new decision which regulates matters on receiving grants from foreign donors. Recently the bases of donor agencies were increased by Presidential Decrees to enable more financial support to civil society institutions by central and local executive bodies.

Developments took place also concerning representatives of civil society institutions whose names were mentioned in the final report of Criteria and Standards Subcommittee of OGP on Azerbaijan and who were held accountable for concrete crimes including tax evasion, illegal financial activity and other legal violations.

On 13 May 2014 the Prosecutor General's Office instituted criminal proceedings under Articles 308.1 (abuse of power) and 313 (forgery by an official) of the Criminal Code in connection with alleged irregularities in the financial activities of a number of non-governmental organizations. Below is information on civil society activists whose names were noted in Steering Committee report and convicted by court decisions.

Intigam Aliyev – was convicted under Articles 179.3.2 (misappropriation), 192.2.2 (illegal entrepreneurship), 213.2.2 (large-scale tax evasion), 308.2 (abuse of power) and 313 (forgery by an official) of the Criminal Code. According to the judgment of the court he illegally gained more than AZN 431,000 (approximately USD 278,000) and avoided paying taxes in the sum of more than AZN 65,000 (approximately USD 42,000).

Rasul Jafarov – was convicted under Articles 179.3.2 (misappropriation), 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion), 308.2 (abuse of power) and 313 (forgery by an official) of the Criminal Code. According to the judgment of the first instance court he illegally gained more than AZN 150,000 (approximately USD 97,000) and avoided paying taxes in the sum of more than AZN 6,000 (approximately USD 4,000). After paying the sum of taxes the accusation under 213.1 of the Criminal Code was lifted by the appellate instance court, accordingly the imposed sentence was also decreased.

Anar Mammdly - was convicted under Articles 179.3.2 (misappropriation), 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion), 308.2 (abuse of power) and 313 (forgery by an official) of the Criminal Code. According to the judgment of the first instance court he illegally gained more than USD 163,000 without paying taxes.

Ismayilova Khadidja - was convicted under Articles 179.3.2 (misappropriation), 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the Criminal Code. According to the judgment of the first instance court she illegally gained more than AZN 335,000 (approximately USD 216,000) and avoided paying taxes in the sum of more than AZN 45,000 (approximately USD 29,000).

On 17 March 2016 President of the Republic signed pardoning decree and names of almost all civil society representatives whose names mentioned in final report were pardoned .

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Here are the names noted in the report who were pardoned by recent Presidential Decree.

- Anar Mammadli –Ex-chairman of Election Monitoring Centre
- Tofiq Yagublu – Deputy of “Musavat” party
- Yadigar Sadigov – Member of “Musavat” party
- Siraj Karimli - Member of “Musavat” party
- Rasul Jafarov – Legal protection and Awareness Society
- Hilal Mammadov – Ex-editor in chief of “Tolışi Sədo” newspaper
- Taleh Khasmammadov – human rights defender
- Omar Mammadov – Member of NIDA Movement
- Rashadat Akhundov – Member of NIDA Movement
- Mammad Azizov – Member of NIDA Movement
- Rashad Hasanov – Member of NIDA Movement

By decision of Baku Court of Appeal in 2015, Leyla Yunus and her husband Arif Yunus were released from prison. On 28th March 2016, Intigam Aliyev was released from prison.

Besides criminal cases were suspended, arrests on bank accounts were lifted and charges on tax crimes were canceled regarding the members of below NGOs most of which also actively involved into Extractive Industries Transparency Initiative in Azerbaijan on March 2016. Below are the names.

- Economic Research Center - Gubad İbadoghlu,
- Economic Research Center - Galib Bayramov
- Support to free economics - Zohrab İsmayıl
- Democratic Institutions and Human Rights - Elchin Abdullayev
- Free Person Human Rights Protection Society - Sabuhi Gafarov
- Protection of Rights of Oilmen - Mirvari Gahramanlı

- Caucasus Media Research Center - Anar Orucov
- Economic and Social Development Center - Vugar Bayramov

Furthermore, new commitments on improving enabling environment for civil society institutions and prioritizing support to projects and initiatives on open government are integrated to new Action Plan. Exact commitments defined in current draft from are noted below.

- **Preparing of proposals for improving the operational environment for NGO's** **Responsibly agency:** Cabinet of Ministers, Ministry of Justice, State Council on Support to NGO's.
- **Setting as a priority direction supporting the initiatives and projects of NGO's on Open Government and prevention of corruption** **Responsibly agency:** State Council on Support to NGO's, central and local executive bodies.
- **Establishment and support to activity of civil society platform on "Open Government Partnership"** **Responsibly agency:** State Council on Support to NGO's, central and local executive bodies. Recommended to civil society institutions.
- **Strengthening the activity of public councils and ensuring continuity of their work**
Responsibly agency: Central and local executive bodies apart from this Action Plan in general includes numerous commitments on different areas which ensures active role of civil society in its implementation and gives a strong message to the public.

5. Working with the OGP Steering Committee

Secretariat of Anti-Corruption Commission and national focal point for OGP proactively informed and responded to all inquiries of Supporting Unit and Steering Committee of OGP before the deadlines and submitted required information/updates based on requests.