



20 July 2015

Dear President Chakrabarti,

We are writing in advance of the EBRD's Board of Directors' meeting on the 22 July where you will be deciding whether to arrange up to US\$500,000,000 to Russia's Lukoil for the Shah Deniz II offshore gas project in Azerbaijan.

We urge you to reject the loan for failing to meeting the basic requirements of the Agreement Establishing the European Bank for Reconstruction and Development and the Bank's own Environmental and Social Policy. Under the EBRD Agreement, the parties must be committed to human rights, multi-party democracy, rule of law and pluralism. This is systematically being violated in Azerbaijan.

During the last few years the Azerbaijani authorities have worked aggressively to silence all forms of criticism and have effectively removed critical voices from public life. Hundreds of human rights defenders, NGO leaders, youth and social media activists, bloggers and journalists have been arrested and imprisoned.

Any loan to Lukoil to develop Shah Deniz II will squeeze the space for civil society even further as it bolsters the current regime¹, as well as contradicting **Article 1 of the EBRD's establishing agreement, which states that you lend to "countries committed to and applying the principles of multiparty democracy"**. Diversifying Azerbaijan's economy away from reliance on hydrocarbons not only makes economic sense; it is also crucial for the development of human rights and democracy in Azerbaijan.

The Aliyev family has held onto power in Azerbaijan for two decades through a combination of fraudulent elections, arresting opposition candidates, beating protesters and curtailing media freedom.

There are significant problems with Azerbaijan's democratic structures. In 2009, 29 articles of the Azerbaijani constitution were amended, the most important change being the abolition of the presidential term limit. (Previously the constitution limited presidents to two five- year terms). The constitutional change was widely condemned including by the Venice Commission (the Council of Europe's advisory body on constitutional matters).

¹ There is a large body of academic literature demonstrating the link between oil wealth and authoritarianism, in particular, in *The Oil Curse: How Petroleum Wealth Shapes the Development of Nations*, Michael Ross notes that "oil has kept autocrats in power by enabling them to increase spending, reduce taxes, buy the loyalty of the armed forces, and conceal their own corruption and incompetence," (p.63) because oil revenues are "unusually large, do not come from taxes, fluctuate unpredictably, and can be easily hidden" (p. 6). The exploitation of Azerbaijan's oil and gas wealth has hindered the development of democracy in Azerbaijan. As Rasul Jafarov explained just one month before his arrest: "Before the oil and gas incomes came to Azerbaijan we had more democracy and freedom." Hydrocarbon revenues have provided the Aliyevs with the finance needed to pay security forces and establish a secure income and therefore enabled them to ignore citizens' voices because they are not reliant on those citizens for a tax base.

According to the Venice Commission's opinion "Azerbaijan, the Constitution of which provides for a Presidential system of Government, is undoubtedly a country where the President concentrates extensive powers in his hands, given the few checks and balances which exist. It was therefore logical that the original text of the Constitution of Azerbaijan provided for a two-term limit... Explicit constitutional limitations on the successive terms of a president are particularly important in countries where democratic structures and their cultural presuppositions have not yet been consolidated. "The recent crackdown began in 2013 in the run up to the Presidential Elections with those opposing the government being beaten and jailed. The OSCE/ODIHR Election Observation Mission concluded that the 2013 Presidential elections were "undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for candidates. Continued allegations of candidate and voter intimidation and a restrictive media environment marred the campaign. Significant problems were observed throughout all stages of election-day processes and underscored the serious nature of the shortcomings that need to be addressed in order for Azerbaijan to fully meet its OSCE commitments for genuine and democratic elections." In June 2015, the Azerbaijani authorities gave the OSCE one month to halt all activities and withdraw their project coordinator from the country.

Last year, Azerbaijani NGO the Institute for Reporter's Freedom and Safety (IRFS) submitted comments to the EBRD's country strategy (attached for your information). In the submission IRFS stated that "In the light of the Azerbaijani government's well documented failure to comply with its own commitments of democracy and pluralism we believe expansion of the Bank's portfolio in Azerbaijan is in direct contradiction to the first Article of the Agreement Establishing the Bank." Since that time the democratic and human rights situation has deteriorated even further, with IRFS becoming one of the many Azerbaijani NGOs, or local branches of INGOs, forced into suspension or closure. IRFS's director Emin Huseynov was forced into hiding, and later exile, to avoid arrest.

Those arrested over the last year include prominent activist Leyla Yunus whose work involved monitoring political prisoners and promoting dialogue between Azerbaijani and Armenian communities; the country's preeminent human rights lawyer Intigam Aliyev; award-winning investigative journalist Khadija Ismayilova and Rasul Jafarov who led the Sing for Democracy campaign which attracted international attention during the 2012 Eurovision Song contest and began the Sports for Rights campaign in the run up to the Baku 2015 European Olympic Games. These government critics now face many years in jail on false charges.

On 24 June 2015, a group of 25 countries led by Ireland and supported by the USA, Canada, the UK, Norway and the Netherlands, delivered a joint statement on Azerbaijan to the UN Human Rights Council on country situations of concern, in which they outlined the threats to freedom of expression in Azerbaijan and called on the Azerbaijani authorities to "end its crackdown on civil society and respect fundamental freedoms".

In April 2015, Nils Muižnieks, the Commissioner for Human Rights at the Council of Europe drew attention to the deliberate targeting of human rights defenders who work with international institutions, stating that "the close working relationships of the Commissioner's Office, and the Council of Europe as a whole, with these human rights defenders reinforce the belief that they are being deliberately targeted with criminal proceedings as a result of their engagement in activities that should be

perfectly legal in a well-functioning democracy”², adding that all of those arrested “are important and reliable partners of the Council of Europe and the Commissioner’s Office.” In the same report, the Commissioner also added “intimidation and reprisals against human rights defenders in retaliation for their work at the international, regional or national levels not only amount to attacks on human rights, but also breach the rule of law.”

A substantial improvement in the respect of basic rights and freedoms should be achieved before you consider lending to Azerbaijan's oil and gas sector.

Corruption reaches to the highest levels in Azerbaijan, including the President and his family. Transparency International's 2014 Corruption Perceptions Index ranked Azerbaijan 126 out of 175 countries. The EBRD strategy for Azerbaijan³ acknowledges the challenges the country faces related to corruption and the steps that the government has taken to fight against it. However, the strategy fails to address the high-level corruption related to the business activities of President Aliyev and his family. The arrest and detention of investigative journalist Khadija Ismayilova, well-known for exposing the Aliyev family’s control of many Azerbaijani businesses and the movement of Azerbaijani state money to offshore accounts, raises serious questions about the Azerbaijani authorities willingness to address corruption.

In April 2015 Azerbaijan was downgraded from 'compliant' to 'candidate' by the Extractive Industries Transparency Initiative (EITI). The EITI stated that the downgrade was a result of “deep concern for the ability of civil society to engage critically in the EITI process in Azerbaijan”. If Azerbaijan fail to implement corrective action by April 2016 it will be suspended from the EITI.

The downgrading of Azerbaijan by the EITI is a key source of concern. The EBRDS energy policy states that “The Bank is committed to adhere to best governance, transparency and revenue management standards by requiring its clients to implement the principles and requirements of the EITI.” The importance of adequate stakeholder engagement in the EITI process is specifically noted in the EBRD's Energy Policy. It states “One key component of transparency in the extractive industries is stakeholder engagement...The Bank has an opportunity to play an important role in conducting meaningful consultations with stakeholders.”

In 2012, the government adopted a series of regressive amendments to the law on the right to obtain information, the law on the state registration of legal entities, and the law on commercial secrets.

On 6 July 2012, President Aliyev signed into law amendments limiting the disclosure of information by corporate entities, which had been adopted by Parliament on 12 June 2012. Strongly criticized by pro-transparency groups, the changes curtail public access to information about the ownership of commercial entities, the amount of their charter capital, ownership structure, and other similar data. These amendments, known as the “corporate secrecy amendments,” became effective in October 2012.

This loan undermines the EBRD's commitment to stakeholder engagement in the EITI. It should not be considered until Azerbaijan has achieved compliant

² Third Party Intervention by the Council of Europe Commissioner for Human Rights, Strasbourg, 16 April 2015 – accessible here: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2728498&SecMode=1&DocId=2259082&Usage=2>

³ <http://www.ebrd.com/downloads/country/strategy/azerbaijan-country-strategy.pdf>

EITI status.

The EBRD strategy for Azerbaijan also acknowledges the importance of supporting the diversification of the Azerbaijani economy. This diversification has not happened. The 2014 IMF country report on Azerbaijan sets out a devastating analysis of resource dependency. It shows that despite oil profits to the government increasing by about 30 per cent of GDP in mid-2000s, the money has been spent, with almost no accountability or oversight. In the last two years oil production has declined, after reaching its peak in 2010, and reserves could be depleted in the next 15 to 20 years. The low oil price is now having a serious impact on the Azerbaijani economy, as indicated by the devaluing of Azerbaijan's local currency, the Manat. This loan will further Azerbaijani dependency on hydrocarbons

In the run up to the European Games, held last month in the Azerbaijani capital Baku, Dunja Mijatović, OSCE Representative on Freedom of the Media stated: "Journalists and free expression advocates sit in Azerbaijani jails in record numbers. Their lot is growing. Azerbaijan scores near the bottom of every objective ranking of nations based on free media and free expression criteria."

In light of the above information, it is imperative that the EBRD do not arrange this loan on the 22 July. We urge you to use your position to recommend that the loan is declined.

Yours sincerely,

1. Article 19
2. Both ENDS
3. CEE Bankwatch Network
4. Committee to Protect Journalists
5. Counter Balance
6. Friends of the Earth, US
7. Index on Censorship
8. International Federation for Human Rights (FIDH), within the framework of 14. The Observatory for the Protection of Human Rights Defenders
9. ODG
10. PEN
11. People in Need
12. Platform
13. Polish Green Network
14. Re:common
15. Urgewald,
16. World Organisation Against Torture (OMCT), within the framework of the Observatory for the Protection of Human Rights Defenders

APPENDIX A:

Summary information compiled by local experts

This document has been compiled by local independent experts in Azerbaijan who wish to remain anonymous fearing imminent reprisals by the increasingly repressive regime. Should the EBRD leadership be interested in hearing further details these experts are available for a series of meetings at the EBRD headquarters.

The income from the energy revenue has for years been spent on fuelling a repressive machine. Funds coming from energy resources have been used to secure loyalty from law enforcement agencies so they can be used for the mass oppression of critical voices.

Unlimited presidential term

In the summer of 2008, the Azerbaijan parliament had rejected the Venice Commission and OSCE's Joint Opinion, dated June 2008, stressing the need for parity in the election commissions. Azerbaijan's election commissions remained under control of the ruling Yeni Azərbaycan Partiyası (YAP), taking decisions with two-thirds majority. As long as this is the case, the opposition argued, "fraud during the counting and tabulation of votes" cannot be prevented.

Furthermore, in 2009, the authorities took an unprecedented step of further centralizing the power in the hands of the ruling establishment. In December 2008, the ruling party announced draft constitutional changes. In March 2009, the referendum took place and 29 articles of the constitution were amended, the most important change being the abolition of the presidential term limit. (The constitution limited presidents to two five-year terms). The constitution change was widely condemned including by the Venice Commission.

In March 2009 the Council of Europe's Venice Commission, the advisory body on constitutional matters, criticized the constitutional amendments, stating that they distort the balance of power and contradict European practice⁴. The main concerns raised by the reforms relate to the abolition of the two-term limit to the office of President and to the President's position. Under the previous provisions, the President could only be elected for two consecutive terms, and the amendment abolished the limit to the number of terms.

According to the Venice Commission's opinion,⁵ "Azerbaijan, the Constitution of which provides for a Presidential system of Government, is undoubtedly a country where the President concentrates extensive powers in his hands, given the few checks and balances which exist. It was therefore logical that the original text of the Constitution of Azerbaijan provided for a two-term limit. ... As a rule, it can be said that the abolition of existing limits preventing the unlimited re-election of a President is a step back, in terms of democratic achievements. ... Explicit constitutional limitations on the successive terms of a president are particularly important in countries where democratic structures and their cultural presuppositions have not yet been consolidated."⁶

4

<http://bit.ly/1fTqx7b>

5

Ibid

6

Under the European Convention on Human Rights, all citizens of Council of Europe member states have a right to democratic governance. The removal of a presidential term limit in Azerbaijan (Article 101, V)⁷ violates the European Convention of Human Rights⁸ and constitutes a breach of international law.⁹

The case of Ilgar Mammadov, critic of the Southern Gas Corridor (TAP/ TANAP)

The recent crackdown began in 2013 in the run up to the Presidential Elections with those opposing the government being beaten and jailed. The government of Azerbaijan refuses to comply with international demands and immediately set free prominent opposition leader, Ilgar Mammadov, after the Committee of Ministers of the Council of Europe made a second call demanding his release. Igar Mammadov has been one of the most outspoken critics of the Southern Gas Corridor (TAP/TANAP) project. He was a member of advisory board of the Revenue Watch Institute (RWI). He was arrested in February 2013 and then sentenced to seven years in jail on trumped up, politically-motivated charges in March 2014.

Civil society crackdown

As stated on the EBRD website, “civil society organisations are both influential audiences and partners of EBRD in its countries of operations. They provide a valuable contribution to the development of the Bank’s policies, strategies and the implementation of projects, particularly on complex, large scale operations”.

After Aliyev secured a third term in the office through a deeply flawed election, he has started an unprecedented “witch hunt” against those who challenged the legitimacy of the election. Human rights activists, journalists, and other regime critics were subjected to criminal charges and physical and financial harassment. Numerous nongovernmental organizations (NGOs) had their bank accounts frozen and many were forced to close, completely shutting up the space for political discourse.

Over the last few years, the climate for civil society in Azerbaijan has deteriorated to the point where it seriously threatens the ability of civil society organizations (CSOs) to engage effectively in the watch dog activities such as tackling corruption and promoting safe and sustainable environment.

The USAID Civil Society Organization Sustainability Index (CSOSI) which since 1997 has been used to assess international and regional trends in the civil society sector and to identify common obstacles impeding the sector's sustainability, such as the legal environment, organizational capacity, and financial viability, points out to serious deterioration of sustainability of civil society in Azerbaijan:

The legal environment in Azerbaijan has deteriorated markedly, dropping from the bottom of the Sustainability Evolving category to the middle of the Sustainability Impeded category. Since the end of 2013, several amendments were made to the laws governing CSOs that significantly limit the operational environment for civil society. In addition, in 2014 the government launched an unprecedented wave of

⁷ <http://bit.ly/14HuXZU>

⁸ See the Constitution of Republic of Azerbaijan, available at <http://bit.ly/Uy7NQd>

⁹ <http://bit.ly/ZsNzNM>

<http://bit.ly/1dXqDhs>

investigations into the offices of domestic and foreign CSOs, followed by interference in their activities, freezing of their bank accounts, and unjustified refusals to register grant contracts. As a result of these changes, Azerbaijan now has the lowest score it has recorded in this dimension since 2000.

Problems have been documented for some time, but have become particularly acute since February 2014, when new amendments to a number of pieces of legislation which regulate civil society activities in Azerbaijan came into force and when the government instituted what can only be described as a crackdown on independent non-governmental organizations (NGOs), especially those that dared to be critical of the authorities. This has been wide ranging, but it has particularly targeted groups which promote government transparency and accountability. This includes members of the NGO Coalition for “Increasing Transparency in Extractive Industries” (EITI NGO Coalition), many of which are the same groups which have been engaged in promoting the transparency and economic freedom in the country.

Serious problems: from devaluation to violations of property rights

The devaluation of the national currency (AZN) alongside the oil price fall has increased social problems in the country. Because of difficulties with liquidity many large banks have started to claim their loans back from entrepreneurs. For example, in order to solve the problem of the loans issued by the International Bank of Azerbaijan –in which the state is the main shareholder-- authorities ordered mass arrests of more than 200 businessmen. During the arrests, the officers from the law enforcement agencies put pressure on the businessmen either to return the loan far before the initial scheduled deadline or to give all their assets to the bank. In fact, for the first time within last the 10 years, the regime has engaged in open misappropriation of private assets. The similar misappropriation took place in 2005 when the regime took control of largest private energy company Azpetrol.

Furthermore, because of serious financial situation in the country Azerbaijani authorities announced privatization plans for the International Bank of Azerbaijan. Local and international experts fear the country’s largest bank will be privatized on the basis of the corruption scheme, similar to the one used to privatize another large bank (which is now owned by Aliyev family) several years back. Against the background of systematic problems in economy and an anticipated inevitable drop of credit ratings, the ruling elite continues to benefit from oil resources at the expense of the Azerbaijani people.

Lukoil in Azerbaijan

According to research data by local experts, Lukoil has, for years, been engaged in mass violation of labor rights. The company has built strong ties with the ruling elite. The company has not done any significant activity to protect environment. Lukoil served as a mediator in negotiations between the Kremlin administration and Aliyev. Following Russia’s aggression in Ukraine Lukoil has been subjected to international sanctions. For years, Lukoil worked with Yanukovich regime so it could be deemed responsible for current situation in Ukraine.

Because of the lack of transparent policy, it is not known who are real shareholders of Lukoil in Azerbaijan and how income is distributed. Local experts have serious concerns that top government officials have their shares in Lukoil Azerbaijan.

Transparency and anti-corruption activities

The recent anti-corruption measures employed by the regime are nothing but imitation of the fight against corruption. While authorities seem to tackle small scale, bureaucratic or petty corruption by establishing ASAN Services Center Azerbaijan legislative framework creates the basis for offshore zone.

In 2012, the government adopted a series of regressive amendments to the law on the right to obtain information, the law on the state registration of legal entities, and the law on commercial secrets.

On 6 July 2012, President Aliyev signed into law amendments limiting the disclosure of information by corporate entities, which had been adopted by Parliament on 12 June 2012. Strongly criticized by pro-transparency groups, the changes curtail public access to information about the ownership of commercial entities, the amount of their charter capital, ownership structure, and other similar data. These amendments, known as the “corporate secrecy amendments,” became effective in October 2012.

The amendments to the 2005 law on commercial information prohibit government officials from distributing information about companies if doing so “contradicts the national interests of Azerbaijan in political, economic, and monetary policy, the defense of public order, the health and moral values of the people, or harms the commercial or other interests of individuals.” The reforms also make the release of information contingent upon receiving permission from all individuals named in the records.

The laws on the right to obtain information and the state registration of legal entities were also amended. The amendments extend the scope of “legitimate public interests” protected in Article 3 of the Constitutional Law of the Republic of Azerbaijan on Regulation of the Exercise of Human Rights and Freedoms, and use language that lacks precision and clarity.

The amendments to the law on the state registration of legal entities makes secret the registration information for commercial legal entities, including information about their founders and shareholders. Such information can now only be disclosed on the basis of an inquiry to the courts and investigative bodies, to the subjects of operational search activities in cases specified by law, and to financial monitoring bodies in the cases and manner specified by the law “on the struggle against legalization of funds or other property obtained through criminal means and financing of terrorism.” According to the bill, this information can only be disclosed to relevant bodies, lawyers, and third parties following the consent of the information-owner.

The amendments contradict Article 10.2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which stipulates: “The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.” The amendments also contradict provisions of the UN Convention against Corruption and the UN’s Global Counter-Terrorism Strategy.¹⁰

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UN’s Global Counter-Terrorism Strategy, <http://bit.ly/1euCYLo>

The amendments can be viewed as an action by the Azerbaijani government to reject the obligations it had previously undertaken before the Azerbaijani people and the international community to fight corruption. They increase restrictions on freedom of information and breach the principles of transparency and public control over the activity of legal entities.

The Council of Europe's Group of States Against Corruption (GRECO) group criticized these amendments.

APPENDIX B: LIST OF JAILED JOURNALISTS AND HUMAN RIGHTS DEFENDERS

Jailed journalists:

1. **Nijat Aliyev** – editor-in-chief of the website azadxeber.az, serving a 10-year prison sentence on spurious charges of drug possession and the illegal import and sale of religious literature.
2. **Araz Guliyev** – editor of the website xeber44.com, serving an eight-year prison sentence on spurious charges of illegal possession of weapons, inciting hatred, and offensive action against the flag or emblem of Azerbaijan.
3. **Parviz Hashimli** – *Bizim Yol* newspaper reporter and editor of the moderator.az website, serving an eight-year prison sentence on spurious charges of organising the sale of weapons from Iran.
4. **Seymur Hezi** – *Azadliq* newspaper reporter and presenter of the Azerbaijan Hour satellite television programme, serving a five-year prison sentence on spurious hooliganism charges.
5. **Khadija Ismayilova** – Radio Free Europe/Radio Liberty journalist detained on spurious charges of embezzlement, illegal entrepreneurship, tax evasion, abuse of power, and inciting someone to attempt suicide.
6. **Hilal Mammadov** – editor-in-chief of *Tolishi Sedo* newspaper, serving a five-year prison sentence on spurious charges of drug possession, treason, and inciting hatred.
7. **Rauf Mirkadirov** – *Zerkalo* newspaper columnist, detained on spurious treason charges, awaiting trial.
8. **Tofiq Yagublu** – *Yenu Musavat* newspaper columnist, serving a five-year prison sentence on spurious charges of organising mass riots and using violence against police officers.

Jailed human rights defenders:

1. **Intigam Aliyev** – human rights lawyer and Chairman of the Legal Education Society, serving a 7.5-year prison sentence on spurious charges of tax evasion, illegal entrepreneurship, and abuse of power.
2. **Rasul Jafarov** – Chairman of the Human Rights Club, serving a 6.5-year prison sentence on spurious charges of tax evasion, illegal entrepreneurship, and abuse of power.
3. **Anar Mammadli** – Chairman of the Election Monitoring and Democracy Studies Centre, serving a 5.5-year prison sentence on spurious charges of tax evasion, illegal entrepreneurship, and abuse of power.
4. **Arif Yunus** – historian and academic, detained on spurious charges of treason and fraud, currently on trial
5. **Leyla Yunus** – Director of the Institute for Peace and Democracy, detained on spurious charges of treason, fraud, forgery, tax evasion, and illegal entrepreneurship, currently on trial.