

RE: EBRD Country Strategy for Azerbaijan

TO: EBRD Board of Directors

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22 February 2019

Dear Member of the Board of Directors,

We are writing in follow-up to the 16 January consultation meeting, as part of the Azerbaijan Country Strategy revision process. We appreciate the opportunity for the EBRD to consult civil society in this process. However, the undersigned participating organisations were left with the impression that the consultation process will not lead to a sufficient EBRD response to the challenges raised concerning the situation in Azerbaijan.

During the consultation meeting, we reflected on the major discrepancies between Article 1 of the Agreement Establishing the EBRD and the country's practices in a wide range of areas. Going forward, we believe that it is vital for the Bank to adequately analyse and respond to these challenges through the Country Strategy.

The political assessment in the recently released Draft Country Strategy details numerous problems with human rights and fundamental freedoms in Azerbaijan. However, the Bank's response to these challenges remains unclear. We expect the strategy will set out the steps required of Azerbaijan, and how any progress would impact the EBRD's planned lending.

Just three months ago, the Bank introduced an addendum to its political methodology with the purpose of translating the challenges in recipient countries into an appropriate investment strategy of the Bank. The EBRD's stakeholders now expect that the Bank will take a more enhanced approach, provide detailed information about countries' compliance with the 14 political principles, and adjust investment activities accordingly. We expect that such an adjustment would be discussed during the public consultation phase of Country Strategy development.

The EBRD's Azerbaijan Country Strategy will serve as an example of how the new 'more for more and less for less' approach will translate into practice. There are many reasons for the EBRD to be critical of Azerbaijan's political and economic situations and to make it explicit in the Strategy. Over the last few years, Azerbaijan experienced worrying downward trends in governance and market economics, including:

Free, fair and competitive elections

In 2018, Ilham Aliyev, won his fourth presidential term, for a new seven-year mandate, in an election that was boycotted by all major opposition parties and was marred by a restrictive political environment and severe shortcomings on election day. This was the first election following the constitutional reforms of 2016, further increasing and consolidating presidential powers.

According to the Organization for Security and Co-operation in Europe (OSCE):

“The election “took place within a restrictive political environment and under a legal framework that curtails fundamental rights and freedoms, which are prerequisites for genuine democratic elections. Against this background and in the absence of pluralism, including in the media, this election lacked genuine competition. Other candidates refrained from directly challenging or criticizing the incumbent, and distinction was not made between his campaign and official activities”.

In addition, in February 2017, President Aliyev effectively appointed his wife, Mehriban Aliyeva, as the First Vice President, making her officially next in line for the Presidency. Although legal a case of nepotism at the highest levels demonstrates disrespect for pluralism and multiparty democracy.

Scale and independence of civil society

A series of amendments to national legislation adopted since 2009 has seriously restricted the right to freedom of association in Azerbaijan and made it extremely difficult for independent NGOs to operate in the country. The authorities have targeted independent NGOs with criminal investigations, raids of their offices, freezing of their accounts and persecution of their leaders. Following amendments adopted in 2014, national legislation now provides for a cumbersome registration procedure for NGOs that allows for wide government discretion; far-reaching restrictions for NGOs on concluding grant agreements and accessing foreign funding; extensive state control NGO activities and excessive reporting obligations; harsh penalties for violations of legal requirements applicable to NGOs; and broad grounds for suspending and closing down NGOs. As a result, the country’s once vibrant civil society has been diminished significantly.

Independent pluralistic media that operates without censorship

The climate for media and freedom of expression in Azerbaijan is extremely repressive. Azerbaijan has one of the world’s worst records on press freedom, with a ranking of 163rd out of 180 countries on Reporters Without Borders’ 2018 World Press Freedom Index. Reporters Without Borders also reports that at least eight journalists and two citizen journalists are currently jailed in the country in connection with their work. Four journalists have been murdered with impunity in Azerbaijan since 2005. The country’s leading critical media outlets have been silenced or forced into exile, the main independent websites are blocked, and the activities of NGOs that support the media have been criminalised. Self-censorship is pervasive.

In March 2017, the Azerbaijani parliament adopted legislative amendments to the law on Information, Informatisation and Protection of Information. These amendments grant discretionary powers to government institutions, including the Ministry of Communication, High Technologies and Transportation, the Azerbaijan Press Council, the Prosecutor’s Office and others to block websites if prohibited information which poses a danger to the state or society is detected.

Since May 2017, over 20 websites have been blocked in Azerbaijan, including Azadliq Radiosu (Radio Free Europe/Radio Liberty’s Azerbaijani Service) and its international service, Radio Free Europe/Radio Liberty, Azadliq newspaper (independent from Azadliq radio), Meydan TV, Turan TV, and Azerbaijan Saati (Azerbaijan Hour), OCCRP (Organized Crime and Corruption Reporting Project), abzas.net, Obyektiv.tv, and others.

Policies and institutions to prevent corruption

According to Transparency International’s Corruption Perceptions Index (CPI) 2018, public sector corruption in Azerbaijan is still perceived to be among the worst in the world. In 2018, Azerbaijan

drastically dropped six points on the CPI, moving from 31 in 2017 to 25 in 2018. According to CPI 2018, Azerbaijan is one of the worst performers in the Eastern European and Central Asian region.

In addition, in September 2017, the Organized Crime and Corruption Reporting Project (OCCRP) published an investigation that revealed a US\$2.9 billion money-laundering operation and slush fund run by Azerbaijan's ruling elite. Leaked banking records from 2012-2014 revealed payments to, among others, now-former members of the Parliamentary Assembly of the Council of Europe (PACE), lobbyists, and other prominent individuals. The Azerbaijani Laundromat operation used the siphoned funds to promote the country's image abroad and distract from human rights violations committed under its authoritarian regime, according to the investigation.

Freedom of assembly

According to Freedom House:

“National law imposes tight restrictions on freedom of assembly, and under 2016 amendments, the right to free assembly is contingent on not violating “public order and morals.” Unsanctioned gatherings can draw a harsh police response and fines for participants. After the Laundromat scandal emerged in September 2017, the main opposition organized two anticorruption protests in Baku. Although both rallies were sanctioned, at least three opposition members were detained prior to the protest.”

Freedom from harassment, intimidation and torture

The US State Department's 2017 Azerbaijan Country Report on Human Rights Practices underlines numerous issues connected with the significant violations of human rights, including:

“[...]unlawful or arbitrary killing; torture; harsh and sometimes life-threatening prison conditions; arbitrary arrest; lack of judicial independence; political prisoners; criminalization of libel; physical attacks on journalists, arbitrary interference with privacy; interference in the freedoms of expression, assembly, and association through intimidation, incarceration on questionable charges, and harsh physical abuse of selected activists, journalists, and secular and religious opposition figures, and blocking of websites; restrictions on freedom of movement for a growing number of journalists and activists; severe restrictions on political participation; and systemic government corruption; and police detention and torture, of lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals; and worst forms of child labor.”

Transparency of State Revenues

On 10 March 2017, the Government of Azerbaijan decided to withdraw from the Extractive Industries Transparency Initiative (EITI) following its suspension from the EITI Board the previous day. Azerbaijan preferred to leave rather than fully meet the corrective actions related to civil society space set by the Board in October 2016, and was therefore suspended. The EBRD, however, did not consider the move as a restriction on the right to obtain information, including public access to information about the ownership of commercial entities, the amount of their charter capital, ownership structure, and other similar data. In opposition, EBRD welcomed the Azerbaijani government's move to create a Commission on Transparency in Extractive Industries (EITC). Although the EITC claims to have similar civil society engagement to EITI, but in fact this is not the case. EITC engages only with officially registered civil society organisations. Azerbaijan was

suspended from EITI due its failure to meet the requirements of the Civil Society Standard, mainly due to the country's restrictions on freedom of association, therefore independent civil society organisations critical of the government cannot obtain registration, and are thus barred from the EITC consultative and monitoring processes. Further, the EITC cannot be considered a legitimate and transparent body, as it is chaired by Shahmar Movsumov, who also heads the State Oil Fund of Azerbaijan.

The EITC claims on progress regarding beneficial ownership are not true. Founders of legal entities operating in Azerbaijan, and the taxes paid by them are still considered commercial secrets, protected by the Constitution since the Referendum of September 2016.

The leadership of the State Oil Fund of Azerbaijan (SOFAZ) has a severe conflict of interest. The SOFAZ Executive Director, besides chairing the EITC, also heads the Supervisory Board of the International Bank of Azerbaijan (IBA). The IBA has been linked to the Azerbaijan Laundromat scandal, as half of the laundered USD 2.9 billion came from a mysterious account at the Bank. While SOFAZ spends over 90% of its revenues, the people of Azerbaijan see no development impacts on the ground. Exposés of corruption, revealed by brave activists like Mehman Huseynov, who remains behind bars, show lavish villas and super yachts owned by the ruling elite, and yet the rest of the country is entrenched in poverty.

Further, the budgetary documents adopted by the Parliament are not published in accessible public media outlets on timely manner. Up to 40 per cent of public spending lack economic and functional classification, and even members of Parliament do not have access to that data.

Considering the above, we expect that the EBRD's 2019 Azerbaijan Country Strategy will clearly stress that Azerbaijan is not in compliance with Article 1. The Bank should further:

- Evaluate the governance transition aspects with far more scrutiny;
- Support policy reforms and use its leverage to improve governance, democratic processes, and human rights protection;
- Refrain from financing major projects, such as in the oil and gas sector, until Azerbaijan becomes compliant with Article 1;
- Address governance gaps, grand corruption and threats to critical voices and human rights defenders. Ensure informed public participation and inclusion of marginalised groups.

Sincerely yours,

Rebecca Vincent, UK Bureau Director, Reporters Without Borders

Tinatin Tsertsvadze, Advocacy Director, International Partnership for Human Rights

Kate Watters, Executive Director, Crude Accountability

Zohrab Ismayil, Chairman, Public Association for Assistance to Free Economy

Patricia Moreira, Managing Director, Transparency International

Huub Scheele, Interim Executive Director, CEE Bankwatch Network