

March 20, 2020

To:
ESF Review Team
Asian Infrastructure Investment Bank
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From:
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Via Electronic Mail

Subject: Joint submission on policy recommendations regarding reprisals against human rights defenders

Dear AIIB ESF Review Team,

Azerbaijan lawyer and activist Ilgar Mammadov had to serve jail-time on trumped-up charges after exposing corruption among high level officials and raising concerns about lack of transparency in government transactions.¹ In a letter penned from his prison cell he further highlighted the link between the Trans Anatolian Natural Gas Pipeline Project (TANAP) and the government crackdown on defenders and civil society more widely, including his own case.² TANAP is a project receiving AIIB financing.³

Mammadov's case is one out of 25 highlighted in a report titled "Uncalculated Risks: Threats and attacks against human rights defenders and the role of development financiers". The report shows how human rights defenders (HRDs) face increasing threats and attacks in the context of infrastructure activities, explores the nature of risks faced by defenders, examines the role of several major international financial institutions (IFIs) in exacerbating or mitigating those risks, and recommends better ways to ensure IFIs respect human rights and safeguard those who defend them. This is of particular importance given research by the World Bank (and others) that has demonstrated that having a strong enabling environment for civic space and public participation correlates to higher levels of economic growth and human development, and leads to more successful development interventions.⁴ At the same time the very ability of these HRDs to raise issues around human rights violations is increasingly being restricted. HRDs are often facing risks ranging from smear campaigns to killing. The AIIB has the leverage through its financing to ensure that projects it finances do not put HRDs at risk, and to address any risks or reprisals they may eventuate.

¹ Coalition for Human Rights in Development, *Uncalculated Risks: Threats and attacks against human rights defenders and the role of development financiers* (May 2019), pp. 89-90, available online at <https://rightsinddevelopment.org/wp-content/uploads/2019/06/Uncalculated-Risks-Full-report-cmpr-h.pdf> [hereinafter, "Uncalculated Risks"].

² Ilgar Mammadov, *A letter from an inmate of the Southern Gas Corridor* (January 2017), available online at <https://www.opendemocracy.net/en/odr/open-letter-from-inmate-of-southern-gas-corridor/>

³ AIIB website, *Azerbaijan: Trans Anatolian Natural Gas Pipeline Project (TANAP)*, available online at <https://www.aiib.org/en/projects/details/2016/approved/Azerbaijan-Trans-Anatolian-Natural-Gas-Pipeline-Project.html>

⁴ See, e.g. Ashis Das et al., *Does Involvement of Local NGOs Enhance Public Service Delivery?* World Bank Development Research Group Poverty and Inequality Team (June 2014) available online at <http://documents.worldbank.org/curated/en/303831468043489612/pdf/WPS6931.pdf>

The submission below relates to your current review of the Environmental and Social Framework (ESF), and makes observations and recommendations specifically related to HRD issues. We urge you to take these on board during this review.

Firstly, the AIIB's current ESF has some language with respect to HRDs that we welcome, notably the following: stands

- Under "Social Development and Inclusion", it states that AIIB "embraces action to remove barriers against vulnerable groups, who are often excluded from the development process, and to ensure that their voices can be heard. In this regard, the Bank seeks, through the Projects it finances, to be supportive of these human rights and to encourage respect for them"⁵
- The ESF further states that "Meaningful consultation is a process that: [...] (e) is undertaken in an atmosphere free of intimidation or coercion;"⁶

However, there remain, a number of issues that the current ESF does not cover and we strongly urge you to incorporate the recommendations from Uncalculated Risks.⁷ We have included the relevant recommendations here for your convenience:

Policy Recommendations from "Uncalculated Risks"

A. Assess and avoid adverse impacts

1. **Avoid activities likely to produce significant human rights impacts** or exacerbate risks for defenders by requiring assessment of the full range of human rights and reprisal-related impacts, including differentiated impacts on defenders and other marginalized or vulnerable groups, and by making human rights impact a determinant factor in investment decisions.
2. **Screen all projects for human rights and defender risks** prior to approval, analyzing contextual and project-related risks as well as the enabling environment for public participation and human rights, the engagement process, risks related to the client, government or third parties, and the vulnerability of affected communities and defenders.
3. **Condition project approval on the ability to reasonably avoid adverse human rights impacts**, to ensure that affected communities are able to safely and effectively raise their concerns, oppose projects, and participate in development decisions and activities, and to be able to adequately address any human rights abuses that may occur.
4. **Where reprisal risk screening identifies significant risk, employ heightened due diligence**, an elevated level of reprisal-sensitive stakeholder engagement, a reprisal prevention and response plan, and engagement of a reprisal monitoring system.
5. **Utilize and increase available leverage to prevent harm**, including by incorporating within contracts with government and corporate clients, requirements to avoid human

⁵ AIIB, *Environmental and Social Framework - Approved February 2016 (Amended February 2019)*, p. 3, available online at <https://www.aiib.org/en/policies-strategies/download/environment-framework/Final-ESF-Mar-14-2019-Final-P.pdf>. [hereinafter, "AIIB ESF"].

⁶ "AIIB ESF" under "15. Meaningful Consultation", p. 30.

⁷ "Uncalculated Risks" under "Annex 2: Policy Recommendations" pp. 99-101.

rights abuses, to employ robust due diligence to prevent abuses, to investigate and remedy reprisals, and to ensure consistency with UN Guiding Principles on Business and Human Rights⁸ and UN Voluntary Principles on Security and Human Rights⁹, tying these requirements to disbursement and building in additional moments of traction.

6. **Adopt and widely communicate a no-tolerance policy prohibiting threats or attacks** against defenders, complainants, and those who express their opinion on the project, client or government, and outlining measures for the assessment, prevention, mitigation and remedy of any reprisals.
7. **Develop necessary institutional expertise and capacity on human rights and defenders** and provide capacity building and technical assistance to clients on reprisal risk assessment, prevention, and response, including through partnering with national and international civil society organizations and human rights institutions.

B. Require Reprisal-Sensitive Engagement with Communities and Defenders

8. **Assess the enabling environment for public participation** at the country and project level and do not proceed with investments where the project cannot reasonably ensure that affected communities are able to safely and effectively raise their concerns, oppose projects, and participate meaningfully in development decisions and activities.
9. **Use contractual provisions and other necessary leverage** with clients, authorities, and relevant parties to ensure an enabling environment for participation and human rights defense.
10. **Where there is significant human rights or reprisal risk or inadequate implementer capacity, play an active role in stakeholder mapping, consultation, and ongoing engagement and monitoring**, including by maintaining a direct communication and feedback channel with the affected communities.
11. **Seek out dissenting voices** and ensure that stakeholder mapping exercises explicitly identify defenders or those at risk of reprisal.
12. **Ensure adequate conditions for participation of women, indigenous, and other defenders** and at-risk groups free from intimidation or coercion as a prerequisite for investment, allowing defenders and marginalized groups to establish the appropriate mode of engagement for their safe and effective participation.
13. Ensure and verify that affected communities have **access to information in a language and format that is understandable** to them, and in a timeframe that allows them to meaningfully engage and shape decision-making at the earliest stages of design and preparation.
14. Require and independently verify that projects have secured and maintain the **free, prior and informed consent of indigenous peoples** and good faith broad community support of other communities.
15. In communications with staff, project partners, authorities, and the public, make clear that those who raise concerns about a project have a **right to be heard, avoid stigmatization or negative labels such as “project opponents,”** and take every

⁸ Available online at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

⁹ Available online at <https://www.voluntaryprinciples.org/>.

opportunity to reaffirm the important role that defenders play in sustainable, inclusive development.

16. **Make protection of defenders and meaningful participation a core component of dialogue** with states and engagement with businesses, and proactively and publicly denounce any labelling of critical voices as “anti-development.”
17. Provide **strong oversight and specific guidance and capacity building** for both clients and staff regarding how to conduct and verify reprisal-sensitive stakeholder engagement, especially in restricted contexts.
18. **Address power imbalances and support affected communities’ capacity** to meaningfully engage in development processes and defend their rights.

C. Ensure Effective Monitoring of Reprisal Risk and Grievance Redress

19. **Strengthen transparency for all projects and sub-projects, including those made through funds and financial intermediaries**, and ensure disclosure of the existence of bank financing and the availability of independent accountability mechanisms, grievance mechanisms and reprisal monitoring and response systems.
20. Require project teams to maintain a **direct line of communication with affected communities, and especially human rights defenders**, and actively work with clients to address any concerns that arise.
21. **Name a point person at the vice presidency level** to be responsible for reprisals and other threats and attacks on defenders and establish a protocol to ensure that reports of human rights risks or incidents, including those relating to defenders, are elevated to the highest levels and acted upon in a timely and effective manner.
22. **Establish a reprisals hotline** accessible to all affected communities and stakeholders, and for projects with significant reprisal risk, establish an on the ground reprisal monitoring mechanism which solicits and collects information from affected communities including through participatory and third-party monitoring.
23. Ensure that **affected communities and workers are aware of and have access to an effective project level grievance mechanism**, ideally a community-driven mechanism, and the **Project-Affected People’s mechanism (PPM)**, without fear.
24. Require the PPM and project level grievance mechanisms to adopt and implement policies and internal protocols and capacities for assessing, preventing, mitigating, reporting, and responding to reprisals.
25. Ensure that **within all grievance and accountability activities power imbalances are addressed**, including by facilitating the accompaniment of communities and defenders by multilateral and human rights organisms.
26. Establish **sanctions for any grievance mechanism involvement in reprisals** or significant mismanagement of reprisal risk.

D. Respond Effectively to Threats and Attacks

27. Establish an **institutional reprisal response protocol** committing the institution to act promptly and effectively to mitigate harm, prevent future attacks, and to ensure remedy.
28. **Assess each threat or attack** and establish a specific response plan together with the communities and defenders at risk.

29. **Investigate each instance and call for prompt and impartial investigations** by relevant authorities or human rights bodies.
30. **Utilize all available leverage to safeguard defenders** and their right to remain in their territories and communities and continue their defense efforts, and to help ensure remedy, including but not limited to, public statements in support of the defenders' rights, diplomacy with relevant governments, embassies and private actors, suspension of financing, convening of mediations, observation of trials, and provision of security resources.
31. **Utilize divestment or disengagement where effective** for mitigation, or where continued engagement poses a risk of exacerbating adverse impacts, where attempts at mitigation fail, where mitigation is not feasible, or due to the severity of the threat or impact.
32. **Expand public sanctions lists** to include clients and implementing agencies that have engaged in or have been repeatedly associated with human rights abuses.
33. **Utilize proactive strategies to ensure remedy**, including through use of a remedy or reserve fund, and ensure that redress is proportional to the harm suffered, restoring victims to their pre-violation condition.
34. **Track, report, and ensure institutional learning and accountability.**

For further clarification of the overall approach to ensure the safety of HRDs, we encourage you to use the illustration under “Annex 1: Reprisal Prevention and Response”¹⁰ and also reach out to Coalition for Human Rights in Development at cfobanil@rightsinddevelopment.org for clarifications or any questions that may remain.

Sincerely,

Accountability Counsel
Arabwatch Coalition
Buliisa Initiative for Rural Development Organization
Cairo Institute for Human Rights Studies
Center for Financial Accountability
Earthrights International
Equitable Cambodia
Gender Action
Initiative for Rights View
Institute for Global Justice
International Accountability Project
Oyu Tolgoi Watch
Recourse
Witness Radio

¹⁰ “Uncalculated Risks”, p. 98.

Annex 1: Reprisal Prevention and Response Process

Uncalculated Risks

