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ACTION FICHE AZERBAIJAN- ENPI AAP 2008

1. IDENTIFICATION

Title/Number	Justice Reform Support Programme – Azerbaijan CRIS N° ENPI/2008/019901		
Total cost	EUR 16 million		
Aid method / Method of implementation	<i>Sector Policy Support Programme:</i> - Sector budget support (centralised management) 14.5 M €; - Project mode (centralised management) 1.5 M €		
DAC-code	15130	Sector	Legal and Judicial Development

2. RATIONALE AND COUNTRY CONTEXT

2.1. Country context and rationale for SPSP

The overall policy of the Government of Azerbaijan (GoA) is to reform the judicial system in line with European Standards (in line with ENP Action Plan Priority 2 and 3 and Council of Europe standards). The Ministry of Justice (MoJ) has introduced many reforms already, including new legislation and the codification of laws, court reform and the establishment of the Judicial-Legal Council and a Judge Selection Commission. While work has begun on the upgrading of court buildings, developments in the management capacity of judicial institutions and information networks, human resource development and training, penitentiary reform and the building of new detention facilities, continued assistance is needed in order to comply with international legal obligations and to make progress in strengthening the rule of law and promoting good governance. The initiatives of Azerbaijan government to reform the judicial system in line with European Standards are positive signs that country is willing to progress. Rule of Law is also the priority area 1 of the Azerbaijan National Indicative Programme 2007-10.

2.1.1. *Economic and social situation and poverty analysis*

The economy of Azerbaijan has been growing in recent years by spectacular figures. On the basis of the oil production profile and current macroeconomic policy intentions, it is expected of GDP growth of 18 percent in 2008. Non-oil growth would moderate, though it would remain high at 9 percent. Oil fund assets and international reserves are projected at \$25 billion at end 2008, more than three times their level at end-2007. The growth is strongly pushed by the booming oil and gas sectors and rising oil prices, but according to IMF article IV 2008 assessment the policy challenges to maintain macroeconomic stability have been intensified. The key near-term policy challenges are to reign in accelerating inflation, strengthen the quality and efficiency of fast growing public expenditure and maintain a sound banking system in the face of rapid credit expansion.

Azerbaijan has completed its first Poverty Reduction State Programme (SPPRED) for 2003-2005 and its successor, the State Programme on Poverty Reduction and Sustainable Development (SPPRSD) to cover the period till 2015 is expected to be approved soon. The new SPPRSD will pursue similar strategic goals to the SPPRED, and judicial reform and modernization are central elements of the strategy, deemed critical to reduce poverty. The strategy includes among its objectives the awareness rising of the poor regarding their civil rights, ensuring equal access to legal institutions, and upgrading capacity building of the legal profession. Upgrading the penitentiary system will improve detention conditions and the treatment of prisoners in accordance with their rights.

2.1.2. *National development policy*

The SPPRSD is directed with the MDGs and other State programmes in Azerbaijan.

It sets both general and specific targets.¹ It is intended to be integrated with the Medium-Term Expenditure Framework (MTEF), Public Investment Programme (PIP) and State budget processes. In the future, the GoA will have to pay due attention to the effective implementation of all these programmes and to the overall consistency and coordination between them. The institutional framework for developing and implementing a sustainable fiscal policy has been established in Azerbaijan. The budget preparation process is governed by the Budget System Law, revised in November 2007. This has led to the introduction of multi-year budgeting through the preparation of an MTEF to provide the necessary link with the SPPRS, and the PIP.

2.2. Sector context: policies and challenges

The 1995 Constitution of the Republic of Azerbaijan, following internationally accepted practice in constitutional law, establishes clear authority for law-making, delegates implementation to the executive and establishes the required basis for a well-functioning court system. More recently the GoA's commitment to judicial reform and modernisation has been emphasized by the Court and Judges Act (amended 2006). The justice sector policy has also been defined by a number of presidential decrees (which in Azerbaijan serve a legislative function as well as an executive one). The Presidential decrees will represent our strategic basis for the implementation of the Programme.

The 17 August 2006 Presidential Decree on the *Development of Justice Bodies* lays the basis of reform. The Decree comprised a number of areas including the establishment of the Academy of Justice and Regional Justice Divisions moving the general Department for the Enforcement of Court Judgments within the Ministry of Justice to the Penitentiary Service improving mechanisms of human rights protection as well as implementation of obligations undertaken by the Republic of Azerbaijan on justice issues regulated by the international agreements.

The Academy of Justice charter is awaiting Presidential approval. The Academy, which operates under the Plenary Board of the MoJ, is responsible for the training needs of approximately 10,000 staff across government. The responsibilities of the ten new Regional Justice Divisions of the MoJ are defined in the Order dated June 25, 2007, No. 29-T, on the establishment of the Regional Justice Divisions and the Statute on the Regional Justice Divisions approved in October 8, 2007, No 38-T.

The Penitentiary Service Action Plan 2009-2011 is currently in draft expected to be finalised shortly and is a comprehensive approach to tackling all the major problems in the penitentiary system. The guiding principle behind the Action Plan is compliance with the standards of the Council of Europe Penitentiary Rules, to which Azerbaijan is a signatory. The 2006 *Rules on Public Participation in Correction of Prisoners and Public Supervision over the Penitentiary* aims to promote civil society involvement in the Azerbaijani correctional process. Legislation on the post-release adaption of prisoners to society and on the use of pre-trial detention are currently being adopted and are expected to be implemented in 2008.

Azerbaijani institutional capacity appears adequate for the implementation of the SPSP. The Ministry of Justice expects a 47% increase in its main budget between 2007 and 2008 (projected), and the Penitentiary Service budget increase with 30%. In addition there is a 10m manat capital building programme for the Penitentiary Service. There is provision in the budget for a threefold increase for the Academy of Justice. The relevant budget for the Regional Justice Divisions is expected to increase by nearly 51% between 2007 and 2008. While the assessment of institutional capacity is hampered by the newness of these institutions the 2008 budget indicates the commitment of the GoA to deliver these reforms.

While there are still some difficulties with internal audit and fiscal management practices receive weak and/or poor rankings, the overall state of Public Finance Management (PFM) is improving. The Azerbaijani government with assistance of its development partners has taken steps towards strengthening its Public finance Management (PFM) system including: adoption of the Medium Term

¹ The Programme seeks to cut poverty by half during 2010-2015 from already reduced level of 20.8% in 2006. Meanwhile, Government intends to develop a policy for the complete eradication of poverty within the next ten years.

Expenditure Framework, modernising its treasury operation through for example the introduction of the new Treasury Information Management System (TIMS).

2.3. Eligibility for budget support

The analysis of the sector policy and related budget confirms that a sector policy that addresses the challenges and problems faced by the partner country is in place in respect of the MoJ Regional Divisions and the Penitentiary Service, and under implementation in respect of the Academy of Justice charter awaiting Presidential approval (see section 2.2). The analysis of the macro-economic framework shows that the macro-economic policy is stability orientated and is not expected to put at serious risk the sector objectives. Both fiscal and monetary policies have been well-managed over the recent years. Azerbaijan has an independent central bank which has guaranteed the stability of the manat in recent years. Although fiscal expansion has occurred at an alarming rate it is still sustainable given Azerbaijan's raising oil revenues.

The analysis of PFM diagnostics and reform programme shows that the overall state of Public Finance Management (PFM) is improving and a relevant and credible programme of reform for the improvement of PFM is being developed. The Public Expenditure Financial Accountability assessment was conducted in 2007 and agreed by GoA in February 2008 but the PFM Action Plan is still to be agreed. Different donors support different areas of public finance sector reform, such as state treasury management and the recently announced Corporate and Public Sector Accounting Project (CAPSAP) of WB, etc. Internal audit is being proposed as the subject of SIGMA intervention once the SIGMA programme becomes operational (expected June/July 2008). The EC Sector Support Programme on Energy Reform from AP 2007 has as conditionality for Azerbaijan Government to agree and implement a PFM Action Plan, and the conditionality of implementing PFM Action Plan will apply also to this Programme. Specific conditionalities arising from the PFM Action Plan may also be included in the FA once the Action Plan is agreed.

2.4. Lessons learnt

October 2006 saw the completion of ten years experience of EC Budget Support to Azerbaijan through the Food Security Programme (FSP). Although Azerbaijan PFM has some weaknesses, the FSP delivered the expected results. Based on these experiences an Energy Reform Support Programme was launched under the 2007 Action Plan.

Besides the policy dialogue carried out through half-yearly meetings of the Programme Steering Committee, success of the programme also requires permanent exchanges at technical level between the European Commission and the Government bodies involved in the programme implementation. Under the FSP this technical collaboration relied on long-term technical assistance provided by the European Commission to assist the beneficiaries. Arrangements to ensure capacity development and permanent technical exchanges took place between the Commission and its partners and these are included also in this Programme. Benchmarks attached to the variable tranche of the programme must be carefully discussed with the Government in order to ensure ownership. Such benchmarks need to represent significant progress towards achieving the programme objectives while remaining realistic. Experience gained in the Food Security Programme (FSP) has shown that the availability of a budget line allowing the beneficiaries to contract short term technical assistance through a fast-track procedure (framework contract) proved to be a very useful instrument to provide technical support at short notice when and where it is needed. A similar instrument would usefully complement this budget support programme.

2.5. Complementary actions

A number of regional EIDHR projects with NGOs in the field of rule of law and human rights are complementing the sector budget support programme. For example in the next months an EIDHR-project, co-funded by the Council of Europe (CoE), combating ill-treatment and impunity by law enforcement agencies and investigative institutions will start. There is the potential for TAIEX seminars at the request of the GoA in support of some of the activities in the Programme. An unrelated Twinning Project is planned to support the Department for Combating Corruption.

The CoE, funded by the EU, has been involved in penitentiary reform for several years, with the last project ending in December 2006. The action plan for penitentiary reform contained in this SPSP derives largely from the review of progress and results of these projects.

GTZ contributes funds to a project on *Support of Judicial and Legal Reforms in Azerbaijan*, which has mostly been used to train the judiciary. The World Bank (WB) *Judicial Modernization Project* presents an opportunity for synergy with the present Sector Budget Support Programme. Components include the development of professional training for judges and other court staff, complementary to the Academy of Justice (the target of this Programme) which will provide in-service training, formal degrees and qualifications to staff throughout the government service. Close coordination with the World Bank project will take place during the implementation of the SPSP.

2.6. Donor coordination

The GoA engages actively with donors and the main donors are associated with Government discussions in the framework of the implementation of the MTEF process. Furthermore the GoA has mandated the Department of Foreign Investment and Technical Assistance Coordination in the Ministry of Economic Development to set up sectoral level donor coordination. Current donor activity is considerable and the MoJ needs to make more explicit its arrangements to ensure no overlaps occur during this Programme.

3. DESCRIPTION

3.1. Objectives

The objective of the proposed sector policy support programme is to support the modernisation of the justice system in Azerbaijan by strengthen the rule of law and human rights protection.

3.2. Expected results and main activities

The Programme will provide sector policy support to the MoJ to facilitate the development of a comprehensive action plan based on the current Presidential Decrees on modernising the justice system; to strengthen the MoJ's organisational capacity in the regions; to develop the MoJ's proposed new Academy of Justice; and, deliver further reforms to the penitentiary system.

Regional Justice Division (RJD) objectives are to improve management capacities and skills in the RJDs; increase the co-ordination of regional justice bodies, facilitate effective information exchange between the RJDs and the central MoJ; improve access to legal documentation within the RJDs (including an e-library) and increase the awareness of legal entitlement by the public and relevant governmental bodies.

Academy of Justice (AoJ) objectives are to improve the capabilities and skills of managers in the AoJ; implement advanced professional training and Bachelor degree courses; raise public awareness of the courses and programmes and offered by the AoJ; enhance academic staff resources and the supporting infrastructure of the AoJ and advance the protection of the legal rights of indigent persons.

In the Penitentiary Service the objectives are to increase the number of sentenced prisoners engaged in meaningful work or vocational training opportunities and to ensure that they have the opportunity to participate in educational, sports and recreational activities. Also to support the effective planning of services and the management of prisoners by implementing a case management system throughout the Penitentiary Service, as well as increase the capacity, knowledge and skills of the penitentiary staff in the management of prisoners and the application of human rights and the European Penitentiary Rules.

Furthermore the programme foresees improvements in the welfare of juvenile defendants and prisoners, preventative measures for juvenile offenders, and amendments of the legislation on the treatment of prisoners in line with the CoE European Penitentiary Rules, including the Code on the Execution of Punishments. Finally it is planned to establish a strategy for probation service providing pre-trial services, alternative sanctions and supervision of offenders in the community in order to reduce the number of offenders in penitentiaries and to improve the level of health services to prisoners.

3.3. Risks and assumptions

The Programme relies on a number of assumptions such as the continued commitment of GoA to reform of the legal and judicial sector, sufficient budgetary means to fund necessary legal and judicial reforms and sustained commitment to the three Programme areas (Regional Justice Divisions, Academy of Justice and Penitentiary Reform).

A powerful mitigating factor would be a public commitment at the launch of the Programme backed up by the publication of the Action Plan once developed. This would allow the EC and other interested parties including the other donors and stakeholders to encourage the GoA to deliver the reforms in order to gain the respect of its citizens and the international community. Joint encouragement by all donor organisations is likely to be compelling to the GoA. As regards budgetary means, it would be important for the Steering Group to urge the MoJ to make well-argued bids for adequate funding in the three yearly budget submissions required each June. Effective donor coordination by the GoA and MoJ, backed up by direct contact between the EC and other donors would ensure that no reform programmes lose momentum.

3.4. Stakeholders

The main direct stakeholder for the Programme is the GoA represented by the MoJ. The MoJ is also responsible for the penitentiary system, the regional justice divisions and the Academy of Justice and will need to consider how best to involve the staff of those bodies in the delivery of the Programme. A stakeholders' network with EC representation will be established within MoJ. External stakeholders include: the Judicial-Legal Council; representatives of the judiciary and courts; the Azerbaijani bar association; academics from law schools and other faculties relevant to the management of the penitentiaries; human rights and prisoners rights groups, donor organizations including the World Bank; international organizations such as the CoE and UNICEF who set standards and are knowledgeable about justice reform; members of the Public Committee of the Penitentiary Service.

3.5. Crosscutting Issues

The programme supports good governance as well as human rights protection as it aims to improve intergovernmental consultation, coordination and support efforts to comply with CoE standards for penitentiaries including improved conditions in the juvenile justice system.

4. IMPLEMENTATION ISSUES

4.1. Method of implementation

The proposed JSPS programme will be implemented via a Sector Budget Support (SBS) with a centralised management by the EC. The SBS will be untargeted and channelled directly into the Unified Treasury Account, after agreed conditions for payment are met. Once released funds are used, along with other government resources, in accordance with the GoA's public financial management system. As well as SBS, complementary technical assistance for monitoring and capacity development will be implemented under centralised management.

4.2. Procurement and grant award procedures

The EC will directly manage and award contracts for the accompanying TA project support component of the programme, in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

4.3. Budget and calendar

The Justice sector budget support programme's expected budget is €16 millions, of which indicative €14.5 millions will be used for sector budget support (SPSP) and indicative €1.5 million for the accompanying project support/technical assistance (TA). The SPSP is proposed to be disbursed over a three year period through an initial instalment of € 3.50 millions (25%) and two conditional annual

tranches of € 3.50 and € 7.50 millions each subject to the conditionalities agreed upon by the EC and GoA in the Financing Agreement (FA). The €1.5 million of TA will be used for project support in monitoring the delivery of the JRSP, for capacity building and external review missions.

The initial fixed instalment will be released upon signature of the FA by GoA and compliance with the conditions related to implementation of the JRSP assessed on the basis of criteria agreed with the MoJ. The other tranches will be disbursed within the three GoA fiscal years following the MoJ signature. The value of the disbursement for each instalment being dependent on the extent of compliance with the conditions agreed with the GoA.. Eligibility conditions for sector budget support will be valid for all payments during the programme and will be continuously reviewed.

The foreseen operational period is 48 months after the signature of the Financing Agreement. At the end of the programme, a final review will be carried out to evaluate the overall performance.

4.4. Performance monitoring and criteria for disbursement

Programme implementation is the responsibility of the GoA/MoJ. While performance monitoring is still being developed in Azerbaijan, the overseeing of the implementation of the overall programme will be entrusted to a Steering Committee (SC) chaired by the Deputy Minister of Justice whose members will be representatives of ministries (MoJ, MoF) and departments involved in the implementation of the present programme (Regional Justice Divisions, Academy of Justice, Penitentiary Service) and of the European Commission. The precise membership of the SC will be agreed between the GoA and the EC.

A TA provision is included in the programme to finance (a) evaluation, audit, and visibility actions (indicatively € 0.50m), (b) independent expertise to assess the fulfilment by the GoA of the conditions for disbursements (indicatively € 0.50m) and (c) capacity building to the Recipient Institutions (indicatively € 0.50m).

The General policy conditions applying to all instalments, in place to guarantee the sound implementation of the current programme, require that the Government of Azerbaijan will :

- continue to improve Public Finance Management through the agreement and implementation of the PFM Action Plan;
- continue implementation of a sound policy for macro-economic stabilisation.

4.5. Evaluation and audit

The programme will be subject to annual review, which will assess compliance with conditions and make recommendations on the appropriate level of disbursements. Prior to the completion of the sector budget support programme, the Commission will mandate consultants to carry out an independent final evaluation of the programme. The programme will be subject to independent reviews that will assess the level of compliance with its conditions/indicators set forth in the Financing Agreement.

4.6. Communication and visibility

Communication and visibility will be organised in conjunction with the Ministry of Justice. A stakeholders' network with EC representation will be established within MoJ. The TA project will support dissemination of results via web-pages, printed materials and other dissemination activities, as well as organises appropriate PR activities with the newly established Judicial Modernisation Team. All documents and events will comply with the EU visibility rules.