



OPEN SOCIETY INSTITUTE

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Dear Directors,

We would like to thank you for your invitation to comment on the draft EBRD Strategy for Turkmenistan.

The Open Society Institute sympathizes with the grave concerns noted by the EBRD in its previous July 2006 Country Strategy for Turkmenistan¹. Whilst the intervening period has seen some increased engagement by the government of Turkmenistan with the international community (which in principle can be commended), this has mainly involved the oil and gas sector and has not constituted meaningful engagement with a view to benefiting the people of Turkmenistan – whose basic rights and freedoms remain extremely curtailed. OSI regrettably notes moreover that since the adoption of the last EBRD Strategy for Turkmenistan in July 2006, the government of Turkmenistan has failed to demonstrate its tangible commitment to the principles of Article 1 of the Agreement Establishing the Bank.

OSI would therefore like to urge the Bank to ensure that the new Strategy adequately reflects the government of Turkmenistan's failure to address the shortcomings identified in the Bank's 2006 Strategy. We are calling on the EBRD to establish a new Country Strategy that ensures that the Bank continues not to engage in financing projects which will directly benefit the government of Turkmenistan.

We focus here on addressing the Bank's Article 1 mandate and pointing out the extent to which Turkmenistan in 2010 fails to meet the provisions entailed therein. We therefore focus on two issues: a) absence of multi-party democracy and pluralism; and b) absence of principles of market economy with respect to budget transparency and safeguards against corruption. Turkmenistan's grievous human rights failings remain at the core of OSI's work on the country. For the sake of brevity, and to avoid possible duplication, we give an overview rather than go into the detail of the substantial rights problems across a range of spheres².

Country Overview: Continued authoritarianism, failure to meet EBRD Article 1 conditions

Article 1 states that the purpose of the bank will be to "*foster transition towards open market-oriented economies and to promote private and entrepreneurial initiative*" in

¹ As summarized in the Bank's January 15, 2010 invitation to comment, at the time of the last strategy's approval in July 2006, the Bank was "seriously concerned by Turkmenistan's continued failure to take any measures which would indicate a willingness to make progress towards multi-party democracy, pluralistic society and a market-based economy."

² For further detail on the problems of prisoners; prison monitoring; restrictions on freedom of movement and freedom of religion as well as Turkmenistan's poor record in cooperating with UN Special Mechanisms see http://www.hrw.org/en/search/apachesolr_search/Turkmenistan

eligible countries that are “*committed to and applying the principles of multiparty democracy, pluralism and market economies*”.

In 2010 Turkmenistan remains a one-party state, dominated by President Gurbanguly Berdymukhamedov, who exercises power in a highly centralized, authoritarian manner: The few remaining members of the opposition are still forced to operate from abroad. The total absence of independent media, free speech and political pluralism contributes to an environment in the country which is not conducive to any criticism of government policies. The government’s human rights record remains very poor. Small steps undertaken by the authorities have failed to adequately address concerns raised by the OSCE, the UN and international human rights groups. The deterioration of educational standards begun under the previous president continues unabated and is an area of serious concern. Domestic civil society is weak and independent NGOs cannot operate freely. The government has not made substantial progress in democratic reforms, nor has it embarked on a program of economic liberalization and reform.

In sum, in the three years since President Berdymukhamedov took power there have been little or no democratic reforms in Turkmenistan that would warrant the Bank changing its policy with regard to supporting projects that would directly benefit the government. Instead, the main reform challenges, correctly formulated in the EBRD 2006 Country Strategy two years ago, remain valid as the situation in Turkmenistan has not improved significantly either politically or economically, and in some cases has even deteriorated.

Overall Recommendation: We urge the EBRD to uphold its Article 1 to the letter and principle and to continue its principled policy of restricting funding to public entities. The Bank could usefully do this by

- *correctly and publicly observing the absence of meaningful reforms in the spheres of human rights, democracy and revenue transparency in its 2010 country Strategy;*
- *by stating core benchmarks which would need to be met in order to enable the country to receive EBRD financing for public sector lending (See OSI recommendations on such benchmarks below).*

a) No commitment to or application of principles of multiparty democracy or pluralism

Since President Berdymukhamedov came to power Turkmenistan has failed to make critical improvements in terms of the electoral process, fostering independent civil society, an independent media, national democratic governance, local democratic governance, and an adequate judicial framework supporting an independent judiciary³. Instead Berdymukhamedov has chosen to strengthen his autocratic rule rather than institute mechanisms for pluralism and democracy. The **2008 constitutional reform** and the **parliamentary elections** offer recent examples of the regime’s repressiveness. The new Constitution has arguably strengthened the President’s indefinite rule. Specifically, Article 52 of the revised Constitution sets the presidential term of office at five years, but does not set term limits, thus providing for a lifetime presidency.

³ According to Freedom House’s “Nations in Transit” 2009 Turkmenistan remains ranked near the bottom of the list of poor performers with regard to democratic development and pluralism. The report notes that “...it is the most authoritarian regime of all the countries included in the study.”

Political pluralism remains similarly curtailed. Whilst the revised Constitution references political parties, trade unions and independent media, there is crucially *no existing or planned legislation* to support these references. Without supporting legislation, such commitments to upholding political pluralism, freedom of expression and worker's rights in the Constitution are meaningless. For example, with regard to political parties, it is telling that the legal and constitutional reforms referred to in the Bank's draft Strategy have not resulted in the registering of any new political party. In the absence of such legal safeguards, attempts to form a party or to run as an independent candidate are being punished: Activists who have tried to register as independent candidates have found themselves under pressure from the Ministry of National Security. As an example, Abdurakhman Rakhmanov, who formed and headed the Ilkindjiler civic group – rather than joining the officially-approved Galkynysh national organization – tried to nominate himself as a deputy to the Turkmen parliament, only to be arrested on charges of tax evasion before the election and sentenced to up to 15 years in prison. In this context it should be noted that, while the Turkmen government hailed the December 2008 Parliamentary Elections as an example of the country's pluralism, this poll was contested only by 288 government-approved candidates from the President's party. Further, only one candidate was of non-Turkmen ethnicity, which points to the enduring policy of ethnic discrimination. Since there is only one party and independent groups are not registered a new law on elections allowing observers to be appointed by political parties and public associations is meaningless.

With regard to **NGOs and independent media** – both of which play a crucial role in fostering real pluralism in a country – Turkmenistan remains one of the most repressive countries in the world. Like his predecessor, Berdymukhamedov tolerates no dissent, and has driven into exile or imprisoned political opposition activists, human rights defenders, independent journalists and non-partisan civil society actors. *The recent case of Andrey Zatoka the environmental activist who was persecuted and forced to leave the country in autumn 2009, exemplifies this.* The President has not authorized the registration of independent media or civil society organizations⁴. It is virtually impossible for nongovernmental organizations to function beyond tight government supervision. Some dissidents have been forcibly committed to psychiatric hospitals. Torture, including beatings and the use of psychotropic drugs, is rampant in police custody and detention facilities. Despite an official removal of the exit-visa regime, the government continues to prevent significant numbers of people from leaving the country.

Whilst the EBRD draft Strategy alludes to positive changes in the media, the reality is that freedom of expression remains severely limited. There have been no fundamental improvements to freedoms of speech, the media, or internet access in Turkmenistan in 2008 and 2009. The overall situation remains that of overwhelming censorship, control over the access to information, direct management by the government of all the media in Turkmenistan and the consistent use of media to advance ideology and strengthen President Berdymukhamedov's cult of personality. Nearly all print media are founded and personally owned by the President Berdymukhamedov or the local government. Subscription to foreign media is prohibited outside a few official institutions, with the exception of Russian entertainment/lifestyle magazines. All internet uses the same satellite channel – extending beyond the borders of Turkmenistan - on which filters have

⁴ A small number of civil society organizations are registered, but these tend to be related to activities and pursuits (e.g. a gardening club), and therefore seen by the authorities as less threatening.

been installed that block users of both Turkmentelecom and MTS from accessing various sites. The President's October 2008 decree on censorship created a special Commission responsible with reviewing all literary works, with regard to permitting or prohibiting their publication or dissemination. This act in practice legitimizes state controlled censorship and introduces it as an official practice. The decree covers the artistic value of literary writings, theatrical productions and cinema screenplays. In contrast to early public statements by Berdymukhamedov that internet would be allowed in Turkmenistan – taken by many observers to signify potentially greater openness to the principle of freedom of expression, we have seen the opposite in practice: total control of internet access appears to have started specifically with the change in power.

Equally high hopes for meaningful reforms in education did not materialize, but rather we now see troubling backsliding. The current education reform amounts to extending secondary education to 10 years and university to 5. However, even this is not backed by teacher trainings, new textbooks or curriculum reform. The curriculum is still dominated by the ideological teaching of Niyazov and now Berdymukhamedov. August 2009 saw the greatest blow to the advancement of future intellectual capital, already badly stunted by years of destructive policies under President Niyazov. Some 160 students and graduates, many on U.S. government scholarships, many bound for the American University of Central Asia in Bishkek, were banned from leaving the country. This action violated Turkmen's own Law on Migration, which carries no provision that the government can deny students the right to attend any institution, and no stipulation that the host institution must be state funded or accredited in Turkmenistan. The few Turkmen students able to attend AUCA and their families have since been subjected to harassment and threats by the authorities and the total 100 + students are now on the travel black list for at least five years, during which they cannot leave the country to study, for family reunification, to seek medical care or any other reason. The well-being of these students and their families is a serious concern, as is the seemingly whimsical decision by the government to deny the student's right to education and free movement.

b) No improvement market economy principles related to transparency and accountability

At the same time, serious questions regarding transparency and accountability of state revenues remain. Public monies should not support a regime with such a paucity of financial controls in place. The government of Turkmenistan maintains the same practices of poor governance, corruption and lack of transparency which characterized President Niyazov's rule. In particular, the opacity shrouding the revenue amounts, the budget and the distribution of state funds is a serious concern for rights NGOs and non-registered Turkmen civil society actors and citizens, as it should be for any financial institution considering lending to Turkmenistan. The Foreign Exchange Reserve Fund (FERF), whilst reportedly operating at a lesser capacity, remains opaque and there is no conclusive evidence to suggest that there has been any meaningful change to its operation as a de facto personal fund. The newly-created Stabilization Fund, where revenues from new hydrocarbon projects will accumulate, is so far a missed opportunity. Even though it is the Ministry of Finance, rather than the Central Bank, that has control over the Stabilisation Fund, this not necessarily a positive development, because ultimately all control still rests with the President Berdymukhamedov: During his three years in power President Berdymukhamedov has changed his Ministers multiple times, with many of their subsequent whereabouts unknown. This has helped to strengthen the

presidential control of the Fund and enforced the predominant atmosphere of fear. In sum, there has been no radical change at FERF. It still operates under presidential control, but likely at a much less capacity.

Taken together, these examples lead us to conclude that Turkmenistan cannot be considered to be applying multi-party democracy and pluralism and therefore is not in compliance with the Article 1 provisions of the EBRD. In this context, we believe that a decision to extend funding to Turkmenistan without restrictions would therefore involve the Bank violating its own principles enshrined in Article 1.

c) Concerns about NGO Consultation

OSI draws on its significant work and interest in supporting civil society across the world to put forward a final remark on the Bank's NGO consultation. The draft Strategy published in December 2009 and presented to INGOs for comment makes reference to having *already* consulted international and local NGOs⁵. Whilst we welcome the present opportunity to comment, we must point out that, to our knowledge, no major international human rights or development organizations, including Amnesty International, Global Witness, Bank Watch, Crude Accountability and Human Rights Watch, had been consulted before December 2009. Given the continuing restrictions on independent NGOs registering and operating freely and openly in Turkmenistan, we can only assume that the NGOs to which the Bank refers as having consulted, and which recommended more engagement, are government-backed organizations based in Turkmenistan. Such GoNGOs are unlikely to be independent, since civil society organizations are not allowed to function in Turkmenistan unless they are registered and work under the auspices of a government ministry. As such, the Bank cannot be considered to have consulted independent civil society in Turkmenistan, but rather an extension of the government.

Recommendations

OSI firmly believes that until meaningful reforms are forthcoming, the EBRD should restrict any investment that benefits the government of Turkmenistan directly. Specifically, we have the following 5 recommendations for the Bank:

1. Since Turkmenistan is not in compliance with Article 1 of the Agreement, *the Bank should continue its policy of desisting from public sector investment benefiting the government of Turkmenistan*, particularly in the hydrocarbons sector, until benchmarks set by the Bank are met (see below).
2. In the meantime, *the Bank should continue engaging in political dialogue and technical assistance* (e.g. developing skills to strengthen auditing facilities, specifically related to auditing the execution of resource revenue collection; creating a mechanism to monitor the implementation of contracts; and working towards building an understanding of the benefits of revenue transparency as a tool to ensure full collection of revenues and improvement of the investment climate). This might include lending to sectors, such as health and education, which are targeted towards supporting the population, although these *must be subject to strict monitoring in order to ensure that funds are used appropriately*.

⁵ EBRD Draft Strategy: "the Bank conducted several missions and active discussion with local and international NGOs, most of whom suggested EBRD's more active engagement in Turkmenistan" page 4.

3. With regard to current or future private sector projects in Turkmenistan, *the Bank should submit these to a review in order to ensure a) that these are consistent with EU policy towards the region in supporting EITI principles⁶ and b) that government officials are not benefiting from EBRD financing, and if so, withdraw financing from these projects.* Regular scrutiny of future private sector projects will be an important enforcement mechanism.
4. Any financing by the Bank of infrastructure projects, and in particular oil and gas sector projects, which are the most lucrative and beneficial to the state, *should be contingent on basic requirements regarding fiscal transparency and budget management before financing agreements are signed and funds disbursed* including, *inter alia*, a transparent analysis of terms, commitment to enforcing contracts and concession, and public disclosure of information around the petroleum sector. At the macro-level an audit of the FERF Stabilization Fund and an agreement by the government of Turkmenistan to publish a proper budget should be a pre-requisite for European public lending in this sector.
5. Given that the elaboration of the Strategy constitutes the moment of greatest leverage and influence with the government of Turkmenistan, *the Bank should use this opportunity to urge government of Turkmenistan to undertake concrete and measurable reform steps to bring the country into compliance with Article 1, making clear that their fulfillment will determine the Bank's level of engagement in the country.* Such reform steps must include the following:
 - Allowing for the registration and functioning of NGOs and independent opposition political parties without restrictions;
 - Ending the use of house arrest and forced displacement of dissidents and their relatives, including politically-motivated internal exile, and lifting of the de facto ban on foreign travel imposed on dissidents and their relatives;
 - Creating basic conditions for media pluralism, including repealing the October 2008 decree on censorship and allowing independently-funded media outlets to operate;
 - Implementation and investment in reforms to ensure full-term secondary education and allowing foreign-language schools to operate;
 - Auditing the FERF Stabilization Fund and publishing a full state budget in a manner to ensure accountability to citizens.

To conclude, we commend the Bank for consulting with NGOs at this critical juncture, and urge the Bank continue to exercise leadership in pursuing principled and transparent lending policies. We express our hope that in the elaboration of its 2010 Strategy for Turkmenistan the Bank will use the leverage created by this review of its financing to elaborate a *publicly principled position* which is consistent with the position it has taken in the recent past.

We believe that engagement can be a meaningful lever of political reform, if it is guided by clear benchmarks and principles which are understood by both parties to be prerequisites for an enhanced relationship. In this context we would like to underline the critical importance of the Bank keeping announcements about policy decisions in the

⁶ EITI is a key feature of the EU's Central Asia Strategy and, whilst Turkmenistan does not yet meet the eligibility criteria (which include the existence of a function civil society), the principles underpinning the scheme, which are being applied in EITI candidate countries such as Kazakhstan, Kyrgyzstan and Azerbaijan, should also apply to Turkmenistan.

public domain, even if, due to restricted lending and fewer projects, these may not see extensive practical impacts on the ground. At a time when Turkmenistan seeks to engage the international community, we believe that such statements carry real symbolic value at the political level in getting the message across that the Bank's commitment to its Article 1 mandate is meaningful and will not be undermined.

Yours Sincerely,

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