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Comments to the EBRD Draft Country Strategy on Turkmenistan

**CIVICUS: World Alliance for Citizen Participation
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CIVICUS: World Alliance for Citizen Participation wishes to recognize and express its gratitude to the European Bank for Reconstruction and Development for its commitment in fostering participatory decision making throughout the consultation processes of the Turkmenistan Country Strategy.

However CIVICUS remains deeply concerned about the legal and operative environments for civil society in Turkmenistan, and by the absence of sufficient consideration of this reality in the Bank's draft country strategy and its analysis of the country's political and democratic process. It is our sincere hope that through this and other consultative processes, we can work with the EBRD to promote the values of multiparty democracy and pluralism in Turkmenistan and other countries in the region as enshrined under the preamble and Article 1 of the Bank's Establishment Agreement. It is our fundamental belief that open and market-oriented economies can and should be built only upon basic foundations of human rights and democratic principles. Based on these premises, CIVICUS wishes to highlight the following observations and recommendations for the new draft Country Strategy for Turkmenistan:

1. The Bank's assessment of improvements on the overall political space in Turkmenistan lacks sufficient analysis of the ground reality of absence of enabling environment for civil society;;
2. Engagement in the extractive industries in the current political and operative environments in Turkmenistan risks a further deterioration of human rights in the country, an increase in corruption and undemocratic governance;
3. EBRD must work with the government of Turkmenistan to promote the implementation of its obligations under its Constitution and international human rights agreements in order to secure an environment which fosters the values enshrined in Article 1 of the Agreement.

1. Enabling environment for civil society in Turkmenistan

There is little doubt that civil society has historically played an important role in promoting transparency, accountability and pluralism of both public and the private sectors. Correlations have been drawn between societies with restrictive environments for civil society, corruption and poor governance, and non pluralistic markets. The same observation can be made in the case of Turkmenistan, where the inability of civil society to operate freely is combined with an authoritarian and opaque government, tightly regulated private sector, and almost exclusive control of major industries such as the financial sector by the government.

In the draft Country Strategy, EBRD notes that there have been some improvements in the political environment since the inception of the last strategy for Turkmenistan. It appears that this conclusion has been drawn based on the 2008 amendments to the Constitution of Turkmenistan, increase in internet access, release of a political prisoner and development of bi-lateral relations with the European Parliament.

Based on our ongoing work with local civil society in Turkmenistan, CIVICUS would like to strongly emphasize that, despite such cosmetic reforms, the ground reality for civil society organizations and activists has not changed in any formative way since 2006. The new Constitution, although a critical step in the right direction, not only has significant flaws, but is actually contradicted both in practice and other subsidiary laws. As one example, the present Constitution removes all limits on the maximum duration of service by one President— a fundamental barrier to the country's democratic growth and political plurality. In practice, citizens still cannot exit the country without an exit permit or even move freely within borders. Despite the guarantees to freedom of movement in the Constitution, the 2005 Law on Migration includes several provisions under Article 32 which allow for full discretion of authorities to authorize exit from the country. Internal migration is still heavily restricted by the need of registration of residence. The internet, international and local print media are still heavily censored—sites such as YouTube are blocked and subscriptions to foreign newspapers or magazines are prohibited to ordinary citizens.

Based on information received from the ground, CIVICUS does not have sufficient reasons to believe that the Interim Agreement adopted between the European Parliament and Turkmenistan, adopted after 11 years of examination for reasons of human rights and democratic principles, is founded on a benchmarked process of reform. Since the Agreement was signed, various EU bodies and countries have also engaged in negotiations with President Berdymukhammedov for gas export via the Nabucco pipeline in grave disregard of the government's poor human rights records. CIVICUS fears that engagement with Turkmenistan for economic reasons, without address of the human rights situation, might give the government a carte blanche to continue business as usual, thereby furthering EU's economic development at the expense of the democratic principles in the country.

In relation to release of prisoners of conscience, although the release of Mr. Aymuradov in 2009 was an important benchmark, it is but a small step to the process of legal and political reform. Evidence generated from our local sources proves that, at the moment, at

least 10 high profile political prisoners remain in jail under inhumane conditions, even without access to independent observers like the ICRC (International Confederation of Red Cross and Red Crescent). CIVICUS was also involved in the campaign for justice to Mr. Zatoka, a reknown environmentalist and activist who was arrested in the fall of 2009. Since President Berdymukhammedov came to power, not a single independent NGO has been granted registration by the government; civil society organizations and activists work under extreme atmosphere of fear facing imminent risk of civil and criminal prosecution. In general, based on ours and our local partners' holistic assessment of the existing reality in the country, CIVICUS I strongly believes that the government of Turkmenistan is far from meeting its commitments to the principles of multi-party democracy and pluralism. , therefore not meriting the large scale investments outlined in the Draft Strategy.

Civil society across the world has historically been a champion of government accountability, fiscal transparency and good governance within the private sector. In Turkmenistan, strong legislative and operational frameworks for civil society would allow in-country monitoring of revenue transparency, competition and both private and public accountability of EBRD-financed projects. At this critical stage, when the Turkmen government is promising to increase the private sector's share of economy to 70% by 2020, it is critical to ensure that the necessary political, regulatory and legal reforms towards an enabling environment to civil society complement this process. Hence CIVICUS strongly urges the EBRD to follow the directives of Article 1 and promote democratic practice in Turkmenistan, before considering financing large scale projects in the country.

2. Investment in Hydrocarbons at this stage of country development risks further deterioration of human rights.

Without adequate governance and market structures, increased development of the oil and gas sector in Turkmenistan is highly susceptible to "Dutch Disease" which often brings with it corruption, increase in inequality, violations of human rights and conflict. Accordingly to the EBRD's Country Strategy for Turkmenistan adopted in 2006, the intermediate scenario outlines a broader range of operational investments if progress is made against the democratic benchmarks described in the regular scenario.

Based on the information that CIVICUS received from the ground, none of the political sphere benchmarks of the 2006 Strategy have been met. Although limited progress has been made in the oil and gas sector, especially with regard to the Foreign Exchange Reserve Fund, there are virtually no mechanisms in Turkmenistan to ensure socially and environmentally sound development of the extractive industries. In fact, the high degree of opaqueness and control of the sector by the government makes any extractive industry investments particularly vulnerable to human rights and ecological violations. The lack of political will in ensuring social and environmental compliance can be seen with violations of and absence of remedy to the Aarhus Convention, absence of disclosed progress on the National Environmental Action Plan, and non-compliance with its own

Constitutional and international obligations to promote freedoms of assembly, association, expression and access to information.

In order to promote the transition process towards market-oriented economy, CIVICUS urges the EBRD to maintain its past position, and expand financing small and medium enterprises instead of the extractive industries until significant improvements in the political sphere benchmarks outlined in the 2006 Country Strategy have been achieved.

3. Implementation of national and international obligations for human rights.

CIVICUS urges EBRD to work with the government of Turkmenistan to promote the implementation of its obligations under its Constitution and international agreements in order to secure an environment which fosters the values enshrined in Article 1 of the Agreement.

Under the new Constitution, citizens are guaranteed freedoms of assembly (Article 29), expression (Article 28) and association (Article 30), but these freedoms are persecuted either in practice or through specific subsidiary legislations. Although CIVICUS supports EBRD in recognizing the important symbolic step of the adoption of the new Constitution, international organizations and governments must work with the government of Turkmenistan to ensure the establishment of appropriate legislations protecting these freedoms. Amongst others, this requires promoting the amendment of the outdated Law on Mass Media of 1991; the adoption of a specific legislation on Freedom of Assembly, which currently does not exist; and the amendment of the laws on Public Associations, including political association, which currently present numerous barriers for free registration of NGOs. Such legislative reforms must be in accordance with Turkmenistan's Constitution and its obligations under the International Covenant on Civil and Political Rights. Freedoms related to expression, information and association are also enshrined in the Aarhus Convention, which Turkmenistan is now out of compliance with.

The recommendations of the Universal Periodic Review of Turkmenistanⁱ by the United Nations Human Rights Council target the need to reform the legislative and operative environments in Turkmenistan to meet the international human rights commitments and the rights set forth in the country's new Constitution. Particularly relevant recommendations include the need to reform domestic legislation towards the full implementation of the new Constitution; to integrate the commitments under the Covenant on Civil and Political Rights, and to comply with the conclusions and recommendations of treaty bodies including the Committee of the Right of the Child, and the Committee on the Elimination of Discrimination against Women. Specifically, some of the relevant recommendations issued by countries represented in the Board of Directors of EBRD include:

- **United Kingdom:** ...to ensure the full and effective implementation of the Constitution... (II.69.1);
- **Sweden:** ...take appropriate measures to guarantee the right of opinion, freedom of expression and freedom of assembly. (II.69.13);

- **Poland:** To take effective measures to allow independent non-governmental organizations to register and work freely. (II.69.14);
- **Germany:** ...to take measures to grant effective and unhindered enjoyment of the freedom of religion (II.69.15);
- **Norway:** To fully respect the rights of everyone to be free to leave and return to their own country, in conformity with article 12 of the International Covenant on Civil and Political Rights to which Turkmenistan is party (II.69.16);
- **Norway:** To protect the human rights of journalists and human rights defenders and ensure that they are able to carry out peaceful activities without harassment, threat of detention or imprisonment (II.70.7)

These are just a few examples of the concerns raised by EBRD member countries at the UPR of Turkmenistan. Although we understand that EBRD's mandate does not specifically include ensuring the implementation of recommendations set forth by human rights bodies, it is nevertheless important that country members of the EBRD demonstrate consistency and uphold responsibility to promote the respect of human rights which they expressed in other forums. The Universal Period Review Report on Turkmenistan is one clear illustration of the dire situation for human rights in Turkmenistan. There is sufficient evidence suggesting that the situation has remained unchanged since then.

CIVICUS understands that it is the EBRD's role to promote the transition process into an open market economy, with the political sphere being only one aspect of this process. Our main message is to underscore that without a vibrant civil society, without good governance and democratic legislative framework and enabling environment for CSOs, markets will not function in competitive, transparent and socially or environmentally responsible manner.

CIVICUS is an international alliance of members and partners in over 100 countries, dedicated to strengthening citizen action and civil society throughout the world. CIVICUS aims to bring citizens into the decision making processes which directly affect them, and advocates for the recognition of civil society civil as a critical stakeholder in global governance frameworks.

For more information, please contact:

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ⁱ UNIVERSAL PERIODIC REVIEW (2009)." Report of the Working Group on the Universal Periodic Review * Turkmenistan". A/HRC/10/79. http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/TM/A_HRC_10_79_Turkmenistan_E.pdf