

Submission on the World Bank Group's Interim Strategy Note for Turkmenistan

September 6, 2012

Crude Accountability, Human Rights Watch, and the Open Society Foundations welcome the opportunity to provide joint input as part of the consultation process on the World Bank Group's (WBG) Interim Strategy Note for Turkmenistan, which is intended to guide the WBG's engagement with Turkmenistan from October 2012 through June 2014. We have reviewed the consultation presentations delivered by the WBG staff describing the main directions of the proposed strategy and specific sector activities. These presentations emphasize the intentions of the Bank to focus on private and financial sector development, public financial management, and climate change adaptation strategies.

Turkmenistan's recent economic gains have not translated into equitable benefits to the population.¹ Despite vast oil and gas wealth, poverty remains persistent. According to the UNDP's Human Development Indicators, Turkmenistan has the lowest life expectancy at birth in the region, at 65, and this rate has remained stagnant since 2006. Turkmenistan also has the second highest under five mortality rate, at 45 per 1,000 live births.² Turkmenistan continues to demonstrate one of the world's worst records on human rights and, as governance indicators have recognized, there is a lack of basic accountability.³ As recently highlighted by the UN Human Rights Committee, the government imposes draconian restrictions on freedom of expression, has completely repressed independent civil society, and refuses to allow human rights monitors access to the country.⁴ Journalists and activists who strive to validate and inform the public about economic, social, and environmental matters are subject to pressure from the authorities.⁵ In addition, people do not have access to relevant information regarding government income and spending. In this repressive

¹ According to World Bank Databank figures, GDP increased by 10 percent in 2011, see <http://databank.worldbank.org>.

² UNDP, International Human Development Indicators, 2001, <http://hdrstats.undp.org/en/indicators/57506.html>. However, according to the World Bank's World Development Indicators, in 2011 Turkmenistan's under five mortality rate was significantly higher, at 56 per 1,000 live births. Few up-to-date development indicators are available for Turkmenistan.

³ In 2011, Turkmenistan was identified, along with eight other countries, as being one of the world's worst human rights abusers. The other countries include: Equatorial Guinea, Eritrea, North Korea, Saudi Arabia, Somalia, Sudan, Syria, and Uzbekistan. As cited in *Worst of the Worst 2011*. Freedom House. See also <http://www.hrw.org/news/2012/03/14/hrw-submission-turkmenistan-un-human-rights-committee>. Turkmenistan received a score of 1.4 out of 100 on the Worldwide Governance Indicators Voice and Accountability Index, the lowest in the region: http://info.worldbank.org/governance/wgi/mc_chart.asp.

⁴ Concluding Observations of the United Nations Human Rights Committee on Turkmenistan, April 2012, http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.TKM.CO.1_en.pdf.

⁵ One concrete example is environmentalist Andrey Zatoka, who was imprisoned on trumped-up charges and later forced to leave the country and rescind his Turkmen citizenship in exchange for release in 2009. See <http://humanrightshouse.org/Articles/17888.html>.

environment, there is no space for civic participation, calling into question the Bank's ability to consult with civil society organizations.

According to its website, the World Bank has not had an active project in Turkmenistan since 1997. The European Bank for Reconstruction and Development (EBRD) has implemented a so-called calibrated strategic approach in Turkmenistan, considerably limiting its investments there because of the dire human rights situation. While the EBRD has an express mandate to consider the human rights situation in making investment decisions, the World Bank has recognized that sustainable and inclusive development, the stated goal of the WBG Turkmenistan strategy, requires not only good economic policies, but strong institutions and good governance. As it looks to enhance its engagement with Turkmenistan, the World Bank should take care not to undermine the principled approach of the EBRD.

Given the current repressive environment in Turkmenistan, the WBG should promote a sequenced approach to engagement. It should initially focus efforts on creating an enabling environment for meaningful civic participation and enhancing fiscal transparency and government accountability, as well as giving priority to urgent social needs and addressing environmental health concerns. It should make clear that only once the government achieves significant progress in those areas will it be eligible for limited lending, subject to adequate safeguards, including human rights safeguards.

As such, the Interim Strategy Note should be confined to advancing these four areas of reform:

1. Meaningful civic participation;
2. Transparency and accountability of government finances;
3. Priority for urgent social needs; and
4. Addressing environmental health concerns.

Additionally, we have highlighted several issues the Bank will need to carefully consider if it goes forward with any projects and identified key safeguards it should apply to assess and address the risk of adverse impacts on human rights.

1. Need for Reform to Enable Meaningful Civic Participation

The World Bank has increasingly emphasized the importance of civic participation and social accountability to sustainable development.⁶ In Turkmenistan, meaningful civic participation is currently impossible. The rights to freedom of expression, association, and assembly are essential to meaningful civic participation and social accountability and are routinely violated in Turkmenistan. The August 21, 2012 announcement in Turkmenistan that a new political party was founded—previously Turkmenistan was a single-party state—does not change this assessment.

⁶ See, for instance, World Bank Group, "World Bank Global Partnership on Social Accountability Approved by Board of Executive Directors," June 25, 2012, <http://go.worldbank.org/LRLHHQMA30I> (accessed August 31, 2012). See also former World Bank president Robert Zoellick's April 2011 landmark speech, "The Middle East and North Africa: A New Social Contract for Development," April 6, 2011, <http://www.worldbank.org/en/news/2011/04/06/middle-east-north-africa-new-social-contract-development> (accessed August 31, 2012).

The UN Human Rights Committee stated in 2012 that the Turkmen government “systematically does not respect the right to freedom of expression,” “harass[es] and intimidate[s] journalists and human rights defenders,” and “monitors the use of the internet and blocks access to some websites.” In addition, the Law on Public Associations “severely restricts freedom of association,” forcing associations to “undergo cumbersome administrative processes for registration,” and contains “onerous obligations on associations to report to authorities.” So immediate and credible is the threat of government repression in retribution for any criticism of government policies and practices that independent human rights activists and journalists cannot work openly. In addition, the government has consistently refused access to the country for human rights monitors, including UN special procedures, 10 of whom remain unable to carry out country visits despite repeated requests for access.

This overwhelmingly repressive environment illustrates the Turkmen government’s willful failure to involve an independent civil society in crafting development priorities, renders impossible any potential for the World Bank to consult freely with civil society in developing its engagement strategy, and demonstrates the absence of any mechanisms for social accountability. The World Bank should be transparent in developing its proposals for engagement, allocate sufficient time for engagement both within and outside Turkmenistan, and craft methods for providing feedback anonymously considering the repressive environment in Turkmenistan. The Bank should make its draft proposals public, hold public consultations on draft proposals, take into account feedback before proposals are considered by the board, and publicize final proposals in advance of board consideration. The Bank should undertake to publish a full draft of the Interim Strategy Note for Turkmenistan and open it for consultation before submitting it to the Bank’s board of directors.

The World Bank should make it clear that only once the government achieves significant progress in creating an enabling environment for civic participation and social accountability will it be eligible for limited lending. Such progress should include:

- Access to Turkmenistan for international human rights monitors, including the 10 UN special procedures who have requested invitations, as the first step toward demonstrating that the government is open to international scrutiny of its human rights record.
- Concrete human rights improvements, including releases of political prisoners, and a proven end to harassment, arbitrary detention, and other acts of retribution against journalists, human rights defenders, and civil society activists.
- Reform of the Law on Public Associations with a view to ensuring it does not unduly restrict freedom of association, simplifies the administrative process for registration, and minimizes reporting obligations to authorities.

2. Need for Transparency and Accountability of Government Finances

Currently, there is a severe lack of transparency and accountability of public finances in Turkmenistan. The public does not have access to relevant information on government income or spending. Turkmenistan is widely considered to be among the most corrupt countries in the world; it ranks 177 out of 183 countries in Transparency International’s 2011 Corruption Perception Index. According to a recent United States government review of the investment climate in Turkmenistan, “Often, government officials expect personal gain for allowing or helping foreign investors enter the local market.... U.S. firms have identified widespread government corruption, usually in the form of

bribe requests, as an obstacle to investment and business throughout all economic sectors and regions. It is most pervasive in the areas of government procurement and performance requirements.”⁷

There is significant evidence of governmental corruption and particular concerns about diversion and mismanagement of revenues from the hydrocarbon sector. President Gurbanguly Berdymukhamedov has “legalized” control of Turkmenistan’s hydrocarbon resources through the Law on Hydrocarbon Resources, which was adopted in 1996 and amended in 2008 and in 2011.⁸ Creating the State Agency for the Management and Use of Hydrocarbon Resources under the President of Turkmenistan, he ensured that only 20 percent of revenues from the sale of hydrocarbon resources go into the country’s budget. The remaining 80 percent are at the disposal of the Agency and are under the exclusive authority of the President.⁹ The IMF has raised concerns about the government’s management of public investment projects, noting that “[e]nsuring the efficient use of public resources is a priority that would entail improving the contract selection process, enforcing transparent bidding and procurement rules, and introducing adequate monitoring and audit practices.”¹⁰ Importantly, IMF directors have underscored the need to improve oversight and governance of the country’s hydrocarbon resources while noting that “pressing social and infrastructure needs warrant higher spending” and calling for “scaling back non-priority spending.”¹¹ Such analyses, alongside other evidence, raise serious concerns that the government of Turkmenistan is failing to “take steps ... to the maximum of its available resources” to achieve progressively the full realization of socio-economic rights, in violation of its obligations under the International Covenant on Economic, Social and Cultural Rights.

While the World Bank’s proposed strategy states an interest in diversifying the economy, it is important to understand that the oil and gas sector is not only the largest sector of the economy, but also the least transparent. The Law on Hydrocarbons, which places the sector under direct presidential control, includes transport, storage, delivery, marketing, and “all other forms of activity, including renting material and immaterial assets in accordance with the Agreement.”¹² In other words, the ability of other government agencies to impact oil- and gas- related activities, including environmental monitoring and protection, is virtually impossible.

⁷ United States Department of State, “Investment Climate Statement on Turkmenistan,” June 2012, <http://www.state.gov/e/eb/rls/othr/ics/2012/191255.htm>.

⁸ “The Private Pocket of the President (Berdymukhamedov): Oil, Gas and the Law,” Crude Accountability, October 2011, pp. 9, 16, http://www.crudeaccountability.org/en/uploads/File/turkmenistan/Private%20pocket_EN.pdf, accessed August 28, 2012.

⁹ Ibid, pp. 33-34, http://www.crudeaccountability.org/en/uploads/File/turkmenistan/Private%20pocket_EN.pdf (accessed August 27, 2012).

¹⁰ IMF, “Statement at the Conclusion of an IMF Staff Visit to Turkmenistan,” Press Release No. 12/281, July 27, 2012, <http://www.imf.org/external/np/sec/pr/2011/pr11223.htm>.

¹¹ IMF, “IMF Executive Board Concludes 2011 Article IV Consultation with Turkmenistan,” Public Information Notice (PIN) No. 11/161, December 20, 2011, <http://www.imf.org/external/np/sec/pn/2011/pn11161.htm>.

¹² Ibid, p. 19.

With respect to fiscal transparency, the WBG's proposed strategy identifies "best practices in public financial management" as an area for Bank assistance. However, the only specified focus is on "investment project appraisal and selection." Such assistance alone is vastly inadequate.¹³

Over the next two years, the World Bank Group's assistance to Turkmenistan should initially focus on measured improvements to enhance fiscal transparency and accountability. Only once the Turkmen government has made significant advances in this field should the WBG consider limited lending. Progress in fiscal transparency and accountability should include:

- Compliance by all government entities, including those associated with the hydrocarbon sector, with internationally recognized standards of transparency and accountability. One key standard is contained in the IMF's Code of Good Practices on Fiscal Transparency.¹⁴ The Code identifies a set of principles and practices to help governments provide a clear, accurate picture of the structure and finances of government and to help ensure that funds are used appropriately and that this use is subject to auditing and public disclosure.
- Improved governance and oversight of the hydrocarbon sector, in line with international standards and best practices, including full implementation of Extractive Industries Transparency Initiative (EITI) criteria on civil society participation. The International Monetary Fund has recommended that Turkmenistan implement EITI.¹⁵ However, EITI is currently not mentioned in the WBG proposed strategy, despite the World Bank's endorsement of and support for this initiative in the region. Any World Bank technical assistance to help Turkmenistan prepare for EITI candidacy should focus on substantive requirements to allow for full civil society engagement, even though these are not formally required of applicants to the initiative until a later stage of candidacy. This would include addressing the fundamental and immediate risks of political retribution

¹³ We understand that the World Bank is attempting to improve the efficiency and quality of public investment and social spending, but the Bank does not propose specific measures to improve transparency or accountability.

¹⁴ Also reflected in the IMF Guide on Resource Revenue Transparency and other initiatives. See International Monetary Fund (IMF), *Code of Good Practices on Fiscal Transparency*, 2007, www.imf.org/external/np/pp/2007/eng/051507c.pdf (accessed August 3, 2012); and IMF, *Guide on Resource Revenue Transparency*, 2007, www.imf.org/external/np/pp/2007/eng/051507g.pdf (accessed August 3, 2012). In 2012 the IMF began work to prepare a board paper on "Natural Resources Wealth Management." See IMF, *Consultation on IMF Natural Resources Work*, July 2012, www.imf.org/external/np/exr/consult/2012/NR/ (accessed August 3, 2012). See also, for example, the principles underlying the Extractive Industries Transparency Initiative (EITI), the Natural Resource Charter, and the Global Initiative on Fiscal Transparency at: Extractive Industries Transparency Initiative (EITI), *The EITI Principles and Criteria*, June 2003, <http://eiti.org/eiti/principles> (accessed August 3, 2012); The Natural Resource Charter, *The Twelve Precepts*, <http://www.naturalresourcecharter.org/precepts> (accessed August 3, 2012); and The Global Initiative for Fiscal Transparency (GIFT), *Draft High-Level Principles on Fiscal Transparency*, <http://fiscaltransparency.net/> (accessed August 3, 2012).

¹⁵ IMF Turkmenistan Article IV Consultation (December 2011): "Directors underscored the importance of enhancing the framework for managing hydrocarbon resources to improve governance and oversight of these resources. They considered that aligning hydrocarbon wealth management with best international practices, including the Extractive Industry Transparency Initiative [EITI] and the Santiago Principles for Sovereign Wealth Funds, would help ensure that the increasing public resources translate into sustainable and inclusive growth."

that civil society activists face should they work on issues of fiscal transparency and accountability, outlined in greater detail above. Given that EITI covers revenues only (from oil, gas, and mining), not government spending, the application of EITI principles is insufficient to ensure full transparency and should be complemented in country by spending disclosures through open budgeting processes and other measures detailed in the IMF's Code of Good Practices on Fiscal Transparency.

- Full implementation of the Santiago Principles for Sovereign Wealth Funds to enhance transparency in the management of Turkmenistan's government-owned investment funds, particularly the Stabilization Fund and the Foreign Exchange Reserve Fund.¹⁶ The World Bank should assist the Turkmen government in implementing these principles to encourage a transparent system of publicly accounting for the 80 percent of the funds from hydrocarbon development that do not go into the state budget, but rather, remain under the exclusive control of the State Agency.
- Concrete measures to combat corruption and enhance accountability, including creation of independent oversight bodies; auditing of all government departments and government spending and publication of these audits; open bidding and tendering for government procurement processes, with results published; and publication of contracts for natural resource extraction and sales.
- An end to off-budget expenditure of hydrocarbon monies.

3. Need for the Government to Give Priority to Urgent Social Needs

Specific data regarding the urgent social needs of the people in Turkmenistan is greatly limited. Both the UNDP's Human Development Indicators and the World Bank's World Development Indicators contain only limited information, and considering the absence of free expression and crackdowns on independent reporting, discussed above, other sources of information are similarly narrow. The legitimacy of government information has been called into question by various sources, shielding alleged violations of the right to health and education, for instance.¹⁷

- The World Bank should consider supporting analytical work directed at understanding the economic and social needs of all in Turkmenistan.¹⁸

¹⁶ See International Working Group of Sovereign Wealth Funds, "Generally Accepted Principles and Practices (GAPP)—Santiago Principles," <http://www.iwg-swf.org/pubs/gapplist.htm>.

¹⁷ For instance, when Médecins Sans Frontières was forced to close its operations in Turkmenistan in December 2009, it reported on the inadequacies of the official medical system, stating, "The people of Turkmenistan are being failed by their health care system, by their government, and by the international community. The system that is supposed to ensure their health is instead designed to conceal problems. This is not a case of individual practitioners failing to do their jobs but one that is far more systematic." <http://www.doctorswithoutborders.org/publications/reports/2010/MSF-Turkmenistan-Opaque-Health-System.pdf> (accessed August 27, 2012). See also, <http://www.hrw.org/world-report-2011/turkmenistan> (accessed August 27, 2012).

¹⁸ See, for example, The World Bank Group, Sierra Leone – The Governance Reform and Growth Credit Program, June 2011, <http://www.worldbank.org/projects/P107335/governance-reform-growth-grant-3?lang=en> (accessed August 3, 2012).

Only when the Turkmen government has shown it is giving priority to the urgent social needs of the population (while creating an enabling environment for civic participation and enhancing fiscal transparency and accountability) should the WBG consider limited lending. Such progress should include:

- Consistent with the obligation to progressively realize economic and social rights—which include the rights to health, education, food, water, and housing—dedicate maximum available resources to this end. Ensure that basic needs (the minimum core obligations in respect of such rights) are fulfilled.
- Combat discrimination in economic opportunities.
- Collect data that can be independently verified on key development indicators for use to guide decision-making.

4. Government's Failure to Address Urgent Environmental Concerns

According to a recent study by Yale University, Turkmenistan was among the worst environmental performers in the world—ranking 131, with only Iraq scoring lower, at 132. Not only is Turkmenistan a poor performer, but the study found that the environmental situation is getting worse over time.¹⁹

- The World Bank should provide technical assistance to aid the government in improving environmental health and overall environmental conditions in Turkmenistan.
- It also should press the government to fully comply with the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), to which it is a party.

The Need to Implement Human Rights Safeguards

The context of rights abuses and corruption in Turkmenistan underscores the importance of analyzing the potential impact of proposed projects on human rights and taking steps to mitigate any adverse impacts. The WBG should require that proposed projects in Turkmenistan go forward only after specific human rights safeguards have been rigorously implemented. Such safeguards should require:

- Human rights impact assessments on any proposed projects in Turkmenistan and an action plan to mitigate potential adverse rights impacts, ahead of board consideration. Assessments, action plans, and any related documents should be developed in consultation with affected communities and civil society, particularly humanitarian and human rights groups, and published ahead of board consideration. The World Bank should rigorously monitor and supervise implementation of the action plan. Assessments should be conducted throughout all stages of projects.
- In the context of a human rights impact assessment or environmental and social impact assessments, assess potential for discrimination on any grounds.

¹⁹ <http://epi.yale.edu/epi2012/countryprofiles> (accessed August 28, 2012).

- In the context of a human rights impact assessment or environmental and social impact assessments, assess potential arbitrary or unlawful interference with the right to privacy and home and violations of the right to housing, considering the history of such abuses in Turkmenistan.²⁰ The World Bank should ensure that it does not directly or indirectly support human rights violations.
- Due diligence on government partners and any private sector partners to ensure they are not implicated in rights abuses or corruption.
- Recognition that the World Bank's Inspection Panel will have jurisdiction to investigate each project, including to review mitigation measures outlined in human rights impact assessments.
- Rigorous application of existing safeguard policies, including beyond the immediate project area to include associated facilities, to ensure projects will not be directly or indirectly linked with rights abuses.

²⁰ For documentation of forced evictions and expropriations in Turkmenistan that violated Turkmenistan's obligations under national and international law, see <http://www.hrw.org/news/2011/10/25/turkmenistan-open-letter-president-berdymukhadmedov-regarding-ongoing-expropriation>.