



EARTHJUSTICE

Because the earth needs a good lawyer

July 21, 2008

Office of the High Commissioner for Human Rights
Palais Wilson, 52 rue des Pâquis, CH-1201 Geneva, Switzerland

**Re: Universal Periodic Review of Turkmenistan, December 2008
Submission of Earthjustice**

I. SUMMARY

1. Recalling UN General Assembly Resolution 60/251 adopted on March 15, 2006, UN Human Rights Council Resolution 5/1 adopted on June 18, 2007, and Decision 6/102 adopted on September 27, 2007, and in accordance with the Information and Guidelines for Relevant Stakeholders regarding the Universal Periodic Review mechanism (July 1, 2008), Earthjustice respectfully submits to the Human Rights Council information regarding Turkmenistan's human rights violations as a result of the implementation of its Law on Public Associations, adopted on October 21, 2003. Via this submission, Earthjustice seeks to contribute to the protection of human rights in Turkmenistan, and to improve a situation in which the policy of the previous Presidency lead to "gross and systematic violations of human rights" as stated in the 2006 Report of the Secretary General to the General Assembly.¹
2. Turkmenistan's Law on Public Associations regulates the creation, registration, activity and liquidation of non-governmental organizations in Turkmenistan, and greatly limits the ability of organizations and individuals to participate in the government's decision-making. Turkmenistan's implementation of this law violates Articles 20 and 21 of the Universal Declaration of Human Rights. Article 20 guarantees the right to freedom of peaceful assembly and association. Article 21 guarantees the right to take part in the government of one's country. The rights to assemble and participate are essential to the protection of a host of other rights that can be affected by government decision-making. In particular, decisions resulting in environmental damage can violate a number of human rights, including, but not limited to, the rights to life, health, water, work, culture, development, information, participation, shelter and housing, and the rights of indigenous peoples.
3. The Information and Guidelines for Relevant Stakeholders regarding the Universal Periodic Review mechanism, issued July 1, 2008, states that stakeholders may draw attention to specific conclusions and recommendations made by international and regional human rights mechanisms, and refer to the extent of implementation. It is important to note that Turkmenistan is a party to the UN Economic Commission for Europe's (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, also known as the Aarhus Convention. The Aarhus

¹ The Secretary-General, *Report of the Secretary-General on the Situation of Human Rights in Turkmenistan*, Summary, A/61/489 (Oct. 3, 2006).

Convention Compliance Committee (ACCC) has documented Turkmenistan's human rights violations over the last four years as a result of a submission from the public regarding the enactment of Turkmenistan's Law on Public Associations. Recently, the third Meeting of the Parties (MOP) of the Aarhus Convention issued a caution to the Government of Turkmenistan for failure to address the human rights violations arising from the Law on Public Associations. We respectfully request that the Human Rights Council: 1) take into consideration the concerns of the ACCC with regard to Turkmenistan; 2) urge Turkmenistan to allow site visits by UN International Experts and Special Procedures, in addition to the visits that have been requested by the ACCC and Aarhus MOP; and 3) encourage Turkmenistan to accept assistance, including assistance from the ACCC, to remedy the infringement of human rights resulting from the Law on Public Associations.

II. BACKGROUND

4. Turkmenistan has ratified several of the most prominent human rights instruments, including the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; and the Convention on the Rights of the Child. In addition to these treaties, Turkmenistan ratified, without any reservation, the Aarhus Convention on June 25, 1999.
5. The Aarhus Convention was adopted in 1998 by the Fourth Ministerial Conference in the "Environment for Europe" process, in order to guarantee that the human right to participate in government would extend to activities affecting the environment. This agreement requires national governments to guarantee three core rights: the right to information about the state of the environment and activities that might harm it; the right to participate in decisions about potentially harmful activities; and the right to access to justice if the activities violate environmental or other laws. The Aarhus Convention grants citizens of signatory states enforceable rights and is monitored by a Compliance Committee, similar to the Human Rights Treaty Bodies, with which members of the public may communicate concerning a Party's compliance with the Convention.

III. HUMAN RIGHTS VIOLATIONS

Turkmenistan's Law on Public Associations

6. Turkmenistan's Law on Public Associations introduced numerous restrictions on the registration, operation and liquidation of NGOs in violation of Aarhus and human rights standards. First, the law did not clearly define the process for registering an organization and gave the Ministry of Justice broad discretion to deny the registration of an NGO. Second, almost all organizations had to reregister once this law came into effect and, in some instances, had to register again if a single member left their organization. These requirements imposed onerous procedural burdens on NGOs, and many organizations were

denied approval during the frequent re-registration process. Third, the new regulations changed the legal status of registered organizations and restricted their legal capability. The law explicitly delineated all rights of public associations and declared that public associations do not have any rights outside those listed. Fourth, the law introduced a direct ban on any activities of unregistered associations in Turkmenistan. In a country that had so few registered NGOs, the inability for informal associations to organize was extremely detrimental to the ability of citizens to participate in civil society. Fifth, the law restricted non-citizens from participating in and forming public associations. Sixth, the law set different regulations based on the geographic scope of activities, making it extremely difficult to operate outside of an NGO's designated area or to operate on a national or international basis. Finally, it restricted the ability of Turkmen NGOs to receive funding from other countries or to open an office in another country, and it set great barriers for international NGOs to operate in Turkmenistan.²

7. In the early 1990s, roughly ten public associations were registered in Turkmenistan, including five organizations that were working in the field of environmental protection. At the time of the initial submission to the ACCC in 2004, there was only one remaining environmental public association in Turkmenistan, the Society for Nature Protection. The Aarhus submission asserts that the organization was established during the Soviet era and was headed by a deputy Prime Minister of Turkmenistan, and that a Turkmen government official had explicitly stated that the Society of Nature Protection exists within the Ministry of Nature.³ Therefore, the only environmental NGO that remains is operating in conjunction with the Ministry of Nature, which likely affects its ability to advocate for change at the state level. Shortly after the enactment of the law, Dashoguz Ecological Club and Ecological Club Cantena, two of the country's oldest and most serious NGOs, were stripped of their registration. In November 2004, Turkmenistan decriminalized participation in the activities of unregistered NGOs, but the stringent restrictions remain in force and invasive oversight by the Ministry of Justice during the cumbersome registration process continues. In 2006, the Ministry of Justice did not approve any new NGO registrations.⁴
8. The Open Society Institute has stated that the Law on Public Associations violates the obligations of Turkmenistan taken under the International Covenant of Civil and Political Rights (Articles 19 and 22).⁵ The Asian Development Bank reports that the majority of unregistered groups in Turkmenistan have ceased to exist or have greatly cut back their activities. Some NGOs started working as or with commercial entities to escape the restrictions placed on public associations.⁶

² International Center for Not-For-Profit Law, *Short Commentary on the New Law on Public Associations of the Republic of Turkmenistan*, Nov. 13, 2003, available at <http://www.icnl.org/knowledge/news/2003/11-14.htm>.

³ Nadejda Mazur, BIOTICA Ecological Society, *Communication to the Aarhus Convention Compliance Committee, Turkmenistan*, 3, ACCC/C/2004/5 (Oct. 5, 2004). See Attachment A.

⁴ Asian Development Bank, Civil Society Brief, Turkmenistan, *Overview of NGOs and Civil Society Turkmenistan*, available at <http://www.adb.org/Documents/Reports/Civil-Society-Briefs/TKM/CSB-TKM.pdf>.

⁵ Nadejda Mazur, *supra* note 3.

⁶ Asian Development Bank, *supra* note 4.

Turkmenistan's Human Rights Violations as Documented by the ACCC and Aarhus MOP

9. In 2004, Ms. Nadejda Mazur of BIOTICA Ecological Society submitted a report to the ACCC alleging that Turkmenistan's Law on Public Associations placed restrictions on non-governmental organizations and individuals that were involved in protecting the right to a healthy environment.
10. In response to the submission, the Aarhus Convention Compliance Committee followed its normal information gathering procedure and organized a hearing on December 16, 2005, at which the Turkmen authorities did not appear. The Committee found that Articles 6 and 17 of the Law on Public Associations is not in compliance with Article 3, paragraphs 4 and 9 of the Aarhus Convention.⁷ It also found that Turkmenistan was not in compliance with the Convention's requirement to establish and maintain a clear, transparent and consistent framework to implement the provisions of the Convention. The Committee requested that the Government of Turkmenistan amend the Law on Public Associations to bring it into compliance with the Convention.⁸ This position was endorsed by the second Meeting of the Parties (MOP2) held in Almaty, Kazakhstan, on May 25-27, 2005, in its Decision II/5c.⁹ MOP2 invited the Government of Turkmenistan to submit a report to the third Meeting of the Parties (MOP3), through the ACCC, on the measures it had taken to implement the recommendations.
11. In the follow-up process, the Compliance Committee exchanged correspondence with Turkmen authorities. As a result, at the invitation of the Committee, two representatives of the Government of Turkmenistan participated in the twelfth meeting of the Committee (June 14–16, 2006). At this meeting, "several suggestions as to practical steps to implement decision II/5c were put forward, including a proposal to draw up a plan of the specific steps to be taken to implement the recommendations."¹⁰ Unfortunately, the Turkmen authorities took no further steps. In its implementation report to MOP3, Turkmenistan argued that its laws are in full compliance with the Convention, and failed to mention Decision II/5c. As a result, the ACCC concluded that Turkmenistan had failed to implement the measures referred in the Decision of MOP2 and recommended MOP3 take a strong action, including a possible on site mission.
12. MOP3, in its the Decision III/6e, regretted the failure of the Government of Turkmenistan to take measures to implement Decision II/5c and confirmed its earlier endorsement of the ACCC's findings. In addition, MOP3 issued a caution to the Government of Turkmenistan, to become effective on May 1, 2009, unless the Government of

⁷ Article 3, Paragraph 4 provides: "Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation." Article 3, Paragraph 9 provides: "Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities."

⁸ ECE/MP.PP/2005/13/Add.5. See Attachment B.

⁹ ECE/MP.PP/2005/2/Add.9. See Attachment C.

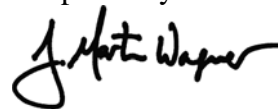
¹⁰ ECE/MP.PP/2008/5/Add.8. See Attachment D.

Turkmenistan fully satisfies the conditions set forth for compliance.¹¹ As it is rare for an Aarhus Meeting of Parties to issue a caution against one of its members, this is a clear sign of the gravity of the issue and a call for the Turkmen authorities to take very seriously the desire of the international community to see effective improvement of the human rights situation in the country.

IV. CONCLUSION AND RECOMMENDATIONS

13. The bodies of the Aarhus Convention have taken action in response to Turkmenistan's Laws on Public Associations because of the numerous human rights violations that have resulted from its enactment. The restrictions placed on public associations and public participation are so stringent that the Asian Development Bank reported that NGOs supporting democracy and human rights are not able to operate openly in Turkmenistan.¹² Without the right to participate, organizations and persons are not able to defend their human rights, including their right to a healthy environment and an adequate standard of living. It is important that the Human Rights Council act to prevent any further human rights violations of this nature.
14. Because one of the objectives of the UPR is to encourage "full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights,"¹³ Earthjustice urges the Human Rights Council in its review of Turkmenistan to take into consideration the concerns of both the Aarhus Convention Compliance Committee and Meeting of the Parties. In addition, we urge the Human Rights Council to recognize that Turkmenistan's infringement of the rights of association and participation as a result of the Law on Public Associations has broad consequences for the rights and freedom of the people of Turkmenistan.
15. Earthjustice also recommends that the Council call on Turkmenistan to open itself to visits from UN International Experts and Special Procedures, as well as on site visits made by the Aarhus Compliance Committee and the Meeting of the Parties. Finally, Earthjustice recommends that the Council urge Turkmenistan to accept assistance in improving the human rights situation in the country. It is important that Turkmenistan take a positive approach to offers of assistance, including the offer made by the Aarhus Compliance Committee, and that it take advantage of the human rights expertise available to Turkmenistan to help it improve its record on the rights of assembly and participation.

Respectfully Submitted,



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¹¹ ECE/MP.PP/2008/CRP.7/rev.1. See Attachment E.

¹² Asian Development Bank, *supra* note 4.

¹³ A/HRC/RES/5/1.