



FIDH-Human Rights Centre Viasna
July 2015

Conditions for a meaningful human rights dialogue with Belarus

Dear Ms. Mogherini,
Dear Mr. Hahn,
Dear PSC Ambassadors,
Dear Members of the COHOM,
Dear Members of the COEST,

The impending resumption of the human rights dialogue between the European Union and Belarus is a new step in the current warming of relations between the two parties. This upcoming dialogue will however be meaningless if it is limited to a mere symbol serving the rehabilitation of the Lukashenko regime, a few months before the October 2015 presidential elections.

To avoid this threat, the EU should address the crucial questions of political willingness, achievable objectives and civil society role. FIDH and its Belarus league Human Rights Centre Viasna call on the EU to be extremely cautious in its negotiation of a future human rights dialogue with Belarus and to set up clear conditions in line with the EU guidelines on human rights dialogue and the EU strategic framework and action plan on human rights and democracy.

Preliminary remarks: the situation in Belarus since the last human rights dialogue

Since the first and last EU-Belarus human rights dialogue, which took place in 2009, the situation in Belarus has been marked by a continuous deterioration in key areas, which could suffice to illustrate the lack of political will of the authorities to advance reforms, *inter alia*:

- a massive crackdown on the independent civil society and the opposition following the December 2010 presidential elections and the continuous infringement on the right to take part in the government, to vote and to be elected;
- the continued existence and mistreatment of political prisoners, whose situation has continued worsening in the last months¹;

¹ FIDH, HRC Viasna, Situation of political prisoners in Belarus worsening, 29 May 2015, <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/belarus/situation-of-political-prisoners-in-belarus-worsening>

- a surge in arbitrary, preventive and illegal detentions, as well as in the judicial harassments of peaceful human rights and democracy activists²;
- the systematic infringement on freedoms of speech and assembly and increasing restrictions on freedom of the media³;
- systematic violations of the right of association⁴; following legislative changes of 2011, Belarusian laws violate the right to peaceful assembly⁵, allowing regular detentions and fining of activists for unsanctioned assembly;
- large scale violations of economic and social rights, including forced labour⁶;
- the continued use of the capital punishment.

Over the last months, Human Rights Centre Viasna monitored further deterioration of the human rights situation ahead of the Presidential elections. Harassment of journalists intensified⁷ while pressure on political prisoners, particularly on N. Dziadok and N. Statkevich, mounted significantly⁸. Finally, the new decree signed by the President in April 2015 further violates economic and social rights of Belarusian citizens obligating citizens to work a specific number of days a year or pay a special duty to the state. Non-payment entails administrative responsibility in the form of a fine or administrative arrest. Thus, stimulation of employment is sought through forced employment under threat of arrest rather than through the implementation of competitive salaries, social benefits and guarantees⁹.

Given the fact that addressing this situation is a matter of political will, not of technicalities, our organisations believe that a human rights dialogue with Belarus can only be set up when the following conditions are met.

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- 2 FIDH-HRC Viasna, Report “Arbitrary Preventive Detention of Activists in Belarus”, 28 September 2014, <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/belarus/16113-release-of-a-report-arbitrary-preventive-detention-of-activists-in-belarus>
 - 3 The recent law on “Mass Media” allows a total censorship of the internet and judicial proceedings against journalists cooperating with foreign outlets.
 - 4 In June 2015, the Supreme Court of Belarus upheld the Justice Ministry's decision not to register the association "For Fair Elections". It was the third attempt by the association activists to register their organisation and one of the many examples of arbitrary rejection to officially register public associations. Human Rights Center Viasna were also denied registration multiple times, in violation of the right to association, as observed by the UN Human Rights Committee's in October 2014 (<https://spring96.org/files/misc/g1421890.pdf>).
 - 5 Since 2011, Belarusian legislation bans spontaneous and simultaneous meetings, applies restrictive rules to organizers and participants of demonstrations and allows wide discretion of the authorities to deny the permission to organize a public meeting.
 - 6 Recommendations of the FIDH-HRC Viasna Report "Forced Labor and the Pervasive Violation of Workers' Rights in Belarus", 10 December 2013, (<https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/belarus/14364-forced-labor-and-the-pervasive-violation-of-workers-rights-in-belarus>), fed into the UN Committee on Economic, Social and Cultural Rights (CESCR) report following its review of Belarus in November 2013: <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/belarus/14424-un-committee-belarus-should-abolish-forced-labour>.
 - 7 Viasna monthly monitoring of human rights violations in Belarus, June 2015: <http://spring96.org/ru/news/78173>.
 - 8 *Ibid.*
 - 9 FIDH, HRC Viasna, "New presidential decree in Belarus uses fines and imprisonment as a means to stimulate employment", 15 April 2015, <https://www.fidh.org/International-Federation-for-Human-Rights/eastern-europe-central-asia/belarus/new-presidential-decree-in-belarus-uses-fines-and-imprisonment-as-a>

The dialogue must be rooted in clearly asserted political commitments

Human rights dialogues are conceived as fora to discuss possible advances with authorities which are “willing to improve the situation”¹⁰. It is important to avoid the dialogue to become an empty exercise legitimising an autocratic regime in its repression policy. This means that the EU should not consider the upcoming human rights dialogue with Belarus as the place where political willingness can be created. More realistically, the EU should rather seek to obtain commitments for reforms at the highest political level *before* the fully-fledged human rights dialogue is set up to discuss the implementation of these reforms.

While the EU should assert the necessity of political prisoners release for any step towards a future normalisation of relations, our organisations urge the EU to engage the Belarus authorities on the adoption of a formal political declaration entailing commitments for a list of key reforms and the recognition of the legitimacy of the independent civil society. This political declaration should be the precondition and a basis for the development of the fully-fledged human rights dialogue. It should be seen as a first step to reassure the stakeholders on the credibility of the process. It should also serve as a basis for a more ambitious Road Map to be discussed and followed in the subsequent human rights dialogues.

The dialogue must ensure constructive involvement independent civil society

Under the Lukashenko rule, independent civil society organisations have been victim of both a comprehensive arsenal of repressive laws¹¹ and practices, and a constant exercise of defamation by the regime. This context needs to be considered when the EU implements its 'Guidelines on human rights dialogues with non-EU countries', which set out various possibilities for civil society inclusion in these dialogues. This inclusion goes from their involvement “in the preliminary assessment of the human rights situation” to their inclusion “in the conduct of the dialogue itself [...] and in following up and assessing the dialogue”¹². The human rights dialogue cannot be credible in a highly repressive context and if no concrete steps are undertaken to legitimate and officially support the independent civil society.

The EU must therefore seek to obtain – before the setting-up of the human rights dialogue – the formal guarantee that repression of the peaceful activities of the civil society will end and that the Belarus authorities recognise the legitimacy of the independent civil society. The legitimisation of the independent civil society can then pass through its direct involvement in the all the phases of the dialogue. The EU should already start a formal consultation of the independent European and Belarus

10 This is the reason why the assessment of the political willingness of the partner is a key part of the preliminary steps the EU must take before setting up a dialogue : “Amongst other things the assessment will look at developments in the human rights situation, the extent to which the government is willing to improve the situation, the degree of commitment shown by the government in respect of international human rights conventions, the government's readiness to cooperate with United Nations human rights procedures and mechanisms as well as the government's attitude towards civil society.”

See: EU guidelines on human rights dialogues with third countries, 2008 update, <http://www.consilium.europa.eu/uedocs/cmsUpload/16526.en08.pdf>.

11 The case of Human Rights Centre 'Viasna' is symbolic of the arsenal of repressive means the Belarus authorities use to continuously harass civil society: dissolution of NGOs, legal intimidation including through taxation law, harassment and arrest of their staff members, impossibility for NGOs to receive funds from abroad without approval from the authorities, restriction on websites, etc

12 “Civil society could become involved under the most suitable arrangement in the preliminary assessment of the human rights situation, in the conduct of the dialogue itself”.

civil societies to collaborate on the baseline assessment of the human rights situation¹³. The EU should in addition put clearly on the table from the beginning of the dialogue negotiation process with the Belarus authorities that it will set up a Civil Society Seminar, which will at some point have to be held in Belarus. Ultimately, the authorities' position towards the evolution of these modalities towards a triad (Belarus authorities/EU/civil society) will be a test case to assess their political willingness to undertake genuine reforms.

The dialogue must implement a human rights Road Map – in conjunction with the best interplay of EU policies

Once the European Union has obtained guarantees on the Belarus authorities' commitment for reforms and participation of the independent civil society, the EU can work with these actors on the establishment of a human rights Road Map. This Road Map should take the form of a detailed action plan setting out clearly the benchmarks, responsibilities and time-frames for the implementation of reforms.

The human rights Road Map should explicitly be presented as part of a wider framework aiming to allow the use of the best interplay of policies and tools available to reach the set objectives. In line with the EU Strategic Framework and Action Plan on Human Rights and Democracy, the EU should ensure the best articulation between “dialogue, targeted support, incentives and restrictive measures”¹⁴.

Recommendations:

FIDH and Human Rights Centre Viasna call on the European Union to:

- Assert that the immediate release and rehabilitation of political prisoners is a clear precondition for any move towards the normalisation of relations with Belarus.
- Engage the Belarus authorities on the adoption of a political declaration entailing the commitment for a list of key reforms and the recognition of the legitimacy of the independent civil society. This political declaration should be the precondition and basis for the development of a human rights dialogue.
- Ensure that the assessment of the preliminary talks between the EU and the Belarus authorities concerning the establishment of a human rights dialogue is shared with the Belarus and European civil society as a basis for a joint discussion on the terms of reference of the dialogue (particularly concerning the baseline, objectives, benchmarks, civil society inclusion, accompanying measures and foreseen consequences once each specific benchmark is met, including possibly the suspension of the dialogue in case of further deterioration of the situation).
- Set up a Civil Society Seminar which should take place in addition to the human rights dialogue

13 According to the EU guidelines on human rights dialogues, “any decision to initiate a human rights dialogue will first require an assessment of the human rights situation in the country concerned”.

14 EU Strategic Framework and Action Plan on Human Rights and Democracy, 25 June 2012, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/131181.pdf

and whose recommendations should be discussed by the EU and Belarus officials. The Civil Society Seminar should allow for the presence of all the representatives of the independent civil society and be able to take place in Belarus. The Seminar should be conceived as a permanent forum rather than a punctual gathering and should also be charged with monitoring the implementation of the Road Map. The objective of setting-up a dialogue should be put on the table as a modality of the human rights dialogue to be reached in a reasonable future.

- Engage the Belarus authorities on the drafting of a human rights Road Map entailing time-bound benchmarks and modalities for implementation, and integrating the input of the independent European and Belarus civil society. Ensure that this Road Map is part of a wider strategy allowing the best interplay of EU policies, the mainstreaming of human rights considerations in sectoral cooperation and the adaptation of the overall pace of the EU-Belarus relations based on progress or lack thereof.
- Consider the following key reforms in the preparation of the Human Rights Road Map:

Civil and political rights

- Releasing without further delay all individuals convicted for political reasons, who are imprisoned or serving other forms of punishment – This must be a precondition for any step towards the normalisation of EU-Belarus relations.
- Immediately stopping the persecution, arbitrary arrest or harassment of citizens for political reasons.
- Ensuring that all the country's citizens have the right to enjoy fundamental rights, including freedom of expression and assembly; and taking effective steps to investigate any cases of arbitrary arrests.
- Repealing article 193-1 of the Criminal Code, which penalises the organisation of, and participation in, activities of non-registered public associations.
- Repealing the set of restrictive legislative amendments to a number of Belarus legislative acts adopted in the end of 2011 concerning the Law on Public Associations, the Law on Political Parties, the Electoral Code, the Code of Administrative Offences, the Criminal Code, the Criminal Procedure Code of Belarus, the Law on Public Gatherings (which further restricts freedom of peaceful assembly), and the Law on State Security (which allows for significant expansion of the powers of the State Security Committee, KGB).
- Registering the Human Rights Centre 'Viasna' and all the previously dissolved organisations which lead pacific activities in the framework of the rule of law.
- Enabling freedom of assembly in law, through the simplification of the procedure of notification, suppression of the obligation for organisers to bare the costs for “guaranteeing law and order and safety for citizens” and suppressing the restrictions on place, time and procedure for holding events; repealing all other law which limit freedom of expression and assembly, with a view to bringing domestic law into conformity with internationally

recognised human rights standards.

- Introducing a moratorium on the death penalty, ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights and taking steps to remove the death penalty from the penal system.
- Taking effective steps to ensure the freedom of the independent media, both domestic and foreign ones.
- Promoting the role of the judiciary in Belarus and its activity without Executive interference; implementing the recommendations of the UN Special Rapporteur on the independence of judges and lawyers; ensuring appropriate publicity for the judicial process; conforming with the OSCE Human Dimension commitments in particular in the field of the Rule of Law.

Economic and social rights

- Amending the Labour code, the civil Procedures code and the criminal code, and all other relevant laws, decrees and regulations to ensure that all of the discriminatory provisions are eliminated, in particular those regarding the work contract system and the situation of the most socially vulnerable groups such as alcoholics and drug addicts, and persons in precarious situation such as those recently released from detention, the homeless and the jobless, “obligated persons” and other groups who need reinforced social protection and care, rather than a discriminatory and by nature repressive arsenal, to successfully reintegrate society.
- Guaranteeing freedom of association, by putting an end to state trade union monopoly’ and by recognising workers’ rights to independently form and join organisations of their choice. Refrain from repressing and persecuting labour activists engaged in trade union activities.
- Granting the UN Special Rapporteur on the situation of human rights in Belarus access to the country and provide him with the necessary assistance to perform his duties, including by allowing him to visit all areas, public institutions and facilities and to meet with independent civil society organisations as he deems fit.
- Accepting all pending requests for visits involving UN Special Procedures, including those for the Special Rapporteur on the rights to freedom of peaceful assembly and of association and for the Special Rapporteur on the situation of human rights defenders.
- Implementing the recommendations issued by the International Labour organisation’s commission of Inquiry on freedom of association.
- Implementing the recommendations issued by UN treaty bodies, in particular in the concluding observations of the Committee on Economic, Social and Cultural Rights issued on November 2013.