



FIDH - International Federation for Human Rights

**Comments from the FIDH on the European Bank for
Reconstructions and Development (EBRD) Draft Country Strategy for
Belarus**

Paris, February 18th, 2013

FIDH wishes to thank the European Bank for Reconstruction and Development (EBRD) for the opportunity to comment and make some recommendations on its draft revised strategy on Belarus.

While the EBRD's proposed strategy stresses the importance of human rights and democracy, FIDH fears that in the present context of severe and recurrent human rights violations the strategy's failure to address the concrete means by which to secure rights realisation risks rendering such references ineffectual.

Information provided by NGOs, including FIDH,¹ as well as international organisations like the United Nations (UN) and the Council of Europe, shows that human rights violations in Belarus are widely and systematically perpetrated. The main features of this repression as documented by FIDH include violent and intense crackdowns on Belarusian democracy activists since 19 December 2010, increasing social control, continuous intimidation of the public and the media, and the persecution, intimidation, detention, harassment and muzzling of human rights defenders, opponents and activists.² Civil society as a whole faces permanent pressure and harassment whilst the economic and social rights of Belarusian citizens are increasingly violated and workers deprived of basic labour rights.

On a daily basis, FIDH and its Belarusian member organization, Human Rights Center Viasna, observe the human rights situation in Belarus deteriorate. The gravity of this situation was underlined by Nils Muižniek, Council of Europe Commissioner for Human Rights, on 12 February 2013. Muižniek publically condemned fact that whilst many have called for the imposition of sanctions on the country, others "continue to do a brisk business with Belarus". His public address on the situation stated that "[Council of Europe] member states should not cooperate with the Belarusian authorities in any actions that may jeopardise the integrity and security of Belarusian human rights defenders". He added that Belarus should not be considered a candidate for membership of the Council of Europe "until it releases all human rights defenders and opposition activists imprisoned for political motives, abolishes the death penalty and carries out far-reaching democratic reforms". Muižniek cites the case of human rights defender and FIDH Vice-President, Ales Bialiatski, in prison for his human rights activities since 4 August 2011. His detention was recognised as a violation of international law by the UN Working Group on Arbitrary Detention in late 2012 (see freeales.fidh.net).³

Supporting reforms that strengthen democracy is an important aspect of the EBRD's mandate, as set out in Article 1 of the Agreement Establishing the Bank. In Belarus such a process is far from being engaged. The EBRD's own draft strategy for Belarus shares this view (pp. 11, 31-36), highlighting not only the country's lack of progress on democracy and human rights but also its introduction of restrictive new laws in October 2011, the application of the death penalty in March 2012, the flawed parliamentary elections of September 2012, and the reinforcement of EU sanctions in both March and October 2012.

Taking these developments into account, the EBRD has decided to "recalibrate" its operations in respect of Belarus. While FIDH welcomes this analysis, we believe that the EBRD has not factored in all the consequences of its alarming findings on the country situation, nor that it has formulated conditions sufficient to ensure its activities will be socially and environmentally sustainable, or designed and implemented in compliance with international practices and standards. In this regard, FIDH, offers the following comments and recommendations.

Political benchmarks, the monitoring of their realisation, and the Bank's support

Articles 1 and 8(1) and (2) of the Agreement Establishing the EBRD, mandate the Bank to ensure that the countries it supports are committed and apply the principles of multiparty democracy, pluralism and market economics.

¹ For a more general overview of the human rights situation in Belarus <http://www.fidh.org/-Belarus.284->.

² See 'Restrictions on the Political and Civil Rights of Citizens following the 2010 Presidential Election', available at : <http://www.fidh.org/Restrictions-on-the-Political-and->.

³ United Nations (UN) Working Group on Arbitrary Detention (WGAD), decision A/HRC/WGAD/2012/39, 64th session

It is now established fact that Belarus does not implement the principles of multiparty democracy and pluralism in practice. The continuing deterioration of the situation in Belarus should raise doubts about the intention and commitment of the Belarusian authorities to move in a rights respecting direction.

Confronted with such a situation, the Bank is at liberty to suspend or modify its support of a state. In the case of Belarus, the Bank has chosen to continue its engagement, without explaining how, in light of the current circumstances, it is convinced that its support will ultimately foster democratic transition.

FIDH believes that the Bank should specify in its strategy for Belarus, how it has determined that its engagement with the country remains relevant and within its mandate, in the absence of any credible commitment or progress towards democratic freedom by the Belarusian authorities. In addition, the Bank should explain how it is convinced that, despite the current situation, its activities are expected to ensure social benefits to the people, foster democracy and contribute to the effective implementation of international law (including labour rights and corporate social responsibility) as per its environmental and social policy, paragraphs 5 and 9.

The Bank has developed political benchmarks to assess, Belarus' commitment, progression and regression, during the period to be covered by new strategy.⁴

FIDH welcomes these benchmarks. However, we consider them inadequate to secure respect for democracy in failing to:

- Give time-bound and detailed targets to be reached by Belarus and monitored regularly by the Bank. The guidance is too general, lacks any agenda, and creates the risk that activities will be pursued in a business as usual manner throughout the strategy's duration.
- Explain how progression, regression or the maintenance of the *status quo* will concretely affect the operations of the Bank and how the Bank will respond to each trajectory.

Benchmarks should reflect specific priorities. In the case of Belarus, FIDH highlights the necessity of the following:

- ending the harassment of human rights defenders, journalists and civil activists as well as the arbitrary closure of NGOs;⁵
- withdrawing article 193(1) from Belarus' Criminal Code, which penalizes participation in unregistered organizations, *de facto* criminalizing the members of hundreds of associations that have lost their registration;
- creating an environment that allows NGOs to register without further obstacles;
- improving unlawful conditions of detention in Belarusian prisons, including torture and inhumane and degrading treatment⁶; and

⁴ See p. 18: 1) Progress toward meaningful political accountability, including the strengthening of checks and balances in the political system, removal of impediments to NGO and opposition parties' active engagement in political life and even-handed application of the rule of law ; 2) Progress in increasing media freedom and freedom of expression ; 3) Progress in enforcing the human and civil rights protections guaranteed in the Constitution, including freedom from arbitrary arrest and detention, and the release and rehabilitation of those recognised by the EU and other members of the international community as political prisoners.

⁵ Please see, <http://www.fidh.org/Belarus-With-the-one-year-12487>; <http://www.fidh.org/Detention-conditions-of-civil-12366> ; <http://www.fidh.org/Belarus-arbitrary-closure-of-the-12285>; <http://www.fidh.org/Belarus-harassment-of-Viasna-Board-12216>; <http://www.fidh.org/Ales-Bialiatski-one-year-in-prison>; <http://www.fidh.org/Andrei-Pochobut-released> ; <http://www.fidh.org/BELARUS-Interior-Ministry-s> and <http://www.fidh.org/BELARUS-Human-rights-defenders>.

⁶ Please refer to <http://www.fidh.org/The-conditions-of-detention-in-the>.

- abolishing the death penalty.

Finally, FIDH welcomes the fact that further to its previous benchmarks, the Bank has added the release and rehabilitation of political prisoners. In this regard, FIDH would like to draw the Bank's attention to 12 political prisoners listed here: <http://spring96.org/en/news/49539>.

The “recalibrated” operational approach adopted by the Bank

FIDH welcomes the fact that due to the negative political developments surrounding the December 2010 presidential election and the international community's continuing concerns regarding the treatment of political opposition, civil society and independent media in Belarus, the EBRD's Board of Directors has decided to “recalibrate” the Bank's operational approach to Belarus within its existing Strategy by renouncing its support of the Belarusian central authorities and confining its operations to projects shown to improve the living conditions of the Belarusian people. Notably, the Bank:

- no longer considers investments in public sector projects in power or transport infrastructure, or direct public sector engagement in the area of sustainable energy; and
- has tightened the conditions concerning working with state-owned banks or in privatisation and pre-privatisation support.

In this context, the Bank now envisages focusing its strategic approach in the next period on promoting private sector development, supporting *inter alia* the “transparent privatisation of state-owned entities and assets, provided the Belarusian central state does not benefit directly from the Bank's investments” (p. 19).

FIDH believes that a more thorough analysis of private companies and the financial sector in Belarus should be made by the Bank, regarding in particular the benefits that the regime may draw indirectly from the Bank's activities.

Indeed, according to information gathered by FIDH, intermediary companies working in particular on Belarusian and international oil and chemical products markets are not independent businesses. These activities require the involvement and permission of the Belarusian authorities. In Belarus any activity in the energy sector, as well as in other lucrative sector, is strictly controlled by the government. All key decisions are made by Lukashenko himself, including granting permission to work in these markets, giving businesses government contracts, redistributing property without any tendering procedures, and appointing directors. In exchange for these privileges, owners and directors of these businesses who are often referred to as Lukashenko's “bagmen”, transfer a portion of their profits to the dictator, provide him with various financial services, and sustain the repressive regime. This system is made up of some 20-30 “oligarchs” who depend entirely on the dictator's favour.⁷ Given the high dependency on the Belarusian authorities for the development of business activity, and thus, the high risk that any support to the private sector is in fact supporting the regime itself, mechanisms are needed to ensure that EBRD support to the private sector is not directly or indirectly benefiting the Lukashenko regime.

In the same vein the Bank must develop efficient mechanisms to ensure that it does not engage with those on EU and US sanctions lists, and that its activities neither benefit such persons or entities nor, de facto, fund those involved in human rights violations.

FIDH views the necessary mechanisms as entailing at least:

- a comprehensive screening of the links between various economic actors and the regime, as well as those entities and persons subject to sanctions;
- a reporting requirement for companies financed by the Bank;
- a disclosure policy to ensure that information about investment is made public and accessible to civil society;

⁷ See ‘EBRD funds pocketed by Lukashenko henchmen, politician says’, euobserver.com, available at: <http://euobserver.com/foreign/115342>.

- anti-corruption and other measures to improve transparency and access to information for all projects financed by the EBRD (fiscal transparency being critical); and
- in relation to the existing Project Complaint Mechanism (PCM), the EBRD should be proactive and inform stakeholders about the mechanism, making clear that any human rights abuse linked to the Bank's financing will be dully examined.

More broadly, given that: (i) legislation in Belarus does not adequately protect against human rights abuses linked to business activity, and (ii) privatization is identified as a priority, the EBRD should place more emphasis on the need to adequately regulate such privatization, in order to ensure that private sector activity respects human rights, to secure business accountability and to facilitate access to justice for human rights abuses linked to business activities. In doing so, the Bank should require the fulfilment of the UN Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, endorsed by the UN Human Rights Council in June 2011 and OECD Guidelines for Multinational Enterprises.

FIDH also recommends that the Bank lay greater insistence on the achievement of economic and social rights beyond the property rights included in the current draft strategy. This should include labour rights,⁸ which have been blatantly violated in recent months, including through regulations tantamount to sanctioning forced labour; rights to an adequate standard of living; and the protection of vulnerable groups, such as women, minorities, the disabled and children, etc. The realisation of these rights is an essential condition to the Bank's ability to achieve its goal of engaging in projects that benefit the Belarusian people. They should thus represent key benchmarks.

Finally, in response to the EBRD's prioritisation of agribusiness investments, FIDH is aware of the importance of developing specific and strong safeguards to avoid the potential negative impacts of agrobusiness investments on rural populations whose land provides them with essential living resources. This includes safeguards to avoid forced evictions and violations of the rights to food, health, a healthy environment, and housing.

These recommendations outline the minimal measures that need to be taken to ensure that the Bank's operations guarantee social benefits to the people of Belarus; contribute to the effective implementation of international law on the environment and labour; secure corporate responsibility, and do not contravene the country's obligations under relevant international obligations related to environmental protection, human rights and sustainable development – all as required under the EBRD's founding agreement and its core policies like its environmental and social policy.

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⁸ Specific safeguards are needed to strengthen implementation of the core labour rights conventions of the International Labor Organization and occupational health and safety standards in the framework of privatization and support to private enterprise.