



September 18, 2012

Sir Suma Chakrabarti
President, EBRD
One Exchange Square
London EC2A 2JN
United Kingdom

Re: EBRD Country Assessment and Operational Priorities for Egypt

Dear Sir Suma Chakrabarti,

The Cairo Institute for Human Rights Studies, the Egyptian Initiative for Personal Rights, and Human Rights Watch thank the European Bank for Reconstruction and Development (EBRD) for hosting a consultation with civil society in Cairo on September 4, 2012. Thank you also for meeting with Human Rights Watch in London in July and the Cairo Institute for Human Rights Studies in June. We write to follow up on the Cairo consultation and to raise key outstanding issues of concern regarding the EBRD's engagement in Egypt.

As we have said throughout the consultation process, we urge you to ensure that the EBRD's upcoming process of creating a country assessment and operational priorities for Egypt will provide a full and accurate assessment of the Egyptian government's commitment to and application of the principles articulated in Article 1 of the EBRD's founding agreement. We strongly recommend that you articulate concrete reform steps in this country assessment, underlining the steps the Egyptian government needs to take to work toward the Article 1 principles, and make clear the EBRD's level of engagement will depend on the level of progress in these areas. We were encouraged by your recognition of the importance of Article 1 principles to all of the EBRD's engagement in our July meeting.

Please see below key reform steps that we recommend you articulate in the assessment. We also recommend that you outline in the assessment an effective system for monitoring progress on these reform steps and make clear that the level of progress will impact the EBRD's engagement. We understand from the Cairo consultation that the political assessment will

address outstanding reforms needed in Egypt, but with no operational implications. We are concerned that this absence of operational implications will significantly hamper the Bank's ability to ensure Article 1 compliance. We believe that the Bank's potential to help secure Article 1 compliance can only be realized by clearly setting out how reforms (or failure to implement reforms) will impact engagement. In other words, the EBRD must be prepared to limit its lending in Egypt, should Egypt not progressively achieve the reform steps outlined below.

In this regard, we note that there is good cause to be concerned that the political leadership in Egypt is not committed to pluralism, as it has publicly stated that it is not committed to gender equality (instead saying women have equal rights insofar as it does not conflict with Sharia) or equal rights for religious minorities other than adherents of Abrahamic religions. In addition, the political situation in Egypt remains in flux and it is difficult to make predictions about the future—this makes it even more essential to ensure that the correlation between reform steps and the level of EBRD's engagement is spelled out to the new government.

We welcome the engagement to date with civil society organizations in Egypt; however we would urge significantly more transparency going forward. As you would be aware, civil society organizations in Egypt are among the best positioned to provide an independent assessment of the human rights situation and the degree to which reforms are taking place. Against this backdrop, we were disappointed to hear at the consultation that the EBRD does not plan to invite the public to comment on the draft country assessment and operational priorities for Egypt for a period of 45 days. While we recognize that this requirement in the Bank's Public Information Policy applies to draft country strategies, it is not clear why the Bank would not opt for the same procedure with respect to what are very similar documents being drafted for SEMED countries, in which the Bank has not previously invested. By not providing for a public comment period in these cases, the EBRD risks bringing into question its commitment to "enhance the transparency of its activities and promote good governance," as pledged in the policy.

The Bank should also ensure that its operations in Egypt assist the Egyptian government in fulfilling its obligation to progressively realize economic, social, and cultural rights, including the rights to health, education, food, water and adequate housing, to the maximum of available resources. The Egyptian government also has minimum core obligations in respect of such rights. As elaborated on below, the Bank should analyze the potential impact of all proposed projects on human rights—civil and political rights as well as economic, social, and cultural rights—and take steps to mitigate any adverse impacts.

Articulate Concrete, Measurable Reforms

We recommend that the Bank use the opportunity of the upcoming assessments to call on the Egyptian government to undertake concrete and measurable reform steps, making clear that their fulfillment will determine the Bank's level of engagement in the country. Such reform steps should include the following:

Freedom of Speech, Media, Association, and Assembly

1. Apply a moratorium on any application of the repressive legal framework from the Mubarak era that severely restricts freedom of expression, association and assembly and do not prosecute anyone under those provisions.
2. Amend the penal code to remove all criminal penalties for expression, including for the crime of insulting the President of the Republic. Decriminalize defamation, and if a law is believed to be necessary, replace with civil penalties. Limit criminal penalties for expression-related offenses to incitement to violence.
3. Adopt a new associations law that will allow NGOs to register, to operate without executive interference and to receive foreign or local funding while complying with requirements of transparency. Ensure that the new law does not allow the executive to dissolve an NGO.
4. Adopt legislation that removes legal and administrative restrictions of freedom of information, upholds the right of citizens to know, access, and publish information.
5. Uphold the right to freedom of assembly and peaceful protest by amending the existing law on assembly which criminalizes demonstrating without a permit. Ensure that security services protect peaceful protesters.
6. Repeal ministry of interior Decree 156/1964 regulating the use of firearms, which permits the use by ministry of interior forces of live ammunition to disperse demonstrations, and replace it with a new decree that complies with international standards, in particular the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials for maintaining security by prohibiting the use of firearms and live ammunition during demonstrations and public disturbances unless strictly necessary to protect lives and regulate their use in all other situations.
7. Ensure speedy, independent and transparent investigations into the cases of violence against demonstrators since January 2011 leading to the identification and prosecution of those responsible, including in particular the November 2011 Mohamed Mahmoud protest where 45 protesters were killed by the police and the October 2011 Maspero protest where the military killed 27 persons.

Rule of Law

1. Ensure that any future declaration of a state of emergency is temporary, and that the measures derogating from human rights protections are clearly and narrowly identified, strictly necessary and proportionate, do not include or impact on non-derogable rights,

and are limited in time and geographical scope to the extent strictly required by the exigencies of the situation. Both the state of emergency and any measures adopted under it should be subject to judicial review, with judges having power to strike down measures that are disproportionate or no longer necessary to meet an emergency that threatens the life of the nation. Include these conditions for declaring a state of emergency in the new constitution.

2. End all trials before Emergency State Security Courts, refrain from ratifying recent decisions and refer remaining trials for retrial before regular civilian courts.
3. Order an end to any new referrals of civilians to trial before military courts, order a retrial of all those sentenced by military courts since January 2011, and refer any ongoing trials of civilians before military courts to regular civilian courts. Amend the Code of Military Justice to restrict the jurisdiction of military courts only to military personnel charged with offences of an exclusively military nature.

Freedom of Conscience and Religion

1. Commit to protecting and ensuring freedom of religion and belief on a basis of equality for all persons in Egypt, including Bahais, Shi'a and others, and do not limit freedom of religion to Abrahamic religions.
2. Investigate cases of sectarian violence against Christians from both before and since January 2011, which prosecutors failed to effectively investigate, and prosecute all those responsible in fair trials.
3. End arbitrary and discriminatory restrictions on the right of religious minorities to worship and perform rituals related to their religious affiliation, end arbitrary and discriminatory restrictions on the construction of houses of worship that have been imposed on those who follow a religion other than Sunni Islam, and protect their right to declare their religious beliefs and worship freely.

Gender Equality

1. Ensure that provisions in the new constitution and in any other new legislation do not discriminate against women on any grounds, including those of culture or adherence to particular religions.
2. Encourage the appointment of women in senior political and administrative positions and their representation in elected assemblies commensurate with their forming half of the population. Take the necessary measures to confront incitement of violence or discrimination against women and measures of exclusion from the public sphere, including effective measures to identify and eliminate direct and indirect discriminatory practices.
3. Order an independent and effective investigation of all cases of violence against women at the hands of security services since January 2011, in particular the sexual assault of women in March 2011 by military police under the guise of "virginity tests;" and the beating of women protesters and sexual assault of women arrested in December 2011. Prosecute

those found to be responsible and initiate internal disciplinary procedures against all those implicated.

Worker's Rights

1. Issue the new draft law on trade union freedoms written by former minister of manpower Ahmed al-Borai in consultation with independent trade unions and civil society groups.
2. Ensure the effective implementation of core labor standards as defined in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and related ILO Conventions.
3. Protect worker's rights as guaranteed by international law, including when there is a change in ownership of an organization, such as with the privatization of state-owned enterprises.

Demonstrable Advances on Fiscal Transparency and Accountability, and Anti-Corruption Measures

1. Implement meaningful anti-corruption measures to ensure that revenues that should be used to benefit the people of Egypt are not squandered or stolen. This would include creating independent oversight bodies, auditing all government departments and government spending and making public these audits, making bidding and tendering for government procurement processes open and publishing results, and making public contracts for natural resource extraction and sales.
2. Implement best practice on transparency and accountability over all government finances, including the finances of the state security forces and state-owned enterprises. One key standard is contained in the IMF's Code of Good Practices on Fiscal Transparency.¹ The Code identifies a set of principles and practices to help governments provide a clear picture of the structure and finances of government.
3. End off-budget funding of the military and ensure full oversight of military finances.
4. 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.

¹ 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).

Implement Human Rights Safeguards

The history of rights abuses, corruption, and previous rulers' failure to dedicate the maximum of available resources to progressively recognizing economic and social rights underscores the importance of analyzing the potential impact of proposed reforms and investments in Egypt on human rights, and to take steps to mitigate any adverse impacts. The EBRD should ensure that it does not call for reforms or support projects or investments that would adversely affect human rights in Egypt. It should require that proposed reforms, projects or investments in Egypt go forward only after specific human rights safeguards have been rigorously implemented. The Bank should undertake such assessments with respect to all reforms, projects, or investments including for example macro-economic reforms, privatization of public utilities and infrastructure projects.

The Egyptian government has an obligation to progressively realize economic, social, and cultural rights, including the rights to health, education, food, water and adequate housing, without discrimination. The Egyptian government also has minimum core obligations in respect of such rights.

Such safeguards should require:

1. Human rights impact assessments on any proposed EBRD activities (e.g. reforms, projects, or investments) in Egypt 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 human rights groups, and published ahead of board consideration. The Bank should rigorously monitor and supervise implementation of the action plan. Assessments should be conducted throughout all stages of projects.
2. In the context of a human rights impact assessment or environmental and social impact assessments, assess potential for discrimination on any grounds.
3. In the context of a human rights impact assessment or environmental and social impact assessments, assess potential land rights violations and violations of the right to water and to freedom of association, considering the history of such violations in Egypt. The Bank should ensure that it does not directly or indirectly support any human rights violations, including any regression in economic, social and cultural rights, in line with the government's obligation to progressively realize these rights.
4. Due diligence on government partners and any private sector partners to ensure they are not implicated in rights abuses or corruption.
5. Rigorous application of existing performance standards, including beyond the immediate project area to include associated facilities, to ensure investments will not be directly or indirectly linked with rights abuses.

Thank you for your attention to our concerns. We would welcome an opportunity to answer any questions you may have.

Sincerely,



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