

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Fax: 917-591-3452

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May 17, 2012

Mr. Thomas Mirow
President
EBRD

One Exchange Square
London EC2A 2JN
United Kingdom
Via Facsimile: 00442073386112

Re: EBRD Country Assessments and Operational Priorities for Egypt, Jordan, Morocco, and Tunisia

Dear President Mirow,

We write to urge you to ensure that the EBRD's upcoming process of creating country assessments and operational priorities for Egypt, Jordan, Morocco, and Tunisia is used to provide an honest assessment of these countries' commitment to and application of the principles articulated in Article 1 of the EBRD's founding agreement. In particular, we urge you to ensure that concrete benchmarks are articulated in these country assessments, underlining the steps each government needs to take to work toward the Article 1 principles.

As described in the attached submission, ongoing, serious human rights abuses continue in Egypt, Jordan, and Morocco, raising serious questions about these governments' commitments to multiparty democracy and pluralism. While there has been significant progress toward enhanced protection of human rights in Tunisia, the Tunisian government needs to protect its fragile new institutions and guarantee public freedoms. We believe a candid assessment of the human rights situation in each of these countries is crucial to allow the Bank to accurately formulate its engagement, particularly as it is engaging in these countries for the first time under its expansion of operations to the southern and eastern Mediterranean (SEMED) region. The Bank should use these assessments to promote positive change by articulating the kinds of reform steps the governing authorities would need to take in order to address concerns and to determine whether any revisions to its approach would be necessary.

We encourage the Bank to articulate reform benchmarks in each of the country assessments and operational priorities, together with specifics on how it intends to pursue the dialogue or monitor the benchmarks. To that end, we recommend that the Bank use the opportunity of the upcoming assessments to call on the Egyptian, Jordanian, Moroccan, and Tunisian governments 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 include the following:

1. Egypt

- Enact a moratorium on the implementation of Law 84 on Associations which has been used to prosecute NGO workers and to impede legitimate NGO activity by blocking funding. Allow NGOs a grace period until the new law is adopted and ensure that the new law is consistent with international standards and allows both domestic and international organizations to register, operate and receive funding.

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- Respect freedom of assembly and ensure that new legislation does not criminalize the right to demonstrate peacefully;
- Conduct effective investigations into all incidents of excessive use of force, beating and sexual assault by the police and military against protesters and hold those responsible accountable;
- End all military trials of civilians; transfer all ongoing trials of civilians to civilian courts and release or order a retrial for those convicted by military tribunals before civilian courts meeting international fair trial standards.
- Repeal the Emergency Law and lift the state of emergency, since the situation on the ground is not one of public emergency that threatens the life of the nation. Release all those detained without charge or trial under the emergency law and transfer to regular criminal courts all trials currently before Emergency State Security Courts, which do not provide the right to an appeal.
- End prosecutions of activists and others for exercising their right to free expression. Decriminalize defamation, limit legal procedures concerning defamation to the civil procedure, and establish a monetary cap on such civil lawsuits;
- Investigate all allegations of torture and ill-treatment of detainees and prosecute perpetrators. Allow independent human rights organizations access to places of detention, both prisons and police stations, as a measure of oversight to deter abuse.
- Enshrine respect for international treaties in the new constitution and include a strong commitment to gender equality to protect against any future legislation that would discriminate against women or religious minorities.

2. Jordan

- Amend the penal code to legalize peaceful speech and assembly, in particular, articles 149, 150, 157, and 188 to 199.
- In consultation with civil society, amend the Law on Charitable Societies to remove the government's power to appoint staff members or management of NGOs, to dissolve an NGO without recourse to the judiciary, to enter NGO premises and access files at will, and restricting funding to NGOs, whether foreign or local.
- End administrative detention by revoking the Crime Prevention Law and instead referring criminal cases to a civilian prosecutor for investigation and referring women in "protective" custody to the governmental Wifaq Center or alternative non-governmental shelters for women while making clear they are free to leave the shelters at any time.
- Abolish the State Security Court.
- Accede to and ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; set up an independent domestic prison inspection mechanism, meeting the requirements set out in the Optional Protocol, and strengthen the powers of the National Center for Human Rights to carry out such inspections. Allow prisoners to submit complaints without the knowledge of prison guards directly responsible for them. In a periodic, public report, detail investigations into prison abuse, including the number, the charges, the evidence, and the result.
- Transfer jurisdiction over crimes in prison to the Ministry of Justice and prosecute officials and prisoners in civilian courts. Halt the withdrawal of nationality from Jordanians of Palestinian origin who hold or once held that nationality, and restore it to all persons who were arbitrarily deprived thereof.

3. Morocco

- Revise its laws in order to better protect freedom of expression, including by eliminating prison terms as a punishment for nonviolent speech offenses.
- Revise article 218.2 of the Counterterrorism Law of 2003, which punishes expression that seeks "to justify terrorism" and has been used to imprison journalists. It should be written more narrowly to prevent it from being used to punish opinions.

- Publicly reaffirm the right to freedom of association as set forth in international conventions and direct local officials to register associations in accordance with Moroccan law and hold local officials who do not do so accountable. Amend the law on associations to require that authorities, in those instances when they decide, in accordance with the law, to oppose legal recognition for an association, to publish their reasons; to narrow the criteria by which an association can be banned on the basis of its objectives; and to limit article 3's stipulation that no association may be created whose objectives include "harming" Islam, the monarchical regime, or Morocco's "territorial integrity," or that "calls" for discrimination, a formulation that is excessively broad and invites politically motivated suppression of associations.
- The state's highest authorities should state publicly that freedom of religion as guaranteed by the 2011 constitution should be interpreted to protect all peaceful religions and fundamental beliefs, including the right to believe in and publicly manifest one's belief in religions other than Islam or Judaism, to practice no religion at all, or to practice Islam according to one's personal beliefs.
- To end and prevent torture and other forms of ill-treatment, Morocco's judiciary should ensure that all allegations of torture and ill-treatment, including the use of coercion and threats, be promptly and independently investigated by prosecutors or judges, as appropriate, and if credible evidence is found against law enforcement officers, to bring them to justice. Judges should strictly apply article 293 of the amended Penal Procedure Code, which renders confessions made under "violence or duress" inadmissible as evidence.
- On Western Sahara, Moroccan authorities should revise or abolish articles of the Press Code, the Law on Associations, and other legislation that criminalize speech and political or associative activities deemed affronts to Morocco's "territorial integrity" and that are used to suppress nonviolent advocacy in favor of Sahrawi political rights. In Western Sahara and elsewhere, authorities should allow the right of peaceful assembly to all persons, including advocates of Sahrawi self-determination, in accordance with Article 21 of the International Covenant on Civil and Political Rights.

4. Tunisia

- Repeal articles of the penal code that contain criminalization of speech offenses such as article 121, paragraph 3 of the criminal code which says that: "The distribution, sale or public display – or the possession with the intent to distribute, sell or display for a propaganda purpose – of leaflets, newsletters or stickers, whether of foreign origin or not, likely to disturb public order and decency, is forbidden."
- Amend the law on public gatherings which is overly vague and leaves room for authorities to arbitrarily ban public gatherings (law no. 69-4; January 24, 1969, as afterwards amended), which gave authorities a free hand to ban public gatherings and demonstrations that might "disturb public security and order" language that is too vague and could be applied by the authorities in arbitrary ways. The national Constituent Assembly should amend this law to limit the discretionary powers available to authorities to ban public gatherings, require the authorities to provide clear and precise reasons to justify banning or restricting gatherings, and provide for an appeals process.
- The new Tunisian Constitution should protect the right to freedom of religion, thought and conscience, including the freedom to change religion or belief, to practice any religion in both public and private and to practice no religion.
- The new Tunisian Constitution should protect the rights to freedom of expression, association, and peaceful assembly by removing the restrictions and qualifying language contained in the 1959 Constitution that gave authorities leeway to restrict rights more than is permitted by the narrowly defined restrictions permitted under international law. To this end, the Constitution could include language affirming international standards regarding to permissible restrictions: that any limitations placed upon the exercise of the rights of association and assembly must not have the effect of negating the essence of that right and must be "prescribed by law and ... necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others" (articles 21 and 22 of the ICPPR).

The above approach would ensure that the Bank's engagement serves to promote political reforms in accordance with the Bank's article 1 mandate. We firmly believe that a SEMED strategy guided by a principled approach to human rights and democracy, which recognizes the interconnectedness of political and economic reforms, stands the best chance of achieving its intended results.

Thank you for your attention to our concerns. We would welcome an opportunity to answer any questions you may have. Human Rights Watch is most pleased to be attending the EBRD's annual meeting and will also attend consultations on the country assessments and operational strategies in the region.

Sincerely,



Jessica Evans
Senior Advocate/Researcher for International Financial Institutions
Human Rights Watch



Eric Goldstein
Deputy Director, Middle East and North Africa Division
Human Rights Watch

Attachment: Human Rights Watch Comments on the European Bank of Reconstruction and Development's Technical Assessments for Egypt, Jordan, Morocco, and Tunisia