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March 29, 2016

Letter to the EU Concerning EU-India Summit

Donald Tusk
President of the European Council

Jean-Claude Juncker
President of the European Commission

Re: EU-India Summit on March 30, 2016

Dear Mr. Tusk and Mr. Juncker,

We are encouraged by the EU's ongoing efforts to engage with India, including on human rights issues and are writing regarding your summit on March 30 to update you on some key issues.

There will be many mutual challenges to discuss including protection and integration of migrants, refugees, and asylum seekers. The summit should re-affirm the EU's and India's commitment to uphold international law and basic humanitarian principles vis-a-vis those in need of protection.

Like Europe, India has dealt with numerous threats to security due to indiscriminate bombings and attacks by extremists. Each of you has a common challenge to deal with terrorist threats. It is crucial that states respond with a strong commitment to the rule of law and human rights in their efforts to prevent further attacks and possible acts of retaliation against communities and individuals.

Expand Access to Basic Services, and Strengthen Fundamental Rights for Marginalized Populations

In India, the government led by Prime Minister Narendra Modi has promised development that will advance economic and social rights for the most marginalized.

The Modi government launched several ambitious programs such as Swachh Bharat Abhiyan (Clean India Campaign) to clean India's villages and cities and end open defecation; Make in India to encourage foreign

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companies to invest in India; Digital India to enable electronic delivery of services in areas such as healthcare, banking, insurance, and education services and improve e-governance; and Smart Cities to improve the quality of life of people in urban areas by harnessing technology. Several EU member states have welcomed these initiatives and promised to support them.

It is important that these programs be implemented in a manner that respect fundamental rights, so that they are non-discriminatory, expand access to basic services, and strengthen fundamental rights rather than further marginalize vulnerable populations.

Strengthening Civil Society, Protecting Free Speech

Even as the prime minister seeks greater foreign investment in the private sector for initiatives such as Make in India, showcasing Indian democracy and diversity abroad, it uses laws such as the Foreign Contribution Regulation Act to restrict foreign funding for civil society groups. Civil society groups face increased harassment and government critics face intimidation and lawsuits. Free speech has come under threat as the authorities target those critical of the government, including students and academics.

Activists that question government infrastructure and development projects or seek justice for victims of the 2002 communal riots in Gujarat have come under particular pressure. In January 2015, the government barred Priya Pillai, a Greenpeace India activist, from boarding a flight to London where she was to speak to members of the British Parliament, alleging that her testimony would have portrayed the government in a negative light. In March, the Delhi High Court ruled that authorities had violated Pillai's rights to travel and to freedom of expression. In November, authorities in Tamil Nadu state, where Greenpeace India's registered office is located, cancelled the organization's registration. Indian authorities also targeted activist Teesta Setalvad and her husband, Javed Anand, in what appeared to be acts of politically motivated intimidation, accusing them of violating the FCRA and receiving funds illegally, among other allegations. Setalvad is well-known for her work supporting victims of the 2002 Gujarat riots and for seeking criminal charges against scores of officials, including Prime Minister Modi for his alleged involvement in the riots as the state's then chief minister.

Meanwhile, free speech increasingly is coming under attack, prompting condemnation from scholars and activists around the world. The authorities used the draconian sedition law to arrest students and activists for alleged anti-national speech. Other overbroad and vaguely worded laws such as criminal defamation and hate speech laws are used to harass and prosecute those expressing dissenting, unpopular, or minority views. In several cases, when interest groups that claim to be offended by books, movies, or works of art pushed

for censorship or harassed authors, the government has allowed them a “heckler’s veto” rather than protecting those under attack.

We urge that you use the summit to encourage the Indian government to:

- Repeal the sedition law, and in the interim instruct state governments to follow Supreme Court strictures when applying the law.
- Amend the FCRA so that it does not interfere with the rights to freedom of expression and association and cannot be misused to choke the protected peaceful activities of civil society organizations.

Protecting the Rights of Minorities

Religious minorities, especially Muslims and Christians, are feeling increasingly at risk, and accuse the authorities of not doing enough to protect their rights. Some leaders of the ruling Bharatiya Janata Party (BJP) have made inflammatory remarks against minorities while militant Hindu groups, who often claim to be supporters of the Modi government, threatened and harassed Muslims and Christians, in some cases even physically attacking them.

Six Muslims were killed by Hindu vigilante groups in separate incidents across the country in 2015 and early 2016 in the name of protecting cows, considered sacred by many Hindus. The Muslim men were killed over suspicions that they had killed, stolen, or sold cows for beef. The violence took place amid an aggressive push by several BJP leaders and militant Hindu groups to protect cows and for a ban on beef consumption.

Churches were also attacked in several states in 2015, prompting fears of growing Hindu nationalist militancy under the BJP government. The authorities did not press robustly for prosecution of those responsible for violent attacks on minorities, and impunity for the assailants is contributing to a sense of government indifference to growing religious intolerance.

Dozens of writers protested against sectarianism and the silencing of dissent by returning prestigious literary awards bestowed by the Sahitya Akademi, India’s National Academy of Letters. Artists, academics, filmmakers, and scientists also added their voices to the protest. Economists and business leaders warned that the Modi government risked losing domestic and global credibility if it failed to control Hindu extremism and restrictions on freedom of expression.

The Indian government continued to fail to implement policies to protect Dalits (so-called “untouchables”) and tribal groups from discrimination and violence. Human Rights Watch

[research](#) found that despite a right to education law that mandated free and compulsory elementary education for all children, discrimination against children from Dalit, tribal and Muslim communities led to high dropout rates among these children. Those who drop out often end up being subjected to the worst forms of child labor or early marriage.

A 2016 [report](#) on caste-based discrimination by the United Nations Human Right Council's special rapporteur for minority issues noted how caste-affected groups continued to suffer exclusion and dehumanization.

The report also noted that atrocities and violence against Dalits had increased by 19 percent in 2014 compared to the previous year and that despite prohibition through legislation, the practice of “manual scavenging”—cleaning of human excreta – a caste-designated occupation that is mainly imposed upon Dalits, particularly Dalit women, persisted. Human Rights Watch [research](#) found that the state has institutionalized the practice with local governments and municipalities employing manual scavengers. The Modi government launched the ambitious Swachh Bharat Abhiyan or the Clean India Campaign in 2014 which includes the plan to eradicate manual scavenging and end open defecation by building more toilets and changing people's attitudes to sanitation.

We hope that any support from the European Union or EU member states toward government initiatives on sanitation will ensure that all toilets being built are sanitary and will not need to employ manual scavengers.

We hope that the European Union and the member states will follow the [2012 resolution](#) which calls for them to include the issue of caste discrimination in their dialogues with the Indian authorities, and to prioritize programs addressing caste discrimination, including in education, and programs with particular focus on women and girls. The resolution also expects future EU cooperation with India to be assessed as to how it would affect caste discrimination.

We urge you to encourage the Indian government to:

- Take immediate steps to eliminate abuses against Dalits, tribal groups, religious minorities, and other marginalized communities, provide concrete plans to implement laws and government policies to secure their protection, and monitor development programs that have largely failed to reach target groups.
- Publicly condemn crimes against minorities, and promptly prosecute all those responsible for such crimes.

- Uphold its commitments to end manual scavenging and ensure that all support for sanitation projects require an immediate end to manual scavenging and contain effective mechanisms for ongoing monitoring to ensure the practice is discontinued.

Protecting Refugees

While India has informally hosted refugees from Sri Lanka, Bhutan, Burma, Afghanistan and Tibet, among others, it is not a party to the 1951 Refugee Convention or its 1967 Protocol and has no domestic asylum law.

We urge you to encourage the Indian government to:

- Ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- Ratify the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.
- Cooperate with the office of the UN High Commissioner for Refugees in enacting a national legal framework for asylum consistent with international standards.
- Provide mechanisms for asylum seekers, refugees, and stateless persons to register and regularize their status.

Ending Impunity

Public officials in India continue to enjoy effective immunity for human rights abuses. Government officials, including members of police and armed forces, enjoy legal cover as the Criminal Code and other legislation require government permission to initiate prosecutions against them. This has prevented proper accountability for human rights violations such as torture, enforced disappearances, and extrajudicial killings by the police, paramilitaries, and the army.

There was some progress in 2015 as the northeastern state of Tripura revoked the draconian Armed Forces Special Powers Act (AFSPA), citing a decline in insurgency. However, the law remains in force in Jammu and Kashmir and in other northeastern states. AFSPA has been widely criticized by rights groups and numerous independent commissions.

A May 2015 report by the United Nations special rapporteur on extrajudicial, summary, or arbitrary executions noted that “impunity remains a serious problem” and expressed regret that India had not repealed or at least radically amended AFSPA.

Police reforms remained stalled even as police were accused of extrajudicial killings in several new cases. In 2014 and 2015, several police officials were reinstated in Gujarat state despite having been implicated in cases of staged armed encounters, raising concerns about the government's commitment to police accountability.

Security forces in the Maoist-affected central Indian state of Chhattisgarh have been accused of serious human rights violations including sexual assault. At the same time, journalists, lawyers, and civil society activists in the state faced harassment and arbitrary arrest.

The EU has a state partnership program with Chhattisgarh state, which includes EU support in several sectors including healthcare, education, and improved livelihoods for tribal communities. In January 2016, an EU delegation visited the state and reportedly interacted with a range of stakeholders such as the government, civil society, political parties, and the State Human Rights Commission. We hope that the EU will raise concerns over attacks and arrests of journalists, police failure to act against vigilante groups and perpetrators, and repression of civil society in the state.

We ask that you urge the Indian government to:

- Repeal the Armed Forces (Special Powers) Act and remove effective immunity granted under the Criminal Procedure Code to security forces for violations of fundamental rights, including torture and ill-treatment, enforced disappearances, sexual assault, and extrajudicial killings.
- Implement police reform as recommended by the Supreme Court including the establishment of a complaint mechanism to address police abuse.
- Enact the pending Prevention of Torture Bill, but only after ensuring it conforms with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The law should not include any provisions that would grant officials effective immunity from prosecution.

Protecting the Rights of Women, Children, and Persons with Disabilities

Violence against women and girls, particularly rape and murder, made headlines throughout 2015. While legal reforms were introduced in response to the 2012 Delhi gang rape and murder, the government has yet to take steps to reform the criminal justice system or ensure effective measures to reduce sexual harassment, and improve women's access to safe transportation and public spaces.

The government has promised that its Smart Cities initiative will adopt solutions to ensure cities are safe for women and girls, and reduce inequalities between women and men. However, none of its documents provide more details regarding conditions precedent, scoring criteria, and selection criteria which incorporate important rights indicators, including those related to gender, disability, and the rule of law.¹ We hope that the European Union and its member states will insist that any support for this program will be conditional on modifying the criteria to include indicators on gender and disability that are developed in consultation with local women and disability rights groups. The EU and its member countries should underscore the importance of such a participatory approach to developing Smart Cities.

The Indian central government is pressing ahead with proposals to reform existing labor laws that raise serious concerns for workers, especially women workers. These concerns should form an integral part of discussions about India's Make in India campaign. The EU has played a leadership role in ensuring that labor laws are amended for the better in Bangladesh and should similarly oversee processes in India.

Persons with disabilities remain particularly vulnerable with mental health and support services severely lacking in India. Human Rights Watch [research](#) found that women and girls with psychosocial or intellectual disabilities are locked up in state mental hospitals and residential institutions, without their consent, where they experience prolonged detention, face unsanitary conditions, risk physical and sexual violence, and experience involuntary treatment, including electroshock therapy. In early 2015, the Indian government initiated its first-ever survey on the condition of women living in mental hospitals across the country but has yet to publicly report its findings.

The Mental Health Care Bill and Rights of Persons with Disabilities Bill, both pending in parliament, seek to advance the rights of people with disabilities. However, they still fall short of international standards and further steps are needed to fully protect the rights of such individuals, including a shift from forced institutional care to voluntary community-based services and support.

Last year, the parliament passed amendments to the Juvenile Justice Act to permit prosecution of 16 and 17-year-olds as adults when charged with serious crimes such as rape and murder, despite concern that this violates India's commitments to child rights protections.

¹ For example, the only criteria on service level that is thus far included as a pre-condition for selection is the "percentage of increase over Census 2011 or Swachh Bharat Baseline on number of household sanitary latrines (whichever is less)." <http://smartcities.gov.in/writereaddata/Process%20of%20Selection.pdf>

We hope that you will encourage the Indian government to:

- Effectively implement laws dealing with sexual violence against women and children and provide appropriate support services, including psycho-social counseling, legal aid, emergency medical care, and reproductive and sexual health services responsive to the effects of sexual violence.
- Alter its selection and scoring criteria to incorporate human rights indicators, including gender and disability, which are developed in consultation with relevant human rights experts in country and indicate that the EU's investment in Smart Cities would be severely hampered without such amendments to the project.
- Ensure that proposals for labor law reforms in India are in line with international standards, are carried out with meaningful consultation with labor law experts, and are part of all discussions about India's Make in India campaign.
- Repeal laws permitting prosecution of 16 and 17-year-olds as adults, in line with India's international legal commitments, and in the meantime, ensure that the treatment for juveniles under 18 in conflict with law is restorative and reformative and not penal.
- Respect its international obligations under the Convention on the Rights of Persons with Disabilities by ensuring new mental health and disability rights legislation guarantees the right to legal capacity for all persons with disabilities.
- Earmark financial assistance toward community-based mental health and support services, and seek to strengthen a community-based model instead of creating new or refurbished mental health institutions.

Reinstating Moratorium on Death Penalty

On July 30, 2015, India executed Yakub Memon for his involvement in a series of bombings in Mumbai in 1993 that caused over 350 deaths. Memon's execution sparked a debate in India over the merits of retaining the death penalty. Memon's was the third execution since the government lifted an unofficial moratorium on capital punishment in 2012.

In August 2015, the Law Commission submitted a report calling for abolition of the death penalty for all but terrorism-related offenses and "waging war" against the state. Like the EU, Human Right Watch is opposed to the use of death penalty in all cases and under any circumstances. We therefore hope that you will encourage the Indian government to reinstate the moratorium on death penalty with a view to abolish capital punishment altogether.

Supporting Human Rights Abroad

Last year, India was a weak proponent of human rights at the UN. In March, India voted in support of a Russian-backed resolution to remove benefits for same-sex partners of UN staff. India abstained on Human Rights Council resolutions on Syria, North Korea, and Ukraine, and voted against resolutions on Iran and Belarus.

In July, India reversed an earlier policy and abstained on a UN Human Rights Council resolution that called for Israeli accountability in the 2014 Gaza conflict. The Indian government said it had abstained from voting because the resolution included a reference to bringing Israel before the ICC, which India considered “intrusive.”

India envisages an increasing role in global affairs, and often believes that it has a voice in supporting developing countries with emerging economies. However, this has often resulted in an obstructive outcome, instead of one where there is collaboration to uphold human rights principles and protections. The EU should encourage India to play a more positive role on behalf of international human rights and stand by victims of abuses, instead of protecting repressive governments from international scrutiny.

We urge you to raise these concerns at the summit but also in all your other meetings with Indian authorities, including in your public comments.

We thank you for your consideration.

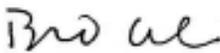
Yours sincerely,

Lotte Leicht



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