

HUMAN RIGHTS WATCH

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HUMAN
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WATCH

Mr. Herman Van Rompuy
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Mr. José Manuel Barroso
President of the European Commission
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Brussels, February 3rd, 2012

Re: EU-India Summit on February 10, 2012

Dear President of the European Council,
Dear President of the European Commission,

We write to request that human rights form a significant part of your dialogue with the Indian government at your upcoming summit in New Delhi to strengthen the strategic partnership.

India is a proud democracy with a constitution that promotes and protects human rights. It has an independent judiciary, largely free media, and an active civil society. In recent years, India has enacted important new laws, such as the right to information and to address rural poverty and ensure food security.

However, the human rights situation in India remains poor in many areas. Successive governments have yet to introduce adequate laws and properly implement existing policies to protect marginalized communities, particularly Dalits, tribal groups, religious minorities, women, and children. The state routinely fails to take action against human rights violations, particularly all forms of sexual assault against women; communal violence; enforced disappearances in conflict areas; extrajudicial killings; torture; and increasing attacks on human rights defenders. Tying many of these issues together is the widespread impunity for abuses and the corresponding problems of access to justice and adequate compensation.

Ensuring Accountability for Human Rights Violations

The current culture of impunity in India protects public officials from prosecution for violating human rights. The Criminal Code and other legislation require government permission to initiate prosecutions against any government official, including members of the security forces. This has prevented proper accountability for human rights violations such as arbitrary arrests, torture, and extrajudicial killings by the police, paramilitaries, and army.

With legal cover provided to police and armed forces, abuses such as extrajudicial killings occur often during counter-insurgency operations. Violent protests have frequently erupted in Jammu and Kashmir and India's northeastern states as a result. In one notable case, in June 2010, police investigations revealed that an army officer entered into a criminal conspiracy to abduct

three villagers, luring them with a promise of jobs, and then killed them in a staged armed encounter, falsely claiming to have engaged in an armed exchange with Pakistani militants.

The failure to implement police reform has created an overworked and undertrained force that often resorts to torture to gather evidence, and uses extrajudicial killings when it cannot secure convictions (see Human Rights Watch's report on the Indian police, Human Rights Watch, [India – Broken System](#), August 2009). Without proper accountability mechanisms, these violations have become the norm.

We request that you urge India to:

- Repeal the Armed Forces Special Powers Act, which has led to widespread violations and suffering in Jammu and Kashmir and in the northeastern states where it remains in force. Soldiers implicated in serious human rights violations remain unaccountable because of immunity provided under this law.
- Revise the overly broad and vague definition of terrorism in the Unlawful Activities Prevention Act.
- Repeal legal provisions such as expanded police powers of search and seizure, the presumption of guilt under certain circumstances, and draconian pre-charge detention periods.
- Enact the pending Prevention of Torture Bill, but only after ensuring it conforms with the 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.
- Encourage each state government to embark upon reforms to professionalize the police forces, both to improve their working conditions and to hold them accountable for human rights violations. The government should codify the full set of guidelines on arrest and detention for police officers that are contained in the landmark 1997 Supreme Court case of *D.K. Basu*. It should sign into law criminal procedure amendments, already passed by parliament, requiring the police to record a formal reason for making a warrantless arrest, thereby closing a glaring legal loophole that fuels impunity.

Protecting Freedom of Expression and Strengthening Civil Society

India has a strong record on freedom of expression. However, in recent months the government has considered measures limiting internet freedom, making unrealistic and unreasonable demands that social networking sites and search engines take responsibility for filtering allegedly offensive material. While the protection of the rights of religious minorities and ensuring communal harmony are responsibilities of the state, sweeping restrictions on the internet unnecessarily infringe upon freedom of expression.

India also has an active civil society. However, some laws and regulations infringe upon civil society's ability to freely engage in peaceful public discourse and free expression rights of individuals. We ask that you urge the Indian government to:

- Repeal all provisions of the Foreign Contribution (Regulation) Act that do not conform to international standards and undermine the work of nongovernmental organizations

(NGOs). The law imposes heavy and often arbitrarily enforced limitations on the ability of NGOs, particularly those engaged in human rights work or other areas involving criticism of the Indian government, to receive funds from foreign sources. While NGOs should be held accountable under law, less sweeping laws can be adopted and implemented to guard against corruption or money laundering. In order to ensure that NGOs can make their crucial and necessary contribution to the country's development, the government should make it a priority to develop a legal framework that safeguards freedom of association, including the ability of NGOs to seek and receive funding.

- Protect citizens' right to freedom of expression by repealing archaic sedition laws that are being used to silence dissent, as it has happened against activists in areas in which the conflict with Maoist groups is occurring.
- Drop proposals to limit internet freedom.

Protecting the Rights of Women, Children, and Other Vulnerable Groups

While India has created constitutional bodies to protect women, children, Dalits, tribal groups, and religious minorities, in practice much remains to be done to advance their rights. Girls and women remain at particular risk, which is also reflected in sex selection that has led to a diminishing female to male sex ratio. In rape trials, criminal courts and appellate courts have for decades reinforced damaging social stereotypes against victims by describing them as "habituated to sex" based on archaic and degrading medical examinations such as the "two-finger test." In some cases the fact that they are identified as "habituated to sex" has resulted in the courts discrediting victims' testimony, affecting the outcome of the trial.

The Indian government's maternal healthcare program is administered in a blatantly discriminatory manner in many parts of the country. In many states, the Indian government's flagship JananiSurakshaYojana ("Safe Motherhood Program") provides cash assistance for poor pregnant women to give birth in health facilities only up to two live births, while limiting such assistance to mothers above age 18, completely excluding young mothers and mothers with more than two children, even though they face considerably higher health risks during pregnancy.

In some areas, children's right to education is under assault. Schools remain at risk of bombing attacks by Maoist groups operating in central India. The government's failure to repair the bombed schools promptly prolongs the negative impact of these attacks on children's education. Meanwhile, security forces continue to occupy government school buildings as bases for their anti-insurgency operations, sometimes only for a few days but often for periods lasting months or years. Both the Maoist attacks and the government occupation and use of schools place students at unnecessary risk and interfere with the right to education.

Dalits and tribal groups remain vulnerable despite constitutional provisions and laws designed to protect them. More than a sixth of India's population, approximately 160 million people, live at the bottom of the caste structure. They are denied access to land, clean water, and education, left out by the recent modernization process and surge in economic growth, forced to work in degrading conditions, and routinely abused at the hands of the police and higher caste groups. While the Indian constitution outlaws caste, the government insists that altering an age-old tradition takes time and cites its numerous laws and schemes as a measure of its commitment to protect victims of caste-related discrimination. At the United Nations and other international fora, the government simply denies any problems of caste in the country.

In areas affected by Maoist conflict, marginalized communities remain at risk of attacks and intimidation by the rebels who demand sanctuary and information. These communities are then targeted for arbitrary arrests and torture by security forces. They are also at risk of forced displacement as the government embarks upon ambitious infrastructure and development projects.

In a positive step to end the profiling of Muslims as terrorism suspects, the national political leadership has repeatedly emphasized that targeting on religious grounds is wrong. Fresh investigations into terror attacks that were initially attributed to Muslim groups have resulted in the arrest and prosecution of members of the majority Hindu community. The government has committed to enacting the Communal Violence (Prevention, Control and Rehabilitation of Victims) bill, which is intended to prevent and control communal violence, ensure speedy investigation and trials, and provide prompt rehabilitation of victims.

We urge you to encourage the Indian government to:

- Enforce the government directive prohibiting state security forces from occupying and using schools as long-term outposts, which results in continued disruption of education, and to act promptly to rebuild schools that are bombed or otherwise attacked by Maoist insurgents.
- Reduce maternal mortality by enforcing guidelines for maternal death investigation, and by ending disparities or discrimination in access to maternal health services.
- Enact a comprehensive law against all forms of sexual assault against women and children and provide reproductive and mental health services to survivors of sexual assault.
- Act to end violence against women by providing services for victim-survivors of violence through one-stop crisis centers. The proposed law to prevent sexual harassment at the workplace should be expanded to include domestic workers, and enacted.
- Ensure that maternal health care programs do not discriminate against women with more than two children or mothers under the age of 18.
- Repeal section 377 of the Penal Code, which criminalizes consensual sexual relations between adults of the same sex.
- Provide disaggregated data and status information on all vulnerable groups including minorities, indigenous people, Dalits, people with disabilities, LGBT people, migrants, and internally displaced persons.
- 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.
- Ensure all protections under Indian and international law against forced evictions of communities without adequate rehabilitation and compensation to make way for mining,

industrial, or infrastructure projects. Enact rehabilitation laws to ensure the protection of communities displaced by development, infrastructure, or mining projects.

Supporting Human Rights Abroad

We very much hope that you can encourage India to use its increasing global influence to address human rights problems in other countries. In the past, India has often opposed strong international action to address serious human rights problems in specific countries. India's growing regional and global influence should be matched by an increasing commitment to protect human rights abroad.

We also hope that you will point out that in addition to its international obligations under the human rights treaties and covenants it has signed, India at present can be a crucial global actor on human rights as a member of both the UN Security Council and the UN Human Rights Council. India should play a leading role in the efforts of these bodies to ensure respect for the Universal Declaration of Human Rights and UN General Assembly resolution 60/251, which states that members of the Human Rights Council "shall uphold the highest standards in the promotion and protection of human rights."

Syria

We urge you to encourage your Indian counterparts to support efforts at the UN Security Council to exert pressure on the Syrian government to cease the serious human rights abuses that the United Nations High Commissioner for Human Rights says may amount to crimes against humanity. Very concretely, we urge you to:

- Encourage India to be proactive in responding to the crimes documented in Syria and the fact that what may amount to crimes against humanity is allowed to continue with utter impunity; and
- Seek India's support for efforts to advance the protection of civilians, including through a UN Security Council resolution that would help advance international pressure on the Syrian government to halt serious human rights abuses, curb impunity for the atrocities, and ban arms transfers to forces engaged in possible crimes against humanity.

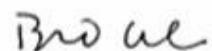
We urge you to raise these concerns about the human rights situation in all your meetings in India, and to also raise these in your public comments. The EU's desire for strengthened relations with India should not lead to double standards in the promotion of human rights.

We thank you for your consideration and we wish you a productive summit.

Yours sincerely,



Lotte Leicht
EU Director
Human Rights Watch



Brad Adams
Executive Director
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CC:

High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, Baroness Catherine Ashton
Secretary-General of the European External Action Service (EEAS), Mr. Pierre Vimont
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Deputy Secretary General for the European External Action Service (EEAS), Mr. Maciej Popowski
Head of Cabinet to President of the European Council, Mr. Franciskus van Daele
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President of the European Parliament, Mr. Martin Schulz
Vice-President of the European Parliament responsible for Democracy and Human Rights, Mr. Edward McMillan-Scott
Chair of the European Parliament's Foreign Affairs Committee, Mr. Elmar Brok
Chair of the European Parliament's Subcommittee on Human Rights, Ms. Barbara Lochbihler
Chair of the European Parliament's Delegation for relations with India, Mr. Graham Watson