

**IDSN, OMCT and FIDH Position in response to:
The European Union's Communication from the Commission to the Council, the
European Parliament and the European Economic and Social Committee entitled
"An EU-India Strategic Partnership"¹**

Introduction

The European Institutions are committed under the treaty of the European Community and the EU Communication on the EU's Role on Promoting Human Rights and Democratisation in Third Countries to respect and promote human rights in all their activities. Fundamental rights are defined as one of the core values of the European process and as an essential element of the EU external actions including its bilateral relations with third countries. Yet translating those obligations into reality is another issue and we can but state that there remains a significant gap between rhetoric and practice.

The Commission Communication on "An EU-India Strategic Partnership" is therefore a new opportunity for the EU to translate into action its long-term commitment to the promotion of human rights. Unfortunately we must state that this Communication has failed to honour this commitment, as it barely mentions human rights nor does it adequately address two of the major rights issues affecting Indian people: caste-based discrimination and torture, including widespread impunity of the perpetrators.

EU Disengagement on Human Rights in India: A Reality Check

Whilst the Communication's commentary on recent EU-India Summits emphasises the importance of the 'continued human rights' dialogue' the reality is less satisfactory. While relations at many levels have been increasing in recent years, the last two years have seen a devastating decline in the EU's engagement with India in human rights dialogue. The Communication ignores these recent problems, which must surely be a cause for concern for anyone seeking the application of human rights principles in all aspects of the EU's relations with India.

In fact, the EU has disengaged altogether from human rights dialogue with India since the 2002 EU-India Summit in Copenhagen. After this summit the EU agreed to downgrade human rights dialogue, but then failed to pursue this dialogue at even the lower level. EU Embassy staff in Delhi were supposed to communicate on human rights concerns with their counterparts in the Ministry of External Affairs, but no meeting took place in 2003. A meeting finally took place on 1st March 2004 between Heads of Mission and their Indian counterparts. As far as we are aware the meeting was so vague and unproductive that no minutes appear to be available.

Meanwhile the Indian government managed to convince the EU that this was acceptable because they would simply prefer to move the dialogue to the multilateral level: however, human rights in India is rarely mentioned by the EU at UN human rights fora, even concerning the major issues of caste-based discrimination and torture and widespread impunity.

¹CM (2004) 430 final, hereafter referred to as the Communication

Caste-based discrimination

While the Communication does make some token references to the persistence of caste-based discrimination, the full reality of the problem remains obscured by this document. A problem, which is by nature of its practice a fundamental cause of the deprivation of the basic rights of hundreds of millions of people, cannot be simply mentioned in passing in the European Union's overarching policy document in relation to its bilateral relations with India. It is not merely an important consideration, but in fact one of the main root-causes of violence and exclusion in India. Despite a Constitution and a raft of laws and civic bodies designed to tackle caste-based discrimination in India, the implementation of these structures remains woefully inadequate. In the absence of strong political will, local caste hierarchies are far superior to these laws and mechanisms. Dalits who attempt to break the caste rules by marrying outside their caste, using public drinking supplies, refusing to live in agricultural bondage, getting an education, entering temples, claiming their legal land rights or entering politics frequently face terrible violence or even socio-economic boycott, with state authorities persistently siding with upper caste interests.

The European Parliament and various UN bodies² have already taken a strong stand against caste-based discrimination, but this has so far not been adequately represented in relations with India. The EU must take a very strong stance against continuing caste discrimination in all relations with India, both bilaterally and multilaterally. Appeasing diplomats and ministers (many of whom may represent upper caste interests) by keeping silent on caste discrimination in the face of the EU's universal human rights policy could appear to be complicity in a form of systematic human rights violation affecting some 170 million Dalits in India.

The EU has never so far taken up the issue of caste discrimination through multilateral fora. India has attempted to block all attempts to raise this nefarious form of systematic discrimination and exclusion at the UN Commission on Human Rights, the UN Sub-Commission on the Protection and Promotion of Human Rights, the World Conference Against Racism and the meetings of the Committee on the Elimination of Racial Discrimination.

Of particular concern is the fact that India has failed to meet its requirements in reporting to the Committee on the Elimination of Racial Discrimination. 2004 marks eight years since India last reported to the Committee (four reports have not been submitted). In 1996 India submitted five reports in one. On receiving this report, the Committee stated that "It regrets the brevity of the report, all the more so since 10 years have passed since the previous report was submitted." It went on to assert that

"the Committee states that the term "descent" mentioned in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention. It emphasizes its great concern that within the discussion of the report, there was no inclination on the side of the State Party to reconsider its position....The Committee recommends that the State Party's next periodic report, due on 4 January 1998, be a comprehensive report and that it address all the points raised in these concluding observations."

- ☞ *The EU must be prepared to engage India in dialogue on caste issues and to constructively criticise its record in protecting and promoting the rights of Dalits at both bilateral and multilateral fora*
- ☞ *Clearly the EU has to encourage India to take its reporting requirements seriously and to fully implement the subsequent recommendation of the Committee on the Elimination of Racial Discrimination.*

² See for example EP's "Resolution on the EU's rights, priorities and recommendations for the 60th Session of the UN Commission on Human Rights" of 10 February 2004; EU Annual resolutions on human rights and the world, 2000, 2002 and 2003; UN CERD General Resolution XXIX; UN Sub-commission on Protection and Promotion of Human Rights' Resolution 2004/17 on Discrimination based on work and descent; Report of Special Rapporteur on Racism to the UN Commission on Human Rights 60th Session.

Widespread violence against the most vulnerable groups

The issue of torture is also paramount. Combatting and preventing torture in relations to third countries is an EU priority according to the EU guidelines on torture and other cruel, inhumane or degrading treatment or punishment (April 2001). Torture is widespread in India, although barely mentioned by the Communication, and is an important weapon for oppression of vulnerable groups such as poor people, women, children and Dalits. Indeed vulnerable and marginalised groups are much more likely to be submitted to torture and other forms of ill treatment as socio-economic discrimination is recognised as one of the main root-causes of violence. For example, The Special Rapporteur on Torture, the UN Independent Expert on Human Rights and Extreme Poverty as well as the Committee against Torture recognise and underline the link between the socio-economic context – characterised by extreme poverty, a marginalisation of certain groups and a lack of enjoyment of economic social and cultural rights – and the emergence of torture. Their approach underlines that this link operates through two different dynamics: the integration of disadvantaged social groups in the typology of victims as well as the creation of framework conditions favourable to the emergence of torture.

In this context India is unfortunately not an exception: for example our organisations are extremely concerned that “dowry deaths” continue to occur in India and that the police often fail to adequately investigate, prosecute and punish these crimes, despite a law which requires special investigation efforts of the deaths of women who have been married less than seven years.

There again, castes and tribes are particularly vulnerable to violence by persistently accumulating social discrimination and poverty. In 1989, the Government of India passed a law that recognises specific crimes against Scheduled Castes and Scheduled Tribes as “atrocities”³ and describes strategies and prescribes punishments. The 1989 Act also provides for Special Courts to try these cases, but this Act and other comprehensive provisions to abolish untouchability and prohibit caste discrimination in the Indian Constitution and national laws remain unimplemented, and reports from local human rights organisations indicate that a small proportion of cases are tried in court.

Indeed impunity of perpetrators is still worryingly widespread, particularly at local level: access to justice is very limited in practice, as many times victims’ complaints are simply not registered or do not lead to proper investigations nor any sanctions against perpetrators. This is particularly the case when the perpetrators are from upper-castes or are police officers.

Last but not least, India is one of the few democratic countries that has not ratified the UN Convention Against Torture and Other forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT, signed in 1997), and thus neither its 2002 Optional Protocol⁴ for the establishment of mechanisms for the prevention of torture and ill treatment in detention.

- ☞ *In such an environment, the EU should consider India's ratification of the Convention against Torture, including the recognition of the Committee against Torture's competence to receive State and individual communications⁵, as an **essential prerequisite** for the strengthening of the EU-India relationships.*
- ☞ *The EU should also make it absolutely clear that the signature and ratification of the CAT Optional Protocol as well as the necessary reform of its criminal justice system are also to be considered of **paramount importance** to the relationship; showing the Indian authorities' goodwill to address the lack of implementation of their national laws and impunity.*

³ Prevention of Atrocities Act

⁴ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199

⁵ Articles 21 and 22 of the Convention Against Torture

Human Rights defenders

In India, the restrictive provisions of the Foreign Contributions regulation Act (FCRA) prevent Human rights defenders from fulfilling their legitimate activities. Indeed, the Act requires any organisation or individual seeking to receive funds from abroad to obtain prior authorisation from the Ministry of the Interior. The Act further requires that any NGO wishing to organise a meeting at which foreign participants would be present must first get permission from the Ministry of Interior and any other Ministry concerned.

Furthermore, women and men who defend human rights are increasingly subject to violence by the Police or armed groups. Our organisations are deeply concerned about the blatant lack of protection for human rights defenders. Several recent cases show that Indian authorities are unable or unwilling to guarantee the security of human rights defenders, contributing to the general atmosphere of impunity⁶.

☞ *In application of the EU guidelines on Human rights defenders, the EU should call for the revision of the FCRA, for it to be in conformity with the 1998 UN declaration on Human rights defenders. The EU should further call on the Indian government to ensure the protection and free activity of the Human rights defenders and organisations, to prosecute and condemn those responsible for violence or attacks against defenders.*

Counter-terrorism and Human Rights

Our organisations are preoccupied by the violations of international human rights standards enshrined in anti-terror legislation. Although legitimate and a duty of the State towards its citizens, the fight against terrorism should, under no circumstance, violate internationally recognised human rights, which respect constitutes another duty of the State. Several laws have been used to violate civil and political rights in recent years, such as the Prevention of Terrorism Act, the Public Safety Act, the Armed Forces Special Powers Act, the Armed Forces (Jammu and Kashmir) Special Powers Act, the Disturbed Areas Act and the Public Safety Act. Repeal or reform of these laws is needed to ensure that suspects are not held without evidence nor tortured while in custody, and future anti-terrorism and public security laws must be examined with this history of misuse in mind.

☞ *The EU should urge the Indian government to revise its anti-terror laws in order to put them in conformity with International Human rights standards. It should also lift the immunity of military personnel or foresee their possible prosecution by regular and independent criminal courts.*

⁶ For instance, activists of the Jangipara branch of the Association for Protection of Democratic Rights (APDR), a leading human rights organization in West Bengal, were attacked by local leaders of the Communist Party of India (CPIM) on August 21, 2004. Although a contingent of police was posted nearby the place of the attack, and the victims rushed to the police station, no police officers came to stop the violence or arrest the perpetrators.

There were also reports of excessive use of force by police officials themselves to end peaceful demonstrations in India, in violation with freedom of expression and the right to peaceful gathering. On 20 March 2004, a march held by the Association of Parents of Disappeared Persons (APDP) in Srinagar, Jammu and Kashmir was dispersed by police personnel. The participants were charged with canes and women were reported to have been dragged by their hair, beaten and had their clothes ripped off. Several human rights defenders were arrested and taken into police custody. Criminal charges under RPC section 323 were lodged against 5 APDP members. No criminal charges have yet been brought against those police officials responsible for using excessive force on the participants of this march.

Impunity for attacks and religious violence

India has been ravaged by extremely violent attacks against religious minorities and low-caste communities. In the aftermath of the Gujarat riots in early 2002, overwhelming evidence emerged implicating members of the police force in the violence against Muslims. Furthermore, collusion between police and Government officials to protect the perpetrators of the violence from prosecution was reportedly widespread. Activists and lawyers campaigning for Gujarat riot victims have come under attack. As just the latest in a series of communal riots for which the victims have not received timely justice, it is imperative that the EU presses the Indian government to ensure efficient and independent prosecution for past crimes and in the event of future riots.

- ☞ *The EU should urge India to prosecute and condemn those responsible for the various incidents or waves of religious or inter-caste violence.*
- ☞ *India should further sign and ratify the statute of Rome for the International Criminal Court, as an important step for the prevention of further waves of violence.*

Death penalty

The situation regarding death penalty in India has dramatically changed over the last month. The *de facto* moratorium on executions running since 1997 has indeed been broken with the execution of Dhababjoy Chatterjee on 14 August 2004. The European Union has expressed its dismay, calling on India to re-establish the moratorium and eventually abolish the death penalty.

But despite the fact that in the past the Indian authorities have opposed the death penalty in some cases and that India's highest courts have ruled that the death penalty can only be applied in the "rarest of rare" cases, the current political climate apparently favours the resumption of this sentence, and its concrete application. Persons condemned for terrorism-related offences face the death penalty. Since the dramatic change of August 2004, there are fears that death row inmates may face imminent execution. The Government of India does not publish statistical information about the implementation of the death penalty but at least 33 people were sentenced to death in 2003, according to Amnesty International. The Government also made clear last July that it had no plans to abolish the death sentence.

This harsher approach to the death penalty confirms a trend that is observed in Asia, where several countries have very recently hardened their legislation (Malaysia), abandoned their *de facto* moratoria (Indonesia and The Philippines), or increased the number of executions (Vietnam, Thailand).

- ☞ *In application of the EU guidelines against death penalty, the EU should further express its concerns at the breach of the moratorium within the framework of the EU-India Summit*

Cooperation with UN mechanisms

The record of cooperation of the Government of India with the Special procedures of the Commission on Human Rights has been very poor. Indeed, a number of Special Rapporteurs have repeatedly asked to be able to visit the country and have still not received any positive answer. This concerns the Special Rapporteur on Torture, the SRSG on Human rights defenders, the SRs on the independence of judges and lawyers and on extrajudicial, summary or arbitrary executions requesting a joint visit, as well as the SR on the right to food.

Regarding the Treaty bodies, India has repeatedly failed to respond to its treaty obligation to report regularly to the various committees. Consequently, India has 10 overdue reports, and has not reported to the Committee on Economic, social and cultural rights since 1990, to CERD since 1996, etc.

☞ *The EU should urge the Indian authorities to cooperate fully with the UN Human rights special mechanisms, through, for example, the issuance of a Standing invitation to the Special mechanisms of the UN Commission on Human Rights. It should further be called to report to the UN treaty bodies, in application of its obligations under the international human rights instruments that it has ratified.*

Conclusion

IDSN, OMCT and FIDH consider that the long-lasting EU commitment for human rights would be undermined if successful business relations with India were not accompanied by a credible human rights dialogue and concrete requirements from the EU to the Indian authorities to take the necessary steps to improve the human rights situation. In particular this means implementation of laws and programs to fight against caste-based discrimination, torture and other forms of violence as well as the related impunity of perpetrators.

As a first step IDSN, OMCT and FIDH strongly recommend that this Communication be reviewed in order to properly reflect the EU's commitment to the promotion of human rights worldwide and in particular in India.

☞ ***In summary, IDSN, OMCT and FIDH propose the following minimum amendments to the text of the Communication (specific amendments proposals are highlighted in the document itself):***

1. The EU must recognise caste-based discrimination, torture and impunity as major human rights and development problems in India in the introduction and in the situation and context analyses, making specific reference to the affected groups.
2. The EU must urge India to ratify UN and ILO conventions, particularly the UN Convention Against Torture, including articles 21 & 22 and its Optional Protocol, and to respect its reporting obligations to UN mechanisms, including those to the Committee on Elimination of Racial Discrimination outstanding since 1996.
3. The EU must make a statement of intent and devise a concrete strategy to enhance the human rights dialogue at ministerial levels and at the EU-India Summits; caste-based discrimination, torture and impunity must be addressed specifically in discussions at all levels, as key elements of the human rights dialogue and development programs.
4. The EU must ensure that development co-operation integrates implementation of anti-discrimination policies and measures at all levels.
5. The EU should support OECD guidelines on multinational enterprises for EU companies operating in India and encourage private sector reservations for Dalits and other excluded communities, to ensure that economic progress does not enhance their socio-economic disadvantage.
6. The EU must ensure regular dialogue with and participation of the most marginalised sections of the Indian society, including Dalits and Adivasis.
7. The Appendices to the Communication must include some human development indicators, and demonstrate the caste divide, e.g. in the continuing literacy and wealth gap between Dalits and non-Dalits.

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