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Overarching human rights concerns of an EU-India FTA



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This dossier addresses preliminary human rights concerns of a trade negotiation - from negotiating table to implementation of the written document - between the European Union with India. It therefore covers one branch of the terms of reference of the sustainability impact assessment (SIA) conducted by Trade Impact B.V. It has no ambition of being comprehensive and should be treated as preliminary guidance on overarching concerns.

Concerns were crowdsourced from Indian civil society actors, human rights defenders and Indian diaspora concerned about the state of human rights and democracy in India. Gerard Oonk provided significant input.

Stichting The London Story (TLS) is a registered charitable organisation with an ANBI status in the Netherlands. TLS' overall mandate is to document, inform and advocate against hate speech and associated human rights violations.

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Part 1:

Background

Rule of law

In Tata Trust's Rule of Law Index 2020, India performs “moderately” in most categories, and “worst” in the categories Order and Security and Civil Justice. Actors with ties to the Indian government routinely receive favourable treatment during legal action, violating rule of law and the principle of equality. The judiciary has been criticised for not adequately uphold constitutional rights. Examples include:

- BJP lawmaker Kapil Mishra, against whom several complaints have been filed after an inflammatory speech that may have contributed to violence that caused 53 deaths in February 2020, has not been prosecuted.
- Research by Article14 from 2022 notes that for 1.5 years, there was no progress on six cases of national importance in the Supreme Court, and 53 cases that required a wider review by a constitution bench were kept pending.
- Indian authorities were reportedly prevented from conducting an independent investigation into corruption allegations in the context of the “Rafale jet deal”, in which India purchased fighter jets from France in 2016 under suspicious circumstances. The Director of the Central Bureau of Investigation was sent on forced leave after he reportedly launched an investigation into the deal.

The SIA should consider these failures of the judiciary in the context of possible remedies for violations of labour and human rights, but also in the context of the likelihood of business contracts being adequately upheld.

Centralisation of power and no stakeholder consultation

Stakeholder consultations by the government reportedly do not take place or are deliberately faked, which is accompanied by systematic persecution of civil society actors. The V-Dem Institute has considered India an “electoral autocracy” for several years in a row.

- In 2023, former senior Supreme Court judges warned that branches of the executive and other oversight bodies had been “turned into extended arms of the central government” and had been “ignoring the Constitution of India”.
- There is no procedure followed in India for discussion or ratification of a proposed FTA by both Houses of the Indian Parliament. This is detrimental, given the lack of stakeholder consultations during negotiations. Additionally, research by Gupta et al. (2018) shows that there has been a centralisation of decision-making in the Prime Minister's office since the election of Modi, including during trade deal negotiations. Democratic processes are thereby circumvented and stakeholders who may be adversely impacted are excluded.

Additionally, stakeholder consultations at the corporate level are equally absent. One investigation reported a large corporation illegally acquired Gram Sabha (village council) permissions by allegedly holding fake meetings and fraudulently coercing villagers into signing notarized documents authorising the mining company to acquire their land for mining purposes.

Systematic persecution of civil society actors

The SIA ToR acknowledge major restrictions to civil society organisations. Freedom House's Freedom in the World 2020 report ranked India as one of the ‘Countries in the Spotlight’ for the “deterioration of basic freedoms”. There are serious concerns about the systematic persecution of human rights defenders, journalists, and environmental activists in India. Civil society therefore cannot monitor the implementation of human rights laws and document the implications of a trade agreement, contrary to the expectation by the European Economic and Social Committee.

- In January 2023, the Central Government's Home Ministry submitted an affidavit to the Delhi High Court to prevent “private and extrajudicial commissions”, which refer to civil society investigations into human rights violations, such as fact-finding reports and “people's tribunals”.
- Between 2010-2020, 154 journalists were arrested, detained, interrogated, or harassed for their work. Over 40% of incidents took place in 2020 itself. The government has imposed travel bans on over 22 journalists, several of whom have faced raids, threats, and detention.
- Human rights defenders, especially those working with indigenous peoples, are systematically persecuted. In July 2021, 84-year-old Jesuit priest Father Stan Swamy died in custody while imprisoned without trial under sedition laws and being denied medical care. In late 2022, a US-based forensic firm found that digital evidence had been planted on his computer before his arrest.
- The Unlawful Activities (Prevention) Act, India's prime counter-terrorism law, is routinely used against human rights defenders and trade unionists. In 2019, the Unlawful Activities Prevention Act was amended to allow the executive to designate individuals as terrorists without due process.
- Between 2015 and 2018, there was a decline of 40 per cent in funding to NGOs in India following amendments to the Foreign Contribution (Regulation) Act (FCRA). The government cancelled the FCRA licences of 6,677 NGOs between 2017 and 2021 for alleged violations of the law. One example includes: Amnesty India was forced to suspend its operations in India in 2020.

Independence and accessibility of information

India engages in severe restrictions on access to information and press freedom, which will adversely impact the monitoring of the TSD commitments as well as the ability of businesses to operate in India. Examples include:

- In 2019 and 2020, India imposed the highest number of internet shutdowns in the world to curb dissent in regions with protests (109 in 2020). The seven-month shutdown in Kashmir constitutes the longest internet shutdown in a democratic country.
- In January 2023, the Ministry of Information and Broadcasting invoked emergency powers under the IT Rules 2021 to block access to a documentary by the BBC (“India: The Modi Question”) which examines violence perpetrated against Muslims in India, and potential responsibility of India’s current Prime Minister Modi. On 24 January, a campus screening of the documentary at the Jawaharlal Nehru University was disrupted by a power shutdown. One day later, at least 70 students were detained ahead of a planned screening. On 14 February, the BBC’s offices were raided.
- In 2005, India enacted the Right to Information Act (RTI) to give effect to the fundamental rights of citizens to seek and receive information from governments, local authorities, public sector enterprises including banks and non-governmental organisations owned, controlled or substantially financed by governments. However, civil society actors who make use of RTI are systematically targeted. Since 2005, at least 97 RTI activists have been killed, 165 injured, and 213 harassed.

Weakening of protective laws

Since its election in 2014, the current government has introduced multiple laws and policies that reverse the guarantees of self-governance and tenure rights for indigenous (“adivasi”) communities. This includes amendments to the Forest Rights Act, 2006, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Indian Forest Act, 1927, the Coal Bearing Areas (Acquisition and Development) Act, 1957, and the Forest Conservation Act, 1980. Many of these amendments and “legal reforms” were enacted during the lockdowns in response to the COVID-19 pandemic, which placed severe restrictions on public consultations.

Part 2: Key concerns by human right and affected group

The SIA is asked to identify which provisions and commitments are most likely to have an impact on sustainability issues. This question must be reframed, as the negotiation of the FTA and the geopolitical importance the EU gives to India itself are likely to have an adverse impact on the centrality of human rights in the EU-India partnership. As the EU is eager to agree an FTA with India, but India has expressed opposition to the basic concept of a TSD chapter, this is likely to result in major concessions within the TSD chapter, in contrast to the demands by the Commission for ambitious TSD chapters. This risks relegating Article 21 TEU to the sidelines, and thereby has an impact on the centrality of human rights overall. Prioritising the conclusion of an FTA over holistically addressing concerns would therefore impair the ability of the EU to fulfil their own human rights obligations.

Demolitions and property rights

The SIA ToR acknowledge that intercommunal violence and freedom of belief and religion are a major concern. Indeed, in its 2023 report, the *Early Warning Project* ranks India 8th highest-risk of concern for mass atrocities among 162 countries. In addition to violence perpetrated by non-state actors, the Indian executive also engages in extreme examples of extrajudicial expropriation that jeopardise fundamental human rights, especially of religious minorities.

- Several BJP-led states in India are demolishing homes with bulldozers without due process. The government either directly states that this is a reprisal for participants of the protests, or claims these demolitions are carried out in efforts against illegal constructions. Homes in the Muslim-majority Kashmir were demolished without notice, and authorities in the state of Uttar Pradesh demolished a mosque, reportedly as part of a road-widening project.
- A new law authorises the government to “recover damages” from alleged violent protestors through quasi-judicial tribunals, which use principles of ‘natural justice’ and do not have the safeguards of a criminal trial. Among those on trial in Khargone is a 12-year-old Muslim boy.

Implications for FTA: There is a possibility that in the name of attracting foreign investment, the executive may increase demolitions of “illegal constructions”, without due process, and aim to construct business districts. In practice, this violates the right to property, the right to shelter, and ultimately the right to life, as demolitions do not appear rooted in objective principles and follow due process. Those targeted are predominantly minorities and impoverished communities.

Militarisation in resource-rich areas

In India, an increase in corporate investments and projects are correlated with an increase in the deployment of security forces, which exacerbates existing conflict and results in targeted violence, mass displacement and human rights violations.

- **Kashmir:** 5.9 million tonnes of lithium reserves, which are needed for EV batteries, have been found for the first time in Jammu and Kashmir, and thereby within the context of an ongoing armed conflict with active military operations.
- **Chhattisgarh:** Since the election of the BJP at federal level in 2014, new battalions of the Central Reserves Police Force (CRPF) in South Bastar and the Border Security Force (BSF) and Seema Sashatra Bal (SSB) in North Bastar are announced regularly. A fact-finding initiative conducted in 2015 found that approximately 60,000 to 100,000 armed forces personnel are stationed in southern Chhattisgarh.

Implications for FTA: Increasing extraction of natural resources in already conflict-ridden regions will further exacerbate human rights violations by the hands of the police, Border Security Forces, army, and private security by corporations. This will adversely impact primarily already marginalised persons, especially impoverished indigenous peoples in Chhattisgarh, and the Kashmiri population.

Land rights and displacement

Over 70 million people have been displaced from “development projects” since India’s independence in 1947, making it the world leader. Additionally, since the ruling Bharatiya Janata Party (BJP) came into power in 2014, state-sanctioned land grabs by corporations in the state of Chhattisgarh have accelerated.

Implications for FTA: Corporate land grabs are expected to aggravate, as the extraction of rare earths needed for so-called clean energy technology is likely to increase under the EU-India Strategic Partnership more broadly. Similarly, displacement from the increased construction of investment zones and corporate headquarters is likely to be observed, such as in the rapidly expanding Gurgaon. Prioritising facilitating foreign investment risks also exposes India’s indigenous peoples to increased forced displacement. While the FTA is presented as contributing to the furthering of the Sustainable Development Goals and social and economic rights, the fact of increasing displacement means that the FTA is likely to counteract the progressive realisation of the rights to shelter and right to life.

Dealings by Indian companies with sanctioned entities abroad

Indian corporations have continued to engage with the Myanmar military, including by selling vehicles to the armed forces. The Myanmar military is under EU sanctions. The report of the independent United Nations International Fact-Finding Mission on Myanmar concluded that the transfer of military equipment to the Myanmar military violates international human rights law. A report by the Special Advisory Council for Myanmar noted that companies from India support Myanmar’s military with raw materials, training, and machinery, and are thereby reportedly complicit in human rights violations.

Implications for FTA: Increasing investment in Indian companies who deal with entities sanctioned by the EU risks the EU-India FTA having an additional adverse effect, by supporting crimes against humanity and potential genocide in a third country, which the SIA according to the ToR must also take into consideration.

Labour rights

Authoritative reports elsewhere detail evidence of forced labour, bonded labour and child labour, including within Indian supply chains leading to exports to the EU ([ILO, 2017](#); [Global Slavery Index, 2018a](#); [Global Slavery Index, 2018b](#); [Walk Free and CHRI, 2020](#); [US Department of Labour, 2021](#)). Yet, India reportedly does not have a governmental action plan to address modern slavery. Similarly, extensive reports elsewhere detail the role of the caste system in forced labour, and emphasise the apathy of the government towards abolishing caste-based discrimination and caste-based atrocities.

In the ITUC Global Rights Index 2022, India reportedly has “no guarantee of [labour] rights”. Concerns noted by the ITUC, beyond those listed above on the systematic targeting of civil society including trade unions, include repressive laws that restrict collective bargaining by unions and violent attacks on striking labourers, ranging from teachers, to healthcare workers, to farmers, by police and other state actors.

Apart from denying workers the ability to enforce their labour rights, India has weakened its labour laws in Special Economic Zones, and prioritised export oriented industries such as garments, with increased informalisation, casualisation, gender-based wage disparity, volatility of employment and worsening conditions of work. India also weakened labour protections outside of SEZs, by suspending 35 out of 38 labour laws in the state of Uttar Pradesh during the COVID-19 pandemic.

Implications for FTA: The FTA comes against a backdrop of existing unwillingness to guarantee such protections, and may exacerbate these violations of labour rights. Provisions allowing for investor-state dispute settlement could further exacerbate the situation of labour rights by limiting the ability of governments to regulate in the public interest, which may negatively impact worker protections, social protections, and access to government services.

Part 3:

Recommendations

The FTA cannot proceed without good-faith consultations with representative and diverse civil society representatives in India. There must be both ex ante and ex post human rights monitoring mechanisms, in which civil society must be actively facilitated as opposed to persecuted, as noted in the TSD review. While the European Economic and Social Committee expects that civil society organisations should deliver timely, well substantiated and evidence-based contributions, this is not possible under the current persecution.

The TSD chapter must strongly emphasise enforceable human rights protection, including sanctions. Violations of the TSD chapter must also be subject to enforceable sanctions (at least as a last resort), and TSD chapter violations must fall under the scope of the FTA's dispute resolution mechanism, as also put forward by the European Economic and Social Committee and the European Parliament. Violations of the TSD chapter must be remediable even if these did not affect trade or investment between the parties, as violations of labour rights are often done in order to increase profits and trade efficiency.

Not only the final FTA, **but the entire trade negotiation process must repeatedly and seriously discuss human rights concerns.** Trade cannot be treated in silos. The EU risks violating its own obligations under Article 21 TEU and thereby jeopardising its foreign policy interests if it does not mainstream human rights in all its engagements.

The TSD chapter must not only refer to the non-binding UN Guiding Principles on Business and Human Rights, but the legally binding ICCPR and ICESCR, and also give mention to specific minority communities whose protection the European Parliament has repeatedly advocated for. For instance, the European Parliament 2022 [annual report](#) on human rights and democracy in the world affirmed the importance of protecting Dalit rights and called for stepping up consultations with communities and the adoption of a policy addressing intersectional discrimination.

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