

Fredrik Reinfeldt,  
Prime Minister of Sweden,  
Presidency of the EU

3 November 2009  
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Dear Mr Reinfeldt,

**Subject: EU - India summit**

The EU is committed in its guidelines on human rights dialogues to using all meetings with third countries to discuss human rights issues. Ahead of the EU India summit on 6 November in New Delhi, we are writing to urge you to use the discussions with your Indian counterparts to address two issues which are of critical importance to effective human rights protection worldwide:

- Cooperation between the EU and India at the UN and in other international forums;
- Greater monitoring and regulation internationally to ensure corporate accountability

**EU and India in international forums**

As key global actors, both the EU and India have a responsibility to play an active role in the protection of human rights internationally, regionally, and at home. On the world stage the voice of the UN is particularly important in the promotion and protection of international human rights; both the EU and the Indian government should ensure that they support the UN in this role as effectively as possible.

The Human Rights Council has a mandate to “address violations of human rights, including gross and systematic violations”. India has repeatedly asserted that it is not supportive of the so-called “naming and shaming” of states that violate human rights or of intrusive monitoring of countries’ respect for human rights. Amnesty International encourages the European Union to call on India to propose specific and effective measures to give effect to the Council’s mandate to address violations of human rights, particularly in those situations where such violations reflect deliberate government policy. Similar concerns with India’s approach to addressing human rights violations would apply to other international forums. Without prejudice to the need for timely and robust measures to address acute and chronic human rights situations as mentioned above, India and the EU states that have been through the Universal Periodic Review (UPR) should contribute to making UPR an effective process by sharing their experiences with implementation of the recommendations accepted and commitments made in the review.

The recent example of the UN’s failure to adequately address the grave human rights situation in Sri Lanka, during the internal armed conflict and particularly at its end, demonstrates clearly the need for greater, more principled co-operation between global actors on crisis situations, including within the UN Human Rights Council. The serious deterioration of the human rights situation in Sri Lanka had long been foreseeable, and yet the Human Rights Council failed to take measures to prevent that deterioration. There were few signs of cooperation between the European Union and India to address the human rights situation in Sri Lanka at the UN or in the convening of the Council’s special session on Sri Lanka. Amnesty International remains greatly disappointed with the resolution on Sri Lanka adopted at the end of the end of the Council’s special session on 27 May 2009, which praised the Sri Lankan government, entirely ignored the human rights violations committed by the government, and disregarded the need to establish accountability. Although the Human Rights Council had established an international fact finding commission at its previous special session dealing with the situation in Gaza in January 2009, it failed to create one for Sri Lanka.

Amnesty International believes that the UN handling of the situation in Sri Lanka and the outcome of the special session was very damaging to the credibility of the UN human rights political bodies, and urges the EU and India to work together in the UN, across regional groupings, to ensure that the IDPs in the north east of the country are provided with urgently needed protection, assistance and the right to return, and that the ongoing impunity for violations committed during the conflict in Sri Lanka is addressed.

The role of India in the UN is particularly important as India is not only an influential global player, but also a critical regional power in Asia. This influence as an Asian actor is vital in the case of Myanmar, which for many years has refused to cooperate with the international community, but has responded in some instances, including following Cyclone Nargis, in 2008 to strong messages from its Asian neighbours. The EU should use its discussions with India to stress the importance of strong engagement from India on the need for Myanmar to end serious and systematic human rights violations, including detention of political prisoners and prisoners of conscience, often in appalling and sometimes isolated conditions.

The EU and India should also ensure that human rights protection at home is consistent with the messages they are promoting in international forums. In line with the EU's commitment to the worldwide abolition of the death penalty, the Swedish Presidency should use the discussions with India, which has held no executions since 2004, to call for India to take a positive approach in the lead up to the debate and resolution on a moratorium on the use of the death penalty at the General Assembly in November 2010.

### **Corporate accountability and the role of India and the EU**

The effects of the 1984 Bhopal disaster, in which half a million people were exposed to the gas leak from Union Carbide's (now the Dow Chemical Company) pesticide plant, are still to be fully addressed. Up to now, no one has been held responsible for the toxic leak and the survivors of Bhopal have fought for 25 years for justice. In line with calls in recent years from the European Parliament, the Swedish Presidency should use the EU India summit to call on the Government of India to take urgent and decisive action to address the outstanding problems of lack of compensation and accountability. In particular, the Government of India should ensure full establishment of the promised empowered Commission on Bhopal, for the rehabilitation of Bhopal Gas victims, with adequate resources and capacity. In conjunction with the companies involved, the Government of India should ensure effective measures to address the long-term impacts of the Bhopal gas leak including proper clean-up and remediation of the factory site, medical care, regular supply of adequate safe water for the affected communities, and economic rehabilitation.

The responsibility of the states in protecting people from human rights abuses committed by non-state actors, including companies, is also shown clearly in the case in the Lanjigarh mining project in Orissa. On 28 April 2009, the Ministry of Environment and Forests of the Government of India granted an environmental clearance for the Government of Orissa's Mining Corporation Limited to establish the Lanjigarh bauxite mining project in the Niyamgiri hills. The opencast mine will be operated by Vedanta Aluminium Limited, a subsidiary of Vedanta Resources Plc - a London Stock Exchange listed company - as per a joint venture agreement between this company and the Orissa Mining Corporation Limited. The Niyamgiri hills are sacred to the Dongria Kondh adivasi community of about 8000 people who live on and at the base of the Niyamgiri hills and were described as 'endangered' by India's Supreme Court-appointed Central Empowered Committee (CEC). The Dongria Kondh self-identify as an indigenous people. They practise shifting cultivation on the Niyamgiri hill slopes, collect forest produce and carry out hunting in the area for their food and livelihoods. They also rely on the Niyamgiri hills as a source of water, wood, and traditional plants which they use as medicine. Amnesty International is concerned that there has been no attempt to ensure that the proposed bauxite mine does not threaten the Dongria Kondh's ability to continue to engage in these traditional practices that are central to their way of life and culture.

Consistent with international law, prior to any approval being granted for the proposed mine, the free prior and informed consent of Dongria Kondh communities should have been sought. The Government of Orissa should have ensured that Dongria Kondh communities were given full information that was accessible, transparent and objective so that Dongria Kondh communities were able to assess the potential impacts of the proposal on their way of life. They should have been allowed sufficient time to be able to freely make informed decisions about their views of the proposed mine, and to actively engage in decision making with the relevant authorities about the proposal. In contrast, the Dongria Kondh communities have not been given any information about the potential impacts of the proposed mine, or been consulted to determine their views about the proposal. None of the Dongria Kondh communities living on or near the Niyamgiri hills were given notice of the public hearings which were held in February and March 2003, nor were attempts made in any other way to ensure their participation in these hearings, which were held at a considerable

distance from where they live. The public hearings were also completely inadequate as information was not provided to the communities on the potential risks and negative impacts of mining. The Swedish Presidency should call on the Indian Government to withdraw the clearance for the Lanjigarh bauxite mining project until all necessary measures are taken to ensure that the mining project will not negatively impact the human rights of the Dongria Kondhs.

The Bhopal disaster and the Lanjigarh bauxite mining project expose a wider problem: when human rights are undermined by companies there are often no effective means to hold companies to account and to ensure redress for those affected. This protection gap involves various actors with different accountability mechanisms. There are the "home states" (where multinational companies are headquartered), the "host states" (where the human rights impact of these companies' operations is felt) or the companies themselves, who have - at a minimum - the responsibility to respect human rights.

Proper accountability needs adequate mechanisms and the international human rights framework has not kept pace with the impacts of economic actors in a globalized context. The fact that there are no clear international human rights standards for all companies also contributes to this protection gap. Both preventive mechanisms and remedies are needed in order to close the gap.

In this context the EU, as a union of values and of respect for human rights, and India, as the largest democracy, have a particular responsibility. Considering that many multinational companies are headquartered in Europe and that the EU is an influential bloc in the international debate on business and human rights, the EU needs to show its leadership. At the same time, India is an influential emerging power and Indian companies are acting globally. Consequently, the EU and India have a responsibility to acknowledge and fulfil their human rights responsibilities, at home and abroad.

The Presidency should stress the crucial link between business and human rights by calling for monitoring and regulation by all states of the human rights impact of their companies, and underlining companies' responsibilities in respecting all human rights by requiring them to undertake robust due diligence in relation to their human rights and environmental impacts, no matter where they operate. The EU and India should agree on concrete measures towards corporate accountability including:

- a mandatory human rights impact assessment;
- adequate and meaningful consultation with communities that are affected by companies' activities;
- effective disclosure of all relevant information to affected individuals and communities; and
- ensuring access to justice for victims.

We look forward to seeing a successful outcome of these discussions and stand ready to provide any further information that would be useful to you in reaching concrete conclusions on the meeting.

Yours sincerely,



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