

## Feedback on Draft Inception Report for a Trade Sustainability Impact Assessment (SIA) in support of Free Trade Agreement and Investment Protection Agreement negotiations between the European Union and the Republic of India

March 2023

### Urgent problems with use of language

On page 31, the draft inception report uses the word “ethnic minorities”. This term carries problematic connotations. The dominant Hindu nationalist (“Hindutva”) ideology of the Indian government sees Hinduism not as a religion, but as an ethnicity or even race. Using the term “ethnic minorities” in the TSIA therefore risks adopting discourse that can harm and exclude religious minorities by legitimating a discourse that frames them as external to the Indian populus. For more information on Hindutva, see material by the Georgetown University [here](#).

On page 24 of the annex, the draft inception report writes that “registrations [of NGOs] have been cancelled; funding from foreign sources has come under attack; and *anti-national sentiments stirred* [emphasis added].” The last formulation carries problematic connotations, and does not serve to describe the situation that the report likely intends to describe. The term “anti-national” is invoked by proponents of Hindu nationalism (“Hindutva”) to dismiss criticism of the government. As material by the Georgetown University ([here](#)) describes, the Indian nation is constructed as a Hindu nation by proponents of Hindutva, which includes the current Indian government. Additionally, Hinduism and Hindutva are deliberately conflated. Therefore, criticism of exclusionary Hindu nationalism becomes equated with being “anti-national”. We strongly urge that the final inception report delete the use of this word in order not provide legitimacy to an exclusionary nation-building project. Instead, we propose being specific about the type of backlash civil society experiences.

### Reformulations and expansions upon formulations

The draft report writes: “Its findings will feed into the negotiations and provide guidance regarding solutions, which may help achieve the goals of supporting economic growth and job creation, enhancing social inclusion, and promoting sustainable development in the EU and India, as well as reducing potential negative impacts of the agreements.”

We propose:

1. The FTA falls within the overall EU-India Strategic Partnership, as laid out in the Roadmap to 2025. It should be an explicit goal to seek to further the full range of commitments in the EU-India Strategic Partnership, which crucially also includes human rights commitments.

The draft report writes: “A robust analysis of potential economic, social, environmental, and human rights-related impacts of the future EU-India FTA and IPA on the EU, India, and other countries. The analysis will examine effects, which may be created by the reduction of tariffs and Non-Tariff Measures (NTMs), as well as by certain provisions adopted in the future agreements.”

*We propose:*

1. The analysis must specify what is meant by “certain provisions adopted in the future agreements”. The intention must be to conduct a comprehensive and robust analysis of all provisions, which must be specified in this draft report.

The draft report writes: “Its findings will inform the negotiators”. The ToR also write: “The SIA shall be carried out during the negotiations and completed before or in any case not later than the end of the negotiations so that its results can inform the negotiations and decision-making process.”

*We propose:*

1. The draft inception report must problematise the time horizon, and the fact that the TSIA is coming late during the process of negotiations. In fact, since negotiators expressed they want the agreement to be concluded before the 2024 elections, it is legitimate for the contractors to problematize how and why the TSIA can inform the negotiators in light of this.

The draft inception report states the report seeks to “identify pre-existing vulnerabilities.”

*We propose:*

1. This must be expanded to include “emerging vulnerabilities” and “under-recognised/neglected vulnerabilities”. Therefore, the analysis will become forward-sighted and be helpful for the negotiators into the future.

The ToR write that “there are also issues of concern related to the intercommunal violence, freedom of belief and religion etc.” This is not reflected in the draft inception report, and “religious minorities” are not explicitly mentioned as vulnerable groups. Caste is also not mentioned, and Dalits are not mentioned as a vulnerable group. For instance, in Figure 2.1 (“the scope of the study”), “vulnerable groups” are not further specified. Additionally, on page 13 the draft report mentions “protection of rights of vulnerable groups, e.g. children and indigenous peoples”. As religious minorities and Dalits are the most targeted by violent attacks, as the report is supposed to be “proportionate”, and as the ToR explicitly mention them, they must also be mentioned in Figure 2.1. In fact, the European Parliament adopted its [annual report](#) on human rights and democracy in the world [calls on the EU](#) to adopt specific local strategies to combat caste-based discrimination. It affirmed the importance of protecting Dalit rights and called for stepping up consultations with communities and the adoption of a policy addressing intersectional discrimination. Indeed, the ToR admittedly call on the report to “pay a particular attention to the impact of the agreements under negotiation on indigenous peoples and the rights to property, including land tenure”. However, this comes in the context of a lack of EU action on the rights of Dalits and religious minorities, which has been widely condemned by

civil society in both geographies. Therefore, the draft inception report must also describe how it will address a situation in which the rights and groups identified as being “most likely to be affected” are different from those the Commission has highlighted in the ToR.

Persecution of civil society in both India and the EU is not recognised in the draft inception report. Instead, the report currently uses lofty language. Two examples where reformulation to acknowledge persecution is needed are:

1. “In the human rights impact analysis, stakeholder consultations are crucial not only as a source of information but also as a tool to ensure transparency of the proposed trade initiatives” (p. 31) → “In the human rights impact analysis, stakeholder consultations are crucial as **civil society is increasingly persecuted and excluded from participation.**”
2. “Civil society stakeholders in India are not empowered much (anymore), with the exception of those working on implementation of welfare-enhancing schemes of the government (more locally). [...] International sources of funding – that helped empower India’s civil society – have dried up recently due to government policies.” (p. 24 Annex). → “Civil society stakeholders in India are **systematically excluded and criminalised**, with the exception of those working on implementation of welfare-enhancing schemes of the government (more locally). [...] International sources of funding – that helped empower India’s civil society – have dried up recently due to government **repression.**”

### Forward-sighted clarifications on methodology

The draft inception report annex, Box 2.8 lists human rights information sources, but does not explicitly mention Indian human rights defenders, human rights organisations or Indian civil society. Additionally, it does not specify how it will weigh and prioritise information. For instance, will the analysis give more weight to sources of information from organisations who have been subjected to retaliation and attempts to silence them by the government? Will it give more weight to those who are accredited at the United Nations under ECOSOC status?

The draft inception report must accommodate and plan for the fact that much potentially relevant data is not recorded. For instance, the Indian government does not maintain data on targeted religious violence and hate crimes, nor on the amount of manual scavengers in the country. Therefore, the TSIA take into account that conclusions on many issues will not be possible. In this context, we propose that where conclusions about potential risk cannot be made, this should be considered as a major limitation and be used for a strong suggestion in favour of not proceeding with the respective provision.

The draft report writes: “It will then follow with a description of the situation in the EU and India in the reference period regarding respect for human rights, identifying trends and pre-existing vulnerabilities.” This part of the draft report must specify whether the description will attempt to be as comprehensive as possible, or only provide an overview of human rights identified as relevant in the ToR and the rest of the report.

The draft inception report methodology specifies that it will identify whether “the potentially affected rights are absolute human rights or not”. We do not see this as a relevant exercise, as grounds for restrictions on non-absolute human rights do *not* include trade benefits, but conditions such as public order, safety and health.

### **Additional material to be consulted**

The draft inception report annex lists UPR reports that will be consulted during the literature review. Please find additional UPR stakeholder submissions that are not yet listed in the annex, including by Stichting The London Story and its partners, [here](#) and [here](#). Additionally, please find an overview of the UPR recommendations issued to India, with a comparison between those in the 3rd and 4th cycle, [here](#).

The annex lists relevant human rights indicators. In addition to those mentioned, we propose consulting and/or including:

- [Internet Shutdown Tracker](#)
- [World Watch List 2023 · Serving Persecuted Christian's Worldwide](#)
- [#KeepItOn: WEAPONS OF CONTROL, SHIELDS OF IMPUNITY](#)
- [Arrest and Detention of Journalists in India 2010-20](#)
- [Democracy Reports - V-Dem](#)
- [Countries at Risk for Mass Killing 2022-23: Early Warning Project Statistical Risk Assessment Results](#)
- [V-Dem's Election Vote Buying Data in 2019](#)
- [Armed Conflict Location & Event Data Project \(ACLED\)](#)
- [V-Dem's data on Freedom of Peaceful Assembly in 2020](#)
- [BTI Transformation Index](#)
- [Global Corruption Barometer Asia 2020 Report](#)

The list of stakeholders is incomplete. Organisations who provided public input available on the TSIA website, such as Stichting The London Story, but also the Rosa Luxemburg Stiftung, are not mentioned in the table in the Annex.