**UNM-M**

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To

UN HUMAN RIGHTS COMMITTEE

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**Subject: NGO Parallel Report on India ahead of the consideration of the List of Issues for India specially on grave human right violation under the environment of AFSPA during the 126th session of the HRCttee(1 to 26 July, 2019)**

The submitting organization is United NGO Mission Manipur (UNMM), a network of 103 NGOs of indigenous peoples, religious institutions, indigenous Women's organizations, community based organisations etc.

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**I. Scope of international obligations**

(1) India is state party to a number of core UN human rights standards, among others the ICCPR, ratified in April 1979 but with reservations declared to articles 1 [self determination], 9, 13.

(2) India has – to date – not ratified the following core conventions: CAT, CED, CMW, and neither ILO Convention 169. India is not a party to any of the Optional Protocols (complaint mechanisms) to the UN core conventions. India did not access the Rome Statute of the International Criminal Court either.

***(3) Recommendations to the Indian government:***

3.1 Ratify CAT, CED, CMW, ILO Convention 169 and the Rome Statute;

3.2 Ratify all Optional Protocols to the UN core standards;

3.3 Respect and implement the recommendations made by UN Treaties Bodies, Special Rapporteurs and the UN High Commissioners of Human Rights with regard to repeal AFSPA as a matter of urgency.

**II. Promotion and Protection of Human Rights on the ground**

**II.1. Administration of justice and rule of law**

(4) In general, India disposes of a comprehensive constitutional and legal framework while the HRCttee noted that international treaties are not self-executing in India and recommended the full incorporation of ICCPR provisions in domestic law.

(5) In this context, the HRCttee and a number of other UN Human Rights institutions and experts[[1]](#footnote-1) expressed their concern about special powers under the legislation of the Armed Forces (Special Powers) Act of 1958 (AFSPA)[[2]](#footnote-2) and further legislation, such as the Unlawful Prevention Act, the National Investigative Agency Act and the National Security Act. The legal construction of AFSPA as such runs counter the provisions of ICCPR in areas which are declared to be disturbed. AFSPA provides the legal basis for serious human rights violations and entails impunity for state agents.[[3]](#footnote-3) According to the HRCttee’s Concluding Observations in 1997, in particular, articles 6, 7, 9 and 14 of the ICCPR are violated by security and armed forces acting under AFSPA as well as by paramilitary organizations employed by pertinent state agencies. The Government of India has not accepted any of the recommendations persistently.

(6) The NGOs called “Extrajudicial Execution Victim Families Association Manipur” and Human Rights Alert have filed a Public Interest Litigation in the Supreme Court of India in 2012, seeking justice for 1,528 cases of extrajudicial executions that occurred under AFSPA in Manipur from 1979 to 2012.[[4]](#footnote-4) In 2016, the Supreme Court came out with a historic judgement saying that extrajudicial execution cannot be tolerated even in areas where AFSPA is applicable.[[5]](#footnote-5) Since then, the phenomenon of extrajudicial execution has fortunately come to a low while impunity remains for any of the atrocities committed. UNMM has also played a role in this transformation.

(7) In July 2017, at the behest of the Supreme Court, the Central Bureau of Investigation (CBI) started investigating in 98 cases on *prima facie* while 41 incidents of extrajudicial executions have been investigated in detail. In August 2018, the CBI had registered 39 First Information Reports (FIR) against security forces. The Supreme Court also appointed in 2013 the Justice Santosh Hegde Commission who found that none of the victims in six cases examined by the Commission had any criminal antecedents nor was there any credible evidence to show that they had affiliations with a banned or unlawful organization.[[6]](#footnote-6)

(8) About seven years now have passed since the families of the 1,528 victims of alleged extra-judicial executions moved to the Supreme Court. Delays in prosecutions and ongoing threats and harassment continue to frustrate their quest for justice. Although the CBI filed charge-sheets in 8 cases, and trials have begun in 5 cases in courts in Manipur, the SIT (Special Investigation Team from CBI) observes many challenges at the time of investigation, gathering of evidences, interrogation of the perpetrators etc. In a Writ Petition 2018,[[7]](#footnote-7) army personnel has been seeking class impunity from legal action in their conduct of counter insurgency operations. The number of petitioners increased to currently more than 750. The investigation status of the majority of the cases is unknown.

(9) The procedure in three cases before Manipur courts involving around 18 police officials has stalled after lawyers of the accused officials argued that government sanction was required for prosecution, and the courts agreed. There is no timeline for the government to respond to requests for sanction. In one case before the Chief Judicial Magistrate in Thoubal district, the government is yet to reply to a request made in July 2018.Around 50 police officials have been named in the charge-sheets so far, and all of them continue to serve in their positions.

(10) As an example, on 2016-08-21, Mr.Herojit Thounaojam, the Senior Head Constable of the Indian Police in Manipur and a gallantry award recipient confessed the killing of Mr. Sanjit, on 23rd July 2009 on the order of his superior officer. The 22-year-old Chungkham Sanjit Meitei was suspected to be member of the insurgent group People’s Liberation Army (PLA). Thounaojam Herojit confessed that Mr. Sanjit was “not armed” when he was killed in July 2009. Other Senior Indian Army officer also confessed that fake encounters and extrajudicial execution by the Indian Army and Police was committed for their promotion and award.[[8]](#footnote-8)Hearings for Prosecution Witnesses were scheduled to be held at the courts but regularly adjourned or not even called for.[[9]](#footnote-9)

(11) Not all incidents and crimes mentioned below are directly related to AFSPA but they reflect the environment of feeling unsecure and missing a reliable implementation of rule of law. During the period of 2012 to August 2016, 345 bomb blasts were reported by which 57 civilians were killed and 325 injured. There were further reports of killing of unidentified people by unidentified gunmen. In 2015, Indian police shot and killed 11 youth in relation to protest for and against the Inner Line Permit in Manipur. Despite the public demand for independent investigations on these and other incidents and killings, the parties have not yet responded.

(12) In the last years, several rounds of high level discussions at the level of the Indian Union Government have taken place on the question whether to remove or dilute at least some parts of AFSPA. On November 2, 2018, the Hn’ble Chief Minister of Manipur, N. Biren Singh,has said that time has come to review the implementation of AFSPA in Manipur. Although no substantial change has happened so far, the discussions have shown that even the repeal of AFSPA is on the political agenda and not beyond any reality.

(13) Egregious human rights violations under AFSPA remain un-investigated. The claim for an effective remedy in the judicial, administrative or legislative framework, as envisaged in article 2(3) of ICCPR remain un-fulfilled. Thus, the civil society by itself started to seek the possibilities of a transitional justice process to address truth, justice, restitution and guarantee of non-repetition.

***(14) Recommendations to the Indian government:***

14.1 Guarantee fully the access to justice as well as the procedural rights for a fair trial in due time.

14.2 Withdraw the restrictions imposed on the progress of legal actions (under AFSPA) which hinder the courts on due progress of the trials.

14.3 Enhance legal action against the perpetrators who committed crimes under AFSPA.

14.4 Provide effective remedy to the victims of human rights violations committed under AFSPA since 1958.

14.5 Invite the Special Procedures on protection of human rights while countering the terrorism, on extrajudicial killings, the independence on justice and lawyers.

14.6 Establish and foster a Manipur Truth Commission in order to initiate both judicial and non-judicial mechanisms to address the human rights violations for a long term peace building.

**II.2 Freedom of expression, association and peaceful assembly**

(15) Reprisals against victims and human rights defenders in the context of investigating cases under AFSPA have continued until today. Sukham Punimabati Devi, a key witness in one case, was approached at her home on four occasions in December 2018 and January 2019 by a man who said he was acting on behalf of a police officer named in the charge-sheet in the case. She was told repeatedly that she had to meet the police officer, and was threatened with consequences if she would refuse. In an official complaint to the Director General of Police (DGP), Manipur, dated 13 January, Punimati Devi said, “I am concerned about my life and personal security. Therefore, I seek timely intervention of the respected DGP for securing my life and personal safety.” Despite her appeal, no action has been taken.

(16) The submitting NGO, UNMM, was harassed several times and its umbrella organisation Centre for Social Development (CSD) lost its registration under the Foreign Contribution Regulation Act (FCRA) for cooperating with UN institutions and revealing human rights situations in India. As an exemplary case, the Director of CSD, Mr. U. Nobokishore Singh was under constant threat by uniformed and non uniformed person since August 2017. On 8th of February 2018, he received threats from the security forces and police intelligent in Meghalaya even while he was visiting this state in relation to the education of his children.[[10]](#footnote-10)

(17) Ms. Ranjeeta Sadokpam, a human rights defender was harassed by the combined forces of armed police and Assam Rifle at 2 am of 27th February 2018 at her home in Bishnupur district. She has been actively engaged in the Court in relation to extrajudicial execution in Manipur for the last 6 years. Mrs. Sobita Mangsatabam Devi, Secretary of Women Action for Development (also member organisation of CSD) was attacked by six persons in civil dress with the suspect of carrying small arms on 11th August 2017 at her office. The case was reported to Imphal SP but he declined to register FIR without reasons till today. She has been actively engaging against the crime against women under context of AFSPA. In front of the CSD office, vehicles with fully packed security forces have been parking constantly and observed the movement of the staff. The constant monitoring and investigation led to insecurity and threats, disturbing the normal daily life and work activities of CSD staff.

(18) Beyond the narrow context of AFSPA, there are further threats to press and the freedom of expression: Mr. Konsam Rishikanta Singh (25 years), Sub-editor of Imphal Free Press, was shot dead in November 2008 but still the Police failed to get any perpetrator arrested or punished. In 2015, 17 Editors of local newspapers received dead threats from an unidentified armed group but the police refused to investigate. On December 24, 2015, Editors Guild of India expressed its serious concern regarding violence and threats faced by the media houses in general and editors in particular. Editor Yumnam Rupachandra Singh received death threats from a militant organisation and a bomb was found at the gate of his house on December 14 evening. All the newspapers in the state closed their publication on December 16.In their editions dated December 16, they left the editorial space blank. All the Television news channels stopped their news broadcasts on that day to protest against threats to the media, impinging on the freedom of the media.[[11]](#footnote-11) In July 2016 student who received permission for the peaceful protest from the Magistrate of Government of Manipur, were not allowed to continue the peaceful sit in protest by police forces.

(19) In recent times, a frequently used leverage by the state to silence dissent and particularly human rights activists, is to frame false charges under ‘sedition’.[[12]](#footnote-12) There were 37 sedition cases filed in India every year on an average between 2014 and 2016 (47 in 2014, 30 in 2015 and 35 in 2016). In 2019 until March, at least 27 people have already been booked for sedition (13 in Assam in January and 14 in Uttar Pradesh). The Assam government informed the state assembly in March 2019 that it has registered 251 cases since the BJP-led alliance came to power in 2016. In January 14, 2019, the Delhi Police filed a 1,200-page long charge sheet on sedition against the Jawaharlal Nehru University student leaders Kanhaiya Kumar, Umar Khalid and Anirban, three years after booking them. Although the large number of people arrested for sedition the courts dismantled the charge and the accused walked free but after suffering the discomfort of arrest, imprisonment and trial.

***(20) Recommendations to the Indian government***

20.1 Guarantee the freedoms of assembly, expression and access to justice

20.2 Ensure independent, impartial and thorough investigations particularly in cases of sedition when alleged perpetrators simply have criticized the performance of government institutions.

20.3 Security forces should not create an environment of fear and insecurity to NGOs working on public and legal matters.

20.4 Stop surveillance and investigation on human rights activists while they perform in due legal contexts guaranteed by the ICCPR

20.5 Invite the pertinent Special Procedures

**I1.3 Right to participate in public and political life**

(21) For the last 20 years, illegal pharmaceutical drugs enter Manipur for consumption by the young people. The Heroin is still coming from Myanmar. There are evidences that members of the Indian Army, Police and family members of Political leader (also members of insurgent groups) are involved. For instance, Col. Ajay Choudhuri and Col. Mr. Singh of Indian Army both were caught in 2015 with drugs and gold. Also, there are a huge number of arms available in the illegal market. UNMM presumes that part of these arms has been originally designated to the Government of India and the Defence Ministry and later licked to the illegal market. Thus, particularly in matters of security, the reliability of Indian security forces and the administrative functionality are not guaranteed which hampers people’s participation in societal and public life. Furthermore, the massive destruction of agriculture land, forest and contamination of rivers not only weakens people’s economic self- reliance but risks their social and cultural existence as such – in detriment to HRCttee General Comment No. 23, para 3.2.

(22) In a number of cases, Indian authorities like the Union Ministry of Atomic Energy (Government of India) have signed a number of so called Memorandums of Understanding (MoU) with national and multinational companies.[[13]](#footnote-13) Not only the MoU process was in-transparent, the public hearings, if conducted at all, did not consider any dissent and critical information from the people on the ground. Human rights defenders had run the risk to be harassed or even put into jail. If necessary, Indian paramilitary units and law enforcing agencies have intervened to guarantee the business interests. Contrary to that, the consultation process with companies for clearance and license had been intensive and constructive. The undue consultation process with local people has violated the free access to information and restricted their fair participation in public life.

(23) In spite of organising public hearings with full participation of local people and NGOs, the Government of India has systematically targeted environmental activists, human rights defenders and their organisations. Government security forces are visiting the home and offices of such activists without any reason or arrest memo. This is a serious act of intimidation. In particular, Mr. Yumnam Jiten Singh (CRAM), Mr. John Pamei, Mr. U. Nobokishore UNMM), and others have been under constant threat by the police and Indian Armed Forces since July 2017.

***(24) Recommendations to the Indian government***

24.1 Abstain from harassment, intimidation, attacks, discrimination against members of civil society who are committed to ensure the safe guard measures and the guarantees by the Constitution of India and International Law

24.2 Demilitarize the North East Region and repeal AFSPA 1958 in order to insure that full participation can be practiced

24.3 Fully respect and implement the Free Prior Informed Consent for local people in all states of the North East of India (in accordance with the UN Declaration on the Rights of Indigenous People)

24.4 Fulfil the state’s obligations on impact assessments including human rights and the cumulative impacts by, for instance, mining and factories.

24.5 Enforcing a moratorium on all mega and unsustainable projects which failed to be consulted in the format of the free, prior and informed consent.

**I1.4 Minority Rights**

(25) Recently, the governments of Indian Union as well as some States promoted the amendment of the Indian Citizenship Act 1955[[14]](#footnote-14) to ease and facilitate migrants citizenship on the basis of religion (Hindu, Sikh, Buddhist, Jain, Parsi or Christian and with exception of Muslims) from Afghanistan, Bangladesh or Pakistan. The subjects under the amendment can become Indian citizens if the person has been a resident of India for six years instead of the mandatory 11 years. Beyond the obvious – and unconstitutional – discrimination of Muslims, the people particularly on the North East region protested in fear of previous experiences. According to these experiences, in such environments people from North East were quitted off their land, resources and political self-administration powers. People on the ground belief that behind this amendment the government seeks ultimately a demographic change in the North East region and to extinct the social and cultural ground for any intention to pursue ethnic self-determination.

(26) ***Recommendations to the Indian government:***

26.1 Recognise the existence of ethnic minorities and indigenous peoples within India’s territory

26.2 Provide protection according to Article 27 of ICCPR

26.3 Ratify ILO Convention 169

26.4 Insert the provisions of the UN Declaration on the Rights of the Indigenous Peoples (2007) into domestic law.

**III. Conclusion**

(27) UNMM hopes that the concerns expressed herewith will be reflected in the List of Issues drawn up for initiating the 4th review process of the Government of India on ICCPR. We are prepared to maintain close communication with HRCttee and can provide further information upon request. We hope the HRCttee may have a meaningful engagement with the Government of India.

… - …

1. CEDAW (2007 and 2014), CERD (2000, 2007, 2014), CESCR (2008) and CRC (2014) also raised concerns about AFSPA on several occasions since 2007 as well as the High Commissioner of Human Rights (2009).The Special Rapporteurs on Human Right Defenders (2011), on Extrajudicial Executions (2012), on Violence against Women (2013) had visited North East India and recommended to repeal AFSPA. Christof Heyns, UN Special Rapporteur on extra-judicial execution provided in his report after his official visit to India in 2012 a detailed legal analysis of the AFSPA (A/HRC/23/47/Add.1). Further, the Indian Justice Jeevan Reddy Commission (2005/4), the 2nd Administrative Reformed Commission (2007), the Justice Verma Commission (20013) and the Justice Santosh Hegde Commission (2013) also recommended repealing AFSPA. [↑](#footnote-ref-1)
2. The Armed Forces (Special Powers) Act, 1958 has been imposed on North East India to suppress nominally the armed uprising after Independence but always targeted predominantly the self determination by indigenous peoples and civil society claims in the region. AFSPA is according to the Justice Jeevan Reddy Commission the sign of oppression and high handedness and symbol of discrimination. [↑](#footnote-ref-2)
3. The law provides special powers to the military including ‘to use force to the extent of causing death’ if anyone is suspected to be disturbing the “public order.” The prolonged imposition of such law has created a climate of impunity, where extrajudicial execution is accepted as the norm of dealing with any form of dissent. [↑](#footnote-ref-3)
4. Extra Judicial Execution Victim Families Association (EEVFAM) &Anr. v. Union of India &Anr. Writ Petition (Criminal) No. 129/2012.The total number of disappearances and killingsin North East of India from 1992 to 2017 is estimated to about 18,791 people affected and executed by the Indian Army, the Indian Police and allied paramilitary forces in the name of counter insurgency. The victims are estimated state wise about7448 in Assam, Manipur (5101), Nagaland (2266), Tripura (3031), and Meghalaya (598). [↑](#footnote-ref-4)
5. The Supreme Court stated that “there is no concept of absolute immunity from trial…”, [↑](#footnote-ref-5)
6. Testimonies in the hands of UNMM and www.frontline.in dated 19.8.2016 page 25-26. [↑](#footnote-ref-6)
7. Writ Petition (Criminal) number 201 / 2018. [↑](#footnote-ref-7)
8. See the Book "BLOOD ON MY HAND" written by Mr. K. Bhattacharjee, Independent Journalist in 2015. [↑](#footnote-ref-8)
9. See the concerns expressed by the Special Rapporteur on extrajudicial, summary or arbitrary executions and Special Rapporteur on the situation of human rights defenders, “India: UN experts call for urgent progress in investigation of hundreds of ‘fake encounter’ killings”; July 4, 2018; accessible at https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23323&LangID=E. [↑](#footnote-ref-9)
10. See the report on reprisals by the UN Secretary General A/HRC/39/41 (2018), paras 50 to 52. [↑](#footnote-ref-10)
11. See more details at http://www.theshillongtimes.com/2015/12/24/editors-guild-condemns-threats-to-media-in-manipur/#2VYJyfz0M8jZ3ISD.99. [↑](#footnote-ref-11)
12. For instance for raising ‘anti-India slogans’or publicly opposing a proposal to grant citizenship to non-Muslims from neighbouring countries. The law in Section 124A of the Indian Penal Code, states: “Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government … shall be punished with life imprisonment”. [↑](#footnote-ref-12)
13. For instance, on Uranium mining, use of water e.g. of the Lukha and Ranikor Rivers, lime stone mining for cement factories, exploration of oil and gas, construction of hydro-powers, etc. [↑](#footnote-ref-13)
14. Citizenship (Amendment) Bill 2016 (CAB). [↑](#footnote-ref-14)