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Joint NGO Submission  
– Universal Periodic Review second cycle on the REPUBLIC OF INDIA –  
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**Submitted by:** UNITED NGOs MISSION-MANIPUR (UNMM), Manipur  
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**In cooperation with:** Member Organisations namely, Council for Anti Poverty Action and Rural Volunteer (CAPARV), Centre for Social Development (CSD), Village Development Organisation (VDO), Social Upliftment & Rural Edn. (SURE), Abundant Life Ministry (ALM), Rural Service Agency (RUSA), Development of Human Potential (DHP), Action for Welfare and Awakening I Rural Environment (AWARE), Rural Education and Action for Change Manipur (REACH-M), United Tribal Development Project (UTDP), Christian Social Development Organisation (CSDO), Chandel Khubol Social Welfare Arts and Culture Assn. (CKSWACA), Good Samaritan Foundation (GSF), Evangelical Assembly Churches (EAC), Joint Action for Relief and Development Association (JARDA), Rural Aid Services (RAS), Integrated Rural Development Agency (IRDA), Socio Economic Development Organisation (SEDO), Centre for Community, Centre for Rural Development and Educational Organisation (CERDEO), Paomei Development Society Tungjoy (PDST), Zougam Institute for Community & Rural Development (ZICORD), Rural Development Association (RDA), Socio Economic & Environment Development Organisation (SEEDO), Integrated Rural Development Welfare Association (IRDWA), Tangkhul Theological Assn. (TTA), Eastern Rural Development & Welfare Service (ERDWS), Participatory Action for Sustainable Development Organisation (PASDO), Women Union for Peace (WUFP), Shalom Development Organisation (SDO), Rural Institute for Community Health and Dev. (RICHD), People's Resource Development Association (PRDA), Rural Christian Development Society (RCDS), New Life Foundation (NLF), Women Action for Development (WAD), Tribal Women Dev. Assn (TWDA), All Manipur Women Assn. (AMWA), Environment and Economic Management Assn. (EEMA), Centre for Women Development (CWD), Rural Women Upliftment Society (RWUS), Women In Holistic Development (WISHD), Tuikhaphai Presbyterians Women Dev. Project (TPWDP), Rural Women Dev. Society (RWDS), Women Development Agency (WDA), Tribal Women and Child Care Assn. (TRIWCCA), Integrated Rural Management Agency (IRMA), Umathel Women Development Association (UWDA), Action for Women in Development (AWID), Women's Action for Reformation (WAR), Centre for Women (CeWE), Grace Ministry (GM), Rural Women & Children Dev. Organisation (RWCDO), Widow Welfare Society (WWS), Association for Rural Development & Women Empowerment (ARDWE), Women Development Organisation (WDO), Development Agency for Tribal People (DATP), Tamei Women Welfare Organisation (TWWO) etc.

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1. The *United NGOs Mission-Manipur* (UNMM) – a network of 235 indigenous peoples’ organisations from Northeast India – submits the joint report to the Office of the High Commissioner for Human Rights on the situation of human rights in the REPUBLIC of INDIA for being considered in the second cycle of UPR in May 2012.

## **I. BACKGROUND AND FRAMEWORK**

### **A. Scope of international obligations**

2. With this stakeholder report, UNMM emphasises the human rights impacts of the *Armed Forces (Special Powers) Act of 1958 (AFSPA)*. In this regard, it is worth to stress that India is state party to a number of pertinent core human rights conventions: ICCPR (ratified in April 1979 with reservations to a number of articles), ICERD (December 1968), CEDAW (September 1993 with reservations) and CRC (December 1992 with reservations).

3. India is not a party to any of the Optional Protocols to the mentioned conventions, nor has India ratified CAT at all (only signed in 1997). India did not access to the Rome Statute of the International Criminal Court either.

4. Until now, India denied the invitation to a number of UN Special Procedures’ mandate holders. With relevance to AFSPA, no visit was agreed with the Special Rapporteur on the question of torture (several requests made); Special Rapporteur on extrajudicial, summary or arbitrary executions (several requests made); Working Group on Arbitrary Detention (several requests made).

5. India was member of the UN Human Rights Council in the years 2006-2007, 2007-2010 and is again member state since 2011 to 2014, and thus, subject to the highest human rights standards. India underwent its first UPR in April 2008 but AFSPA was only considered by Canada referring to reports of torture and abuse by and impunity of police and security forces acting and asked what measures had been taken to repeal or reform this Act (A/HRC/8/26 para 27). Germany asked the government’s position regarding the recommendation of treaty bodies to repeal AFSPA (para 40).

### **B. Constitutional and legislative framework**

6. Under section 4(c) and (d) of AFSPA, the Acts grants extraordinary powers to the army, including to detain persons, use lethal force, and enter and search premises without warrant. These powers are formulated broadly and in a vague language (“use such force as may be necessary”). Under section 4(a) of AFSPA, a non commissioned officer of the Indian army can shoot to kill in mere suspicion of crimes defined by the government. The Act contains no effective safeguard to protect rights. Under section 6 of AFSPA, no prosecution, suit or other legal proceeding shall be brought, except with the express sanction of the Indian central government against any person regarding anything done or purported to be done in exercise of the powers under this Act.

7. The Supreme Court of India did not address in its judgement of 1997 the compatibility of AFSPA with international human rights standards as was requested by the HR Committee. Furthermore, India did not submit any further report to the HR Committee since 1997, thus, depriving the Committee from reconsidering the matter. In terms of international law, the concerns on the compatibility with international human rights law continue.

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

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

8. In general, India disposes of a comprehensive constitutional and legal framework while the HR Committee noted that international treaties are not self-executing in India and recommended the full incorporation of ICCPR provisions in domestic law. In this context, the HR Committee remained concerned since 1997 at the continuing reliance on special powers under the legislation of AFSPA, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups.

9. The HR Committee, CEDAW, CERD and CRC raised concerns about AFSPA on several occasions. CERD and CEDAW also referred to the report of the Committee to review AFSPA set up by the Ministry of Home Affairs, which recommended the repeal of this Act. In recent time, CERD recommended in its seventieth session to repeal AFSPA (Concluding Observation of 9<sup>th</sup> of March 2007 para 12). Related to ASFPA, CERD has also sent Special Communications to India on 15<sup>th</sup> of August 2008, 13<sup>th</sup> of March and 28<sup>th</sup> of September 2009 respectively referring to Art. 2(1)(c), 5(b), 5(d) and 6 of the Convention. Also CESCR recommended in its fortieth session (28<sup>th</sup> April to 16<sup>th</sup> May 2008) to repeal AFSPA.

10. The Special Rapporteur on extrajudicial, summary or arbitrary executions sent allegation letters to the Government and recommended that the Government consider either repealing the AFSPA or ensuring its compliance with international law. Very recently, the Special Rapporteur on Human Rights Defenders visited the Northeast States of India on 14<sup>th</sup> January 2011 and expressed her serious concerns on grave human right violations and alleged atrocities being perpetrated by security forces against human rights defenders. During her visit in New Delhi on 23<sup>rd</sup> of January 2010, the UN High Commissioner for Human Rights, Ms. Navanethem Pillay called for the repeal of ASFPA, too.

11. The HR Committee noted with concern that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under AFSPA, may not be commenced without the sanction of the central Government and stated that this contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with the ICCPR. Various Special Rapporteurs related to reports of alleged impunity for criminal acts committed by officials. In some cases relating to reports of death or ill-treatment while in detention, it is alleged that the authorities had attempted to block the investigation, or had taken no steps to investigate the allegations. In the context of AFSPA, the HR Committee regretted since 1997 that India's National Human Rights Commission (NHRC) is prevented from directly investigating complaints of human rights violations against the armed forces but must request a report from the central Government, and that complaints to the Commission are subject to a one-year limit.

12. Those general observations coincide with UNMM's assessment on AFSPA. According to our analysis, AFSPA remains in effect in the states of Nagaland, Manipur, Assam and parts of Tripura as well as a similar version of that law is in effect in Jammu and Kashmir. Thus, the Government of India continues to make use of a law that is supposedly aimed at stopping terrorism and non-state armed actors but has created situations where the legal provisions of that law stipulate to enforced disappearances, extrajudicial killings, illegal detention, custodial torture, sexual violence against women and summary executions disguised as armed encounters. AFSPA provides armed forces with immunity when they are deployed in areas of armed conflict in the states of Manipur, Assam, Nagaland, Tripura, Jamu and Kashmir of India. AFSPA has opened doors to effectively make misuse by state agents ending up in the abuse of human rights. In Manipur, the invocation of the AFSPA for half a century

has blatantly violated non-derogable rights, primarily the right to life. Manipuri youths are primary victims of daily and routine extra-judicial executions. Due to the fear of the armed forces, the people are scared to send their children to schools.

13. UNMM acknowledges that part of India's executive and legislative powers undertook attempts to deal with AFSPA in a more rule of law approach. An officially established Committee (chaired by the retired justice of the Supreme Court, B.P. Jeevan Reddy) reviewed AFSPA and submitted its report to the Home Ministry in June 2005. Although it has never been officially published, the report was leaked informally, and the Committee was of the unanimous view that the Act 'should be repealed'. In April 2007, a working group on Jammu and Kashmir appointed by the Prime Minister also recommended the repeal of laws sanctioning impunity, such as AFSPA. However, the central Indian government has not acted on any of these recommendations.

14. Currently, there is a debate within the central government of India between the Home Ministry and the Defence Ministry. According to our observations, the Home Ministry is likely to repeal AFSPA while the Defence Ministry is blocking such intention. UNMM has received a letter No. 11011/80/2011-NE-III dated 1<sup>st</sup> of August 2011 from the Union Ministry of Home Affairs saying that "Government of India is examining the Act". Till date, there is not taken any decision in this matter.

## **2. Right to life, liberty and security of the person**

15. Action taken pursuant to AFSPA reportedly led to 562 people killed by government security forces in 2008. Most of them were civilians. During the year, there were 60 incidents of bomb blast which killed 28 civilians and injured 65 people. In 2009, 540 people were reportedly killed by the security forces. There were 57 incidents of bomb blast which killed 4 people and injured 59. In 2010 and 2011 (till July) 257 people were killed by security forces and unidentified gunmen. There were 47 incidents of bomb blast which killed 4 people and injuring 19 in 2010. Until recent days, the indiscriminate use of firearms continues; as in the case during the night of April 2-3 2011, which led to the killing of Ms. Waikhom Mani in the village of Nonganghkong, and assault against the Justice of Guwahati Court in Imphal on April 20, 2011.

16. Since April 10, 2009, a security operation called "*Operation Summer Storm*" at Loktak Lake was launched by the 57<sup>th</sup> Mountain Division and State Police Commandos to flush off militants from that area. Hundreds of people were displaced, some of them were used as human shields by the security forces. It is reported that 12 persons were shot dead by them.

17. On 23<sup>rd</sup> of July 2009 at 10.30 a.m., amidst the ongoing budget session of the Manipur Legislative Assembly, a fake gun battle took place during the rush hour in the Khwairamband market area. The result was two persons killed including a seven month pregnant woman and a militant suspect besides injuries to five others. The deceased persons were Ms. Thockchom Rabina Devi and Mr. Chongtham Sanjeet Meitei. This fake gun battle was captured on camera and widely published in the national and local media ("Murder in plain sight", *Tehelka Magazine*, Vol. 6, Issue 31, dated August 08, 2009 available at [http://www.tehelka.com/story\\_main42.asp?filename=Ne080809murder\\_in.asp](http://www.tehelka.com/story_main42.asp?filename=Ne080809murder_in.asp)). The same day of the incident, the Chief Minister of Manipur stated in the Assembly Session that "there is no alternative way but to kill". The perpetrators enjoy impunity, and the Act also violates the right to remedy.

18. During the years 2008 to 2011 (till June), 498 cases of violence against women occurred in the context of ASFPA in the State of Manipur. There is the famous case of Irom

Chanu Sharmila. Irom Sharmila Chanu has been on hunger strike since November 2000, protesting against the imposition of AFSPA.

19. At the moment all possible domestic mechanisms and non-violence movement of the people in order to make ASFPA repealed are exhausted. On the contrary, India extended the application of AFSPA on 19<sup>th</sup> of November 2010 for another one year with effect from 1<sup>st</sup> December 2010. In addition, the army is raising a new Special Forces battalion primarily for conducting counter-insurgency operations in the Northeast. The new unit of the Parachute Regiment 11 Para (SF) will be first deployed there. The army is also planning to set up a mountain strike corps against insurgents.

### **3. Freedom of expression, association and peaceful assembly, and right to participate in public and political life**

20. On 5<sup>th</sup> of August 2009, people's protest against the 23<sup>rd</sup> of July 2009 fake encounter killing at Imphal was suppressed. During the fake encounter Manipur police killed Chungkham Shanjit and Thockchom Rebina, and several human rights defenders were arrested and detained under National Security Act, 1980. On 6<sup>th</sup> May 2010, Mr. Dikho Losha (19 years) and Mr. Nili Chakho (19 years) were killed by the security forces at Mao Gate of Senapati district while they were participating a protest rally against AFSPA. More than 80 persons were injured, mostly women and widows.

21. Journalists are also victims. On 17<sup>th</sup> of November 2008 at about 4.30 p.m., Mr. Konsam Rishikanta Singh (25 years), sub-editor of the local daily Imphal Free Press, was shot dead at Langol near the Lamphel Police Station under Imphal West district. He was found blind folded, his hands were tied behind, and his mouth gagged with a piece of cloth. In another incident, the Indian Police Unit arrested Mr. Ahongsangbam Mobi, editor of the vernacular daily "Sanaleibak" on December 29, 2010 on the allegation that he is working for the secessionist elements operating in the state. Mr. Mobi has denied the case and accused the police trying to implicate him in a fabricated case. The All Manipur Working Journalists Union (AMWJU) supports Mr. Mobi's contention. The Chief Judicial Magistrate, Imphal West, released Mr. Mobi on bail on 6<sup>th</sup> of January 2011 as no prima facie case has been made out against him.

### **4. Right to education**

22. In Manipur, the security forces, while deployed for counter insurgency operations and other purposes, started occupying school buildings since 1998 (<http://www.thesangaiexpress.com/fullstory.php?newsid=1784>). Thus, children have not been able to go to their schools and study properly. The school buildings which are currently being occupied by security forces in Manipur include Karang Primary School (since 2006) and Saiton High School (since 2009) in Bishnupur district, Sajik Tampak Junior High School (since 2004) in Chandel district, Singat Government High School (since 1998), Songdoh Government Junior High School (since 2010) and Hengkot Aided JB School (since 2005) in Churachandpur district, Awangkhul LP School (since 2005), Charoi Chagotlong Junior High School (since 2005) and Lamdangmei Junior High School (since 2004) in Tamenglong district.

### **III. Recommendations**

23. As AFSPA's central provisions are incompatible with India's international human rights law obligations, namely the articles 2 (3), 6, 7, 9, 17 and 21 of ICCPR, it is recommended to simply repeal AFSPA.

24. In addition, it is recommended to formally acknowledge the full applicability of the CCPR in the above mentioned situations and, accordingly, to hold accountable the members of the security forces and to ensure the effective investigation and prosecution of human rights violations committed by them in the context of AFSPA.
25. It is recommended to fully implement the recommendations made by CERD.
26. It is recommended to provide effective access to justice and remedy for the victims of violations committed in the context of AFSPA.
27. It is recommended to submit the fourth periodic report (due since 2001) to the HR Committee as soon as possible.
28. It is recommended to ratify CAT and the Optional Protocols to the human rights conventions to which India is already party.
29. It is recommended to invite the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on Torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention, the Special Rapporteur on the Right to Food, the Special Rapporteur on the promotion and protection of human rights while countering terrorism communicate with India with regard to the situation in the Northeast India.
30. It is recommended to entitle the Indian NHRC to directly investigate complaints of human rights violations against the armed forces.
31. It is recommended to take immediate and effective measures to ensure the safety and security of indigenous peoples in the Northeast area and ensure that adequate resources are provided towards this end. These measures should be designed and implemented with the meaningful participation and informed consent of indigenous peoples.

Attachment

## References

REDRESS, Asian Human Rights Commission, Human Rights Alert (ed.) [2011]; *Sanctioning Repression in Violation of India's Human Rights Obligations. The Armed Forces (Special Powers) Act of 1958 in Manipur and other States of the Northeast of India*. London-Hongkong-Imphal