Request for adoption of a Decision under the Urgent Action/ Early Warning Procedure in Connection with violation of Indigenous Peoples’ Rights in Northeast, India

69th Session of the Committee on the Elimination of Racial Discrimination

Submitted by:

United NGOs Mission Manipur
Forest Peoples Programme

31 October 2006
<table>
<thead>
<tr>
<th>Contents</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive summary &amp; Submitting Organizations</td>
<td>i</td>
</tr>
<tr>
<td>I. Introduction</td>
<td>1</td>
</tr>
<tr>
<td>II. General Background</td>
<td>2</td>
</tr>
<tr>
<td>III. Indigenous Peoples and the Armed Forces (Special Powers) Act</td>
<td>4</td>
</tr>
<tr>
<td>IV. Numerous Dams proposed for Northeast India will cause Irreparable Harm to Indigenous Peoples</td>
<td>10</td>
</tr>
<tr>
<td>V. Discrimination in Health and Education</td>
<td>12</td>
</tr>
<tr>
<td>VI. Structural discrimination against the Indigenous peoples</td>
<td>14</td>
</tr>
<tr>
<td>VII. Conclusion and Request</td>
<td>14</td>
</tr>
<tr>
<td>VII. Annexures:</td>
<td>15</td>
</tr>
</tbody>
</table>

Annexure A: Armed Forces Special Power Act (AFSPA), 1958 (Acts)
Annexure B: Armed Forces Special Power (Amendment) Act 1972
Annexure C: Analysis of AFSPA
Annexure D: Amnesty International report on AFSPA
Annexure E: Human Rights Documentation
Annexure F: ‘Dos and Don’ts’ of Indian Supreme Court on AFSPA
Annexure G: News Articles on Dams
Annexure H: Power Sector in NEI
Annexure I: Draft petition on Lower Subansiri dam
Executive Summary:

This report and request is submitted by the United NGOs Mission Manipur, a network of national NGOs, and the Forest Peoples Programme, an international NGO. It emphasizes the dangerous and urgent situation that has developed in the northeast states of India as a result of India’s discriminatory acts and omissions. Systematic discrimination and other human rights violations against the indigenous peoples of northeast India are manifest in relation to the 1958 *Arms Forces (Special Powers) Act* and the imminent construction of 68 mega dams throughout indigenous peoples’ territories in the northeast.

The report also highlights widespread, persistent and systematic violations of various provisions of the Convention on the Elimination of All Forms of Racial Discrimination against the indigenous peoples of the northeast by the Republic of India. This discrimination is particularly evident in connection with India’s failure to adequately recognize, guarantee and protect indigenous peoples’ rights in the context of armed conflict between state and non-state actors and denial of indigenous peoples’ rights to own and control their traditional lands, territories and resources.

A large number of armed opposition groups operate in Manipur and elsewhere in the northeast and they also have been responsible for gross human rights abuses. Yet, disregard for basic human rights by the State in countering these groups only begets contempt for the rule of law and contributes to a vicious cycle of violence. The unusual form of demonstration taken by some members of the Meira Paibi (women torch bearers) who stripped themselves naked in front of the Kangla Fort on 15 July 2004 was an act of desperation to protest against the systematic denial of access to justice even for unlawful, arbitrary, summary and extrajudicial deprivation of the right to life.

Immediate and increased attention to the situation in northeast India is urgently needed due to the presence of a pattern of escalating racial hatred and violence towards indigenous peoples. This hatred and violence has the support of significant elements within local government and law enforcement and now has been markedly exacerbated by the Government’s failure to seek a political solution to the violence.

The submitting organizations emphasize the pressing need for the Committee’s immediate and sustained attention to systematic human rights violations against indigenous peoples in northeast India. This includes the imminent construction of a large number of dams on indigenous peoples’ lands. Such attention is required to prevent further immediate and irreparable harm to indigenous peoples and their rights, halt the escalation of racial conflict, and limit the scale and number of serious violations of the Convention. Consequently, the report requests, *inter alia*, that the Committee adopts a decision under its Early Warning and Urgent Action procedures in relation to this situation.

Submitting Organizations:

**United NGOs Mission Manipur (UNMM):** The UNMM, established in 1995, is a network of 103 indigenous peoples’ NGOs and 156 associate members. These
organizations work in solidarity to end violence due to traditional ethnic conflicts, conflicts between Hindus and indigenous peoples and to conflict between armed groups and the Government of India. The UNMM also seeks to protect Manipur’s large forests on which indigenous peoples’ depend for their livelihoods and to otherwise promote and defend the rights of indigenous peoples in the region.

**Address:** Chingmeirong East, Imphal – 795001, Manipur, India.
Tel: 0091-385-2421053, Fax: 0091-385-2321368 e-mail: unmmanipur@sancharnet.in

**Forest Peoples Programme (FPP):** FPP is an international NGO, founded in 1990 and based in the United Kingdom, which supports the rights of forest peoples. It aims to secure the rights of indigenous and other peoples, who live in the forests and depend on them for their livelihoods, to control their lands and destinies.

**Address:** 1c Fosseway Business Centre, Stratford Road, Moreton-in-Marsh GL56 9NQ, UK. Tel: (44) 01608 652893, Fax: (44) 01608 652878, e-mail: info@forespeoples.org
Request for adoption of a Decision under the Urgent Action/ Early Warning Procedure in connection with violation of Indigenous Peoples Rights in Northeast India

I. Introduction

1. This report respectfully requests the adoption of a decision under the Urgent Action/Early Warning procedure of the United Nations Committee on the Elimination of Racial Discrimination (“CERD” or “the Committee”) in relation to the alarming situation of indigenous peoples in northeast India. It also provides brief comments on the State Party report submitted by India. It is submitted by the United NGOs Mission Manipur (“UNMM”), a network of NGOs established by the indigenous peoples of Manipur, which comprises 103 primary members and 156 associate members, and the Forest Peoples Programme, an international NGO based in the United Kingdom.

2. This report details systematic and pervasive racial discrimination against the indigenous peoples of northeast India. This discrimination is evident with regard to laws applicable to indigenous and tribal peoples throughout India as well as in special laws that only apply to indigenous peoples in the northeast. With regard to the former, the Committee has previously acknowledged this situation and expressed its concern about “widespread discrimination against [indigenous peoples in India] and the relative impunity of those who abuse them….”

3. Concerning the latter, namely the Armed Forces (Special Powers) Act of 1958 (“AFSPA”), gross violations of indigenous peoples’ basic human rights are occurring on a daily basis while the perpetrators enjoy de jure impunity. This law was originally and specifically designed to suppress the self-determination aspirations of the Naga indigenous people. In the 1980s, this law was extended to apply to the entire northeast region, a region predominately inhabited by indigenous peoples.

4. The AFSPA therefore has its origins in discrimination against indigenous peoples seeking to exercise their political and other rights and continues to be discriminatory in intent and effect in as much as it disproportionately affects the indigenous peoples of the northeast. As the Committee observed in its 1996 observations on India, “the denial of the equal enjoyment of political rights, as provided for in article 5(c) of the Convention, has led to an increase of violence….” While this statement was made with regard to Kashmir, it equally applies to the situation in the northeast.

5. The Human Rights Committee found that AFSPA has essentially created an undeclared state of emergency spanning almost 50 years in the northeast. It also expressed its concern about “serious human rights violations, in particular with respect to

---

1. CERD/C/IND/19, 29 March 2006.
3. Id. at para. 22.
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.” Nonetheless, the Indian Supreme Court upheld the constitutionality of AFSPA in a 1997 judgment and the findings of a committee established to review that law have yet to be publicly released by the Indian government (see infra para. 30-1).  

6. Discrimination and violations of indigenous peoples’ rights are also marked in relation to India’s existing and planned hydroelectric dam construction programme in the northeast. 168 dams are scheduled to be constructed, all within traditional indigenous territories and all without meaningful participation by and the consent of the affected traditional owners. These dams, which will provide power to other regions of India, will flood a large proportion of indigenous peoples’ remaining land base, causing irreparable harm to their ability to survive as distinct peoples and their right to be secure in their means of subsistence. Large-scale mining and logging operations further exacerbate the nature and extent of this irreparable harm.

7. Indigenous peoples’ rights to own and control their traditional lands and resources are not adequately recognized in law and India’s laws employ assimilationist and discriminatory classification schemes that severely undermine the exercise of indigenous peoples’ rights.

8. Immediate and increased attention to the situation in northeast India is urgently needed due to a persistent pattern of discriminatory violence and other rights violations against indigenous peoples. As described below, this violence has the support of significant elements within all levels government and the security forces and has been exacerbated by India’s failure to seek a political, rather than a military, solution. We are confident that the Committee can take the necessary measures to assist and encourage India to protect the physical, territorial and cultural integrity of the indigenous peoples of the northeast.

II. General Background

9. The northeast states of India are Tripura, Assam, Meghalaya, Manipur, Nagaland, Arunachal Pradesh, Mizoram and Sikkim. This region is located in the extreme northeast corner of India bordering China to the north, Myanmar to the east and southeast, and Bangladesh to the southwest. This part of the country is connected to the mainland of India by a small strip of land 34 km wide between the Bangladesh and Chinese borders. According to the 2001 Census, the total population of these seven states is 38,495,089 persons.

10. The northeastern states are the home to around 270 indigenous peoples, among these, the Bodo, Karbi, Dimasha, Ahomia, Adi, Khasi, Garo, Naga, Kuki, and Meitei. Some of have a population in the millions while some number as few as two thousand persons. The northeast contains their traditional territories, which are fundamental to the

---

5 Id. at para. 18.

maintenance of indigenous peoples’ material, cultural and spiritual life. These indigenous peoples have a holistic relationship with their territories and a rich and varied traditional knowledge about their ecology and uses. The vast majority practice a subsistence economy based on sustainable use of their natural resources, particularly in the remaining forested areas of the region. These territories and indigenous peoples’ rights to own and control them are thus inextricably tied to the preservation of distinct indigenous cultures and societies. Disregarding the fundamental importance of securing indigenous peoples’ traditional tenure, India’s laws fail to adequately recognize and protect indigenous peoples’ rights to own and control their traditional territories in the northeast. Moreover, due to the construction of dams (extant and proposed), the imposition of restrictive forestry laws and the implementation of AFSPA, indigenous peoples’ rights are being actively violated, and in some cases they are unable to access their traditional means of subsistence.

11. At the time of India’s independence, the departing the British left more than 500 previously independent princely states most of which were incorporated into modern India by merger agreements between the newly independent government and the various rulers. Following this procedure, the Manipur Merger Agreement of 21 September 1949 was concluded between India and Maharaja Budhachandra of Manipur. The indigenous people and peoples of Manipur were however not offered any role in the decision-making process about the merger. This occurred despite a pre-independence promise that the northeast would maintain its independence.

12. After the India’s acquisition of Manipur and a massive influx of Indian Army troops, armed opposition by the Naga, Ahomia, Meiteis, and Tripuries peoples broke out as they sought to restore and exercise their right to self-determination. This is confirmed by Amnesty International, which reported in 2005 that “Tensions in that region originated in demands for self-determination by the Naga people in the post independence period which led to an armed struggle.” It was against this background that India adopted the Armed Forces (Assam and Manipur) Special Powers Ordinance, (today known as AFSPA) in September 1958. Ironically this law was based on a British colonial ordinance specifically designed to quell the Indian independence movement.

13. In 1972, AFSPA was amended to allow for the declaration of ‘disturbed areas’ by the federal government and to extend its reach to include the other states of the northeast. The law provides extensive and largely unfettered powers to the armed forces, both regular army and paramilitary.

14. The result, as explained by Amnesty International was that

In Manipur, what began as a movement for self-determination for the Naga people is today far more complex. Other tribal and non-tribal communities have become engaged in the conflicts and a faction-ridden armed opposition has emerged, organised on the basis of community affiliations and demands for greater autonomy and self-

---

determination. The troubled political history of Manipur has been perpetuated by a multitude of factors including anger at economic under-development, drug-smuggling and corruption. Human rights abuses are a feature of daily life in Manipur.8

15. Amnesty International confirms that AFSPA remains only in part about maintaining order in ‘disturbed areas’. It explains that “State and army officials consider the Act necessary to protect the state against what are known as internal disturbances, uphold the ‘integrity of the nation’, fight ‘terrorisim and insurgency’ and protect ‘sensitive border areas.’”9 As explained below, AFSPA has both the purpose and effect of nullifying the internationally guaranteed rights of indigenous peoples in the northeast of India and, therefore, contravenes the guarantees set forth in the Convention on the Elimination of All Forms of Racial Discrimination.

16. Finally, as observed by the Human Rights Committee – endorsing the views of India’s National Human Rights Commission – “bearing in mind the provisions of articles 1, 19 and 25 of the Covenant: … the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political…..”10 The Committee on the Elimination of Discrimination Against Women made similar comments in 2000.11

17. The continued application of AFSPA to indigenous peoples’ territories in the northeast today coupled with the State Party’s failure to seek a durable resolution of the underlying problems through serious and meaningful dialogue indicate that the political approach has not received sufficient attention to-date. Particularly noteworthy in this context is the reference made by the Human Rights Committee to Article 1 of the Covenant on Civil and Political Rights because this acknowledges that one of the underlying causes of the violence in the northeast is the ongoing denial of indigenous peoples’ right of self-determination.

III. Indigenous Peoples and the Arms Forces (Special Powers) Act

18. As discussed above, AFSPA was introduced in 1958 and applied to Assam and Manipur primarily as a means to suppress the Naga indigenous people’s self-determination movement. In the intervening years, this law has been extended to the entire northeast and a range of different armed groups – some of which are responsible for serious human rights violations against civilians – have emerged and are actively fighting the State, and in some cases each other. India’s most recent State Party report, which is due to be examined by the Committee at its 70th session, makes no mention of

---

8 Id. at p. 8.
9 Id. at p. 3-4.
10 Concluding observations of the Human Rights Committee: India. 04/08/97. CCPR/C/79/Add.81, para. 18.
11 Concluding observations of the Committee on the Elimination of Discrimination Against Women: India, 01/02/2000, at para. 72 – “The Committee recommends a review of prevention of terrorism legislation and the Armed Forces Special Provisions Act, in consultation with the Human Rights Commission of India, the National Commission of Women and civil society, so that special powers given to the security forces do not prevent the investigation and prosecution of acts of violence against women in conflict areas and during detention and arrest. The Committee recommends that women be given an opportunity to make their contribution to peaceful conflict resolution.”
AFSPA or the situation in the northeast of the country.

19. The key provisions of AFSPA contravene international human rights law and have led to gross and systematic violations of indigenous peoples’ rights (see also Annexure D, which discusses AFSPA and human rights abuses in relation to that law in greater detail). Sections 4 and 6 require special mention in this respect:

**Sec. 4 Special Power of the Armed Forces** – Any commissioned officer, warrant officer, non commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area-
(a) if he is of opinion that it is necessary so to do for the maintenance of Public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;
(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;
(c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;
(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that purpose use such force as may be necessary.

**Sec. 6-Protection to Persons acting under Act** – No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

20. Section 4 permits forcible search and arrest without a warrant in cases where the security forces believe that a person has or may be about to commit an offense; the destruction of homes and any other structure or dwelling if security forces are of the opinion that an attack has been made or may be made or that a structure may be used as a hideout; and the use of force, including killings, if the security forces are of the opinion that such force is necessary, including if persons are carrying items, such as farm tools, that are “capable of being used as weapons.” It is important to note also that under Indian criminal law the penalty for violating an order prohibiting the assembly of more than five persons is one month’s imprisonment; in the northeast, persons may lawfully be killed for the same act.

21. Section 6 adds that no “prosecution, suit or other legal proceeding” may be brought except with permission of the central government in relation to any act done under authority of the Act. As noted by both this Committee and the Human Rights Committee, this legal immunity also extends to complaints brought before the National
Human Rights Commission because Article 19 of its enabling legislation specifically prohibits complaints against members of the armed forces.\(^\text{12}\)

22. The Human Rights Committee, the Committee on the Rights of the Child, Amnesty International, the South Asian Human Rights Centre and many others have all concluded that AFSPA has facilitated widespread and systematic violations of non-derogable and other basic human rights in the northeast of India. The Human Rights Committee, for example, expressed its concern about “the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act … 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.”\(^\text{13}\) Amnesty International similarly concludes that AFSPA “has facilitated grave human rights abuses, including extrajudicial execution, ‘disappearance’, rape and torture by bestowing sweeping powers on the armed forces…” (see also Annexure D).\(^\text{14}\) The Committee on the Rights of the Child further confirms that children in the northeast have also suffered serious abuses.\(^\text{15}\)

23. These violations, given the racial and ethnic composition of this region, disproportionately and primarily affect indigenous peoples and are perpetrated with impunity, both \textit{de jure} and \textit{de facto}. In this respect, the Committee explained in 1996 that the provisions of article 6 of the Convention are mandatory and that the Government of India should adopt legal provisions making it easier for individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, including acts of discrimination based on belonging to a caste or a tribe.\(^\text{16}\)

24. Further, while the Committee did not directly refer to AFSPA in its 1996 concluding observations on India, it did welcome the lapse of the \textit{Terrorist and

---

\(^{12}\) Concluding observations of the Committee on the Elimination of Racial Discrimination: India. 17/09/96. CERD/C/304/Add.13, at para. 16 – “Clause 19 of the Protection of Human Rights Act prevents the National Commission on Human Rights from directly investigating allegations of abuse involving the armed forces. This is a too broad restriction on its powers and contributes to a climate of impunity for members of the armed forces;” and, Concluding observations of the Human Rights Committee: India. 04/08/97. CCPR/C/79/Add.81, para. 22.

\(^{13}\) Id. at para. 18.

\(^{14}\) Amnesty Report, at p. 1.

\(^{15}\) Concluding observations of the Committee on the Rights of the Child: India, 23/02/2000, at para. 63 -- “The Committee is concerned that the situation[s] in areas of conflict, particularly Jammu and Kashmir and the north-eastern states, have seriously affected children, especially their right to life, survival and development (art. 6 of the Convention). In the light of articles 38 and 39, the Committee expresses its very serious concern at reports of children who are involved in and are victims of these conflicts. Moreover, it is concerned at reports of involvement of the security forces in disappearances of children in these conflict areas.” See, also, Concluding observations of the Committee on the Rights of the Child: India, 26/02/2004, para. 68-9.

\(^{16}\) Concluding observations of the Committee on the Elimination of Racial Discrimination: India. 17/09/96, at para. 32.
**Disruptive Activities (Prevention) Act**\(^{17}\) and expressed its concern about the continued applicability of the **National Security Act** and the **Public Safety Act**.\(^{18}\) These laws all contain similar provisions to AFSPA and resulted in similar human rights abuses. Additionally, the Committee observed that “the Kashmiris, as well as other groups [such as the indigenous peoples of the northeast], are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention.”\(^{19}\)

25. The state of impunity established by AFSPA was only slightly tempered by the 1997 judgment of the Indian Supreme Court in the case of **The Naga People’s Movement of Human Rights v Union of India**. This case was heard on the basis of a series of complaints filed over an 11 year long period between 1980 and 1991, all of which challenged the constitutionality of AFSPA. No explanation was given in the judgment for this extreme delay in hearing the case.

26. In the **Naga People’s Movement** case, the Supreme Court held that a declaration of ‘disturbed area’ status had to be reviewed every six months, elaborated on safeguards for detained persons, and declared that a pre-existing list of ‘do’s and don’t’s’ applicable to the conduct of military operations is legally binding.\(^{20}\) The Supreme Court also held that “The powers conferred under clauses (a) to (d) of Section 4 and Section 5 of the Central Act on the officers of the armed forces, including a Non-Commissioned Officer, are not arbitrary and unreasonable and are not violative of the provisions of Articles 14, 19 or 21 of the Constitution.” With regard to Section 6, it further held that

> in so far as it confers a discretion on the Central Government to grant or refuse sanction for instituting prosecution or suit or proceeding against any person in respect of anything done or purported to be done in exercise of the powers conferred by the Act does not suffer from the vice of arbitrariness. Since the order of the Central Government refusing or granting the sanction under Section 6 is subject to judicial review, the Central Government shall pass an order giving reasons.

27. As noted by Amnesty International, the Supreme Court’s “apparent lack of concern” for the preceding appeared to be related to the possibility of holding inquiries and prosecution for abuses under the **Army Act**.\(^{21}\) However, as Amnesty also observes, these inquiries consistently find complaints to be false, reflecting, in its view, “more a culture of impunity created in part by the AFSPA than by the absence of wrongdoing on behalf of members of the armed forces….”\(^{22}\) Moreover, a member of the Human Rights Committee stated that “Article 6 of the Armed Forces (Special Powers) Act, which prevented all legal proceedings against members of the armed forces, was extremely

---

\(^{17}\) *Id.* para. 12 -- The lapse of the Terrorist and Disruptive Activities (Prevention) Act (TADA), which applied in parts of the north-eastern part of the country and in Jammu and Kashmir, under which the right to personal security of some members of ethnic and religious minorities living in those areas was often reported to be violated by security forces, is welcomed.”

\(^{18}\) *Id.* para. 21.

\(^{19}\) *Id.* at para. 15.

\(^{20}\) See, List of Dos & Don’ts as directed by the Supreme Court in NPMHR v. India 1997, in Amnesty Report, Appendix 2

\(^{21}\) Amnesty Report, p. 13, quoting para. 53 of the judgment of the Supreme Court.

\(^{22}\) *Id.*
worrying; if the Government’s fear was that citizens would bring vexatious or frivolous actions, that was a matter better left to the courts to resolve. It was inadmissible for citizens to be deprived of a remedy as was at present the case.\textsuperscript{23} This statement was made in part in response to India’s explanation before the Committee that government sanction of legal action was required to prevent frivolous suits.

28. In finding that AFSPA did not violate constitutional guarantees, the Supreme Court also failed to heed the recommendation of the Human Rights Committee, which noted in 1997 “that the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court is due to be heard in August 1997, [and] hopes that its provisions will also be examined for their compatibility with the Covenant.”\textsuperscript{24} India’s international human rights and humanitarian law obligations were not directly considered by the Supreme Court. The Court’s judgment also directly contradicts the Human Rights Committee’s finding that the prohibition of unsanctioned legal action under Section 6 of AFSPA “contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant,” and its recommendation that:

the requirement of governmental sanction for civil proceedings be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive. It urges that judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commission of Enquiry Act of 1952, be empowered to direct the prosecution of security and armed forces personnel.\textsuperscript{25}

29. Indigenous peoples from the northeast and others have manifested their opposition to AFSPA and other denials of their rights for decades. As stated by Amnesty International:

For decades, human rights groups and women’s organizations in the Northeast have expressed opposition to human rights abuses in the region and to the AFSPA. In the late 1990s, an India-wide campaign was initiated in opposition to this Act, and mobilised support for its repeal. Activism aimed at the repeal of the Act was reinvigorated following the alleged sexual assault and death in custody of a woman named Thangjam Manorama in Imphal, Manipur, India in July 2004. A group of 32 civil society organizations based in Manipur formed a coalition called the Apunba Lup to protest abuses under the AFSPA and call for its repeal. Members of Apunba Lup publicly protested for months following Thangjam Manorama’s death. Others from the Northeast have expressed their opposition to the AFSPA through more extreme protests such as self-immolation, a fast until death or naked protests. In response to protests in Manipur, the Act was withdrawn from the Greater Municipal District of Imphal. Human rights activists and academics from across India have also called for the total repeal of the AFSPA, raising concerns that the Act violates basic rights and international human rights

\textsuperscript{23} CCPR/C/SR.1606 of 21 November 1997

\textsuperscript{24} Concluding observations of the Human Rights Committee: India. 04/08/97. CCPR/C/79/Add.81, at para. 18.

\textsuperscript{25} Id. at para. 21.
and humanitarian law. They have recorded serious human rights abuses and charge that there was inadequate debate in Parliament when the Act was initially introduced.  

30. In 2004, after months of sustained protest in Manipur, the Government appointed a five-person committee headed by Justice B.P. Jeevan Reddy to review AFSPA. At that time, the Prime Minister stated that the “government would consider replacing the Act with a more ‘humane’ law that would seek to address the concerns of national security as well as rights of citizens.”  

27 The review committee held a number of hearings in the northeast and submitted its report to the Indian Government in June 2005. However, to date, over three years after it was constituted, its report and recommendations have yet to be released to the public. While it is widely known that the review committee recommended that AFSPA be repealed, the law remains in force today and serious violations of basic human rights continue unabated.

31. On 8 October 2006, The Hindu national newspaper published extracts of a leaked copy of the review committee’s report and observed that Government Ministers refused to publicly release the report.  

28 The newspaper explains that the report “unambiguously” recommends the repeal of AFSPA and includes the following quotes from the report: “the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness.”  

29 Discussing the immunity provided by Section 6 of AFSPA, the committee’s report adds that “while providing protection against civil or criminal proceedings in respect of the acts and deeds done by [the armed] forces while carrying out the duties entrusted to them, it is equally necessary to ensure that where they knowingly abuse or misuse their powers, they must be held accountable therefore and must be dealt with according to the law applicable to them.”  

32. To conclude, as discussed above, in addition to facilitating gross and systematic violations of basic human rights, AFSPA is also discriminatory in its purpose and effect, both because it was designed to suppress the self-determination movement of the indigenous peoples of the northeast and because it disproportionately affects indigenous peoples who are the overwhelming majority of the population in the northeast. This was acknowledged by the Human Rights Committee in its 1997 Concluding Observations together with its recommendation that a political solution to the situation in the northeast should be pursued.

33. In connection with this, this Committee’s 1996 General Recommendation XXI on the right to self-determination is highly relevant. It provides in pertinent part that:

In order to respect fully the rights of all peoples within a State, Governments are again called upon to adhere to and implement fully the international human rights instruments

---

26 Amnesty Report, at p.4  
29 Id.  
30 Id.
and in particular the International Convention on the Elimination of All Forms of Racial Discrimination. Concern for the protection of individual rights without discrimination on racial, ethnic, tribal, religious or other grounds must guide the policies of Governments. In accordance with article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international documents, Governments should be sensitive towards the rights of persons belonging to ethnic groups, particularly their right to lead lives of dignity, to preserve their culture, to share equitably in the fruits of national growth and to play their part in the Government of the country of which they are citizens. Also, Governments should consider, within their respective constitutional frameworks, vesting persons belonging to ethnic or linguistic groups comprised of their citizens, where appropriate, with the right to engage in activities which are particularly relevant to the preservation of the identity of such persons or groups.31

34. The Human Rights Council’s recent approval of the United Nations Declaration on the Rights of Indigenous Peoples is also noteworthy. In addition to affirming that indigenous peoples have the right to self-determination and to protection of that right, without discrimination under the law, this Declaration provides a wide range of protections that are relevant to the application of AFSPA in the northeast. For instance, the Declaration affirms that “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.”

35. Finally, while the preceding has focused on the acts and omissions of India, we wish to emphasize that this in no way minimizes the role and responsibility of the armed opposition groups in the northeast for the longstanding violence that has dominated the region’s daily life for generations. These groups contribute to the cycle of violence and human rights abuses in the northeast and are equally responsible for seeking a political solution to the region’s problems.

IV. Numerous Dams proposed for Northeast India will cause Irreparable Harm to Indigenous Peoples

36. Constitutional provisions, including the Sixth Schedule which applies to some parts of the northeast (Manipur is a notable exception), allow for limited degrees of autonomy and self-management for indigenous peoples. Despite this, there is little real opportunity for participation in the planning of large development projects, which are largely imposed by the central government. An integral part of this imposed ‘development’ is the construction of numerous large hydroelectric dams in the northeast, all for power export to the rest of India.

37. A recently published Indian Central Electricity Authority study of planned big hydro-projects in India contains 168 existing or proposed hydropower projects in the northeast region32 with a combined generation capacity over 62,000 MW.33 This is over

31 General Recommendation XXI on the right to self-determination (1996), at para. 5
32 A list of these dam project is available at: http://www.narmada.org/sandrp/mar2002.4.html
1.5 times India’s existing hydropower capacity and the equivalent of more than 26 times the capacity of the infamous Sardar Sarovar hydro-project. Existing power generation in the northeast produces 1,790MW, which should satisfy the region’s power needs for decades. A Parliamentary Standing Committee on energy reported, for instance, that even peak demand in the region is only 926 MW.\(^{34}\) The power generated by these dams therefore will be primarily to fuel economic expansion in other parts of India.

38. Today, at least two dozen large dams among the many proposed for the northeast are in advanced stages of planning or clearance. The Government and proponents of large dams in the region paint a win-win picture; exploiting the country’s perennial water systems to produce cheap, plentiful power for the nation, economic benefits through power export, employment generation, and the end of militancy and flood control. Dams are made out to be the panacea for all the problems of the northeast. However, northeast India’s unique characteristics and the past lessons from large dams are reason enough to critically examine these promised benefits. A close look at some of the projects reveals planning based on inaccurate and inadequate information, violations of environmental and social safeguards and regulations by project authorities, lack of transparency, and little scope for effective public participation in decision making.\(^{35}\) Additionally, these dams will permanently flood vast areas of indigenous peoples’ traditional territories causing irreparable harm to their livelihoods and means of subsistence and to their cultural integrity and survival as distinct peoples.

39. The Lower Subansiri hydroelectric project of Arunachal Pradesh and Tipaimukh dam in Manipur are prime examples. Federal authorities together with the operating companies began construction at Subansiri without first conducting an Environmental Impact Assessment and obtaining a permit from the State Government of Arunachal Pradesh’s Department of Forest and Environment.\(^{36}\) This is not uncommon and the National Hydroelectric Power Corporation often authorizes construction or large-scale pre-construction works before obtaining clearance from State authorities. In the case of the Tipaimukh dam, the Manipur Assembly even passed a resolution against the dam on 22 July 1998, yet this was not respected.

40. All of the existing dam projects in the northeast have been initiated without obtaining the free, prior and informed consent of the indigenous peoples whose traditional lands will be flooded, and without regard for their right to consent to the resettlement that is normally required in relation to this flooding. There is no reason to expect that India will change this in connection with the many additional dams planned for the region. For example, the impending loss of their ancestral land and livelihood is

---


34 Id.


36 Id.
currently being opposed, without result, by the Bodo people in connection with the Pagladiya project in Assam and by the Hmars and Nagas with regard to the Tipaimukh project in Manipur. The latter will directly displace 1,461 Hmar families, destroy a number of major sacred sites of the Hmar and other indigenous peoples in Manipur, and will affect 67 villages: 16 will be completely submerged, as will the low-lying areas in 51 other villages. The result has been and will continue to be irreparable harm to indigenous peoples and harm on a massive scale if all or even some of the proposed dams are constructed in the northeast.

41. All the social and environmental costs of these dams have been and will be borne by the indigenous peoples of the region. If past experience is any guide, these costs are going to be heavy. For example, the Gumti dam project in Tripura submerged over 4634 hectares of land and displaced over 3,000 families in the mid-1970s; this figure would be several multiples higher today. Dam construction also involves large-scale movements of migrant workers and the construction of buildings for staff and workers (in some cases on the scale of small towns). This requires a large area of land in addition to the actual dam site and the clearance of large areas of native forest.

42. Most of the region’s indigenous peoples depend on the forest for their subsistence and non-material needs and compelling evidence demonstrates that their livelihoods will suffer greatly due to dam construction. A recent Yale University economics study on dams in India, for instance, concludes that while poverty slightly decreases in downstream locations, it markedly increases in the vicinity of the dam: “Using district-level poverty data at five points in time we find that dams significantly increase rural poverty in districts where they are located.” Dams in neighbouring countries have also had long-term and as of yet unmitigated impacts in the northeast. The Kaptai dam, built in the Chittagong Hill Tracts of Bangladesh, submerged the traditional homelands of the Hajong and Chakma communities and forced them to migrate into northeast India. This led to ongoing conflicts between the refugees and local communities.

V. Discrimination in Education and Health

Education:
43. The indigenous peoples of northeast India face enormous educational challenges and inequality that in turn prolong and exacerbate their economic, social and health problems. These problems are manifold and interrelated. While many indigenous communities have primary schools (some do not), these schools often lack qualified teachers, materials, supplies and equipment commensurate to that enjoyed by non-indigenous schools, and in some cases lack any supplies and materials at all.

37 Dr. R. Ranjan Singh, Large Dams in North East India, Manipur Online, 6 February 2006. Available at: http://www.manipuronline.com/Manipur/February2006/tipaimukh06_2.htm
38 S. Talukdar, Proposed Dam in Northeast India to Destroy Lives, Lands, One World South Asia, 30 June 2004. Available at: http://southasia.oneworld.net/article/view/89074/1/
44. The lack of infrastructure in the remote and peripheral areas of the region makes getting to school difficult and many students simply drop out. The percentage of out-of-school children among indigenous peoples remains very high at 9.54 percent. This means 1.65 million tribal children are still out of school. There are very few secondary schools and colleges for higher studies in most parts of the region. There are a few clustered in the urban areas, but these are also of poor quality. Teachers of the lower classes have large class sizes, with children having to sit, kneel or lie on the floor. Teachers often have no chairs or tables. Some 70/80 percent of indigenous students were found to be achieving below an acceptable level of functional literacy.

45. India has recognized the right to Education as a fundamental right through the 86th Amendment to the Constitution (see State Party Report, para 20, 121-25). It has also committed to providing free and compulsory education to all children between six and 14 years of age. The Savara Shiksha Abhiyan (SSA) or Education of All a flagship programme launched by the Government of India to achieve Universal Elementary Education in the country was targeted to cover the entire country by 2002. However, the indigenous children of the region do not benefit from this opportunity and the programme has yet to be implemented in northeast India.

46. Few indigenous persons from the northeast attend secondary school and fewer complete it, meaning that even fewer on to higher levels of education. When they do get to higher education outside of the northeast, they are subjected to racial abuse and daily discrimination. A recent study on racism against northeast students in Delhi, for example, concludes that university students referred to “students from the northeast as ‘Chinkies’ or hurled obscenities or racial insults at them. … This racial hostility comes unbidden from the non-Northeastern student community.”41 The same study found that 50 percent of the female students from the northeast drop out and return home due to the barrage of discrimination and sexual abuse they face each day.42

**Health:**

47. The right to health is recognized as an integral part of the right to life under the Constitution of India (State Party Report, para 118), yet health services in indigenous communities are substantially worse than they are in non-indigenous areas. It is extremely difficult for indigenous communities outside the urban areas of the northeast to see a doctor for most of the year. Because of the armed conflict most of the primary health centres and sub-centres are not able to function properly. More than 70 percent of the population of the region does not have access to basic health care. If someone falls ill and requires treatment, s/he has to travel a long distance for treatment. As such, many women are compelled to deliver their babies at home resulting in an enormous increase in still births.

---


42 Id.
48. This is the case despite the fact that indigenous peoples disproportionately suffer from certain diseases. The main health-related problems faced by the indigenous peoples include HIV/AIDS, malaria, tuberculosis, diarrhoeal diseases, cancer, dental caries, and inadequate access to health care. HIV/AIDS and malaria have reached epidemic proportions in many parts of the region. Very little has been done to mitigate the effect of HIV/AIDS and malaria in indigenous communities and most communities either lack drugs or have insufficient drugs to treat the diseases.

VI. Structural Discrimination against the Indigenous People of Northeast India: Massive Colonization, Environmental Destruction and Cultural Loss

49. The Committee has previously acknowledged that there are deep structural inequalities affecting indigenous peoples in India.43 This is particularly apparent in the northeast where indigenous peoples suffer from various social (ethnic conflict, armed conflict and conflict over the land) and environmental problems (the construction of mega dams, for instance). Cumulatively, these activities are threatening indigenous peoples’ integrity and survival as distinct peoples and cultures.

50. The serious problems of massive colonization and settlement by non-indigenous populations from neighbouring countries like Bangladesh, Myanmar and Nepal is becoming one of the major barriers that prevents indigenous communities from enjoying their rights over lands and natural resources. The rate of influx is increasing day by day and the authorities have done very little to mitigate the effects. The failure to recognize and protect indigenous territories is yet another example of the structural discrimination suffered by indigenous peoples in northeast India, discrimination in which governmental authorities have played an active role.

VII. Conclusion and Request:

51. In the light of the preceding, the submitting organizations respectfully request that the Committee consider the situation of the indigenous peoples in northeast India under its Early warning and Urgent Action procedure so as to avoid further irreparable harm to indigenous peoples and to assist India to ensure that the rights guaranteed by the Convention are fully recognized and respected in law and practice. In particular, the submitting organizations request that the Committee adopts the following measures:

   a) An Urgent Action decision expressing its profound concern over violations of indigenous peoples’ rights in relation to AFSPA and recommending that India repeal that legislation without delay;

   b) Consistent with the recommendations of the Human Rights Committee, recommend that India immediately begin a process of political dialogue with the armed groups, indigenous peoples’ freely chosen representatives and civil society in the northeast in order to seek a peaceful and sustainable solution to the violence in a manner that fully respects the right to self-determination and the political and other rights of the indigenous peoples of the northeast;

c) Urge that India adopt immediate and effective measures to provide effective remedies to victims of human right violations in the northeast;

d) Urge India to take immediate and effective measures to ensure the safety and security of indigenous peoples in the 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;

e) Request that India refrain from and bring a halt to any activities that diminish indigenous peoples’ traditional lands, territories and resources and that it legally recognize their ownership rights in and to their traditional territories and take steps to return these territories where indigenous peoples have been deprived of them without their free, prior and informed consent. In this context, particular attention is required in relation to the construction of hydroelectric dams in indigenous peoples’ territories without their free, prior and informed consent.