



Forest Peoples Programme

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Special Rapporteur on violence against women, its causes and consequences
and
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples

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RE: Urgent communication concerning the unlawful and arbitrary detention of indigenous 11 year old girl in India

1. This urgent communication concerns the unlawful and arbitrary detention of an 11 year old, indigenous girl from Nongmaikhong Mayai leikai, a village of Thoubal District situated about 50 km from Imphal city in Manipur State in North East India. It is submitted by Women Action for Development based in Manipur, India¹, and by the Forest Peoples Programme, an international organisation based in the United Kingdom (the submitting organisations).

2. At 8:30 am on 14 August 2009, a combined force of paramilitary state police commandos and regular army went to the house of Mr. Salam Dewan in Nongmaikhong Mayai Leikai to arrest him. The security forces found his 11 year old daughter, Salam Bidyarani, who said her parents were absent. The combined forces started searching the house, pulling clothes of the cupboards and throwing things in all directions. They took a photograph of Salam Dewan from the house and told the daughter, Salam Bidyarani, that her father would be killed.²

3. Salam Bidyarani was first kept in detention and harassed at her house. She tried to go see her grandmother for help but was stopped by the security forces. She was brought at Mayang Imphal police station at around 9:30 am after which she fell unconscious due to the shock of the events. Although she was in need of urgent medical attention, Salam Bidyarani was reportedly in custody of the police and unconscious from 9 :30 am to 3 :00 pm . The security forces did not even bring her to the nearest medical centre and the girl was instead admitted to the New Light Health Clinic, Mayang Imphal, after 3 :00 pm.³

¹ Women Action for Development, Purana Rajbari, Nongmeibung, Imphal - 795001, Manipur State, India. Email: wad_imphal03@rediffmail.com.

² CWC submits enquiry report on child detention to child rights commission, *Hueiyen News Service*, Imphal, August 21 2009: <http://e-pao.net/GP.asp?src=22..220809.aug09> (attached as annex I); A statement given by Bidyarani was also published in a local newspaper, the Naharolgi Thougand, on 22 August. It is available in local language only and a copy can be obtained on request from WAD, one of the submitting organisations.

³ *Idem*

4. She was discharged from the clinic the next day (15 August) and escorted back to the Mayang Imphal police station by about 5 police women in uniforms. Reports show that when villagers asked for her release the police said she would not be released 'until her father is produced' and pressured the villagers to ensure the surrender of Mr Dewan.⁴ Security personnel occupied the family's house from the morning of August 14.⁵

5. The girl was detained for a further 5 days with two of her grandmothers and two women constables in a 10 by 10 foot room with only two beds and was frequently harassed and threatened by the police personnel.⁶ She was released on 18 August after local residents again protested against the detention of a minor. She was very weak and fainted frequently.⁷ She spent the night of 18 August at a relative's with her grandmother and was brought back to her house on the afternoon of 19 August.⁸

6. The girl's parents were arrested on 19 August on charges of 'helping cadres of the Peoples of Liberation Army'. This was part of a week-long operation led by the police and the army during which various people were arbitrarily arrested under similar charges.⁹ Residents of Nongmaikhong held a rally on 20 August for the release of the parents.¹⁰

7. On 20 August 2009, the girl was admitted to the psychiatric department of the Regional Institute of Medical Sciences (RIMS) for mental trauma.¹¹ Tests are being carried out to find out the cause of the mental trauma and a psychologist declared she was in a state of shock and needed to be watched constantly.¹² She is a class VI student of Emmanuel Grace Academy, Nongmaikhong and had been brought home for health reasons just before the security force came on 14 August. On 22 August, one of the submitting organisations visited RIMS and witnessed that while the condition of the minor was improving she was still suffering from numbness, anxiety and fear.¹³

8. The police have issued contradictory public statements according to which the girl had been taken away from her house for medical reasons and had been looked after by a doctor during her custody.¹⁴ Super Intendant of police, L. Kailun, claimed that the police took the girl for medical treatment as she fainted and no responsible family member came for her.¹⁵

9. There are growing tensions among the villagers of Nongmaikhong and security forces and the detention of this 11 year old girl occurred in the context of a systematic attempt to intimidate the local population. Many human rights organisations and activists have denounced the behaviour of the security forces in the region and they report that the

⁴ Not finding father home, SF arrest 11 yr-old girl, still untraced, *Hueiyen News Service*, August 18 2009 : <http://e-pao.net/GP.asp?src=18..190809.aug09>

⁵ Child freed after 5 days police custody, *The Shanghai Express*, August 19 2009: <http://e-pao.net/GP.asp?src=1..200809.aug09>

⁶ *Ibid*, note 2

⁷ Watch on traumatised girl, *The Telegraph*, August 20: http://www.telegraphindia.com/1090821/jsp/frontpage/story_11389429.jsp ; Child freed after 5 days police custody, *The Shanghai Express*, August 19 2009: <http://e-pao.net/GP.asp?src=1..200809.aug09>

⁸ Child freed after 5 days police custody, *The Shanghai Express*, August 19 2009: <http://e-pao.net/GP.asp?src=1..200809.aug09>

⁹ Forces make huge haul during week long ops, *Imphal Free Press*, 21 August 2009: <http://ifp.co.in/shownews.php?newsid=4168>

¹⁰ Watch on traumatised girl

¹¹ *Id.*

¹² *Id.*

¹³ Women Action for Development, one of the submitting organisations visited the RIMS.

¹⁴ Bidyarani not arrested; she was only being looked after: Police, *The Imphal Free Press*, 20 August 2009: http://www.kanglaonline.com/index.php?template=headline&newsid=48533&typeid=1&Idoc_Session=729b89decd5076f6caee11ab7444fca3

¹⁵ Watch on traumatised girl

continuing presence of police commandos creates massive insecurity among local residents.¹⁶ The situation severely interferes with the residents' daily activities and children can't go to school due to the excessive security operations. The residents fear that the psychosis created by similar security forces operations held in April 2009 will be repeated. Local human rights organisations are demanding the abolition of the use of police commandos and the resignation of the Chief Minister of Manipur, who encourages this type of security activities.¹⁷

10. Promptly after the events of August 14, local civil society organisations created a 'Joint Action Committee' (JAC) against the arrest of student Salam Bidyarani. The JAC wrote to the local members of the Legislative Assembly and submitted a memorandum to the State Governor. On 22 August 2009 the JAC publicly stated that:

- It condemned the illegal detention of Salam Bidyarani in the police custody and demanded the rehabilitation of the child;
- One or both of the child's parents must be released to look after the family immediately;
- The security personnel who were involved in this heinous case should be punished;
- The Chief Minister of Manipur (Mr. O. Ibobi Singh) should resign on moral grounds on the charge of giving free hand to the security and army personnel.
- The next plan of action is to take up sit-in protest in all the surrounding villages.¹⁸

11. The submitting organisations emphasize that the arbitrary detention of Salam Bidyarani and others is taking place in the context of what the Human Rights Committee has called a 50 year-long, undeclared state of emergency in northeast India,¹⁹ a situation brought about by internal armed conflict and the application of the 1958 *Armed Forced (Special Powers) Act (AFSPA)*. AFSPA now applies only to northeast India. The powers conferred by this law are wide ranging, undermine the rule of law, and, as discussed below, contravene India's international legal obligations.²¹

¹⁶ 'Condemned', *The Imphal Free Press*, 20 August 2009 :

<http://kanglaonline.com/?template=headline&newsid=48570&typeid=2>

¹⁷ Nongmaikhong tense after 11 year old girls whisked away by cops, *The Imphal Free Press*, August 18 2009:

http://www.kanglaonline.com/index.php?template=headline&newsid=48513&typeid=1&Idoc_Session=5434ee4f770e051a1d1b8ba9782bobb5

¹⁸ The public meeting took place on 22 August at Hiyangthek Lairembi Community Hall, Nongmaikhong Mayai leikai and this information was gathered by WAD, one of the submitting organisations.

¹⁹ *Concluding observations of the Human Rights Committee: India. 04/08/97. CCPR/C/79/Add.81*, para.19.

²¹ Section 4 of the AFSPA, for instance, 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 offence; 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 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 North East, however, persons may lawfully be killed for the same act; 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 AFSPA.

12. UN treaty bodies and Special Procedures, NGOs and many others have all concluded that AFSPA has facilitated widespread and systematic violations of non-derogable and other basic human rights in northeast India and have called on India to repeal the AFSPA. These violations, given the racial and ethnic composition of this region, disproportionately and primarily affect indigenous peoples, and are perpetrated with *de jure* and *de facto* impunity.²²

14. India is party to various international human rights instruments, notably: the Convention on the Rights of the Child and its two Optional Protocols, the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights. The behaviour of security forces contravenes international law as set forth in those instrument, and most blatantly violates Articles 16, 20 and 37 (b) and (c) of the Convention on the Rights of the Child, which provide for : protection against arbitrary or unlawful interference with a child's privacy, and unlawful attacks on his or her honour and reputation ; the right to a special protection when a child is deprived of his or her family temporarily; and the right for a child not to be deprived of his or her liberty unlawfully or arbitrarily. The powers granted to the army under AFSPA, the current systematic intimidation of civilians, and the treatment of Salam Bidyarani in particular, also contravene various provisions of international humanitarian law, especially pertaining to the treatment of civilians and minors.

15. Therefore, **the submitting organisations respectfully request**, as a matter of urgency, that the Special Rapporteurs and the Working Group???:

- a) Urge the Indian government to take all necessary measures to ensure that Salam Bidyarani immediately receives the appropriate medical and psychological assistance and care she needs;
- b) Urge the Indian government to take all necessary measures to ensure the security and protection of Salam Bidyarani, notably by allowing her to be with her parents;
- c) Request information from the Indian government concerning the acts of intimidation and violence towards the villagers of Nongmaikhong by police commandos and provide guidance to the Indian government on how to address the situation;

²² Concluding observations of the Committee on the Rights of the Child: India, 23/02/2000, at para. 63; *Concluding observations of the Committee on the Rights of the Child: India*, 26/02/2004, para. 68-9; *Concluding Observations of the Committee on the Elimination of Discrimination Against Women: India*. 04/02/2000, A/55/30, para. 72 ; *Concluding observations of the Human Rights Committee: India*. 04/08/97. CCPR/C/79/Add.81, at para. 21; *Concluding observations of the Committee on the Elimination of Racial Discrimination: India*. 17/09/96. CERD/C/304/Add.13, at para. 16; *Concluding observations of the Human Rights Committee: India*. 04/08/97. CCPR/C/79/Add.81, para. 22; *Concluding Observations of the Committee on the Elimination of Racial Discrimination: India*. 05/05/2007. CERD/C/IND/CO/19, para. 12; *Report of the Special Rapporteur on Extrajudicial Execution to the UN Human Rights Council, Philip Alston*. UN Doc. A/HRC/4/20/Add.1, p. 138-40; See also 'Human Rights Activists to Protest AFSPA in Manipur', *Merinews*, 10 September 2007. Available at: <http://www.merineews.com/catFull.jsp?articleID=126286>; *Submission of the Committee on Human Rights (COHR) Manipur on the Human Rights Situation in Manipur (India) to the OHCHR concerning the Universal Periodic Review of the Government of India at the UN Human Rights Council in April 2008*, Annex 15, 'Some Selected Case of Human Rights Violations perpetrated by the Indian Army under the Armed Forces (Special Powers) Act, 1958 Manipur from October 2003 – October 2007' (detailing a number of cases of serious human rights violations against indigenous peoples in northeast India); *Article 2 of the International Covenant on Civil and Political Rights, Special Edition: Militarisation and Impunity in Manipur*. Vol 5, No. 6, December 2006, p. 13-26 (containing testimony of victims) & p. 38-47 (containing descriptions of recent violations), Available at: <http://www.article2.org/pdf/v05n06.pdf>; and 'India: Repeal the Armed Forces Special Powers Act Law Provides Impunity for Human Rights Abuses, Fuels Cycles of Violence', Human Rights Watch, 10 November 2007. Available at: http://hrw.org/english/docs/2007/11/20/india17381_txt.htm;

- d) Urge the Indian government to take all necessary measures to ensure compliance with international human rights and humanitarian law, in particular to protect the population of Nongmaikhong against the abuses of power of security forces and ensure that no other children are made victims of security forces' unlawful activities, including by investigating the situation and, where appropriate, by ordering the prosecution and punishment of those responsible.

ANNEXE 1

CWC submits enquiry report on child detention to child rights commission

Source: **Hueiyen News Service**

Imphal, August 21 2009:

The chairperson of the Child Welfare Committee, Imphal west today submitted a spot enquiry report conducted on the "unlawful" detention of the 11 year old girl, Salam Bidhyarani in the police custody to the chairperson of the National Commission for the Protection of Child Rights. While placing a detail account of the detention of the child for four days in the police custody and freed after her parents were arrested on August 18 last, the CWC, Imphal west, in the submission, observed that the girl was detained unlawfully and the detention was amount to exploitation of the girl child in the form of bargaining the daughter in exchange of her parents.

She was kept in an atmosphere not permitted by the Juvenile Justice Act and the act was total violation of the rights of the Child and Juvenile Justice Act. They also harassed the child physically and mentally which as a result, Bidhyarani is at present admitted in the psychiatric department of the Regional Institute of Medical Sciences as she needed immediate medical intervention. In the submission of action against the security and police, the report of the enquiry conducted by a team of CWC led by its chairperson Annie Mansatabam also stated that the enquiry revealed the abuse of child rights and gross violation of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006.

The enquiry report mentioned that Salam Bidhyarani was forcefully picked up by the combined team of commandos of Imphal west and 12 Maratha Light Infantry (MLI) after a prolonged scuffle between the security forces and the womenfolk of the neighbouring houses including a school teacher who reached the child's house on hearing the commotion. On not finding her parents not at home when the combined force entered the house, they picked up the child who was preparing lunch for the day at about 8 to 8.30 am. During the scuffle, the child also fainted, the report stated. Though, the child was picked up in the morning at about 9.30 am, she was admitted at the New Light Health Clinic, Mayang Imphal in the afternoon at about 3 pm as per record of the clinic. "Throughout this time (from 9.30 am to 3 pm) the girl was unconscious and was in the custody of the combined forces even though she needed immediate medical attention.

Apart from this, instead of opting for the PHC which is much nearer to the Mayang police station, the child was admitted at the Clinic and after she was discharged from the clinic on the next day (August 15), she was taken into the Mayang Imphal police station by four to five women constables in uniforms. The two grandmothers who attend the girl insisted the police to allow the girl to return home, the police station (reportedly the OC) responded that she will be freed only after her parents are handed over to the police by her family members, the report further mention. At the time inspection to the room at Mayang Imphal police station where the girl was detained, the team also found out that the girl along with her grandmothers and two women constables (1MHG, 1MP) were on guard in a congested 10X10 room with only two 'charpoys' and with uniforms hung all over one side of the room.

The atmosphere contributed to a threatening ambience for a child, the enquiry report submitted today to the chairperson of the National Commission for Protection of Child Rights.