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REQUEST FOR CONSIDERATION UNDER THE URGENT ACTION AND EARLY WARNING PROCEDURE IN CONNECTION WITH GRAVE AND PERSISTENT VIOLATIONS OF INDIGENOUS PEOPLES' RIGHTS IN NORTHEAST INDIA (72ND SESSION OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, 18 FEBRUARY – 7 MARCH 2008)

I. INTRODUCTION

1. This short report is respectfully submitted to the Committee on the Elimination of Racial Discrimination ("the Committee") by the United NGOs Mission Manipur, a network of 235 indigenous peoples' organisations from northeast India, and the Forest Peoples Programme, an international NGO ("the submitting organisations"). These organisations previously transmitted a report to the Committee concerning the situation of the indigenous peoples of northeast India on 31 October 2006.¹ The information contained in that report remains valid today and is hereby reiterated and incorporated by reference herein.

2. This present report further emphasizes the dangerous and urgent situation that has developed, persists, and has intensified 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 especially manifest in relation to the 1958 *Armed Forces (Special Powers) Act* ("AFSPA"); the ongoing failure to recognize and secure indigenous peoples' property, political, and other rights; and active violation of indigenous peoples' rights in connection with the extant and imminent construction of some 68 mega- and other dams throughout indigenous peoples' territories. Indigenous women and children are disproportionately affected with regard to all of these acts and omissions.

3. In March 2007, the Committee adopted concluding observations which address, *inter alia*, the racially discriminatory character of AFSPA and its implementation;² India's failure to recognise and protect indigenous peoples' property and other rights;³ and the imminent and severe threat to indigenous peoples' rights and integrity posed by the construction of dams in northeast India.⁴ The Committee further emphasised the serious nature of its concerns on these points by requesting that India submit information about implementation of the corresponding recommendations within one year (by the Committee's 72nd session).⁵

¹ *Request for adoption of a Decision under the Urgent Action/ Early Warning Procedure in Connection with violation of Indigenous Peoples' Rights in Northeast India*. United NGO Mission Manipur & Forest Peoples Programme, 31 October 2006.

² India: 05/05/2007, CERD/C/IND/CO/19, para. 12.

³ *Id.* para. 19 and 20.

⁴ *Id.* para. 19

⁵ *Id.* at para. 34.

4. This brief report has been prepared to assist the Committee when it assesses the situation in India with regard to the points highlighted in paragraph 3 *infra*. It stresses that India to date has failed to adopt any measures directed towards implementation of the Committee's recommendations and explains recent developments that demonstrate that India is actively disregarding those recommendations. This information confirms that India has chosen to persist with its long-standing practice of systematic racial discrimination against the indigenous peoples of the northeast region. Moreover, in some cases, India has accelerated the nature and extent of its discriminatory acts and omissions and irreparable harm to indigenous peoples is both extant and continuing and is additionally threatened in new areas.

5. In light of the gravity and enduring nature of the situation affecting indigenous peoples in northeast India, the submitting organisations respectfully request that the Committee consider this situation under its early warning and urgent action procedure at its 72nd session (specific requests are set forth in paragraph 23 *infra*). The submitting organisations observe that the situation in northeast India is fully consistent with a number of the early warning and urgent action indicators identified by the Committee in August 2007, including the following:

- b. Presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other State officials;
- f. Policies or practice of impunity regarding: (a) Violence targeting members of a group identified on the basis of race, colour, descent or national by State officials or private actors; (b) Grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, colour, descent, national or ethnic origin; (c) Development and organization of militia groups and/or extreme political groups based on a racist platform;
- g. Significant flows of refugees or displaced persons especially when those concerned belong to specific ethnic groups;
- h. Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources.⁶

II. INDIA HAS FAILED TO IMPLEMENT THE COMMITTEE'S RECOMMENDATIONS

A. AFSPA has yet to be repealed and India has indicated that it will not repeal this discriminatory law

Extrajudicial executions and other naked human rights violations have been a fact of life in the northeastern states of India for the last five decades (N. Sanajaoba, Dean of the Law Faculty, Gauhati University).⁷

6. In paragraph 12 of its 2007 concluding observations, the Committee observed that the AFSPA sanctions impunity for serious human rights violations perpetrated against the predominant indigenous population of Manipur and other northeast states "(arts. 2 (1)(c), 5(b),

⁶ *Guidelines for the Use of the Early Warning and Urgent Action Procedure. Advanced Unedited Version.* Adopted by the Committee on the Elimination of Racial Discrimination, August 2007, at p. 3, para. 12.

⁷ N. Sanajaoba, *The Armed Forces (Special Powers) Act: An unproclaimed emergency and gross injustice*. In, *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. 29-34, at 29. Available at: <http://www.article2.org/pdf/v05n06.pdf>

(d) and 6).” It recommended that this law be repealed and observed that India’s own special commission on AFSPA (the “Reddy Commission”) had earlier made the same recommendation.

7. The Reddy Commission’s report,⁸ which, despite the Committee’s 2007 recommendation,⁹ has yet to be made public by India, states that AFSPA “has become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness.”¹⁰ In recommending its repeal and replacement by a revision of the 1967 *Unlawful Activities (Prevention) Act*, the Reddy Commission’s report further acknowledges that AFSPA is discriminatory:

a major consequence of the proposed course [repeal of AFSPA] would be to erase the feeling of discrimination and alienation among the people of the North-eastern States that they have been subjected to, what they call, ‘draconian’ enactment made especially for them. The ULP Act applies to entire India including to the North-eastern States. The complaint of discrimination would then no longer be valid.¹¹

8. On 25 June 2007, the Second Administrative Reforms Commission (“SARC”), an Indian Government body chaired by Congress Leader Veerappa Moily, also recommended that AFSPA be repealed. The SARC stated, as did the Reddy Commission before it, that repeal of AFSPA would remove the feeling of discrimination and alienation among the people of the northeast.¹²

9. However, India has chosen to disregard the Committee’s recommendations, the detailed conclusions and recommendations of the Reddy Commission, and the recommendations of the SARC, and has refused to repeal AFSPA. For instance, on 26 June 2007, in a speech delivered at Dimapur, Nagaland, the Minister of Defense, the Hon. A.K. Anthony, explicitly rejected the SARC’s recommendations stating that the time has not come to scrap the ‘anti terror law’.¹³ India has also chosen to retain AFSPA despite massive public protests against the continued application of the legislation, most recently in September¹⁴ and November 2007.¹⁵

10. Additionally, on 25 May 2007, the Government of the State of Manipur decreed a six month-long extension to Manipur’s ‘Disturbed Area’ status resulting in the continued applicability of AFSPA for that period.¹⁶ On 22nd November 2007, it again extended the

⁸ *Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958*. Government of India, Ministry of Home Affairs 2005 (this report was submitted to the Committee at its 69th session).

⁹ India: 05/05/2007, CERD/C/IND/CO/19, para. 12 (requesting that “the State party to release the report”).

¹⁰ See, also, ‘Repeal Armed Forces Act: Official Panel,’ *The Hindu*, 08 October 2006 (containing the first leaked version of the Reddy Commission’s report). Available at: <http://www.hindu.com/2006/10/08/stories/2006100806130100.htm>

¹¹ *Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958*. Government of India, Ministry of Home Affairs 2005, at p. 77.

¹² See, *inter alia*, ‘ARC backs ‘repeal AFSPA demands’, *The Sangai Express/PTI*, New Delhi, 25 June 2007. Available at: <http://www.e-pao.net/epRelatedNews.asp?heading=15&src=260607>; ‘Administrative Reforms Commission for repealing Armed Forces (Special Powers) Act’, *HimTimes*, 26 June 2007. Available at: http://www.himtimes.com/india/index.php?subaction=showfull&id=1182845570&archive=&start_from=&ucate=1&

¹³ ‘Antony holds up flag in favour of AFSPA’, *The Sangai Express/PTI*, New Delhi, 26 June 2007. Available at: <http://www.e-pao.net/epRelatedNews.asp?heading=12&src=270607>

¹⁴ See, ‘Human Rights Activists to Protest AFSPA in Manipur’, *Merinews*, 10 September 2007. Available at: <http://www.merineews.com/catFull.jsp?articleID=126286>

¹⁵ See, ‘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>

¹⁶ *The Sangai Express*, 23 Nov. 2007 Vol. IX/67. Available at: www.thesangaiexpress.com

'Disturbed Area' status thus ensuring that AFSPA will be in force for at least another year (1 December 2007 to 30 November 2008).¹⁷ This most recent extension appears to contradict the 1997 ruling of the Indian Supreme Court in the *Naga People's Movement of Human Rights v. India* case that 'Disturbed Area' declarations must be reviewed every six months.¹⁸

11. India's refusal to repeal AFSPA represents a rejection not only of the Committee's recommendations but also the long-standing concerns and recommendations of other United Nations human rights bodies.¹⁹ In January 2007, for example, the Committee on the Elimination of Discrimination Against Women reiterated its previously expressed concerns about AFSPA and requested information on "the steps being taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest is not impeded."²⁰ The Human Rights Committee found that AFSPA has established an undeclared state of emergency spanning almost 50 years and which is characterized by "serious human rights violations."²¹

12. While India refuses to repeal AFSPA, violence, including killings and torture, against indigenous peoples in the northeast and impunity for the perpetrators continue unabated.²² Philip Alston, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, has transmitted letters of allegation to India in relation to a number of recent incidents including killings of unarmed civilians.²³ He recalls how he had previously communicated his view to India that AFSPA "violates non-derogable provisions of international human rights law."²⁴ The Special Rapporteur also reiterated his prior recommendation that India "consider either repealing the (Special Powers) Act, 1958 or ensuring that it and any other such future legislative measures comply fully with international human rights and humanitarian law treaties to which India is a state party...."²⁵ He further noted that India did not respond to his letters of allegation and thus failed to cooperate with his mandate.

¹⁷ *Id.*

¹⁸ *Naga People's Movement of Human Rights v Union of India* [1997] ICHRL 117, at para. 38.

¹⁹ See, *Concluding observations of the Human Rights Committee: India. 04/08/97*, para. 18, 19 & 21; *Concluding observations of the Committee on the Rights of the Child: India, 26/02/2004*, para. 63, 68-9; and *Concluding observations of the Committee on the Elimination of Racial Discrimination: India. 17/09/96*, para. 32.

²⁰ *Concluding observations of the Committee on the Elimination of Discrimination Against Women: India. 02/02/2007*, at para. 9.

²¹ *Concluding observations of the Human Rights Committee: India. 04/08/97. CCPR/C/79/Add.81*, at para. 18 & 19.

²² See, *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). See, also, *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) & 38-47 (containing descriptions of recent violations). Available at: <http://www.article2.org/pdf/v05n06.pdf>

²³ *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, at 140.

²⁴ *Id.* at p. 139. See, also, *Report of the Special Rapporteur on Extrajudicial Execution to the UN Human Rights Council, Philip Alston*. UN Doc. E/CN.4/2006/53/Add.1, p. 75-82 (discussing AFSPA and detailing a series of allegations of killings in Manipur).

²⁵ UN Doc. A/HRC/4/20/Add.1, *id.* at p. 140.

13. In addition to facilitating gross, persistent and systematic violations of basic human rights, the AFSPA is discriminatory in both its purpose and its effect because it was designed to suppress the right to self-determination of the indigenous peoples of the northeast and because it disproportionately affects indigenous peoples who are the overwhelming majority of the population in the region.²⁶ This was acknowledged by the Committee in 2007 and by Human Rights Committee ten years earlier in 1997.²⁷ Citing Article 1 of the Covenant on Civil and Political Rights, the Human Rights Committee also recommended that a political rather than a military solution to the situation in the northeast should be pursued.²⁸

14. The recent approval of the United Nations Declaration on the Rights of Indigenous Peoples by the UN General Assembly is also relevant, not the least because it contains rights that must be equally protected pursuant to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.²⁹ In addition to affirming that indigenous peoples hold the right to self-determination³⁰ and the right to its exercise and enjoyment without discrimination,³¹ this Declaration affirms a wide range of rights and protections that are relevant to the application of AFSPA in the northeast. For instance, Article 30 of the Declaration affirms that

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a significant threat to relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

15. Pursuant to AFSPA gross violations of indigenous peoples and their members' basic human rights are occurring on a daily basis while the perpetrators enjoy *de jure* and *de facto* impunity.³² The perpetration and perpetuation of these violations enjoys the support of

²⁶ See, *Request for adoption of a Decision under the Urgent Action/ Early Warning Procedure in Connection with violation of Indigenous Peoples' Rights in Northeast India*. United NGO Mission Manipur & Forest Peoples Programme, 31 October 2006, paras. 9-10 & 12-16 (explaining, respectively, the demographics of northeast India and the origins of AFSPA). See, also, *Article 2 of the International Covenant on Civil and Political Rights. Special Edition: Militarisation and Impunity in Manipur*. Vol 5, No. 6, December 2006. Available at: <http://www.article2.org/pdf/v05n06.pdf>

²⁷ India: 05/05/2007, CERD/C/IND/CO/19, para. 12.

²⁸ The Human Rights Committee stated that – 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....” *Concluding observations of the Human Rights Committee: India. 04/08/97*. CCPR/C/79/Add.81, para. 18.

²⁹ *General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms (Art. 5)*: 15/03/96, para. 1.

³⁰ Article 3 of the UN Declaration affirms that “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

³¹ Article 2 of the UN 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.”

³² While this report focuses 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 long-standing 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.

significant elements within all levels government and the security forces. India has rejected the Committee's 2007 recommendations as well as numerous other recommendations by other UN treaty bodies and special procedures, all holding that AFSPA contravenes India's international obligations and should be repealed. It has also rejected the similar recommendations of two of its own commissions that specifically reviewed AFSPA in the past two years and its National Human Rights Commission. Immediate and increased attention to AFSPA and the situation in northeast India is therefore urgently needed due this persistent, systematic, and State-condoned pattern of discriminatory violence and other long-standing rights violations against indigenous peoples.

B. India persists in disregarding indigenous peoples' property rights and has not altered its highly prejudicial dam building activities and plans

16. Discrimination³³ and violations of indigenous peoples' rights are also pronounced in relation to India's existing and planned hydroelectric dam construction programme in the northeast.³⁴ The Committee's 2007 concluding observations highlight India's ongoing failure to recognise and respect indigenous peoples' property rights and observe that "large scale projects such as the construction of several dams in Manipur and other north-eastern States ... are carried out without seeking their prior informed consent. These projects result in the forced resettlement or endanger the traditional lifestyles of the communities concerned."³⁵ The Committee's corresponding recommendation urged India to

fully respect and implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them ... [and to] seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects and provide adequate compensation and alternative land and housing to those communities.³⁶

17. There are dozens of mega-dams and scores of smaller dams either under construction or proposed for imminent construction throughout the northeast region. The majority of these dams are either causing or threaten to cause irreparable harm to indigenous peoples, their cultural and physical integrity, and their survival as distinct peoples. 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 and integrity will suffer greatly due to dam construction.³⁷ These dams will permanently flood vast areas of indigenous peoples' traditional territories causing a drastic and irreplaceable reduction in their traditional and other means of subsistence, and will result in the forced displacement of hundreds of thousands of persons, if not many more.

³³ India: 05/05/2007, CERD/C/IND/CO/19, para. 10 (observing that India "does not recognize its tribal peoples as distinct groups entitled to special protection under the Convention..."). Similarly, in 1996, the Committee expressed its concern about "widespread discrimination against [indigenous peoples in India] and the relative impunity of those who abuse them..." *Concluding observations of the Committee on the Elimination of Racial Discrimination: India*. 17/09/96. CERD/C/304/Add.13, at para. 23.

³⁴ See, *Request for adoption of a Decision under the Urgent Action/Early Warning Procedure in Connection with violation of Indigenous Peoples' Rights in Northeast India*. United NGO Mission Manipur & Forest Peoples Programme, 31 October 2006, paras. 36-42 (detailing India's dam building plans).

³⁵ India: 05/05/2007, CERD/C/IND/CO/19, at para. 19.

³⁶ *Id.* at para. 19.

³⁷ See, generally, K. Roy & C. Tisdell, Sustainability of Land Use in North East India. Issues involving Economics, the Environment and Biodiversity, 24 *Int'l J. Social Economics* 160, 1997.

18. The Tipaimukh dam in Manipur is an emblematic example. This dam will flood close to 300 square kilometres of indigenous lands in Manipur.³⁸ It will directly displace 1,461 Hmar families,³⁹ destroy a number of major sacred sites of the Hmar and Naga indigenous peoples, and in total will affect 67 indigenous villages: 16 will be completely submerged, as will the low-lying areas in 51 other villages.⁴⁰ The Zeliangrong Naga tribe, for example, expects that 40,000 of its members (approximately one-third of its total population) will be forcibly displaced by the dam.⁴¹

19. The Zeliangrong Naga's most sacred sites – the Zeihlat lake and the Barak waterfalls – will also be submerged and irreparably damaged. These sacred sites are central to their cosmology and beliefs about their origin as a community and thus central to their identity and integrity. In this respect, a Zeliangrong Naga elder states that:

I don't care about how much land I shall lose. I do not care about where I shall be thrown to eke a living. I am a Zeliangrong Naga because there is the Zeihlat lake. Nothing can ever damage the lake.⁴²

20. Discounting the Committee's recommendations with regard to dams in the northeast, India continues to pursue construction of the Tipaimukh dam. Despite the fact that environmental and other permits have yet to be issued,⁴³ a cornerstone for the dam was laid in December 2006 by central Government Minister for Power, S. Shinde, and a global tendering process for engineering, procurement and construction works has been initiated and is scheduled to close on 31 December 2007.⁴⁴ Work has also begun on constructing workers' lodgings and upgrading roads to the dam site.⁴⁵ India is also moving forward with Tipaimukh in the face of widespread public protest, the latest being a Manipur state-wide strike held in August 2007;⁴⁶ overwhelming opposition in a number of public hearings held about the dam;⁴⁷ and strong condemnation of the project by the United Naga Council, a body representing all Naga organisations and tribal presidents.⁴⁸ In short, indigenous peoples in Manipur, both those directly affected by Tipaimukh and the vast majority of the general population, are steadfastly opposed to the Tipaimukh dam.

21. Despite indigenous peoples' opposition to Tipaimukh, India has given no indication that it will honour its international obligations to respect indigenous peoples' right to give their free,

³⁸ See, Annex 1, 'Divisive Dam', *Down to Earth. Science and Environment Online*, 15 October 2007. Available at: http://www.downtoearth.org.in/cover.asp?foldername=20061015&filename=news&sec_id=9&sid=52

³⁹ 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

⁴⁰ 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/>

⁴¹ See, Annex 1, 'Divisive Dam', *Down to Earth. Science and Environment Online*, 15 October 2007.

⁴² *Id.*

⁴³ The environmental impact assessment has not been released to the public.

⁴⁴ Annex 1, 'Divisive Dam'. See, also, 'Public Hearing on Tipaimukh', *The Telegraph India*, 16 December 2007. Available at: http://www.telegraphindia.com/1071217/asp/northeast/story_8674319.asp

⁴⁵ 'Public Hearing on Tipaimukh', *The Telegraph India*, 16 December 2007, *id.*

⁴⁶ See, 'Manipur rallies against dam', *The Hindu*, 04 April 2006. Available at: <http://www.thehindu.com/2006/04/04/stories/2006040401611100.htm>

⁴⁷ 'Public Hearing on Tipaimukh', *The Telegraph India*, 16 December 2007

⁴⁸ 'United Naga Council says "No" to Tipaimukh Dam: Demands cessation of public hearings and total scrapping of project', *The Free Press*, Imphal, 23 October 2006. Available at: http://www.forestpeoples.org/documents/asia_pacific/india_megadam_rejection_23oct06_eng.shtml

prior and informed consent in relation to this or any of the other dams in the northeast. The result is and will continue to be massive violations of indigenous peoples' rights and irreparable harm to their basic rights and integrity as distinct peoples. This not only disregards the Committee's 2007 recommendations, it also contravenes Article 32(2) of the UN Declaration on the Rights of Indigenous Peoples, which provides that

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

22. In the same vein, the World Commission on Dams has also strongly endorsed indigenous peoples' right of informed consent.⁴⁹ The World Commission's final report observes that, "In a context of increasing recognition of the self-determination of indigenous peoples, the principle of free, prior, and informed consent to development plans and projects affecting these groups has emerged as the standard to be applied in protecting and promoting their rights in the development process."⁵⁰

III. CONCLUSION AND REQUEST

23. 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 a decision under the urgent action and early warning procedure:

- a) expressing its profound concern over violations of indigenous peoples' rights in relation to AFSPA and recommending again that India repeal the offending legislation without delay;
- b) consistent with the recommendations of the Human Rights Committee, recommends that India immediately begins 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) urges 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; and,
- d) requests that India refrains from and brings a halt to any activities that diminish indigenous peoples' traditional lands, territories and resources, and that it legally recognizes their ownership rights in and to their traditional territories and takes steps

⁴⁹ See, <http://www.dams.org/>

⁵⁰ *Dams and Development: A new framework for decision-making. The Report of the World Commission on Dams*. Earthscan: London, 2000, at p. 112 (see, also, 267, 271, 278).

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 where their free, prior and informed consent, including prior agreement to rehabilitation and compensation measures, has not been obtained.

- e) Finally, and in line with the Committee's 2007 *Guidelines for the Use of the Early Warning and Urgent Action Procedure*,⁵¹ the submitting organisations further request that the Committee recommends that:
- i) the World Bank and the Asian Development Bank refrain from supporting dams or related projects in the northeast of India at least until such time as indigenous peoples' rights to own and control their traditional lands, territories and resources and their right to free, prior and informed consent are enshrined in law and protected in practice;
 - ii) the Permanent Forum on Indigenous Issues initiates a dialogue with the World Bank and Asian Development Bank with respect to implementation of the preceding recommendation; and,
 - iii) the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and 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.

⁵¹ *Guidelines for the Use of the Early Warning and Urgent Action Procedure. Advanced Unedited Version.* Adopted by the Committee on the Elimination of Racial Discrimination, August 2007, at p. 4-5, para. 14(c).

Annex 1:

‘Divisive Dam’, *Down to Earth. Science and Environment Online*, 15 October 2007.⁵²

Tipaimukh Dam in Manipur driving a wedge?

Imphal, Manipur’s capital, came to a grinding halt on August 28, with a strike being called. Imphal’s people are habituated to bandhs, and most of them are successful. But this was a bandh with a difference — more than 20 social and political organisations, representing the largest communities, ethnic groups and political interests. Almost unheard of, in a badly divided society.

Academics, politicians, students and civil society organisations united that day for one reason: to demand that work on the proposed Tipaimukh Multipurpose Hydel Project be stopped, convinced the project would deepen the cracks in Manipur’s already fissured society because it would benefit some groups at the cost of others. They formed a joint front called the Action Committee against Tipaimukh Project (ACTIP) to oppose the project.

It’s not that Manipuris are not aware of the commitment the centre has to the project — after all it has been in the pipeline for the best part of half a century. Despite that the widespread opposition to the dam shows no sign of abating, as the unprecedented unity of August 28 abundantly demonstrated.

NITIN SETHI explores the complex social and political matrix that comprises Manipur and examines the impact the proposed dam in Tipaimukh will have on the ethnic mosaic of the state.

Octopus

Too many arms, too many aims

Work on the Tipaimukh Multipurpose Hydel Project (TMHP) is yet to start. For the past five decades the Union government has been working on it. The North Eastern Electric Power Corporation (NEEPCO), the government agency entrusted with the responsibility of building power projects in the northeast, has been handed the project. In November 2005, it floated a global tender for the project. In July 2006, the pre-bid qualification of the tender for the first phase was opened. The ball was finally rolling

TMHP, as it is now envisaged, is to come up in the hills of Churachandpur district in Manipur

A 1,500-MW project, one of the largest in the region, it is to generate power from the Barak river, the second largest river in the region. The site of the dam is almost on the border with Mizoram. The proposed 164-m-high dam will come up 500 m downstream of the confluence of the Barak and Tuivai rivers. Its reservoir will have a storage capacity of 15,900 million cubic m with a maximum depth of 1,725.5 m.

Long gestation

The project has a long history. According to the reworked detailed project report, a project on Barak was first thought of in 1954 when the government of Assam requested the Central Water and Power Commission for ways to manage floods in the river basin. The commission surveyed and rejected three sites by 1965 on two grounds. The sites were geologically unsafe and large-scale submergence of cultivable land made it economically unviable.

Then the North-Eastern Council intervened and discussed the project with the three states through which Barak flows — Assam, Manipur and Mizoram. On its request, the Central Water Commission began investigations in 1977. In 1984, it identified a new site, where the river takes a 220 degree bend from southwest to a northerly direction flowing through a gorge. The stretch was 24 km downstream of Tipaimukh. The dam, it was then estimated, would cost Rs 1,078 crore. But the project was put in the cold

⁵² Available at:
http://www.downtoearth.org.in/cover.asp?foldername=20061015&filename=news&sec_id=9&sid=52

storage because it did not have the requisite environmental and management plans, say observers.

Then the Brahmaputra Board jumped into the fray. It is a government body that was at that time meant to manage the Brahmaputra and Barak river basins. The board also carried out studies, revising the plan until the estimated cost went up to Rs 2,899 crore in 1995.

Yet, the project was nowhere near taking off. The Naga Women's Union says: "People of Manipur began to take notice. In July 1995 environment minister Kamal Nath ensured resettlement issues would be taken care of and nothing would be done in haste. In 1999, Pranab Mukherjee, deputy chairman of the Planning Commission, gave similar assurances."

In 1995, chief minister Rishang Keishing made a statement declaring that the state cabinet did not approve of the dam. In 1998, the Manipur assembly passed a resolution not to implement the project.

In 1999, the central government handed over the project to NEEPCO, under circumstances which many social organisations allege are questionable. They claim that during a spell of president's rule, imposed in 2001, the governor approved the project.

Then in 2003, the Public Investments Board and the Central Electricity Authority cleared the project by which time its cost had been revised by NEEPCO to Rs 5,163.86 crore.

The rationale

The project is to be built primarily for flood control and power generation. Irrigation and other benefits will be spin-offs. Flood control will benefit some plain areas in Assam. Manipur and Mizoram, on the other hand, will bear the brunt of submergence. But they are to equally share, as the central government stipulates, 12 per cent of the power from the project, free of charge, while the rest will be taken by NEEPCO and the centre.

The problem is that of the installed capacity of 1,500 MW, at any given time only 412 MW will be generated, usually in the monsoons when the river is in spate.

The plant load factor — calculated at 28 per cent — is also a worry, because it implies heavy losses due to inadequate utilisation. NEEPCO believes the centre should help make the dam economically viable.

The leaders of the groups comprising ACTIP and academics in Manipur believe that the unviable project design will also drive a wedge between communities that live in a state of unremitting conflict between themselves and with the state.

Under siege

Insurgent politics sets the tone

To understand what the Tipaimukh project could bring to the state, one must put it in context. Imphal is in a valley surrounded by hills on four sides. In the valley the Meitei people are predominant. Legally, they do not have the right to purchase land in the hills.

The hills are inhabited by 29 major tribes. These tribes fall largely into two groups: the Nagas and the Kuki-Zomi-Chins. Besides these, there are some smaller communities. Though the Nagas share a sense of common history and kinship, as do the Kuki-Zomi-Chins, both the communities are internally differentiated.

Some districts like Ukhrul and Tamenglong are dominated by the Nagas, others, like Churachandpur, are predominantly Kuki-Zomi-Chins.

For more than five decades, the communities have experienced armed conflicts. The armed groups from both communities fight the state, some fight among themselves. Some groups engage non-violently with the state.

The insurgents have various demands — independence, new states within India, greater autonomy, greater rights, territorial integrity or simply development on their own terms. Some groups are powerful enough to run parallel governments — imposing taxes and running administrative and judicial systems.

Experts have counted up to 35 insurgent groups.

Sharp divides

There are sharp economic divides that feed the friction. In the valley, access to the rest of the world is relatively easy. Income levels are far higher. Markets for every primary commodity that the hills can sell, from rice to wood to bamboo, exist in the valley.

In the hills, the only form of livelihood is agriculture — a mix of swidden (*jhum*) and settled. Forest and riverine products supplement agriculture. The economic disparity between the valley and the hills fuels the divide between the communities.

There are sharp political divides too

The Naga underground has been asking for an integrated Naga homeland by merging districts of Manipur that are Naga-dominated with neighbouring Nagaland.

Mainstream Meitei society, largely based in Imphal, as well as valley-based underground organisations, is against this demand. They ask for the territorial integrity of the state to be maintained.

The underground groups of the Hmars, a dominant tribe of the Kuki-Chin-Zomi group, have been at war with the Nagas over territorial claims too. The battles between Kukis (including the Hmars) and Naga underground groups, going back to the 1980s and 1990s, have led to massacres that still scar people's psyches.

Middle path

Social organisations, student unions and women's groups often play the role of intermediaries. Even though they too are often divided along ethnic lines, they are the only forces in the state that try to encourage a climate for dialogue and negotiation, cajoling underground groups to come to the negotiating table.

These, for instance, are the groups that have come together to protest against the Tipaimukh project. Usually, the state government accuses these groups of supporting the underground and covertly fomenting its agendas. But indisputably they provide the only modicum of democratic politics in the state.

Against this setting of immense distrust the government wants to build the Tipaimukh Multipurpose Hydropower Project.

Likely gainers

See both benefits and dangers

The project is to come up in Churachandpur, a Hmar-dominated area. Some Hmar leaders are not completely unhappy with the idea, because they believe their community stands to gain.

John Pulamte, Hmar Students' Association's president, says: "The Hmar community does not object completely as the people firmly believe that the dams will bring the much-needed development to these interior areas." Pulamte makes a cogent case for his people: "Firstly, if the areas to be submerged are wasteland, I think we have nothing to lose.

Secondly, there are no good schools, hospitals, electricity or even proper roads. So people feel that with the coming of the dam, these facilities will follow."

But there is an obvious caveat. Pulamte makes it clear that his people realise that NEEPCO is not responsible for providing these amenities, the government is. State failure is a big issue in Manipur. "Every

night our people see the electric light on the other side of the border in Mizoram. So they wait for a night when they can have lights in their villages too,” he says.

But it’s not a one-way street, even for the gainers. Pulamte, for instance, has his doubts. He claims though the community is open to the proposed project, there are apprehensions. “Who will guarantee security of livelihood; even if we get houses and electricity if we don’t have rice to eat, the benefits are meaningless to us.” He observes that since the people are mostly illiterate, transparency becomes a casualty. Pulamte’s is one of the organisations that have formed ACTIP to protest against the project.

However, NEEPCO defends Tipaimukh. Ibomcha Singh, deputy general manager, NEEPCO, Manipur, says: “The area to be affected is practically a no man’s land. With the coming of the project, roads and communication will improve significantly. Apart from free power, there will be tremendous scope for small-scale industries. In a place like Manipur with acute unemployment problem, the availability of free power will be a boon. There is scope for developing pisciculture, water sports, tourism, and development of small townships, commercial centres and facilities for marketing agricultural products. Since the forest area will become restricted after the project, wood cutting will be banned and the forest can be saved.”

When asked how many jobs the project will bring, he says, “There will be 400 jobs, both skilled and unskilled, and many indirect employment opportunities.” He forgets to mention that most of these jobs shall last only till the dam is up. The jobs will disappear as the dam becomes functional — if it goes by plan, by 2012.

“For the politicians and the well connected in the region it’s a bonanza in a sense. They all see contracts and money. As is typical in the region, if a large company wants to get a work done in a particular area, the only way is to contract it out to leaders and well-connected business people from the area belonging to the dominant ethnic group. They can negotiate with the underground, the community leaders and understand ethnic nuances,” explains a senior journalist.

For the lesser mortals small contracts, say to lift gravel from the river behind their village to the project site or start a teashop for the migrant labour, can mean a bonanza.

Counterpoint

The Naga leaders in Tamenglong don’t see it that way. “It is not right to bring advantage to one group at the cost of another,” says D Dikambui, the president of the Zeliangrong Union, the apex social body of the people of Tamenglong. It is immensely influential. The Zeliangrong tribe is part of the Naga groups that predominate in Tamenglong. “If some people shall get a little benefit at the cost of our people how can the government trade off one community’s future against the others?” This tirade is repeated by every Zeliangrong elder or leader that one meets. Very often it boils into anger. “If this is what the government wants to do then we shall have no option but to pick up arms. We shall defend our way of life and our lands,” says Guiliang Panmei, adviser Zeliangrong Women’s Union. This is not an empty threat in a district where Naga groups are immensely powerful. They are concerned with what the Zeliangrong Naga in Tamenglong will lose, if the Tipaimukh dam comes up.

Losing out

Tamenglong to get a bad deal

What the Hmars gain on the swings, in Tamenglong district, the Zeilangrong Nagas lose on the roundabouts. The area stands to be submerged by the dam, besides being affected culturally. Manipur will lose 293.56 sq km to the reservoir. Much of the support for the dam comes from some leaders in Churachandpur as well as the state government. In Tamenglong, one can count the number of people in favour of the dam, without breaking into a sweat.

The Zeliangrong Nagas are in for substantial damages. With the environmental impact assessment report still not available, the public has to depend on NEEPCO’s claims.

The Zeliangrongs, typical of most Nagas in the hills, live primarily by *jhum* and a bit of settled wet rice cultivation if they manage to find some flat piece of land in the first place. Zeliangrong has a unique system of managing land. They have the equivalent of a chief who owns land and gives people the right to cultivate. But the right to give is often notional because people are able to choose what land they want to

cultivate. The villages surveyed showed high degrees of autonomy.

There are three focal points around which the economy of Zeliangrong villages revolve: the *jhum* crop, settled agriculture and the produce from the lush forests. Kitchen gardens provide food throughout the year. The *jhum* crop is their tin of rice. Patches of graded land are remembered for their productivity. The terrace fields are more productive. Chemicals are not used in any of these regions, which makes input costs minimal. Villagers, on an average, take out 400 to 500 tins of rice through *jhum*.

Another 150 tins comes from wetland rice. Neilolung Goimei of Tajiing village explains, "We can get vegetables to last us the year around, at times almost 20 different things, at least five or six vegetables," he says. "The rice we eat here is of the best quality and the most expensive in Manipur. In the district headquarters it's sold at Rs 16-30 per kg. And the price rises considerably in Imphal valley." The chillies they produce too can be sold at premium rates: Rs 150-500 per kg in Imphal.

Fishing is also lucrative. Some families make as much as Rs 40,000-50,000 annually from selling fish. But most villages are not connected by road. Therefore, they fish mostly for personal consumption. "If I could sell in the district headquarters I could make Rs 150 for a small basket of dried fish and much more for fresh fish," says a village elder. Even a pack of small snails from a rivulet can be sold for Rs 10 to get supplementary income.

Forests are the other steady provider of cash and food. Along with meat, villagers collect herbs, fruits, tubers, wood, bamboo and timber. "My brother sells cane in Imphal. He buys it from the village and takes it there. A charcoal producing factory buys it in Tamenglong. Each cane sells for Rs 30. Our forests are stocked with cane and bamboo," says Ramkung Pamei, editor of *Dih Cham*, a local daily in Tamenglong.

Losing out

Villagers obviously get little out of the deal as most of the money is made by brokers in the valley. Most villagers are unable to sell because there are no roads to transport the forest produce. Besides, the Supreme Court's restriction on sale of timber has affected their livelihood.

The villagers end up spending almost 70-75 per cent of their money in sending children to the city to study, which is why the poorest district in one of the poorest states of the country has a literacy rate of over 65 per cent. But NEEPCO doesn't recognise this achievement and chooses to refer to the villagers as 'primitive'.

Beyond economics

For many in the Tamenglong district, the dam comes as a threat not only to their economy but also to the Zeliangrong Naga community. Their most sacred sites, they believe, are threatened by submergence in the reservoir. The Zeliangrong people, believe the Zeihlat lake and the Barak waterfalls close to the lake are central to their origin as a community. "The idea of Zeliangrong Naga as separate from others is based on the belief centered around Zeihlat and six other lakes. If the lakes go or the falls disappear, it is like the people in the Gangetic valley losing Varanasi, Allahabad and Haridwar.

For us tribes, our existence is simply our lands and our beliefs, the dam threatens both," explains Namdithu Pamei, a student from Tamenglong.

NEEPCO claims that the Zailat lake and the Barak waterfalls will at worst get submerged during the peak monsoon. Zeliangrong leaders are not impressed with the argument. "I don't care about how much land I shall lose. I do not care about where I shall be thrown to eke a living. I am a Zeliangrong Naga because there is the Zeihlat lake. Nothing can ever damage the lake," says an agitated Bilai, a legendary Naga elder in Zailatjan village close to the lake.

NEEPCO, regardless, has its own solution, promising to turn the lake and waterfall into a tourist spot.

Lost people

State represses, doesn't enable; creates poverty from riches

People in Imphal talk of the micro-climatic changes that the dam will bring and its impact on their famous

orange groves; they talk of negotiating and fighting. The Naga people have held their own public hearings in several sub-divisions of Tamenglong condemning the project. The official public hearing under the Environment Protection Act, 1986, is yet to be held even after three years of getting clearance. Yet, NEEPCO has floated a global tender.

“The global tenders were floated in anticipation of getting the environmental and forest clearance from the Union ministry of environment and forests,” says Ibomcha. It has refused to share the environment impact assessment (EIA) with the public. “We do not officially have either the project report or the EIA or any other information.

Forty years and every iota of information we have got has been by stealth,” says an angry Aram Pamei, ex-head of the Naga Women’s Union.

The final paperwork is being completed. Recently, the prime minister reportedly released Rs 400 crore for the security of the dam besides the Rs 60 crore, which is already allegedly sanctioned, asking that the work begin quickly. This is unprecedented in the controversial history of big dams in India. Again, he has done so despite the legal requirements of clearances remaining unfulfilled. There are apprehensions that the money shall be used to quell anti-dam protests. “Manipur has the Armed Forces (Special Powers) Act, 1958. It can be used to quash almost any protest or dissent, labelling them as anti-state,” explains Jitn Yumnam of Centre for Organisation, Research and Education, an Imphal-based NGO. “This is not a normal state of affairs where one can protest or file a right to information petition.”

The state government has fallen in line. It has come down on intellectuals raising issues against the dam. The registrar of Manipur University and another faculty member were recently pulled up by the vice-chancellor for participating in a seminar on Tipaimukh.

A public hearing held in Mizoram earlier had reportedly gone against NEEPCO, which has been trying to hold another to get a favourable verdict. But a NEEPCO official defends his corporation: “There is no question of lack of transparency. A memorandum of understanding was signed between NEEPCO and the Manipur government on January 23, 2003, authorising NEEPCO to complete the formalities. Thereafter it was published in the Manipur gazette inviting objections within a month. Objections were forwarded by the state to NEEPCO, which gave comprehensive replies in the form of a booklet which should be available with the government. The pollution control board (PCB) is responsible for translating it into Manipuri, Hmar and Zeliangrong. Likewise, the EIA was given to PCB to do the needful. After these formalities are done, the public hearing can be held,” says Ibomcha. But it’s still not possible to get a date out of him.

Larger questions

There are issues beyond legality. “First, the government does not build any infrastructure in our areas. In the monsoons we remain cut off. We are unable to sell anything. Then the government comes in and says because you only are at subsistence levels, you are dispensable. Imagine if the state had provided what it should — roads, water, other amenities. We would have been the richest people in the region. They wouldn’t have dared to touch us because we too would be influential. But now they promise us these utilities in the name of the dam and say you shall get them when we remove you from your lands. What will we do with the hospital and roads then?” asks the secretary of the Zeliangrong Union in Tamenglong. “In the rest of India you hear about the Narmada and Tehri conflicts because so many people are displaced. It is easy to do away with us because our numbers look so small. For the other communities in mainland India 40,000 people maybe a convenient number to dispense with, for us that is one-third of our population,” he adds.

Tipaimukh is a challenge for the Indian state. It can use the opportunity to reassure Manipur through a transparent approach. The current policy of opacity can only strain ties further.

With inputs from Sunita Akoijam, Imphal