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To,

Imphal (India): 21st June 2014

Committee on the Elimination of Discrimination against Women (CEDAW)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson – 52, rue des Pâquis
CH – 1201 Geneva (Switzerland)

India, CEDAW, the region of Northeast India and the Armed Forces (Special Powers) Act of 1958

Introduction

(1) United NGO Mission Manipur (UNMM; see details in Annex) submits this intervention in relation to CEDAW's review of India's 4th and 5th periodic report on its compliance with the Convention on the Elimination of All Forms of Discrimination against Women. The submission deals in particular with systematic and pervasive discrimination against indigenous women in North East India with special reference to Manipur under the Armed Forces (Special Power) Act 1958 (AFSPA). In particular, indigenous women in North East India experience the violent protracted armed conflict between armed opposition groups and Indian armed forces since 1958. Pursuant to AFSPA and activities of the armed insurgent groups, gross violations of women's human rights are occurring on a daily basis while the perpetrators enjoy impunity de jure and de facto. As AFSPA has been dealt with over the years by a number of UN Treaty Bodies and UN Special Procedures, this report does not reveal details of the scope and meaning of AFSPA. Simply that: AFSPA deals with insurgency and militancy situations in certain parts of India, and provides exceptional powers to the Armed Forces for carrying out military operations. From a legal viewpoint, AFSPA grants impunity.

(2) We take note that India signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 30 July 1980 and ratified it on 9 July 1993 with two declarations and one reservation regarding Article 29 para. 1. Furthermore, the Indian Constitution as well as the interpretation of the Courts support substantive equality in terms of equality and equal protection in law for men and women. The Constitution genuinely prohibits discrimination on the grounds of religion, race, caste and sex or place of birth (Article 15) and discrimination at workplace (Article 16). Article 15 (3) empowers the State for adopting special measures for women and children. Article 16 (4) empowers the State for making provisions / reservation in employment for any backward class citizens who are not adequately represented in the services, which includes Scheduled Tribes (indigenous people) and Scheduled Casts.



(3) We also take note that the Indian Government has adopted various policies, programmes and legal measures for operationalizing its commitment towards eliminating discrimination of women; in particular such as the Immoral Traffic (Prevention) Act 1956, the Bonded Labour System (Abolition) Act 1976, the Scheduled Castes and the Scheduled Tribes Prevention of Atrocities Act of 1989, the Pre-Conception and Prenatal Diagnostic Technique (Prohibition of Sex Selection) Amendment Act of 2003, the Hindu Succession (Amendment) Act of 2005 which removes gender discriminatory provisions, the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, the Unorganised Workers' Social Security Act of 2008, the Criminal Procedure Code (Amendment) Act of 2008, the Right of Children to Free and Compulsory Education Act of 2009, the Personal Laws (Amendment) Act of 2010, or the Plantations Labour (Amendment) Act of 2010. The Government has further launched the National Commission for Women constituted under the provisions of the National Commission for Women Act 1990 with national jurisdiction except in Jammu and Kashmir, and the National Mission for Empowerment of Women (2010-15) in 2010 in order to empowering women. The Government has also undertaken various measures to address the gender stereotyping and sex roles; for instance, via the National Policy on Education.

(4) We principally acknowledge such legal and political framework. Nevertheless, the kind and quality of the implementation of each of these provisions (as others not mentioned above), there is evidence everywhere that none of these legal provisions do factually exist in so called disturbed areas in the Northeast of India under the rule of the Armed Forces (Special Powers) Act of 1958. Logically, the Indian Government has not provided any substantive answer to the concerns expressed by CEDAW on AFSPA and its impacts on women's rights since 2000. CEDAW's recommendations have neither been implemented, nor steps taken to abolish or reform AFSPA, nor steps taken 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. These concerns, recommendations and information have been documented in the Report of CEDAW (twenty-second and twenty-third session, General Assembly Official Records Fifty-fifth session, Supplement No. 38 (A/55/38)), CEDAW Concluding comments of the Committee on the Elimination of Discrimination against Women: India (CEDAW/C/IND/CO/3, paras. 8 and 9), and CEDAW List of issues and questions in relation to the combined fourth and fifth periodic reports of India (CEDAW/C/IND/Q/4-5, paras. 4 and 10). UNMM seeks therefore to contribute to the concerns in order to testify the violence against women in such disturbed areas with a special view on the exemplary case of Manipur.

General Information

(5) A number of UN Treaty Bodies and Special Rapporteurs have already critically reviewed the Armed Forces (Special Powers) Act of 1958 and have called for the repeal or reform of AFSPA. In addition to the before mentioned pronouncements by the Committee on CEDAW, there were such conclusions made by HRC in 1997 (CCPR/C/60/IND/3 and CCPR/C/79/Add.81), CERD in 2007 (CERD/C/IND/CO/19), CESCR in 2008 (E/C.12/IND/CO/5), CEDAW in 2010 (CEDAW/C/IND/CO/SP.1). The situation assessed by CEDAW in 2007 still continues unchanged: India, the State party, has not taken adequate steps, if any, to implement the recommendations raised in CEDAW's concluding comments of 2000 (CEDAW/C/2000/II/CRP.3/Add.4/Rev.1, para. 72). India has neither provided any information on steps to review AFSPA in response to CEDAW's concluding comments (CEDAW/C/IND/CO/3, para. 8).

(6) With regard to the UN Special Procedures, Radhika Coomaraswamy, former Special Rapporteur on Violence Against Women (1994-2003), already recorded a number of individual complaints of alleged rape perpetrated by state security officials received from the region (E/CN.4/2000/68/Add.1, paras. 49-66). **Rashida Manjoo, the current Special Rapporteur on the same subject stated that "Information received through**



both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency. Testimonies also highlight the impact of that situation on women's health, including psychological disorders such as posttraumatic stress disorder, fear psychosis and severe anxiety, with such conditions having a negative impact on women's physical well-being. Additionally, the freedoms of movement, association and peaceful assembly are frequently restricted. The specific legal framework that governs those areas, namely, the Armed Forces (Special Powers) Act and its variations, allows for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens." (A/HRC/26/38/Add.1, para. 23). She noted that women living in militarized regions, such as the northeastern States, live in a constant state of siege and surveillance, whether in their homes or in public.

(7) Furtherone, Christof Heyns, current Special Rapporteur on extrajudicial, summary or arbitrary executions - Mission to India (A/HRC/23/47/Add.1, Mission to India, paras. 21-28) and his predecessor, Philip Alston, (A/HRC/8/3/Add.1, Mission to India, para. 176), both identified a long standing pattern of gross violation of human rights in the context of AFSPA and consequently recommended to repeal or substantially reform AFSPA. In the same direction, statements were made by Margaret Sekaggya in 2011, previous Special Rapporteur on human rights defenders (A/HRC/19/55/Add.1, Mission to India) and on her visit to India in 2009 by the then UN High Commissioner for Human Rights, Navanethem Pillay. The pattern of such gender motivated violations of women's physical and mental integrity in Manipur has been acknowledged also by international human rights organizations such as Human Rights Watch, Asian Human Rights Commission, Amnesty International and Asian Centre for Human Rights.

Recent Cases

(8) During 2008-2013, altogether there are 732 cases of violence against women alone in the State of Manipur, including children and girls. Out of them, 97 were raped, 18 raped and killed, 85 committed suicides, 53 were sexually harassed, 251 are missing, 18 have been kidnapped, 102 were assaulted and injured, 10 were burnt and 5 risked murder attempts. In order to illustrate, some cases in brief:

- I) A 36 year old woman was raped by Indian Army at Ukhongshang Awang Leikai, Thoubal District on 9th November 2010;
- II) A 3 years girl was raped and murdered by Border Road Transport Force (BRTF) at Seinoujang Village, Churachandpur District on 20th January 2011;
- III) An 18 years girl was raped by IRB at Kongba Khunou Mayai Leikai, Imphal East District on 14th July 2011;
- IV) A 22 years woman was raped by Village Defense Force (VDF) at Sandrok, Imphal East District on 31st December 2011;
- V) A 40 years woman was gang raped by four men including two IRB at Meijrao Agriculture Field, Bishnupur District on 22nd March 2012;
- VI) A 17 years girl was raped by two men including one Manipur Police Commando at Tampha Fast Food, Ghari Airport Road on 20th October 2012.



Details to these and further violations are documented in Civil Society Coalition on Human Rights in Manipur and the UN [ed.] (2013): *Manipur: Perils of War and Womanhood*. Memorandum submitted to Rashida Manjoo, UN Special Rapporteur on violence against women, its causes and consequences. Modern Press: Imphal (ISBN 978-81-905939-6-0); annex III (pp. 35-37), annex IV (pp. 38-41), annex V (pp. 42-49), annex VI (pp. 51-58), and annex VII (pp. 59-61). The report is attached to this submission and accessible via www.humanrightsmanipur.wordpress.com.

(9) As a matter of exemplary illustration, how AFSPA expands its adverse effects to freedom rights, we refer to the continued solitary confinement and detention of Miss Irom Sharmila who has been on a hunger strike demanding the repeal of AFSPA since November 2000. Irom Sharmila has been charged for attempt to commit suicide under Section 309 of the Indian Penal Code and kept in detention for the past 13 years. An executive order issued by the Home Department, Government of Manipur dated 8 October 2004 stipulating "not to allow anybody" to meet her without "clear permission of the Home Department". According to our understanding, this severely curtails her human rights and fundamental freedoms including her right to communicate with her family, friends and supporters and amounts to mental and physical torture.

(10) We also remind the case of Miss Thangjam Manorama, gang raped by Indian security forces before murdered on July 11, 2004. The way, this crime has been handled, is exemplary till today. The 32 year old woman was arrested from her home at Bamon Kampu, Imphal East District by personnel of the 17th Assam Rifles. The arrest memo was signed by Havildar Suresh Kumar (Army no. 123355), Rifleman T. Lotha (Army no. 123916) and Rifleman Ajit Singh (Army no. 173491). Thangjam Manorama was killed while being in the army's custody. Her body was found by villagers about four kilometres from her house. A report from the Central Forensic Science Laboratory concluded that she may have been tortured and raped before killed. Her brother filed a written complaint at the Iribung police station, and the Manipur government then ordered a commission of inquiry in order to "inquire into the facts and circumstances leading to the death", to "identify responsibilities on the person or persons responsible," and to "recommend measures for preventing recurrence of such incident in the future". The Assam Rifles authority challenged the competence of the Government of Manipur to examine the case before the Gauhati High Court. The High Court strengthened the competence of the Manipur State Government to inquire the case under the Commission of Inquiry Act. Assam Rifles once again appealed the order of the High Court before the Supreme Court. The Supreme Court is yet to dispose the case.

(11) After the murder of Thangjam Manorama, the then Prime Minister of India, Manmohan Singh, established a commission under the Chair of Justice (Retd.) Jeevan Reddy in order to review AFSPA. The commission's report in 2005 which concludes that AFSPA has become a symbol of oppression, hate and instrument of discrimination; while the report is not yet officially public. The story of unfulfilled duties and recommendations can be continued with the 2nd Administrative Reformed Commission which recommended in 2007 to repeal AFSPA in Manipur. The same did the Second Administrative Reforms Commission (SARC) in the same year. The Justice J.S. Verma Committee, former Chief Justice of the Supreme Court, concluded in 2012 that there is an eminent need to review the continuance of AFSPA and AFSPA like protocols in internal conflict areas as soon as possible. The Justice Santosh Hedge Commission recommended in 2013 the withdrawal of AFSPA with respect to Manipur. Even a member of the Union Government, the previous Finance Minister, P. Chidambaram, stressed on 6th of February 2013 the need for turning the Armed Forces (Special Power) Act into a more humanitarian law, but he also stated that the Union Government could not move forward as there was no consensus with the Army. The Indian Government has disregarded till today the mentioned conclusions and recommendations, and has refused to repeal AFSPA.



Legal and Procedural Insufficiencies

(12) With regard to access to justice, the framework of the Armed Forces (Special Powers) Act does not provide measures for accountability and redress for victims. There is rather an absolute disregard of non-derogable rights, provided for in article 4 of the International Covenant on Civil and Political Rights, and there is no justification on the restrictions either, required by ICCPR in relation to fundamental freedoms. The Army Act of 1950 limits the scope for civil courts further by effectively excluding persons living in the territories under the Armed Forces (Special Powers) Acts when allegations of violence against women are raised perpetrated by army officials, including killings and sexual violence. Subsequently, there are no legally established measures to ensure redress for women victims of violence in the areas under AFSPA. There are no guarantees of non-recurrence either. Impunity governs those areas.

(13) The National Commission for Women lacks foundational, functional, operational, political and financial independence and is unable to deal with complaints effectively and undertake independent investigations into violations of women's rights. The Commission not only failed in addressing the causes and consequences of violence against women, but even denied reports of sexual violence by security forces, including in regions governed by AFSPA.

(14) Within the Court system in Manipur, there should be 9 family courts in each district while there is only one Family Court and 3 (three) Magistrates First Class (JM1Ci.e, I/E, I/W) located in Imphal. Currently, an Association of widows filed a petition on 1,528 cases of extrajudicial execution to the Supreme Court of India, the trial is pending.

Questions and Recommendations to the Indian Governments

(15) Obviously, harmful practices and pervasive gender stereotypes are deeply entrenched in the social and cultural norms of Indian society and not only the result of AFSPA. Therefore, in order to overcome the idea of superiority of men over women and women's dependence and subordination, it is necessary to comprehensively implement relevant legislative and effective policy measures in schools or university, at work, in the family, in the community; in printed and electronic media. It is essential that the authorities understand this challenge in order to eliminate all forms of violence against women.

(16) In terms of law reform, and recommended since the year 2000, we suggest the Committee to recommend that the Indian Government repeal, as a matter of urgency, the Armed Forces (Special Powers) Act [and the Armed Forces (Jammu and Kashmir) Special Powers Act]. The use of force by the armed forces should be bound to respect the principles of proportionality and necessity in all instances, as stipulated under international human rights law. In the meantime, the status of a "disturbed area" under AFSPA should be clarified, regularly reviewed, and a justified decision made on its further extension. Last but not least, the Indian Government should ensure that criminal prosecution of members of the Armed Forces is free from legal barriers.

(17) Questions in this regard:

1. How does the Indian Government intend to investigate the case of killing of Thangjam Manorama (2004) and other crimes committed by the 17th Assam Rifle and Indian police? What is the present status of the case(s)?
2. Will India provide remedies to the victim families? If so, what are the plans? If not, why not?
3. What further arrangements on, for instance, livelihood or education of children will be taken to ensure that the victims family members are not further victimized?



4. How will the Indian Government ensure that women and girls are protected against members of the Indian armed forces under the rule of AFSPA?

(18) The National Commission for Women Act of 1990 should upgrade its status in accordance with the Paris Principles in order to ensure independence, transparency and accountability of these body, and ultimately, expand the effective scope of protection also in disturbed area, i.e. the Commission be authorized to investigate all allegations of violations by agents of State.

(19) Questions in this regard:

1. Does the Indian Government prepare such adaptation? If yes, when India will take action on the ground? If not, what are reasons for?
2. Does the Indian Government consider a mandatory judicial enquiry into cases of sexual harassment by any state agent?

(20) Strengthening the legal provisions in general, we suggest the Committee to recommend the Indian Government to ratify

- (a) The two Optional Protocols to the ICCPR;
- (b) The Optional Protocol to CEDAW;
- (c) The Rome Statute of the International Criminal Court;
- (d) The two Optional Protocols to the Geneva Conventions.

(21) Questions in this regard:

1. Does the Indian Government prepare for the adaptation and implementation of CEDAW in domestic law and ratification of the Optional Protocol? If yes, when India will take action on the ground? If not, what are reasons for?
2. Does India plan to adopt the Geneva Conventions? If so, when it will be ratified? If not, why not?
3. Does the Indian Government intend to sign and ratify the Rome Statute of International Criminal Court? If so, when? If not, why not?

Annex

Information on United NGO Mission Manipur (UNMM)

(22) UNMM was established in the year 1995 by the representatives of local NGOs, religious institutions of church, Mosque, Hindu, Buddhists etc. women organizations, human right organizations from the 32 ethnic communities in Manipur. The commitment of establishing UNMM has been to respond to the violent conflict and protect human right. UNMM closely work with the communities through its members, parliamentarians, policy makers, academic, media, victims Associations etc. UNMM also work constructively with the parties which are involved in the conflict.

(23) Member Organizations of UNMM: Council for Anti Poverty Action and Rural Volunteer (CAPARV), Centre for Social Development (CSD), Village Development Organization (VDO), Social Upliftment & Rural Edn. (SURE), Abundant Life Ministry (ALM), Rural Service Agency (RUSA), Development of Human Potential (DHP), Action for Welfare and Awakening Rural Environment (AWARE), Rural Education and Action for



Change Manipur (REACH-M), United Tribal Development Project (UDTP), Christian Social Development Organization (CSDO), Chandel Khubol Social Welfare Arts and Culture Assn. (CKSWACA), Good Samaritan Foundation (GSF), Evangelical Assembly Churches (EAC), Joint Action for Relief and Development Association (JARDA), Rural Aid Services (RAS), Integrated Rural Development Agency (IRDA), Socio Economic Development Organization (SEDO), Centre for Community, Centre for Rural Development and Educational Organization (CERDEO), Paomei Development Society Tungjoy (PDST), Zougam Institute for Community & Rural Development (ZICORD), Rural Development Association (RDA), Socio Economic & Environment Development Organization (SEEDO), Integrated Rural Development Welfare Association (IRDWA), Tangkhul Theological Assn. (TTA), Eastern Rural Development & Welfare Service (ERDWS), Participatory Action for Sustainable Development Organization (PASDO), Women Union for Peace (WUFP), Shalom Development Organization (SDO), Rural Institute for Community Health and Dev. (RICHD), People's Resource Development Association (PRDA), Rural Christian Development Society (RCDS), New Life Foundation (NLF), Women Action for Development (WAD), Tribal Women Dev. Assn. (TWDA), All Manipur Women Assn. (AMWA), Environment and Economic Management Assn. (EEMA), Centre for Women Development (CWD), Rural Women Upliftment Society (RWUS), Women In Holistic Development (WISHD), Tuikhaphai Presbyterians Women Dev. Project (TPWDP), Rural Women Dev. Society (RWDS), Women Development Agency (WDA), Tribal Women and Child Care Assn. (TRIWCCA), Integrated Rural Management Agency (IRMA), Umathel Women Development Association (UWDA), Action for Women in Development (AWID), Women's Action for Reformation (WAR), Centre for Women (CeWE), Grace Ministry (GM), Rural Women & Children Dev. Organization (RWEDO), Widow Welfare Society (WWS), Association for Rural Development & Women Empowerment (ARDWE), Women Development Organization (WDO), Development Agency for Tribal People (DATP), Tamei Women Welfare Organization (TWWO).

Thank with regards,
Sincerely Yours,

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