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Joint NGO Submission

Universal Periodic Review 3rd cycle on the REPUBLIC OF INDIA 2017

Submitted by: UNITED NGOs MISSION-MANIPUR (UNMM), Manipur

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India

In cooperation with: Member Organisations namely, Council for Anti Poverty Action and Rural Volunteer (CAPARV), Centre for Social Development (CSD), Village Development Organisation (VDO), Social Upliftment & Rural Education. (SURE), Abundant Life Ministry(ALM), Rural Service Agency (RUSA), Development of Human Potential (DHP), Action for Welfare and Awakening I Rural Environment (AWARE), Rural Education and Action for Change Manipur(REACH-M), United Tribal Development Project (UTDP), Christian Social Development Organisation (CSDO), Chandel Khubol Social Welfare Arts and Culture Assn. (CKSWACA), Good Samaritan Foundation (GSF), Evangelical Assembly Churches (EAC), Joint Action for Relief and Development Association (JARDA), Rural Aid Services (RAS), Integrated Rural Development Agency (IRDA), Socio Economic Development Organisation (SEDO), Centre for Community, Centre for Rural Development and Educational Organisation (CERDEO), Paomei Development Society Tungjoy (PDST), Zougam Institute for Community & Rural Development (ZICORD), Rural Development Association (RDA), Socio Economic & Environment Development Organisation(SEEDO), Integrated Rural Development Welfare Association (IRDWA), Tangkhul Theological Association (TTA).

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The United NGOs Mission-Manipur (UNMM) – a network of 103 indigenous people's organisations from Northeast India – submits the joint report to the Office of the High Commissioner for Human Rights on the situation of human rights in the REPUBLIC of INDIA for being considered in the Third cycle of UPR in April-May 2017.

I. BACKGROUND AND FRAMEWORK

I.1. Scope of international obligations

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

2. The Armed Forces (Special Powers) Act, 1958 has been imposed in North East India to suppress nominally the armed uprising after Independence but always targeted predominantly the Self Determination movement by the Indigenous people in the region. AFSPA (according to the official Justice Jeevan Reddy Commission) is the sign of Oppression and High Handedness and symbol of discrimination.

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

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

5. India allowed Ms. Navanethem Pillay, the High Commissioner of Human Right (23rd January 2010), the Special Rapporteur on Human Right Defender (14th January 2011), the Special Rapporteur on Extrajudicial Execution (2012) and the Special Rapporteur on Violence Against Women, it's causes and consequence (2013) to visit Assam and Manipur in North-East India. The four UN experts recommended repealing ASFPA as a matter of urgency with deep concern. After the visit of the 3 Special Rapporteurs above mentioned, the Government of India confirmed rhetorically providing visa to other Special Rapporteurs but they never received the official invitation till today. So, the last

but unofficial visit of the Special Rapporteur on housing in India was in April 2016 whereas India denied the invitation to the Special Rapporteur on Freedom of Assembly Association (Several request made), Working Group on Arbitrary Detention (Several request made), the Special Rapporteur on Promotion of Human Right while Countering Terrorism and several others.

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

7. Ms. Rashida Manjoo, the former Special Rapporteur on Violence Against Women, reported in 2014 to the Human Rights Council that she never received the kind of insult as by the Government of India's representative during her visit to India in April 2013 (in her oral statement).

8. The report of the Special Rapporteur on Human Right Defenders to the UN General Assembly (A/66/203) page 18 clearly highlights to protect the Human Right Defenders and to repeal AFSPA. Mr. Christof Heyns, Special Rapporteur on Extrajudicial Execution, recommended in his country visit report of India in 2012 to repealing AFSPA. He continued to recommend repealing AFSPA in his follow-up communications with India. The last communication was on 6th November 2015. (A/HRC/23/47/Add.1) The Special Rapporteur on Violence against Women (2013) also recommended repealing AFSPA as a matter of urgency (A/HRC/26/38/Add.1).

9. On 6th November 2015, a joint communication of the Special Rapporteurs on Violence Against Women, on Extrajudicial Execution and on torture and other cruel, inhuman or degrading treatment or punishment requested to punish the perpetrators who killed 3 women, raped and killed one woman in Manipur by the soldier of 17 Assam Rifled. The three Special Rapporteurs also urged India to respond within 60days to the communication. (IND. 13/20/15)

10. Many countries used the First and Second cycle of UPR on India in order to strongly recommend to repeal AFSPA. However, India refused till today to repeal AFSPA. One of the main reasons is the strong objection from the Indian Army and Sri. Manohar Parrikar, the Union Minister of Defence. On June 6, 2016, Lieutenant General Pravum Bakshi, Eastern commander of the Indian Army said that the Army is required to handle insurgency. "We require AFSPA. If we don't have AFSPA, our hands are tied and we cannot do our job. It's enabling provision and not a draconian

provision”.¹Ironically, meanwhile some of the armed insurgent groups, which are under the pre-official peace negotiation, are operating from the Indian Army Camps for various purpose of counter insurgency activities including involvement in illegal drug, timber and armed trade. Thus, on May 30, 2016, the Honorable Shri. Manohar Parrikar said, “If that Act is not there, the army will not take action for carrying out counter terror operation, the army required power. That power comes from such Laws, AFSPA is a major one. (...) If that is not there, the army will not go to civilian area for operation”.²

I.2 Constitutional and legislative framework

11. Under section 4(c) and (d) of AFSPA, the Acts grants unlimited powers to the Indian Army and other armed forces with impunity even to shoot to the cause of death on mere suspicious. AFSPA is violating the Art. 14- Equality before the law, Art.21- Right to Life and personal Liberty, Art. 22- Prevention of Arbitrary Detention, Torture etc. AFSPA also violate many other important Article of the Indian Constitution. Thus, the Justice Jeevan Reddy Commission Report (2005) recommend to repealing AFSPA but Shri. Rajnath Singh, the Union Home Minister of India rejects the report in February 24, 2015 (The Economic Times). In addition, the Justice Verma Commission (2013) and the Justice Santosh Hegde Commission (The Supreme Court 2013) both recommend to repeal AFSPA too, but India decided not to respect the recommendation.

I.3. Promotion and Protection of Human Rights on the ground.

I.3.1. Administration of justice and the rule of law

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

13. AFSPA was imposed in 12 district of Arunachal Pradesh in 2015. Further in June 2016, AFSPA was also extended to Nagaland without the consultation with the Government of Arunachal Pradesh

¹ See Press trust of India/ Kolkata June 6, 2016

² See Narada Desk/ news@naradanews.com

and Nagaland. In 2014, AFSPA was claimed to be not operational in Tripura but the Act is still there and the environment of AFSPA is same in all the 7 states in the North-East.

I.3.2. Right to life, liberty and Security of the persons

14. The Supreme Court appointed the Santosh Hegde Commission (2013) who found that none of the victims in the six cases it examined had any criminal antecedents nor was there any credible evidence to show that they had affiliations with a banned or unlawful organization.³

15. During the period of 2012 and 2016 August, there were reports of 345 bomb blast where 57 civilians were killed and 325 were injured. There were reports of killing of unidentified people by unidentified gunmen.

16. On October 16, 2016 a Manipuri engineering student and two of his friends were assaulted in Bangalore around Tuesday midnight after they were allegedly told to “learn to speak in Kannada or get out” and “this is India, not China”. In 2015, Indian police shot and killed 11 youth in relation to protest for and against the Inner Line Permit in Manipur. Most of them are students. Many people demand for independent investigation against such killing, but both the parties are not yet responded.

17. A number of attacks on people from Northeast happened and ended up in an exodus to even the mainland of India. Not all are directly related to AFSPA but they reflect the environment of feeling insecure and missing a reliable implementation of rule of law; which has definitively deteriorated under AFSPA.

18. In July 2012, violence in the Indian state of Assam broke out with riots between indigenous Bodo sand Bangali speaking Muslims. The first incident was reported to have taken place on 20 July 2012. As of 8 August 2012, 77 people had died and over 400,000 people were taking shelter in 270 relief camps, after being displaced from almost 400 villages. Eleven people have been reported missing.

19. In August 2012, 30,000 people from the Northeast region had fled to Bangalore after attacks and threats of more attacks to come after Ramadan. Mr. Shiyeto from Nagaland, resident of Bangalore, was attacked by a group of people who threatened to kill him if he did not leave the city before Ramadan. Cities of Pune, Chennai and Hyderabad also witnessed an exodus of people from

³Own testimonies and www.frontline.in dated 19.8.2016 page 25-26.

Northeast. In the national capital Delhi, rumours that people from the Northeast will be targeted, particularly after Ramadan, started circulating.

20. About 16 years, Ms. Irom Sharmila was on hunger strike which ended on 9th August, 2016. She protested against India's disrespect to the life of its citizens and the non-violent and democratic protest to repeal AFSPA. She decided finally to find an alternative strategy for the struggle to repeal AFSPA.

I.3.4. Right to Education of Children

21. 96 Schools in Manipur and Assam are either occupied or zero meter distance from the Indian Army and Para Military Forces. The name of some of the schools and Institutions are:

- (i) The Manipur Public School, Koirengai, Imphal - Indian Army camp located at zero meter
- (ii) Manipur University, Imphal - Assam Rifle camp in the middle of the University
- (iii) St. John and The Moreh Higher Secondary School - 11 Assam Rifle camp located at 20 metres
- (iv) SajikTampak Government High School – 21 Assam Rifle occupied the School wherein students are taught in the veranda

22. There are reports of recruitment of children by the few armed groups for child soldier by developing strategic mechanism openly at various part of Manipur. Our analysis is that, how the Government of India with huge presence of armed forces, police and Intelligent agencies in Manipur allowing such activities of recruitment. UNMM has the fear that Government of India is indirectly supporting to such activities in order to continue the Insurgency movement which legitimise the imposition of AFSPA.

I.3.5. Right to access to justice

23. On 2016-08-21, Mr. Herojit Thounaojam, the Senior Head Constable of the Indian Police in Manipur confessed the killing of Mr. Sanjit, on 23rd July 2009 by him with the order from his Superior officer. Since his suspension over an alleged fake encounter in Imphal more than six years ago, Thounaojam Herojit Singh, a Manipur Police head constable and a gallantry award recipient, has said he shot 22-year-old Chungkham Sanjit Meitei, a suspected member of the insurgent group People's Liberation Army (PLA), who was "not armed" when he was killed in July 2009. Other Senior Indian Army officer also confessed the situation of Extrajudicial Execution by the Indian Army and

Police for their promotion and award under AFSPA in the Book on "BLOOD ON MY HAND" written by Mr. K. Bhattacharjee, Independent Journalist in 2015.

24. Thounaojam Herojit was to give his testimony before District and Sessions Judge, Imphal East, Maibam Manojkumar Singh on February 20, 2016. The hearing for Prosecution Witness was scheduled to be held at the Court. However, the hearing was adjourned as the judge in the case was reportedly on official tour to Tamenglong district following a State Government decision.

25. A high number of unarmed citizens were victims of severe human rights violations including being killed without any due legal procedure to investigate the case or bringing the perpetrators to account. To name only a few examples: On 24th December 2014, Adivasi Christian villagers were shot and killed by the well armed persons in camouflage dress in Assam. It was suspected to be done by Indian Army. But till now, there is no any investigation and action taken report.

26. On 6th August 2016 in Kokrajhar (Assam), 13 civilian were gun down and 20 civilians were injured in the brought day light by a person who was in full Indian Army uniformed. According to police and auto driver, the person come in Army dress but when another group of police killed the person he was in civil dress and found his two legs were tight with rope.

27. Two boys were torture and killed and one child at the age of 12 year old was seriously beaten by the members of insurgent groups in 2014 but the perpetrator are not punish yet in Manipur.

I.3.6. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

28. Following some examples on the threats to press and the freedom of expression: Mr. Kongsam Rishikanta Singh (25 years), Sub-editor of Imphal Free Press was shot dead in November 2008 but still the Police failed to arrest the perpetrator and punished. In 2015, 17 Editors of local news paper received dead threat from the unidentified armed group but the police refused to investigate and arrest the perpetrators. On December 24, 2015, Editors Guild of India expressed serious concern regarding violence and threats faced by the media houses in general and editors in particular. Editor, Yumnam Rupachandra Singh received death threats from a militant organisation and a bomb was found at the gate of his house on December 14 evening. All the newspapers in the state closed their publication on December 16 and not even a single newspaper hit the stands on December 17. In their editions dated December 16, they left the editorial space blank. All the Television news channels stopped their news broadcasts on that day to protest against threats to

the media, impinging on the freedom of the media.⁴In July 2016 student who received permission for the peaceful protest from the Magistrate of Government of Manipur, was not allowed to continue the peaceful sit in protest by police with forces. In March 2016 even the member of UNMM was not allowed to use loud speaker for the peaceful protest rally demanding to implement Manipur State Action Plan on Climate Change.

1.3.7. Illegality as a main feature of governance in the Northeast

29. For the last 20 years, illegal Pharmaceutical drugs from India enter Manipur for consumption by the young people with the estimated cost of Rs.132 crore in a year. The Heroin is still coming from Myanmar. In such trade, there are evidences of involvement of members of the Indian Army, Police and family members of the Political leader and some members of the insurgent groups. Col. Ajay Choudhuri and Col. Mr Singh of Indian Army were caught on 24th February and January 2015 with drugs and gold.

30. There are huge arms available in the illegal market. Most of the arms are with clear trade mark with the name of the country where this are made. UNMM has the fear that these arms were originally designated to the Government of India for the Defence Ministry while many of these arms licker into the illegal market. UNMM has also received the information that such arms should not be in illegal market as these trade requires the official consignment of a recognised country for defence purpose.

1.3.8. Displacement of indigenous peoples in the context of Uranium, Oil and Dams

31. The Uranium Cooperation of India Limited (UCIL), a Government of India Enterprises, under the Department of Atomic Energy, invites applications for “Expression of Interest from competent Indian Companies/ Joint Ventures/ Consortium to undertake the preliminary activities to facilitate the open pit mining of Uranium in the West Khasi Hill district of Meghalaya state in North-East India. As a precedent, there are serious reports of human right violation of Adivasis in Chhattisgarh (India) by the coal miners including Ministry of Coal Mine, Government of India.

32. Oil mining in Manipur by the Jubilant Company in Europe along with the Government of India still continues its activities by providing money and promising Schools, roads, jobs etc. to the villagers; though the affected people in Manipur have been protesting against the mining.

⁴Read more at <http://www.theshillongtimes.com/2015/12/24/editors-guild-condemns-threats-to-media-in-manipur/#2VYJyfz0M8jZ3ISD.99>

33. In July 2016, the Highest Court in India rejected the petition against the construction of the Lower Demure Hydro power project with the allegation that people in Arunachal Pradesh need electricity. According to our understanding, this is in breach with international standards such as CESC, ILO Convention 169 and UNDRIP and the right to livelihood.

34. In May 2016, the Ministry of Environment, Forest and Climate Change (MoEFCC) provided the environmental clearance to construct the 3 dams namely Saskang, Kantangshri and Dibang Dam in Arunachal Pradesh. All the proposal for Uranium, Oil mining and construction of dams did not even attempt to see the free, prior, informed consent of the affected people. EIA and DPA reports of the above projects are not made public which is the violation of the right of information. CERD already communicated to the Government of India about its deep concern of violation of the right of the indigenous people in regards to the construction of Lower Subansiri Dam (Arunachal Pradesh) and Tipaimukh Dam (Manipur, border with Bangladesh) in 2008, 2010, 2011 and afterwards. Military, paramilitary and other armed forces of India are already stationed in and around the dam construction area of Lower Subansiri Dam. In July 2014, the Prime Minister of India, Shri. Narendra Modi visited Bangladesh in order to discuss the issue of construction of Tipaimukh Dam; despite the fact that the dam construction in its current structure would violate human rights standards like CERD and UN Declaration of the Right of the Indigenous People (2007).

I.3.9. AFSPA, anti-terrorism measures and Hinduism extremists

35. On May 25, 2016, the Hindu nationalist organisation RSS (Rashtriya Swayamseva Sangh) pronounced on its support for continuing AFSPA in order to flesh out terrorists from Jammu and Kashmir, Nagaland, Manipur, and the disturbed areas of the Northeast. "Terrorists in league with pseudo-human right (...) its try to implicate Army Jawans on fake ground, even some times misusing girls for allurements. (...) The Jawan is dragged to military court, and civil court as well. At this point, AFSPA comes to the rescue of the Jawan "RSS was quoted.⁵

II. Challenges and Recommendations

II.1. Recommendations to India in the context of UPR

36. Urge the Government of India to:

⁵See the news network, TNN/May 25, 2016/04:56AM IST

1. Respect and implement the recommendations made by the UN Treaties Bodies, Special Rapporteurs and the former High Commissioner of Human Rights to repeal AFSPA as matter of urgency.
2. Take legal action against the perpetrators who committed crime to the women whose names are mentioned in the letter of November 2015 signed by the several Special Rapporteurs at the earliest.
3. Withdraw all the military camps from inside and around the schools, colleges and Universities by respecting the Safe School declaration at earliest in order to protect the right to education
4. Invite the Special Rapporteur on Protection of Human Rights while countering the terrorism and the Special Rapporteur on Right to Education.
5. Invite the Working Group on Arbitrary Detention and the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment to review the situation of Ms. Irom Sharmila during her illegal arrest and detention by the Authority since November 2, 2000 to 9th August 2016.
6. Establish the Manipur Truth Commission in order to initiate both judicial and non judicial mechanisms to address the human rights violations for long term peace building.
7. Initiate a political process with armed groups in order to address their political demand and involve women representatives, NGOs and other civil organisations for the political negotiation on sustainable peace.
8. Ratify CAT and the Rome Statue of International Criminal Court.

Yours sincerely,



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Secretary