

article2



of the International Covenant on Civil and Political Rights

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special edition
**militarisation
& impunity
in Manipur**

any person whose rights or freedoms are violated shall
have an effective remedy, determined by competent
judicial, administrative or legislative authorities

The meaning of article 2: IMPLEMENTATION of human rights

Since the adoption of the Universal Declaration of Human Rights in 1948, the human rights movement has worked hard to spread its gospel. The development of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) was a major milestone. Numerous other conventions and declarations have further improved and enhanced the body of human rights principles, and articulated them to the global community. United Nations mechanisms have provided a base for monitoring the observance of rights.

All over the world extensive programmes are now taking place to educate people on human rights. States engage in this work to varying degrees, United Nations agencies facilitate them, and academic institutions participate. The most important education work is done by human rights organisations. As a result today there exists a vast number of persons and organisations firmly committed to human rights; more than at any other time in the history of humankind. Yet human rights continue to be monstrously violated all over the world.

It is time for the global human rights movement to examine why it may not yet be achieving real improvement in the global human rights situation. One factor hindering honest examination is the belief that improvement of knowledge about human rights will by itself end human rights violations. This is a myth based on the corresponding belief that education is itself capable of improving things. In reality human rights can only be implemented through a system of justice. If this system is fundamentally flawed, no amount of knowledge—no amount of repetition of human rights concepts—will by itself correct its defects. Rather, these need to be studied and corrected by practical actions. Hence research and intimate knowledge of local issues must become an integral part of human rights education and related work.

Human rights monitoring mechanisms aim to redress individual violations. This approach is inadequate when dealing with systemic breaches. For example, a country may be condemned for acts of torture, mass murder, crimes against humanity and other violations, and a monitoring body may make some recommendations to correct these. However, monitoring bodies have neither the mandate nor capacity to engage in studies on the actual functioning of components within the justice system—the police, prosecutors and judiciary—through which such recommendations have to be achieved. Thus, even if one person or another is punished, the actual system allowing violations remains, and may even get worse.

Legislation on human rights also does not by itself result in improvements in rights. Legislation can work only through the administration of justice. If justice institutions are fundamentally flawed then legislation remains in the books and is used only to confuse monitoring bodies into believing that conditions are improving. For example, a constitution may provide for fair trial, however the criminal investigation, prosecution and judicial systems may not have reached a credible standard. Such legislation then only mocks the victims and cynically manipulates monitoring bodies and the international community.

Article 2 aims to draw global attention to article 2 of the ICCPR, and make it a key concern of all partners in the global human rights community. This integral article deals with provision of adequate remedies for human rights violations by legislative, administrative and judicial means. It reads as follows. [*Continued on back inner cover*]

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Militarisation & impunity in Manipur

Jiten Yumnam & Phulindro Konsam,
Committee on Human Rights, Manipur, India

Manipur, which is situated on the border of Burma in India's northeast, has witnessed low-intensity armed conflict ever since it was annexed to India in 1949, when the King Budhachandra was coerced into signing the Merger Agreement. The merger was rejected by local people as it was not discussed and ratified by the Manipur Legislative Assembly, which had been formed with an adult franchise in 1948. In response to people's attempts to assert their right to self determination the government of India deployed its armed forces and subsequently enacted special emergency laws, the most notorious being the Armed Forces (Special Powers) Act of 1958, which suspends fundamental rights, including the right to obtain a legal remedy for violations of other rights, including killing by state officers.

The Armed Forces (Special Powers) Act declared Manipur a 'disturbed' area and legitimized full-scale military operations, permitting even a non-commissioned officer to extinguish kill on mere suspicion with guaranteed immunity. The extent of military deployment is such that at the height of anti-insurgent operations in the 1990s there were at least four divisions and 270 paramilitary companies stationed in the small state. Today a military camp can be found nearby every inhabited area of the region. In some parts, the area of land occupied by state security units exceeds that of the villagers. For instance, from Sangakpham Bazaar to Koirengei Duck Farm in Heingang Constituency, a distance of some 5.5 kilometres, the security forces have occupied some 470 acres of land.

There has not ever been a systematic assessment of the effects of militarisation on the people of Manipur. However, it can be said that three decades of suffering and humiliation at the hands of the military has greatly undermined people's physical and spiritual integrity and threatened the survival of entire communities. The threats are variously direct--caused by extrajudicial executions, rape, torture, enforced disappearance and arbitrary detention--and indirect--caused by confiscation of

arable agricultural land, sacred cultural sites and hillocks in residential areas, or restrictions on fishing, farming and other activities in forests and wetlands.

Confiscation of land for military deployment is a recurring cause for great hardship and dissatisfaction, as in the case of the occupation of over 200 acres of land at Mahakabui village in Senapati District, which is now a massive Assam Rifles camp. Land is occupied without regard to its value or importance to local inhabitants. The 8th Assam Rifles have taken over the Chinga Hills, considered a sacred site by the Meitei people. Likewise, they have occupied a prime location inside Manipur University campus which was once the place of the royal palace of King Gambhirsing, and Tombisana School in the heart of Imphal town has been occupied by the Central Reserve Police Force. Elsewhere in the town, the Kangla Pungmayol, a cultural and historical site that was a traditional seat of Manipuri kings, was until recently occupied by the Assam Rifles. Even now the military is attempting to acquire another 120 acres of land at Luwangsangbam in Imphal East District, and at the Waithou Hills.

Where army camps are set up, villagers lose not only their land but also suffer many other restrictions that affect their livelihoods. The 7th Assam Rifles deployed at Thanga Karang and Sendra has completely banned fishing in Loktak Lake after dark, and strictly regulates it at other hours. It has also ordered people there off floating huts in the lake that allowed them the time and means to earn their livings from fishing. These are just the latest impositions on the local population, who were already displaced and denied compensation after a hydroelectric project was commissioned in 1984. Meanwhile, the Khunkhu village council and United North Eastern Tribal Village Authorities Council have consistently complained about troops from Leimakhong army base using a nearby area as a firing range. Intense artillery and small arms practice there has killed and injured villagers and their domestic animals. During firing practices of more than two weeks, villagers and their cattle are forbidden to move out of their houses. The villagers filed a petition to the Guwahati High Court in 1997 and the court in September 1998 directed the army to shift the firing practice location from time to time and pay compensation for casualties. However, the court order has not been respected, in violation of the Maneuvers, Field Firing and Artillery Practice Act of 1938, which obliges compensation for loss of livelihood and damage to crops due to field firing and artillery practice.

The psychological effects of living within sight of an army camp or similar facility, common throughout Manipur and other northeastern states of India, also have not been properly studied. What can be said with certainty is that the heavy military presence precipitates a breakdown in local communication, making people vulnerable to suspicion and forcing communities to close themselves to the outside.

“The heavy military presence precipitates a breakdown in local communication, making people vulnerable to suspicion ”

AHRC Urgent Appeal
Karang villagers in Manipur suffer human rights violations during a recent military operation

UA-184-2005, 24 October 2005

Dear friends,

The Asian Human Rights Commission (AHRC) has received information from the Forum for Indigenous Perspectives and Action in Manipur, India regarding human rights violations committed by the security personnel at Thanga Karang, Bishenpur District, Manipur.

According to the information received, members of the 73 Mountain Brigade under the aegis of 57 Mountain Division led by Major General Govind Dwivedi conducted a massive operation in Thanga Karang between 3 and 5 October 2005. It is alleged that there were as many as 3000 people at Karang during the operation, all of whom have now been confined to the area, where their welfare remains unknown. The fish-traps in the Loktak Lake were destroyed by the motor boats of the army, which has heavily affected the Karang villagers who sustain their lives through fishing activities. Also, there is no road communication for Karang villagers and they have been suffering from a lack of essential commodities following the army operation.

Upon hearing the news that the army launched an operation in Karang, local journalists tried to enter the operation area but were stopped by the aegis of 57 Mountain Division. They were even prohibited from talking with the affected villagers while the operation was going on.

At a news briefing in Karang on the morning of October 5, Major General Govind Dwivedi said that the army conducted the operation because Karang is a stronghold of underground armed rebels. He also claimed that the villagers "welcomed" the army and extended their full cooperation during the operation. He added that the army personnel would be deployed in Karang to prevent any underground activities. The army reportedly handed over two elderly persons to the Moirang police and they were identified Oinam Menjor (52) of Karang Yongchak Pandon and Laimayum Shyamchand (62) of Karang Bamon Leikai.

This major military operation is not the first to be held in Karang. For example, a massive operation was conducted in the Karang area in March 1999. Many human rights violations such as arbitrary arrest, detention, and torture, forced labour and inhuman treatment were reported by the villagers...

The AHRC urges you to immediately intervene in this matter. Please request the Manipur state government to stop on-going military operations in this area and duly compensate the villagers for their losses. Please also request the Government of India to abolish the draconian Armed Forces (Special Powers) Act 1958, which affords excessive powers to security personnel...

Increasingly the military is being deployed in Manipur to protect unsustainable and exploitative government projects. The Loktak Hydroelectric Power Project, which displaced thousands of people in Thoubal and Bishenpur Districts without compensation and caused massive destruction to the Loktak Wetlands, is being protected by the Central Reserve Police Force and the Border Security Forces. The Assam Rifles and Indian Reserve Battalion are guarding the Mapithel Dam of the Thoubal Multipurpose Project in Ukhrul District, the construction of which has been vehemently opposed by local people. Three people died in December 2005 when the Border Security Forces and Indian Reserve Battalion fired upon villagers demanding proper rehabilitation and resettlement after they were forced out of their houses by the Khuga Dam. And the Assam Rifles has publicly stated that they will protect the construction of Tipaimukh High Dam, which local people have opposed for over two decades.

“ As the legacy of atrocities has continued till today so also has the legacy of protest against injustice ”

The expansion of the military and related agencies in Manipur has created enormous problems for civil society. While the government complains that it has no money with which to support civilian institutions, it has blatantly pumped millions more rupees every year into the police and army forces stationed throughout the state. Meanwhile, the spaces for dissent have steadily shrunk.

Public resistance to the militarisation of Manipur began with the historic protests in the early 1980s against the killings and atrocities in Patsoi Langjing perpetrated by the Central Reserve Police Force, including the rape of a pregnant woman. As the legacy of atrocities has continued till today so also has the legacy of protest against injustice, which has been consistently met with violence.

The militarisation of Manipur must be taken seriously. The government of India must stop viewing Manipur simply in terms of military calculations. The idea that militarisation creates national security cannot be sustained: all that it reveals is a hardened denial of fundamental rights, and disinterest in the cries of people calling for justice.

As far back as 1997 the UN Human Rights Committee called upon the government of India to adopt a political, rather than military, solution to the conflict in Manipur. The people of Manipur would welcome the same. The fact that insurgent groups have only gained momentum and strength indicates that three decades of militarisation in Manipur have not worked. Listening and responding to the voices of the people of Manipur for a political solution would be a vastly superior alternative.

The militarisation of Manipur

Laishramcha Jinine, Program Executive,
Human Rights Alert, Manipur, India

People throughout Manipur live in fear of the sound of three to four olive green jeeps or vans roaring through a locality after dark, perhaps early in the morning, to pull up outside a house. The men inside break open the doors and windows, and whisk away someone's son or a newly-married husband. The next morning the bullet-ridden body is found. The authorities claim that the person died in an 'encounter'. Sometimes such incidents are carried out in broad daylight, and in front of eyewitnesses. The body may bear torture marks: burns on the genitalia, a stick inserted into the anus, nails torn off or broken fingers. The torture of one creates psychological ill health throughout the entire society.

Manipur, a small hilly land on the Indo-Burma border has been a controversial part of India since an accord was signed between the King of Manipur, Bodhchandra and the government of India on 21 September 1949. Armed opposition groups fighting for the liberation of Manipur from India claim that the accord amounted to annexation. The government of India has since sent large numbers of troops to Manipur under exclusive military legislation called Armed Forces (Special Powers) Act 1958 (AFSPA), itself derived from the Armed Forces (Special Powers) Ordinance of 1942, which was used by the British colonial government to crack down on the Indian nationalist movement. There is now estimated to be one member of the security forces for every 20 persons in Manipur, which has a population of some 2.5 million, most of whom are small-scale farmers. Out of these, the Chief Minister of Manipur, Okram Ibobi, has reportedly said that around 8000 civilians and 12000 army troops and insurgents have been killed since the conflict began in the 1970s up to 2005.

The military authorities in Manipur are not only above the civil administration but also the judiciary. They impose arbitrary restrictions on civilians' access to their paddy fields, fishing farms and other work places. They conduct military operations without any administrative oversight, and often even prohibit the police access to their areas of operation. They make their own rules and enforce them without regard to whether or not they contradict

or undermine those of the civil administration, national laws or otherwise. For instance, in 2006 the military stationed at Mayang, around 16 kilometres south of the state capital, Imphal, made local people carry a new identity card, and invalidated all other documents for the purpose of military checks, including electoral and student cards and even the government's official cards. In other instances, Max Fajang, a session judge in Imphal East was pulled out of his chair and assaulted in the courtroom by security forces, and the present chief secretary of the state reprimanded an army captain who decided to shut down a power station, affecting the supply of electricity to parts of the capital and other areas of the state.

Office bearers of the Senior Citizens' Forum, Mayang, Imphal West

Rajkumar Brajakeshwar Singh (President); Chrom Naollo Singh (Secretary); Asem Radhamani (Municipal Councilor), August 2006

We are under the shadow of the 22 Maratha Light Infantry Division of the Indian Army stationed at the BSNL office in Imphal. There are not many insurgency-related crimes in our area; however, all of a sudden the army called for a public meeting in which the commanding officer, Major James Thomas, ordered every man and woman between the ages of 15 and 40 to carry an identity card issued by the Mayang Municipal Council. His order was on 16 May 2006. He also said that the cost of preparing the cards must be borne by every individual and that they would start arresting persons not carrying the cards starting from two weeks after that date, and would start a combing operation to make arrests after three weeks. The municipality then informed everyone by loudspeaker announcements. The identity cards were first to be issued in Ward No. 12. Later every ward must have the cards issued. This will cost a huge amount to the already poor people in our village and municipality.

In fact this is not legal. The army cannot make such arbitrary decisions. The community now feels threatened and vulnerable. The officer has also now ordered everyone to report on anyone from outside our village entering it between 6pm and 8am daily. This kind of order is unacceptable. People have a right to move around. We have relatives staying in distant places. We have business relationships with various people. How can the officer expect to get a report of every relative visiting us? This is ridiculous. However, we have to comply or they will arrest us on any charge.

In practice the army is more powerful than the government. We feel that we are under constant watch. Before the army came, everything was peaceful. Now we have to be scared of these people. The central government and the state administration have no concern for our people. Democracy has no meaning in this state. This state is ruled by the army.

“No person can start legal action against any members of the armed forces without permission ”

The AFSPA allows security forces to arrest and enter property without warrant and permits shooting to kill in circumstances where their members are not at imminent risk. In fact, the 1958 law--which was restricted in application to the northeastern states--significantly loosened the restrictions on application that had been placed upon the 1942 colonial-era ordinance. More vaguely-defined powers were added, including the right to use force to kill a person on suspicion of disturbing public order or carrying weapons, to search any place without a warrant or destroy any place on suspicion of it being used by opposition groups. Also, the power to take action, which previously had to be authorized by a captain or above, was delegated to lower ranks, including junior commissioned officers and non-commissioned officers.

No person can start legal action against any members of the armed forces for anything done--or purportedly done--under the AFSPA, without permission of the central government. In this the act contradicts both the Constitution of India, which guarantees equality before the law (article 14), and the equivalent section in the International Covenant on Civil and Political Rights (article 16), to which India has been a party since 1979. It also patently violates non-derogable provisions of international human rights law, including the right to life, the right to a remedy where a violation occurs, and rights to be free from arbitrary deprivation of liberty and from torture and cruel, inhuman or degrading treatment or punishment

How this works in practice can be seen in the infamous case of Thangjam Manorama. Sometime in the night of 10-11 July 2004, the paramilitary Assam Rifles took Manorama from her house, issuing an arrest memo to her family. Her dead body was found covered with scratch marks, a deep gashing wound, probably caused by a knife, and seven fatal bullet wounds into her back, one of which passed through her vagina. The next day, July 12, the home department of the government of Manipur appointed a commission of inquiry presided over by a retired district and session judge, C Upendra Singh, as per section 3 of the Commission of Inquiry Act 1952. However, the Assam Rifles challenged the authority of the commission (writ petitions [c] nos. 5817 & 6187 of 2004), asserting that a commission established by the state government had no authority over the Indian Armed Forces, as per section 6 of the AFSPA: “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act.” The Gauhati High Court endorsed section 6 of the AFSPA on 23 June 2005, and thereby denied the possibility that Manorama’s killers would be brought to justice.

AHRC Urgent Appeal
Torture & murder of a woman by armed forces in India

UA-096-2004, 29 July 2004

Dear friends,

The Asian Human Rights Commission (AHRC) has received information from the Centre for Organisation Research & Education (CORE) on the extrajudicial killing of a 32-year-old woman named Thangjam Manorama by the personnel of the paramilitary force 17 Assam Rifles on 11 July 2004. Her body was found at around 5pm at Keirao Wangkhem Road near Ngariyan Maring Village, after she was picked up by the armed forces in the early morning of July 11. Manorama's family believes that she had been raped and then killed by the army personnel.

According to the report from CORE, a curfew was imposed in Greater Imphal, Bishenpur and Thoubal Districts of Manipur, India since 15 July 2004 in wake of widespread public protests against the torture and extrajudicial execution of Manorama. Large numbers of people came out on the streets, defying the curfew... Over 100 people were injured in police firing on July 16, while the police tried to disperse the people at various places including Kongba, Sangakpham, Tera, Uchekon and some on the outskirts of the state capital, using tear gas and rubber bullets.

The Manipur state administration and military agreed to inquire into the case of Manorama. However, almost all judicial inquiries ordered in prior cases of arbitrary execution are pending disposal since the army has not cooperated, and it is believed that this case also will not end in justice. Your urgent action is required to pressure the government of India to take genuine action to correct this matter...

Military personnel also escape independent and impartial justice by having recourse to military tribunals rather than civilian courts. Under the Constitution of India (article 136[2]) offences committed under the Army Act 1950, Air Force Act 1950 and Navy Act 1957 are excluded from the jurisdiction of the high courts and the Supreme Court. Similarly, the Indian Penal Code and Criminal Procedure Code do not give criminal courts jurisdiction over defense personnel in respect to offences committed under these acts. Even if armed forces personnel are detained by local police, they must be handed over to the military authorities for court martial. The only way by which the decision arising from a court martial can be challenged in the ordinary courts is through the writ jurisdiction of the Supreme Court and high courts granted under the constitution (articles 32 and 226).

Both the AFSPA itself and the security forces operating in Manipur and other parts of the northeast under its auspices stand accused of being racist. Although the situation of law and order in many other parts of the country is even worse than in the northeast, the law has not been applied in those areas. Nor do

“Over some forty years, the Indian government’s attempts to curb armed opposition in Manipur through increasing numbers of troops and increasingly onerous laws have not been successful ”

the troops stationed in Manipur systemically target the some one million persons who have come to the state from mainland India: the numbers of ethnic Indians among the killed, raped and tortured are few and far between; nor are their areas of habitation subject to the same sorts of indiscriminate firing as occurs in those places where the local people predominate. Article 2 of the International Convention on the Elimination of all Forms of Racial Discrimination, which India joined in 1968, calls upon parties to take special and concrete measures in social, economic, cultural and other fields to ensure full and equal enjoyment of human rights and fundamental freedoms by adequate development and protection of certain groups or individuals belonging to them. This obliges legislative and administrative measures to eliminate racial discrimination, equal treatment before the law, protection from violence and enjoyment of freedom of opinion and expression. None of these provisions seem to be of consideration to the government of India in its continued application of the AFSPA and deployment of troops in Manipur.

Recommendations to repeal the AFSPA have so far fallen on deaf ears. In 2004 the central government instituted a committee to review its application, chaired by Justice BP Jeevan Reddy. Although the committee, having made field visits in 2005, recommended that the law be repealed and Prime Minister Manmohan Singh has given his support for this step, to date the act remains in force.

Over some forty years, the Indian government’s attempts to curb armed opposition in Manipur through increasing numbers of troops and increasingly onerous laws have not been successful. In fact, the scale of resistance and number of casualties has increased as the years have passed. Meanwhile, the government denies access to the region by international and regional human rights groups, and concerned individuals and journalists. The granting of access to the International Committee of the Red Cross is anxiously awaited by the hundreds of civilians displaced in the remote hilly areas who are threatened with starvation and death from preventable diseases due to the total lack of health care in the region.

People in Manipur are doing everything they can to obtain justice and get the army out of their land. Irom Chanu Sharmila has been force-fed for the last six years, having gone on a hunger strike after a massacre nearby Imphal Airport in November 2000. In the summer of 2004, mothers shed their clothes and protested naked in front of the former palace at Kangla: an extremely shocking incident in a conservative society. Others have burnt--or attempted to burn--themselves to death in defiance of the Indian Armed Forces. When will their demands finally be met? How many more must lose their lives to make their voices heard?

Irom Sharmila: Fast-unto-death in a corner of India

Kavita Joshi, *Tehelka*, 25 March 2006 (Extracts)

An eye: piercing, intent. A nose, covered by a swatch of medical tape, as a yellow tube forces its way in. Lips, stretched tight as if in pain. A woman sits against a bare wall, huddled under a blanket, tightly hugging herself. This is my first impression of Irom Sharmila as I walk to her hospital bed.

She is incarcerated at the security ward of JN Hospital in Imphal, Manipur, in custody of the Central Jail, Sajiwa. It takes her immense effort to speak, but she tries her best. "How can I explain? This is not a punishment. It is my bounden duty at my best level."

Irom Sharmila has not eaten for over five years now. For this, she has been locked up in jail by the government under very dubious charges and is being forcibly nose fed. Since November 2000, Sharmila has been on a fast-unto-death, demanding the removal of the Armed Forces (Special Powers) Act 1958 (AFSPA).

AFSPA is a law that can come into force in any part of India declared as "disturbed". The act allows anyone of any rank in the army or a paramilitary force under its operational command to shoot, arrest or search without warrant; and to kill on suspicion alone.

Furthermore, there is little scope for judicial remedy. The whole of Sharmila's state--Manipur--has continuously been under this law since 1980 (with minor exceptions in recent times).

It's been five years since that day which changed her life. November 2, 2000 was just another Thursday. Till, that is, a convoy of Assam Rifles was bombed by insurgents near Malom in Manipur. In retaliation the men in uniform went berserk: 10 civilians were shot dead.

You could say that neither the killings nor the brutal combing operation that followed were new to the people. Manipur had been ravaged by umpteen such incidents in the past.

But for Sharmila, Malom was the proverbial straw that broke the camel's back. "There was no means to stop further violations by the armed forces," she says. She began her epic fast.

From then to now, Sharmila's frail body has become a battlefield. Within days of her fast, she was arrested on charges of 'attempted suicide' and put in jail. She refused bail; she refused to break her fast.

For five years now, she has been in custody, being forcibly nose-fed. Time and again, the courts have--rightly--released her. But she resumes her fast and is invariably re-arrested each time.

Kavita: Why did you start upon this fast?

Sharmila: For the sake of my motherland. Unless and until they remove the Armed Forces (Special Powers) Act 1958, I shall never stop my fasting.

Kavita: Could you tell me something about the incident that sparked this off for you?

Sharmila: I had gone there (to Malom) to attend a meeting. The meeting was towards planning a peace rally that would be held in a few days.

I was very shocked to see the dead bodies on the front pages of the newspapers. That strengthened me to step on this very threshold of death. Because there was no other means to stop further violations by the armed forces against innocent people.

I thought then, that the peace rally would be meaningless for me, unless I were to do something to change the situation.

Kavita: Just why are you in custody? Why exactly?

Sharmila: It is not my will. But the state insists it (the hunger strike) is unlawful.

Kavita: But the government is saying that your fast-unto-death is attempted suicide, which is an offence...

Sharmila: Although they may think so, I am in no mood for suicide. In any case, if I were a suicide-monger, how could we communicate like this, you and I? My fasting is a means, as I have no other.

Kavita: How long are you prepared to go on like this?

Sharmila: I don't know, though I do have hope. My stand is for the sake of truth, and I believe truth succeeds eventually. God gives me courage. That is why I am still alive through these artificial means (indicates the tube going into her nose).

Kavita: If you had one wish that was yours for the asking, what would it be?

Sharmila: My wish? We must have the right to self determination as rational beings.

Kavita: Do you think the AFSPA will be repealed? Will you get what you are fighting for?

Sharmila: A lot of the time I realise my task is a tough one. But I must endure. I must be patient. That happy day will come some day, if I'm still alive. Until then, I must be patient.



“Every mother in this place will have a similar story to tell”: Illegal arrest, arbitrary detention & torture in Manipur

N Boinao, Priyokumar, Brojen Toigam & Oinam Hemanta: “It was horrible to see young men treated this way”

Jayantha, grandfather of N Boinao:

On 15 July 2006 four army vehicles came near our house. It was about 10pm. Since it was a warm day we had kept the windows open. Hearing the sound of boots Boinao’s wife Laxmi opened the door and asked who was outside. They did not answer but rushed into our house. Boinao was sleeping inside. They dragged him out and then they searched the house. Everyone in the family was told to sign blank papers. They took thumb prints of all members of the family on those papers.

I was sleeping in a separate room. Hearing the commotion I came out. This was before the soldiers entered the house. I tried to ask them whom they were looking for and why they were taking my grandson. They informed me that they were taking him to the army camp for questioning.

The next day Boinao was handed over to the police at the Moreh police station. When the soldiers came, they had brought one policeman along with them. I was told that his name is Wahid. I was also informed that when the police were framing charges they wanted to add that a grenade was recovered from our house. However, the police constable refused to attest to that charge. Later I heard that the police decided to take my grandson along with others to Imphal.

When preparations were being made at the police station to take the detainees to Imphal, women gathered in front of the police station and protested. They insisted that the police could not take the detainees to Imphal. So the police contacted the

These stories were documented by Bijo Francis, South Asia programme officer with the Asian Human Rights Commission, Hong Kong, in Moreh and Thoubal, Manipur, during August 2006.

1

VICTIMS:

1. N Boinao, 21, son of N Amuchou
2. Priyokumar, 26, son of Ibohi (deceased)
3. Brojen Toigam, 35, son of Mohori (deceased)
4. Oinam Hemanta, 21, son of Lukhoi

INCIDENTS:

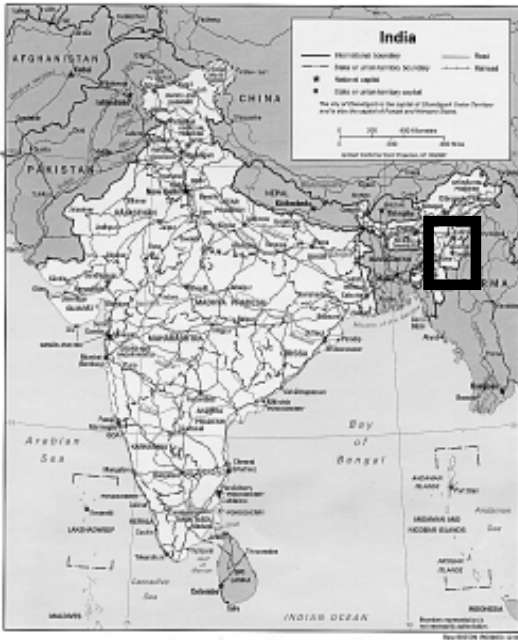
Illegal arrest, arbitrary detention & torture

ALLEGED PERPETRATORS:

Army personnel

DATE: 15 July 2006

PLACE: Ward 7, Moreh



superintendent of police at Chandel. The superintendent came to Moreh on the 17th. On the 18th the deputy inspector general also came, along with special force commandos. The officers told the women to go back home. They gave an assurance that the detainees would not be taken away without informing people. However, at about 10pm that night when there was no one protesting outside the police station they took them away.

My grandson was released on August 2. Now he is under treatment for injuries sustained while in custody. All the detainees were brutally tortured. They were beaten all over their bodies. They applied electric shocks to my grandson's penis. It was a hard sight for me to see him at the hospital. My grandson was recruited to the Indian Reserve Battalion. He was waiting for the confirmation of his medical tests to join. It was at this time that he was arrested and implicated in a crime which he did not commit. I am certain that he will not get through. The shock and trauma he suffered while in custody will not easily go away.



Sobitha, wife of Priyokumar:

My husband Priyokumar was arrested along with Boinao. We are neighbours. We did not know that the army was coming and had already arrested Boinao. On 15 July 2006 at about 10:30pm we heard the front door of our house shaking. It was as if somebody was trying to break it open. The door was bolted from inside. I woke up hearing the noise and thought it was some thief. So I kneeled down and looked out through the gap between the door and the floor. In the faint light outside I could see army boots and also at a distance I could see army men in uniform. Suddenly the door at the back was kicked open by an army man. They poured into the house.

The soldiers shouted to raise our hands. They asked us our names. At that time I was at home with my husband and child. My husband was sleeping, and hearing the sound he also woke up. He was taken into custody and the officers, who were armed with guns, searched our house. They pulled down everything, including containers of grain and other food. I asked the officers why my husband was being taken into custody. I informed them that he is a daily labourer and asked them not to hurt him. I saw an officer slapping him on his face and dragging him out from the house. I tried to stop them, but another officer pushed me inside with the butt of his gun. I fell down.

Then they dragged my husband out of our compound towards one of the army jeep. I followed them begging them not to take my husband away. At that time an officer turned around and told me to go inside my house and go back to sleep. I could not, but neither could I follow my husband. I saw him kicked by army

officers while he was thrown into the jeep. Then an officer came and told me to sign a paper. There was nothing written on the paper. It was an empty form. I refused. But I was told to sign it at gunpoint. I had no option other than to oblige.

My mother-in-law stays nearby. I went and met her and asked her to gather the other women in the locality. By the time the women gathered they had taken away my husband along with several others. He was released on July 21. When I met him, I could see that he had been severely injured. I asked him how and he informed me that he was tortured while in army custody. He said that the night he was arrested he was taken to the army barracks. Once inside he was undressed and water was poured on him. Later they started beating him and asking for information related to some rebel movement activists. My husband informed them that he is a daily labourer and that he did not know about anyone whom they were asking about. Then they tied a wire on to his penis and connected the free end of the wire to a power supply. He screamed out loud. At that time an officer held a piece of cloth on his mouth and made him silent. Soon he lost consciousness. He said while he was tortured he could hear other persons crying out from nearby rooms in the barracks.

Since my husband was released until now he has been in a hospital at Imphal. He is recovering, but we are afraid that the army will again come and take him into custody. So we wish we could leave from this place.

Ithobi Toigam, mother of Brojen Toigam:



On 15th July 2006 night I heard sounds outside my house. I could not make out what it was. I thought the pigs were fighting. Soon I heard someone stamping at my door. Before I could open the door, the latch snapped and the door was thrown open. An army officer entered the house and started speaking in Hindi. Before I could reply or even understand what the person was asking or looking for more soldiers came in. Along with them there was also a police officer. They did not find anything. Brojen was sleeping inside the house. He also woke up upon hearing the noise.

They grabbed Brojen and took him outside the house in spite of our protest. They bolted the door from outside. I saw Priyokumar sitting on the veranda, guarded by other military persons. After a while an officer opened the door and told us to sign a few documents. My daughter-in-law Premila refused to sign. She asked why she should sign the documents since nothing was written on them. We asked why they were taking Brojen, and the police constable answered that they were taking him only to ask a few questions. I did not see my son being beaten, but I saw Priyokumar was kicked around and forced into an army vehicle blindfolded.

It was horrible to see young men being treated this way by the forces that came supposedly to protect us from criminals and anti-national forces.

Oinam Hemanta:

On 16 July 2006 at about 4am we heard someone violently knocking at our door. We were all sleeping. We opened the door. As the door opened army officers rushed into the house. There was a policeman named Wahid too. The officers who came inside opened the mosquito net around our bed. My brother's wife and brother were asked to stay outside the house at gunpoint. They asked us several questions regarding involvement with the underground forces. I denied any involvement with anything to do with the underground groups. They asked my brother to give me some clothes and took me away after they forced us to sign two documents.

I was released on August 2. Before being released I was handed over to the police and accused of possession of four cartridges. However, the police officer who was present at the time of arrest denied that the army had recovered anything from my custody at that time.

While I was in army custody I was brutally tortured. I am undergoing treatment for the injuries I sustained. While in police custody I was taken to the doctor twice. The jail doctor informed the authorities that my condition was not stable and that I had to be given better treatment. The jail doctor also sent his report to the chief judicial magistrate of Chandel, in Imphal.

I do not want to discuss what happened to me while I was in army custody. That experience gives me nightmares and I do not know how to get it out of my mind.

Abdul Wahid, police constable, Moreh police station:

They send two police officials to accompany army officers during every operation. For the July 15 operation in Ward 7 of Moreh, I was asked to go along with another constable, Shyam. We witnessed several persons being arrested. One person's name I remember as Priyokumar. In his arrest memo it was written that he was a member of the UNLF [United National Liberation Front]. In my opinion it is not correct to brand a person like that.

After the arrest and search both myself and Shyam were given memos to sign in which it was mentioned that during the search five 9mm cartridges were seized from the possession of one Boinam, and a Chinese-made grenade was also seized from one of the persons who were arrested. I refused to sign this fabricated document, though my friend Shyam was prepared to do so, out of fear. However, later he also decided not to sign. In fact we did not recover anything like that during our search. The army appears to be making up cases with which to charge people with crimes to justify their operations.

“I do not want to discuss what happened to me while I was in army custody; that experience gives me nightmares and I do not know how to get it out of my mind ”

—Oinam Hemanta

“In most cases the army gets a fabricated medical certificate from a doctor who never even sees the detainee and hands him over to us to be produced in court”

—PC Abdul Wahid

The police must monitor army actions. However, the police are threatened by the army. One of our officers who refused to comply with the demands of the army lost his life. On August 3 there was also a confrontation with the army. They came to our police station and asked for two police officers. The officer in charge was one of the two who went with them, and saw the army beating up kids for eating tobacco. When he protested he also was beaten up by the army along with the boys. When he came back to the police station and explained the incident to us, we were all in low spirit. While he was explaining it the army officers again came asking for two officers and I told them to go away, saying that they have no business here. We are since informed that the army officers have furnished a false report to their superior officers stating that the officer in charge was under the influence of alcohol. I can vouch that this is impossible since I know that the officer in charge is a true Muslim.

The army has a unit that they call operative intelligence. You never know who works for this unit. Its officers never appear in uniform. They walk around freely, gather information and target people for arrest and later come for our help to get them. In many cases they take people into custody on a suspicion and torture them. In most cases these people are youngsters who have nothing to do with any secessionist movement. By the time these people are put back in police custody to be produced in court they might have suffered the worst from the military.

In most cases the army gets a fabricated medical certificate from a doctor who never even sees the detainee and hands him over to us to be produced in court. The army provides the name and address of the person and the doctor issues the certificate saying that the person is in perfect health. However, when we see the person he has a swollen face and bruises all over the body, and injuries from being beaten and brutally tortured. One of the most common methods is to apply electric shocks to the penis. When the person is produced before the magistrate he does not complain because those who complain cannot return home. If the army comes to know that someone has complained they will kill him later and claim it was done in an encounter.

Even magistrates are afraid of the army. If they take any action against the army then they will get them on the street. They will harass a magistrate in the presence of family members and even take them into custody for questioning. If this is the situation of magistrates and police officers like me then you can imagine the conditions of ordinary people who are detained and arrested by the army.

A soldier can shoot to kill and all that he needs to say is that the person shot was suspected to be an underground activist. They enjoy absolute power in this region. If the army takes someone into custody and tortures him brutally and thinks that the person will die soon they will simply kill the person and throw the body into some forest and later say that he was killed in an encounter.

These raids that the army conducted [in July and August] were the result of an insurgent attack on an army camp in the first week of July. The insurgents fired RPGs at the army camp from Burma. One fell near the gate of the camp and one non-commissioned officer died. About ten RPGs fell on the rooftops of houses and people lost property and also many suffered injuries. Now the army came and raided houses, while we as policemen are forced to be silent spectators and witnesses. I do not know when this will end. The ordinary people here suffer equally from the army as well as the insurgents.

It is true that we can register cases against army officers where we receive complaints. But who will dare to complain in these circumstances? What is the guarantee that people like us who work for the police will not face an attack by the army if we take action against army officers? All that we can do now is hope that the government will come up with some solution to this problem.

Jano: Crying from fear & hugging his mother

Mani Thombi, mother:

The army came to our house past midnight of July 16. There were about 100 soldiers. They surrounded our house and knocked at our door, which I opened. They searched the house but could not find anything. My son was sleeping in the room which is open to the front veranda; it has no door. He woke up and was asked to step out of the room. Then one army officer came out with a grenade in his hand and asked my son in Hindi what it was. In fact, he did not know what it was. He also can not speak Hindi, but my elder daughter can. She said to the army officer that it, "It appears to be a grenade that you might have brought along with you while you came and now want to use to implicate my brother."

The army had come with a list of names which they claimed was the list of suspects in the locality. I said to the army officer that there is another person in the locality with the same name as my son and informed him that it might be that person whom they were looking for. However, the officers did not listen.

My son was crying from fear and they did not understand that my son could not even speak sensibly since he is mentally disabled due to a fall from a tree when he was a child. He hugged me by my waist and cried loud. The army officer kicked my son on his back and it hurt him. He also has a problem with his walking. So they dragged him away. I tried to follow him. I was recovering from surgery and had a pain in my waist. When I tried following an officer kicked me there. The pain was unbearable. However, I could not stay back since my son's life was at stake. I cried aloud and shouted at the officers saying that they were making a terrible mistake by taking my poor son away. I saw them throwing my son into the army vehicle.

2

VICTIM: **Jano, son of Punshi**
INCIDENTS:
**Illegal arrest, arbitrary
detention & torture**
ALLEGED PERPETRATORS:
Army personnel
DATE: **16 July 2006**
PLACE: **Ward 7, Moreh**



I could not keep quiet. I ran around waking up people and urged them to follow the army vehicles to wherever it went. While doing this I forgot the pain in my waist. I managed to get to the Mairaphabi [women's organisation]. By that time I had a severe pain in my right shoulder. I was also scared to chase the army vehicles alone. So I had to wait until it was daybreak to continue.

At morning we gathered together in front of the police station. By about 4pm my son, along with many others whom I was informed were also arrested during the night, were brought to the police station. I could see that my son had been brutally tortured. He was shown to a doctor who advised that he be given more medical treatment. However the police refused to provide any.

As a mother I cannot forget the look in my son's eyes when he was brought to the police station. I also cannot forget the way he tried to hug me when he was pulled away from me by the army. I cannot forget the officer who kicked my son and me.

However, to whom shall we complain about all this? The police are equally helpless. To the army or to the government who sent the army here? Or to the insurgents? Every day here is uncertain. You can never be sure about tomorrow.

3

VICTIM: Meisanam Premkumar, 26, son of Ibotombi
INCIDENTS: Illegal arrest, arbitrary detention & torture
ALLEGED PERPETRATORS: Assam Rifles personnel
DATE: 16 July 2006
PLACE: Ward 7, Moreh

Meisanam Premkumar: "He will not come back; he is afraid that he will be taken again"

Shanti, elder sister:

At about 4:30am on 16 July 2006 thirty soldiers from the Assam Rifles kicked at our front door. My brother opened the door. There were two policemen also. They entered and searched our house. They did not find anything and started questioning us. My brother said his name is Amo, but the officers said that his name is Premkumar. They pulled a paper out of a red file and all of us were told to sign it. I did not sign, but my younger brother signed along with my father-in-law and sister-in-law. They accused my brother of being a member of the UNLF. In fact, he has nothing to do with this UNLF. He is married and has a child.

My brother was taken away in an army vehicle. He was later released but will not come back since he is afraid that he will be taken into custody again.

Soibam Mithun:
"I have no words to explain how I feel now"

I came here to give tuition to children as I finished 12th grade. On the night of July 21-22 I opened the door, hearing someone outside. I wanted to go out but my brother and mother held me back. Then an army officer stepped into the light. He asked all of us to step outside. As we came out, soldiers poured into the house.

4

VICTIM: Soibam Mithun, 23, son of Soibam Samu
INCIDENTS: Illegal arrest, arbitrary detention & torture
ALLEGED PERPETRATORS: 24 Assam Rifles personnel
DATES: 21-22 July 2006
PLACE: Ward 7, Moreh

We were told to stay with our hands raised while one pointed his rifle at us. The officers who went inside came out with some CDs. An arrest memo was produced. I did not see anyone preparing it. However, my name was on the memo and the underground organisation UNLF was also mentioned. I was beaten up and put into the army vehicle. My brother and mother protested, but no one heard them and an officer threatened that if they made more noise then they would take my brother too. Still my brother did not stop shouting, but my mother was so scared that she held her palm across my brother's mouth to keep him silent. I was thrown into the army vehicle.

“A wire was fixed to my testicles and they applied electric shocks; they hit me on the back of my head with a rifle butt”

—Soibam Mithun

I was taken to the 24 Assam Rifles' camp in a Gypsy [an SUV commonly by the army]. On our way to the camp we did not stop at the police station. At the army camp I was blindfolded and taken to a room. My legs and hands were tied. I was told to lie face up on a wooden cot. My legs were stretched and my underwear was removed. A wire was fixed to my testicles and they applied electric shocks. I had not suffered anything like that in the past. They hit me on the back of my head with a rifle butt. They accused me of being a UNLF cadre. I told them that I am not. The more I said that I am not connected with any organisation and that I was making a living by private tuition, the more they hit me and applied electric shocks. For a moment my blindfold was removed and I also saw others like me in the same room being tortured in a similar manner.

The interrogation continued for about a few hours, until 4am. Later I was told to have some tea, but when the tea was brought they poured it onto my thigh: the scar is still there. In the morning I was told to sit in the sun and made to eat chilies. They also sprayed chili powder in my eyes. I could not urinate and they gave me some tablets, which they forced me to take and drink a lot of water. Still I could not urinate. Then an officer came and threatened me again. He asked lot of questions about whether I was associated with the UNLF. I repeated that I was not. They asked me, “Who fired the shells?” “Who killed the Subedar [an army rank]?” I said that I was in Imphal during the time of that incident, but they thought that I was lying.

At about 4pm I was blindfolded again. When the blindfold was removed I found that I was at the police station. I stayed there for a day and the next day was taken to Imphal where I was produced at the Chief Judicial Magistrate's Court. I was remanded till the 27th and then was again produced before the court and released on bail the same day. In between I was interrogated at the Imphal police station and Kangla police station. I said that, “Whether you torture me or not, I don't have anything to say.” I was not tortured much at the police station. I have a friend at Kangla police station and because of him I was not tortured at all there.

I have no words how to explain how I feel now. It is very difficult to put in words. One has to go through it to understand it. I am so scared of the army that I do not feel comfortable when an army

VICTIM:

Moirangthem Ibohal, 30

INCIDENTS:

**Illegal arrest, arbitrary
detention & torture**

ALLEGED PERPETRATORS:

Army personnel**DATES: 30-31 July 2006****PLACE: Ward 7, Moreh**

person is travelling in the same bus with me. I find it difficult to go out of my house since on the road you meet soldiers. I still have problems with my testicles and to urinate. I am still undergoing treatment.

I do not think that I can live here anymore. I do not know what to do now. I want to finish my life.

**Moirangthem Ibohal: “What is an arrest memo?
A document to measure the level of torture?”**

Leibaklai Moirangthem, mother:

At about 10:30pm on 30-31 July 2006 we heard a few vehicles coming and stopping by our house. When my dog barked the occupants threw stones at it. Soon the dog came in and the gate was pushed open, and they knocked at the door. Before I could open it the army broke the door open and came inside. A police officer was also present. They searched my room. They asked who was staying upstairs. I said that an old lady stays there and that she had gone to Imphal.

They knocked at my son’s door and pushed it open. My daughter-in-law and my three grandchildren were sleeping on the floor; my son was sleeping on the bed. They searched every corner of the room. They opened my son’s cupboard and tried placing something inside the cupboard between the blankets. I could see what they were doing from outside. I shouted from outside and asked what they were doing inside the cupboard. One of the officers came outside the room and signaled me to keep quiet by putting his finger across his mouth.

Then they searched my son. My son asked the officer what he or anyone else in the family had done. Soon they started beating him. I cried out loud along with my grandchildren and my daughter-in-law, asking them not to beat my son. They stopped beating him for a while, but suddenly one slapped him on his face. The slap was so hard that the sound was like a firecracker. My son had a previous injury on his cheek and he screamed out loud from pain. I felt faint.

Soon another soldier brought a paper. We were told to sign that paper, on which it was written that my son was associated with the UNLF. Then they dragged him out of the house. We continued protesting, but it was no use. I tried to stop them. Then one officer came and asked for a medical certificate to show about my son’s treatment. We gave it. We thought that he was being taken in an army vehicle to the police station. We went to the police station along with others in the locality. However we did not find him there. I informed a police officer what had happened. The police officer said that if they had prepared an arrest memo it must be okay and that they would not torture him very much. I did not understand this logic. They arrested and beat my son, searched our house without permission and accused my son of being a member of the UNLF. Now these officers said that if there is an arrest memo prepared the chances of the army torturing

my son are less compared to if they have not prepared one. What is this arrest memo? Is it a document to measure the level of torture?

Soon I realised that there were lot of other people also had been taken into custody on the same night and it became a public issue.

About 5pm the next day they produced my son along with others at the police station. But the police refused to receive him since his condition was so bad and the army had wrongly recorded the time of arrest. The police officer said that they could not accept him because he might die in police custody. I did not have any more tears to shed. I was like a piece of wood. The son to whom I gave birth and brought up and who was to take care of me and his family and the only hope for us now was so brutally injured that he could not even open his eyes. His face was swollen from beating and he was so red from bruises that it was the worst sight I had ever seen.

The army kept insisting that the police should accept my son, but the police kept refusing. They refused for about 12 hours. All this time I was begging various persons to get my son a doctor, but no one heard my cries. You cannot understand this pain unless you are a mother. And look around you and every mother in this place will have a similar story to tell. They are murderers.

Later the police accepted my son and kept him for 12 more days without producing him in court. I was told later that the police cannot do this and to extend remand they must go to court. What kind of justice system do we have here in this country?

My son is still in custody. Whom shall I complain to about what is happening? To the government, army or police? He will be produced in court today and I have to go. I have complained in court; however, the court is also helpless. It seems that nobody who has complained in the court has ever received any good. The only thing that will happen is when you come out of court you will face another army officer who will threaten you by asking why you complained to the court. They ask, "Don't you want to live in your village?" They said that will burn our house and rape our women if we complain. I am no more afraid. I am sure that by the time my son is released he will have suffered so much that he will find it difficult to lead a normal life. None of us are spared.

Huirem Bhakta: "I had to pay the police to take me from the army"

[In mid-2006] I was abducted by an underground group and taken to their hideout. I was beaten up by them since they thought that I was an army and police informer. I said that I am a poor farmer and had nothing to do with the army or police. They released me after a few days.



6

VICTIM: **Huirem Bhakta**
INCIDENTS: **Illegal arrest, arbitrary detention & torture**
ALLEGED PERPETRATORS: **Central Reserve Police Force (CRPF) personnel**
DATES: **17 July 2006**
PLACE: **Thoubal**

Once I was released, I was taken into custody by the army. I was arrested on the night of July 17 and taken from my house blindfolded to a CRPF outpost and later to a camp in a bulletproof vehicle with some others. While in the vehicle we were kicked around, but the real torture was once we were in the camp.

They separated us then asked us about guns, wireless sets and grenades. I informed them that I had none of those things. Then they started telling me if I did not have those things to tell them where they could find such things and who kept such things. I said that I do not know anyone who keeps such things.

Then I was told to lie down. My hands and legs were tied together. I could not see what they used to torture me, but I can say it was heavy and flat. They kept beating me with it all over my body. When the pain became unbearable I tried to stand up. Then they held me down with an iron rod. They forced my mouth open with a rifle barrel. A stone was inserted into my mouth and they continued beating me. I could not cry since the stone was inside my mouth. They hit me heavily on the spine. Then they forced something on to my shoulder and tried twisting it. The torture continued from 5am to 6pm. Thereafter we were taken to a doctor who gave us some tablets to eat.

When I was handed over to the [regular] police, the police first refused to take me into custody. They were scared since they thought that I may die from my injuries. I had to pay 2500 rupees to the police for them to take me from the army. Once in police custody I had to pay a lawyer 11500 rupees as a fee for bailing me out on July 25. But all of this is nothing compared to what I faced while I was in army custody.

As in many cases, an arrest memo was prepared for me and handed over to my relatives. But what is the purpose of such a piece of paper if they ignore all laws and torture us at will? I have filed a complaint with the superintendent of police but I am sure that there will be no action taken on it. The CRPF is more powerful than anyone in the government. I want to pursue my case and somehow get out of this place, but I do not know where to go.

7

**VICTIM: Namoijam Chothoi,
28, son of Bibison**

**INCIDENTS:
Illegal arrest, arbitrary
detention & torture**

ALLEGED PERPETRATORS:

Army personnel

DATES: 17 July 2006

PLACE: Thoubal

Namoijam Chothoi: Tortured in old wounds

Bibison, father:

My son was arrested on 17 July 2006. The army came to our house and knocked at our door. I told them that I could not open the door unless they told me who they were and who they were looking for. My son had been abducted by underground forces a few weeks before and I was scared that they would come for him again. They replied that they were army so I starting opening the door; they did not wait but kicked it down and stormed into the house. They held a rifle to my head. I told them not to harm me or anyone inside the house. They got my son from his bed and took him out. He still had injuries from the assaults he had suffered at the hands of the underground movement people. He had bandages on his body. They started beating him in front of

me. I pleaded with them not to beat my son but they did not listen. They dragged him into a vehicle in which they had come. When they were taking him I cried to them not to take him and hugged their legs. Then one officer hit me with a rifle butt. I fell down and they took my son.

I met my son at the Bishnupur Chief Judicial Magistrate's Court on the 25th. Between the 17th and 25th I tried my best to find where my son was being held but I was not successful. When I met him at the court he told me that while he was dragged to the vehicle his bandages had fallen off from his wounds and later in the army camp the soldiers tortured him on his wounds. Now he is deaf in his right ear due to a severe injury from beating and slapping.

He is still in the custody of the police. I do not know when he will be released. I have contacted a lawyer who is the neighbour of one of my relatives. The lawyer has collected about 11000 rupees from us. To raise this money we had to sell our year's rice supply and also pawn our gold. The community also helped. The police officers at Moirang police station have also asked for money. The sub divisional police officer's staff informed us that unless we pay them 500 rupees each then they will not release my son.

Ningthoujm Deven: Assaulted with a hockey stick

In the night of 8 October 2005 some people came to my house and asked me to open the door. They did not identify themselves as army officers. When we opened the door I could see that they were in army uniform. The moment the door was opened they came rushing inside the house. I asked them what the problem was. They did not answer, but dragged me out of the house into a waiting vehicle. My father tried to stop them but could not.

The women in the family raised the alarm by ringing bells. There was a person along with the army persons who had covered his face with a black cloth. I could only see his eyes. He was the person who identified me to them. I was taken in a vehicle to the 7 Assam Rifles Camp at Sagang. The camp commander, Jitendra, ordered that maximum force be used to extract information from me. I said that, "I can give you any information which I know," and pleaded for them not to hurt me. But I did not know what information they wanted from me.

I was actively working as the organizer of a drug rehabilitation programme for the Southern Rural Development Organisation, of which I was the assistant secretary. It is a registered non-governmental organisation. Many people, particularly youth, seek our help. We do not know the identities of the persons who come and accept our services. We provide counseling and medical care through hospitals. I thought probably the army was expecting information regarding some persons who had visited us. In fact we do not collect personal details like addresses or other contact details of those who visit us, to safeguard identity and maintain confidentiality. I was quite certain that if the army was looking

VICTIM: Ningthoujm Deven, 33, son of Ango
INCIDENTS: Illegal arrest, arbitrary detention & torture
ALLEGED PERPETRATORS: Camp commander Jitendra and subordinates, 7 Assam Rifles
DATES: 8 October 2005
PLACE: Thoubal



“If I die before my case is decided, I hope my wife and children will continue the fight”
—*Ningthoujm Deven*

for information regarding persons whom we attend to in our centre I could explain to them the nature of our work and get out of custody. But what followed turned my beliefs upside down.

The army officers first started kicking me. Then they took me to a room. My hands were tied together and my legs held together with another rope. Then I was told to lie down on the floor. They raised my legs and started beating me on them. They did not ask any questions at first. I started to cry out loudly in pain. I pleaded to them to stop hitting me but they continued, using a hockey stick.

Then one officer asked me, “Where is the mobile phone and guns?” The officer also asked me where I had hidden money. They also asked me when and where the underground movement would strike again. I said I did not know and I also said that I did not have any weapon or mobile phone, but they did not listen. When I tried to move they threatened me that if I moved much they would apply chili to my anus and mouth and would break my bones. But I could not help moving violently from pain.

I was handed over to the Kumbi police station at about 3pm the next day. Since that police station did not have any jurisdiction in my case, I was kept there for a day and the next day transferred to Sugunu police station. But that station did not have any place to keep detainees, so I was taken to Imphal police station.

At Imphal I was taken to the residence of the Chief Judicial Magistrate. I informed the magistrate what happened to me. However the magistrate remanded me till the 14th. I was bailed out then. I was not examined by a doctor. The magistrate did not take any steps to do that. However, after I was released I admitted myself to the Regional Medical Centre. I have also filed a medico legal case against the army, which is going on. However, now I am infected with tuberculosis. I am informed by the doctor that the infection is probably due to the injuries I sustained while in custody.

I will not give up my case. If I die before my case is decided, I hope my wife and children will continue the fight.

The Armed Forces (Special Powers) Act 1958

Act 28 of 1958, 11 September 1958

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the State of [Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura] [Subs. by Act 69 of 1986, sec. 43, for "Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura and the Union Territory of Arunachal Pradesh" (w.e.f. 20-2-1987)].

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

1. Short Title and Extent –

Short Title & Extent

(1) This Act may be called [The Armed Forces (Special Powers) Act, 1958] [Subs. by Act 7 of 1972, sec. 3, for "the Armed Forces (Assam and Manipur) Special Powers Act, 1958" (w.e.f. 5-4-1972)].

(2) [Subs. by Act 7 of 1972, sec. 4 (w.e.f. 5-4-1972)] It extends to the whole of the State of [Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura] [Subs. by Act 69 of 1986, sec. 43, for "Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura and the Union territory of Arunachal Pradesh" (w.e.f. 20-2-1987)].

2. Definitions – In this Act, unless the context otherwise requires:

Definitions

(a) "armed forces" means the Military forces and the air forces operating as land forces, and includes any other armed forces of the Union so operating;

(b) "disturbed area" means an area which is for the time being declared by notification under section 3, to be a disturbed area;

(c) all other words and expressions used herein, but not defined and defined in the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) shall have meanings respectively assigned to them in those Acts.

3. Power to Declare Areas to be Disturbed Areas [Subs. by Act 7 of 1972, sec. 4 (w.e.f. 5-4-1972)] – If, in relation to any State or Union territory of which the Act extends, the Governor of that State or the Administrator of that Union territory or the Central

Power to Declare Areas to be Disturbed Areas

Government, in either case, if of the opinion that the whole or any part of such State or Union territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil powers is necessary, the Governor of that State or the Administrator of that Union territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union territory to be a disturbed area.

Special Power of the Armed Forces

4. Special Power of the Armed Forces – Any commissioned officer, warrant officer, non commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area

(a) if he is of opinion that it is necessary so to do for the maintenance of Public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognisable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that Purpose use such force as may be necessary.

Arrested Persons to be made over to the Police

5. Arrested Persons to be made over to the Police – Any person arrested and taken into custody under this Act shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

Protection to Persons acting under Act

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

Repeal & Saving

7. Repeal and Saving – [Repealed by Amending and Repealing Act, 1960 (58 of 1960), First Schedule, sec. 2 (26-12-1960)]

The Armed Forces (Special Powers) Act: An unproclaimed emergency & gross injustice

Dr Naorem Sanajaoba, Professor & Dean of Law
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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. The state has rationalized these abuses through enactment and enforcement of laws like the Armed Forces (Special Powers) Act of 1958 (AFSPA).

The AFSPA's predecessor, the Armed Forces (Special Powers) Ordinance of 1942, was enacted to neutralize the quit-India movement. It was used exclusively to further the objectives of colonialism. The 1942 ordinance, however, in fact expedited and facilitated the passage of the Indian Independence Act in 1947. The 1958 law inherits the same powerful political potency. This can be seen in the fact that the AFSPA was introduced in 1958 to quell an ethnic uprising in the Naga Hills of Assam. Yet over four decades it has created a chain-reaction, starting from the small chain of hills into a conflagration over all of the seven northeastern states.

An unproclaimed emergency

Parliament did not fully apply its mind to the passage of the statute in 1958. The law, which took on emergency status, was enacted without formal declaration of emergency, as Home Minister GB Pant saw it passed as a short term measure, after only three hours of debate. When the parliament briefly discussed the purpose of invoking the law in Manipur and the Naga Hills, members of parliament from those areas resisted its passage.

Like addicts dependent on a drug, the state and security forces have become so conditioned by their dependency on this unproclaimed emergency law that they feel deeply vulnerable without it. So the act goes on and on in perpetuity. Similarly, the

“The problems of the northeast have been misconceived as ‘law and order’ problems when in fact they are a consequence of unresolved political questions ”

perceptions of decision makers about the situation in the northeast have been distorted and rationalised by their addiction into the following:

1. The security forces are fighting a low-intensity war against “anti-national elements”, as they are known to the army.
2. The security forces have assumed powers for internal security management on par with defence against external aggression to aid the civil authorities.
3. The security forces use military power to quick-fix the fault lines left by our colonial history.
4. The security forces need the AFSPA and other draconian laws in order to maintain public order.
5. The security forces should not be dragged into allegations of human rights violations as they have their own court martial system.
6. The numbers of security forces deployed are not excessive, although they constitute a sizeable part of the third-largest army in the world against a few hundred politically-motivated secessionists.
7. Human rights violations are not atrocities; they are a modest inconvenience to be borne by the civilian population, which are necessary to keep India intact.

In fact, these reasons are much the same as the arguments advanced when the 1942 ordinance was enacted in order to keep the British Empire intact. The irony lies in the use of the same justifications to re-colonize after the end of colonialism. Just as the earlier law was used to keep a colony in tow, the latter one does nothing other than to show that colonialism has survived in India even after the withdrawal of the British in 1947.

The problems of the northeast have been misconceived as “law and order” problems when in fact they are a consequence of unresolved political questions emanating from the time of independence. Manipur and Tripura were annexed to India only some two years after independence was proclaimed, while Assam became a part of British India not by choice but as a result of the Treaty of Yandaboo signed between the British and Ava kingdom in 1826. Accords between nationalist groups and the government during the last five decades have been highly restrictive, excluding any role for the higher judiciary, human rights commissions or executive agencies, even the army. As a result they have yielded little: dialogue since 1997 with one of the secessionist outfits in Nagaland has brought no result after nine years.

Human rights obligations ignored

The government's obligation to abide by the International Bill of Rights arises out of constitutional requirements, customary international law, India's common law background, state practices and, above all, the union government's signature and ratification of the two key international covenants in 1979. These can be identified as follows.

1. Articles 253, 51, 246 and schedule VII list I items 10-15, among others, of the Constitution of India.

2. Fundamental rights under chapter III of the constitution, which can no longer be suspended even during a situation of emergency, following the 44th amendment.

3. Article 21, compounded with articles 14 and 19 of the constitution, which have been placed as a special class of mini-code, especially after the construction of the 'due process of law' meaning the 'procedure duly established by law'.

4. The rule of law, democracy and judicial review are basic features of the constitution, unlike peripheral and unsustainable special laws, which do not conform to the basic tenets of the rule of law.

5. The Supreme Court of India's endorsement of the human rights covenants of the United Nations in the process of evolving 'human rights jurisprudence' in several landmark public interest litigation cases, and by incorporation as part of particular fundamental rights as in *PUCL v. Union of India* (1977; 2 JT 3/1/1), among others.

6. State practices since India's becoming a member of the United Nations in 1945, two years before independence.

7. General and customary international law as followed by the comity of nations, of which India is an inseparable part.

As a party to the International Covenant on Civil and Political Rights, the government of India is required to report periodically to the UN Human Rights Committee. It has so far submitted three reports. The fourth report was due to be submitted in 2001, yet up to now it has not been. This delay reflects its utter neglect of its obligations under the covenant. Notwithstanding, the committee as far back as 1991 found section 4 of the AFSPA and other sections too to be incompatible with articles 6, 9 and 14 of the covenant.

Beyond the above, international humanitarian law stipulates universal standards which even in the event of violations do not lose their legitimacy.

1. The Geneva Conventions of 1949, alongside the domestic Geneva Convention Act 1960, render all international humanitarian laws applicable to India and its forces.

“ The government's obligation to abide by the International Bill of Rights arises out of constitutional requirements, customary international law, India's common law background, state practices and, above all, the government's ratification of two key international covenants ”

“No civilized jurisprudence would justify permission given to security forces to kill citizens”

2. The protection of life, liberty and property of civilians and *hors de combat* is non-derogable under common article 3 of the conventions and the two protocols. The International Court of Justice also endorsed these rights as *jus cogens* under customary international law (*Nicaragua v. USA*, 1986).

3. Non-combatants, injured civilians and wounded or captured insurgents in the northeast are fully protected under domestic law (see Martens clause). The Supreme Court has laid down guidelines on the same (*NPMHR v. Union of India*, 27 November 1997, paras. 56-58).

4. Insurgents and national liberation movements have also been admitted into international humanitarian law, especially since the decolonization movements of the 1960s. They too are bound by the same standards.

The maintenance of public order and tranquility is within the ambit of the Criminal Procedure Code, section 129 of which provides for the dispersal of an assembly by the use of civil force, and section 130 of which for the use of armed forces. This law is adequate to mobilize armed forces where required to restore order. The AFSPA is an additional, highly repressive feature of military control of the northeast.

The Supreme Court should see the AFSPA be struck down as it is incompatible with both international human rights and humanitarian laws and the domestic provisions that follow from these. However, the Supreme Court instead upheld the statute on 27 November 1997 and only by overlooking the gross human rights violations that have occurred under its provisions since 1958, India's obligations under the Geneva Conventions and International Bill of Rights, and the basic fact that the Constitution does not envisage long-term deployment of the armed forces in civilian areas.

The 1997 judgment failed to refute criticism that the powers exercised under the AFSPA violate the constitution and international laws to which India is bound. It failed to clarify as to how the provisions of the law that allow for security forces to fire upon persons and cause death on the order of even a non-commissioned officer with the slightest suspicion of an offence do not amount to the legalisation of extrajudicial execution.

In the 60-page judgment, the constitutional bench, headed by the Chief Justice, J S Verma, observed that the parliament could enact the impugned statute through the power conferred under article 248 read with list 1, entry 2, entry 97 and entry 2A, inserted after the 42nd Constitutional amendment. The verdict demonstrates an extreme technical formalism which is at the same time of the crudest positivist kind, totally devoid of the notions of public justice that are now supposed to be part of our civilization.

No civilized jurisprudence would justify this permission given to the security forces to kill citizens. The Supreme Court has thus far failed in its duty to the people of the northeast. In this it

also failed to consider the recommendation of the National Human Rights Commission of the year earlier that the law be repealed; likewise, the government has itself failed to comply with this recommendation. In this, the commission has been joined by numerous other domestic and international human rights groups, which have denounced and called for the withdrawal of the law, or at least introduce minimum safeguards.

Procedure established by law & gross injustice

Article 21 of the Constitution of India states that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This provision is intrinsically not an enabling law but a disabling law. It cannot and should not be construed so as to mean that one’s life should be taken away, by the state simply enacting a new law. A full bench of the Supreme Court should therefore review the 1997 judgment.

The sharp difference between an enabling law and disabling law can be best understood by looking at how ‘procedure established by law’ has been construed as one of the easiest methods to commit gross injustice, and even genocide. The attempted extermination of the Jews by the Third Reich was performed by observing constitutionality and a legal procedure, including the Nuremberg laws of 1936. The path for later laws and regulations was laid open by the Emergency Presidential Decree of 1933, under article 48 of the then-constitution. A subsequent law of the same year established a special court for trial of cases of “insidious attacks against the government”.

Like the Third Reich, the Indian parliament acted *intra vires* the constitution by opening the way for killing through ‘procedure established by law’. However, the Supreme Court is usually prompt to strike down statutes or executive actions that are contrary to the constitution, either *suo moto* or in the normal course of hearings. Somehow it did take such a strong interest in writ petition nos. 5328 of 1980 and 550, 9229 and 9230 of 1982, among seven submitted to the court which challenged the constitutionality of the statute: it only decided upon them, without the sought-after result, in 1997.

So how should ‘procedure established by law’ under article 21 of the Constitution of India be understood? Justice Fazal (in the minority, but saner than the majority) in *Gopalan v. State of Madras* (1950 SCR, p. 180) stated that the word ‘established’ suggests “certain principles of justice which inhere in every civilized system of law”; the absence of ‘due process’ in article 21 still cannot lead to arbitrary use of procedure. The majority judgment in *Menaka Gandhi v. Union of India* (AIR 1978, SC 597, p. 622) made it amply clear that whatever procedure is prescribed by statute it “cannot be arbitrary, unfair or unreasonable”. So procedural ‘due process’ has been constructed out of that upon which article 21 is silent.

By a creative interpretation of article 21, Justice PN Bhagwati enlarged the sweep of the procedure. In his words:

“ The sharp difference between an enabling law and disabling law can be best understood by looking at how ‘procedure established by law’ has been construed as one of the easiest methods to commit gross injustice ”

“There is no room for abdication of state responsibility for what is happening in the northeast ”

The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Art. 14 like and omnipresence and the procedure contemplated by Art. 21 must answer the test of reasonableness in order to be in conformity with Art. 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Art, 21 would not be satisfied.

The meaning of the right to life under article 21 has been progressively and more affirmatively interpreted by the Supreme Court in subsequent public interest cases. 'Reasonableness' has been widened to the extent of saving the life from arbitrary deprivation, and statutes forestall the slightest tinge of arbitrariness even in the common sense.

Above all, human rights jurisprudence to which all state agencies subscribe by virtue of the International Bill of Rights and *jus cogens* unequivocally censures extrajudicial executions and other such brutalities. Nonetheless, the Supreme Court of India has overlooked the reasonableness aspect of the statute and wantonly upheld the AFSPA. It is time for a review of its decision.

The Armed Forces (Special Powers) Act of 1958 violates vital provisions of international covenants, the Constitution of India and the principles established under the rule of law by centuries of jurisprudence. It ought to be removed from the statute book once and for all. The deep political and national questions that characterize the turmoil in the northeast, Manipur in particular, deserve equal political and national attention. In the meantime, global human rights standards should not be compromised on one pretext or another: there is no room for abdication of state responsibility for what is happening in the northeast.

The Armed Forces (Special Powers) Act: “Procedure established by law”?

Khangembam Chonjohn, Former Member,
Manipur Human Rights Commission & Former
General Secretary, Civil Liberties & Human Rights
Organization, Manipur, India

Amid the clash of arms, laws are not silent. They may be changed, but they speak the same language in war and peace. Would law speak in a different language in internal disturbances? Law addresses all with one mouth or voice. Whenever, there is a doubt between liberty and bondage, the decision must be in favor of liberty. So says the digest.

--Supreme Court of India in *State of Punjab v. Sukhpal Singh*

Law in derogation of fundamental rights is void under the Constitution of India. Article 13(2) of the constitution states that, “The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

Section 4 of the Armed Forces (Special Powers) Act 1958 (AFSPA) authorises armed forces officers to form an “opinion” about when to “to fire upon or otherwise use force, even to the extent of causing death, against any person”. Can this provision be in compliance with the constitution? Or is it a violation of article 13(2)? Article 21 of the constitution requires that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Can this be understood as “procedure established by law” as required by article 21?

The Supreme Court of India has held that, “Procedure established by law means procedure established by lex, i.e. State made law and not just naturale.” (*Gopalal v. State of Madras*, AIR 1950 SC 27). But the contrary view of Justice Fazal Ali, which appears saner than the majority in that judgment, was that “procedure established by law” suggests “certain principles of justice which inhere in every civilized system of law”. The absence of the words “due process” in article 21 cannot in itself lead to barbaric and arbitrary use of procedure. Procedure

“It has now become a settled principle of law that ‘procedure established by law’ must comply with requirements synonymous with ‘due process of law.’”

established by law within the meaning of article 21 must be “right and just and fair” and “not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied”. It has now become a settled principle of law that “procedure established by law” in article 21 must comply with the requirements synonymous with those of the American “due process of law”. Procedural “due process” has been construed out of the silent zone of article 21 (*Meneka Gandhi v. Union of India*, AIR 1978 SC 597).

Article 14 of the constitution is a guarantee of not only the general right of equality before law but also fairness, justness and reasonableness in every state action. Any state action--including legislation--held as violative of article 14 must be unconstitutional and void (*Union of India v. Tulsiram Patel*, AIR, 1985 SC 1416; *Satyavir Singh v. Union of India*, AIR 1986 SC 555). Again, in its modern expanded meaning article 14 embodies elements analogous to those of “due process” (*E P Royappa v. State of Tamil Nadu*, AIR 1974 SC 555; *Meneka Gandhi case*; and, *Ajay Hasina v. Khalid Mujib*, AIR 1981 SC 487).

A five-judge Constitution Bench of the Supreme Court has reiterated and reaffirmed the interpretative principle in respect of article 21 made in *Bachan Singh* case that, “Every facet of the law which deprives a personal of his life or personal liberty would therefore, have to stand the test of reasonableness, fairness and justness in order to be outside the inhibition of Article 21 of the Constitution” (*Bachan Singh v. State of Punjab*, AIR 1982 SC 1325). The bench unanimously invalidated section 303 of the Indian Penal Code 1860 (compulsory death penalty for murder committed by a life convict) as violating articles 14 and 21 of the constitution. The Court held that, “These decisions have expanded the scope of Article 21 in a significant way that it is now too late in the day to content that it is for the legislature to prescribe the procedure and for the courts to follow it, that it is for the legislature to provide the punishment and for the Courts to impose it” (*Mithu v. State of Punjab*, AIR 1983 SC 473).

The Code of Criminal Procedure 1973 is the established procedural law extended through out India except the State of Jammu and Kashmir. The code has no provisions that allow for punishment by death. Offences under the code made punishable by law are either cognizable or non-cognizable. A person who has committed a cognizable offence may be arrested by the police, but for commission of a non-cognizable offence, no arrest can be made without a warrant from a competent court. No doubt, the act of disobeying a prohibitory order lawfully promulgated by a competent officer at any place within his territorial jurisdiction, whether declared disturbed or not, is a cognizable offence, which is bailable and triable by any magistrate. But the maximum punishment that can be imposed on the arrestee is simple imprisonment for one month, or fine of 200 rupees or both if the disobedience causes obstruction, annoyance or injury to persons

lawfully employed; or imprisonment for six months, or a fine of a thousand rupees or both if the disobedience causes danger to human life, health or safety.

Under the established criminal procedural law, award of a death sentence to a convict by the Court of Sessions or the Special Court under the Narcotic Drugs and Psychotropic Substances Act 1985 is exceptional. As a safeguard, the sentence of death shall not be executed unless it is confirmed by the High Court subject to a further remedy of appeal against the sentence of death and stay of execution until the disposal of the appeal. As a further safeguard of the citizen's right to life, the court is also duty-bound to hear the convict on the question of the sentence; failure to comply would make the death sentence unsustainable. The appropriate government may also suspend, remit or commute the sentence of death, except in the case of a person sentenced to death under the provisions of section 31 A of the Narcotic Drugs and Psychotropic Substance Act 1985.

Capital punishment can be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, and the same may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts. The person sentenced to death shall also have the right to apply to the president of India or the governor of the state to pardon, suspend, remit or commute the sentence of death.

Notwithstanding, the armed forces while acting or purporting to act under section 4(a) of the AFSPA have been 'licensed' to fire upon or otherwise use force upon persons, even cause death if in the opinion of the officer it is justified to do so after having given a due warning as he may consider necessary. The AFSPA, however, is not a complete code containing any established procedure of law--even of a summary nature--for depriving citizens of the right to life. To the extent that it contains a procedure, this is limited to the opinion of the officer in charge at a given time. Essentially the act holds that the mere suspicion of a military officer may be immediately converted to a conviction for a penal offence punishable with immediate death.

So does the AFSPA, or at least its section 4(a), stand in contravention of article 13(2) read with articles 14, 20 and 21 of the constitution? In asking this question, it is not necessary to be concerned with the upholding of the constitutional validity of the act by the Supreme Court in its 27 November 1997 judgment in *Naga People's Movement for Human Rights v. Union of India* (AIR 1998 SC 431: [1998] 2 SCC 109). Rather, what we as citizens of this country are strictly concerned with is the consequences of the act: fake encounter killings; extralegal, arbitrary and summary executions, and enforced disappearances. None of these need any further test of law: on these alone it can be said that the act must be repealed as in contravention of the Constitution of India and international human rights norms and standards.

“The AFSPA is not a complete code containing any established procedure of law for depriving citizens of the right to life”

Urgent Appeals from Manipur

1

VICTIM: Longjam Surjit, 18
INCIDENT:
Extrajudicial killing
ALLEGED PERPETRATORS:
22 Maratha Light Infantry
personnel
DATE: 31 August 2006
PLACE:
Samurou, Imphal West

AHRC UA-289-2006

Longjam Surjit: Shot dead looking for a horse

Longjam Surjit had reportedly gone to look for a missing horse on the night of 31 August 2006 with his friend Naorem Brajamani by the banks of the Nambul River. When Brajamani stopped to relieve himself Surjit kept walking. Then Brajamani heard ten shots from the direction in which his friend had walked. Scared, he ran home.

In the morning Surjit was found shot dead. Army personnel of the 22nd Maratha Light Infantry unit stationed at Mayang, Imphal claimed responsibility, saying that Surjit had tried to fire at the army officers. They claimed to have recovered arms and ammunition from Surjit, which his family has denied.

On September 1 and 3 local residents met at the Samurou market to protest the killing. In a public meeting it was decided that Surjit's family would not claim his body from the mortuary unless there is an independent investigation of the case and the army officers responsible are punished. People at the meeting expressed strong resentment at the paramilitary forces and police responsible for killing innocent persons and then claiming that they were insurgents. They also blocked the main Mayai Lambi Road in protest.

2

VICTIMS:
1. Yengkokpam Langamba,
alias Thabi, publicity
secretary, Threatened
Indigenous People's Society
(TIPS)
2. Leitangthem Umakanta,
secretary general, TIPS
INCIDENTS:
Illegal arrest & torture
ALLEGED PERPETRATORS:
Assam Rifles personnel;
SDPO Jhalajit Singh &
subordinates of Imphal West
police
DATES: 23-24 August 2006
PLACE: Imphal West

AHRC UA-278-2006

Yengkokpam Langamba Meitei & Leitangthem Umakanta Meitei: Human rights defenders arrested & tortured

At about 4am on 23 August 2006 officers from the Assam Rifles accompanied by police came to the house of Yengkokpam Langamba, alias Thabi, to conduct a search. The search team was led by Sub-Divisional Police Officer (SDPO) Jhalajit Singh of Imphal West. The search revealed nothing. However, Thabi was arrested and taken into custody on the allegation of his having some illegal CDs in his house. An arrest memo was issued under section 41 of the Criminal Procedure Code.

At about the same time next day SDPO Singh led a unit of police to surround the house of Leitangthem Umakanta, a lawyer who is also spokesperson for Apunba Lup, a collation of 34 human rights organisations working in Manipur. After the house was thoroughly searched Umakanta was also arrested. No arrest

memo was given to his family. Soon after arrest, his wife and younger brother visited him at the Imphal City Police Station and an arrest memo was handed over to them there, but allegedly with the time of arrest recorded as 9:30am. It is also alleged that the arrest memo names Assistant Sub-Inspector (ASI) Mohamad Anwar Hussain as a witness to the arrest, although he was not.

A complaint was registered against Umakanta (First Information Report [FIR] No. 140 [8] 2006, Porompat Imphal Police Station), under sections 38 and 39 of the Unlawful Activities (Prevention) Act (Amended) 2004. These sections define offences relating to membership of terrorist organisations and supporting the activities of such organisations. The offences are non-bailable, and carry severe punishment, like rigorous imprisonment for long periods.

Both men were remanded in custody and have alleged that they were tortured.

An Open Letter to the Chairperson of the Bar Council of India by the Asian Human Rights Commission

September 6, 2006
AHRC-OL-055-2006

The Chairperson
Bar Council of India
21, Rouse Avenue, Institutional Area
New Delhi - 110002
INDIA

Fax: + 91 11 23232767
Email: bcindia1@vsnl.com

Dear Chairperson,

INDIA: Bar Council of India is urged to take immediate actions in the case of illegal arrest, torture, continuing detention and fabrication of charges against a human rights lawyer and activist in Manipur

The Asian Human Rights Commission (AHRC) is writing to you to express our deep concern over the continuing detention of Mr. Yengkokpam Langamba Meitei alias Thabi, the Publicity Secretary of the Threatened Indigenous People's Society (TIPS), Manipur and Mr. Leitangthem Umakanta Meitei, the Secretary General of the TIPS. Mr. Umakanta is a member of the All Manipur Bar Association and also a human rights activist. He is the spokesperson for Apunba Lup, a collation of 34 human rights organisations working in Manipur.

Prior to the arrest the house of Umakanta and Langamba was surrounded by the officers from the Assam Rifles stationed in Manipur and the arrest was made by police officers from Imphal West police station. Umakanta was arrested around 4am on 24 August 2006 from his home at Porompat Thawanthaba Leikai,

Imphal East District, Manipur while Langamba was arrested the previous day. Both these arrests were carried out in breach of all procedures and mandates of the Criminal Procedure Code, 1973 and the directives issued by the Supreme Court of India regarding arrest, detention and questioning of persons by law enforcement agencies.

It is alleged that the Assam Rifles wanted to place some incriminating evidence to justify the arrest. For this, it is alleged that the Assam Rifles pressured the state police, to place on record some compact disks as recovered from their custody, connecting the two with secessionist forces operating in Manipur. Both Umakanta and Langamba have denied that no such articles were recovered from their house. This is further reiterated by the fact that a proper arrest or seizure memo was not prepared at the time of arrest. It is alleged that both Umakanta and Langamba were tortured while in custody. The AHRC has issued an urgent appeal on 25 August 2006 through its urgent appeals programme regarding this case as UA-278-2006.

Later the police registered a First Information Report number 140 (8) 2006 of Porompat Imphal Police Station for charges under Sections 38 and 39 of the Unlawful Activities (Prevention) Act, 1967 [as amended in 2004] claiming that Umakanta and Langamba had connections with Kanglei Yawol Kanba Lup (KYKL), a secessionist group operating in Manipur. The two were produced before the court on 24 August and were remanded to judicial custody till 29 August 2006.

Umakanta and Langamba when produced before the Magistrate had complained to the Magistrate that they were brutally tortured while in custody. They explained to the Magistrate how they were tortured and the injuries they sustained from torture. The Magistrate has recoded these submissions made in the court. However, the Magistrate refrained from taking any action in this regard but for asking the Investigating Officer to prepare a report on the allegation. Umakanta was later produced before an ENT specialist instead of a General Practitioner to be examined for the injuries he sustained while in custody.

Umakanta and Langamba were again produced before the court of the Chief Judicial Magistrate, Imphal on 29 August 2006. The Magistrate ordered the release of Umakanta observing that the police could not substantiate the charges levelled against him. However, the Magistrate also ordered Umakanta to furnish security for his release against which Umakanta made his protest through his lawyer. This was on the ground that if the arrest itself is illegal and if there is no substantial case made out against him why should he be asked to furnish a security. He insisted on an unconditional release and the withdrawal of the charges levelled against him and his colleague.

Massive protests by hundreds of persons, especially women, were held in Manipur against the arrest and detention of Umakanta and Langamba. The protest that began from the day of arrest is continuing. The members from the All Manipur Bar Association condemned the atrocities committed against Umakanta and Langamba and also visited them in custody. However, they failed to take the matter any further.

It appears that this is the general attitude of anyone who is in a position to raise their voice against the atrocities committed by the armed forces and other law enforcement agencies in India, particularly in Manipur. It is because anyone who consistently protests against atrocities committed by the law enforcement agencies will be silenced using force in India. They also risk the possibility of being involved in non-bailable offences and arrested and tortured, against which there is no law in India.

As you might be aware, there is no law in India which criminalise custodial torture. In addition, in places like Manipur draconian laws like the Armed Forces Special Powers Act, 1958 is used to silence anyone who raises voice against the atrocities committed by the armed forces in Manipur. The enormous powers conferred to the rank and file of the armed forces by virtue of the above Act and owing to the absence of any specific law to prosecute the perpetrators, nobody dares to challenge the armed forces and other law enforcement agencies stationed in Manipur beyond a limit.

This case, while being yet another example showing the deterioration of rule of law in India also substantiate the requirement that India must ratify the United Nations Convention against Torture or Other Cruel, Inhuman and Degrading Treatment or Punishment. The directives of the Supreme Court regarding the procedures to be followed during arrest, detention and questioning of a suspect seem to be continuously violated in India. The only effective implementation of the order of the Supreme Court appears to be posting the court's guidelines as a public notice in the police stations across the country.

The AHRC has been raising our concern to the relevant authorities in India for the past few years that India must ratify the convention and come-up with appropriate domestic law to prevent custodial violence. However, it appears that the government of India has not initiated any action in that regard, but rather defended all such demands on the ground that the current domestic law and the judiciary in India is good enough to prevent custodial torture in India.

Regarding Manipur in particular, the government of India must also initiate an open ended discussion with the people in Manipur to bring an end to the ongoing violence in Manipur. The possible first step towards this end would be to repeal the Armed Forces Special Powers Act, 1958.

“ Anyone who consistently protests against atrocities committed by law enforcement agencies risks the possibility of being arrested and tortured ”

“ Will the Bar Council pressure the government of India to ratify the UN Convention against Torture?”

As it has turned out in the court, the charges levelled against Umakanta are fabricated. The Magistrate was not convinced why he was arrested and charged with offences that could not be substantiated in the court. The case of Langamba will also soon reveal itself as a fabricated case. The AHRC is aware that the actual reason for the arrest is to enforce silence upon those who work on human rights issues in Manipur. It appears that the local police also have been forced into conceding to the pressure from the paramilitary. As of today Langamba and Umakanta are held at the Sajiwa Central Jail in Manipur.

Umakanta is a lawyer who has his freedom and obligation to represent clients and their cause in a court of law in India. This is his fundamental right. The challenge to this right, in Umakanta's case in particular, assumes more gravity given the fact that he was actively involved in challenging human rights violations committed by the armed forces and other law enforcement agencies in Manipur. Umakanta is the spokes person for a consortium of human rights organisations working to protect and promote human rights in Manipur. It is apparent that the intention behind the arrest of these two persons was an attempt to silence the entire human rights movement in Manipur.

In this context the AHRC would like to raise the following issues to the Bar Council of India expecting that the Council will take immediate measures to address these concerns.

1) As a lawyer and a human rights defender, Mr. Umakanta Leitanthem was targeted by the Armed Forces, arrested by the police and fabricated in a false case. There is evidence already placed in court that he was tortured while in custody and that the reason for arrest and torture were fabricated by the Assam Rifles. As a governing body responsible to safeguard the rights, privileges and interests of advocates in India under Section 7 (1) b of the Advocates' Act, 1961 what action will the Bar Council of India take in this case?

2) An advocate practicing in India has been illegally arrested along with his colleague where the arresting officers have violated all legal mandates including the directives of the Supreme Court of India regarding arrest, detention and questioning. The Supreme Courts directives are now considered to be incorporated into the Criminal Procedure Code of India. The AHRC is sure that this is not an isolated case. Is the Bar Council of India planing to take any action within a reasonable time to prevent such breach of law repeatedly happening in India?

3) This case and thousands of other cases are examples of violation of fundamental rights in India. All these apparently stem out from the absence of a specific law in India against custodial torture. By virtue of the powers conferred upon the Council by Section 7 (1) b of the Advocate's Act, 1961 will the Council take any steps to pressure the government of India to ratify the United Nations Convention against Torture or Other Cruel, Inhuman and Degrading Treatment or Punishment?

4) Will the Bar Council of India take any steps to bring these issues before the government of India and the Supreme Court of India for appropriate consideration and further action?

5) Will the Council conduct an impartial inquiry into the incident and publish its findings within a reasonable time?

6) If the council conduct such an inquiry and if the enquiry reveals that the charges against Umakanta and Langamba are false and fabricated will the Council: (1) Take up Umakanta's and his colleague's case to see to it that the fabricated case is quashed and the officers responsible for torturing Umakanta and Langamba are punished; and, (2) Further pressure the government of India to repeal the Armed Forces Special Powers Act, 1958?

Yours sincerely,

Basil Fernando
Executive Director
Asian Human Rights Commission, Hong Kong

Cc:

- 1) Justice Y. K. Sabharwal, Chief Justice of India
- 2) Mr. Manmohan Singh, Prime Minister of India
- 3) Justice A. S. Anand, Chairperson, National Human Rights Commission of India
- 4) Mr. Leandro Despouy, UN Special Rapporteur on the independence of judges and lawyers
- 5) Professor Manfred Nowak, UN Special Rapporteur on the Question of Torture

Six student leaders assaulted & abused

In mid-2006, in response to a series of student actions in Jiribam subdivision of Imphal East calling for educational and administrative reforms, the chief minister of Manipur sent a message through the additional deputy commissioner of Jiribam that he would like to meet the student leaders.

On July 15, six representatives led by the president of the All Manipur Students' Union in Jiribam were on their way by car to the meeting when at about 10:30am they were stopped on National Highway No. 53 at the Numgba army checkpoint. Major Abhishek asked about their identities and purpose of their journey, to which the students answered truthfully and produced their letter of invitation from the chief minister and forwarding letter through the additional deputy commissioner. The documents were photocopied and the group was returning to their car when the major called them back for further interrogation. During the next two hours the group were photographed and verbally and physically abused, including being punched in the chest and threatened. After that they were released.

The group did not go to meet the chief minister and student groups alongside other local organisations began protest actions to demand that the army officers be held accountable.

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VICTIMS:
Six student leaders of the All Manipur Students' Union and Democratic Students' Alliance of Manipur
INCIDENTS:
Illegal detention, assault & intimidation
ALLEGED PERPETRATORS:
Army personnel at Numgba under Major Abhishek
DATES: 15 July 2006
PLACE: Jiribam, Imphal East

AHRC UA-250-2006

VICTIMS:

1. **Khundrakpam Lukhoi, alias Binodkumar, brother of Khundrakpam Romen**
2. **Khundrakpam Debata, brother**
3. **Khundrakpam Bimol, brother**
4. **Khundrakpam Sunibala, sister**
5. **Khundrakpam Abeyai, alias Debla, sister**
6. **Khundrakpam Ruhini, mother**
7. **Maibam Naobi, friend**

INCIDENTS:

Assault, intimidation & illegal arrest

ALLEGED PERPETRATORS: Manipur Police Commando personnel

DATES: 21 February 2006

PLACE: Thoubal

AHRC UA-073-2006

A statement issued by the Press Information Bureau of the Defence Wing on July 17 denied any wrongdoing. Although the chief minister made a public statement in the same day saying that action would be taken against the officers if the allegations were found to be true, no investigation was conducted.

Khundrakpam Lukhoi & family: Beaten up for mourning brother's death

On 20 February 2006 a shoot-out between police and members of an insurgent group in the Thoubal Market resulted in four police commandos and one of their opponents being killed. Among the police was a highly-decorated inspector, Nongthombam Lakhon Singh. Khundrakpam Romen, alias Bikash, was the sole member of the People's Liberation Army killed in the incident.

The four slain commandos were given full state honours in a ceremony held at the 1st Battalion Manipur Rifles parade ground on February 21 attended by the chief minister and all senior government and security officials.

On the same day the dead body of Bikash was also brought back home after an autopsy. Many of his friends and relatives gathered to cremate his body according to local ritual. But at around 4:30pm police commandos came in four jeeps, barged into the house where the relatives and friends were mourning and started beating the deceased man's relatives, during which time his five brothers and sisters sustained serious injuries.

The commandos reportedly ordered the family not to complete the ceremony, saying that if the family defied their orders then a second family member would be killed. They also demanded a large sum of money

Maibam Naobi, a teacher and friend of Bikash, was resting inside his house when the commandos broke in. She was questioned, grabbed by her hair and dragged outside. Khundrakpam Ruhini, the dead man's mother, pleaded that Maibam was innocent, but she was also beaten up. Naobi was then taken away in a police jeep without an arrest memo being issued.

On February 22, local people, including Naobi's students and colleagues, went to Thoubal Police Station and swore that Naobi is an innocent teacher and a law-abiding citizen. A petition was filed with the Manipur Human Rights Commission (MHRC) by Khundrakpam Debala Devi, pleading it to prevent further inhumane torture and harassment of the family and friends of Naobi. The MHRC asked the government to submit a report to it and two of its members visited Bikash's family and instructed the officer-in-charge of Thoubal Police Station to provide security to the family until the last rites had been performed. The officer denied that Naobi had been charged with any offence. However, on February 23 she was produced before the chief judicial magistrate in Thoubal and was remanded to police custody for a further nine days. According to her lawyer she was visibly weak

and dizzy, indicating severe physical and mental torture. She was wearing a new shirt as the original shirt one had allegedly been torn by the police.

According to the police report, Naobi was arrested at 8pm on February 22 in the courtyard of Bikash's house: some 28 hours after she was actually arrested. She was charged with being "an associate of the party who ambushed the OC and commandos" and being the "girl friend of Bikash". A complaint was lodged against her (FIR No. 25[2]06, Thoubal Police Station) under section 20 of the Unlawful Activities (Prevention) Act (Amended) 2004.

On February 24 the commandos again came to Bikash's house when the family was observing religious ceremonies mourning Bikash's death and further arrested two young men. When the women present gathered around the police inquiring why they were arrested the police fired teargas shells to disperse the crowd and threatened that anyone trying to interfere with them would also be taken into custody and face a similar fate as Bikash.

L Premananda, Pechimayum Yaima Singh & Leimapokpam Bilashini: One killing, two arrests & a pile of cash

Premananda was picked up along Nongpok Sanjenbam Road by the Manipur Police Commando, Imphal East on 30 January 2006 and was shot at Manging, Sabal Leikai Kshetrigao in the same district. Premananda had 85,000 rupees (USD 1900) with him, and robbery of the money is believed to have been the motive for the arrest and killing.

On January 31 local people formed a protest group and submitted a memorandum to the chief minister of Manipur stating that Premananda was killed deliberately by the police after arrest. They demanded that the perpetrators be sacked and Premananda's family have the money and his other belongings returned to them within 48 hours. This never happened. Moreover, his mother, L Subadani Devi, lodged a complaint with the Imphal East Police Station but the police reportedly refused to act on it. The family refused to take back his family until the government gave a clear commitment to punish the perpetrators; on February 5 the government declared the body unclaimed and cremated it under tight security. In subsequent protests, government offices in Imphal East were burnt down.

In an early morning raid on 10 February 2006 Imphal East Police Commando personnel led by Inspector Mubi Singh came to Kongpal and arrested and falsely charged two of the protest organisers, Pechimayum Yaima Singh and Leimapokpam Bilashini, at their house. They were detained and a case registered against them (FIR No. 31[2]06, Porompat Police Station) under sections 436, 427 and 34 of the Indian Penal Code and section 4 of the Prevention of Damage to Public Property Act 1984. The same day they were remanded to judicial custody and lodged in the Sajiwa Jail.

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VICTIMS:

1. L Premananda, 25 (deceased)
2. Pechimayum Yaima Singh
3. Leimapokpam Bilashini

INCIDENTS:

Extrajudicial killing, robbery, illegal arrest & detention

ALLEGED PERPETRATORS:
Manipur Police Commando

personnel, including Inspector Mubi Singh

DATES: 30 January & 10 February 2006

PLACE: Imphal East

AHRC UA-073-2006

VICTIMS:

Ningthoujam Chaoba, 27, son of N Yaima; human rights defenders protesting his arrest

INCIDENTS:

Illegal arrest, torture & assault

ALLEGED PERPETRATORS:

24 Assam Rifles personnel commanded by Major Atul Yadav

DATES: 16 January 2006

PLACE: Hotel Broadway, Moreh

AHRC UA-052-2006

Ningthoujam Chaoba: Dragged from hotel with baby in arms

On 16 January 2006, Assam Rifles personnel summoned all hotel owners in Moreh and told them that clients could stay only on production of identity cards and that hotel records should be submitted to the army regularly, failing which the hotels would be closed down.

At about 3:50pm the same day personnel from 24 Assam Rifles led by Major Atul Yadav went to Hotel Broadway in Moreh to arrest Ningthoujam Chaoba, who had been staying there with his wife and three-month-old baby since January 10. When Chaoba protested he was dragged out of the hotel while holding his baby and in the scuffle the baby was hurt.

Some 20 women human rights defenders from the Meira Paibi group in Moreh came to intervene. They pleaded for the safety of the baby and insisted on the issuing of an arrest memo, but the personnel reportedly refused and hit the women with rifle butts and also kicked them. Six were seriously injured and hospitalised. Samulailatpam Sushila Devi lodged a complaint against the brutality (FIR No. 8[1]06, Moreh Police Station) under sections 354 and 34 of the Indian Penal Code and section 27 of the Arms Act.

Chaoba was subsequently handed over to the Moreh police. While in police custody he told his wife that he was tortured, treated inhumanely and sexually harassed while in the custody of the Assam Rifles. On January 18 local newspapers reported that he had been made to strip naked and dance before being sodomised by three Assam Rifles personnel in their camp.

A day before the arrest of Chaoba, Major Yadav and his men had also gone to the Hotel Geetanjali and allegedly ordered 18-year-old Lairenlakpam Uttam, son of L Bijoy, to supply them with women or be killed.

On January 20 a protest gathering demanded that the 24 Assam Rifles be transferred from Moreh immediately. At around 4pm that day Brigadier R A Lewis of the Assam Rifles met leaders of the public in Moreh to discuss the matter, but nothing came of the meeting.

Jangkhotinmang Haokip: Shot dead for running inside

Personnel of the 24 Assam Rifles in civilian clothes led by Commanding Officer Colonel K S Kadian allegedly drove a red van without registration plates into Chavangphai village of Moreh Ward 7 on 11 January 2006. Some villagers sitting around a small fire by a roadside restaurant stopped the van to identify the persons inside. On realising that they were members of the 24 Assam Rifles they ran for their lives. Another group of villagers sitting beside a fire in the courtyard of the house of Holngam Mate, next to the restaurant, rushed inside. According to eyewitnesses, two personnel chased them inside, including

VICTIM:

Jangkhotinmang Haokip, alias Mangcha, 27, son of Thangkholun

INCIDENT:

Extrajudicial killing

ALLEGED PERPETRATORS:

24 Assam Rifles personnel commanded by Colonel KS Kadian

DATES: 11 January 2006

PLACE: Ward 7, Moreh

AHRC UA-052-2006

Jangkhotinmang Haokip, the village carpenter, whom they cornered in the kitchen and shot at pointblank range, after which they assaulted him. He died on the way to hospital.

The next day Tongkholun Haokip, chairman of Hill Tribal Council Unit XII, Chavangphai lodged a complaint with the police (FIR No. 6[1]06, Moreh Police Station), under sections 302 and 34 of the Indian Penal Code and section 27 of the Arms Act. The Assam Rifles filed a counter complaint (FIR No. 7[1]06, Moreh Police Station) under sections 307 and 34 of the Indian Penal Code and section 25(1-C) of the Arms Act, claiming that the victim was killed when an armed insurgent group attacked them while on duty.

Sarangthem Jayenta: Handed to police after public protests

On 1 January 2006, personnel from the 24 Assam Rifles posted at Moreh arrested Sarangthem Jayenta, alias Arun, in the police compound at about 8:30pm. The arrest was witnessed by several locals, but the Assam Rifles at first denied it.

A complaint was lodged with the police by Sanasam Maglem, brother-in-law of the victim, on January 2 (FIR No. 1[1]06, Moreh Police Station) under sections 365 and 34 of the Indian Penal Code, but the police expressed helplessness since the accused were paramilitary personnel.

The residents of the town then staged a public protest and the Assam Rifles attacked the procession, injuring ten women human rights defenders from the Meira Paibi group.

As public pressure mounted the Assam Rifles handed Jayenta to the Imphal West Police Station on January 4, stating that he was arrested the day before. He had been severely tortured and was accused of having weapons in his possession and being a member of the banned People's Liberation Army (FIR No. 2[1]06, Moreh Police Station) under sections 17 and 20 of the Unlawful Activities (Prevention) Act 2004, section 25(1-C) of the Arms Act and section 5 of the Explosive Substances Act.

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VICTIMS:

Sarangthem Jayenta, alias Arun, son of Sarangthem Chaobhan of Hiyangthang Maning Awang Leikai; human rights defenders protesting his disappearance

INCIDENTS:

Illegal arrest, torture & assault

ALLEGED PERPETRATORS:

24 Assam Rifles personnel

DATES: 1 January 2006

PLACE: Moreh

AHRC UA-052-2006

Appendix I: Report of the Committee to Review the Armed Forces (Special Powers) Act 1958 (Extracts)

Part III, Chapter I

1. The Committee, with a view to ascertain the views, opinions in Manipur on the AFSPA and its implementation, issued a notification calling for responses from the public. The Committee visited the State of Manipur in the first instance. This was for the reason that the latest upsurge against the AFSPA took place in Manipur following the death of Ms. Th. Manorma Devi while in the custody of the Assam Rifles. The visit to Imphal took place on December 27-30, 2004 and the hearings were held in the premises of the Manipur Human Rights Commission. The Chairman of MHRC, Justice (Retd.) W. A. Shishak was kind enough to make necessary arrangements for our hearings.

2. There was a *bandh* [boycott/strike] called by a faction of the Apunba Lup, which demanded the immediate repeal of AFSPA, when the Committee was in the State. Despite that, many groups, individuals and organizations made depositions before the Committee. The family of Manorama Devi also met the Committee. The list of individuals and groups who made representations to the Committee is at Annexure-III. From the views expressed before us and from the representations received, the following distinct view-points emerged:

This appendix consists of extracts from the Report of the Committee to Review the Armed Forces (Special Powers) Act 1958 (AFSPA) pertaining to Manipur, and key recommendations. The committee was chaired by Justice B P Jeevan Reddy (retired), and had as its other members Dr S B Nakade, P P Shrivastav IAS (retired), Lt. Gen. V R Raghavan (retired) and Ssanjoy Hazarika. The committee was established on 19 November 2004 in the wake of intense protests across Manipur following the rape and killing of Thangjam Manorama on 11 July 2004 while in the custody of the Assam Rifles, and the indefinite fast begun by Irom Sharmila in 2001 demanding the repeal of the AFSPA. The committee was asked to determine whether the AFSPA should be amended or replaced. It handed down its findings in mid-2005 but up to time of publication the report had not been tabled in the Indian parliament. Prime Minister Manmohan Singh has also made clear that the law may be amended but not revoked.

(a) The dominant view-point expressed by a large number of organizations/individuals was that the Act is undemocratic, harsh and discriminatory. It is applicable only to the North-Eastern States and, therefore, discriminates against the people of the region. Under the protection provided by the Act, several illegal killings, torture, molestations, rapes and extortions have taken place particularly since the Act does not provide for or create a machinery which provides protection against the excesses committed by armed forces/para-military forces deployed in the State. The Act should, therefore, be repealed. The Committee specifically put questions to the persons who appeared before it whether they wanted both the Act and the Army to go, or whether they want only the Act to go but the Army to remain. To this question, the overwhelming response was that while the Act should be repealed, the Army should remain to fight the militants and guard the borders.

A certain view-point voiced by some persons was that both the Act and the Army should be removed from Manipur. According to them, the problem in Manipur is essentially a socioeconomic one and not of law and order. If the basic issues of socio-economic and of political nature are attended, it would not be necessary to have the presence of the Army in the State,

(b) A different view-point voiced by a few elderly persons and associations was that both the Act and the Army should remain in the interest of and for ensuring the safety of small ethnic groups and other minorities.

3. The Committee gathered the impression that there is a certain amount of confusion in the minds of many citizens regarding the respective powers of the State police organizations and that of the armed forces of the Union. They are under the impression that the State Police Forces were also acting under the protection of the Act. As a consequence, the excesses committed by the State Police and Commandos are generally laid at the door of the Act.

4. Certain organizations filed elaborate lists of alleged atrocities committed by the security forces and in particular against the members of the Assam Rifles. These lists also cite instances of killing of innocents, including women and children. This material, being too bulky, is not enclosed to the Report but is sent to the Government along with this Report for such use as may be found appropriate by the concerned authorities. It was also brought to our notice that in several cases of alleged excesses, enquires were held by competent authorities and the guilty personnel awarded punishment and compensation was also given to the aggrieved persons in some cases.

5. The current situation in Manipur is a complex amalgam of factors. There are longstanding animosities among ethnic, tribal, plains and hill groups. The Meitei people who constitute the majority in the State have a deeply felt historical perspective of Manipuri territorial and cultural unity. The nexus between crime

and politics on one hand, and foreign involvement through funds, arms, and sanctuaries on the other, make for a highly volatile security situation. Over the years, the nature of insurgency has - as elsewhere in the North East - shifted to acts of terrorism, extortion, coercion of the population giving rise to a situation of internal disorder. In the last two decades the numbers of militant groups, their arsenals and lethality have grown immensely. The situation, it appears, cannot be managed by the State law and order machinery as at present. The Army and other Central forces may continue to play a major role in the security management of Manipur, till the political process and socio economic measures begin to take effect and the governance in the State improves.

6. The Committee is also of the opinion that there is a deliberate and carefully planned attempt by militant organizations to damage the reputation and morale of the Armed Forces. The requirement therefore is to ensure that the powers of the army to conduct operations against militant organizations remain while at the same time, ensuring that these operations do not impinge upon the rights and the safety of the citizens.

Hill Districts of Manipur

Senapati

7. The Committee also visited the hill-districts of the State and held hearings at Senapati and Churachandpur on April 21 and April 23, 2005

8. At Senapati the various Naga organizations had met earlier and discussed the issue in detail, exchanged views amongst themselves and made out a common written representation on behalf of the Naga Peoples' Organisation. However, as many as 11 representatives of the Civil Society groups made oral presentations. Three more written representations were also handed over.

9. Initially, however, they said that they would not be satisfied with 'review'. Their demand was nothing short of repeal of the Act. It was explained to them on behalf of the Committee that Review was a very wide term and included repeal also. They were quite satisfied with this clarification. They made a grievance that though the Nagas had been suffering and complaining against the Act for almost 50 years, nothing was done until the

Manorama Devi incident in Imphal prompted the Govt. of India to set up this Committee.

Churachandpur

10. Six written representations were received by the Committee at Churachandpur on behalf of the organizations representing the Kukis, Zomis, Paites, Koirengs (Korens) and others on April 23, 2005. Representatives of four organizations (a total of 17 persons) appeared for oral hearings.

11. The views expressed at Churachandpur were qualitatively different from those received from elsewhere in the State. One view was in favour of replacement of the Act by a more effective law so that peace and harmony could be restored in the State. Some others wanted that the Act should not be lifted from Churachandpur area where the people were the major victims at the hands of underground outfits, as a result of which development work had come to a standstill. One view was that the Army should stay but the excesses committed by them should be stopped. Only one organization was in favour of complete withdrawal of AFSPA.

Part IV, Recommendations

4. The Committee finds that there are four options available for it to adopt viz.,

(a) to recommend the repeal of the Armed Forces (Special Powers) Act, 1958;

(b) to recommend that the present Act should continue as it obtains today or with such amendments as may be found appropriate;

(c) in case the repeal of the Armed Forces (Special Powers) Act, 1958 is recommended, to recommend that it should be replaced by an appropriate legislation;

(d) in case of recommendation for repeal of the Act, to recommend insertion of appropriate provisions in an existing / cognate enactment

5. Keeping in view the material placed before us and the impressions gathered by the Committee during the course of its visits and hearings held within and outside the North-Eastern States, the Committee is of the firm view that:

(a) The Armed Forces (Special Powers) Act, 1958 should be repealed. Therefore, recommending the continuation of the present Act, with or without amendments, does not arise. The Act is too sketchy, too bald and quite inadequate in several particulars. It is true that the Hon'ble Supreme Court has upheld its constitutional validity but that circumstance is not an endorsement of the desirability or advisability of the Act. When the constitutional validity of an enactment is challenged in a Court, the Court examines

(i) whether the Act is within the legislative competence of the Legislature which enacted it

and

(ii) whether the enactment violates any of the provisions of the Constitution. The Court does not - it is not supposed to - pronounce upon the wisdom or the necessity of such an enactment. It must be remembered that even while upholding its constitutional validity, the Hon'ble Court has found it fit and necessary not merely to approve the "Dos and Don'ts" in the

instructions issued by the Army Headquarters from time to time but has also added certain riders of its own viz., those contained in clauses 8, 9 and 14 to 21 in para 74 of its judgment (at pages 156 and 157 of the judgment in NAGA PEOPLES' MOVEMENT OF HUMAN RIGHTS v UNION OF INDIA - (1998) 2 SCC 109). The Committee is of the opinion that legislative shape must be given to many of these riders. We must also mention the impression gathered by it during the course of its work viz., the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness. It is highly desirable and advisable to repeal this Act altogether, without, of course, losing sight of the overwhelming desire of an overwhelming majority of the region that the Army should remain (though the Act should go). For that purpose, an appropriate legal mechanism has to be devised,

(b) The Committee is also of the firm view that it would be more appropriate to recommend insertion of appropriate provisions in the Unlawful Activities (Prevention) Act, 1967 (as amended in the year 2004) - which is a cognate enactment as pointed out in Chapter III Part II of this Report instead of suggesting a new piece of legislation.

...

8. We may also refer in this connection to the necessity of creating a mechanism, which we may designate as the "Grievances Cell"- Over the years many people from the region have been complaining that among the most difficult issues is the problem faced by those who seek information about family members and friends who have been picked up and detained by armed forces or security forces. There have been a large number of cases where those taken away without warrants have "disappeared", or ended up dead or badly injured. Suspicion and bitterness have grown as a result. There is need for a mechanism which is transparent, quick and involves authorities from concerned agencies as well as civil society groups to provide information on the whereabouts of missing persons within 24 hours.

9. To ensure public confidence in the process of detention and arrest, grievances cells are proposed to be set up in each district where armed forces are deployed. These cells will receive complaints regarding allegations of missing persons or abuse of law by security/armed forces, make prompt enquiries and furnish information to the complainant. Where, however, the complainant is not satisfied with the information furnished and is prepared to file an affidavit in support of his allegation, it shall be competent for the Cell to call upon the State level head of the concerned force or organization to enquire into the matter and report the same to the cell as early as possible, not exceeding in any event, one week. The State level officers from whom these Grievances Cells seek information shall immediately make necessary enquiries and furnish full and correct information to the Grievances Cell as early as possible, not exceeding in any event

one week. The Grievances Cells will be composed of three persons, namely, a senior member of the local administration as its chair, a Captain of the armed forces/security forces and a senior member of the local police. These will have dedicated communications, authority to obtain information from concerned authorities and have facilities for recording and responding to complaints. They shall locate their offices in the premises of the Sub Divisional Magistrate or in the premises of the District Magistrates, as the case may be. Such a mechanism is absolutely essential to achieve the two equally important purposes viz., (a) to infuse and instill confidence among the citizenry that the State, while deploying the armed forces of the Union to fight insurgency/terrorism has also taken care to provide for steps to guard against abuses/excesses with a view to protect the people and to preserve their democratic and civil rights; and (b) to protect the honour and the fair name of the forces.

11. While deploying the forces under sub-section (3) the Central Government shall, by a notification published in the Gazette, specifying the State or the part of the State in which the forces would operate and the period (not exceeding six months) for which the forces shall operate. At the end of the period so specified, the Central Government shall review the situation in consultation with the State Government and check whether the deployment of forces should continue and if it is to continue for which period. This review shall take place as and when it is found necessary to continue the deployment of the forces at the expiry of the period earlier specified. It shall be permissible for the Central Government to vary the part of the State where the forces are deployed in case the earlier notification is in respect of a part of a State. Every notification extending the period of deployment of forces or varying the area of the State, as the case may be, shall be laid on the table of both the Houses of Parliament within one month of the publication of such notification.

...

Appendix II: Concluding Observations of the UN Human Rights Committee on the report of India, 1997 (Extracts)

18. The Committee remains concerned at the continuing reliance on special powers under legislation such as the Armed Forces Special Powers Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to Article 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. The Committee, noting that the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court is due to be heard in August 1997, hopes that its provisions will also be examined for their compatibility with the Covenant.

In this respect, bearing in mind the provisions of Article 1, 19 and 25 of the Covenant, the Committee endorses the views of the National Human Rights Commission to the effect that 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, and emphasizes that terrorism should be fought with means that are compatible with the Covenant.

19. The Committee regrets that some parts of India remains subject to declaration as disturbed areas over many years--for example the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer--and that in these areas, the State party is in effect using emergency powers without resorting to Article 4, paragraph 3, of the Covenant.

This appendix consists of extracts from the 1997 Concluding Observations of the UN Human Rights Committee on the periodic report of India in compliance with the International Covenant on Civil and Political Rights, to which it is a party (CCPR/C/79/Add.81, 4 August 1997). India has failed to submit subsequent reports to the committee as required under the covenant.

The Committee recommends that the application of these emergency powers be closed monitored so as to ensure its strict compliance with the provisions of the Covenant.

...

21. The Committee notes with concern that criminal prosecution or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the Central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with Article 2, paragraph 3, of the Covenant.

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

22. The Committee regrets that the National Human Rights Commission is prevented by Clause 19 of the Protection of Human Rights Act from investigating directly complaints of human rights violations against the armed forces, but must request a report from the Central Government. The Committee further regrets that complaints to the Commission are subject to one-year time-limit, thus preventing the investigation of many alleged past human rights violations.

The Committee recommends that these restrictions be removed, and that the National Human Rights Commission be authorized to investigate all allegations of violations by agents of the State. It further recommends that all states within the Union be encouraged to establish Human Rights Commission.

23. The Committee expresses concern at allegations that police and other security forces do not always respect the rule of law and that, in particular, court orders for habeas corpus are not always complied with, particularly in disturbed areas. It also expresses concern about the incidence of custodial death, rape and torture, and at the failure of the Indian Government to receive the United Nations Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

While the Committee welcomes the requirement by the National Human Rights Commission that all such alleged incidents be reported and investigated, and that all post mortem examinations be taped, it recommends:

a. the early enactment of legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody;

b. the adoption of special measures to prevent the occurrence of rape of women in custody;

c. the mandatory notification of relatives of detainees without delay;

d. the guarantee of the right of detainees to legal advice and assistance and to have a medical examination;

e. and that priority be given to providing training and education in the field of human rights to law enforcement officers, custodial officers, members of the security and armed forces, as well as judges and lawyers, and that the United Nations Code of Conduct for Law Enforcement Officers be taken into account in this regard.

24. The Committee regrets that the use of special powers of detention remains widespread. While noting the State party's reservation to Article 9 of the Covenant, the Committee considers that this reservation does not exclude, inter alia, the obligation to comply with the requirement to inform promptly the person concerned of the reasons for his or her arrest. The Committee is also of the view that preventive detention is a restriction on liberty imposed as a response to the conduct of the individual concerned, that the decision as to continued detention must be considered as a determination falling within the meaning of Article 14, paragraph 1, of the Covenant, and that proceedings to decide the continuation of detention must, therefore, comply with that provision.

The Committee recommends that the requirements of Article 9, paragraph 2, of the Covenant be complied with in respect of all detainees. The question of continued detention should be determined by an independent and impartial tribunal constituted and operating in accordance with Article 14, paragraph 1, of the Covenant. It further recommends, at the very least, that a central register of detainees under preventive laws be maintained and that the State party accept the admission of the International Committee of the Red Cross and the Red Crescent to all types of detention facilities, particularly in areas of conflict.

...

[Continued from front inner cover]

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Sadly, article 2 is much neglected. There is a dearth of relevant international jurisprudence, and hardly any mention of it in the enormous volumes of annual literature on human rights.

There is a reason for this neglect. In the 'developed world' the existence of basically functioning judicial systems is taken for granted. This does not mean that these systems are perfect; in some instances they may face serious problems. But those from countries with developed democracies and functioning legal systems may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. As persons from such countries guide the global human rights movement, vital problems outside their experience do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

Other difficulties also arise. One is the fear to meddle in the 'internal affairs' of other countries too intimately. State parties especially can create many obstacles for those trying to go deep down to the roots of problems. Thus, inadequate knowledge of actual situations may follow from the nature of interactions and the monitoring system itself. A further and quite recent disturbance is the portrayal of national human rights institutions and their equivalents as surrogate agencies for dealing with article 2 related issues. Some state parties may agree to new national human rights institutions taking on this role because they know that by doing so they may avoid criticisms of a more fundamental nature.

Human rights are implemented via institutions of justice: the police, prosecutors and judiciary. If these are not functioning according to the rule of law, human rights cannot be realized. In most Asian countries, these institutions suffer from grave defects. These defects need to be studied carefully, as a means towards strategies for change.

After many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia. Relevant submissions by interested persons and organisations are welcome.

In this issue of *article 2*

SPECIAL EDITION: Militarisation & impunity in Manipur

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- The Armed Forces (Special Powers) Act: An unproclaimed emergency & gross injustice

Khangembam Chonjohn, Former Member, Manipur Human Rights Commission & Former General Secretary, Civil Liberties & Human Rights Organization, Manipur, India

- The Armed Forces (Special Powers) Act: "Procedure established by law"?

And

- "Every mother in this place will have a similar story to tell": Illegal arrest, arbitrary detention & torture in Manipur
- The Armed Forces (Special Powers) Act 1958
- Urgent Appeals from Manipur
- Report of the Committee to Review the Armed Forces (Special Powers) Act 1958 (Extracts)
- Concluding Observations of the UN Human Rights Committee on the report of India, 1997 (Extracts)

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ALRC is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. ALRC seeks to strengthen and encourage positive action on legal and human rights issues at local and national levels throughout Asia.

ALRC invites submissions to *article 2* by interested persons and organisations concerned with implementation of human rights standards in the region.

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