

<p><b>India</b></p> <p><b>STATUS OF HUMAN RIGHTS IN MANIPUR</b></p> <p><i>Submitted to the</i></p> <p>Office of the High Commissioner for Human Rights</p> <p>4<sup>th</sup> Cycle</p> <p>Universal Periodic Review</p> <p>Human Rights Council</p> <p>United Nations</p> <p>MANIPUR</p> <p>30 March 2022</p> <p><i>JOINT STAKEHOLDERS' REPORT</i></p> <p><b>CIVIL SOCIETY COALITION FOR HUMAN RIGHTS IN MANIPUR AND THE UNITED NATIONS (CSCHR)</b></p>	<p><u>Constituent member organizations of CSCHR</u></p> <p>Centre for Research and Advocacy Manipur (CRAM)</p> <p>Committee on Human Rights (COHR), Manipur</p> <p>Extrajudicial Execution Victim Families Association, Manipur (EEVFAM)</p> <p>Families of the Involuntarily Disappeared's Association Manipur (FIDAM)</p> <p>Human Rights Alert (HRA)</p> <p>Human Rights Defender, Manipur (HRDM)</p> <p>Human Rights Initiative (HRI)</p> <p>International Peace and Social Advancement (IPSA)</p> <p>Just Peace Foundation (JPF)</p> <p>Manipur Alliance for Child Rights (MACR)</p> <p>Movement for Peoples' Right to Information Manipur (M-PRIM)</p> <p>Indigenous Perspective (IP)</p> <p>United Peoples Front (UPF)</p> <p>Youth Collective Manipur (YCM)</p>
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## **Introduction**

0.1 *Civil Society Coalition for Human Rights in Manipur and the UN* (CSCHR) is a conglomeration of civil society groups with the mission of cooperating with the UN human rights mechanisms to ameliorate the human rights situation in the militarized and isolated Manipur and its surrounding North East region of India. As done in the 2<sup>nd</sup> and 3<sup>rd</sup> cycle, CSCHR is hereby submitting the joint stakeholder's report for the 4<sup>th</sup> cycle of UPR on India.

0.2 The present report is prepared through a series of consultations since January 2022. The report presents a gist of the major human rights challenges facing the people of Manipur along with specific recommendations. The report is divided into three sections namely:

(1) Suspension of Right to Life (Page 2-3)

(2) Entrenched Impunity (Page 4-6)

(3) Political Solution to Armed Insurgency (Page 7-9)

## 1. Suspension of Right to Life

1.1. The issue of *Armed Forces (Special Powers) Act* (AFSPA) has persistently attracted strong recommendations from the UN human rights mechanisms starting from 1991 when India's second periodic report was reviewed under the *International Covenant on Civil and Political Rights (ICCPR)*<sup>1</sup>. The *Working Group on UPR* in all the three cycles (2008, 2012 and 2017) has recommended the repeal/review of AFSPA. But the *Government of India (GoI)* has not accepted the recommendations till date.

1.2. Human Rights Committee (HRC) in its concluding observation of the third periodic review under ICCPR stated<sup>2</sup>:

**... the Committee remains concerned at the continuing reliance on special powers under legislation such as Armed Forces (Special Powers) Act ... in areas declared to be disturbed and at serious human rights violations, in particular with respect to Articles 6, 7, 9 and 14 of the Covenant...**

1.2 Supreme Court of India, however, upheld the constitutionality of AFSPA *vide* its judgement dated 27 November 1997<sup>3</sup>. In doing so, the court ignored the specific recommendation of HRC to examine the compatibility of its provisions with ICCPR<sup>4</sup>. Special Rapporteur on extra-judicial execution, Professor Christof Heyns, after his official visit to India in 2012 gave a detailed legal analysis of the AFSPA<sup>5</sup> and he observed:<sup>6</sup>

**...the NHRC shared with the Special Rapporteur its views in support of AFSPA's repeal ... The Supreme Court of India ruled, however, in 1997 that AFSPA did not violate the Constitution. The Special Rapporteur is unclear about how the Supreme Court reached such a conclusion. ... the powers granted under AFSPA are in reality broader than that allowable under the state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency is absent.**

1.5 *Committee on the Elimination of All Forms of Discrimination against Women* recommended the review/repeal of the AFSPA in 2000, 2007<sup>7</sup> and 2014<sup>8</sup>. Stamping the AFSPA as racist, *Committee on the Elimination of Racial Discrimination* also recommended the repeal of AFSPA in 2007. It was followed by repeated communication under the *Early Warning and Urgent Action Procedure*. The *Committee on Economic Social and Cultural*

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<sup>1</sup> Concluding Observations in the Reports of the Human Rights Committee dated 10 October 1991, contained in A/46/40 paras 258-312.

<sup>2</sup> Para 18, Concluding Observation of the Human Rights Committee: India, CCPR/C/79/Add81, dated 04/08/97.

<sup>3</sup> <https://indiankanoon.org/doc/1072165/>

<sup>4</sup> Naga People's Movement for Human Rights v/s Union of India, AIR 1998 SC 431.

<sup>5</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution, Christof Heyns, Mission to India, A/HRC/23/47/Add.1 dated 26 April 2013.

<sup>6</sup> Para 26 and 27, Report of the Special Rapporteur on extrajudicial, summary or arbitrary execution, Christof Heyns, Mission to India, A/HRC/23/47/Add.1 dated 26 April 2013.

<sup>7</sup> Para 8, Concluding Comment of the Committee on the Elimination of Discrimination against Women: India, CEDAW/C/IND/CO/3 dated 2 February 2007.

<sup>8</sup> Para 13(b), Concluding observation on the combined fourth and fifth periodic report of India, CEDAW/C/IND/CO/4-5 dated 24 July 2014.

*Rights* also recommended its repeal in 2008<sup>9</sup>. The *Special Rapporteur on Human Rights Defender* and the *Special Rapporteur on violence against women* who visited India in 2011 and 2013 respectively also made the same recommendation to repeal AFSPA.

1.6 People of Manipur have been demanding the repeal of AFSPA since the day the bill was introduced in the Parliament in 1958<sup>10</sup>. *Meira Paibi*<sup>11</sup> are at the forefront of the struggle. Ms. Irom Sharmila carried out a hunger strike for 16 years<sup>12</sup> demanding its repeal. After a sustained people's agitation spearheaded by the *Working Committee of the Apunba Lup* (WCAL), following the rape and murder of Ms. Thanjam Manorama, including the naked protest of 12 *Meira Paibi* in front of Kangla<sup>13</sup>, the then Prime Minister of India assured WCAL that "AFSPA will be replaced by a more humane act". All the committees and commissions<sup>14</sup> set up by GoI to look into the matter have recommended the repeal of AFSPA. Most recently, following the 4-5 December 2021 killing of 16 coal-miners and protesters at Oting, Nagaland by the Indian Army, the Chief Ministers of Nagaland, Manipur and Meghalaya called for the repeal of AFSPA.<sup>15</sup> But to no effect.

### **Suggested recommendation:**

- a. Repeal the *Armed Forces (Special Powers) Act, 1958* immediately.**

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<sup>9</sup> Para 50, Concluding Observation of the Committee on Economic, Social and Cultural Rights, India, E/C.12/IND/CO/5 dated 8 August 2008.

<sup>10</sup> Two lone Members of Parliament from Manipur vehemently opposed AFSPA when it was introduced as a bill in 1958.

<sup>11</sup> Meaning 'torch holder' are the middle aged women who stand vigil in the streets and bi-lane of Manipur in an effort to resist the military from picking up their sons and daughters in the darkness of the night.

<sup>12</sup> She was arrested, forced fed and incarcerated in isolation for more than 15 years.

<sup>13</sup> Kangla is a sacred site of the Manipuri people from where the erstwhile kingdom was ruled, at the time of the protest it was used by the Assam Rifles (India para military force operating in Manipur) as their Head Quarter.

<sup>14</sup>1. Committee for the Review of Armed Forces (Special Powers) Act, set up by the Union Home Ministry, Govt of India, headed by Justice Jeevan Reddy, 2004.

2. Second Administrative Reform Commission (Public Order) of the Government of India headed by Veerapa Moily, 2004.

3. Committee for Confidence Building Measures in Jammu and Kashmir headed by Hamid Ansari, former Vice President of India, 2007.

4. Supreme Court appointed Commission pertaining to writ petition (Criminal) No. 129 of 2012, EEVFAM vs Union of India, 2013.

<sup>15</sup> Hindustan Times, "Now Manipur CM Backs AFSPA Repeal", December 12, 2012, available at: <https://www.hindustantimes.com/india-news/now-manipur-cm-backs-afspa-repeal-101639260019046.html> .

## 2. Entrenched Impunity

2.1 The *Extrajudicial Execution Victim Families Association, Manipur*, (EEVFAM) and *Human Rights Alert*, (HRA) petitioned the Supreme Court of India<sup>16</sup> seeking justice for 1,528 documented victims of extrajudicial executions carried out from 1979 to 2012 in Manipur. Acknowledging the systemic violation of the right to life under AFSPA, the apex court pronounced a historic judgement in 2016 re-asserting that criminal cases should be registered against the police and *armed forces of the Union* alleged to have perpetrated extrajudicial killings. A *Special Investigation Team* (SIT) of the *Central Bureau of Investigation* (CBI) was directed to investigate cases where there is already a *prima facie* finding by the *High Courts* or the *National Human Rights Commission* or the *Official Commission of Inquiries* and interim compensation have already been awarded. However, the extremely slow process of the CBI investigation on the one hand and the systematic intimidation and harassment of the witnesses and human rights defenders involved in the case on the other hand, has compelled the then *Special Rapporteur on Summary, Arbitrary or Extrajudicial Execution*, Ms Agnes Callamard and the *Special Rapporteur on situation of Human Rights Defender*, Mr Michel Forst to issue a public statement on 4 July, 2018, reiterating that:

**... the Government of India has an obligation to ensure prompt, effective and thorough investigations into all allegations of potentially unlawful killings, and a failure to do so is a violation of its international obligations. Justice delayed is justice denied ... some of these families have been waiting decades for these cases to be fully investigated. It is unacceptable that CBI is failing to meet these deadlines and appears to lack good faith ... we are extremely concerned that the delay appears to be deliberate, undue and unreasonable and we condemn this lack of progress.**

2.2 Finally, CBI registered 39 FIRs. Out of this, 30 final reports have been submitted. Charges are pressed against the perpetrators in 21 incidents and not in 9 cases. EEVFAM filed protest petitions against most of the investigation reports that has not pressed charges.

2.3 When the alleged perpetrator are police personnel the Government of Manipur have granted prosecution sanction under section 197 of Criminal Procedure Code (CrPC) and the trial has proceeded. However, when the perpetrators are personnel of the armed forces of the Union, the Union Home Ministry has denied prosecution sanctions under section 6 of AFSPA in all cases. As a result, in at least half a dozen cases, the prosecution cannot proceed any further.

2.4 The victim's plea in the court of the Chief Judicial Magistrate (CJM), where the final reports are submitted, is that the court should take cognizance of the crime and start the prosecution as sufficient evidence of the crime is presented before the court by none other than the premier investigating agency of the country, and that too under the direction of the apex court. But the Union of India is insisting to halt all legal proceedings as prosecution sanction is denied under AFSPA. CJM of Imphal West has referred the matter to the High

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<sup>16</sup> Writ Petition (Criminal) number 129 of 2012 of the Supreme Court of India.

Court of Manipur<sup>17</sup> to ascertain the correct legal position on how to proceed with the cases. With little progress in the High Court for over a year, all cases involving armed forces of the Union is kept in abeyance.

2.5 On the other hand in the Supreme Court, in August 2018, when the first army officer, one Major Vijay Singh Balhara (now Colonel), was named in the First Information Report, 356 serving army personnel moved a Writ Petition in the Supreme Court<sup>18</sup> seeking class impunity from legal action in their conduct of counter insurgency operations. The number of army personnel signing the petition swelled up to more than 750. Even though the court finally dismissed the petition on 30 November 2018, such a demonstration of military valour in the court, supported by the Attorney General, seems to have effectively stopped the proceedings on the EEVFAM case in the Supreme Court. The last hearing on the case was in September 2018. Ever since the retirement of the senior judge Justice Madan Lokur, in December 2018, no bench has been constituted to hear the matter. This is despite repeated mention by the counsel of the petitioners as well as the *amicus curiae* in the open court.

2.6 Notwithstanding the best efforts put in by the victims at the local, national and international redress mechanisms, the prospect of an effective remedy in the judicial, administrative or legislative framework, as envisaged in article 2(3) of ICCPR remain a pipe dream.

2.7 Thousands of cases of egregious human rights violations, both documented and undocumented, remain un-investigated and has piled up in the last 63 years of AFSPA's operation in Manipur and in the North East region. With the prospects of achieving justice in this mass atrocity crime getting dimmer and dimmer by the passing days; the victim groups, with support from civil society, universities and State Human Rights Institutions, have started deliberating on the possibilities of instituting a transitional justice process to address the pressing needs of truth, justice, restitution and guarantee of non-repetition<sup>19</sup>.

#### **Suggested Recommendations:**

- a. The prosecution sanction regime, granting effective immunity to the security forces alleged to have perpetrated egregious human rights violations, should be dismantled by repealing section 197 of CrPC and section 6 of AFSPA.**
- b. In the interim, prosecution sanction should be promptly granted to facilitate the unhindered prosecution of the alleged perpetrators of egregious human rights violation and to establish Rule of Law.**
- c. Institute a robust, transparent, and effective mechanism of redress for persons suffering from mass atrocity crimes under the shadow of AFSPA and their families with the aim of:**

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<sup>17</sup>Vide order dated 22 February 2021 in Cril. Misc. (FR) Case No. 633 of 2020 of the Court of Chief Judicial Magistrate, Imphal West.

<sup>18</sup> Writ Petition (Criminal) number 201 of 2018 of the Supreme Court of India.

<sup>19</sup> <https://www.ictj.org/news/truth-commission-needed-manipur-justice-victims>.

- i) to conducting prompt, effective, and independent investigations and prosecute perpetrators in civilian courts.**
- ii) to ensure comprehensive restitution of the victims and their families**
- iii) to dig up the whole truth behind the mass atrocity crimes committed under the shadow of AFSPA**
- iv) to guarantee the none repetition of such mass atrocity crimes in the future.**

### 3. Political Solution of Armed Insurgency

3.1 The need to address the issue of “armed insurgency” by political means was deliberated upon by HRC while reviewing India’s third periodic review in 1997 and stated in its Concluding Observations<sup>20</sup>:

**... bearing in mind the provisions of article 1, 19 and 25 of the Covenant...the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problem must also, essentially, be political, and emphasizes that terrorism should be fought with means that are compatible with the Covenant.**

3.2 Earlier, during the second review of HRC members belonging to France (Madame Chanet), Egypt (Mr. Shafei), erstwhile USSR (Mr. Myulldson) and Sweden (Mr. Bertil Wennergren) also raised the queries about the self-determination issues of the border state. Mr. Bertil Wennergren made the following statement<sup>21</sup>:

**“India has ever since its independence has accepted its adherence to self-determination and said that is coexistent with the principle of Sovereign equality ... I will make an example. According to the constitution, Parliament may by law admit a new State. Well, there you recognized that self-determination of a people and a nation and a State to ask for admission into the Union. So far, you recognize self-determination. But when the admission has been granted, then the people and the nation, well they will be consumed by the people of India and these people do not exist any longer and then self-determination of that people will not exist any longer, legally speaking I mean. And then, because if that people that nation wants to depart, wants to leave the Union, I cannot see any possibility to do so...”**

3.3 The constitution of India is silent on the legal and legitimate processes to deal with the democratic aspiration of the peoples and nations to depart from the Union. The law that attacks the activities of the groups with such aspiration is the *Unlawful Activities Prevention Act* (UAPA)<sup>22</sup>. Under the UAPA, “secession” is included in the definition of “terrorist”. Section 2(i) states “secession of a part of the territory of India from the Union” “includes the assertion of any claim to determine whether such part will remain a part of the territory of India”.

3.4 However, such criminalization of the political discourses cannot deter the democratic aspirations of the people of Manipur. As a matter of fact, Manipur with just 0.2% of the population of India at some point constituted a woofing 65% of the total detentions under the UAPA of the country<sup>23</sup>! The answer perhaps can be seen from the history. Manipur, which stood as an independent kingdom in the western frontier of South East Asia for at least two

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<sup>20</sup> Para 18, Concluding Observation of the Human Rights Committee, India CCPR/C/79/Add.81 dated 4 August 1997.

<sup>21</sup> India Report, Para 10.

[https://mha.gov.in/sites/default/files/A1967-37\\_0.pdf](https://mha.gov.in/sites/default/files/A1967-37_0.pdf)

<sup>23</sup> <https://www.thehindu.com/news/national/other-states/manipur-records-65-uapa-cases/article7563462.ece>

millennia, was “merged” into the Dominion of India under controversial circumstance on 15 October 1949. In doing so, India under-mind the democratically elected popular Assembly and Council of Ministers already functioning then under the Manipur Constitution Act of 1947. No plebiscite / referendum of the people of Manipur was ever conducted, thereby denying the right to self-determination of the people of Manipur. As late as March 2021, the *National Investigation Agency* (NIA) filed a chargesheet under UAPA and IPC against Mr. Yambem Biren and Narengbam Samarjit Singh for declaring “Manipur government-in-exile” at a press conference in London in 2019 as “Chief Minister of the Manipur State Council” and “Minister of External Affairs and Defence of Manipur State Council” respectively<sup>24</sup>.

3.5 The prevailing electoral politics is unable to address the underlying vexed issue of political status of Manipur as candidates aspiring to stand for assembly or parliamentary election have to take oath and swear by the sovereignty and integrity of India<sup>25</sup>. Moreover, the current election practice prevalent in the corrupt and militarized environment of Manipur is more a demonstration of money and muscle power than a genuine expression of free will of the people as envisaged by article 25 of ICCPR<sup>26</sup>.

3.5 Elaborating on this issue of the right to self-determination of Manipur, the *Committee on Human Rights (COHR), Manipur* had already submitted an alternate report during the third periodic review of India for consideration of the HRC in 1997.

3.6 The proscribed *Revolutionary People’s Front* submitted a memorandum to the Secretary General of the United Nations and the Chairman of the *Decolonization Committee (Committee of 24)* “for de-colonisation of the Manipur from Indian colonialism and alien racist regime, enlisting Manipur in the list of the non-self-governing territories of the United Nations and, restoration of independence and sovereignty of Manipur”.<sup>27</sup>

3.7 Proposal for a UN monitored Plebiscite by the proscribed *United National Liberation Front* (UNLF) of Manipur to resolve “the politico-military conflict in Manipur” has no taker in the corridors of power in New Delhi<sup>28</sup>. Instead, the Chairman of UNLF Mr. Rajkumar Meghen was arrested, charged and convicted for waging war against the State by NIA. Even

after serving his full ten-year-prison-term in Guwahati Central Jail, he is still kept under strict surveillance and high security in virtual house arrest constraining his movement.

3.8 When the *Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggaya visited India in 2011 and met a group of HRD from Manipur, she wrote the

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<sup>24</sup> <https://www.newindianexpress.com/nation/2021/mar/23/manipur-government-in-exile-case-nia-files-charge-sheet-against-two-separatist-leaders-their-ass-2280555.html>

<sup>25</sup> Article 84(a) read with Schedule III of the Constitution of India.

<sup>26</sup> <https://thefrontiermanipur.com/manipur-needs-serious-intervention-in-electoral-conduct-says-ycm/>  
[http://e-pao.net/epSubPageExtractor.asp?src=news\\_section.opinions.Politics and Governance.Manipur Votes amid Violent and Corrupt Environment By YCM](http://e-pao.net/epSubPageExtractor.asp?src=news_section.opinions.Politics_and_Governance.Manipur_Votes_amid_Violent_and_Corrupt_Environment_By_YCM)  
<https://www.thehindu.com/news/national/other-states/manipur-youth-platform-flags-normalisation-of-gun-culture-during-assembly-election/article65217017.ece>

<sup>27</sup> [https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/COHR\\_IND\\_UPR\\_S1\\_2008anx\\_Annex%20VI\\_Memorandum%20of%20Revolutionary%20Peoples%20Front%20Manipur%20to%20UN.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/COHR_IND_UPR_S1_2008anx_Annex%20VI_Memorandum%20of%20Revolutionary%20Peoples%20Front%20Manipur%20to%20UN.pdf)

<sup>28</sup> <https://www.telegraphindia.com/states/north-east/unlf-throws-plebiscite-challenge/cid/1621387>

following in her official report submitted to the General Assembly and Human Rights Council<sup>29</sup>:

**At the time of the visit, Manipur was reportedly the state worst affected by militarization with more than half a dozen human rights groups having been banned as terrorist due to their self-determination advocacy.**

**Recommendations:**

- a. Drop reservation on common Article 1 of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic Social and Cultural Rights* and let the people of Manipur freely determine their political status and freely pursue their economic, social and cultural development.**
- b. Lift the ban on political groups advocating the right to self-determination and stop the arbitrary arrest, torture, enforced disappearances and extrajudicial execution of its members.**
- c. Initiate humane, inclusive, comprehensive, transparent and sustainable peace by respecting all the universally recognized human rights in the geo-politically sensitive region of North East India.**

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<sup>29</sup> Para 83, Report of Special Rapporteur on the situation of human rights defender, Margaret Sekagya, Addendum, Mission to India, A/HRC/19/55/Add.1 dated 6 February 2012.