



Forest Peoples Programme

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Mr. Torsten Schackel,
Secretary
Committee on the Elimination of Racial Discrimination
Office of the UN High Commissioner for Human Rights
UNOG-OHCHR
1211 Geneva 10
Switzerland

30 July 2009

RE: Request for Consideration under the Urgent Action and Early Warning Procedure in Connection with Grave and Persistent Violations of Indigenous Peoples' Rights in Northeast India

Dear Mr. Schackel:

Introduction and Background:

1. This short report is respectfully submitted to the Committee on the Elimination of Racial Discrimination ("the Committee") by the United NGOs Mission Manipur, a network of 235 indigenous peoples' organisations from northeast India, and the Forest Peoples Programme, an international NGO ("the submitting organisations"). It requests that the Committee continues to consider the situation of indigenous peoples in northeast India under its early warning and urgent action procedures.

2. The submitting organisations previously transmitted four reports between 2006 and 2009 to the Committee concerning the situation of the indigenous peoples in northeast India.¹ These reports detail systematic discrimination and other human rights violations. These violations are especially apparent in relation to the 1958 *Armed Forces (Special Powers) Act* ("AFSPA") and violation of indigenous peoples' rights in connection with the extant and imminent construction of numerous mega-dams throughout indigenous peoples' territories in the northeast region.

3. Following its dialogue with India, the Committee adopted concluding observations in March 2007 which address, *inter alia*, the racially discriminatory character of AFSPA and its implementation;² India's failure to recognise and protect indigenous peoples' property and other rights;³ and the imminent and severe threat to indigenous peoples' rights and integrity posed by the construction of dams.⁴ The Committee stressed the serious nature of its concerns on these points by requesting that India submit information about the implementation of the corresponding recommendations no later than the Committee's 72nd session.⁵ India failed to submit this information.

¹ *Request for adoption of a Decision under the Urgent Action/ Early Warning Procedure in Connection with violation of Indigenous Peoples' Rights in Northeast India*, 31 October 2006. Available at: <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/fpp.doc>. See also *Request for Consideration under the Urgent Action and Early Warning Procedure in Connection with Grave and Persistent Violations of Indigenous Peoples' Rights in Northeast India*, 07 July 2008. Available at: http://www.forestpeoples.org/documents/law_hr/india_cerd_follow_up_rep_jun08_eng.pdf.

² *Concluding Observations of the Committee on the Elimination of Racial Discrimination: India. 05/05/2007. CERD/C/IND/CO/19*, para. 12.

³ *Id.* para. 19 and 20.

⁴ *Id.* para. 19

⁵ *Id.* at para. 34.

4. On 15 August 2008, the Committee adopted a letter under its early warning and urgent action procedures and called on India to provide further information no later than 31 December 2008.⁶ The requested information concerns “the measures taken by the State party to safeguard the rights of indigenous communities whose territories and traditional lifestyles are threatened by projects such as the Tipaimukh and Lower Subasiri dams, as well as the continued application of the Armed Forces (Special Powers) Act.”⁷ India again failed to submit any information.

5. In March 2009, the Committee adopted an additional communication pursuant to its early warning and urgent action procedures. In addition to again requesting that India submits information, this communication explains that dam construction and its impact on indigenous peoples remains an issue of concern, and notes that India has granted an ‘environmental clearance permit’ for the Tipaimukh dam without “meaningfully seeking to obtain prior consent of the affected indigenous peoples.”⁸ The Committee also reiterated its recommendation that India repeals the AFSPA.⁹

6. India’s disregard for its international obligations and the rights of indigenous peoples in the northeast goes beyond a failure to honour the Committee’s requests for information. As discussed below, not only has India failed to adhere to the recommendations issued by the Committee in 2007, which were reiterated in August 2008 and March 2009, it is actively contravening those recommendations. Rather than comply with its international obligations, India has chosen to persist with its long-standing practice of systematic racial discrimination against the indigenous peoples of the northeast region and irreparable harm is both ongoing and additionally threatened in new areas.

7. This present report calls further attention to the dangerous and urgent situation that persists and has intensified in northeast India as a result of India’s discriminatory acts and omissions. For instance, and as discussed below, India recently granted final permits for the construction of the Tipaimukh dam in Manipur without any meaningful attempt to consult with and obtain indigenous peoples’ consent. It has also ordered that the dam construction will commence in 2009. Further, India has not taken any steps to repeal or to otherwise mitigate the impact of the AFSPA, which continues to provide impunity for violations of non-derogable and other human rights. The submitting organisations therefore respectfully request that the Committee continues to consider this situation under its early warning and urgent action procedures (see paragraph 17 below for the full request).¹⁰

India recently issued final permits for the construction of the Tipaimukh dam:

8. In 2007, the Committee recommended that India “seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects and provide adequate compensation and alternative land and housing to those communities.”¹¹ This recommendation was reiterated in August 2008¹² and March 2009 with particular reference to the Tipaimukh dam in Manipur.¹³

⁶ *Letter of the Chairperson of the Committee on the Elimination of Racial Discrimination*, 15 August 2008, at p. 2.

⁷ *Id.*

⁸ *Letter of the Chairperson of the Committee on the Elimination of Racial Discrimination*, 13 March 2009, at p. 1.

⁹ *Id.*

¹⁰ The situation in northeast India is fully consistent with a number of the Committee’s early warning and urgent action indicators. See *Guidelines for the Use of the Early Warning and Urgent Action Procedure*. Adopted by the Committee on the Elimination of Racial Discrimination, August 2007, at p. 3, para. 12 (among others, adopting the following as an indicator for the use of said procedures: “Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources”).

¹¹ *Concluding Observations of the Committee on the Elimination of Racial Discrimination: India. 05/05/2007*. CERD/C/IND/CO/19, at para. 19 (observing that “large scale projects such as the construction of several dams in Manipur and other north-eastern States ... are carried out without seeking their prior informed consent. These projects result in the forced resettlement or endanger the traditional lifestyles of the communities concerned”).

¹² *Letter of the Chairperson of the Committee on the Elimination of Racial Discrimination*, 15 August 2008, *supra*.

¹³ *Letter of the Chairperson of the Committee on the Elimination of Racial Discrimination*, 13 March 2009, at p. 1. The Committee on Economic, Social and Cultural Rights has also expressed its concerns about the disproportionate and negative impact of dams on indigenous peoples in India. See *Concluding observations of the Committee on Economic, Social and Cultural Rights. 05/2008*. E/C.12/IND/CO/5, at para. 31 (observing that indigenous peoples are

9. The environmental clearance permit granted by the Indian government on 24 October 2008 for the Tipaimukh dam¹⁴ was issued in the face of massive public opposition¹⁵ and was condemned by all but the ruling political parties.¹⁶ It states that “557 households consisting of 2027 persons likely to be affected due to this project in Manipur. In addition to that 77 villages will be affected due to land acquisition.... Only land of 13 villages will be affected in Mizoram.”¹⁷ Other estimates, however, paint a very different picture. For example, the Zeliangrong Naga people alone expects that 40,000 of its members (approximately one-third of its total population) will be forcibly displaced by the dam.¹⁸ Their most sacred sites – the Zehlat lake and the Barak waterfalls – will also be submerged and irreparably damaged.

10. In June 2009, it was announced that the Union Power Ministry and Manipur State Government has agreed terms for construction of the Tipaimukh dam and that construction would commence before the end of 2009.¹⁹ The Manipur State Government will hold a five percent equity share in the project. Further public protests ensued and later spread to Bangladesh given fears that the dam will damage the cross-border environment and alter river flows that are crucial for agriculture and other subsistence purposes.²⁰

11. Construction of the Tipaimukh dam was finally approved without any meaningful attempt to obtain the consent of the affected indigenous peoples. By failing to obtain indigenous peoples’ consent in relation to the Tipaimukh dam, India has disregarded the Committee’s 2007, 2008 and March 2009 recommendations and contravened Article 32(2) of the UN Declaration on the Rights of Indigenous Peoples.²¹ This Declaration contains rights that must be equally secured and protected pursuant to Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (“the Convention”).²²

disproportionately affected by forced evictions “in the context of land acquisition by private and state actors for the purposes of development projects, including constructions of dams and mining...” and; at para. 71 (recommending that India takes “immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions”).

¹⁴ Despite the fact that environmental and other permits were yet to be issued, a cornerstone for the dam was laid in December 2006 by central Government Minister for Power, Hon. S. Shinde, and a global tendering process for engineering, procurement and construction works was initiated and closed on 31 December 2007. This is in direct contravention of Indian law. See ‘Public Hearing on Tipaimukh’, *The Telegraph India*, 16 December 2007. Available at: http://www.telegraphindia.com/1071217/asp/northeast/story_8674319.asp.

¹⁵ See ‘Public Hearing on Tipaimukh’, *The Telegraph India*, 16 December 2007 and; ‘Tipaimukh hearing, Bodies foil Govt’s ploy’, *The Sangai Express*, 28 March 2008.

¹⁶ ‘BJP, MPP and others denounce Tipaimukh Project’, *The Sangai Express*, 15 January 2009. Available at: <http://www.e-pao.net/epRelatedNews.asp?heading=12&src=160107>.

¹⁷ See *Letter of the Chairperson of the Committee on the Elimination of Racial Discrimination*, 13 March 2009, at p. 1 (referring to ‘Notice of Environmental Clearance, Tipaimukh Hydroelectric dam’, 24 October 2008).

¹⁸ See ‘Divisive Dam’, *Down to Earth. Science and Environment Online*, 15 October 2007. Available at: http://www.downtoearth.org.in/cover.asp?foldername=20061015&filename=news&sec_id=9&sid=52. See also Dr. R. Ranjan Singh, Large Dams in North East India, *Manipur Online*, 6 February 2006. Available at: http://www.manipuronline.com/Manipur/February2006/tipaimukh06_2.htm and; S. Talukdar, Proposed Dam in Northeast India to Destroy Lives, Lands, *One World South Asia*, 30 June 2004. Available at: <http://southasia.oneworld.net/article/view/89074/1/>.

¹⁹ See ‘Tipaimukh Multipurpose Project’, *The Sangai Express*, 01 June 2009. Available at: <http://e-pao.net/GP.asp?src=10..020609.jun09>.

²⁰ See ‘India finalises construction of Tipaimukh Dam: Adverse impact feared on Bangladesh environment, ecology’, *Bangladesh Economic News*, 09 May 2009. Available at: <http://bangladesheconomy.wordpress.com/2009/05/09/india-finalises-construction-of-tipaimukh-dam-adverse-impact-feared-on-bangladesh-environment-ecology/>.

²¹ The Declaration provides that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.”

²² *General Recommendation No. 20: Non-discriminatory implementation of rights and freedoms*: 15/03/96, para. 1. The Committee has further observed that the Declaration should be used as a guide to interpret states’ obligations under the Convention. See *Concluding Observations of the Committee on the Elimination of Racial Discrimination*: United States of America, CERD/C/USA/CO/6, 08 May 2008, at para. 29.

12. Further inflaming the situation, the Indian and Manipur State Governments have heavily militarised the dam site and surrounding area in an attempt to quell opposition to Tipaimukh. This was officially authorised in a resolution issued by the Manipur Government on 28 July 2008. It authorises deploying Central and State security forces and the opening of security posts at seven kilometre intervals along a 99 kilometre-long stretch of the Mon Bahadur road.²³ This road is the main artery for the movement of materials needed for the construction of the dam. This is not the first time that the army has been sent to the dam site; troops were deployed in April 2008, among other times.²⁴

13. The troops deployed to protect the Tipaimukh dam may exercise the extraordinary and sweeping powers granted by the AFSPA. This law has essentially established an undeclared state of emergency in the northeast for some 50 years and has facilitated gross and systematic violations of human rights in the northeast for decades. This law is now being used as a means to control opposition to dams, such as Tipaimukh, and other projects pursued by the Indian government, projects that have caused and will continue to cause irreparable harm to indigenous peoples.²⁵

India continues to apply the *Armed Forces (Special Powers) Act*:

14. In paragraph 12 of its 2007 concluding observations, the Committee observed that the AFSPA sanctions impunity for serious human rights violations perpetrated against the predominant indigenous population of Manipur and other northeast states. Citing Articles 2(1)(c), 5(b), 5(d) and 6 of the Convention, the Committee recommended that AFSPA be repealed. This recommendation was reiterated in March 2009.²⁶ Four other United Nations human rights treaty bodies have also recommended that the AFSPA be repealed, as has the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston.²⁷ The latter observes that the Act “violates non-derogable provisions of international human rights law.”²⁸

15. Despite widespread condemnation of the Act by international human rights bodies, and in direct contravention of their recommendations, India has refused to repeal AFSPA and again has extended ‘disturbed area’ declarations pursuant to that law throughout the northeast. In Manipur, for example, the disturbed area declaration was extended for a 12 month period ending 1 December 2009. As with the previous extensions, this appears to directly contradict the 1997 ruling of the Indian Supreme Court in *Naga People’s Movement of Human Rights v. India* that ‘disturbed area’ declarations must be reviewed every six months.²⁹

²³ See *inter alia* ‘Heavy security to be deployed on 99 km stretch of road to Tipaimukh dam’, *Imphal Free Press*, 28 July 2008. Available at: <http://www.siphro.org/2008/07/29/heavy-security-to-be-deployed-on-99-km-stretch-of-road-to-tipaimukh-dam/#more-359>.

²⁴ See ‘Army launches Tipaimukh vigil’, *The Telegraph Calcutta*, 30 April 2008. Available at: http://www.telegraphindia.com/1080430/jsp/northeast/story_9205605.jsp.

²⁵ See ‘CM reviewed security at project sites’ *Hueiyen News Service*, 18 December 2008 (stating that “Among others, the meeting reviewed the deployment of security at the Maphou Dam, a component of the Thoubal Multi-purpose Project, Dolaithabi project, Tipaimukh Hydro-electricity Project where government considers the reasons behind slow progress as due to threats posed by anti-social elements”). Available at: <http://ne.icrindia.org/2008/12/20/cm-reviewed-security-at-project-sites/>.

²⁶ *Letter of the Chairperson of the Committee on the Elimination of Racial Discrimination*, 13 March 2009, at p. 1.

²⁷ See *Concluding observations of the Human Rights Committee: India*, 04/08/97, para. 18, 19 & 21; *Concluding observations of the Committee on the Rights of the Child: India*, 26/02/2004, para. 63, 68-9; *Concluding observations of the Committee on the Elimination of Discrimination Against Women: India*, 02/02/2007, at para. 9; *Concluding observations of the Committee on Economic, Social and Cultural Rights*, 05/2008, E/C.12/IND/CO/5, at paras. 12 and 50; and *Concluding observations of the Committee on the Elimination of Racial Discrimination: India*, 17/09/96, para. 32.

²⁸ *Report of the Special Rapporteur on Extrajudicial Execution to the UN Human Rights Council, Philip Alston*. UN Doc. A/HRC/4/20/Add.1, at p. 139. See also *Report of the Special Rapporteur on Extrajudicial Execution to the UN Human Rights Council, Philip Alston*. UN Doc. E/CN.4/2006/53/Add.1, p. 75-82 (discussing AFSPA and detailing a series of allegations of killings in Manipur).

²⁹ *Naga People’s Movement of Human Rights v Union of India* [1997] ICHRL 117, at para. 38.

16. While India refuses to repeal the AFSPA, violence, including killings and torture, against indigenous peoples in the northeast, and *de jure* impunity for the perpetrators, continues unabated. This is confirmed and highlighted in an August 2008 report issued by Human Rights Watch, which states that

The AFSPA gives the armed forces wide powers to shoot to kill, arrest on flimsy pretext, conduct warrantless searches, and demolish structures in the name of 'aiding civil power.' Equipped with these special powers, soldiers have raped, tortured, 'disappeared,' and killed Indian citizens for five decades without fear of being held accountable.³⁰

Request:

17. In the light of the preceding, the submitting organizations respectfully request that the Committee again considers the situation of the indigenous peoples in northeast India under its early warning and urgent action procedure so as to avoid further irreparable harm and to assist India to ensure that the rights guaranteed by the Convention are fully recognized and respected in law and practice. In particular, the submitting organizations request that the Committee adopts a decision under the urgent action and early warning procedure:

- a) expressing its profound concern over violations of indigenous peoples' rights in relation to the AFSPA and recommending again that India repeal the offending legislation without delay;
- b) consistent with the recommendations of the Human Rights Committee, recommending that India immediately begins a process of political dialogue with the armed groups, indigenous peoples' freely chosen representatives and civil society in the northeast in order to seek a peaceful and sustainable solution to the violence in a manner that fully respects the right to self-determination and the political and other rights of the indigenous peoples of the northeast;
- c) requesting that India refrains from and brings a halt to any activities that diminish indigenous peoples' traditional lands, territories and resources, and that it legally recognizes their ownership rights in and to their traditional territories and takes steps to return lands and territories where indigenous peoples have been deprived of them without their free, prior and informed consent. In this context, particular attention is required in relation to the construction of hydroelectric dams in indigenous peoples' territories where their free, prior and informed consent, including prior agreement to rehabilitation and compensation measures, has not been obtained; and,
- d) finally, and in line with the Committee's 2007 *Guidelines for the Use of the Early Warning and Urgent Action Procedure*,³¹ the submitting organisations further request that the Committee recommends that:
 - i) the World Bank and the Asian Development Bank refrain from supporting dams or related projects in northeast India at least until such time as indigenous peoples' rights to own and control their traditional lands, territories and resources and their right to free, prior and informed consent are enshrined in law and effectively protected in practice;

³⁰ *Getting Away With Murder. 50 Years of the Armed Forces (Special Powers) Act.* Human Rights Watch, August 2008, at p. 5. Available at: <http://hrw.org/backgrounders/2008/india0808>.

³¹ *Guidelines for the Use of the Early Warning and Urgent Action Procedure. Advanced Unedited Version.* Adopted by the Committee on the Elimination of Racial Discrimination, August 2007, at p. 4-5, para. 14(c).

- ii) the Permanent Forum on Indigenous Issues initiates a dialogue with the World Bank and Asian Development Bank with respect to implementation of the preceding recommendation; and,
- iii) the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, the Special Rapporteur on the Right to Food, and the Special Rapporteur on the promotion and protection of human rights while countering terrorism communicate with India with regard to the situation in the northeast.

