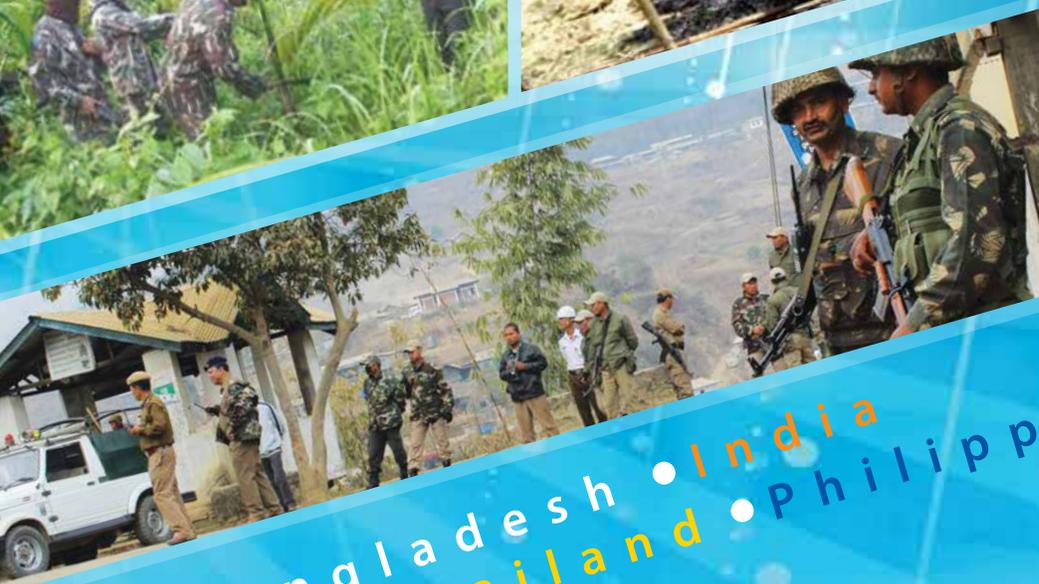


NATIONAL SECURITY LAWS & MEASURES

THE IMPACTS ON INDIGENOUS PEOPLES



• Bangladesh • India
• Thailand • Philippines



National Security Laws & Measures: Impacts on Indigenous Peoples

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ACRONYMS

AFP	Armed Forces of Philippines
AFSPA	Armed Forces (Special Powers) Act
AIPP	Asia Indigenous Peoples Pact
APB/APBn	Armed Police Battalion
ARMM	Autonomous Region of Muslim Mindanao
ASEAN	Association of Southeast Asian Nations
ASP	Special Powers Act
ATA	Anti-Terrorism Act
BDR	Bangladesh Rifles
CAFGU	Citizens Armed Forces Geographical Unit
CARHRIHL	Comprehensive Agreement on the Respect of Human Rights and International Humanitarian Law
CAT	Convention Against Torture
CBD	Convention on Biological Diversity
CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CHR	Commission on Human Rights
CHRA	Cordillera Human Rights Alliance
CHT	Chittagong Hill Tracts
CHTRC	Chittagong Hill Tracts Regional Council
COFEPOSA	Conservation of Foreign Exchange and Prevention of Smuggling Activities Act
CPA	Cordillera Peoples' Alliance
CPP	Communist Party of the Philippines
CRC	Convention on the Rights of the Child
CrPC	Code of Criminal Procedure
CRPD	Convention on the Rights of Persons with Disabilities
CSR	Corporate Social Responsibility
EO	Executive Order
FPIC	Free, prior and informed consent
GRP	Government of the Republic of the Philippines
HDCs	Hill District Councils
HSA	Human Security Act
ICC	Indigenous Cultural Communities
ICCPR	International Convention on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Convention Economic, Social and Cultural Rights
IDP	Internally displaced person/s
ILO	International Labour Organisation
IP	Indigenous Peoples
IPC	India Penal Code
IPRA	Indigenous Peoples Rights Act
IPSP	Internal Peace And Security Policy

ISPR	Inter Service Public Relation Directorate
KAMP	Kalipunan ng mga Katutubong Mamamayan ng Pilipinas
KARAPATAN	Alliance for the Advancement of People's Rights
KATRIBU	Indigenous Peoples Party List, Philippines
KTE	Knowing the Enemy
MILF	Moro Islamic Liberation Front
MISA	Maintenance of Indian Security Act
MNLF	Moro National Liberation Front
MoCHTA	Ministry of the Chittagong Hill Tracts Affairs
NCIP	National Commission on Indigenous Peoples
NCPO	National Council for Peace and Order
NDFP	National Democratic Front of the Philippines
NGO	non-government organization
NHRC	National Human Rights Commission
NHRCT	National Human Rights Commission of Thailand
NPA	New People's Army
NSA	National Security Act
NSCN-IM	National Socialist Council of Nagaland (Isak Muivah)
OB	Order of battle
OpBay	Operational Plan Bayanihan
P.O.	President Order
PASAKA	Alliance of Lumad Organizations in Southern Mindanao
PCJSS	Parbatya Chattagram Jana Samhati Samiti
PDA	Preventive Detention Act
PKO	United Nations Peace Keeping Operations
PNP	Philippine National Police
POTA	Prevention of Terrorism Act
RA	Republic Act
RAB	Rapid Action Battalion
RFD	Royal Forestry Department
RLPD	Rights and Liberties Protection Department
SC	Scheduled Caste
SPA	Special Powers Act
ST	Scheduled Tribes
TAAA	Terrorist Affected Areas Act
TADA	Terrorist and Disruptive Activities Act
UAPA	Unlawful Activities (Prevention) Act
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNPFII	UN Permanent Forum on Indigenous Issues
UNSC	UN Security Council
UPR	Universal Periodic Review

NATIONAL SECURITY LAWS AND MEASURES AND THE IMPACTS TO INDIGENOUS PEOPLES IN FOUR ASIAN COUNTRIES

EXECUTIVE SUMMARY

The implementation of national security laws, measures, programs and policies results to serious and adverse impacts to the respect for and protection of the individual and collective rights of indigenous peoples as enshrined in various international human rights instruments, national constitutions and laws.

After the U.S. government passed its Patriot Act in October 2001, most governments, including Bangladesh, India, the Philippines and Thailand, declared support to the US “War on Terror” and enacted more anti-terror laws or so-called “national security measures.” With these draconian laws, the experiences of indigenous peoples in these countries demonstrate a worsening trend of human rights violations. Among these violations are political killings, arbitrary arrest and torture, militarization of indigenous communities leading to massive displacements, and violence against women.

These national security laws are contrary to the international human rights obligations of states to uphold civil and political rights including freedom of expression, beliefs and legitimate political affiliation, freedom of association and peaceful assembly due process and equal protection of the law, and the right to a fair and free trial in competent courts.

These laws on national security legitimize warrantless arrests and the illegal detention of “suspected terrorists.” These result to physical, sexual and psychological torture and even death. Likewise, the collective rights of indigenous peoples such as their right to their lands and resources, as well as peace and security in their territories, are systematically violated. Indigenous communities are militarized; military operations and blockades targeting innocent indigenous peoples are conducted; curfews, restrictions to livelihood activities and evictions are enforced; and, sexual violence to indigenous women and girls are perpetrated by military elements all in the name of national security.

All four countries share similar histories of colonization. Bangladesh and India were directly colonized by the British while the Philippines was colonized by the Spanish and then the Americans. Thailand was an indirect colony

of European powers. Having been colonized, these countries inherited unjust legal and political systems that perpetuate the systematic discrimination, oppression and subjugation of indigenous peoples.

Even prior to the “War on Terror” national security laws already existed in the four Asian nations. These are the 1974 Special Powers Act (SPA) of Bangladesh; the laws of India like the Armed Forces (Special Powers) Act, 1958, the Unlawful Activities Prevention Act, 1967, and the National Security Act, 1980; Republic Act 1700 (1957) and Presidential Decree 885 (1976) both Anti-Subversion laws of the Philippines; and Thailand’s Martial Law, 1914.

India, Bangladesh and the Philippines have repealed some of these draconian laws but have enacted new and wide ranging anti-terrorist legislation. The said countries’ governments have time and again implemented counter-insurgency programs and policies that have directly and adversely affected indigenous peoples in various periods of their histories up to this day.

Bangladesh has a continuing case of suppression of the indigenous Jumma peoples in the Chittagong Hill Tracts (CHT) region with the State employing the following laws, among others: Special Powers Act 1974, Arm Act of 1879, Forest Act of 1927, the Emergency Power Rules of 2007, and the de facto military rule Operation Uttoron (Operation Upliftment). Under Operation Uttoron, the military forces remain the supreme authority in the region. The military search operations, harassment, threats, intimidation, and repression in CHT are continuing. A vested group within the army continues to oppose any substantive progress on the implementation of the CHT Accord. The Army authority has also influenced the present grand alliance government against the constitutional recognition of indigenous peoples.

In India, their extraordinary laws give broad powers to the State machineries. While several of these laws have been repealed, they remain effective for those who were charged, arrested, and detained for violations of the repealed laws when the said laws were still in effect. Furthermore, the continuing counter-insurgency programs against the armed group called Naxalites that operates in the areas known as the tribal belt have resulted to massive human rights violations of the *adivasi*

or scheduled tribes. Many of the Indian military forces' claims of encounters with Naxalites were in reality, attacks, killings, arbitrary arrests, detention and torture



of scores of innocent *adivasis*. Thousands remain in detention with no access to justice and their families are not provided with appropriate assistance for their very impoverished condition.

The Philippines' human rights situation has worsened despite the repeal of the aforesaid antiquated anti-subversion laws. The enactment of the Human Security Act (HSA) is used against people's movements, organizations and individuals including those of indigenous peoples that are critical of State policies and programs. The military has vilified these movements, organizations and their members, making them fair targets for repression and even physical elimination. To date, there are more than 43 political killings of indigenous peoples in the Philippines under President Benigno Aquino's term. Impunity is prevalent despite the international attention on this serious breach of the human rights obligations of the Philippine government.

Thailand recognizes 'traditional communities' instead of indigenous peoples under the 2007 Constitution. The Constitution is likewise silent on citizenship rights. This is of serious concern as majority of the more than half a million stateless population in Thailand are indigenous peoples. Thailand has its Emergency Decree of 2005 and Internal Security Act of 2007 to counter people's uprisings.

The Philippines, India, and Thailand have voted in favor of the adoption of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the September 2007 UN General Assembly while Bangladesh abstained. Likewise, all these countries have ratified international human rights conventions such as the International Convention

on the Elimination of All Forms of Racial Discrimination, the International Convention on Civil and Political Rights, and the International Convention Economic, Social and Cultural Rights.

However, most of the human rights obligations of these states are not reflected or implemented properly in their respective national laws and measures. In particular, the governments of the Philippines and India have national laws relating to indigenous peoples and scheduled tribes respectively but these are not appropriately enforced or have been weakened or are being challenged in courts.

At the same time, the implementation of national security laws is in fact contrary to the laws and policies that respect the rights of indigenous peoples and scheduled tribes. It thereby results to ethnocide in certain areas due to massive evictions, weakening of, or the outright destruction of indigenous institutions as mistrust and fear are sown among the indigenous peoples. Killings or silencing of indigenous leaders add to the systematic violation of their civil and political rights.

This alarming situation needs urgent actions and measures at all levels from local to global in order to abate further human rights violations, attain genuine peace, social justice, non-discrimination, and sustainable development of indigenous peoples as equal to others.

These national security laws are contrary to the international human rights obligations of states to uphold civil and political rights including freedom of expression, beliefs and legitimate political affiliation, freedom of association and peaceful assembly, due process and equal protection of the law, and the right to a fair and free trial in competent courts.

I. INTRODUCTION

Indigenous peoples in Asia continue to face discrimination, land alienation, forced population transfer, displacement, human rights abuses, genocide, cultural assimilation, and denial of access to justice.

Of deep concern are the increased labelling of legitimate indigenous peoples' movements and activists as 'terrorists.' This includes declaring indigenous peoples' territories as 'disturbed areas' or insurgency areas to legitimize full-scale military operations known variously as Operation Greenhunt, Operation Cleanheart, Operation Conflagration, Operation Upliftment, or Oplan Bayanihan. These operations have resulted to unlawful killings and other human rights violations through legal or quasi-legal arrangements. These are compounded by the enactment of national security laws such as anti-terrorism laws in many countries in Asia.



The continuing militarization of numerous indigenous peoples' territories under these security laws in Asia has led to gross human rights violations, including extrajudicial killings, torture, illegal detention, forced disappearances, rape and other forms of sexual violence against women and children. These are characterized by a culture of impunity whereby the perpetrators of such violations escape detection and punishment.

The Asia Indigenous Peoples Pact (AIPP) undertook this study to look at the impact of national security laws and measures on indigenous peoples where they are most affected. This paper presents the extent to which the implementation of these national security laws and measures in four Asian countries impacts on the human rights of indigenous peoples.



This paper focuses on the following countries in Asia: Bangladesh, India, the Philippines, and Thailand. Each country study will examine the following areas: profile of indigenous peoples in the country; legal recognition of indigenous peoples and other legal frameworks relevant to indigenous peoples; international obligations of the country; scoping of national security laws and measures and their implementation and the impact of these laws and measures to indigenous peoples.

A comparative analysis is made to establish trends, draw lessons and posit recommendations to aid the AIPP Regional Secretariat, its member-organizations, partners, and advocates in coming up with policy recommendations for the respect, protection, and fulfilment of indigenous peoples rights.

Of deep concern are the increased labelling of legitimate indigenous peoples' movements and activists as terrorists.

II. COUNTRY STUDIES

A. BANGLADESH

Impacts of National Security Laws to Indigenous Peoples in Bangladesh

Contributor: Mangal Kumar Chakma

1. Background

More than 54 indigenous ethnic communities have been living in Bangladesh for centuries. Most of these communities have self-identified as indigenous peoples. In the 2011 official census, the total number of indigenous peoples in Bangladesh was 1,586,141. However, indigenous peoples claim that the total IP population is over 3 million. The Chittagong Hill Tracts (CHT) is the only region in Bangladesh where indigenous peoples are largely concentrated. In other parts of Bangladesh, they are also found mainly in the north-west (Rajshahi-Dinajpur), central north (Mymensingh-Tangail), north-east (Greater Sylhet), south-west (Patuakhali-Barguna-Barishal) and south-east (Chittagong-Cox's Bazaar).¹

The Bangladesh 1972 Constitution has no provisions on indigenous peoples. Although it does not recognize the ethnic, linguistic, and cultural minorities of Bangladesh as 'indigenous peoples,' a number of articles in the Constitution apply to the human rights of indigenous peoples. Articles 27 and 28 guarantee equality of all citizens and prohibit discrimination on the grounds of religion, sex, caste, race, and place of birth. It also stipulates 'affirmative actions' which are measures that favor poorer sections of the population of which most indigenous peoples fall under.

In the Fifteenth Constitution (Amendment) Bill passed by the Parliament on 30 June 2011, the government ignored the indigenous peoples' demand for the recognition of their fundamental rights. However, the government recognized the culture of indigenous peoples in the Fifteenth Amendment stating that "the State shall take steps to protect and develop the unique local culture and traditions of the tribes, minor races, ethnic sects and communities." It is important to note that "tribes, minor races, ethnic sects and communities" are terms not accepted by the indigenous peoples.

Further, the Fifteenth Amendment provides that "the People of Bangladesh shall be known as Bengalis as a

nation and the citizens of Bangladesh shall be known as Bangladeshies." Indigenous peoples have rejected this provision, arguing that they are Bangladeshi as citizens, but they are not "Bengali" as a nation. They all are a separate nation possessing a separate identity, culture, customs, language, and society distinct from Bengalis. Indigenous peoples have rejected the Fifteenth Amendment as it undermines their human rights and fundamental freedoms.

It is worth mentioning that the indigenous Jumma peoples of the CHT were independent peoples before British colonization. During the British colonial period (1860-1947), the CHT was denoted as an "Excluded Area" in order to protect the indigenous Jumma peoples from economic exploitation by non-indigenous people, preserve the indigenous peoples' socio-cultural and political institutions based on customary laws, community ownership of land and so on. In fact, several provisions of the CHT Regulation of 1900 functioned as a safeguard for the Jumma peoples as it prohibited migration into the region and land ownership by non-indigenous.

In August 1947, the British handed over the administration of CHT to the Pakistan government. Pakistan then recognized the CHT as a fully Excluded Area with a provision in its first constitution that was passed in 1956 with reference to the CHT Regulation of 1900 as basis. The Pakistani Government however, looked upon the Jummas with suspicion for being 'anti-Pakistani.' There was discrimination against the Jummas in the workforce, business, and education. The government policy was clearly revealed by the repeal of the CHT Frontier Police Regulation 1881. This effectively disbanded the Jumma police force in 1948.

The Pakistan government actively encouraged the Bengali Muslim infiltration of the CHT. It started the Bengali Muslim settlement in the CHT in 1950, violating the CHT Regulation of 1900. That Bengali Muslim settlement program continued up to 1966.

In order to transform the CHT into a Muslim-dominated area, the Pakistan government amended the CHT Regulation of 1900 several times against the will of the Jumma peoples to provide a legal basis for the influx of non-indigenous Bengali Muslim people from the plains of present Bangladesh into the region.

In 1960, in the name of so-called industrial development, the Pakistan government built the Kaptai hydroelectric project on the Karnafuli River that flooded 1,036 square

kilometers of lands and submerged 54,000 acres of the best arable land in the heartland of the indigenous Jumma peoples.

The Kaptai dam project permanently displaced about 100,000 Jumma peoples from their ancestral domain and severely damaged the self-sufficient agro-based economy of the CHT. This brought about the permanent disintegration of the Jumma peoples collectivity and ancestral domain and led to the increase of the Bengali Muslim population in the region.

The indigenous Jumma peoples hoped that the rulers of independent Bangladesh would realize their hopes and aspirations to be free from oppression and discrimination as they fought together with the Bangladesh rulers against the oppression and suppression of Pakistani rule. The Jumma peoples pushed their democratic demand for autonomy. A delegation of institutional leaders and prominent personalities of tribal peoples headed by M. N. Larma called on Prime Minister Sheikh Mujibur Rahman and submitted a 4-point charter of the following demands:



- (1) Chittagong Hill Tracts shall be an Autonomous Region and shall have its own legislative assembly.
- (2) There shall be a legal provision similar to “Chittagong Hill Tracts Regulation, 1900” in order to preserve the rights of tribal peoples.
- (3) Offices of the Tribal Chiefs shall be preserved.
- (4) There shall be a prohibition on any amendment or alteration to the constitutional provision on Chittagong Hill Tracts affairs.

Unfortunately, the Bangladesh government did not respect the Jumma peoples fundamental rights and not a single word regarding the Jumma peoples mentioned in the 1972 Constitution. Prime Minister Sheikh

Mujibur Rahman rejected the Jumma peoples demands and maintained his government’s stance on ‘Bengali nationalism. According to Rahman, Bengali would be the only national identity for all citizens of Bangladesh. Without a constitutional provision for the CHT and its Jumma peoples, the entire region was opened to waves of Bengali Muslim migration. The government used the Bengali Muslim infiltration of the CHT to control the Jumma peoples movement for self-determination. In fact, it was the beginning of a relentless government-sponsored ethnocide in the CHT on the basis of extreme Bengali nationalism.

2. National Security Laws and Measures

Bangladesh started its journey as a nation in 1972 with a Constitution that had no provisions on national security, preventive detention or emergencies. In 1973, it was quickly amended to insert such provisions. The Special Powers Act (SPA) promulgated in 1974 contains provisions that appear to be the predecessors of subsequent security laws. In the meantime, actual or perceived security concerns increased immensely in the post 9/11 situation. As a backlash, religious extremism took root in Bangladesh for the first time and in the global, regional, and domestic context. Thus, the Anti-Terrorism Ordinance was passed by the caretaker government in 2007 without much opposition or debate.²

The promulgation of these laws may look excessive in view of the degree of extremism and terrorism that occurred in the country in the last 40 years. The first large-scale violence occurred in the period 1974-1975 when the ruling party-backed paramilitary forces confronted resistance from the opposition-backed armed forces. The violence was contained almost automatically after the fall of the then government in 1975.

During the formulation of the first Bangladesh constitution in 1972, the indigenous Jumma peoples demanded constitutional recognition of CHT special governance status. Following the rejection of this demand by the new government, the Jumma peoples started a democratic rights movement. With the declaration of martial law on 15 August 1975, the democratic struggle of the Jumma peoples was curtailed. The Jumma peoples then took up arms under the leadership of the Parbatya Chattagram Jana Samhati Samiti (PCJSS) to resist the military junta and advance self-determination. Thereafter, the indigenous Jumma peoples’ movement for self-determination in the CHT had been dubbed ‘terrorist’ by successive governments through the 1980s to the 1990s. On December 2, 1997, the government and the Jumma

guerillas signed a peace agreement to end hostilities and put an official end to that conflict through the Chittagong Hill Tracts Accord of 1997, or popularly known as the CHT Accord.³

2.1. Anti-Terrorism Act (ATA) in Bangladesh

The Anti-Terrorism Act (ATA), called “Anti-Terrorism Ordinance, 2008,” was enacted by the military-backed caretaker government on 11 June 2008 to combat religious militancy and the terrorist activities of Islamic militant groups active in Bangladesh. It was implemented in 2009 and subsequently amended in 2012. Recently, the Awami League-led 9th parliament passed the controversial amendatory legislation Anti-Terrorism (Amendment) Bill [ATA] in its budget session on 11 June 2013.

The ATA imposes death sentence, 3 to 20 years rigorous imprisonment, and fines for the broadly-defined offense of “terrorist activities.” The offenses of “terrorist activities” in the ATA cover the following: (1) any person creating horror amongst the public or segment of the public to jeopardize the territorial integrity, solidarity, security or sovereignty of Bangladesh, for the purpose of compelling the government or any other person to do or not to do an act that (a) causes death, inflicts grave injury, confines or abducts any person or causes damage to any property of a person; or (b) uses or keeps any explosive, ignitable substance, firearms or any other chemical substance with a view to effect the purposes enumerated in clause (a); and, (2) any person committing terrorist activities.

The Government of Bangladesh enacted also the 2012 Anti-Terrorism Act (Revised) and the 2012 Anti-Money Laundering Act to prevent terrorist activities and funneling of funds to these ends. These laws were passed when the US Department of State praised Bangladesh for its strong and bold approach against terrorism. Some provisions of the 2012 Anti-Terrorism Act can be misused for political reasons. These include the mandate given to law-enforcement agencies to seize individual or organizational properties and to freeze the bank accounts of the same. In its 2012 amendment, death penalty was introduced as the maximum penalty for terrorist activities. It also provided scope to prohibit the use of Bangladeshi land for the conduct of any terrorist activities in the country or against other countries, all types of illegal arms and explosives, and the creation of ‘panic’ among the people through any terrorist activity.

This broad definition of terrorist acts includes property

crimes and disruption of public services that do not involve violence or injury to people. The United Nations special rapporteur on counterterrorism and human rights has affirmed that the concept of terrorism should be limited to acts committed with the intention of causing death or serious bodily injury, or the taking of hostages, and should not include property crimes. In addition, mandating the death penalty for property crimes would be contrary to international law.⁴

The Amendment in 2013 empowers the police, Rapid Action Battalion (RAB) and other law enforcement agencies to record and collect videos, still photographs, and conversations posted by people and organizations on social and communication media as well as monitor emails. The said Amendment allows these as admissible evidence in court. The police could use this power in specific circumstances with a court-issued authority. This provides law enforcers the legal cover to trample on people’s privacy, a right that is guaranteed in Article 43 of the Constitution.⁵

The criminalization of opinions expressed online through social media or blogs is not only a violation of freedom of expression and the right to privacy. It also represents a new pattern of persecution of any voice of dissent, including those from human rights defenders.



The ATA maintains that a person may be held criminally liable for financing terrorism if he/she is involved in financial transactions for which there is merely a “reasonable suspicion” that the money will be used to fund any terrorist act.

The ATA and its amendments, in its effort to deal with suspected terrorist bank accounts, will bring more than

a dozen reporting agencies, in addition to the banks, under the direct purview of the Bangladesh Bank. In this revised law, a Bangladesh Financial Intelligence Unit was created to scrutinize and freeze suspected financial transactions and bank accounts.

All the amendments to the ATA were passed without any consultation with civil society organizations and despite strong opposition in Parliament. Human rights defenders raised their long-standing concerns on the vague definitions of 'terrorist activities' in the ATA that open the legislation to potential abuse. This is also incompatible with the principle of law that requires criminal liability and punishment to be limited to clear and precise provisions. This principle is enshrined in Article 15 of the International Covenant on Civil and Political Rights (ICCPR), which Bangladesh has ratified.⁶ In the present context, there is no doubt that an anti-terrorism law is needed to combat domestic violence, religious extremists, and international terrorists. Nevertheless, this law needs checks and balances that shall protect both national and public interests. The recent amendments to the ATA provide law enforcement agencies with further arbitrary sweeping powers of arrest, detention, and punishment in the interest of state security and the elimination of global terrorism.

In section 42 of ATA, nine international conventions ratified or acceded to by the Government of Bangladesh has been included in its schedule. However, these conventions have not been taken up by Parliament, which is a fundamental prerequisite to legitimize international conventions under the purview of the Constitution (Article 145A).⁷ The schedule of the amended ATA comprises of the following:

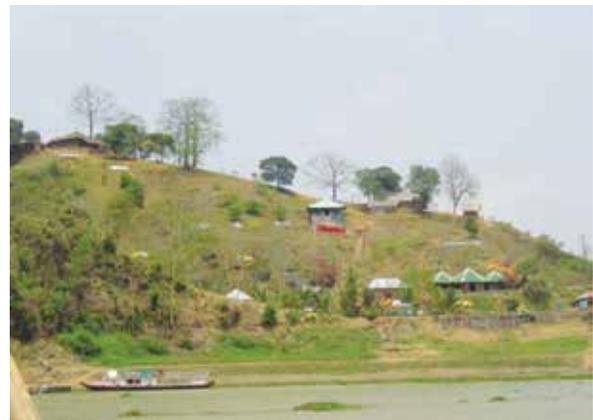
- (1) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the UN General Assembly on December 14, 1973. Bangladesh ratified it on 20 May 2005;
- (2) International Convention against the Taking of Hostages, adopted by the UN General Assembly on December 17, 1979 which Bangladesh ratified on 20 May 2005 and Convention on the Physical Protection of Nuclear Material which Bangladesh ratified on 11 May 2005;
- (3) Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation;

- (4) Convention for the Suppression of Unlawful Acts against Safety and Maritime Navigation; and
- (5) Convention for the Suppression of Terrorist Bombings, adopted by the UN General Assembly on December 15, 1997. which Bangladesh ratified on 11 May 2005.

2.2. Military Rule in the CHT

In the history of the Jumma peoples, government decisions and programs with the ultimate aim of ethnic cleansing had been implemented. Some of these are: the exclusion of the Jumma peoples during the partition of India in 1947; the settlement of Bengali Muslims in the CHT after the creation of Pakistan; the enactment of the CHT Land Acquisition Act in 1958 for the illegal occupation of Jumma lands; the eviction of the Jumma peoples from their ancestral lands after the implementation of the Kaptai Hydroelectric Dam project; the unilateral abolition of the Tribal Region status of the CHT without prior consent of the Jumma peoples that paved the way for the influx of outsiders into CHT; inhuman tortures upon the Jumma peoples in the name of wiping out the Razakar-Mujahid-Mizo elements after the liberation of Bangladesh; the rejection of the Jumma peoples' demand for Regional Autonomy in 1972; and, the series of Bangladesh government-sponsored settlements of Bengali Muslim settlers into CHT in the 1950s.⁸

The Jumma peoples' struggle for self-determination began within the bounds of the Constitution. However, the ruling classes rejected the Jumma peoples' demands and continued the heavy militarization in the region. When all legal avenues for the Jumma peoples were exhausted, the movement turned into an armed struggle.



Since Bangladesh emerged as a nation-state in 1971, the CHT region has been heavily militarized to suppress the

Jumma peoples. The government started its militarization of the CHT in the late 1970s through Operation Dabanal (Operation Wildfire). The Bangladesh Army's 24th Infantry Division is in charge of the CHT. It set up three full-fledged cantonments (Dighinala, Alikadam and Ruma) in 1973. An estimated 150,000 soldiers as well as the paramilitary Bangladesh Rifles BDR, Armed Police Battalion, Rapid Action Battalion, police, Ansar and Village Defence Party, have been strategically deployed in the region. At Kaptai, there is also a naval base. The same policies of militarization and Bengali Muslim settlement programs in the CHT were continued during the regimes of General Ziaur Rahman and General H. M. Ershad.⁹

On December 2, 1997, after more than two decades of armed conflict, the government and the Jumma rebel group Parbatya Chattagram Jana Samhati Samiti (PCJSS) signed the CHT Peace Accord. After the signing of this agreement, the Bangladesh government replaced Operation Dabanal with Operation Uttoran (Operation Upliftment) continuing military interference in civil administration, tribal affairs, and forest resources. In the conduct of Operation Uttoran, the military continues to meddle with the functions of the general civil administration, law and order, and road infrastructure. It exercises control over the admission of Jumma students to higher educational institutions and actively supports the outsider Bengali settlers in expanding and establishing new cluster villages in the CHT through Shantakaran (pacification) and Ashrayan (housing) projects.

2.3. National laws used against the indigenous peoples

Among the Bangladesh national laws being used to combat terrorist activities is the Special Powers Act (SPA). This Act provides for special measures to prevent certain prejudicial activities, for more speedy trials, effective punishment of certain grave offenses, and for other related matters.

As a background, the grim post-independence situation inspired the government to promulgate the Scheduled Offenses Special Tribunal order by virtue of President Order (P.O.) 50 in May 1972. Due to serious lapses in the application of such laws (including P.O. 8) innocent people were harassed and routinely victimized. The misapplication of P.O. 50 of 1972 caused severe public criticism that culminated with the enactment of the SPA that repealed it on 9 February 1974, together with the 1951 Security Act and the 1958 Public Safety Act Ordinance. The SPA was adopted in line with the Maintenance of Indian Security Act, 1971 and the East Pakistan Public Safety Act, 1958. However, the provisions

of the SPA were made more draconian than the two other laws. Several sources indicated that the SPA has been used to suppress alleged criminals as well as political opponents.



The SPA provides for the detention of any person without trial. The detainee may be kept imprisoned for years without any specific charge. The initial period of preventive detention is six months under the Constitution. Neither the SPA nor the Constitution specifies any fixed period for detention. Most of the political parties have termed the SPA as a black law and even promised its repeal if voted into office. But whichever party went to power in the last 25 years conveniently forgot the promise.

There are more national laws used against indigenous peoples that label them criminal, terrorist, and reserved forest intruders, among others. These laws include the Arm Act of 1879, Forest Act of 1927, and the Emergency Power Rules of 2007.

3. Implications, impacts, and consequences to indigenous peoples' human rights

3.1. Violations to civil and political rights

Bangladesh inherited the CHT as a highly politicized region with well-organized indigenous peoples, collectively referred to as Jummas. Immediately after the liberation war, the Jummas heightened their demand for autonomy under the leadership of Manabendra Narayan Lama, national awakening pioneer of the Jumma peoples and a member of the Bangladesh parliament from the region. However, as mentioned earlier, the government of Sheikh Mujib Rahman refused to give recognition of these under the 1972 Constitution.

Mujib not only dismissed their appeal but also called for the unequivocal assimilation of the ethnic tribes into the country's mainstream 'Bengali' population and to forget 'ethnic identities' and 'merge with the Bengali nationalism.' Mujib also launched "a series

of sweeping and indiscriminate reprisal raids against the CHT for alleged complicity with the Pakistanis.” Immediately following Bangladesh independence in early 1972 the CHT underwent militarization. Such actions prompted M. N. Larma to launch a new political party in 1972 named the Parbatya Chattagram Jana Samhati Samiti (PCJSS) and to form its armed wing named ‘Shanti Bahini’ to spearhead the Jummas’ demands.¹⁰

Ziaur Rahman, a fiercely nationalistic military general-turned-political leader who succeeded Mujib in 1975, reversed many of the previous regime’s policies but maintained the militarist stance on the CHT. Zia significantly strengthened the military presence and intensified Bengali settlement in the CHT. He deployed over 150,000 military and paramilitary personnel in the region, forcing almost all PCJSS leaders, including M. N. Larma, to go underground. However, the massive military presence bolstered the Shanti Bahini to emerge as a full-scale indigenous armed force.

The Zia regime enacted the Disturbed Areas Bill in 1980 that granted blanket powers to the army to shoot anybody involved in any ‘unlawful activity’ in the region. This resulted to thousands of civilian casualties.¹¹ The government implemented military administration in the CHT through Operation Dabanal. The Zia regime branded the Jumma peoples as separatists and hostile to the government and encouraged the massive entry of Bengali settlers into the region through land grants, cash, and rations. Jumma leaders claim that such patronage resulted in a fresh influx of more than 400,000 Bengali settlers during the period.

Hossain Mohammad Ershad succeeded Zia as military strongman in 1982. He continued the military confrontation as well as the Bengali settlement strategy of his predecessors. By 1983, Bengali settlers into the CHT reached the half-million mark and about a quarter of the country’s entire defense forces were deployed in the region. The government declared that each settler family would be given 7.5 acres of land and rations for an unlimited period without verifying availability of land or identifying specific locations of where these lands are. Since no cultivable land was vacant for settlement, the Bengali settlers started to forcibly occupy Jumma peoples’ lands. The Bengali settlers and the armed forces’ intensified attacks increased the number of Jumma refugees in neighboring India to 70,000.

The SPA of 1974 has been used by every government as a brutal weapon to suppress the indigenous peoples’ movement in CHT and even democratic movements

across Bangladesh. The detention law is still used to harass indigenous political activists and indigenous human rights defenders in the name of national security. Hundreds of Jumma peoples were detained under this law before the CHT Accord. Further, the worst victims of this law are the indigenous peoples of the CHT who carried forward movements for the right to self-determination under different regimes.¹²

The Shanti Bahini demonstrated greater ability to mount direct attacks on the armed forces as well as on Bengali settlers. After a long struggle, the indigenous Jumma peoples compelled the government to engage in negotiations to resolve the CHT problem through peaceful and political means. This resulted to the signing of the CHT Accord on 2 December 1997. The Accord paves the way for peace, development, and demilitarization of the region as well as for the meaningful engagement and representation of the Jumma people.

3.1.1. CHT Accord and Demilitarization

From the very beginning, the government tried to solve the CHT political problem with military might but failed miserably. The government eventually signed the CHT Accord with the PCJSS in 1997 for a political solution. One of the early articles on the result of the CHT Accord stated thus:

“After the signing and execution of the Agreement between the Government and the Jana Samhati Samiti and immediately after return of the members of Jana Samhati Samiti to normal life, all the temporary camps of the army, the Ansars and the Village Defense Party (VDP), excepting the Border Security Force (BDR) and permanent army establishments (being those three at the three district headquarters and those at Alikadam, Ruma and Dighinala), shall be taken back by phases from Chittagong Hill Tracts to permanent cantonments and the time limit shall be fixed for its purpose. In case of deterioration of the law and order situation, in time of normal calamities and for other similar purposes, Army forces may be deployed under the authority of the civil administration in adherence to Law and Rules as applicable to all the other parts of the country. In this respect, the Regional Council may, in order to get the required or timely help, make requests to the appropriate authority.”¹³

The government implemented some of the provisions of the CHT Accord, including the framing of some related laws as stipulated in the pact. However, there are allegations that the government is reluctant to implement major reforms stated in the Accord. It has yet to establish the CHT special governance system that includes a CHT Regional Council and three Hill District Councils, resolve ongoing land disputes, withdraw the temporary military camps, relocate Bengali settlers outside the CHT, and rehabilitate the internally displaced Jummas and returnee refugees.

Aside from not withdrawing the temporary camps of security forces from the CHT, the military acts as armed guardians of Bengali Muslim settlers. This imperatively blocks the implementation of the CHT Accord at every step.

The government has instead imposed de facto military rule via Operation Uttoran during the post-Accord period. Essentially, most of the Accord's provisions on the main issues mentioned above are either partially implemented or unimplemented at all.

According to the PCJSS, out of more than 500 camps, only 31 were withdrawn in the Awami League government period (1996-2001). Following the formation of a new government by the Grand Alliance, a total of 35 camps including a brigade headquarters were withdrawn. However, it is alleged that the APBN have re-deployed at least five camps out of 35 camps withdrawn. On the contrary, the government claimed that 172 camps have been withdrawn since the signing of the Accord. In spite of this, the government has not provided a list of camps withdrawn.¹⁴

Operation Dabanal that was imposed on the CHT during the period of insurgency was replaced with Operation Uttoran on 1 September 2001. Under Operation Uttoran, human rights violations by the military which is still in force, continue unabated. In fact, currently, the military vigorously pursues a combined program of militarization and Islamization through establishing more and more outsider Bengali Muslim settlements in the CHT region. In short, it can be likened to a gradual ethnic cleansing of the Jumma peoples.

The Bangladesh Army's 24th Infantry Division was given the responsibility to combat the armed struggle of the PCJSS and of the Jumma peoples in the mid-1970s under Operation Dabanal. The said military division holds the same power in the post Accord period under Operation Uttoran. With direct support from military and police

forces, Bengali settlers also have launched large-scale attacks on Jumma villages.

3.1.2. State of Emergency and Arbitrary Arrests of Indigenous Activists

Amidst violent conflicts among the national political parties during the formation of a caretaker government, a State of Emergency was declared on 11 January 2007. The Emergency Power Ordinance and the Emergency Power Rules of 2007 authorized the government to "detain citizens without filing formal charges or specific complaints." There are widespread allegations that government agencies misused the emergency powers to arrest innocent indigenous Jumma rights activists in the CHT and in the plains. The most serious cases involved extrajudicial killings, arbitrary arrests under false charges, and summary trials under dubious circumstances.

In particular, the government forces targeted indigenous Jumma political activists, including members of the PCJSS, and indigenous human rights activists without political affiliation. To back up their allegations, government forces have been stage-managing firearms recoveries from arrestees by planting evidence and lodging false Arm Act cases against innocent people. Since the promulgation of the State of Emergency, at least two innocent villagers have been killed and 50 indigenous activists arrested. In addition, it has also been reported that at least 20 innocent Jummas, including public representatives, women, and villagers have also been arrested or otherwise detained.¹⁵

In most cases, they have been falsely charged with illegal possession of firearms, murder, kidnapping, and extortion. The cases against them were filed under section 16(b) of the Emergency Power Rules of 2007. Section 16(b) states that "regardless of whatever is stated in sections 497 and 498 of the Criminal Procedure Code or any other law, an accused under the Emergency Powers Ordinance will not be released on bail during the enquiry, investigation and trial of the case against that person." This 'No Bail Rule' is an example of how the last caretaker government has assumed the role of judge and jury in clear violation of the internationally accepted principles on the administration of criminal justice.

For instance, on 18 February 2007, the Joint Forces comprised of the army and police led by Lt. Kazi Mustafizur Rahman of the Rangamati army region and Md. Osman Goni, PSI of Kotowali police station of Rangamati District arrested Mr. Satyabir Dewan, 56 years

old, in Rangamati municipality from his home. Five false cases were lodged against him at different police stations. The five cases are as follows:

- (1) Case no. 6 of Kotowali police station dated 18-02-2007, in violation of Section 19(a) and (f) of the Arm Act of 1879 for keeping an illegal firearm;
- (2) Case no. 1 of Jurachari police station dated 01-12-2006, in violation of Section 364/34 of the Bangladesh Penal Code for killing Kina Mohan Chakma. The name of Mr. Dewan was not in the statement of the complainant (Priya Kumar Chakma s/o Kina Mohan Chakma), however the Joint Forces included Dewan in this case;
- (3) Case no. 12 of Kotowali police station dated 25-02-2007, in violation of Section 25(b) of the Special Power Act of 1974 for possession of illegal foreign currency;
- (4) Case no. 9 of Kotowali police station dated 29-01-2007, in violation of Section 302/34 of the Bangladesh Penal Code for killing of Jnana Lal Chakma in Kutukchari under Rangamati upazila. Ms. Neepa Chakma w/o Jnana Lal Chakma mentioned the name of culprit as unknown in her statement;
- (5) Case no. 1 of Naniarchar police station dated 12-06-2006, in violation of Section 326/307/34 of the Bangladesh Penal Code for the attempted murder of Pidikya Chakma in Naniarchar.

The court meted 17 years of rigorous imprisonment to Satyabir Dewan in May 2007 for possession of illegal firearms and two years for keeping illegal foreign currency after summary trials under questionable conditions. He has appealed the verdict to the High Court.

Another case is the arrest of Mr. Ranglai Mro, 45 years old, on 23 February 2007 by the Joint Forces in the Bandarban District. Mr. Mro was brutally tortured while in army custody. Due to his condition, the police of Bandarban police station did not agree to receive him when the army tried to turn him over to them. He was eventually admitted to the Bandarban District Hospital and later transferred to the Chittagong Medical College Hospital. He was given treatment under the Joint Forces custody for a week.

Mro is the chairman of the Sualok Union Council and headman of the Sualokmouza in the Bandarbandsadar



sub-district. He was protesting against the eviction of indigenous peoples from their villages of Sualok and Tankaboti in the Bandarban District for the establishment of an artillery training center. It is reported that some 750 families including Mro, an indigenous peoples in the CHT with a small population, have been evicted from their dwellings. The military forces acquired 11,445 acres of land in 1991-92 in Renikkhong, Sualok and Tonkabotimauzas in Mro communities in Bandarban District for this artillery training center.

In the plain lands, there is no regular reporting on the implications of the Anti-Terrorism Act and its impacts and consequences to indigenous peoples' human rights. Only one incident has been reported during the State of Emergency in 2007-2008. On 18 March 2007, Choles Ritchil, a leader of the Garo indigenous community, is reported to have died of torture carried out by Joint Forces personnel at the Modhupur Kakraidh temporary army camp in Tangail District. On 20 March 2007, Choles Ritchil's wife Sandha Simsang filed a complaint at the Modhupur Police Station. However, the Modhupur police did not register the case. Ritchil has been struggling against the Forest Department's repression of his indigenous peoples for a long time. In 2003, the government of Bangladesh declared an Eco-Park in the Modhupur forest and started constructing a wall around 3,000 acres of the Modhupur forest without acquiring consent from the Garo indigenous peoples living in the area. During a peaceful protest procession against the Eco-Park in Modhupur on 3 January 2004, police and the forest guards opened fire at the protesters, killing a Garo protester named Mr. Piren Snal on the spot and injuring 25 others, including women and children. After this incident, the Forest Department postponed the construction of the wall.

3.2. Violations of right to land, territories, and resources and threats to the life and livelihood of indigenous peoples

Large tracts of land have been acquired for military purposes in the CHT, particularly for cantonment expansion, military camp expansion, new artillery training centers, and new air force training centers. The land illegally acquired by the government for military purposes in Bandarban District alone is 71,711 acres. The process of acquiring 9,560 acres of land for the expansion of the Ruma Garrison in Bandarban District is, for example, now in the final stage. The proposed expansion plan would affect 1,569.06 acres of privately-owned land and 4,000 acres belonging to the Forest Department. It shall displace 4,315 persons of 644 indigenous Jumma families mostly from Marma, Tripura, and Murung indigenous peoples. If the project pushes through, many villages would be completely destroyed and thousands of acres of forests would disappear. There is no suitable and adequate land for the relocation of the displaced peoples. This will in turn create enormous pressure on the demands for land, increase dependence on Jum cultivation, and pose serious threats to the lives and livelihood of the displaced indigenous peoples.

A total of 1,871 leases of 25 acre plots comprising 46,775 acres of community jum land [jum refers to shifting cultivation] in the CHT have been issued to non-resident industrialists, companies, and civil and military officials prior to the CHT Accord of 1997. Only about 30 leases have been granted to the indigenous peoples. Among the prominent lessees are General Motin, former General Commanding Officer of 24th Infantry Division of Chittagong, who has huge lands in Bandarban in his and his family members' names. Meanwhile, in some areas, Jumma villages have been attacked by hired Bengali laborers working in these plantations. If the leases are not undone and the illegal occupation of Jumma lands are not fairly resolved, the situation in those areas will only get worse.

The CHT Accord provides that the leased lands allotted to non-tribal and non-local persons for rubber and other plantations wherein no project was undertaken or properly utilized in the last ten years shall be cancelled.

During the post-Accord period, about 593 plantation plots have so far been cancelled. To the utter frustration of the CHT people, the Deputy Commissioner of Bandarban District has recently reinstated most of the plots to the lease holders. On the other hand, allotments of land under this category continue unabated by the

district authorities.

The Bangladesh government initiated the creation of 218,000 acres (89,034 hectares) of reserve forests in the mouza forest areas in the CHT using the Forest Act of 1972. There are a number of reserved or protected forests in different parts of the plains as well. The inhabitants of the reserve forests in CHT and the plains, mostly indigenous peoples, suffer from multiple forms of discrimination. Indigenous peoples often face false and harassment criminal cases for allegedly violating the forest laws. The forest-dependent communities' traditional rights to cultivation, hunting, gathering, and so forth are denied, in violation of the provisions of ILO Convention No. 107 and the CBD that were both ratified by Bangladesh.

The Bandarban army zone authority plans to acquire more than 600 acres of land at Dola Mro Para (Jaban Nagar), Kaprupara (Nilgiri), Chimbuk Shola Mile, Owai Junction (Baro Mile), and Keokradong Hills under Bandarbandsadar and Rumaupazila in Bandarban District. The acquisition is for the establishment of a luxury commercial resort, restaurants, and a shopping mall in the said areas. The proposed locations are populated by the Mro and Bawm, two of the most marginalized indigenous peoples in the CHT. The army authority has already acquired 16 acres of land at Jiban Nagar under Bandarbandsadar upazila. However, villagers allege that the army has occupied more than 16 acres of land.

On the other hand, around 50 acres of land belonging to local indigenous peoples of Ruma in Bandarban District was acquired by the Ruma army zone authority to establish a tourist spot called AnindyaParjatan Kendra. The said authority also got around 100 acres of land belonging to indigenous peoples in Sajek union under Baghaichari upazila in Rangamati District to establish a tourist spot. The indigenous villagers were asked to leave the area. The plan would hamper land security, social cohesion, and communal harmony. Since huge tracts of jum lands are included in the acquisition process, residents of the proposed locations will be landless and will lose their livelihood. This shall generate anger and frustration among indigenous victims and start a wave of violence.

3.3. Military Intervention in Politics and Civil Administration

Intervention in politics and civil administration is another role played by the military forces that has a negative influence on the situation in the CHT as well as on

the indigenous peoples' cause, in addition to rampant human rights violations. The areas of intervention are diverse, ranging from top-level policy decisions on the CHT, constitutional amendments, amendment of the CHT Land Dispute Resolution Commission Act, and the inappropriate use of *adivasi* (indigenous) terminology.

3.3.1. Special governance system in CHT remains dysfunctional due to military interference

In the current political, social, and economic setting of Bangladesh, the army is one of the most powerful institutions, immune to public criticism or scrutiny even by the Supreme Court. With its pervasive power and influence over Bangladeshi society in general and the CHT in particular, the army continues to oppose any substantive progress on the implementation of the CHT Accord.¹⁶

Contrary to the provisions of the CHT Accord to diminish the powers of the military, military rule is being further entrenched with the retention of Operation Uttoran, which is an executive order conferring rights on the military to intervene in civil matters beyond their jurisdiction while the full activation and devolution of powers to the CHT institutions of the special governance system, namely, CHTRC and three HDCs, are still to be fulfilled.

Furthermore, the military continues to lord it over in development activities such as road-building and the distribution of food rations under the so-called pacification program as well as a recent unofficial proposal from the Armed Forces Division of the Prime Minister's office to establish a strategic management forum.¹⁷ The forum would have a significant presence of military and intelligence officials and its major responsibilities would include formulating integrated initiatives, policy making, and an action plan on all issues related to the CHT.¹⁸

3.3.2. Intervention in the Constitutional Recognition of "Indigenous Peoples"

The most significant military intervention in 2011 was on the provisions on indigenous peoples in the constitutional amendments. According to the *Jugantor*,¹⁹ a daily published in Dhaka, the Directorate General of Field Intelligence, had briefed high-level Ministers in June 2011 about why indigenous peoples should not be termed 'indigenous' and how that affects the sovereignty of the country and gives them special rights. In fact, according to the leaked minutes of the Cabinet meeting held on

January 26, 2011, the military brought up the cases of East Timor and South Sudan, saying that measures must be taken so that a similar situation does not occur in the CHT.²⁰

The ILO Conventions on Indigenous Peoples (Nos. 107 and 169) mentions 'indigenous' and 'tribal' groups but clarifies that the provisions of both conventions apply equally to both groups. Bangladesh has ratified ILO Convention 107 on Indigenous and Tribal Peoples. Therefore, the current regime of international human rights law (including the ILO Conventions and the UNDRIP) does not distinguish between tribal and indigenous peoples, with indigenous peoples being the currently accepted terminology. Thus, the CHT Accord and issues of indigenous peoples in different countries (whether called 'minorities,' 'tribal' or otherwise) are undeniably within the mandate of the Permanent Forum, the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the rights of indigenous peoples.²¹

3.3.3. Counter-insurgency continues even after the signing of the CHT Accord

During the insurgency period, the army carried out a 'Pacification Programme' (Shantakaran Prakaipa) as one of the counter-insurgency measures. This measure continues today, 16 years after the signing of the CHT Accord. The military receives more than 10,000 metric tons of food grains every year. They continue to actively support the outsider Bengali settlers in expanding and establishing newer cluster villages in the CHT through this programme.²² From 1979 to 1984, the successive governments settled around half a million Bengalis from the plain lands to the CHT to outnumber the indigenous Jumma peoples.



3.3.4. Human Rights Situation and Violence against Indigenous Women

Due to lack of effective initiatives for the implementation of the Accord's main provisions, there has hardly been any positive development on the overall situation in CHT. Gross human rights violations against the indigenous peoples continue unabated. These violations include arbitrary arrests, torture, extrajudicial killings, harassment of rights activists, and sexual harassment. In most cases, the violations happen with impunity. The failure to thoroughly investigate human rights violations by security forces and Bengali settlers in the CHT has remained a matter of serious concern.

After the signing of the CHT Accord in 1997, at least 16 communal attacks took place in the CHT.

The latest communal attacks committed by Bengali settlers in collusion with the security forces happened in the following locations:

1. Baghahat under Baghai-chaiupazila in Rangamati District and Khagrachari municipality in Khagrachari District on 19-20 February 2010;
2. Bagachadar area under Longaduupazila in Rangamati District on 17 February 2011;
3. Hafchari area under Ramgarh and Manikchari upazilas in Khagrachari District on 17 April 2011;
4. Baghaichari and Dighinala on 14 December 2011;
5. Rangamati on 22-23 September 2012; and
6. Taindong-Matiranga on 3 August 2013.

The lack of security always poses major risks in all spheres of indigenous women's lives. Even in the post-Accord situation, abuses by the non-security forces and Bengali settlers have not been stopped or reduced. Indigenous women are victims of a fanatically nationalist and communal section of the majority community of the country. The indigenous women are the victims of rape, abductions, murder, forced marriages, and religious conversions by the extremist section of the Bengali community.

Among these incidents is the abduction of Kalpana Chakma on 12 June 1996 by Lt. Ferdous and his gang. This elicited a huge domestic and international outcry. Kapaeng's records show that from 2007 to 2013 there were at least 227 reported incidents of violence against

indigenous women and children. 176 of these occurred in the CHT while 51 occurred in the plains. Women and children continuously face violence in both CHT and plains.²³

On 18 February 2014, a 28-year old Chakma woman was almost raped, allegedly by a security person in the area of Sajek union under Baghaichari upazila in Rangamati District. The local villagers caught the perpetrator named warrant officer Md. Kader of the Laxmichari camp but the camp authority did not take any action against him. On 21 February 2014, the Inter Service Public Relation Directorate (ISPR), at a press briefing, denied the incident and said that a vested group was trying to use this issue by distorting and exaggerating the situation.²⁴



4. Responses of Related Bodies

4.1. National Human Rights Commission

The National Parliament passed the National Human Rights Commission Act on 9 July 2009. The National Human Rights Commission Ordinance was first promulgated by the military-controlled Caretaker Government on 23 December 2007. The Act stipulates that the Commission has no power to take measures against accused persons or against law enforcement agencies, including investigations of human rights violations by the army and law enforcement agencies. With this limited mandate, the Commission is a toothless tiger.²⁵

The Act only allows the Commission to make recommendations to the government to take steps against persons for whom accusations have been proven. Consequently, its administrative independence goes as far as conducting investigations and submitting

recommendations, but not taking any further decisive actions. The Commission lacks the institutional capacity and adequate government support despite the formulation and adoption of a strategic plan and the strong role of its chairperson for the promotion and protection of indigenous peoples' rights in the country.

4.2. UPPFII's Study on the Implementation of the CHT Accord

In 2010, the UN Permanent Forum on Indigenous Issues (UNPFII) appointed Lars-Anders Baer, then member of the Forum, as Special Rapporteur to undertake a study on the status of the implementation of the CHT Accord of 1997. Based on a visit to Bangladesh, he submitted a report²⁶ to the UNPFII at its tenth session in May 2011. The report analyzed that the delay in the CHT Accord implementation is largely due to the overwhelming military presence in the region and suggested that temporary army camps be withdrawn as stated in the Accord.

At present, Bangladesh is one of the three largest providers of troops to overseas missions of the United Nations Peace Keeping Operations (PKO). However, there are concerns that sending military personnel criticized for human rights violations at home could lead to similar human rights violations overseas. These concerns led the human rights activists from the region and international organizations to raise the issue at the UN.

Based on the Study, the 11th session of the UNPFII adopted recommendations to prevent military units and personnel that violate human rights from participating in international peacekeeping activities under the auspices of the UN consistent with the code of conduct for UN peacekeeping personnel.



4.3. Parliamentary Caucus on Indigenous Peoples

The indigenous peoples are encouraged by the initiative taken by the Parliamentary Caucus on Indigenous Peoples of Bangladesh, a pressure group of sitting Members of Parliament, as it has proposed to: (1) enact a 'Bangladesh Indigenous People's Rights Act' to incorporate the rights to ancestral domain, self-governance, cultural integrity, social justice and human rights, and (2) set up a 'National Commission on Indigenous Peoples' to comply with the provisions of international human rights laws.

5. Conclusion and recommendations

The issue of terrorism and human rights has long been a worldwide concern. While unequivocally condemning terrorism and recognizing the duty of States to protect those living within their jurisdictions, the United Nations has placed a priority on the protection of human rights in the context of counter-terrorism measures.

"Suffering from a 'security phobia of separatist movements' in the CHT, the government refuses to recognize the Jumma peoples as indigenous," Dr. Mizanur Rahman, Chairman of the National Human Rights Commission (NHRC), said. He further noted that a vested quarter briefed the government that indigenous Jumma peoples may start a movement for independence based on different international laws once they are given 'indigenous' status.

The Bangladesh military intelligence always views the CHT issue as well as indigenous peoples' issues on the ground of national security. However, as per the United Nations Global Counter-Terrorism Strategy, the military should not consider human rights issues as terrorist activity. As a member-state, Bangladesh has pledged to take measures aimed at addressing human rights violations and to ensure that any measures taken to counter terrorism must comply with their human rights obligations.

Recommendations

To the Government of Bangladesh

- 1) Amend the emergency and preventive detention provisions in order to strike a balance between state security and protection of human rights.
- 2) Declare a roadmap with timeframe in order to ensure the effective implementation of the CHT Accord.

Bangladesh is one of the three largest providers of troops to the United Nations Peace Keeping Operations.

- 3) Withdraw all temporary camps and military forces from the CHT region and end Operation Uttoran.
- 4) Rehabilitate returnee Jumma refugees and internally displaced Jumma families.
- 5) Preserve the characteristics of Jumma indigenous peoples' inhabited status in the CHT.
- 6) Amend the CHT Land Dispute Resolution Commission Act of 2001 based on the recommendations of the CHTRC and MoCHTA and to operationalize the Land Commission.
- 7) Rehabilitate the Bengali settlers outside CHT with dignity.

To the United Nations

- 1) Call on the Bangladesh government to implement the recommendations of the Lars-Anders Baer study on the status of the implementation of the Chittagong Hill Tracts Accord of 1997 (E/C.19/2011/6).
- 2) Take measures to implement the UNPFII recommendations to prevent military personnel and units that violate human rights from participating in international peacekeeping activities under the auspices of the UN.

To the National Human Rights Commission

1. Establish a high-level, independent, and impartial commission of enquiry into human rights violations perpetrated against indigenous peoples, including sexual violence against women and children.

To the Indigenous Peoples Organizations

- 1) Conduct lobby and advocacy work among policy-makers in the country.
- 2) Strengthen networks, solidarity and unity among the indigenous peoples.

B. INDIA

Impact of National Security Laws and Measures to Indigenous Peoples in India

Contributor: Chonchuruinmayo Luithui

1. Background

India is a federal republic with a parliamentary system of government. Its polity is governed by the Constitution. With a population of 1.21 billion²⁷ spread over 3.3 million square kilometers of land, it ranks right after China as the second most populous country in the world. The Government of India has contested the use of the term 'indigenous peoples' for a particular group of people saying that all its citizens are indigenous to India.

However, those categorized as Scheduled Tribes (ST) are generally understood to be indigenous peoples. The Advisory Committee on the Revision of SC/ST Lists (Lokur Committee) set up in 1965 defined the characteristics²⁸ of a community to be identified as Scheduled Tribes as follows:

- (a) primitive traits;
- (b) distinctive culture;
- (c) shyness of contact with the community at large;
- (d) geographical isolation; and
- (e) social and economic backwardness.

Article 366 (25) of the Constitution of India refers to Scheduled Tribes as those communities who are 'scheduled'²⁹ in accordance with Article 342 through a declaration by the President. Scheduled Tribes tend to live in specific areas and the Constitution recognizes these as 'Scheduled Areas.'³⁰ The central region and the seven states in the northeast have the highest density of IPs. According to the 2011 census, the number of persons belonging to a Scheduled Tribe constitutes 8.6 percent of the total population of India. There are around 700 communities³¹ classified as Scheduled Tribes.

The tribal peoples in India prefer to identify themselves as *adivasi* which literally means the original inhabitants. However, in the north eastern region of India, the indigenous communities prefer to call themselves indigenous peoples. There are large communities with

The tribal peoples in India prefer to be called *adivasi*.

populations that reach more than a million like the Bhils, Oraon, and the Santals. The Jarawas and Onges, on the other hand, total to a few hundreds.

• Legal Provisions in Relation to the IPs of India

1. The Constitution of India: out of 395 articles and twelve schedules, there are about 209 articles and 2 special schedules which are directly relevant to Scheduled Tribes.
2. Legislations at the central and the state levels: the Parliament and State legislatures are empowered to legislate, make rules, and issue government notifications.³² There are also central and state agencies that address the issues of the Scheduled Tribes such as the Ministry of Tribal Affairs, National Commission on Scheduled Tribes, National Scheduled Tribes Finance and Development Corporation at the central level and the Department of Tribal Welfare and Tribes Advisory Councils at the state level, among others.
3. Judicial Decisions: Supreme Court decisions are considered to be the law of the land as specified in Article 141 of the Constitution.³³ These form important precedents that are binding in all High Courts and subordinate courts.³⁴ High Court decisions are generally binding in the State over which they have jurisdiction.
4. Customary law: customs and usage are also recognised as 'laws' by the Constitution³⁵ provided that they are consistent with the fundamental rights. The indigenous peoples' way of life is built around the practices and observation of certain traditions and customs that have evolved in such a way that they have attained force of law.

2. National Security Laws

The security laws of India can be divided into the ordinary criminal laws and extraordinary laws. The former would include the India Penal Code (IPC), 1860 which defines the types of offenses; the Code of Criminal Procedure (CrPC) 1973 which describes the procedures for criminal justice administration; the Indian Evidence Act, 1872; the Juvenile Justice (Care and Protection of Children) Act, 2000 and Probation of Offender Act, 1958. These laws more or less define the offenses stated under the

various extra-ordinary laws such as Unlawful Activities Prevention Act, 1967; the National Security Act, 1980 and the Armed Forces (Special Powers) Act, 1958.

The difference between the ordinary and the extraordinary laws is the broad powers given by the extraordinary laws to the state machineries. Some of the extraordinary laws are discussed below. Many of them have been repealed prospectively and therefore remain effective for those who were booked when the law was still in operation.

2.1 Armed Forces (Special Powers) Act, 1958

Enacted to quell the Naga insurgency, the Armed Forces (Special Powers) Act (AFSPA) came into force in Assam and Manipur in 1958.³⁶ The law was supposed to be enforced for only one year but more than fifty-five years later, it still remains in effect. It was amended in 1972 to extend to other parts of the north eastern region, Arunachal Pradesh being the last state to be brought under the Act in 1987 after the States of Jammu and Kashmir.

AFSPA gives the armed forces unfettered powers to shoot, arrest, and search, all in the name of "aiding civil power"³⁷. Even a non-commissioned officer³⁸ is granted the right to shoot-to-kill based on mere suspicion and on the premise of "maintaining the public order." It empowers the governor (or administrator in case of Union Territory) and the central government to declare any area within the State or Union Territory to which the Act applies as "disturbed area" if it is in view, there is such a "disturbed or dangerous condition" and therefore the necessary use of the armed force in aid of civil power.

The declaration is to be published as a notification in the official Gazette. Only after such declaration can the special power conferred on the armed forces be exercised under AFSPA.³⁹ The arrested persons under the Act are to be handed over to the nearest police with the



“least possible delay.”⁴⁰ The Act has granted complete impunity to the armed forces. No legal proceeding can be instituted against any persons acting under the AFSPA except with the permission of the Central government.⁴¹

The decision on how the Act would be implemented and the use of general sweeping terms such as “is of the opinion,” “least possible delay” and “disturbed areas” is left to the discretion of the governor, the administrator, or the central government. This only fostered the misuse of the AFSPA. The Supreme Court of India in its judgment in *Naga People’s Movement for Human Rights v. Union of India*,⁴² while upholding the constitutionality of the Act had laid down a number of ‘do’s and don’ts’ while performing duties under the Act.

2.2 Terrorist Affected Areas (Special Courts) Act, 1984 (TAAA)

This law was enacted by the Indian Parliament in 1984 to establish special courts⁴³ “to provide for the speedy trial of certain offenses⁴⁴ classified as “scheduled offenses.” TAAA Section 2(1)(f) defines it as “an offense specified in the Schedule being an offense committed in terrorist affected areas”⁴⁵ declared by the central government for a certain time period. Section 12 (1) requires the court to conduct hearings with a video camera except where the Public Prosecutor applies otherwise.⁴⁶ Under the TAAA, bail could be refused if the prosecutor opposes the release of the accused and there is no reasonable ground to believe the accused was not guilty. The person can also be detained from 90 days to one year.

2.3 Terrorist and Disruptive Activities (Prevention) Act (TADA) 1987

This law was enacted in 1985 and amended in 1987 in the aftermath of the Indira Gandhi assassination. It aimed “to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities.” Most of the TAAA provisions were incorporated without defining the geographical area of operation. It gave a very general definition of what constitutes a ‘terrorist act.’⁴⁷ Departing from the ‘ordinary rules’ of criminal administration, it gave wide-ranging powers to law enforcement agencies. Ordinary laws preclude the admissibility of confessions by detainees to police officers but such confessions are admissible under the TADA. Like the TAAA, it has stringent rules for bail and any person could be detained for up to one year.⁴⁸

The TADA was allowed to lapse prospectively in 1995 due to reports of widespread misuse. The cases initiated

under the TADA remain active and the central and state governments can initiate cases against persons who violated provisions of this Act in the period of its effectivity.

2.4 Prevention of Terrorism Act, 2002 (POTA)

Shortly after the lapse of TADA, the Congress Party-led government failed in its attempts to pass the Criminal Law Amendment Bill which had more or less similar contents as that of TADA in 1995. In 1999, at the behest of the BJP government, the Law Commission of India undertook a study for an anti-terrorism law and came out with the Prevention of Terrorism Bill.⁴⁹ This was approved despite overwhelming opposition from human rights activists, the National Human Rights Commission, and BJP’s coalition partners as they have witnessed the human rights abuses under TADA.⁵⁰



Then the terrorist attack in the USA on 11 September 2001 happened and like many countries all over the world, there was a shift in the stance against terrorism. The anti-terrorism law was passed off as the Prevention of Terrorism Ordinance. Then two other major incidents took place. The Legislative Assembly of Jammu and Kashmir were attacked in October 2001. Another attack on the Indian Parliament happened in December 2001. Finally in 2002, the Prevention of Terrorism Act (POTA) was brought into force after much debate and resistance from the opposition.

Under the POTA, a detainee could be detained by the police for up to 180 days. It also provided for special courts and made confessions to the police admissible in court, among others. POTA was considered far more severe than the TADA with its strict provisions on criminal liability⁵¹ for mere association with suspected terrorists; an expanded definition of ‘terrorist’ that includes a number of offenses punishable under ordinary laws such as the Indian Penal Code (e.g., murder, theft, etc).⁵²

It also included continued membership with associations that have been declared unlawful by the UAPA⁵³ as a terrorist act.⁵⁴ The government could classify an organization as terrorist without giving justification to it.⁵⁵ The Act was severely criticized by human rights activists and after much pressure, was repealed in 2004.

2.5 Unlawful Activities (Prevention) Act, 1967 (UAPA)

Since gaining independence in 1947, India has seen a number of preventive detention laws starting with the Preventive Detention Act (PDA) in 1950. The Act empowered the central and state governments to put any person under preventive detention⁵⁶ for a maximum period of twelve months.⁵⁷ The PDA lapsed in 1969. Shortly after, the Maintenance of Internal Security Act (MISA), which had most of the PDA provisions, was enacted in 1971.⁵⁸ MISA was largely used by the government under Prime Minister of Indira Gandhi to detain opponents and anyone that showed dissent.⁵⁹ The Act was repealed in 1978 when there was a change in government.

In 1967, the Indian Parliament enacted the Unlawful Activities (Prevention) Act (UAPA) “for effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities.” The Act has since been amended four times. It was amended for the third time in 2004 to incorporate most of the provisions of the repealed POTA. Then after a terrorist attack in Mumbai in 2008, the Act was subjected to more stringent amendments. The amendments, as an act of compliance to the UN Security Council Resolution 1373 and other UNSC resolutions,⁶⁰ introduced new terms such as ‘terrorist act’⁶¹ and ‘terrorist gang.’

The central government was empowered by Section 3 to declare any association as unlawful by notification in the Official Gazette if it is of the opinion that such organization is involved in committing review the formulation. However, it need not do so, if such disclosure is against public interest.⁶³ The notification has to be referred to a tribunal established under Section 5 within thirty days.⁶⁴ Only after the confirmation by the Tribunal,⁶⁵ the declaration remains in force for two years from the date of notification.⁶⁶ Once an organization is declared unlawful, the central government can prohibit the association and individuals “from paying, delivering, transferring or otherwise dealing in any manner whatsoever with moneys, securities or credits.”⁶⁷ The UAPA also mandated the central government to confiscate any property owned by the association declared as unlawful.⁶⁸

2.6 National Security Act, 1980 (NSA)

A law on preventive detention, the National Security Act was promulgated from an ordinance into an act by the Indian Parliament in 1980. It provides for preventive detention in certain cases. It empowers the central or state government to order the detention of a person including a foreigner if it is convinced that the person may act in a manner prejudicial to the defense of India, its relations with foreign powers, and the security of India.⁶⁹ The NSA also provides for the detention of any foreigner with a view of regulating his continued presence in India or with a view of making arrangements for his expulsion from India.⁷⁰

The central and state governments could also order the detention of a person to prevent him from acting in any manner prejudicial to the security of the State and to the maintenance of public order or from acting in any manner prejudicial to the delivery of supplies and services



essential to the community.⁷¹ The Act also empowers the central and state governments to determine the place and conditions of detention.⁷² A detainee has to be brought before an advisory board within three weeks⁷³ of his detention.⁷⁴ The advisory board determines whether there is sufficient cause for detention of the concerned person in seven weeks.⁷⁵ Once a detention order is confirmed, a person can be detained for a maximum period of twelve months.⁷⁶ The NSA also requires the detaining authority to inform the detainee of the grounds for his detention save for exceptional circumstances.⁷⁷

3. Implementation of security laws and their consistency with other national laws

Aside from those mentioned above, there are other laws that are within the generic fold of extraordinary security laws. Among these laws are the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974; Essential Services Maintenance Act, 1968; Maharashtra Control of Organized Crime Act, 1999; the National Security Guard Act (1986); SAARC Convention (Suppression of Terrorism) Act, 1993; the Disturbed Areas (Special Courts) Act, 1976; and the National Investigation Agency Act, 2008.

The common thread of these laws is the level of discretionary powers given to the implementing authorities. By using general, sweeping or vague terms such as 'is of the opinion,' 'disturbed areas,' 'national security,' and 'maintenance of public order,' life and liberty become a matter subjected to the satisfaction of the State, the administrators, the military, and the number of agencies that operate under such laws.

The main yardstick to check the repressiveness of a law is Article 13 of the Constitution of India which declares that all laws enforced in India will be void if it is inconsistent with fundamental rights.⁷⁸ Yet, in spite of such inconsistency in the security laws, the Supreme Court has been quick to uphold their constitutionality.⁷⁹

According to Article 21 of the Constitution of India, a person cannot be deprived of his right to life and personal liberty except through procedure established by law. But preventive detention laws such as the UAPA and NSA have deprived a detainee this right along with the many other fundamental rights guaranteed by the Constitution. This is because the criminal procedures required by ordinary law such as the filing of a charge sheet, investigation and fair trial are not carried out. The assumption of innocence until proven guilty as practiced in ordinary criminal law is denied. Instead of the prosecution proving the guilt, the person arrested or detained has to prove his innocence.

The absence of due process of law and the impunity guaranteed by the laws such as AFSPA has only increased human rights violations. Any challenge against acts committed by the armed forces where AFSPA is in effect has to be made only after getting permission from the central government. In a similar line, broad immunity is given to state machineries while acting "in good faith" or "purported to be done in pursuance of the Act" under a statute.⁸⁰ It is therefore difficult to hold the state machineries accountable for their actions. Under

the UAPA, no claims can be made against any active or retired members of the armed or paramilitary forces while acting in good faith in the course of combating terrorism.⁸¹ Thus, the people are simply deprived of their right to legal remedies, a fundamental right that is guaranteed to all the citizens of India by Article 32 of the Constitution.

There is the question of how successful these laws have been in relation to their objectives. The AFSPA was enacted to counter armed militancy in the Naga Hills before northeast India as we know today ever came to existence. But instead of curbing militancy, there is an increased number of underground groups operating in the region. On the other hand, the Act has been extended to cover most of the northeast and the states of Jammu and Kashmir.

Then, there is also the issue of people charged and convicted under the various security laws. According to the data from the Union Home Ministry, in October 1993, out of 52,268 detained under the TADA from the date it came into force, the total number of persons convicted was a mere 0.81 percent. By mid-1994, more than 76,036 people were detained under the Act but the conviction rate was just 1 percent.⁸² Thus, the TADA was being used as a tool for preventive detention at the whims of the state than to combat terrorist activities.⁸³ The other facade to these laws is that they are used to subvert and threaten activists involved in fighting any injustice perpetrated by government policies. Amnesty International reported how tribal leaders and their supporters protesting against a bauxite mine were threatened with the NSA by government officials.⁸⁴

Security laws are created to guarantee safety of the people. However, these laws are used by the state to give legality to the abuses and human rights violations. At the same time, there are laws such as the Indian Penal Code, 1860; Indian Evidence Act; and Criminal Procedure Code, 1974 for all the offenses that are also punishable under the extraordinary security laws.

It is a State prerogative to frame laws and regulations for national security, counter any threats to the country, and guarantee protection of the citizens. However, these laws have been used as weapons to stifle political opponents. These extraordinary laws are used to suppress free speech and freedom of association, criminalize dissent, and the struggles for land rights, against environmental aggression brought about development projects, for self-determination, and to suppress trade unionists.⁸⁵ For

example, there are reports of *adivasis* and *dalits* engaged in land reform being targeted. Many of them, including children and farmers, were labelled as Naxalites and booked under POTA.⁸⁶

4. Implications, impacts, and consequences to indigenous peoples' human rights

Any legal system is not created in a vacuum but is influenced by certain practices, culture, and the prevailing environment. Therefore, enforcing laws totally alien to a culture or a way of life of a particular community can lead to detrimental effects to its social institutions and its individual members.

4.1 National security laws and indigenous peoples vis-a-vis the respect for collective rights of indigenous peoples under the UNDRIP

One of the main challenges faced by the indigenous peoples in India is the non-recognition of their collective rights over their ancestral land and resources which goes hand in hand with their struggle for self-determination. Land is the source of their traditions, customs, belief systems, and their way of life which in turn shape their identity. While acknowledging the right of citizenship in the States where they live, the UNDRIP also recognizes the rights of indigenous peoples to determine their own identity or membership according to their customs and traditions.⁸⁷



However, the adoption of laws and policies that negate or exclude the application of the UNDRIP along with the other international instruments have caused detrimental impacts on the rights of indigenous people over their land and resources. For instance, there are legal provisions such as the Fifth Schedule in the Constitution of India and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 that recognize the collective rights of ownership over their

traditional land. On the contrary, there are laws such as the Special Economic Zones Act that are used to easily deprive indigenous peoples of their land.

Indigenous peoples all over India have been driven out of their land, witnessed their forests plundered, deprived of their livelihoods, and alienated from their lands where counter terrorism and insurgency, development projects, and neoliberal land policies have come to determine the control and ownership over their land. They are left to confront the prospect and reality of becoming illegal encroachers on the land they have cultivated and sustained for generations.⁸⁸

The National Commission on Scheduled Castes and Tribes observed that about 148,000 people (mainly tribals) occupying 184,000 hectares of forest areas in the state of Madhya Pradesh were declared encroachers on 24 October 1980 and were in danger of eviction under the Forest (Conservation) Act, 1980.⁸⁹



The New Economic Policy of the early 1990s gave way to big and multinational companies entering the land of the indigenous peoples. State machineries have often resorted to using force, to the extent of causing the death of indigenous peoples protesting against encroachments on their ancestral land and the exploitation of natural resources.

4.1.1. Police Firing at Kalinganagar, Orissa⁹⁰

On 2 January 2006, around 300 to 400 indigenous peoples were protesting against the levelling of the land for a steel plant being built by a company of the Tatas with the help of the district administration. There were about three hundred policemen. The police tried to stop the protesters from entering a cordoned area and started firing stun guns, tear gas, and rubber bullets. While chasing the protesters, some policemen fell. To give cover to their comrades, the police started firing at the fleeing protesters, killing and injuring some of them. While this

was going on a policeman fell and got killed by the angry protesters. Taking this as a cue, the police started firing indiscriminately at the protesters. Six protesters died on the spot, six others succumbed to their injuries the next day and 37 were injured. Among them were many women and children. Two of them succumbed to bullet wounds after a few months. After the post mortem, five of the deceased were handed to their families with their hands dismembered from their wrists. The doctors at Jajpur Hospital where the post mortem took place justified their cruel act that they needed the palm to take finger prints since their faces were disfigured by bullets.

Tough security laws have enabled the State to blatantly violate human rights in the course of countering insurgencies. However, it is often the common people who bear the brunt of such violent acts. Such is the case with the indigenous peoples. In the shelter of AFSPA, the armed forces have zealously committed murder and sexual assault, tortured innocent peoples and destroyed properties. The AFSPA is in force mostly in the areas belonging to indigenous peoples who are struggling for self-determination. In most cases, the State has successfully used this law, through its armed forces, to repress the civil liberties of the people and cause unaccountable damage. In the peoples' collective consciousness, they have been made to carry a lifelong fear of waiting for the next gun shots, combat operations,⁹¹ arrest, torture, rape and killings.⁹²

4.1.2. Shiroy Siege⁹³

From 19 January to 2 February 2009, the 17 Assam Rifles laid siege of Shirui village, Ukhrul District, a village inhabited by the Tangkhul Naga indigenous community, to drive out National Socialist Council of Nagaland under Isak Muivah (NSCN-IM) cadres stationed in a camp at the periphery of the village. The two-week siege created immense insecurity and fear among the Shirui villagers and people in the adjoining area. No agricultural or economic activity could be carried out, severely disrupting their way of life.

The constant presence of security forces violated their freedom of movement, their right to privacy, and personal security. For the majority of the villagers who depend entirely and exclusively on paddy farming for their livelihood and survival, the disruption of their routine, even for just a day, seriously jeopardized their survival and existence. The said incident took place in the sowing season and for the first time in history, Shirui village cancelled their seed sowing festival. For indigenous peoples, such festival is of paramount

importance and central to their identity and sense of belonging to the community. The tense situation also affected and undermined the efforts of many students who were preparing for their board exams in the following weeks. Many students also could not secure their school admission on time because of the incident.

The counter insurgency measures taken have led to widespread militarization with large numbers of paramilitary, military, and the various state police forces. Militarization in India has been discussed principally in the context of Kashmir and the north eastern States. However, in recent years, there has been increased attention on the campaign by the Indian State to eradicate what is popularly known as Naxalism in the Central and adjoining parts of India. It has launched a number of operations including Salwa Judum, Operation Green Hunt, among others. Often caught in the cross fire are the indigenous peoples.

4.1.3. Salwa Judum⁹⁴



Salwa Judum means “Peace March” in Gondi. The Gondi indigenous peoples live in the state of Chattisgarh. The Salwa Judum was started in 2005 by the Chattisgarh state government to counter Naxalites by arming and deploying tribal youths as Special Police Officers. While the State has maintained that it is a peaceful people’s movement, the stories narrated by human rights activists and the various indigenous peoples affected by it appear to be otherwise. Within a year of its operation, 50,000 people have been displaced and at least 350 persons have died. The evicted tribals have been moved to temporary shelters with deplorable living conditions.

The members of the Salwa Judum go as a mob from village to village, committing arson and rape. The Naxalites have responded with increased violence. The other side to this is the forcible recruitment of people who are mostly indigenous as Special Police Officers for

a measly sum of Rs. 1500 (about 30 dollars) a month. On the other hand, the Naxalites are reported to often recruit at least one person from each family. With the forcible recruitment to Salwa Judum, often members of a family are pitted against each other. Another dark side to this is the persecution of innocent civilians by both state and non-state actors. The people are targeted by the state because they are suspected as sympathizers and by the Naxalites because they are considered as 'informers' or supporters of the state. In July 2011, the Supreme Court of India declared as illegal and unconstitutional the deployment of these tribal youths as Special Police Officers in the anti-insurgency war and ordered their immediate disarming.

4.2 National security laws and indigenous peoples vis-a-vis individual rights

For indigenous peoples, collective and individual rights are interdependent and interconnected. It becomes a vicious cycle wherein one of those rights is violated and the others also get affected. Security laws have only aggravated this situation. The laws are enforced discriminately, often to suppress democratic struggles for land and movements against environmentally-detrimental development projects like dams. In most cases, the stakeholders are indigenous peoples.

4.2.1. 9 May 1994 incident, Ukhrul Manipur⁹⁵

On 9 May 1994, two Majors of the Assam Rifles were killed by persons allegedly belonging to the NSCN in Ukhrul town that is inhabited by Tangkhul Nagas. The armed forces responded by bombarding the town with two-inch mortars for more than three hours. They raided houses, destroyed properties, randomly shot into houses with high-powered guns, and tortured many people, including women and children. Many people needed medical attention. There were three fatalities: one boy, one woman, and an old man, Panghom Shimrah, who was out cow herding.

Panghom was the chief of his clan and played an important role in the traditional village council. More importantly, to his grand children and family, he was the source of folklores, folksongs, and stories orally handed down from generation to generation. The day he died, much of it died along with him. For indigenous peoples, folksongs and folklores provide the connection to their past and are an important part of their culture and their identity. They also form a sort of precedent in customary law and practices. The loss of their folklores and folksongs has a long term impact to the community as whole. It

also comes down to the right of the individual members to practice one's belief, culture, and tradition. Thus, the loss of one person's right to life could deprive so a people of their collective rights.

4.2.2. 13 June 2002 Incidents, Arunachal Pradesh⁹⁶

Arunachal Pradesh is a state in the northeast of India bordering China. It is home to many indigenous peoples. Civilians have been targeted by the armed forces in the name of countering insurgency. The armed forces have not spared anyone including those attending to the sick. It has often resorted to torture, arrests, detention and sexual assaults as a part of their operations.



Another form of torture is the use of the people as porters without payment, clearly a form of modern slavery. The army has often justified this on the ground that if the people could carry the loads of underground groups, they should also be willing to do so for the Indian Army. On 13 June 2002 at around 4 p.m., personnel belonging to the 6th Assam Rifles took three women and four men from Laju Village in Arunachal Pradesh to carry their belongings. On their way, there was a firing and one of the women, Yangli Kongkang, succumbed to a head injury which was believed to be a bullet wound. The army claimed that she fell on a rock.

On the same day, 29 year-old Yumsen Homcha was arrested by the 6th Assam Rifles from a hospital while he was attending to his ailing relatives. On seeing the arrest, 40 year-old Kamthoak Khocha, a patient in the same hospital, died from shock.

4.3 National security laws and indigenous women

Indigenous women have been at the forefront of the struggles for self-determination, better governance, land rights and movements against development projects

that are anti-indigenous peoples. Women have been at the forefront in much of these struggles. The state has resorted to different tactics including the exploitation of women to put pressure on them, spread fear and demoralize the people.

4.3.1. *Soni Sori*⁹⁷

Soni Sori is from the Jabeli District, Chhattisgarh. She was a school teacher and an activist in her community. She left her home on 10 September 2011 after the police accused her of aiding the Naxalites. She was arrested on 4 October 2011 in Delhi on a number of charges including aiding and raising funds for the activities of a terrorist organization and criminal conspiracy under the UAPA. When she was presented to the court, fearing that she would be abused by the Chhattisgarh Police, she pleaded to be kept in Delhi. The judge refused her plea and she was sent to Dantewada, Chhattisgarh. She was placed in the custody of the Chhattisgarh Police for two days of questioning. There she was raped and tortured. She was so injured and was taken to a hospital in Jagdalpur. The police had claimed that Soni Sori slipped in the bathroom but the medical examinations revealed otherwise.

4.3.2. *3 November 2008 Protest against Mapithel Dam*

Hundreds of indigenous women were preparing to submit a memorandum against the construction of the Mapithel Dam (Thoubal Multipurpose Dam) in the Ukhrul District when they were assaulted and beaten by the security forces. Forty-five women sustained serious injuries while one of them was critically injured when a tear gas canister hit her on the head. A team of a few indigenous organizations went to the site and found that the authorities used excessive illegal force against the women protesters. The team also discovered that the government had not conducted a holistic impact assessment of the dam and was depending on military force that often resulted to the curtailment of the rights of those affected by the dam project.

Majority of the people affected by the dam belong to the indigenous communities with women and children as the main victims. The area has become a heavily militarized zone that has severely affected the lives and livelihood of the indigenous people.

5. Conclusions

One of the negative consequences of national security laws is the manifest violation of the right to equality and non-discrimination as stipulated in Articles 2 and 26 of the ICCPR and Article 2 of the ICESCR.⁹⁸ As discussed

earlier, the state machineries have often resorted to these laws to clamp down on indigenous peoples struggling for better governance, self-government, and movements against projects in their land. The State has relied on its security forces to get its way against the peoples' wishes all in the name of combating insurgency, maintenance of national security, and national interest.

The result is the systematic violation of human rights - the main contributor to the vicious cycle of land alienation, denial of livelihood, and conflict that cause significant impacts on the social, cultural, and political situation of the people. These adversely affect the indigenous peoples' traditional way of life.

Most of the national security laws are equipped with extraordinary powers that have often resulted to violations of human rights. On the other hand, there are a number of ordinary criminal laws that can be effectively used to combat terrorism and maintain national security.

6. Recommendations

To the Government of India, end the culture of impunity by:

1. Immediately repealed AFPSA;
2. Establishing an independent body together with the relevant national human rights institutions, and indigenous peoples apex organisations, all cases related to the application of AFPSA and other national security laws;
3. Immediate application of due process in the procedures for preventive detention; and
4. Where there are a number of laws that list similar crimes, giving preference to the one that provides for fair trial.

C. PHILIPPINES

Impact of National Security Laws and Measure to Indigenous Peoples in the Philippines⁹⁹

Contributor: Beverly Longid

1. Introduction

The 11 September 2001 events have changed the security landscape all over the world. After former United States President George Bush's infamous "either you are with us or without us" speech, the US, together with the UK, Australia, and its allies launched its global War on Terror against the Al-Qaeda, organizations, and movements

perceived to be terrorists. It also sought to topple and replace uncooperative or unfriendly regimes the US government accuses of having links to fundamentalist groups. In line with this, the US and UK immediately enacted emergency measures to combat 'terrorism' and pressured governments worldwide to do the same.

In October 2001, the US Congress approved its anti-terrorism legislation, known as the Patriot Act, which provides law enforcement agencies with increased powers to monitor and detain suspected terrorists without charge or trial. The UK Parliament followed suit in December of the same year with its Anti-Terrorism, Crime and Security Act, which allows detention of foreigners suspected of terrorism without trial.

Most governments and heads of state aligned with the US openly declared their support. President Gloria Macapagal-Arroyo of the Philippines was among the first heads of State to pledge all-out support for the US' "War on Terror." Hence, she urged the passage of an 'anti-terror law' in the Philippines, the Human Security Act (HSA), which took effect on 15 July 2007.

The HSA defines new crimes of terrorism and conspiracy to commit terrorism. It is but a replica of the US Patriot Act.

The HSA by all indication is a revival of the anti-subversion laws RA 1700 (1957) and PD 885 (1976), both repealed in 1992, that punished membership in and support to the Communist Party of the Philippines and other groups and associations organized to overthrow the government with the support of a foreign power.

This study shall discuss the Human Security Act and the current National Internal Security Plan - Operational Plan Bayanihan, and its impacts on the human rights of the indigenous peoples in the Philippines. It shall also



briefly present laws, jurisprudence, and other policy papers related to national security, a general description of the Indigenous Peoples Rights Act (RA 8371), a listing of international human rights standards signed by the Philippine government and how these affect the indigenous peoples human rights relative to national security.

2. Background on Indigenous Peoples

The unofficial survey of the National Commission on Indigenous Peoples (NCIP) estimates the number of indigenous peoples in the Philippines to be around 12 to 15 million, or roughly 10 to 15 percent of the total population of the Philippines. About 61 percent live in Mindanao, 33 percent reside in Luzon, and six percent are scattered throughout the Visayas islands (NCIP, 2009). They occupy approximately 20 to 30 percent or 6 to 10 million hectares of the country's total land mass of 30 million hectares. The exact population of indigenous peoples in the Philippines cannot be precisely determined due to the absence of disaggregated data.

Indigenous peoples have strong respect for nature and kinship and have an intense sense of spirituality. They live mostly in rural areas and in the mountainous hinterlands. They subsist largely on agricultural production such as lowland rice, wet-rice production in mountain terraces, slash-and-burn farming of root crops and corn, as well as hunting and foraging. Some indigenous peoples supplement their livelihood through small-scale mining and labor for private companies such as plantations and large-scale mines operating within their ancestral domains.

National surveys and studies report that human development indicators are lower among indigenous peoples and their poverty indicators are higher than the national average. Their income is below national average. Majority of them suffer from hunger, high mortality and infant mortality rates, illiteracy, and serious lack of basic social services. Of the country's 15 'poorest provinces,' nine are in Mindanao.

Some indigenous peoples suffered the worst form of atrocities at the height of Martial Law in the 1970s. This predicament continues under the present era through the government's counter-insurgency campaigns to suppress the revolutionary movement. A significant number of indigenous peoples in militarised communities then were forced to migrate to the urban centers due to massive counter-insurgency operations.

The continuing state policy of oppression and discrimination of the indigenous peoples has historical roots. Through vicious military expeditions and Christianization, Spain colonized the Philippines in 1521 and declared authority and ownership over the entire archipelago and its resources through the Regalian Doctrine that enacted Royal Decrees. Because they could not subdue the Islamised Moro and the indigenous peoples in the hinterlands, the Spanish colonizers waged the propaganda that the Moro and indigenous peoples were “juramentados,” “herejes,” “feroces,” “barbaric,” and “uncivilized.”

Spanish colonial rule lasted for more than 300 years. However, it never fully conquered the entire country due to the indigenous and Moro peoples heroic resistance in defense of their territories and for independence.

When the US claimed hegemony over the Philippines in 1898, the Filipinos vehemently resisted US colonization. Some of the fiercest resistance to US colonization took place among the IP who previously fought tenaciously against Spanish rule.

The US colonial government launched a benevolent assimilation program through the public school system and the cooptation of indigenous leaders by granting them political positions. The colonial government and the succeeding Republics enacted the Mining Act of 1905, Presidential Decree 705 of 1975 (Forestry Code), Mining Act of 1995 and other similar laws that further marginalized the indigenous peoples. The government declared vast parts of the IP territories as reservations, protected areas, wildlife sanctuaries, and watersheds that led to further dispossession and dislocation of indigenous peoples. Through homestead programs, people from other parts of the country were encouraged to settle in Mindanao to bring in “civilization,” dislocating the indigenous peoples and Moro people in the process.



Amidst all these, the indigenous peoples remain defiant. The history of their resistance to colonization is a continuing lesson. Present-day forms of repression continue, made worse after 9/11, where the state labels peoples’ resistance as an act of terrorism.

However, in the face of continuing adversity, the indigenous peoples maintain and pass on to new generations a significant extent of their distinct social, cultural, economic, and political systems together with their assertion for the right to self-determination.

2.1 National legislation and policies specific to indigenous peoples and their implementation

• 1987 Philippine Constitution

The 1987 Philippine Constitution provides for the national legal framework on indigenous peoples rights. It uses the term indigenous cultural communities (ICC) to refer to indigenous peoples.

Article II (Declaration of Principles and State Policies) provides as a State policy the recognition and promotion of IP rights:

Section 11: “The State values the dignity of every human person and guarantees full respect for human rights.”

Section 22: “The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.”

In relation to this, Article III of the Philippine Constitution is the Bill of Rights which enumerates the basic freedoms and liberties of Filipinos (including the indigenous peoples) and defines the relationship between them and the State. In so doing, it limits the power of the State as it forbids encroachment on these rights. Among the rights guaranteed are: due process and equal protection of law; right against unreasonable search and seizure; right of privacy; freedom of speech and of expression; right to a just compensation when private property is taken for public use; rights pertaining to persons under investigation; rights of the accused in criminal cases.

Aside from these, the Constitution contains several provisions specific on the legal protection and recognition of the rights of indigenous peoples.

Section 5, Article XII provides for the protection of the right to ancestral land, however, subject to the national development framework.

This Constitutional guarantee led to the passage of

the Indigenous Peoples Rights Act (IPRA). The IPRA stipulates four sets of IP rights: on Ancestral Domains, Self-Governance and Empowerment, Social Justice and Human Rights, and Cultural Identity.

The provisions in Article X (Local Government) of the Constitution enshrine the creation of autonomous regions for the Cordillera and Muslim Mindanao.

Section 15 calls for the creation of autonomous regions in Muslim Mindanao and the Cordilleras which are both major territories of indigenous peoples.

Section 18 calls for the enactment of an organic act for the creation of the autonomous regions.

However, many view this as an attempt to pacify the indigenous peoples and quell the revolutionary movement and the growing armed secession among the Moro people. In 1990, the government through a plebiscite, created the Autonomous Region of Muslim Mindanao (ARMM). The peoples of the Cordillera have rejected two previous attempts at establishing the same in the Cordillera. A third attempt is currently being pursued by the current government.

The 1987 Constitution also recognizes the marginalized and under-represented situation of indigenous peoples as it included indigenous peoples as a sector that can participate in the party-list elections.

• **RA 8371: The Indigenous Peoples Rights Act (IPRA)**

In 1997, the Philippine Congress enacted the Indigenous Peoples Rights Act (IPRA) enabling the above stated Constitutional provisions on indigenous peoples rights and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Thus, many indigenous peoples and advocates were jubilant and heralded this landmark legislation as it called for the recognition of indigenous peoples rights to ancestral land and free, prior and informed consent (FPIC) process. The IPRA uses the term indigenous cultural communities/ indigenous peoples (ICC/IP) for indigenous peoples.

Notwithstanding, there are discriminatory provisions in the IPRA:

“Section 7 (g). Right to Claim Parts of Reservations. *The right to claim parts of the ancestral domains which have been reserved for various purposes, except those reserved and intended for common and public welfare and service;”*



The provision is a classic of giving with one hand but taking away much more with the other. The exception excludes State-declared reservations such as forest and watershed reservations, national parks, and the like from ancestral domains.

“Section 56. Existing Property Rights Regimes prior to IPRA. *Property rights within the ancestral domains already existing and/or vested upon effectivity of this Act shall be recognized and respected.”*

In essence, the above legitimizes the past land grabs of mining companies, energy corporations, commercial plantations, landlords and other big businesses. It glosses over the fact that ancestral lands are lands held by indigenous peoples since time immemorial even before the creation of these companies and do not form part of the public domain. Corporate permits, licenses and concessions supersede the inherent property rights and collective rights of indigenous peoples.

Section 78 exempts the City of Baguio in the Cordillera region from the purview of the IPRA.

It denies the existence of the original inhabitants of Baguio, the indigenous Ibaloi and negates the historical fact that the Doctrine of Native Title arose from the suit filed by Mateo Carino, an Ibaloi from Baguio, asserting his prior rights over land located therein.

The IPRA also created a National Commission on Indigenous Peoples (NCIP). It is under the Office of the President and composed of seven (7) Commissioners representing the seven ethnographic regions country, with one as the Chairperson.

The NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the ICC/IP and the recognition of their

ancestral domains as well as their rights thereto; and with due regard to their beliefs, customs, traditions and institutions.¹⁰¹

The NCIP has an Office of Empowerment and Human Rights. This office among others ensures the protection and promotion of the basic human rights and such other rights as the NCIP may determine, subject to existing laws, rules and regulations; and in all instances it requires, the presence and compliance of the basic elements of free prior informed consent.¹⁰²

However, it has not acted on many complaints of human rights abuses committed against indigenous peoples by State security forces and private companies. On the contrary, there are increasing reports and complaints against the NCIP for facilitating and protecting the interests of private business and government profiteering through the manipulation of the FPIC process, the issuance of fraudulent titles and flawed FPIC certificates.

The NCIP has been severely criticised by indigenous communities that have suffered and are suffering from flawed FPIC processes leading to the loss of their ancestral lands to extractive industries, particularly mines and plantations. The role of NCIP personnel in the facilitation of the FPIC process in favor of corporations, and the creation of fake tribal leaders and organisations is well documented. Another complaint is the granting of Certificate of Ancestral Domain Titles to a few unscrupulous individuals who then used this for the entry of corporation in ancestral territories. These have led to the call for the revamp of the NCIP or its abolition.

3. National security laws and protective laws

In 8 September 2001, in response to the 9/11 attacks, the UN Security Council unanimously adopted Resolution 1373 as a counter-terrorism measure. Among others, it called on all member States to:

“2. (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;”¹⁰³

Following its adoption, the enactment of anti-terrorism laws spread like wildfire.

At the regional level, the Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Declaration on Joint Action to Counter Terrorism on 11 May 2001, a Declaration on Terrorism on 3 November 2002 and the ASEAN Convention on Counter Terrorism on 13 January 2007.

The Philippine government supported UN Resolution 1373 and signed the above ASEAN measure and used these to justify its involvement in “the global fight against terrorism” and the enactment of the Philippine Human Security Act (HSA).

3.1 Republic Act 9372: An Act to Secure the State and Protect our People from Terrorism (Human Security Act, HSA)

The HSA defined new crimes such as terrorism and conspiracy to commit terrorism; and made terrorism “a crime against the Filipino people, against humanity, and against the law of nations.”¹⁰⁴

“Section 3. Any person who commits an act punishable under any of the following provisions of the Revised Penal Code xxx thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism.

“Section 4. Conspiracy to Commit Terrorism. - Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment. xxx”¹⁰⁵

Section 3 also lists 11 crimes punishable with terrorism, of which six that are already punishable under the Revised Penal Code of the Philippines to include Piracy and Mutiny, Rebellion or Insurrection, Coup d'état, Murder, Kidnapping and Serious Illegal Detention, and Crimes Involving Destruction. The other five are punishable under special laws on Arson, Hijacking, Piracy and Robbery, Illegal and Unlawful possession of Firearms and Ammunition, and crimes under Republic Act 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990) and Republic Act 5207 (Atomic Energy Regulatory and Liability Act of 1968).

From the above, one is guilty of terrorism, if the following elements are present:¹⁰⁶

1. The commission of one or more of the crimes listed above;

2. The commission of said crimes sows and creates a condition of widespread and extraordinary fear and panic among the populace; and
3. The commission aims to coerce the government to give in to an unlawful demand.

The above definition is vague, ambiguous and thus, highly susceptible to abuse. It does not provide the parameters of determining a condition of widespread and extraordinary fear and panic. It does not identify the populace. It does not describe what an unlawful demand is. The discretion is with law enforcers who largely have a poor understanding of and/or do not have a proper training on human rights.

The HSA also provides measures to prevent acts of terrorism. These include the “surveillance of suspects and the interception and recording of their communications (Section 7), proscription of organizations deemed terrorist by declaration of a Regional Trial Court (Section 17), detention of suspects without judicial warrant of arrest (Section 18), travel restrictions and house arrest for terror suspects on bail (Section 26), and the examination of bank deposits, accounts and records as well as the seizure and sequestration thereof (Section 27).”

The law extinguishes the rights and guarantees in the Bill of Rights. It overturns a basic principle in human rights and criminal law on the presumption of innocence of an accused and due process of law. The HSA is alarming as it is indiscriminate and disregards human rights of persons on mere suspicion of terrorism.

The UN Human Rights Council’s Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, said in a statement:

*“There are some positive aspects of the definition of terrorist acts in the Human Security Act but the end result is an overly broad definition which is seen to be at variance with the principle of legality and thus incompatible with Article 15 of the International Covenant on Civil and Political Rights (ICCPR).”*¹⁰⁷

3.2 Internal Peace and Security Policy

The current internal peace and security policy (IPSP) of the State is Operation Plan Bayanihan (Oplan Cooperation/Solidarity). “The Armed Forces of the Philippines (AFP)¹⁰⁸ crafted the IPSP to serve as the guide in the performance of its mandated functions of protecting the state and the people.”¹⁰⁹ It is the Philippine military’s framework in



dealing with so-called armed “threat groups.”

The Operational Plan Bayanihan (OpBay) classifies “threat groups” into three: “ideology-based groups” such as the CPP-NPA-NDFP, the Moro Islamic Liberation Front (MILF) and “rogue” Moro National Liberation Front (MNLF) factions; “terrorist groups” such as the Abu Sayyaf, Jemaah Islamiyah (JI) and other Foreign Terrorist Organizations; and last, the “auxiliary threat groups” which include “partisan armed groups”, private armies and some criminal groups. Thus, OpBay is also the counter-insurgency policy of the State.

In OpBay, the AFP claims of a “paradigm shift” with its pronouncements of: Adherence to Human Rights, International Humanitarian Law and the Rule of Law, and Involvement of all Stakeholders. Gone are the days of the fascist military, so they say.

Accordingly, the new IPSP espouses a “whole-of-nation” and “people-centered” approach, implying that OpBay is different from the previous policies that espoused a purely militarist or an “enemy-centric approach.” It thus engages in various socio-civic-economic activities and employs the civilian bureaucracy and civil society in counter-insurgency. However, combat operations remains the primary military option with the socio-civic-economic component enhancing the combat component. The socio-civic-economic activities, civilian bureaucracy cooperation and engagement with civil society serve to mask the primarily repressive character of the OpBay policy.

Thus, OpBay is no different from the policies of previous regimes; Oplan Katatagan during the Marcos regime in the 1980s, Oplan Lambert Bitag I and II during the time of Cory Aquino, Oplan Lambert Bitag III and IV in the time of Fidel Ramos, Oplan Balangai under Joseph Estrada, and Oplan Bantay Laya by Gloria Arroyo.

Previously, in 2005, the AFP made public a slide presentation called “Knowing the Enemy” (KTE) and a three-book series entitled Trinity of War. These military materials contain the AFP analysis on the CPP-NPA-NDFP as “Enemies of the State.” Menacingly, both military references provide a long list of legitimate mass or people’s organizations, NGOs or private institutions including the Church and media, and even party-lists that the military considers as “legal front organizations or sectoral front organizations” of the CPP-NPA and hence deemed as “Enemies of the State.”



Those in the list are mostly activists critical of government policies and/or human rights defenders and peace advocates. The list includes indigenous peoples organizations, specifically the Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (KAMP) and the Cordillera Peoples’ Alliance (CPA). The KAMP is the national alliance of indigenous peoples’ organizations in the Philippines and the CPA is its chapter in the Cordillera. More particular and detailed lists are the AFP “orders of battle” or “OB list” that identify persons belonging to the above particular organizations or sectors such as farmers, youth, indigenous peoples, women, workers, among others. The “order of battle” is a list of State enemies up for neutralization and ranked according to their importance. Those in the OB list have reported threats, surveillance and monitoring, and worst, some have been summarily killed or made to disappear. Thus, the OB list has come to mean a “hit or death list.”

While the AFP has pulled out the KTE from public scrutiny, the IPSP Bayanihan has not been officially withdrawn. IPSP Bayanihan remains, together with the Trinity of War as its supplement and reference, as the military and other State security agents’ primary framework in engaging “the enemies of the state.” Consequently, this has further ingrained in the mindset and practice of State security

forces that individuals and groups promoting change or challenging the existing order are terrorists.

3.3 Protective Laws

Due to the lobby efforts of human rights organizations and victims of human rights violations and the support of progressive lawmakers, the Philippine Congress enacted the laws against enforced disappearance and torture in the last two years. The passage of these laws were a clear recognition of the existence of torture and enforced disappearances often denied by government and State security forces; and the criminal nature of these acts and the criminal liability of perpetrators. More importantly, it acknowledged that State security forces and other State agents perpetrate these crimes.

Despite these legal deterrents, torture and enforced disappearances reportedly continue. The rate of prosecution of offenders is low as victims and witnesses fear for their own lives and many law enforcers and public counsel hesitate to prosecute fellow persons in authority.

• Republic Act 10350 Anti-Enforced or Involuntary Disappearance Act of 2012

On 21 December 2012, President Aquino signed into law RA 10350 or The Anti-Enforced or Involuntary Disappearance Act of 2012. This is the first anti-enforced disappearance law in Asia. The salient points¹¹⁰ of the law are:”

- a. Recognises the specific right against enforced disappearances, and highlights the non-derogable nature of the right and safeguards for its prevention under any circumstance including political instability, threat of war, state of war or other public emergencies.
- b. Prohibits the use of secret detention facilities (safe houses), solitary confinement, and being held incommunicado, and invocation of an “order of battle” to justify or exempt the commission of enforced or involuntary disappearances.
- c. Provides for restitution, compensation and rehabilitation of victims and their family members.
- d. Engages civil society to help develop rules and regulations for the effective implementation of the Act, as well as raising awareness of it in the public.



However, Desaparecidos,¹¹² an organization of the disappeared, their family and friends in a statement cited the following flaws in the law:

- a. The law imposes penalties for failure to report a case of enforced or involuntary disappearance but does not make a distinction of person/s that may not be able to fulfil such duty for fear of reprisal from State agents who have such information yet fail to report. This does not provide an enabling environment for witnesses or whistleblowers to come out later. The law should rightfully impose penalties to such failure of State agents.
- b. The law also disregards the need to provide restitution of honor and reputation to victims of enforced disappearances who remain missing and are later on found dead, as it only provides such for victims who surface alive. While the law provides compensation for the victims (and their relatives) who remain missing or are later found dead, it denies them restitution, a crucial component of justice.

• **Republic Act 9745: Anti-Torture Law**

Enacted on 10 November 2009, Republic Act (RA) 9745 salient points¹¹³ of the law are the following:

- a. Criminalization of all forms of torture physical, mental, psychological and pharmacological;
- b. Prohibition against any justification for torture and other inhuman punishments;
- c. Maximum penalty of life imprisonment to torturers;
- d. Military and police required to submit a monthly list of all its detention centers, including safe

houses, to the Commission on Human Rights, and penalises those who fail to report such; and

- e. Provides for the protection of complainants and witnesses and persons involved in the prosecution and the establishment of a rehabilitation program for victims.

• **Republic Act 9851: International Humanitarian Law¹¹⁴**

Enacted on 11 December 2009, RA 9851 is called the “Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity.” The law defines and provides penalties for war crimes, genocide and crimes against humanity. Common prohibited acts include willful killing (rather than murder), physical mutilation, inhuman treatment, torture, committing outrages upon personal dignity, in particular humiliating and degrading treatment, taking of hostages, and deprivation of the rights of fair and regular trial.

Among others, the forcible transfer of population, ordering the displacement of the civilian population and sexual offenses, namely rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence, are defined as war crimes.

• **The Comprehensive Agreement on the Respect of Human Rights and International Humanitarian Law (CARHRIHL)¹¹⁵**

The CARHRIHL is the first of four agreements in the substantive agenda of the formal talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP). The other items in the substantive agenda are on socio-economic reforms, political and constitutional reforms, and on the end of hostilities and disposition of forces.

The above Parties signed the CARHRIHL on March 16, 1998 in The Hague, Netherlands and approved by NDFP National Council Chairperson Mariano Orosa on April 10, 1998 and GRP President Joseph Estrada on August 7, 1998, respectively.

The CARHRIHL seeks to confront, remedy and prevent the most serious violations of human rights in terms of civil and political rights, as well as to uphold, protect and promote the full scope of human rights and fundamental freedoms. At the same time, it also reaffirms the respective commitments of the GRP and NDFP to the rules of war in the conduct of the armed conflict. This



is important considering that the peace negotiations are still ongoing, the roots of the armed conflict are still unresolved, and the hostilities continue.

The CARHRIHL prohibits the violations (outlined below) of the human rights of indigenous peoples and stipulates that persons liable for violations and abuses of human rights shall be subject to investigation and, if evidence warrants, to prosecution and trial. It also mandates the indemnification for the victims or their surviving relatives.

4. Impacts of national security laws and measures to indigenous peoples

The indigenous peoples of the Philippines are not exempt from the so-called War on Terror and the application of domestic laws and measures on security. Thus, it is important that indigenous peoples understand the issue of national security and its relation to the defense and assertion of indigenous peoples rights, and as Filipinos in general.

Indigenous peoples territories in the Philippines are rich in minerals and hydro-power, land for commercial plantations and other commercial ventures. This has made their ancestral lands and domains contested areas extractive industries and pitting them against the state which grants concessions and corporations which have the resources to fight them to death. Their defense of their right to their lands, livelihoods, territories and resources have been and are being subject to these national security laws and measures. Their struggles have come in various forms (undertaken separately or in combination) from policy advocacy on mining, national land use, anti-discrimination; legal suits against companies (e.g. Writ of Kalikasan); campaigns and mobilizations, meta-legal actions such as community barricades and extra-legal actions such as revolutionary pangayaw or fetad (traditional defense of territory) or armed defense against corporate trespassing.

The national security laws and measures have worsened the human rights situation of indigenous peoples in the Philippines. The prevailing Constitutional guarantees and legislated protections appear weak and ignored as discrimination and violations of the individual and collective rights of indigenous peoples continue.

4.1 Militarization

The Philippine government has largely responded to the indigenous peoples' active assertion and defense with repression. It considers the legitimate resistance of indigenous peoples as acts of terrorism. Indigenous communities, especially those protesting mining, energy, logging, and commercial plantation projects, are among the heavily militarized areas in the country. It is also these communities that the military describes as 'rebel infested,' 'red or rebel areas,' and/or 'communist-controlled areas.' Thus, the AFP justifies their presence and counter-insurgency combat operations in indigenous territories.

Indigenous peoples experiences show that militarization brings human rights violations to include violations of international humanitarian laws such as indiscriminate bombings, denial of food and medical aid, hamlets and restrictions on mobility, and others. Human rights violations of threats, harassment and intimidation, warrantless arrests, searches and seizure, torture, killings, enforced disappearances, and the like.

Counter-insurgency operations have led to forced evacuations of indigenous communities. Starting March 2014, the combined forces of the 1003rd Brigade's 68th and 60th Infantry Battalions of Philippine Army and the 4th Special Forces conducted combat operations in Talaingod, Davao del Norte (in Mindanao, southern Philippines). This forced the indigenous Ata-Manobos to flee their villages and abandon their livelihoods on April 3, 2014.



In 2002, Rodolfo Stavenhagen, United Nations special rapporteur for the human rights and fundamental freedoms of indigenous peoples visited the Philippines and reported:

“Of particular concern are the long-term devastating effects of mining operations on the livelihood of indigenous peoples and their environment. These activities are often carried out without their prior, free and informed consent, as the law stipulates. Communities resist development projects that destroy their traditional economy, community structures and cultural values, a process described as “development aggression”. Indigenous resistance and protest are frequently countered by military force involving numerous human rights abuses, such as arbitrary detention, persecution, killings of community representatives, coercion, torture, demolition of houses, destruction of property, rape, and forced recruitment by the armed forces, the police or the so-called paramilitaries.” (Stavenhagen, Rodolfo, 2003)

According to PASAKA (Alliance of Lumad Organizations in Southern Mindanao) and SAGIP (a support group for peasants and indigenous peoples), the forced evacuation involved 309 Ata-Manobo families or 1,353 individuals, including women and around 515 children, from newborn to 12 years old. The Provincial Social Welfare and Development office provided a bigger number of 557 families or 2,395 individuals including women and children.

The AFP claimed that it directed or focused its military operations only against the NPA. However, the human rights group KARAPATAN has documented various violations by the military that led to the forced evacuation of the Ata-Manobos. Initial cases included the sexual abuse and humiliation of an elderly Manobo woman who was also used as a guide for military operations, the interrogation of 13 pupils and their parents, aerial bombings, incidents of strafing and indiscriminate firing that led to the miscarriage of a young woman, military encampment, labelling civilians as NPA supporters, and many reports of threats, harassment and intimidation.¹¹⁶

This is also a recurring experience of other Lumads, the term used to collectively refer to the indigenous peoples of Mindanao. In Mindanao such as the Mamanwa in Agusan del Norte and Surigao del Norte provinces, and the Matigsalog in Bukidnon province.

A component of militarization is the formation of paramilitary forces. This involves the recruitment of civilians to perform military combat functions to augment

the regular military units in its counter-insurgency campaigns.

The presence of paramilitary forces finds legal support in Executive Order (EO 264) that mandated formation of the Citizens Armed Force Geographical Unit (CAFGU); EO 546 that orders the Philippine National Police (PNP) to support military counter-insurgency operations and authorizes the deputization of barangay tanods (village watchmen) as force multipliers; and RA 7077 in the organization of a citizen armed forces and reservist force.

All the aforementioned laws cite Section 4, Article XVI (General Provisions) of the Constitution as legal basis: “The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve as may be provided by law. It shall keep a regular force necessary for the security of the State.”

In distorting the indigenous peoples traditional culture of armed defense of their territory against encroachment, the Philippine Army actively recruits indigenous peoples to the regular paramilitary force i.e. CAFGU, Civilian Armed Auxiliary or Civilian Volunteer Officer; enlists indigenous peoples armed groups such as the New Indigenous Peoples Army for Reform, Bungkatol Liberation Front, and Wild Dogs (Salawakan) in Mindanao; and integrates paramilitary groups in the regular army such as the Cordillera Peoples Liberation Army in the

NO.	NAME (L/VA)	LOCATION OF HOME	CP NUMBER	ORGANIZATION	REMARKS
1	HARRIS, MODELO C	Am. Gumbang, Tineg, Ragao GC-845478		Farmers organization	BARANGAY PANGSIBAYAN SA NPA
2	ESAY, ARSENIO P	Gumbang, Tineg, Ragao GC-845478		Farmers organization	BARANGAY PANGSIBAYAN SA NPA
3	EDMUNDO FERDINAND	Wal-wal restaurant GC-875512		Farmers organization	Member of NPA
4	ASAL, ORA DAHLIAN	Pub. Tineg, Ragao GC-79043		Women's organization	Member of NPA
5	ADINA ELA FUMAN ATAS	Pub. Tineg, Ragao GC-79043		NPA	BARANGAY PANGSIBAYAN SA NPA
6	RGO, ALLAN UPDAMEN	Tawing, Gumbang, Tineg, Ragao GC-8304577		Farmers organization	BARANGAY PANGSIBAYAN SA NPA
7	NESTOR POLILO	Dontag, 2, Binablayan, Tineg, Ragao GC-856495		Farmers organization	Member of NPA during ambush
8	ELAND USIANO	Pub. Tineg, Ragao GC-79043		Farmers organization	Member of NPA during ambush
9	IMESAN WALERI	So polakaw Gumbang, Tineg, Ragao GC-83362		Farmers organization	Member of NPA
10	PADOUVAO, Marsha	Binablayan, Tineg, Ragao GC-834488		Farmers organization	BARANGAY PANGSIBAYAN SA NPA
11	AGUNO, Lara	Binablayan, Tineg, Ragao GC-834488		Farmers organization	BARANGAY PANGSIBAYAN SA NPA
12	TADAK, MIRIDA, IBORIGAN	No. Tapanan, POB. Tineg, Ragao GC-7904867		BARANGAY PANGSIBAYAN SA NPA	
13	HUMAWAT, ABE	Gumbang, Tineg, Ragao GC-845478		BARANGAY PANGSIBAYAN SA NPA	
14	DAUSALING, CATHERINE	So Dontag, Binablayan, Tineg, Ragao		BARANGAY PANGSIBAYAN SA NPA	
15	GUENO, LINDAWAY	So Dontag, Binablayan, Tineg, Ragao		BARANGAY PANGSIBAYAN SA NPA	
16	LETRIO, ARGENA	So Dontag, Binablayan, Tineg, Ragao		BARANGAY PANGSIBAYAN SA NPA	

Cordillera. These groups have been responsible for the killings of indigenous peoples defending intrusions in their territories.¹¹⁷

These regular army and paramilitary forces both serve as counter-insurgency and investment defense/security forces.

4.2 Trumped-up charges, Vilification, and the Order of Battle

The military does not distinguish civilians from combatants and New Peoples Army guerillas. Alongside militarization is the legal offensive that involves the filing of trumped-up charges against persons and organizations that are active in legitimate protests for changes and reforms and their vilification as terrorists or common criminals.

In October 2012, the Cordillera Human Rights Alliance (CHRA) secured a two-page document titled “Municipality of Tinoc (Target Persons)” from a concerned soldier of the 86th Infantry Battalion based in Tinoc, Ifugao. It bore the logos of the 86th IB and the 5th Infantry Division of the Philippine Army. In the document’s six columns listed the names of at least 28 civilian individuals, their organizations, mobile phone numbers and the military’s assessment of their suspected rank, position and tasks in the NPA. The document classified persons as a ‘suporter ng NPA’ (supporter of the New People’s Army); ‘nagbibigay ng pagkain sa NPA’ (food provider of the NPA); ‘tulugan ng NPA ang kanilang bahay’ (the NPA takes shelter in the person’s house); ‘imbakan ng baril’ (storage place for guns) or ‘utak ng NPA’ (brains of the NPA).

The list included CHRA secretary-general Jude Baggo and William Bugatti of the Ifugao Peasant Movement as number 22 and 21, respectively. Both were tagged as brains of the NPA. Unidentified men believed to be State security agents shot Bugatti to death on 25 March 2014. Like other victims of extrajudicial killings, before his assassination he received death threats and reported surveillance on his person.

In Mountain Province and Kalinga, the CPA local chapters also obtained a similar list that included the names of CPA provincial staff and officers. In some cases, especially in the communities, the military would intimidate village activists that they saw their names in the “OB list.” The said list or “Target Persons” such as above can also take a different form.

A month before Bugatti’s killing, posters surfaced in different towns in Ifugao captioned “Rupa ken

nagandagiti NPA nga agsusuweldo” (Faces and names of NPA receiving salaries). The colored long bond paper size posters included the photograph and names of Beverly Longid of KATRIBU Party-list and former Chairperson of the CPA, Jude Baggo, and Emerson Soriano of the CPA.¹¹⁸

Much earlier in 2008, Kaerlan Fanagel also of KATRIBU Party-list and PASAKA, found his photograph on a poster with 14 other NPA wanted by the government dead or alive. The posters were about the size of two bond papers, conspicuously posted on the walls of terminal buildings, eateries and other public areas in Compostela Valley province. The name below the picture was not his, but the face was unmistakable.

If not in the “order of battle” lists, indigenous peoples human rights defenders would find their names in the list of the accused in trumped-up criminal charges together with others alleged to be members of the NPA.

Forty members of MAPASU, an affiliate organization of KASALO (Indigenous Peoples’ Alliance in CARAGA¹¹⁹ region), were charged with rebellion, malicious mischief, murder, frustrated murder, arson, illegal possession of firearms and explosives, filed by the PNP in connection with the NPA attack on the Lianga Police Station in Surigao del Sur province on April 29, 2011.

In September 2012, the military filed murder and frustrated murder charges among others against Genasque Enriquez of KATRIBU Party-list and KASALO. The charges allege that he and 36 others are members of the NPA who figured in an armed encounter against the 75th Infantry Battalion in Bunawan, Agusan del Sur province on 21 July 2012. The trial court dismissed the charges months later, but the military filed another set of charges against him in 2013.

4.3 Assault on Women and Children

Oplan Bayanihan and national security measures do not spare women, children, and even the elderly. Women, children, and the elderly also participate in social and political activities for change and justice. Thus, State security agents also tag them as terrorists. By association and family relations, the kin of those vocal and active against mining, energy projects, and militarization in the communities also experience threats, harassment, and intimidation.

The situation of children is a reflection of the conditions of their family and society. The arrest and detention of one or both parents result to further economic difficulty



and the dislocation and separation of children. Children with parents arrested, detained, and those who are publicly labelled as terrorists or criminals in the media are put in a situation of shame, ridicule, and bullying.

In a report, the Children’s Rehabilitation Center¹²⁰ noted that from July 2010-October 2012, half of the victims of extrajudicial killings were indigenous children from Mindanao and the Visayas. These included the children of Juvy Capion who were killed when the 27th IB PA opened fire at their house in Tampakan, South Cotabato in 2012. The Capion family was firmly opposed to the open-pit mining operations of Xstrata-SMI in their community. The report also documented the branding of children victims as child soldiers to cover up military atrocities.

Military forces have also attacked schools and day care centers, especially those located in far-flung indigenous villages. In response to government neglect, IP communities and organizations in Mindanao and in Palawan province sought partnerships with church-based and private institutions to build schools and medical facilities for their children. It is unfortunate that the military brands these acts of cooperation and self-reliance as NPA projects or centers for communist/terrorist indoctrination. Such narrow views subject the teachers, parents, and pupils to harassment.

The encampment in schools and places of learning and play disrupts the learning activities of indigenous children.

An overview of the situation of militarized IP communities indicate increasing cases of violations against women including rape, sexual harassment, prostituted women, impregnation and abandonment, and invalid marriages. In communities with or near military detachments, the military and attached paramilitary units are a bad

influence to the young. Reports speak of the military inviting teenage boys and girls to drinking sprees and forcing them to watch pornographic videos.

5. Recommendations

In view of the above, we reiterate and forward these key recommendations to the following:

Government of the Philippines

1. Review the Human Security Act and repeal provisions that curtail human rights to attain conformity to its international human rights commitments and compliance to universally accepted principles of legality and the rule of law.
2. Abandon Oplan Bayanihan and the militarist framework of national internal security policies that do not address the cause of unrest and maldevelopment in the country. Recognize and uphold indigenous peoples’ rights to ancestral lands/domains and revoke discriminatory laws, policies and doctrines that deny these rights.
3. Ensure the meaningful and genuine implementation of the right to the free prior informed consent (FPIC) of indigenous peoples. Revamp or dissolve the NCIP.
4. Implement and enforce the protective and preventive laws against torture, enforced or involuntary disappearances, on international humanitarian law and against war crimes, genocide and crimes against humanity, including the CARHRIHL. Take steps to substantially inform and properly train State security agents and public law enforcers on these laws. Stop labelling individuals and organizations as fronts and their vilification as terrorists. Scrap and prohibit the OB lists.

Military forces have also attacked schools and day care centers, especially those located in far-flung indigenous villages.

5. Positively act on the recommendations of Professor Rodolfo Stavenhagen, UN Special Rapporteur on Human Rights and Fundamental Freedoms of Indigenous Peoples, and Professor Philip Alston, UN Special Rapporteur on Extrajudicial Killings, especially the particular recommendation to the Philippine government to end the use of paramilitary groups and pull them out from indigenous communities.

United Nations

1. Urge the Philippine government to implement the recommendations of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions Philip Alston and the Special Rapporteur on Indigenous Peoples Rodolfo Stavenhagen, who visited the Philippines in February 2007.
2. Encourage the Philippine government to extend a permanent invitation to the UN special procedures, and invite and support in particular the UN Special Rapporteur on Torture, the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, the Special Rapporteur on the Rights of Indigenous Peoples and the Working Groups on Enforced and Involuntary Disappearances, as well as on Arbitrary Detention.
3. Monitor the Philippines' compliance to its international human rights commitments.



D. THAILAND

IMPACT OF NATIONAL SECURITY LAWS AND MEASURES TO TRIBAL AND INDIGENOUS PEOPLES IN THAILAND ¹²¹

Contributor: Ekachai Pinkaew ¹²²

1. Overall Preview

National security laws have become an important issue for Thai society, particularly in the period of change in the government and in the restoration of peace and order under the National Council for Peace and Order (NCPO) that was established by the military. The continuing transition period is marked with conflict and human rights violations in the context of the power struggle among various groups of varied identities and political persuasions.

Before the NCPO took power on 22 May 2014 during the prolonged peoples' protests, a number of alternative approaches to end the conflict have been put forward. Among these proposed options was an amnesty law or an amendment to the Constitution. These options however, did not end the conflict. More violence erupted with apparently no end in sight. Social inequities are countrywide that are among the serious problems that lead to widespread human rights violations, especially for the underprivileged and marginalized sectors, including tribal and indigenous peoples. These inequities prevent people from accessing resources, attaining equal opportunity for self-development and for self-determination. This phenomenon is a structural problem that cannot be solved by mere law enforcement or a centralized development policy.

The underprivileged and marginalized groups, including tribal and indigenous peoples, with their cultural differences and conflicts, were previously unheard and unreachable. Thai policies on tribal and indigenous peoples are still dominated by issues of national integrity, border security, land-related issues, deforestation, and drug smuggling.

The discourse on 'Thai-ness' blankets the whole society and confines a person or group of persons with distinctive identities into certain boxes unjustly labels them as criminals or terrorists. The State often files cases and violates the freedom of expression, the right to full and equal participation in political affairs and decision making, and the right to a fair trial.

Among the violations in the last decade are: forced

relocation, land alienation, displacement, human rights abuses, cultural assimilation, denial of access to justice, dispersals of political gatherings, prolonged unrest in the Deep South and the proliferation of trumped-up charges of deforestation and threats to national security. Thus, calls for reconciliation need the participation of all stakeholders, not only the political parties or politicians.

2. Tribal and Indigenous Peoples in Thailand

The terms ‘tribal’ and ‘indigenous peoples’ in this paper are used to position the diverse identities of Thai, non-Thai, and undocumented persons in Thai society who all claim to have lived in Thailand for generations. The Thai government recognizes them as ethnic minority groups that are prejudicially presumed as either non-Thai ethnic groups, irregular migrants, or undocumented persons on its assumption that there are no indigenous peoples in Thailand.

In 2013, the National Statistics Bureau announced that Thailand has a population of 64.8 million. They are all presumed to be Thai citizens but about 3 million are assumed to be non-Thai citizens. The Tai ethnic group is a majority group, while the other groups can be officially called ethnic minority groups which also include migrants, tribes and indigenous peoples.



Relying on Thai immigration regulation records in 1945-1987, the migrants can be enlisted in accordance with the periods of their arrival and the legal status bestowed on them as follows: Vietnamese (1945-1946); former soldiers of the Chinese National Army (1950-1961); Chinese who first joined the group of former soldiers of Chinese National Army (1950-1961); independent Chinese (1962-1978); Laotian (non-camp, Post 1974); Tai ethnics from Koh Kong province, Cambodia (1974-1977);

Nepalese fleeing Myanmar’s insurgencies and Burmese (pre March 1976); Burmese and highland ethnic groups from Myanmar and Laos (post March 1976); Cambodians, Tong Lueng (Mlabi) and illegal migrant workers(post 1977); as well as Malaya Communists from Malaysia and Thai Lues (pre 1987).¹²³

Some of them were also mixed with the ethnic highlanders, called “Hill Tribes or Chao Khao.” There are only nine groups recognized as the hill tribes under Thai law: the Karen, Hmong, Lahu, Mien, Lisu, Akha, Lua, Khamu, and Mlabri.¹²⁴ These peoples have self-identified as indigenous peoples as understood in international law. Several sources report that the total hill tribe population is approximately 948,173. Some claim that they are original communities in their ancestral lands, especially the Karen in the western provinces while other ethnic groups found in the highland or forest areas are not recognized by law. The Karen group exists on an internationally-recognized state border. In the end, they are stateless as the reports of human rights reveal that these tribal and indigenous peoples lack citizenship and do not own the lands they till.¹²⁵

Pati (Respected Leader) Joni Odo-Chao, of the Karen Community in Chiang Mai, stated in his opening remarks in the commemoration of Indigenous Peoples’ Day in Thailand, 2007 that:

“Indigenous peoples have distinctive livelihood, dwelling and modes of living which undoubtedly being integrity with nature, forest and wildlife. Our lifestyle encourages sustainability with friendliness to nature, while it has been practiced and handed-over from generation to generation with spiritual retention and the reawakening of indigenous identity with self-responsive development. The intervention of the State with aggressive development compromises our good customary practices. Thereupon we need to unite in cohesive efforts to Protect our indigenous peoples’ rights.”

This statement reflects two facts in Thailand. Firstly, there is systemic discrimination against tribal and indigenous peoples in Thailand. This is fueled by the lack of understanding and communication gaps and these give rise to human rights violations, even with the so-called Thai humanitarian principles and benevolent mindset. Secondly, the Thai government, with distortions of history, stands firm on the portrayal of the state’s sovereignty as ‘one nation’ as a single state, with the centralization of power and the undertaking of a colonial mindset termed ‘the otherness.’

Therefore, the security of the State means it is of the highest significance than the security of the majority of the people including tribal and indigenous peoples. The laws and policies are crafted and implemented with a colonial mindset with a sprinkling of nationalism. Thus the State wields its power with centralized control, even while there is a check and balance on that power with the existence of social movements and civil society that forward human rights and confront globalization.

A so-called pluralistic society is seen with government acknowledgment of ethnic minorities and indigenous peoples, particularly on the legal status of indigenous peoples and the respect of their economic, social and cultural rights. Absent this, human rights violations will continue.

2.1 National Legislation and Policies undertaken for Indigenous Peoples

Due to the political unrest from the abolition of the 1997 People's Constitution, the 2006 overthrow of Prime Minister Thaksin Shinawatra by military coup, to the scrapping of the 2007 Constitution, the prolonged economic crisis and exhaustion of human rights and justice systems continues. Thailand has been under the military-backed National Council for Peace and Order (NCPO) that scrapped the 2007 Constitution and replaced it with an Interim Constitution, B.E. 2557 (2014), since 22 July 2014.

The Interim Constitution is comprised of 48 Articles intended to restore peace and order in society, to remedy the losses and damages from political unrests and social segregation that happened within the last decade, to strengthen and maintain the rule of law, democracy, and human rights.

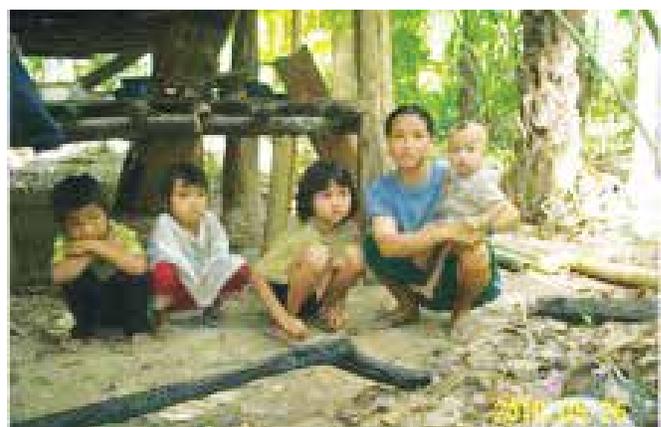
This 19th Constitution is posted with interim measures and processes with temporary enforcement approximately in one year, comprised of the following:

- (1) The reformation of politics and society with the establishment of a National Legislative Council composed of 220 members with multi-faceted qualifications selected from the NCPO and mandated to draft laws and to appoint high-ranking persons to the Parliament;
- (2) the establishment of a Cabinet composed of 36 appointed persons from various sectors with general administrative reform duties;
- (3) the establishment of a National Reform Council,

composed of 250 members appointed after a selection process undertaken nationwide with 77 provincial representatives and 173 issue-responsive members proposed nationwide with the mandate to propose and organize reform measures on various aspects;

- (4) the establishment of a Constitution Drafting Committee, composed of 36 eligible persons recruited from various sectors who are authorized to draft the Constitution to respond to four main frames as recommended by the National Reform Council and subject to Section 35 of the Interim Constitution, within a period of 120 days; and
- (5) the retention of NCPO which is mandated to advise the Cabinet on consultative efforts with authority undertaken subject to Sections 44 and 46.126 All of these would be dissolved or terminated after the announcement of a new Constitution.

The values of rule of law, human rights and democracy stated in the Interim Constitution are essentially from the provisions in the 1997 and 2007 Constitutions. Some of these provisions are: Section 4 which assures that the rights and liberties of all Thai people, mentioned and manifested in customary practices and laws including those stipulated in all ratified international human rights treaties shall be protected; and Section 35 (6) and (9) on strengthening of rule of law, morality, goodness and governance with the formation of effective mechanisms safeguarding the Constitution.



In a nutshell, several provisions on the rights of communities and individuals were included in the 2007 Constitution. These should be brought into the new Constitution. The said provisions are as follows: (a) right to be protected in the peaceful habitation of one's home (Section 33); (b) liberty of movement and the right to

choose one's residence (Section 34); (c) right of traditional communities to participate in the management, maintenance, preservation and exploitation of natural resources and the environment (Sections 66-67); (d) right to own private property; (e) detailed procedural protections in the event of expropriation of immovable property (Sections 41-42); and (f) rights of participation in and information about the decision-making process in all kind of development or changes which will affect their lives (Sections 56-62).¹²⁷

By virtue of the 1997 and 2007 Constitutions, several human rights mechanisms were introduced to strengthen the rule of law and implement relevant internal safeguards. These are the Ombudsman, Constitutional and Administrative Courts, the Rights and Liberties Protection Department (RLPD) under the Ministry of Justice and the National Human Rights Commission of Thailand (NHRCT).

However, Section 35 of the 2014 Interim Constitution gives room for the Constitution Drafting Committee to consider necessity, cost-effectiveness and value of existing or establishment of constitutional organizations or other agencies established under the Constitution. If it deems it expedient to retain or establish such entities, effective and efficient administrative measures shall be put in place.

Aside from Thailand's ratification of international treaties relevant to tribal and indigenous peoples, the government also recognizes the protection of basic rights of all persons, including tribal and indigenous peoples regardless of their nationalities.

Section 4 of the 2014 Interim Constitution, acknowledging the principles of human dignity, rights, liberties, and equality, implies that Thailand adheres to the principles of equality of every individual before the law and legal protection against all forms of discrimination upon its ratification of international treaties. Therefore, Thailand guarantees the legal protection of non-derogable rights under the ICCPR such as right to life, right to humane treatment, and right to freedom from slavery. Regarding compliance with the ICESCR, the Thai State also supports all people who wish to work while staying in Thailand. But they must not have violated the 1979 Immigration Act and must not seek to be employed in a job that would endanger the national economy and integrity. Sometimes tribal and indigenous peoples who have no Thai nationality, but had been missed in the different censuses, can register as migrant workers under the Ministry of Labor.

In general, tribal and indigenous peoples can access health care services with equal treatment and non-discrimination. The protection of personal property is ensured to all citizens and non-citizens. All under the condition that the manifestation of religion, beliefs, customs and cultures does not infringe upon the public order or the general social welfare, the Thai Constitution and Government fully protect the rights of tribal and indigenous peoples. The Thai legal system also guarantees marriage and the family's unification rights for tribal and indigenous peoples.

In 2003, the "Child Protection Act" was also enacted within the line of the CRC. The Ministry of Education has also established regulations to facilitate enrollment for students who do not have legal Thai nationality documents. Under these procedures, in accordance with the 1999 National Education Act, non-Thai tribal and indigenous children can attain the normal compulsory level of education while they stay in Thailand.

However, according to the NHRCT investigation reports, the exploitation and human rights abuses of tribal and indigenous peoples is often due to the gaps between policies and their implementation. A number of tribal and indigenous peoples in Thailand are victimized by smuggling and trafficking networks and are not often protected by laws. Those who practice traditional shifting agriculture are always threatened and criminalized by state authorities.

3. National Security Situation, Laws and Measures, their Implementation and Case Scenarios

In three Deep South provinces Yala, Pattani, and Narathiwat - where there are Thai-Muslims and Malaya Communists from Malaysia (pre 1987) - among the officially-recorded migrants mentioned in immigration regulations, the violence escalated in the past decade since 2004. This has caused great losses of life and property to the people living in the area.

The violence is due to three main factors. These are: (1) excessive use of power by government authorities in retaliation to the use of violence by alleged insurgents; (2) the unfair treatment to the people in the justice system and weak local economy; and (3) the distinct ethnic and religious identity differences of the local population.¹²⁸ In 2004-2010, there were 11,523 incidents of violence, 4,370 deaths and 7,136 injuries in total.¹²⁹ Those affected by the violence include the local people, Buddhists and Muslims alike, as well as government authorities, both civil and military personnel.

The government has, in various times, promulgated three special laws to deal with what it perceived as national security threats. These laws are: (i) the Martial Law 1914; (ii) the Emergency Decree 2005; and (iii) the Internal Security Act, 2007. Under the current military regime, the interim Constitution charges the chief of the NCPO with the responsibility for national security, “allowing him to suppress any action both inside and outside the Kingdom that could be considered a threat to national peace, security, economy or the monarchy”. All order from the junta chief that are endorsed by the NCPO are deemed final and executory under Art. 44 of the current Constitution. Article 48 grants amnesty to the NCPO for the coup. The NCPO issues orders which have the force of law. One particular order that directly impacts on indigenous peoples is the Return Forest Policy/NCPO Orders 64 and 66/2014. Complementing these is the Forestry Master Plan. NCPO Order 64, issued on 14 June 2014, orders government agencies to take action against forest encroachers to put an end to deforestation in all forest reserves. It clarified this order days after by issuing another order on June 17th, NCPO Order 66/2014, stating that operations carried out under NCPO 64/2014 “must not must not impact the poor, people with low incomes, and the landless who have lived on the land prior to the order. However, military units have carried out the forced evictions without apparent regard for Thai law or order 66/2557.” These orders were followed up in August with the Forestry Master Plan on the implementation of Order 64/2557. The Master Plan’s end goal is to increase forest cover in Thailand to 40% within ten years.

The enforcement of such laws over a long period of time has given rise to human rights violations. These laws have vested the authorities with exceptional powers without any safeguard against possible abuse. Under these laws, the authorities have the power to detain a person for interrogation for a longer period than provided for in the Criminal Procedure Code without disclosing the place of detention. The detainees are denied access to family members. The detention and treatment of juvenile persons below the age of 18 years old are not in accordance with international standards. Officials are immune from civil and criminal liabilities for human rights abuses committed under these laws.

For the rights of local communities and indigenous peoples to their lands, arable areas and natural resources, the 2007 Constitution guaranteed “Community or Collective Rights.” The state allowed communities to participate in the management, preservation, and

exploitation of natural resources and the environment to ensure their sustainable livelihood. The Community Rights are especially important for people living in the rural areas, particularly tribal and indigenous communities because the government’s exploitation of natural resources has caused negative impacts towards them.

There are conflicts arising from the government’s overlapping declaration of natural reserves in forest areas that have long been utilized and managed by local communities and indigenous peoples. A similar problem is caused by the issuance of land utilization certificates to public and private entities for projects in local communities and indigenous peoples territories. The government policy focus on economic growth has also adversely affected the environment, way of life, health and well-being of the people and the communities in the industrial zones and the areas where mega projects



are implemented. The 2007 Constitution fully guaranteed Community Rights and stipulated that the State and the private sector have to undertake a process whereby the community rights, such as the rights to access information and to participate in the environment and health impact assessments of a project that might affect the community shall be protected. However, the government has not taken any action to respect these rights.

In the case of Klity Creek in Kanchanaburi province, where lead pollution has severely affected generations, the Karen community won a 15-year lawsuit. The community was granted a favorable Administrative Court Order on 10 January 2013 that obligated the Pollution Control Department to revive the Klity Creek and pay compensation for losses and damages to 22 Karen community litigants totaling 3,898,390.10 Baht (US\$121,824.69).¹³⁰

The case of the destruction and forced relocation of Karen communities in Keang Krachan National Park, Phetchaburi province in July 2011 showed the officials' excessive use of power. The government forces stormed and burned 90 homes and rice barns in a Karen village. Officials justified this incident as a means to prevent forest destruction, even though it is the constitutional right of these Karen to reside in the forests, as they have been on the land for generations. Mr. Tatkamol Ob-om, a Karen community activist, later brought the case to the National Human Rights Commission. He was summarily killed on 10 September 2011. Forest officials have blamed Karen traditional swidden agriculture for contributing to forest degradation and global warming. The Thai Cabinet has adopted a Resolution dated 3 August 2010, with Policy Guidelines for Rehabilitation of Livelihood of the Karen mentioning the vitality and significance of shifting agriculture with folk wisdoms of Karen for dwelling in the forest. Nevertheless there is no or very little implementation, particularly for safeguarding indigenous communities from forced relocations. This resolution has never been respected by the Royal Forestry Department as seen in the case of the Karen of Kaeng Krachan.

Thirty eight cases of 'global warming' were brought against Thailand's indigenous forest-dwelling peoples in 2005 to 2011, nine of which have been settled resulting in fines of over 18 million Baht. There is no proper mechanism for the protection of community rights. This problem has deteriorated and community leaders rallying against opponents often face life-threatening situations, some of them having been killed. The culprits have not been prosecuted.

In issuing Order 64/2014 last 14 June 2014, the junta's NCPO aimed to step up legal measures against "forest encroachers" so as to reclaim and increase the forest cover of Thailand. Since the announcement, many ethnic minorities and other marginalized Thai people living in areas overlapping with National Parks have been affected.¹³¹

On 19 October 2014, the Mae Sariang Court of the Mae Hong Son province sentenced 24 Pakayaw Karen indigenous peoples from one to seven years of imprisonment for illegal deforestation. The jail term, however, is suspended for one year. Fifteen others who faced similar charges were fined 10,000 to 20,000 Baht. Two of the 15 have died before the verdict was issued.

These 39 Pakayaw Karen, residing in Tung Pa Ka district of Mae Hong Son Province were arrested by the military

on 4 May 2014. They were later charged with forest encroachment and illegal logging in protected areas on 28 August 2014 by the Mae Sariang district prosecutor.

According to the Royal Forestry Department (RFD), the Karen villagers were cutting trees in protected areas for commercial purposes. However, the Karen claimed that they only wanted to use the timber to renovate and build houses within their community.

Earlier on 24 July 2014, three Pakayaw Karen families were left destitute after their farmland in Mae Ngao National Park in Mae Hong Son province, which they claimed to use for subsistence farming, was reclaimed by officials from the RFD. Prior to their eviction, these Karen families had been ordered by the RFD to move down from their traditional homes up on the mountains to the river basin only to be evicted again several years later.¹³²

But a Pakayaw Karen village head, Tawee Paitaimongkonboon, asserted that "we have been living in these hills for hundreds of years. Our ancestors moved down from the highlands to cultivate these lands sustainably for generations, so as to obey the Thai authorities' order, but now some of us have again been left with no land to cultivate for food."

These Karen families have been growing soybeans, rice, papaya, and bananas, and collecting forest products for a living. A family of 3 to 5 members usually shares a plot of 2 to 3 acres to cultivate throughout their lives.

On 13 October 2014, the Thai military stopped a caravan of Lahu villagers travelling to Bangkok affected by Order 64/2014. The villagers were to complain to the junta's NCPO.

Curiously, the junta announced Order No. 66/2014 on 17 June 2014 that states that poor people should not be affected by their policies. Order No. 66/2014 stipulates that poor people and those living in protected areas prior to the announcement of Order No. 64/2014 will not be affected by the policy, and that the authorities will only apply strict measures to prevent further encroachment into protected areas. Despite this order and the fact that the indigenous peoples mentioned above have been living in the questioned forest areas for long periods of time, they were still subjected to harassment, eviction and arrest.

For the sake of tribal and indigenous peoples' legal status, Thailand still has a sizable part of its population, mostly



indigenous peoples, that is either stateless, thereby having no legal status and are deprived of basic human rights. A fundamental issue at hand is the failure of past censuses to cover remote territories of indigenous peoples and thus automatically rendering them stateless and now subject to the stringent requirements to prove historical residence and lineage. Government's policy to deal with this issue is encapsulated in the Strategy to Address Problems Relating to the Status and Rights of Persons that was adopted in 2005. Although relevant laws have been amended, there is not much progress in the naturalization of ethnic groups in the North and former Indochinese refugees in the Northeast. In addition, former displaced Thai citizens who have not reacquired their Thai nationality are unable to enjoy such rights as the right to freedom to travel freely, right to work, right to education and right to health care.

4. Recommendations

Local and indigenous communities are faced human rights violations particularly within the exercise of security laws, either with explicit or implicit disregard of the State's obligations and relevant principles. The state apparatuses do not work properly to create harmony, mutual respect and acceptance of diverse cultural groups. These also go against the right to self-determination, particularly of the marginalized communities including indigenous peoples. The right to self-determination is one of the most important rights for indigenous communities.

The state, as a policy controller, bombards propaganda on the populace into acceptance of the prevailing status quo. The people are then misled to overlook human rights principles under the Constitution. In law enforcement, the state's abuse of power against indigenous communities continues as the rule of law is disregarded.

The following recommendations are addressed to government for the respect, protection and fulfilment of the rights of indigenous peoples in Thailand:

1. Create a body to reform the justice system by reviewing laws and the administration of the justice system, including the police, the prosecutors, the courts and the corrections department, in accordance with the objectives of the Constitution; promote restorative justice, and further develop the community justice system to all over the country;
2. Revoke the irrelevant special laws in the southern border provinces. If the government deems that such laws are necessary, it must clearly explain the necessity to the public. There should be guidelines for law enforcement officers that are in accordance with international standards, to include procedures on searches, arrests, detention, questioning and investigation. Officers should be trained to respect human rights and a safeguard mechanism should be put in place to check against possible abuse;
3. Enforce law the law without discrimination. State officials who commit an offense must be prosecuted to prevent the culture of impunity. Timely and adequate remedies should be provided to victims without discrimination. The government should expedite the amendment of relevant laws to fully comply with its obligations under the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It shall accelerate the process to become a party to the Convention for the Protection of All Persons from Enforced Disappearances after its signing on 9 January 2012;



4. Cooperate fully with appropriate bodies responsible for investigations related to past political demonstrations and full information related thereto;
5. Take necessary measures to effectively recognize and implement community rights and speedily solve the problems arising from violations of such rights and provide remedies to the affected people; review its policy on land utilization and the expansion of natural reserve areas with meaningful participation of affected peoples;
6. Accelerate the implementation of its 2005 Strategy to Address Problems Relating to the

Status and Rights of Persons so that stateless persons are accorded Thai nationality or other appropriate legal status; reinstitute Thai nationality to former displaced Thai citizens and accord their basic rights; and

7. The term ‘indigenous peoples’ should be clearly identified to cover all tribal and indigenous peoples under Thai law. It should also endeavor to simplify the complicated and extremely restrictive registration system to address undocumented persons.

III. COMPARATIVE ANALYSIS OF THE NATIONAL SECURITY LAWS OF BANGLADESH, INDIA, PHILIPPINES AND THAILAND

Having similar colonial histories and sizable populations of indigenous peoples, Bangladesh, India, the Philippines and Thailand have numerous national security laws and measures that have a profound effect on each country’s national life and indigenous peoples. Below is a short list of national security laws that are still in effect in each country.

Table 1. List of National Security Laws of Four Asian Countries used Against Indigenous Peoples

Bangladesh (5)	India (6)	Philippines (1)	Thailand (4)
1. Arm Act of 1879	1. Armed Forces Special Powers Act, 1958	1. Republic Act 9372 Human Security Act of 2007	1. Martial Law 1914
2. Forest Act of 1927	2. Unlawful Activities (Prevention) Act, 1967		2. Emergency Decree 2005
3. Special Powers Act of 1974	3. Terrorist Affected Areas Act, 1984		3. Internal Security Act 2007
4. Anti-terrorism Ordinance of 2007	4. Terrorist and Disruptive Activities Act		4. Order 64/2014
5. Emergency Power Rules of 2007	5. National Security Act, 19806. Prevention of Terrorism Act, 2002		

Table 1 shows that in all countries, laws on national security have been in place long before the 9/11 attacks

on the United States. The laws enacted after 2001 are even more draconian than the preceding ones that they repealed. Bangladesh and India define terrorist activity in relation to territorial integrity, while the Philippines covers those intended to coerce the government to give in to an “unlawful demand”, and in Thailand, national security threats are those related to national peace, security, economy or the monarchy. In Bangladesh and the Philippines, these include property crimes and crimes punishable under criminal laws. The determination of ‘horror’, ‘disturbed area’, ‘extraordinary fear and panic’, ‘opposition’ are all in the hands of the government, and the military, and can be based on ‘mere suspicion’/‘of the opinion’. In Bangladesh, India and the Philippines, legal measures can be taken to collect evidence through video, photos, social and communications media, bank accounts, among others, and these will be admissible as evidence in court. Confiscation of assets, including bank account, of persons or groups, is also allowed. Bangladesh imposes the death penalty as maximum punishment and 40 years imprisonment in the Philippines. Suspects can be arbitrarily arrested under these laws and can be held incommunicado. The right to be presumed innocent until proved guilty according to law is suspended under these laws.

The Philippines currently has one all-encompassing Human Security Act (HSA) of 2007 that defines terrorism as “a crime against the Filipino people, against humanity, and against the law of nations.” Aside from long prison terms, the HSA also listed six terrorist crimes already punishable in the Philippine Revised Penal Code: Piracy

and Mutiny, Rebellion or Insurrection, Coup d'état, Murder, Kidnapping and Serious Illegal Detention, and Crimes Involving Destruction; and five other crimes punishable under special laws on Arson, Hijacking, Piracy and Robbery, Illegal and Unlawful possession of Firearms and Ammunition, and crimes under the Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990 and Atomic Energy Regulatory and Liability Act of 1968.

The HSA renders one guilty of terrorism if the following elements are present:

1. The commission of one or more of the crimes listed above;
2. The commission of said crimes sows and creates a condition of widespread and extraordinary fear and panic among the populace; and
3. The commission aims to coerce the government to give in to an unlawful demand.

This definition is vague, ambiguous and highly susceptible to abuse by State security forces. It does not clearly delineate what constitutes "widespread and extraordinary fear and panic." It does not identify the "populace." It does not define what an "unlawful demand" is. The discretion is with Philippine law enforcers who have a poor understanding of and do not have proper training on human rights.

The HSA also provides measures to prevent acts of terrorism. These include the "surveillance of suspects and the interception and recording of their communications, proscription of organizations deemed terrorist by declaration of a Regional Trial Court, detention of suspects without judicial warrant of arrest, travel restrictions and house arrest for terror suspects on bail, and the examination of bank deposits, accounts and records as well as the seizure and sequestration thereof." The HSA sets aside the human rights of persons on mere suspicion of terrorism.

The security laws of India form part of a complex matrix of repression. Among India's chilling extraordinary laws for national security is the Armed Forces (Special Powers) Act, 1958 that gives, among others, the armed forces the power to shoot, arrest and search, all in the name of "aiding civil power." Even a non-commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to "maintain the public order." The Act has granted the armed forces impunity and their actions can only be challenged in the

court of law if granted central government permission.

The National Security Act, 1980 (NSA) of India provides for preventive detention in certain cases and empowers the central or state government to order the detention of a person including a foreigner if the person may act in manner prejudicial to the defence of India, its relations with foreign powers, and the security of India.

The Terrorist Affected Areas (Special Courts) Act, 1984 (TAAA) established special courts "to provide for the speedy trial of certain offences in terrorist affected areas" in the central government declared terrorist affected areas. The Terrorist and Disruptive Activities (Prevention) Act (TADA) 1987 was enacted in 1985 "to make special provisions for the prevention of, and for coping with terrorist and disruptive activities" wherein most of the provisions in TAAA were incorporated without defining the geographical area of operation. It gave wide-ranging powers to law enforcement agencies; has stringent rules for bail and allows any persons detention for up to one year. The TADA was allowed to lapse prospectively in 1995 due to reports of widespread misuse. The cases initiated under it remain active.

The Prevention of Terrorism Act, 2002 (POTA) was brought into force after much opposition. The POTA is far more severe than TADA with its provisions on criminal liability for mere association with suspected terrorists; with an expansive definition of "terrorist" that includes a number of offences punishable under the ordinary laws of the nation such as the Indian Penal Code (e.g., murder, theft, etc). The government could classify an organization as terrorist without giving justification to it. The Act was severely criticized by human rights activists and after much pressure, was repealed in 2004.

The Anti-Terrorism Act (ATA) of Bangladesh was enacted by the military-backed Caretaker Government in 2008 in order to combat religious militancy and terrorist activities of Islamic militant groups active in Bangladesh. This Act was called "Anti-Terrorism Ordinance, 2008." The Ordinance was firstly legitimized by the Awami League-led government in 2009 and subsequently amended in 2012. Recently, the 9th parliament passed a controversial amendment titled Anti-Terrorism (Amendment) Bill, 2013.

ATA defines "Terrorist Activities" stating that (1) If any person by creating horror amongst the public or segment of the public to jeopardize the territorial integrity, solidarity, security or sovereignty of Bangladesh, for the purpose of compelling the government or any other

person to do or not to do an act (a) causes death, inflicts grievous hurt, confines or abducts any person or causes damage to any property of a person; or (b) uses or keeps any explosive, ignitable substance, firearms or any other chemical substance with a view to effect the purposes enumerated in clause (a); shall commit the offence of “terrorist activities;” (2) Any person committing terrorist activities shall be sentenced to death or punished with 3 to 20 years rigorous imprisonment and fines.

Amendments in 2012 included the maximum penalty of death for terrorist activities, prohibited the use of Bangladeshi land for the conduct of any terrorist activities inside the country or against other countries, and all types of illegal arms and explosives, and the creation of ‘panic’ among the people.

The Amendment in 2013 empowers the police, RAB and other law enforcement agencies to record video, still photographs and conversations posted by people and organizations on social media, emails and allow these as court evidence against the accused. The criminalization of opinions expressed online through social media presents a new pattern of persecution of dissenters and even human rights defenders.

The ATA maintains that a person may be held criminally liable for financing terrorism if there is “reasonable suspicion” they are involved in financial transactions for any terrorist act. More than a dozen entities in addition to the banks will come under direct purview of the Bangladesh Bank in its effort to deal with the suspected bank accounts.

All the Amendments were passed despite strong opposition from the opposition Parliament members and no consultations with the civil society organizations. The vague definitions of ‘terrorists activities’ and without clear and precise provisions in the ATA provides arbitrary sweeping powers of arrest, detention and punishment to law enforcing agencies for state security and elimination of global terrorism.

The Thai government’s national security laws have become more important with the changing of power and restoration of peace and order under the ‘National Council for Peace and Order (NCPO)’ established by the military junta.

The transition period has been marked with conflict and violence. The government has attempted to control the situation by ensuring security to the people by announcing the effectivity of three special laws in the

areas affected by violence namely, the Martial Law 1914, Emergency Decree 2005 and Internal Security Act 2007. However, the enforcement of such laws over a long period of time has given rise to human rights violations. These laws have vested the authorities with exceptional powers without safeguard against possible abuse. Under these laws, authorities have the power to detain and interrogate a person for a longer period than provided for in the Thailand Criminal Procedure Code without disclosing the place of detention. The detention and treatment of persons below the age of 18 are not in accordance with international standards, and officials are immune from civil and criminal liabilities for human rights abuses committed under these laws.

The national security laws of the four countries tackled in this paper give credence to repressive measures and programs in each nation that negatively affect indigenous peoples.

The Bangladesh military suppression of the indigenous Jumma peoples in the Chittagong Hill Tracts (CHT) region continue since 1971 as a response to their demand for autonomy of indigenous Jumma. The Bangladesh government wants to solve the political problem of CHT by imposing its military and paramilitary forces on the Jumma people.

The policies of militarization and Bengali Muslim settlement programs in the CHT are coupled with military interference in civil administration, tribal affairs, forest resources, control over admission of the Jumma students to higher educational institutions, among others.

The counter-insurgency programs of India and the Philippines similarly affect indigenous peoples with the human rights violations committed by the state security forces of the respective countries.

Indigenous peoples all over India, also called scheduled tribes and *adivasi*, have had their forests plundered, forcibly evicted from their ancestral domains, and deprived of their livelihoods where counter terrorism measures, development projects and neoliberal land policies are implemented all together. The Indian national security laws have enabled the State to blatantly violate human rights in the name of countering insurgencies. In the shelter of AFSPA the armed forces have committed murder and sexual assault, tortured innocent people, and destroyed properties. The AFSPA is in effect in the areas mostly belonging to indigenous peoples who are struggling for self-determination.

In the Philippines, the government's current national internal peace and security policy OpBay serves to guide the AFP in the performance of its mandated functions in dealing with external and internal security threats.

The current and previous operational plans have consistently labelled terrorists and vilified activists critical of government policies, human rights, peace and indigenous peoples' organizations and advocates as communists and/or terrorists and therefore "Enemies of the State." Those in the OB list have reported threats, surveillance and monitoring, and worst, are killed or forcibly disappeared. Thus, the OB list has come to mean a "death list."

Scores of indigenous peoples including women and children have been subjected to various forms of human rights violations and some have been killed in the crossfire of counterinsurgency operations of the Philippine government. Many have been slapped with fabricated charges of murder, frustrated murder, arson, illegal possession of firearms and explosives, rebellion and malicious mischief.

Thailand's indigenous peoples have been evicted from their forest lands by government security forces to give way to government declarations of their ancestral lands as national parks. Forest degradation is blamed on indigenous peoples and the state has charged and fined local communities. A number of IP rice barns and houses in a village have been burned by national park authorities and a Karen tribe leader was forcibly disappeared in 2014 after bringing a case to the Thai National Human Rights Commission in 2011.

1. International treaty obligations

The governments of Bangladesh, India, the Philippines and Thailand have either signed, ratified or acceded to almost all major international treaties or conventions that have direct or indirect bearing on indigenous peoples rights.¹³³

But with regard to upholding their respective obligations in terms of implementing treaty provisions, all the four nations have either under-implemented or not implemented them at all.

1.1 Bangladesh and its international obligations

The Bangladesh government has ratified several international human rights treaties relevant to indigenous peoples' rights, including the ILO Convention on Indigenous and Tribal Populations (Convention No. 107

of 1957) and the Convention on Biological Diversity. The ILO Convention No. 107 contains several provisions that deal with indigenous and tribal peoples' rights on land, recruitment and conditions of employment, vocational training, handicrafts and rural industries, social security and health, administration, education and means of communication. The latter convention contains a few provisions of direct relevance to indigenous peoples, particularly Articles 8j and 10c, which deal with the rights of indigenous communities over their genetic resources and intellectual property.¹³⁴

While many provisions of Bangladeshi law conform to the standards of ILO Convention No. 107, several - especially in the plains - fall short of these standards. A few legislative prerogatives, customary laws and on self-government issuances in the CHT go beyond the provisions of Convention No. 107 and conform with the more progressive Convention No. 169, and are almost comparable to provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

However, the implementation of the aforesaid treaties' provisions is far from good. In particular, the non-implementation of the important provisions in ILO Convention No. 107 is of particular concern since it is the only human rights treaty with direct relevance to indigenous peoples ratified by Bangladesh. The said Convention includes matters on administration, land, education, vocational training, employment, mother tongue education, language rights, all of which are vital for the welfare of indigenous peoples in Bangladesh, especially in the plains regions, where there are few or no legal and administrative provisions that address the rights and particular needs and concerns of indigenous peoples. Unfortunately, most of the aforesaid provisions remain unimplemented or under-implemented.

There are several factors behind the weak implementation of the aforesaid treaty provisions in Bangladesh. First and foremost, under Bangladeshi law, international treaty-based rights are not directly enforceable in the courts of law. Secondly, the treaty-monitoring system, especially in the case of the ILO Convention, is complicated, and without direct access to indigenous peoples.

Thirdly, monitoring of the aforesaid processes by the indigenous peoples themselves and human rights groups has not been conducted in a sustained and thorough manner. This itself is related to the limited capacity and organizational strengths of indigenous and human rights organizations.

These shortcomings need to be addressed by a combination of lobbying, advocacy and capacity-raising work within the treaty monitoring bodies, government agencies, indigenous peoples' institutions, human rights and civil society organizations.¹³⁵

1.2 India's obligations under international laws

India is a party or signatory to a long list of International Covenants and has the obligation to abide by these instruments and the UN Charter.

Article 51(c) of the Constitution of India states that "India shall foster respect for international law and treaty obligations in the dealings of organized peoples with one another." Thus, acknowledging its obligation under international law, many Supreme Court rulings have emphasized the importance of India's obligations under international law.

Among the major violations of human rights committed by Indian national security laws is the denial of the right to seek legal remedy. This is in contrast to the provisions laid down in Article 2(3) (b) of the ICCPR which requires the member state party to the covenant to ensure "effective remedy" against violations of the rights mentioned in the statute even while acting in an official capacity. Such effective remedy must include fair judicial remedy.¹³⁶

The absence of clear definitions and broad powers given to the state officials by the extraordinary laws have only made it easier for arbitrary arrests and detention, extrajudicial killings and other heinous crimes. For instance, the vague definition of "terrorist act" in UAPA has enabled the government to ban any organization as unlawful and make it a crime for individuals to be members of banned organizations. Being accused of committing a terrorist act effectively curtails the right to free speech and freedom of association without any due process of law that is contrary to the provisions of the ICCPR.

International bodies have in many occasions shown their reservation in enforcing extraordinary laws like the UAPA and AFSPA and have pointed out the contradiction of these laws with the relevant international instruments. The Human Rights Committee that monitors the implementation of the ICCPR have questioned the absence of due process in detention and extrajudicial killings under AFSPA as contrary to Articles 4 and 6 of the ICCPR.¹³⁷ In 1997, the Committee insisted during the country's third periodic report that India should amend

its anti-terrorist policies to conform to the ICCPR.¹³⁸

Laws such as AFSPA are area-specific and consequently, citizens affected by such laws belong to specific group of people. The Committee on the Elimination of Racial Discrimination (CERD) had observed that indigenous peoples are disproportionately affected by the AFSPA because they are the predominant population in the northeast where the law is in effect.¹³⁹ The Committee on the Elimination of Discrimination Against Women (CEDAW) has called upon India to repeal or amend the AFSPA "to ensure the investigation and prosecution of acts of violence against women by the military in disturbed areas."¹⁴⁰

1.3 The Philippines' implementation of international commitments

The Philippines is a signatory to the UDHR and the UNDRIP that provide the international framework for the recognition of indigenous peoples' rights. It has also ratified optional protocols of the ICCPR, CAT, CEDAW, and CRC.

Although the Philippines is a signatory to the above and other international treaties, this has not generally resulted to an improved human rights situation in the Philippines. The Philippines has not ratified ILO Convention 169 on Indigenous and Tribal Peoples and the Convention for the Protection of All Persons from Enforced Disappearance; and has not recognized the provision on individual complaints in the CAT.

The Philippine Universal Periodic Review (UPR) Watch,¹⁴¹ in the Executive Report during the second cycle of UPR on the Philippines stated that "The submissions reveal that after the first UPR Review of the Philippines and despite its promise to implement the recommendations put forward by 14 countries, the human rights situation in the country has not improved. The submissions contain various types of human rights violations that occurred after the first UPR under the government of then President Gloria Macapagal-Arroyo and which continue until the administration of President Benigno Simeon C. Aquino III."

"The inherent right of indigenous peoples to their ancestral land and natural resources are undermined by jurisprudence, the Mining Act of 1995, regressing interpretation of the IPRA, weakened implementing rules and regulations, Administrative Orders and several other domestic laws and national policies. The right to Free, Prior and Informed Consent (FPIC) that is legally

protected under the IPRA, the UNDRIP and other UN instruments are manipulated, either blatantly or through subtle means, and in many cases, through coercion and use of force by the military and its paramilitary arm.”

1.4 Thailand’s international treaty ratifications

Thailand voted in favor of the UDHR in 1948 and subsequently endorsed the 1949 Geneva Conventions. Then, it earnestly ratified, or became party to human rights instruments as follows: the CEDAW (1985), CRC (1992), CERD (1992), ICCPR (1997), ICESCR (1999), CAT (2007), and the CRPD (2008). The remaining core treaties,

especially the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, are still under consideration.¹⁴²

Despite some positive Thai Cabinet Resolutions restoring the traditional livelihood of the Chao Ley and Karen in 2010, not real improvements have occurred. Some indigenous peoples are still considered “illegal aliens” and have been subjected to arbitrary arrests, discrimination, denial of social services such as education and health care, freedom of movement and land ownerships.

IV. IMPACTS OF NATIONAL SECURITY LAWS AND MEASURES TO INDIGENOUS PEOPLES IN BANGLADESH, INDIA, PHILIPPINES AND THAILAND

The indigenous peoples of Bangladesh, India, the Philippines and Thailand are not exempt from the application of domestic laws and measures on national security in their respective governments’ campaigns against terrorism. Thus, it is important that the indigenous peoples understand the issue of national security and its relation to the defense and assertion of their collective rights to self-determination, lands, territories and resources, and the promotion of their economic and cultural aspirations.

The national security laws and measures have worsened the human rights situation of indigenous peoples in all the four countries despite Constitutional guarantees and protective laws that are ignored as discrimination and violations of the individual and collective rights of millions of indigenous peoples continue.

In the course of implementing counter-insurgency, counter-terrorism and return-to-normalcy programs, governments repressively respond to the assertion and defense of indigenous peoples rights. Governments consider legitimate movement and resistance of indigenous peoples as acts of terrorism.

Indigenous communities protesting against mega projects in mining and energy, logging concessions and commercial plantations, and land utilizations are heavily militarized in their respective countries. It is also these same communities and areas that the military describes as “rebel infested,” “terrorist affected” “red or rebel areas,” and/or “terrorist or communist controlled areas.” These are where the military detachments, cantonments, regiments, composite army, police and paramilitary forces converge to combat national security threats in

Table 2. Estimated Population of Indigenous Peoples

Country	Number of Indigenous Tribes	Estimates on Total Population
Bangladesh	54 indigenous communities	1,586,141 (2011 Census)
India	35 scheduled tribes	104,281,034 (2011 Census)
Philippines	More than 100 indigenous tribes	12 to 15 million (NCIP)
Thailand	9 hill tribes	948,173

each country.

Thus, the state security forces of Bangladesh, India, the Philippines and Thailand justify their presence, their intervention in civilian and tribal affairs, their combat operations and their wanton human rights violations in indigenous territories.

The varied experiences of the indigenous peoples in the countries reaffirm that with militarization comes human rights violations including violations of international humanitarian laws such as indiscriminate bombings, denial of food and medical aid, hamlets and restrictions on mobility, and others. Human rights violations to include harassment and intimidation, warrantless arrests, illegal detention, searches and seizures, torture, killings, enforced disappearance sand the like happen and are largely unreported to the public.

National security laws and measures do not spare indigenous women and children, and even the elderly from human rights violations. Indigenous women, children and the elderly also clamour for change and justice and participate in social and political activities.

Thus, State security agents tag them too as terrorists and subject them to various forms of harassment. In all four countries, militarized indigenous communities have increasing number of violations against women including rape, sexual harassment, prostituted women, impregnation and abandonment, and invalid marriages.

V. CONCLUSIONS

Despite the fact that all four countries are parties to various international human rights treaties, all of these are largely not translated into national laws or implemented effectively. Repressive national security laws in conjunction with other ordinary and extraordinary criminal and penal laws and jurisprudence have in fact legalized the violation of indigenous peoples' rights.

One of the major consequences of national security laws are the inherent and practical state violation of the individual and collective rights of indigenous peoples. The state security forces of all four nations have always resorted to these laws to clamp down on indigenous peoples struggling for better governance, self-determined development, and respect for their free, prior and informed consent for projects and measures related to their ancestral domains. Common response to assertions to, and defense of indigenous peoples of their rights to their ancestral lands and resources have been the deployment of state security forces. These have led to more human rights violations, all in the name of combating terrorism and insurgency, the maintenance of 'national security' and the pursuit of 'national interest.'

These have resulted to the multifarious violations of the individual and collective rights of indigenous peoples, the main contributor to the vicious cycle of land alienation, denial of livelihood, impoverishment, and conflict causing significant impact on the social, cultural and political situation of the peoples. This in turn, adversely affect the enjoyment of indigenous peoples of all their human rights, and the ability of indigenous communities to maintain and transmit their lifeways to future generations. This may lead to ethnocide.

VI. RECOMMENDATIONS

It is imperative for the indigenous peoples of Bangladesh, India, the Philippines and Thailand to unite and lobby their respective country governments to take action on the following recommendations:

A. For Governments

1. Immediately review national security laws and policies and undertake legal reform in strict adherence to international human rights instruments and with the international human rights obligations and commitments of states. This shall include special laws, regulations, border control and executive orders that violate human ights including the rights of indigenous peoples
2. Ensure the proper implementation of laws and policies that respects and protects human rights in adherence to state's human rights obligations. This shall include inter alia legislations against torture, enforced dis-appearances, war crimes, genocide
3. De-militarize indigenous territories where serious violations of human rights have taken place and where indigenous peoples have not given their free prior and informed consent to military presence and actions. Immediately prosecute offenders including military officials on the basis of command responsibility; and ensure justice, reparation and rehabilitation of human rights victims.
4. Carry out the proper orientation, education and training of military elements and officials, law enforcers and state security agents on human rights including on measures to respect and protect the rights of indigenous peoples and citizens.
5. Fully engage with indigenous peoples leaders and community in addressing security and peace issues in their territories within the framework of human rights protection; and take special measures to ensure the protection of Indigenous Elders, women, youth, children and persons with disabilities, particularly in the context of armed conflicts.
6. Stop the vilification and criminalisation of indigenous peoples' human rights defenders and activists as "terrorist", stop arbitrary arrest and detention, enforce or involuntary disappearances, torture, political killings and harassment; and prosecute human rights violators among state agents.
7. Ensure access to justice for indigenous peoples through formal justice institutions, and other forms of redress, including by taking into account indigenous peoples' customary laws, justice institutions and processes.

8. Legally recognise and or implement properly the rights of indigenous peoples particularly to their lands, territories and resources as enshrined in international norms and standards as a means to ensure just and lasting peace for indigenous communities.

B. For the United Nations

1. Encourage governments to extend permanent invitations to UN special procedures, and invite and support in particular the UN Special Rapporteur on the Rights of Indigenous Peoples, UN Special Rapporteur on the Situation of Human Rights Defenders, UN Special Rapporteur on Torture, the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism and the UN Working Groups on Enforced and Involuntary Disappearances, on Arbitrary Detention.

2. Monitor the faithful compliance of the governments of Bangladesh, India, the Philippines and Thailand to their international human rights obligations.

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²⁷ Data from the 2011 Census of India.

²⁸ Ministry of Tribal Affairs. (2007). *Annual Report 2006-2007*. New Delhi. (Online), Available: <http://tribal.nic.in/TribalAR0607-E.pdf> The scheme for determining whether an individual belongs to a Scheduled Tribe has been laid down in this document.

²⁹ Members of a community that have been declared a Scheduled Tribe benefits from all the laws and schemes created specifically for the Scheduled Tribes including reservation of seats in appointments and education.

³⁰ Since it is area specific, a community declared as a Scheduled Tribe in one state need not be so in another state. For example, the Santals living in Assam do not have access to the benefits as Scheduled Tribes, which are accorded to the Santals in Jharkhand, Orissa and West Bengal.

³¹ Ministry of Tribal Affairs, Government of India. *State/*

Union Territory-wise list of Scheduled Tribes in India. (Online), Available: <http://www.tribal.nic.in/Content/list%20of%20Scheduled%20Tribes%20in%20India.aspx>

³² They have to conform to the fundamental rights laid down in Chapter III of the Constitution, otherwise they are void.

³³ The Government of India. *The Constitution of India*. (Online), Available: <http://india.gov.in/my-government/constitution-india>

³⁴ The decisions of the High Courts are also binding on the courts over which they have jurisdiction.

³⁵ Article 13(3) (a) provides that “law” includes any ordinance, order, by-law, rule, regulation, notification, custom, or usage within the bounds of the force of law in India.

³⁶ Modelled on the Armed Force (Special Powers) Act, 1942 of the British Colonial era that was framed to suppress the Quit India Movement.

³⁷ The Government of India. (11 September 1958). Section 3. *The Armed Forces (Special Powers) Act, 1958 Act 28 of 1958*. (Online), Available: http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm

¹ The Government of India. (11 September 1958). Section 4. *The Armed Forces (Special Powers) Act, 1958 Act 28 of 1958*. (Online), Available: http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm

² The Government of India. (11 September 1958). Section 3. *The Armed Forces (Special Powers) Act, 1958 Act 28 of 1958*. (Online), Available: http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm

³ The Government of India. (11 September 1958). Section 5. *The Armed Forces (Special Powers) Act, 1958 Act 28 of 1958*. (Online), Available: http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm

⁴ The Government of India. (11 September 1958). Section 6. *The Armed Forces (Special Powers) Act, 1958 Act 28 of 1958*. (Online), Available: http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm

⁴² *Naga People’s Movement for Human Rights v. Union of*

India. (1998) 2 SCC 109

⁴³ The Government of India. Section 4. *Terrorist Affected Areas (Special Courts) Act, 1984*. (Online), Available: https://www.unodc.org/tldb/pdf/India/TERRORIST_AFFECTED_AREAS_ACT_1984.pdf

⁴⁴ Classified as “scheduled offenses.” TAAA Section 2(1) (f) defines it as “an offense specified in the Schedule being an offense committed in a terrorist affected area.”

The term ‘terrorist’ has been given a sweeping definition to mean “any person who indulges in wanton killing of persons or in violence or in the disruption of services or means of communication essential to the community or in damaging property with a view to: (i) putting the public or any section of the public; or (ii) affecting adversely the harmony between different religious, racial, language or regional groups or cases or communities; or (iii) coercing or overawing the Government established by law; or (iv) endangering the sovereignty and integrity of India.” - TAAA, Section 2(1)(h)

⁴⁵ The Government of India. (1984). Objective. *Terrorist Affected Areas (Special Courts) Act, 1984*. (Online), Available: https://www.unodc.org/tldb/pdf/India/TERRORIST_AFFECTED_AREAS_ACT_1984.pdf

⁴⁶ The Special Court is also required to make provisions for the protection of the witnesses where the later have made such request. There are also provisions for holding the proceedings in protected places and withholding the name of witnesses and their addresses in the judgments accessible by the public.

⁴⁷ Section 3(1) defines it as an act “with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act.”

⁴⁸ Under the Code of Criminal Procedure, the maximum

period of detention cannot exceed 90 days.

⁴⁹ This was largely based on the Criminal Law Amendment Bill of 1995 introduced by the Congress Party-led government.

⁵⁰ Kalhan, Anil, Conroy, Gerald P., Kaushal, Mamta et.al. (2006). *Anti-Terrorism and Security Laws in India*. ABCNY Report. (Online), Available: <http://ipc498a.files.wordpress.com/2007/04/antiterrorism-and-security-laws-in-india.pdf>

⁵¹ The Government of India. (2002). Section 3(3). *The Prevention of Terrorism Act, 2002 (Act No. 15 of 2002)*. (Online), Available: [https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/\\$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf)

⁵² Verma, Preeti. (Ed.). (March 2004). *The Terror of POTA and other security legislation: A report on the People’s Tribunal on the Prevention of Terrorism Act and other security legislation*. New Delhi: Human Rights Law Network, New Delhi, and People’s Watch, Madurai. The report was prepared by Ram Jethmalani, K.G. Kannabiran, Justice Hosbet Suresh, D.K. Basu, Mohini Giri, Syeda Hameed, Arundhati Roy and Praful Bidwai.

Chakma, Suhas. (April 2002). Do ends justify means? *States of Insecurity: a symposium on emergency laws, human rights, and democracy*. (Online), Available: <http://www.india-seminar.com/2002/512/512%20suhas%20chakma.htm>

⁵³ See below.

⁵⁴ The Government of India. (2002). Section 3(1)(b). *The Prevention of Terrorism Act, 2002, Act No. 15 of 2002*. (Online), Available: [https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/\\$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf)

⁵⁵ The Government of India. (2002). Section 18. *The Prevention of Terrorism Act, 2002, Act No. 15 of 2002*. (Online), Available: [https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/\\$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf)

⁵⁶ According to UAPA, Section 3(1): “to prevent him from acting in any manner prejudicial to the defence of India, the relations of India with foreign persons, the security of India, the security of the state, the maintenance of public order, the maintenance of supplies and services essential to the community.”

⁵⁷The Government of India. (1950). Section 11A. *The Preventive Detention Act, 1950 (Act No. 4 OF 1950)*. (Online), Available: <http://www.helplinelaw.com/docs/THE%20PREVENTIVE%20DETENTION%20ACT,%201950>

⁵⁸ PDA was to lapse within a year but the Act was re-enacted year after year.

⁵⁹ More than 111,000 people were detained under the Act in a span of two years when the Indira Gandhi's government had declared a state of Emergency in 1975. See *Anil Kalhan et al; supra* 23, p.38.

⁶⁰ The Government of India. (2008). Preamble. *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

⁶¹ The Government of India. (2008). Section 15. *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

⁶²UAPA, Section 2(1)(o) defines unlawful activity “in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise): (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or

group of individuals to bring about such cession or secession; or (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India.”

⁶³ The Government of India. (2008). Proviso to Section 6. *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

⁶⁴ Comprising of a single High Court judge.

⁶⁵ The Tribunal, upon receiving the notification, must call upon the affected association within thirty days to show cause as to why the association should not be declared unlawful. The government is also empowered to make the declaration effective immediately while awaiting confirmation by the Tribunal. It is also empowered to cancel the notification on its own or on the application of any person aggrieved by the notification.

The Government of India. (2008). Section 6. *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

⁶⁶ The Government of India. (2008). Section 4. *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

⁶⁷ The Government of India. (2008). Section 7. *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

⁶⁸ The Government of India. (2008). Section 8. *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

⁶⁹ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 3(1)(a). *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday, December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷⁰ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 3(1)(b). *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷⁵ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 3(2). *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷² Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 5. *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷³ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 9. *The National Security Act, 1980* (The Gazette of India, No.

76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷⁴ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 10. *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷⁵ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 11. *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷⁶ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 1. *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf.

The Punjab and Union Territory of Chandigarh Amendment of 1984 extended the maximum period to two years.

⁷⁷ Ministry of Law, Justice, and Company Affairs (Legislative Department), The Government of India. (1980). Section 8. *The National Security Act, 1980* (The Gazette of India, No. 76 New Delhi, Saturday December-27, 1980/PUSA 6, 1902). (Online), Available: http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf

⁷⁸ The Government of India. Part III. *The Constitution of India*. (Online), Available: <http://india.gov.in/my-government/constitution-india>

⁷⁹ The Supreme Court had upheld TADA (in *Katar Singh v. State of Punjab*) and AFSPA (in *NPMHR v. Union of India*) as constitutional in spite of their provisions that empower the state agencies to commit widespread violation of fundamental rights enshrined in Part III of the Constitution.

⁸⁰ For example, UAPA, Section 49(a). Such provision was also included in POTA (Section 57) and TADA (Section 26).

⁸¹ The Government of India. (2008). Section 49 (b). *Unlawful Activities Prevention (Amendment) Act, 2008*. (Online), Available: https://www.unodc.org/tldb/pdf/India/THE_UNLAWFUL_ACTIVITIES_BILL2008.pdf

The Government of India. (2002). Section 56. *The*

Prevention of Terrorism Act, 2002, Act No. 15 of 2002. (Online), Available: [https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/\\$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf](https://www.icrc.org/applic/ihl/ihl-nat.nsf/0/70885ebca6462000c125770400454b71/$FILE/THE%20PREVENTION%20OF%20TERRORISM%20ACT,%202002.pdf)

⁸² Chakma, Suhas. (April 2002). Do ends justify means? *States of Insecurity: a symposium on emergency laws, human rights, and democracy*. (Online), Available: <http://www.india-seminar.com/2002/512/512%20suhas%20chakma.htm>

⁸³ While upholding the constitutionality of TADA, the Supreme Court in *Kartar Singh v. State of Punjab* [1994] 2 S.C.R. 375 had shown their concern of its misuse and abuse by the police.

⁸⁴ Amnesty International Report. (April 2000). *Persecuted for Challenging Injustice: Human Rights Defenders in India*. (Online), Available: www.amnesty.org/ailib/aipub/2000/asa/32000800.htm.

⁸⁵ Coordination of Democratic Rights Organizations (CDRO). (April 2012). *The Terror of Law: UAPA and the Myth of National Security* in REPRESSIVE LAWS - A COMPILATION OF CDRO. PUCL Bulletin. (May, 1981). NSA, A Weapon of Repression in Time to end abuses. *States of Insecurity: a symposium on emergency laws, human rights, and democracy*. (Online), Available: <http://www.india-seminar.com/2002/512/512%20seminarist.htm>

⁸⁶ Supra 25

⁸⁷ UN General Assembly. Article 33 Paragraph 1. *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*, available at: <http://www.refworld.org/docid/471355a82.html>

⁸⁸ Pimple M and Sethi M. Occupation of land in India: Experiences and challenges in Moyo S and Yeros P (Eds.) *Reclaiming Land: The Resurgence of Rural Movements in Africa, Asia and Latin America*.

London: Zed (2005), p.239

⁸⁹ Kapoor, Dip. (2012). Human Rights as Paradox and Equivocation in Contexts of Adivasi (original dweller) Dispossession in India. *Journal of Asian and African Studies*: (Online), Available: <http://www.ualberta.ca/~dkapoor/JAAS47-4.pdf>

⁹⁰ PUCL Bulletin. (April 2006). *Police firing at Kalinganagar: A Report by People's Union for Civil*

Liberties (PUCL) Orissa. (Online), Available: <http://www.pucl.org/Topics/Dalit-tribal/2006/kalinganagar.htm>.

ACHR. *The Displaced India: From Kalinganagar to Singur*. Online *ACHR Weekly Review*, 148/0 [Online weekly]. Available: <http://www.achrweb.org/Review/2007/148-07.htm>

⁹¹ The security forces would make the people to group in a certain spot and then, search every empty house for the ‘enemy.’

⁹² Luithui, Chonchuirinmayo. *In the Shadow of AFSPA: Life Not So Uncommon*. Retrieved from the World Wide Web: <http://sevensistersproject.org/in-the-shadow-of-afspa-not-so-uncommon-lives>

⁹³ NPMHR South. (2009). *Annual Activities Report April 2008 March 2009*. NPMHR South: Tahamzam, Senapat. p.18.

⁹⁴ Sunda, Nandini. *Salwa Judum: Not a path of peace*. Retrieved from the World Wide Web: http://articles.economictimes.indiatimes.com/2006-07-01/news/27455880_1_dantewada-naxalites-maoist-violence.

AITPN and ADIVASIS. *Victims of India’s Red Spectre Sandwiched in the Naxalite conflict*. (Online), Available: <http://www.aitpn.org/Issues/II-04-06-Adivasis.pdf>

⁹⁵ Source: Interviews

⁹⁶ Committee for the Repeal of the Armed Forces Special Powers Act, Delhi. *End Army Rule: a report on the working of the Armed Forces Special Powers Act in the North East*.

⁹⁷ CDRO. (April 2012). *The Terror of Law: UAPA and the Myth of National Security*.

⁹⁸ The right to equality has become a yardstick in any discourse on human rights. Aside from the articles mentioned in the two conventions, there are a number of other articles that speaks on right to equality such as Arts. 23 and 24 of ICCPR and Arts. 7, 10 and 13 of ICESCR. As also recognized in Art. 2 of UDHR, Art. 1 par. 1 of CERD, Art. 1 of CEDAW, and Arts. 14 to 18 of the Constitution of India.

PHILIPPINES

⁹⁹ This is an initial study by Beverly L. Longid, KATRIBU Indigenous Peoples’ Party-list, Philippines.

¹⁰⁰ Communist Party of the Philippines-New People’s Army-National Democratic Front of the Philippines, See

<http://www.philippinerevolution.net/> and <http://www.ndfp.net/web2014/>

¹⁰¹ National Commission on Indigenous Peoples, The Government of the Philippines.

Vision, Mission, and Mandate. (Online), Available: <http://www.ncip.gov.ph/index.php/about-us1/vision-mission-mandate>

¹⁰² National Commission on Indigenous Peoples, Republic of the Philippines (Online), Available: <http://www.ncip.gov.ph/index.php/bureaus/office-of-empowerment-and-social-rights>

¹⁰³ Resolution 1373 (2001), Adopted by the Security Council at its 4385th meeting, on 28 September.

¹⁰⁴ RA 9372: Section 2 Declaration of Policy, paragraph 1.

¹⁰⁵ Congress of the Philippines. *An Act to Secure from the State and Protect our People from Terrorism*, RA 9372. (Online), Available: http://www.congress.gov.ph/download/ra_13/RA09372.pdf

¹⁰⁶ Diokno, Jose Manuel. (15 July 2007). *FAQs on the Human Security Act*. *The Philippine Daily Inquirer*. Retrieved from the World Wide Web: http://opinion.inquirer.net/inquireropinion/talkofthetown/view/20070715-76703/FAQs_on_the_Human_Security_Act

¹⁰⁷ UN rights expert calls on Philippines to amend or repeal anti-terrorism law. (12 March 2007). *The United Nations News Center*. Retrieved from the World Wide Web: <http://www.un.org/apps/news/story.asp?NewsID=21827#.UGUkRfmSz0o>

¹⁰⁸ Armed Forces of the Philippines

¹⁰⁹ Armed Forces of the Philippines. *Internal Peace and Security Plan “Bayanihan.”* (Online), Available: http://www.army.mil.ph/pdf_files/bayanihan.pdf

¹¹⁰ Philippines passes landmark law criminalizing enforced disappearances. (24 January 2013). *United Nations Human Rights, Office of the High Commissioner for Human Rights*. Retrieved from the World Wide Web: <http://www.ohchr.org/EN/NewsEvents/Pages/Philippinespassescriminalizingenforceddisappearances.aspx>

[forceddisappearances.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/Philippinespassescriminalizingenforceddisappearances.aspx)

¹¹¹ Sec. 3 Definitions (c) Order of Battle xxx made by the military, police or any law enforcement agency of the

government xxx

¹¹² Karapatan. Alliance for the Advancement of People's Rights. Statement of Desaparecidos on the Anti-Enforced or Involuntary Disappearance Act of 2012 and its IRR. (13 February 2013). Retrieved from the World Wide Web: <http://www.karapatan.org/Statement%2Bof%2BDesaparecidos%2Bon%2Bthe%2BAnti-Enforced%2Bor%2BInvoluntary%2BDisappearance%2BAct%2Bof%2B2012%2Band%2Bits%2BIRR>

¹¹³ Olea, Ronalyn. (14 November 2009). At Last, Philippines Now Has Law Against Torture. *Bulatlat.com*. Retrieved from the World Wide Web: <http://bulatlat.com/main/2009/11/14/at-last-philippines-now-has-anti-torture-law/#sthash.e6waFh2B.dpuf>

¹¹⁴ Santos, Soliman Jr. (8 January 2010). R.A. No. 9851 breakthrough law for IHL enforcement in the Philippines. *People's Recovery, Empowerment and Development Assistance*. Retrieved from the World Wide Web: <http://www.preda.org/en/media/research-documents/r-a-no-9851-breakthrough-law-for-ihl-enforcement-in-the-philippines/>

¹¹⁵ National Democratic Front of the Philippines. *Primer on the CARHRIHL*. (Online), Available: <http://www.scribd.com/doc/19432075/Primer-on-the-Carhrihl-by-the-NDFP>

¹¹⁶ Karapatan: Alliance for the Advancement of People's Rights. (11 May 2014). *Solidarity for the Manobo people's struggle for the protection of land rights, self-determination, and the environment*. Retrieved from the World Wide Web: <http://www.karapatan.org/appeal-for-Manobo-evacuees-March-May-2014-Talaingod>

¹¹⁷ Kalipunan ng mga Katutubong Mamamayan ng Pilipinas (National Alliance of Indigenous Peoples Organizations in the Philippines). *The Human Rights Situation of Indigenous Peoples in the Philippines*. (Online). available: http://lib.ohchr.org/HRBodies/UPR/Documents/session13/PH/KAMP_UPR_PHL_S13_2012_KalipunannmgmgaKatutubongMamamayannngPilipinas_E.pdf

¹¹⁸ Political persecution of human rights defenders must end. (1 March 2014). *International Coalition for Human Rights in the Philippines*. Retrieved from the World Wide Web: <http://www.humanrightphilippines.net/2014/03/political-persecution-of-human-rights-defenders-must-end/>

¹¹⁹ Caraga. *Wikipedia*. Retrieved from the World Wide Web: <http://en.wikipedia.org/wiki/Caraga>

¹²⁰ Imprints of Violence: Shattered Lives and Disrupted Childhood. (3 March 2012). *Children's Rehabilitation*

Center. Retrieved from the World Wide Web: <http://www.childrehabcenter.org/resources/documents/imprints-violence-shattered-lives-and-disrupted-childhood>

THAILAND

¹²¹ This article was represented the authors' own view and accountability, except where due acknowledgement is made.

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¹²³ Department of Public Administration, Ministry of Interior. (30 June 2014). (in Thai language). (Online), Available: www.dopa.gov.th

¹²⁴ The Bureau of Registration Administration, Department of Provincial Administration, the Ministry of Interior Affairs, the General Regulation for Household Registration, B.E. 2535 (1992) and the General Regulation for Thai Nationality Bestowment, B.E. 2543 (2000) www.dopa.gov.th (30 June 2014) (in Thai language).

¹²⁵ The Sub-commission on Ethnic groups issues, the report of the cooperation project: A new Paradigm towards Ethnic Highlander Community's Development: a Human Rights Approach (Bangkok: the National Human Rights Commission of Thailand, 2003) p 56-60. (in Thai language).

¹²⁶ The Interim Constitution of the Kingdom of Thailand, B.E. 2557 (2014) (in Thai language). (Online), Available: www.ratchakittha.soc.go.th/DATA/PDF/2557/A/055/1.PDF

¹²⁷ The Secretariat of the National Legislative Council, Thailand, "the 2007 Constitution" (the Thai language).

¹²⁸ Extracted from the deliberations of Professor Amara Pongsapich, NHRCT Chairperson, at a Panel Discussion on "Taking Stock and Looking Ahead: Human Rights in Southern Border Provinces amidst Violence," jointly organized by the Senate Committee on Human Rights, Rights, Freedoms and Consumer Protection and the NHRCT on 1 February 2011 at Parliament Building 2. The deliberations referred to the report of the Independent National Reconciliation Commission, on June 2006.

¹²⁹ Special report on Dissecting Southern Violence Budget: 1.45 Trillion Baht in 8 Years. 17 February 2011.

¹³⁰ Administrative Court Order. (10 January 2013) (Online),

Available: www.isranews.org/isra-downloads

¹³¹ See: About 40 Karens prosecuted for forest encroachment IN: <http://www.prachatai.com/english/node/4450>

¹³² See: Junta's attempt to 'return forest' hurts the poor IN: <http://www.prachatai.com/english/node/4441>

¹³³ See UN Treaty Collection <https://treaties.un.org/Home.aspx?lang=en>

¹³⁴ Roy, Raja Devasish. (July 2006). The Laws of Bangladesh: A Comparative Review. *The ILO Convention on Indigenous and Tribal Populations, 1957*.

¹³⁵ Roy, Raja Devasish, Chakma, Kumar Mangal, and Drong, Sanjeeb. *Bangladesh Component. An Assessment of the United Nations First International Decades of the World's Indigenous Peoples (1995-2004)*. ICIMOD, Kathmandu, Nepal.

¹³⁶ In addition to the effective remedy, there are enumerated rights under ICCPR including right to life (Art. 6); prohibition of torture, cruel, inhuman or degrading treatment or punishment (Art. 7); prohibition of slavery and bonded labor (Art. 8); right to liberty and security of persons including the right against preventive detention without due process established by law (Art. 9); equality before law and the right to be presumed innocent until proven guilty (Arts. 14 and 26); right against arbitrary or unlawful interference with one's privacy, family, home or correspondence (Art. 17); freedom of thought, conscience and religion (Art. 18); freedom of expression (Art. 19); and freedom of assembly (Art. 21) and association (Art. 22). The member states are allowed to derogate from their obligation only during the time of "public emergency" to the "extent strictly required by the exigencies of the situation" and should not be discriminatory on the grounds of race, colour, sex, language, religion or social origin (Art. 4), after meeting a series of requirements such as necessity, duration and precision. India did not make any declaration for derogation of its obligation while enacting the abovementioned security laws.

¹³⁷ Human Rights Committee, Report to the General Assembly, UN Doc. CCPR/46/40.

¹³⁸ Human Rights Committee, Concluding Observations on the Third Periodic Report of India, UN Doc. CCPR/C/79/Add.81.

¹³⁹ Committee on the Elimination of Racial Discrimination: India. 05/05/2007. CERD/C/IND/CO/19.

¹⁴⁰ Committee on the Elimination of Discrimination against Women, Concluding Comments on the combined second and third periodic reports of India, UN Doc. CEDAW/C/

IND/CO/3. In its recent 4th and 5th periodic review of India, CEDAW has asked India to repeal the Armed Force (Special Powers) Act.

¹⁴¹ Philippine UPR Watch is a delegation of human rights defenders and advocates that engages in the Universal Periodic Review process of the UN Human Rights Council and brings to the attention of the UN and the international community the human rights situation in the Philippines. For more information: <http://philippineuprwatch.wordpress.com/>

¹⁴² The Office of United Nations High Commission on Human Rights. 30 June 2014. (Online), Available: <www.ohchr.org>

INDIGENOUS PEOPLES HUMAN RIGHTS DEFENDERS NETWORK

The Indigenous Peoples Human Rights Defenders Network (IPHRD Net) is a platform for solidarity, coordination and support among indigenous human rights defenders and their organizations. Through the IPHRD Net, indigenous peoples human rights defenders can more effectively address human rights issues and violations wherever these occur by working with other indigenous peoples organisations, other human right organisations, and with regional and international human rights mechanisms and bodies.

THE FUNCTIONS OF THE IPHRDS NET ARE AS FOLLOWS:

1. Mechanism for exchange of information and updates relating to human rights of indigenous peoples
2. Facilitation of technical, logistics and other forms of support
3. Forum for planning, capacity building and skills enhancement of network members
4. Mechanism for strengthening solidarity and cooperation.

ACTIVITIES

1. Documentation of human rights violations against indigenous peoples for use in lobby and advocacy at all levels
2. Manage the database of human rights violations against indigenous peoples in Asia
3. Capacity-building on human rights documentation and advocacy
4. Awareness-raising on human rights, in particular the UN Declaration on the Rights of Indigenous Peoples
5. Advocacy on indigenous peoples issues at the all levels
6. Networking with other civil society organisations to gather support on the issues and concerns of indigenous peoples
7. Facilitate direct support to indigenous peoples human rights defenders at risk.

<http://www.iphrdefenders.net/>

Have you witnessed a human rights violation against indigenous peoples?

Report to: <http://www.iphrdefenders.net/index.php/iphrd-human-rights-violation-form>

Are you an IPHRD at risk needing assistance?

Contact us at: <http://www.iphrdefenders.net/index.php/request-for-assistance-form>

AIPP at a glance

The Asia Indigenous Peoples Pact (AIPP) is a regional organization founded in 1988 by indigenous peoples' movements as a platform for solidarity and cooperation. AIPP is actively promoting and defending indigenous peoples' rights and human rights, sustainable development and management of resources and environment protection. Through the years, AIPP has developed its expertise on grassroots capacity building, advocacy and networking from local to global levels and strengthening partnerships with indigenous organizations, support NGOs, UN agencies and other institutions. At present, AIPP has 47 members from 14 countries in Asia with 7 indigenous peoples' national alliances/networks and 35 local and sub-national organizations including 16 are ethnic-based organizations, five (5) indigenous women and four (4) are indigenous youth organizations.

Through our Indigenous Women (IW) programme, AIPP aims to empower indigenous women through networking, education and capacity building activities with the overall goal for indigenous women to assert, promote and protect their rights as women and as indigenous peoples.

Our Vision

Indigenous peoples in Asia are living with dignity and fully exercising their rights, distinct cultures and identity, and enhancing their sustainable management systems on lands, territories and resources for their own future and development in an environment of peace, justice and equality.

Our Mission

AIPP strengthen the solidarity, cooperation and capacities of indigenous peoples in Asia to promote and protect their rights, cultures and identities, and their sustainable resource management system for their development and self-determination.

Our Programmes

Our main areas of work among the different programmes are information dissemination, awareness raising, capacity building, advocacy and networking from local to global. Our programmes are:

- Human Rights Campaign and Policy Advocacy
- Regional Capacity Building
- Environment
- Indigenous Women
- Communication Development

AIPP is accredited as an NGO in special consultative status with the UN Economic and Social Council (ECOSOC) and as observer organization with the United Nations Framework Convention on Climate Change (UNFCCC), Convention on Biological Diversity (CBD), Green Climate Fund (GCF), Global Environment Facility (GEF) and the World Intellectual Property Organization (WIPO). AIPP is a member of the International Land Coalition (ILC).

Asia Indigenous Peoples Pact (AIPP)

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