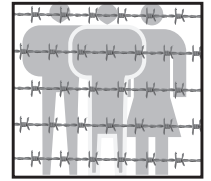


MILITARISATION & SECURITY LEGISLATION AND APPARATUS



Briefing Note for Regional Consultations on UPR II

During the past five decades, the Indian state has increasingly used militarization as a policy to counter armed insurgencies and resistance movements in Jammu & Kashmir, North-East and in the Central Indian states of Chattisgarh, Orissa, Jharkhand, West Bengal and Andhra Pradesh. In J & K there has been a long standing demand for self determination, based on its political history, which witnessed the emergence of an armed resistance in 1989. The past decade has seen a rapid decline in violent resistance, with only 119 militants active presently, lowest in the last twenty years.¹ The movement has since morphed into a strong non-violent call for the exercise of the right to self-determination. In North-Eastern states like Nagaland, Manipur, and Assam, armed insurgent groups are seeking independence or autonomy from India.

The conflict in Central India has aggravated due to the adoption of neo-liberal economic policies by the Indian government from 1990's onwards, that actively promote corporate acquisition and privatization of land and other resources in the region, thereby dispossessing Adivasis of control and access over their lands and natural resources, over which they have special rights guaranteed by the Indian Constitution and laws such as PESA and FRA.

Rather than looking for political solutions, the state has responded to these diverse conflicts by heavy militarization of these regions, together with introducing special security legislations that dump international human rights guarantees and supply sweeping impunity to its armed forces.

SECURITY LEGISLATIONS AND HUMAN RIGHTS

The Armed Forces Special Powers Act, operational in 'Disturbed Areas' like North-Eastern states (since 1958) and J&K (since 1990) provides the armed forces with powers to shoot to kill, arrest, demolish structures, conduct warrantless searches, on the basis of mere suspicion.² These powers operate within provisions according sweeping impunity to the armed forces.³ Similarly, the Public Safety Act, widely and often arbitrarily used in J&K, provides for detention without trial for up to two years with the possibility of fresh slapping of charges at the expiry of those two years.⁴ It is reported that even children below the age of 18 have been charged under PSA, tortured, and kept under detention for long periods of time with adults.⁵ All of these legislations have been repeatedly criticized by international organizations like Amnesty International and Human Rights Watch for violating International Human Rights guarantees.

Central India is witnessing an armed resistance, particularly in areas that are home to Adivasis, by Maoists who are challenging the forcible acquisition of their lands and natural resources and minerals and causing dispossession and displacement. The union government has responded with a heavy paramilitary offensive

- 1 119 Militants active in Kashmir, lowest in 20 years, Indian Express,06/06/2011, available at <http://www.indianexpress.com/news/119-militants-active-in-kashmir-lowest-in-20-years/799806/>
- 2 Refer to Sec 4 of the Armed Forces Special Powers Act ,1958, available at http://mha.nic.in/pdfs/armed_forces_special_powers_act1958.pdf
- 3 Sec 6 of AFSPA:No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.
- 4 Refer to Sec 18 of the J & K Public Safety Act,1978, available at <http://www.unhcr.org/refworld/country,,,LEGISLATION,IND,,3ae6b52014,0.html>
- 5 See Amnesty International Report, A 'Lawless Law': Detentions under the J & K Public Safety Act, 2011, available at <http://www.amnesty.org/en/library/asset/ASA20/012/2011/en/b0cf8603-e47c-4070-82d3-713d8f873a42/asa200122011en.pdf>

named 'Operation Greenhunt' in coordination with state governments- Dantewada in Chattisgarh being its epicentre. The state armed Adivasis against to form a counter-insurgency army named 'Salwa Judum' which it uses against Maoists and for terrorizing non-cooperative Adivasi villages.⁶ Salwa Judum was recently declared as illegal by the Supreme Court, which also ordered it's disbanding.⁷ Scores of human rights defenders and activists have been prosecuted under laws like the Unlawful Activities Prevention Act, the Chattisgarh Special Public Security Act, and Indian Penal Code provisions of waging war against the state, sedition, all of which not only trump life and personal liberty guarantees but also render the right to freedom of expression meaningless.

The severe militarization of the North East and Kashmir reflects itself in the everyday life of people and the high rate of psychological disorders like Post Traumatic Stress Disorder (PTSD) is indicative of the severe toll that militarization is taking on the populace.

IMPUNITY

The security forces in these regions in conjunction with extraordinary "security" legislations - routinely carry out violations of human rights like custodial torture, enforced disappearance, extrajudicial killings and sexual violence against women in particular. Despite the national and international call for the repeal of impunity laws like the AFSPA, which facilitate the commission of these abuses, the Indian state continues to condone and allow flagrant violations of human rights encouraged by these laws.

RELEVANT UPR I RECOMMENDATIONS, 2008

- Recommendation n° 1: Expedite ratification of the Convention against Torture (United Kingdom, France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom).
- Recommendation n° 12: Ratify the Convention on Enforced Disappearances (Nigeria).
- Recommendation n° 14: Extend standing invitation to special procedures (Latvia, Switzerland).
- Recommendation n° 15: Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland).

6 People's Union for Civil Liberties fact finding reports: <http://www.pucl.org/Topics/Human-rights/2005/salwa-judum-report.htm>

7 Salwa Judum is illegal, says Supreme Court, available at: <http://www.thehindu.com/news/national/article2161246.ece>