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# The State Strikes Back: India and the Naga Insurgency

*Charles Chasie and Sanjoy Hazarika*



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# List of Acronyms

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<b>AFSPA</b>	Armed Forces Special Powers Act
<b>ARC</b>	Administrative Reforms Commission
<b>DMK</b>	Dravida Muthera Kazagham
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>NNC</b>	Naga National Council
<b>NPC</b>	Naga People's Convention
<b>ULP</b>	Unlawful Activities (Prevention) Act

# Executive Summary

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In the first decade after India declared independence in 1947, the Indian state faced numerous challenges to its very existence and legitimacy. These ranged from a war with Pakistan over the state of Jammu and Kashmir immediately after independence, an issue that continues to challenge policy makers in both countries, to the first armed uprising in the country in Telengana led by Communists in what is today the state of Andhra Pradesh.

Strident demands for separation from India rose in the 1960s in the South with the growing power of the Tamil nationalist Dravida Kazagham, later the Dravida Muthera Kazagham (DMK), which campaigned against the imposition of Hindi as a national language as one of its main planks. The DMK, led by a deeply committed leadership drawn from Tamil's underprivileged castes and classes was, however, as much a revolt against the privileged and upper castes, particularly the Brahmins, who had controlled the region historically.

The DMK was the first of a number of influential political movements that stressed and posited the importance of the "local" against the "national" and also advocated separation. Telengana was resolved, and so was the DMK problem, without the use of the armed forces. The central government felt that it had enough powers under existing laws to deal with these challenges and that the local police were capable of tackling such surges.

Yet when an armed revolt against the very idea of India erupted in the distant Naga Hills of Assam state in the 1950s, the Indian government was quick to act by using the full force of the army and, in some cases, the air force, as well as its paramilitary and local police. It enacted special parliamentary legislation such as the Armed Forces Special



Powers Act (AFSPA) to give security forces even more powers and to protect them from criminal prosecution for any “normal” violation of the law, since these were regarded as extraordinary conditions requiring extraordinary responses. AFSPA was later used in the states of Punjab and Jammu and Kashmir, with amendments for local conditions.

The scholar Udayon Misra says that the centralized power of the Indian state is repeatedly questioned in the Northeast of the country, where several ethnic groups live in eight states. Also questioned is its management of the problems of dissent and political identity and especially the question of “one nation,” with an emphasis on homogeneity. The first real armed challenge to the Indian state came from the Northeast, especially its hills. Historically, these areas had been kept at a distance from the “mainland” by the British, through special administrative arrangements with the hill tribes, and they were completely uninvolved in the welter of the independence movement led by Mahatma Gandhi. “During the post-Independence period, the rise of nationalistic aspirations among different communities has nowhere been as prominent as in undivided Assam.” (Misra 2000: 11).

Perceived internal threats, according to Margaret A. Blanchard (1996), often have created far greater repressive reactions than when the nation is at war. To a large extent, these internal and external threats are universal in nature. The fears that such threats engender appear similar across borders, as are the responses to them from around the globe. According to the human rights campaigner Babloo Loitongbam, common issues that arise during periods of great fear caused by national security apprehensions include:

- a lack of confidence in the good sense of the nation’s people (whether from the Northeast or other “troubled” regions);
- limited access to information due to excessive government secrecy;
- government control of ideas that people can receive;
- surveillance of dissidents;
- reliance on repressive legislation.

All five are major issues in the Northeast today, which has the “dubious distinction of being home to Asia’s longest running insurgency” (Loitongbam 2008).

This monograph addresses how the Indian government has tackled nationalist aspirations through the use of the Armed Forces Special Powers Act, with a focus on Nagaland, and analyzes the approach, its impact on Naga society, and the fallout for the Indian state.

The first section provides background on Nagaland and the imposition of the act, including a timeline; the second section “Precursor and Rationale” looks at the precursors to the act as well as the act itself, its rationale and scope; the next section considers some of the impacts; the fourth section, “The Reddy Committee’s Report,” focuses on the review of AFSPA by the Justice Reddy Committee; and the final section provides conclusions and makes recommendations.

The Naga story is proof of the failure of AFSPA and the greater effectiveness of civil power. The act has pushed people away from government and the practice of democracy, and has helped to sustain the insurgency by violating people’s human rights. Among the lessons that have emerged from the phases of the Naga conflict is a realization by the central government and the Naga groups that dialogue is more fruitful than force or violence. The system must now enact laws to control the situation peacefully and involve communities and civil society in increasing the democratic space.

Many armed groups in the region are also gross violators of human rights and humanitarian laws. As such they have become objects of both hate and fear. The state at least can be called to account; these shadowy groups cannot, and therefore a very strong mobilization of civil society is called for, across the spectrum of scholarship, media, and nongovernmental organizations to raise the people’s voices against predatory actions, by the state and by nonstate actors.

# The State Strikes Back: India and the Naga Insurgency

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Many of the ethnic groups in India's Northeast, which shares borders with four countries—China, Myanmar, Bangladesh, and Bhutan—are ethnically and historically different from the rest of India, although there are strong connections, established over centuries, between the state of Assam and the “mainland” as well as Tripura. The physical connection is slim, a narrow land corridor euphemistically called “the chicken-neck.” Barely 4 percent of the region is contiguous to the rest of India; 96 percent of the Northeast borders other countries.<sup>1</sup>

The Nagas are a group of heterogeneous tribes belonging to Mongoloid and Indo-Burman stock. Theirs is a fiercely independent history, with each village existing as an independent sovereign republic; virtually all sixteen major tribes in the current state of Nagaland practiced headhunting (the same is true of Naga tribes in other states of India and in neighboring Burma [Myanmar]) until it was banned by the British. The pronounced differences among the tribes and even villages under the ambit of one tribe were significant, although many of them also claimed common ancestry despite having different languages, as well as social and cultural practices.

But there was no truly common ground, despite a shared political heritage—there was neither a nation-state as defined by contemporary political understanding with accepted structures of common governance, army, foreign policy, and civil rule statutes that define

the role of the state and the citizen. The Nagas, nevertheless, continued to assert their commonality as a people against the Indian-ness that New Delhi was perceived to promote, and not a little aggressively.

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***The Nagas have  
lived in isolation  
for centuries***

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The Nagas have lived in isolation for centuries, and there are extensive descriptions in the Ahom Buranjis and chronicles of their frequent clashes with the Ahom rulers of medieval Assam, rulers who came from Burma's Shan region in the thirteenth century. For the most part, they lived in isolated, hilltop independent village states

that were often hostile to each other and were involved in frequent raids on each other's territories. (Indeed, some Nagas still speak of the "wars" with rival villages in the present context as if these were still continuing.)

In the nineteenth century, the British extended their administration in the province of Assam to a limited area in the Naga Hills, which was inhabited by a large and diverse group of Naga tribes. Following the Treaty of Yandabo (1826), through which Manipur, then a kingdom, and Assam, became part of British India, it became necessary to open a connecting land route between Assam and Manipur. This was attempted in 1832, from Imphal to Assam, under Captains Jenkins and Pemberton through the Naga Hills.

Britain's expansionism led to decades of Naga resistance to British efforts to establish authority in the Naga areas. The battles with imperial troops and expeditions ended in 1880 with the battle of Khonoma, in which the Nagas were besieged for about four months and starved out.

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***Britain's expansionism  
led to decades of  
Naga resistance***

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The British punitive expeditions were aimed at stopping Angami Naga depredations into the plains of Assam, and

although there was a military occupation, a loose political administration left most tribes alone. The most significant British intervention after the securing of the Naga Hills was the spread of education, which

was conducted almost exclusively by the American Baptists, who brought Christianity and a way of life that often disrupted the traditional village structures, eroded the power of the chiefs, and discouraged old customs and beliefs, including the great Feasts of Merit, as well as headhunting. This situation prevailed until 1935, when the Government of India Act was issued to bring some control there. Political power rested with the governor-general and was exercised by the provincial governor, as his representative. The British instituted the Excluded Areas Act and the Partially Excluded Act to prevent interaction between the plains and hills; these rules also blocked nationalist Indian campaigns, such as the independence struggle, from places like the Naga Hills.

With the spread of education, a Naga consciousness spanning tribe loyalties began to grow as education became available to all social groups. Internecine conflict among the tribes began to diminish.

The first political organization established by the Nagas in the area, the Naga Club, was formed in 1918. On January 10, 1929, it submitted a memorandum to the Simon Commission demanding that the Nagas be under the control of the British and be excluded from proposed changes to the Indian constitution.<sup>2</sup> Although, according to Misra, this was a request for a continuation of British rule rather than a demand for independence (since the memorandum bemoaned the lack of unity among the Nagas), many Nagas see it otherwise.<sup>3</sup> It is regarded by most Naga historians as the first Naga declaration of nationality and their first demand for independence.

The Nagas' desire to be located outside India and not within it appeared clear even at that nascent stage of nationalism. It was prompted also by a determination to protect what they perceived to be a traditional way of life based on customary laws that were not codified.

The next steps in Naga political organization were the formation of Lotha and Ao Councils and the emergence of the Naga Hills District

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*The first [Naga]  
political organization...  
was formed in 1918*

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Tribal Council, which gave way to the Naga National Council (NNC) in 1946. The birth of the NNC signaled the foundation of Naga consciousness; it reasserted the 1929 Memorandum to the Simon Commission, which spoke of the “Naga way of life” and “home rule” quite distinct from being a part of India, about which one leader said, “our country is connected...in many ways.” The secretary of the NNC also proclaimed that the organization’s goal was “the unification of all Naga tribes and their freedom.”

This was a significant step forward in political formation and articulation; Paul Brass describes the graduation of an ethnic community into a nation and speaks of “an ethnic community politicized with recognized group rights in the political system” (quoted in Misra 2000: 31).

Six major political steps followed, in quick succession: First, the Nagas signed an agreement in June 1947 with the governor of Assam, Sir Akbar Hydari, which gave them special privileges and rights. It is the ninth and last clause of this agreement that has caused much resentment, interpretation, and reinterpretation on both sides. That clause said: “The Governor of Assam, as representative of the Government of the Indian Union, shall have a special responsibility for a period of ten years to observe the due observance of the Agreement. At the end of the period, the Naga National Council shall be asked if they require the above Agreement to be extended for a further period or a new agreement regarding the future of the Naga people to be arrived at.” Sir Akbar died soon after this agreement, and it was repudiated by both the Assam state government and New Delhi.<sup>4</sup> This rejection led to the second step; second, the Naga National Council declared independence on August 14, 1947, one day before India; third, the charismatic Angami Zapu Phizo was picked as the head of the NNC in 1949 and then pushed forward with an aggressive campaign aimed at independence. He was to be the most significant voice in Naga politics until his death in 1990; fourth, the NNC organized a referendum on Naga independence in May 1951, which it claimed was supported by 99.9 percent of the population. What it neglected to say was that the “referendum” was conducted in only a few areas of the Naga Hills; fifth, the

NNC organized a successful boycott of India's first general elections, from the Naga side; and, six, the NNC organized the entire audience to walk out of a meeting addressed by Prime Minister Jawaharlal Nehru and Burma's U Nu in 1953, citing a slight by local officials who had refused to allow Naga elders to meet the prime minister. The Nagas left, slapping their bottoms, one of Nehru's most humiliating experiences. He never returned to Nagaland, even after it became a state in 1963.

However, the Government of India considered the Naga areas to be part of India by virtue of the fact that much of these were under the British colonial administration and regarded the Naga movement as an "insurgency" and "secessionist." The claim is based on the British Parliament's Indian Independence Act, especially the Extra Provincial Jurisdiction Act, "empowering the new Indian Government to continue its administration in the Naga Hills." Thus, on the basis of its right as "inheritor" of British colonial power, the Government of India refused to recognize the Naga case.

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*the Government of India  
refused to recognize the Naga  
case [for independence]*

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The government considered itself on stronger legal ground after it had made Nagaland a state in 1963, seeing this as an effective counter to the insurgent campaign for sovereignty. By establishing the state, it thought that it could wean away the public by offering political and financial power and a role in the Indian Union.

After the successful (though limited) referendum of 1951 and the election boycott of 1952, the Nagas found themselves dealing increasingly with an irredentist state government in Assam, which showed neither sensitivity to their concerns nor appreciation of their history. The state launched a crackdown on the NNC soon after the snub of Nehru, viewing the Naga issue as a law-and-order problem. It promulgated the Assam Maintenance of Public Order (Autonomous Districts) Act in 1953 for application in the Naga Hills District; all Naga tribal councils and courts were dismissed. It needs to be noted that until then the state police had led the campaign against the Nagas; the army was

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***the Assam Disturbed  
Areas Act...paved the way  
for the enactment of the  
Armed Forces Special  
Powers Act...in 1958***

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not involved. However, once the Assam Disturbed Areas Act was passed, it paved the way for the enactment of the Armed Forces Special Powers Act (AFSPA) for Assam in 1958 by Parliament.

AFSPA was the barest, the most controversial, and also the most powerful of legislation drawn up by lawmakers in Delhi to crush the first armed and political challenge to independent India's territorial and political integrity. It also authorized the first use of the army in

India against a major political uprising.

When introducing the Armed Forces Special Powers bill (1958) in the Lok Sabha, Home Minister Shri Govind Ballabh Pant declared that "certain misguided sections of the Nagas" were involved in "arson, murder, loot[ing], dacoity [robbery,] etc." He added, "So it has become necessary to adopt effective measures for the protection of the people in those areas. In order to enable the armed forces to handle the situation effectively whenever such problem arises hereafter, it has been considered necessary to introduce this bill." It should be emphasized here that the Indian home minister did not speak of the threat to "national security" or national integrity or sovereignty at the time; he spoke of the problem as a law-and-order issue that needed to be sorted out "for the protection of people in those areas." He did add the caveat that the law had been introduced to help the armed forces "handle the situation effectively whenever such problem arises hereafter," indicating that even in the 1950s New Delhi was concerned about a future increase in challenges like that posed by the Nagas. Some members of Parliament, from Manipur and elsewhere, opposed the act; one of them, L. Achaw Singh of Manipur, described the proposal as "unnecessary...an anti-democratic measure...a lawless law" (Government of India 2005).

The government intention, as publicly stated, was to use the powers granted by the act as a temporary measure; but fifty years after its promulgation, AFSPA continues in the Northeast and has been used in



Jammu and Kashmir and also in Punjab, where the state defends its use, citing the need to fight local struggles for self-determination and/or outright independence, which could harm “national integrity.”

As has been pointed out, the law is one of several in use in the region that empowers troops to intervene in times of civil disturbance if the local administration loses control of the situation. One of the most controversial clauses of the act is that which arms even junior members of the security forces with the power of death over life. Sanjib Baruah argues that AFSPA gives “authoritarian trappings” to India’s democratic institutions and that this and other laws have tried to provide “a permanent counter-insurgency capacity” since “insurgencies and counterinsurgencies have become part of the fabric of everyday life in Northeast India” (Baruah 2007b: 3).

Why was such sweeping legislation, invoking the army, used against the Nagas and restrained force relying on the police against the Communist and DK/DMK (Dravida Kazagham/Dravida Muthera Kazagham) challenges elsewhere in the country? The debates in Parliament show that the central government felt the need for an omnibus law. Misra (2000) has argued that this was as much an outcome of the failure of the nascent Indian state to understand the Nagas and what they wanted as it was the result of a lack of comprehension of a distant area with complex ethnic groups. This lack of understanding was clear in the Indian home minister’s statement to Parliament in which he compared the Naga armed groups to bandits and said that “certain misguided sections of the Nagas” were involved in “arson, murder, loot[ing]...” The justification appears weak, in our view, since criminal gangs in central India roamed the Chambal Valley for decades and were finally persuaded to lay down their arms largely through the persuasive skills of a follower of Mahatma Gandhi, Jayaprakash Narayan, although they also faced much pressure from state police operations.

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***[AFSPA]...empowers troops  
to intervene in times of  
civil disturbance***

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It also appears to us that the police proved inadequate in coping with the armed uprising because they were not used to dealing with violent movements. Since the 1930s, much of the opposition to British rule had been peaceful, although the violence inflicted on pro-independence demonstrators in Assam was vastly disproportionate to the scale of the challenge. The size of the police force was also inadequate, and there was just one senior official handling the law and order for a medium-sized state, an inspector general of police. Today, there are no fewer than three director-generals of police for Assam alone.

On the “Naga national question,” Misra has observed that the fundamental strength of the Naga movement was drawn from the support it got from the traditional Naga leadership at the village level, “the most basic foundation” of Naga nationhood. In order to reduce the Naga leaders’ authority and influence, the Government of India felt it was necessary to shake the very basis of Naga society—the village republics—and to “break up...the economic pattern...of the Naga people,” specifically of land relationships (Misra 2000: 44). Even a cursory study of the role of the Indian Army in Nagaland would reveal that, under cover of fighting the insurgents, there has been an attempt to disrupt the entire economic pattern of the Naga people.

### **Precursor and Rationale**

The promulgation of AFSPA, as well as predecessor legislation, is closely associated with an event in 1953 at Kohima involving what was perceived as a slight to Prime Minister Jawaharlal Nehru. The surge of violent activities against the Indian state, as the timeline in the previous section shows, started soon after, although for a number of reasons.

Nehru, along with his Burmese counterpart, Thakin Nu or U Nu, visited Kohima on March 30, 1953. It was to be a grand gesture on Nehru’s part to the leader of a neighboring nation, an ally of India’s policy of nonalignment. It was also an opportunity for the Nagas to bridge what they described as the “Indo-Naga” and “India-Burma” divides. Bureaucratic mishandling of the situation resulted in a missed opportunity.

Naga elders wanted an audience with Nehru to discuss a number of issues. Fearing an embarrassing situation, the deputy commissioner of the Naga Hills District informed the elders that there would be no audience. The public had been waiting for Nehru and U Nu to come to the meeting ground, but after learning there would not be an audience, turned their backs on the leaders. What Nehru saw, to his everlasting chagrin, was hundreds of Nagas whacking their backsides as they left. He vowed never to visit the Naga Hills again and never did.

Following that ill-fated visit in March, only two months later (on May 26) the Assam government promulgated the Assam Maintenance of Public Order (Autonomous Districts) Act, 1953 (Act XVI of 1953). This act received the Assam governor's approval and was published in the Assam *Gazette* on June 3, 1953. It was the first of a series of successive and increasingly draconian legislation that was to govern the Naga Hills and then other parts of the Northeast, as groups rose in revolt. Such laws were used in no fewer than five states, including Assam, by the 1990s.

Over the past several decades, the rise of ethnic tensions among various ethnic communities has escalated into gruesome conflicts, further complicating the security scenario. Indeed, the range of complications leads planners in New Delhi to view the region as a perpetual national security challenge.

The 1953 act specifically mentioned that it "shall apply to the Naga Hills District" and come into force "at once." The act was meant to be an amendment of the Assam Maintenance of Public Order Act of 1947. The provisions are sweeping in their scope: Individuals' movements, associations, and activities are regulated. An executing officer, not necessarily a magistrate, needs no proof except his own personal "opinion" to proceed against a suspect. According to another provision, even if a person's life and activities were "restricted," the authority needs only to inform the person of the order

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***An...officer...needs  
no proof...to proceed  
against a suspect***

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“without disclosing facts which the said authority considers it would be against the public interest to disclose.”

A third clause allows “the inhabitants of any area” to be “collectively” fined in any manner the “authority” thinks fit. A sub-inspector of police can arrest anyone on suspicion, without warrant. And the act makes no mention of requiring an arrested person to be produced in court, although the maximum penalty for not appearing is up to two years imprisonment or fine or both. To protect the police, no suit, prosecution, or other legal proceedings were allowed against any officer acting under the act.

The last clause is crucial because it was to form the core of AFSPA, which came five years later and provides omnibus protection to any soldier or officer who may have violated the rights of a citizen by forceful entry into a home, damage to property, detention without a warrant, or custodial deaths.

The Assam Maintenance of Public Order Act (1953) laid the “foundation” for other extraordinary legislation, which followed in quick succession. These laws have, according to human rights activists, successively denied basic rights to citizens and cloaked judicial proceedings. In recent years, with the growth of civil society movements, especially in the human rights sector, the media have begun to function as both investigators of abuse and disseminators of information about such violations.

The Assam Disturbed Areas Act (Act XIX of 1955) followed in December and became operational on January 1, 1956. The act itself was preceded by an ordinance of the same name (Ordinance V of 1955). This legislation and the Assam Maintenance of Public Order Act of 1953, were applicable to the Naga Hills District.

The Disturbed Areas Act went back to 1947 when the Government of India, facing communal violence at the time of Partition, enacted four ordinances to tackle the crisis: the Bengal Disturbed Areas Ordinance (Special Powers of Armed Forces); the Assam Disturbed Areas Ordinance (Special Powers of Armed Forces); the East Punjab and Delhi Disturbed Areas Ordinance (Special Powers of Armed Forces); and the United Provinces Disturbed Areas Ordinance (Special Powers of

Armed Forces). These were designed to confront the Hindu-Muslim riots of the time, when India and Pakistan were born in blood.

The Assam Disturbed Areas Act empowered authorities to:

- declare any area “disturbed”;
- empower any magistrate or police officer of sub-inspector rank or havaldar (equivalent to a sergeant) in the case of a police armed branch, including the Assam Rifles, to fire upon or use force to the extent of causing death, if he “thinks” such a step is necessary to maintain “public order”;
- block processions and legal proceedings against any person acting under this law except with the previous permission/sanction of the state government (executive) that first orders the action.

Less than two years later, the Armed Forces Special Powers Act of 1958 was enacted, embracing the second and third clauses in the Assam Disturbed Areas Act, which empowered soldiers to shoot to kill and then protected them against any prosecution, other than that by the central government. AFSPA specifically enabled the military to play a role in insurgencies (it was amended in 1972 to enlarge the scope of its operation). This was a turning point in policy formulation and field action for it represented the moment when civil power to deal with a political challenge was “transferred” to the army and paramilitary forces. A military response to a political problem became embedded in the system and in Delhi’s approach.

In 1961, the central government passed the Nagaland Security Regulation Act (Gazette of India Extraordinary Part II, Section I, April 11, 1962); this and the Disturbed Areas Act are still in place.

Over and above AFSPA, the Nagaland Security Regulations Act put more sweeping powers in the hands of police and civilian authorities. These included the rights to:

- use force to the causing of death if an officer suspects a person was likely to commit an act of “looting” in a riotous situation;

- control the production, sale, and purchase of any commodity—including transport, modification, repair, etc.;
- evict any person from his own property; such property can be confiscated/ requisitioned;<sup>5</sup>
- enable the governor to take a range of additional actions, which included the arbitrary relocation of villages.<sup>6</sup>

In addition, the judiciary could not interfere with the powers or processes pursued by government.

AFSPA transformed the government's approach to the problem, substituting central security forces for the police. This signified a new phase in the conflict—an acceptance that the challenge from the Nagas was far more serious than previously thought and that armed forces required “special powers” to deal with the situation. Local police and constabulary were thus viewed as not able to deal with the Nagas who, though not trained in insurgency, had a tradition of fighting against intruders, rival villages, and tribes in their forested hills.

At the time, the areas covered by the new law were the Naga Hills District in Assam and three subdivisions (Ukhrul, Tamenglong, and Mao) in what was then the Union Territory of Manipur.<sup>7</sup> What started as a temporary measure to deal with the Naga movement was invoked in the Lushai Hills District of Assam (currently the state of Mizoram) in the 1960s; in the 1980s, the law was extended to Tripura and the largest state of the region, Assam, following insurgencies there.

In addition, as originally enacted, the act conferred the authority to declare an area to be a “disturbed area” only on the state government. This is the enabling provision that legalizes the use of AFSPA; without it, the act cannot be used. In 1972, however, the same authority was given to the central government to enable its armed forces to exercise the special powers.

What are perceived widely as emergency and draconian powers are dressed up as normal procedure. Consequently, there have been instances in which the state governments of Tripura and Nagaland wanted to lift the “disturbed area” status and the central government wanted to re-impose it. All it requires is for the central government to

propose to Parliament an extension of the use of the act before it expires in the specific state—even if the concerned state has not asked for it. A great deal of ennui has set in: casualness on the part of the government, and helplessness on the part of the states and people's organizations.

As if this was not enough, a whole slew of all-India legislation was enacted between the 1960s and 2004. These laws were targeted at problems of internal security, which the police were viewed as incapable of handling because they constituted an armed insurrection against the whole state, not just a part of it, and hence justified the use of the army or paramilitary forces. The laws include the Maintenance of Internal Security Act and the Unlawful Activities (Prevention) Act (ULP) of 1967, which lapsed and was reintroduced in 2004 and then passed virtually unanimously by Parliament that year.

The ULP of 1967 was the first comprehensive legislation passed by New Delhi that dealt with the problems of secession. At the time, the Naga armed movement and the Mizo insurgency were viewed as major threats, and the new law strengthened AFSPA by defining unlawful organizations and facilitating bans on them. In addition, it empowered the central government to control the use of funds by such groups. In other words, the central government had created a legal framework to target the political associations and support systems that sustained the insurgencies. AFSPA was intended to be just a military tool, although it was used extensively against civilian populations. The ULP buttressed that power by hitting at the basic freedoms that were constitutionally guaranteed to all Indians but which it sought to deny to those living under the pall of AFSPA: the freedoms of expression and association as well as of movement.

In 2004, the ULP was repealed, following much criticism over its use and abuse in the nearly forty years of its existence. However, bowing to national security concerns in the wake of an attack on

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*emergency and draconian powers are dressed up as normal procedure*

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*the [ULP] introduced  
specific clauses to  
battle “terrorism”*

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Parliament and an India-Pakistan standoff that had lasted almost a year, a new law, the Unlawful Activities (Prevention) Act, introduced specific clauses to battle “terrorism.” In this new law, enacted post-9/11, lawmakers took pains to define terrorism in detail.

Yet despite all these laws and a large presence of the armed forces, about forty armed groups—some more active than others—continue to function in most states of the region, except Sikkim. Most of the influential and feared groups operate out of Assam, Manipur, and Nagaland, and Tripura also reports irregular activity by two groups.

### **AFSPA and Its Impact**

There are just six clauses in AFSPA. One of the crucial clauses states,

“Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.”

It also states that no criminal case can be brought against the soldier if he has taken action under the act that has resulted in loss of life or otherwise, except by the express sanction of the central government. Such sanction has not been given in a single case since the act was instituted in 1958.

Many citizens regard the AFSPA clauses as “lawless,” undemocratic, and unconstitutional laws that have further alienated communities and groups that did not anyway feel deeply attached to the idea of India. There is virtually no legal redress in these laws because:



- No courts of law have any right to take up any case, even against civilian personnel, unless express permission is granted by those authorized—in other words, usually by the persons who should be held accountable for the act/s of commission or omission. It must also be kept in mind that until 2006 there was no formal attempt to separate the executive and the judiciary in Nagaland, and the district administrations, by virtue of their executive posts, became magistrates.
- There is no equality before the law because the laws themselves were made to “legalize” inequality.
- In most laws, an individual is presumed innocent unless proved guilty. Under these laws, a person is guilty unless he can prove beyond doubt that there is no ground for authorities to “suspect” him.

Discussion often arises as to why normal powers under civilian control would not have sufficed to deal with the Naga situation in the 1950s and whether it was necessary to have brought in the armed forces, a situation that continues half a century later. Essentially, AFSPA asserted New Delhi’s reluctance to deal with armed rebels through a process of dialogue. Efforts to seek mediation and peace were significant but brief and were not sustained. Today, this reluctance has changed to an official recognition that only dialogue and political settlements, not military force, can sort issues out. Yet this has taken over forty years to be established, although there were two sporadic ceasefires in the 1960s and 1970s, the first in 1964 between the two sides and the second after the 1975 agreement between the government of India and representatives of the Naga underground.<sup>8</sup>

Although the first ceasefire was followed by several rounds of discussions between Prime Minister Indira Gandhi and leaders of the NNC (the political organization that set up the Federal Government of

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*AFSPA asserted New Delhi’s reluctance to deal with armed rebels through...dialogue*

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Nagaland), the talks fell apart, with the central government accusing the Nagas of continuing their connections to Pakistan and the People's Republic of China, where India alleged the Nagas were sending groups for training in arms and guerrilla tactics. Attacks on trains in Assam gave the government a reason to abrogate the ceasefire. Meanwhile the Indian government also was messily involved in dividing the Nagas along tribal lines in order to weaken the movement, a schism that continues to widen. What is significant is that all these events were taking place despite the decade-long use of AFSPA, indicating that it was not as effective as Delhi had expected it to be.

India also sought to lessen the damage and the threat through a political initiative aimed at reducing the influence of the "underground." This took the form of what is widely known in Nagaland as the 16-Point Agreement, in 1960, with the Naga People's Convention (NPC) (comprising those who were opposed to the armed movement and were part of the state, either local officials or politicians from the NPC, most of whom later crossed over to Nehru's Congress Party). The agreement ensured that Nagaland became a full state three years later, with special rights. One was that customary laws would be untouched even by Parliament and that laws passed by Parliament would not apply to the state unless ratified by the local legislature.

There were sixteen points of political discussion, but not all were agreed to. Those rejected included a demand for the integration of the contiguous Naga-inhabited areas, by including districts from neighboring states of Assam, what was then the North East Frontier Agency (now Arunachal Pradesh), and Manipur. This particular point was deferred for discussion at a later date at Nehru's insistence and continues to be a sensitive issue in all three states as well as in Nagaland.

No elections were possible in the Naga Hills until 1964, a year after the state of Nagaland was carved out of Assam, a move by Delhi to meet local aspirations. However, Naga scholars say this failed to assuage basic demands, although it did help build up a middle class, a government bureaucracy, and a political class with an interest in close financial and political connections to New Delhi.

But the reality was that the central government was unsure, in the first decades of Indian independence and despite the growth of the Naga elite, whether representative democracy would work in Nagaland. It knew that it could depend on the army, an all-India organization that served the state without asking too many questions. But it was not prepared to trust even its own administrative structures in the state, such as the police and civil administration, and viewed even political organizations with suspicion, concerned that these could again fan revolt. Such suspicions are visible in the central government's approach to pro-Naga nationalist groups, and reflect what Sanjib Baruah describes as a policy supporting army rule through the back door in the Northeast. "Generals as governors" is a much-quoted phrase of Baruah, who referred to the military mind-set of Delhi that continues to appoint either retired generals or former intelligence officials as governors to sensitive states like Nagaland, Assam, and Manipur, and most recently to Arunachal Pradesh.<sup>9</sup> Baruah sees this approach as reflective of Delhi's mistrust of the region and the need to have a strong representative to intervene on its behalf should a crisis arise. (Baruah 2007a: chap. 3)

In Nagaland, the first pro-NNC government took office in 1974, against the opposition of the Ministry of Home Affairs. The Vizol government lasted barely two years before it was dismissed by the central government. Over thirty years later, after Neiphiu Rio, a renegade congressman, had formed his own state-level party and led it to a decisive victory over the Congress Party, the central government did the same thing. Barely two months before Rio was to complete his term, it dismissed him, only to face embarrassment when he captured power again, partly on a sympathy vote.

Even in the Indian army, although there is resistance at high levels to repealing the act, there is an acknowledgement that things cannot remain as they are and that AFSPA needs change: the army wants the act to be made "more humane"

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*the army wants the act to  
be made "more humane"  
but not scrapped*

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but not scrapped, as civil society and as the Committee to Review the Armed Forces Special Powers Act had recommended.

Repealing AFSPA is part of a larger process of democratizing spaces and reducing the power of the military. Lieutenant-General J. M. (Johnny) Mukherjee, the former head of Eastern Command in Kolkata that supervises the army structure and operations throughout Eastern India (including the Northeast), as well as a former chief of army staff, General Shankar Roy-Chowdhury, have spoken publicly of the need for political solutions to issues like the Naga problem, saying that there cannot be a military resolution. Both men have extensive experience with the Northeast. What Mukherjee, Roy-Chowdhury, Major-General Dipankar Banerjee, and other military officials stress in association with Baruah, Misra, and other scholars is that challenges such as those posed by the Naga conflict need to be fought with ideas, not weapons. The power to influence political decisions and the ongoing political processes must be taken away from the army. One way of doing that is by repealing AFSPA.

A bid to do so through the Supreme Court failed in 1996 when the apex court overturned a challenge to the law's constitutional status by the Naga Peoples' Movement for Human Rights but issued a list of "Do's" and "Dont's" for the armed forces, as recommendations, not binding edicts. It was left to a committee set up by the government of India nearly a decade later to challenge the need for the act and propose sweeping changes.

### **The Reddy Committee's Report**

For years, Indian human rights groups and jurists as well as international organizations have sought judicial review of AFSPA and its annulment on the grounds that it was repugnant to the right to equality and the federal structure of the Constitution. In 1997, however, a five-member Constitutional Bench of the Supreme Court unanimously upheld AFSPA as constitutionally valid, much to the disappointment of many human rights activists.<sup>10</sup>

There have been strong objections by international organizations to AFSPA and its continued use by a nation that prides itself on democrat-

ic values. Thus the United Nations Human Rights Committee, which monitors the compliance of the state parties to the International Covenant on Civil and Political Rights (ICCPR), after discussing the Third Periodic Report of the Government of India, stated in its Concluding Observation:

Under Article 4, paragraph 3 of the ICCPR Government of India is under a legal obligation to inform the other State Parties to the Covenant, through the intermediary of the Secretary-General of the United Nations, if it wishes to derogate from the human rights obligations it has entered into by becoming a party to the Covenant. By conferring special powers to its armed forces having a serious bearing on the right to life, right against torture, right against arbitrary detention and right to fair trial, the Government of India is in fact derogating from its obligation under the Covenant without informing the other State Parties. (ICCPR 2007, para. 12)

The United Nations Committee on the Elimination of Racial Discrimination, after considering various reports of the Indian government under the International Covenant on Elimination of All Forms of Racial Discrimination in February 2007, urged the government to repeal the Armed Forces Special Powers Act. The committee asked India to inform it of its implementation of the above-stated recommendation within one year of the adoption of the conclusion. Nothing has happened; the law remains on the statute books, despite international condemnation.

On June 25, 2007, the Administrative Reforms Commission (ARC), a statutory body set up by the president of India, also called for repeal. Indeed, the ARC, headed by a prominent Congress Party leader from the southern state of Karnataka, M. Veerappa Moily, said in the 342-page report to Prime Minister Manmohan Singh: “Without amending the Constitution, we considered that a law should be enacted to empower Indian government to deploy its forces and even direct such forces in case of major public order problems which may lead to the breakdown of the constitutional machinery” (Administrative

Reforms Commission 2008: 143–79). He said that conditions to use the law should be strict, and that its enforcement should be temporary.

Although the ARC differed from the Reddy Committee, whose report and findings are discussed below, saying the new law should apply only to the Northeast and not all of India, it endorsed the Reddy Committee's view that armed forces should not be deployed except in short bursts, "because then the very purpose would be defeated."

The Moily report was preceded by another government committee that supported the call for repeal. Mohammad Hamid Ansari, currently the vice president of India, headed a committee appointed by the prime minister designated as the "Working Group on Confidence-Building Measures in Jammu and Kashmir." In the report (issued before he was elected vice president), Ansari's group, in April 2007, also called for the repeal of AFSPA.

In 2004, under pressure from agitation in Manipur state arising from the detention and death of a young woman in the custody of a unit of the Assam Rifles paramilitary, the Government of India appointed a committee headed by former Supreme Court Judge B. P. Jeevan Reddy to review AFSPA (hereafter, the Reddy Committee) and to decide whether it should remain, be replaced by a more humane law, or be repealed. The prime minister himself said that "more humane" legislation could replace the act.

After extensive public hearings in all the states of the region, except Sikkim, the Reddy Committee submitted its report in June 2005. Those who shared their views with the committee included civil rights activists, lawyers, families of victims, academics, political leaders, officials, and even the army. The army's view remained unambiguous throughout. It consistently opposed repeal, saying that it required "adequate authority" to conduct its operations. At one presentation, the army told the committee, "Such authority should cover actions involving entry and search without warrant, seizure of weapons and explosives, use of force including opening fire when needed, and destruction of armed camps and military stocks held by insurgent groups. The army also requires adequate safeguards against spurious and motivated accusations of excesses leveled and legal proceedings

commenced against its personnel. Such authority and legal safeguards are provided by AFSPA.”<sup>11</sup>

The approach of the committee, after some initial criticism from human rights groups, has received support from the United Nations Committee on ending Racial Discrimination, which called on the Indian government to publish the report and repeal the act. The Reddy Committee identified three priorities:

- the security of the nation, which is of paramount importance;
- the fundamental rights conferred upon the citizens of India and the deployment of armed forces or paramilitary forces of the Union to restore public order in any part of India, or to protect a State from internal disturbance is, and ought to be, an exception and not the rule;
- the need for a level legal playing field.

While protecting such forces against civil or criminal proceedings for acts and deeds carried out while performing the duties entrusted to them, the report said it was also equally necessary to ensure that “where they knowingly abuse or misuse their powers, they must be held accountable therefore and must be dealt with according to law applicable to them.”

The Reddy Committee’s report called for the repeal of the act, describing it as “too sketchy, too bald and quite inadequate.” It tried to develop a middle position. “The Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness. It is highly desirable and advisable to repeal this Act altogether, without, of course, losing sight of the overwhelming desire of an overwhelming majority of the region that the Army should remain (though the Act should go). For that purpose, an appropriate legal mechanism has to be devised.”<sup>12</sup>

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***The Reddy Committee’s report called for the repeal of the act***

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The chief minister and top elected official of Nagaland, Neiphiu Rio, says that there was a need to “appreciate the special circumstances of Nagaland as well as the security concerns of Government of India,” yet, “at the same time, we are against these (extraordinary) laws as today we are living in a civilized world. We cannot win over the people with such laws.” Rio, who assumed office in 2003 and runs a regional coalition called the Democratic Alliance of Nagaland, says that the state government had repeatedly declined to extend the Disturbed Areas Act, which empowers AFSPA and the use of the army. But each time, the central government would override the local government.<sup>13</sup>

The governor of Maharashtra, S. C. Jamir, a three-time chief minister of Nagaland, said, “These laws have blatantly denied all fundamental rights to the Nagas and treated them worse than animals, many innocent people were killed and/or herded to jails, traditional villages were uprooted and grouped into well stockaded ‘concentration camps’ under the pretext of denying food to underground cadres etc.”<sup>14</sup>

The committee noted that while the Supreme Court had upheld AFSPA’s constitutional validity in a 1997 ruling that deeply disappointed human rights activists and organizations around the world, it pointed out that this ruling was not an endorsement of the law. In addition, the committee said that legislative shape should be given to many of these riders; its concern here was that security forces should not be allowed to hide behind the cloak of rules that did not empower them to conduct themselves as they wished and in violation of the basic tenets of justice and the rule of law.

The committee did not merely stop with recommending the removal of AFSPA. It formulated a structure that aimed at undoing the draconian aspects of the Prevention of Unlawful Activities Act of 2004 by proposing clauses that could curb the sweeping powers of the states and its functionaries. The proposals were aimed at what committee members described as bringing the armed forces under the law instead of allowing them to remain above it. This has been misunderstood by some legal pundits in Delhi, and even some human rights activists, as an effort to enforce AFSPA on a national scale. What they may have failed to understand is that the committee suggestion was aimed at



democratizing the ULP of 2004, for currently it has the same objectionable clauses and protections of AFSPA.

What the committee proposed appeared to be based on a realistic understanding of the political establishment in India and its concerns: that it would not be possible, given the conditions in Jammu and Kashmir and the Northeast, as well as the problems in neighboring Pakistan, Bangladesh, Sri Lanka, and Nepal, to do away with anti-terrorism laws. The AFSPA review committee took the view that “it would be more appropriate to recommend insertion of appropriate provisions in the Unlawful Activities (Prevention) Act, 1967 [as amended in the year 2004]...instead of suggesting a new piece of legislation” because it considered the ULP to be a law that was sufficiently broad yet comprehensive to curb terrorism.

The committee suggested a proposal that could meet many of the basic grievances laid at the door of the armed forces by proposing a chain of Grievance Cells that could be managed by army and police officers and civil administration. The goal was to deal effectively with the complaints of people who had been picked up and detained, and with the cases of those who had disappeared or ended up dead or badly injured. There is a need for a mechanism that is transparent and quick and that involves authorities from concerned agencies as well as civil society groups to provide information on the whereabouts of missing persons within twenty-four hours.

Although this may be regarded as a proactive approach to preventing the abuse of power by armed forces by insisting on transparency, accountability, and a rigorous time frame in which accountability has to be delivered, it drew criticism from Amnesty International, which reluctantly welcomed only one “aspect” of the report, referring to the committee’s call for AFSPA’s repeal. Amnesty opposed the committee’s suggestions to amend the ULP.

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***The committee [proposed]  
a chain of Grievance Cells  
that could be managed by  
army and police officers  
and civil administration***

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It is our view that Amnesty International failed to understand the committee's efforts to resist state power and to enforce greater accountability on the armed forces and the government. As part of this effort, it suggested that the current method of simply extending the Disturbed Areas Act every six months by a decision of the Ministry of Home Affairs be done away with. This power is now concurrent; thus the central government can override the state government, which may not want the act to be applied.

As noted earlier, AFSPA can become operational only after the promulgation of the Disturbed Areas Act: an area must be declared "disturbed" by either the state or central government and requiring the deployment of the army and other central security forces because local law enforcement authorities are regarded as inadequate to deal with security conditions. The committee wanted a control on both the time and the conditions of deployment so that it did not become a permanent feature of government and governance, because this, in effect, was what AFSPA had enabled the army and paramilitary forces to do.

The committee went so far as to propose its own draft legislation for a bill that Parliament could enact as Chapter VI A of the 1967 Unlawful Activities (Prevention) Act "to serve as a guide in drafting the legislation to be introduced in Parliament."

Surprisingly, apart from occasional statements and articles or uncoordinated meetings and conferences, there has been no debate worth the name over the committee's report (the civil society movement in Manipur began focusing on other issues after the report was submitted to the government), and the central government has deflected every effort to make it public. Although it has not been made public officially, the

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***there has been no debate  
worth the name over the  
committee's report***

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newspaper *The Hindu* posted the report on its website.

But the strong views of civil society toward the government's inaction on this matter remain unchanged: The *Sentinel* newspaper of

Guwahati remarked caustically on the first anniversary of the committee's report that the government "stubbornly refuses" to place the report in Parliament.<sup>15</sup>

The Reddy Committee report tried to break new ground and offer a way out of the conundrum in which Nagaland and other parts of the Northeast find themselves. The lack of official response highlights the lack of government interest in taking a broader perspective on issues and in continuing a business-as-usual approach.

The prime minister has called for amendments that could make the act more "humane," a view that has the approval of the Defense Ministry, the army leadership, and the Ministry of Home Affairs. This was echoed by Defense Minister A. K. Antony, who categorically stated that AFSPA would remain in force but could be amended to make it "more humane." Mr. Antony even went so far as to say that the army would accept such an amendment, raising serious questions about who calls the shots in the Indian defense establishment. His statements drew caustic comments from the public and the media that the country did not require the army to approve political decisions or to play a role in policy making.

The Review Committee's recommendations and report have been stalled by the inability of the United Progressive Alliance Government to get a consensus within the Cabinet on the issue, as well as by strong opposition from the army and the Ministry of Defense. The nonimplementation of the report indicates the power of the latter institutions to dictate government policy in the name of "national security."

### **Conclusion**

Agitations against AFSPA such as those in the neighboring state of Manipur in 2004 are the symptoms of a malaise that goes much deeper. The recurring unrest over various issues and the fact that public sentiment can be roused so easily and frequently to unleash confrontation and violence, also point to deep-rooted causes that are often not addressed.

India is a country no longer in the stage of nation building, as it was in the post-independence era after 1947 and into the 1970s, when

the Naga movement and others erupted. India has managed to contain such movements and has even battled them physically; dialogue has often reached a virtual stalemate. The leadership of these movements has also now understood the altered political and economic changes sweeping across India and the world.

But problems remain, including the refusal or reluctance of armed fighting groups in the region to recognize that their popular support has declined and their goals of independence are regarded as unrealistic, that in a changing environment in the neighborhood, with so much at risk economically, there is much more interest in moving ahead with connectivity and change, which can only grow out of peace and stability.

Indeed, even in the case of Nagaland it can be asserted that the bilateralism that defined relations between New Delhi and the Nagas, especially their political groups, is more or less gone. Even prominent Naga leaders are now saying that in this day and age no nation can be “truly” sovereign.

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*Naga leaders are now saying that in this day and age no nation can be “truly” sovereign*

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The internal conflicts fueled by old divisions and hates among factions and tribes have also caused deep distress at all levels of society, especially in Nagaland. This state lives in a strange situation: the armed groups are at peace with the Indian army and the

Indian government, but they are fighting each other bitterly in different parts of the state, each trying to undermine the other’s support base. In the process, the innocent continue to suffer, victims of both hatred and extortion.

India must take all available opportunities to find ways to end the confrontation and stalemates in Nagaland and elsewhere in the Northeast. As long as government and the state are seen to be unbending on issues as sensitive as AFSPA, despite promises by prime ministers and others, hopes will turn to despair, which will mobilize further public expressions of anger.

What has emerged from the phases of the Naga conflict is a realization that the use of force is fruitless in light of the acceptance by the central government and the Naga groups of the process of dialogue. The Naga story is proof of the failure of AFSPA and the greater effectiveness of civil power, which includes formal and informal dialogues as well as a growing role for nongovernmental civil society groups. The act has pushed people away from government and the practice of democracy, and instead of reducing insurgency has helped to sustain it by violating people's human rights. It remains an anachronism, for as the Reddy Committee's report has shown, there is enough space within the system to enact laws to control the situation without recourse to state violence and to involve communities and civil society in increasing the democratic space.

Many armed groups in the region are also gross violators of human rights and humanitarian laws, defying logic and public concerns, functioning in a predatory manner, and descending, despite high-sounding ideals and rhetoric, into a criminalized oligarchy. As such they have become objects of both hate and fear.

The state at least can be called to account; these shadowy groups cannot, and therefore a very strong mobilization of civil society is called for, across the spectrum of scholarship, media, and nongovernmental organizations to raise the people's voices against predatory actions, by the state and by nonstate actors. National security comes from ensuring human security.

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***The act has pushed people  
away from government and  
the practice of democracy***

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# Endnotes

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1. This monograph draws from a number of extensive interviews and discussions with the following people: Niketu Iralu, Shillong and Kohima, between 1990 and 1999; L. P. Singh, former governor of Assam and former Indian home secretary, 1993; Chaman Lal, former director-general, Nagaland Police, February 2001; N. Duolo, Kohima, January 2006; Mr. Koutso, Kohima, December 2006; senior officials of the Prime Minister's Office, Ministry of Home Affairs, November 2007, January, February, March, and May 2008; K. S. Dhillon, IPS (Retd.), New Delhi, October 2007; army officers in Assam, February 2008; senior army officers, New Delhi, March 2008; Babloo Loitongbam, Human Rights Alert, Manipur, New Delhi, April 5, 2008; and Dr. Udayon Misra, Dibrugarh, April 12, 2008.
2. This panel was formally known as the Indian Statutory Commission, a group of seven British Members of Parliament that had been dispatched to India in 1927 to study constitutional reform in the then colony. It was commonly referred to as the Simon Commission after its chairman, Sir John Simon. Ironically, one of its members was Clement Attlee, the British Prime Minister who would oversee the granting of independence to India and Pakistan in 1947.
3. Dr. Udayon Misra, interview with Sanjoy Hazarika, Dibrugarh, April 12, 2008. The Simon Commission (for its chairman, Sir John Simon) was formally known as the Indian Statutory Commission, a group of seven British Members of Parliament who had been dispatched to India in 1927 to study constitutional reform in the colony. Ironically, one of its members was Clement Attlee, the British prime minister who would oversee the granting of independence to India and Pakistan in 1947.
4. From the Naga perspective, the Nine-Point Agreement was a missed opportunity; it showed a willingness to be flexible and to experiment with co-existence with India, even with a status less than a state. But this was not appreciated and the agreement failed; yet today it reflects what the major Naga groups are seeking to negotiate with India.

5. The right to private property was thus neither absolute nor assured, with the state assuming powers to seize or possess at any time it wished.
6. Under the act, villages were relocated and grouped together (this was extensively carried out in the Mizo Hills in conditions of conflict a decade later), with rural populations located in specific, regulated camps; the original villages were burned.
7. Responding to demands from some Naga groups, a process of statehood had been put in motion. However, there was no “Nagaland” at that time; it came into being only on December 1, 1963.
8. In the 1960s, the Peace Mission comprising Chief Minister Bimala Prasad Chaliha of Assam, the Gandhian Jayaprakash Narayan, and Reverend Michael Scott formed one such effort.
9. The former chief of army staff, General J. J. Singh, was appointed governor of the Arunachal Pradesh in March 2008, soon after China renewed its position on the state’s status as “disputed territory,” leading to rebuttals by New Delhi; apparently the general’s appointment was to reinforce India’s stake in Arunachal Pradesh.
10. The Supreme Court of India had reacted in a separate case involving the disappearance of two Nagas of Manipur, Daniel and Paul, which came before it in 1984. The two men were taken away by army personnel on March 10, 1982. The Supreme Court ruled that the widows of the two men should receive compensation for their disappearance.
11. Because of the reluctance of government to make it public, especially the Ministries of Defense and Home Affairs and in particular the leadership of the armed forces, the Reddy Committee’s report has remained a “secret” document. It has neither been tabled in Parliament nor released for debate by the government of India, despite pressure from civil society groups and the opposition. A Hindu newspaper later procured a copy of the report and posted it on its website.
12. The Reddy Committee’s report stressed that “there are two enactments for fighting militants/insurgents/terrorist organizations, groups.... In the North-eastern states viz. the Armed Forces (Special Powers) Act whose application is limited to the North-eastern states alone and ULP Act which extended to the whole of India including the North-eastern States.”
13. Neiphui Rio, interview with Charles Chasie in Kohima, February 20, 2007.
14. S. C. Jamir, interview with Charles Chasie in Kohima and Goa (via e-mail), February 25, 2007.
15. The committee’s report includes a note by Hazarika, who says that the repeal of AFSPA could create political space for negotiations, dialogue, and peace in the Northeast.

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# Appendices

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## **I. Excerpts from the Armed Forces Special Powers Act of 1958**

Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area,

- (a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of firearms, ammunition or explosive substances;
- (b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as training camp for armed volunteers or utilised as a hideout by armed gangs or absconders wanted for any offence;
- (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;
- (d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.

- (e) Any person arrested and taken into custody under this Act shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.
- (f) No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government, against any persons in respect of anything done or purported to have been done in exercise of the powers conferred by this act.

## **II. Stories of Victims**

By Charles Chasie

- A Chakhesang tribe elder, in Phek district, said his village was burnt fourteen times by the Indian army. “Many children born during the second half of 1950s and early 1960s suffered from physical deformities of one kind or the other.” He suspected these were due to malnutrition, unavailability of salt, and eating uncooked food in the jungle for fear of making fire, which would attract the Indian army.
- The following incident occurred in 1974: A woman of about 70, from a village now in Dimapur District, had gone to visit a relative in a neighboring village. As she was passing through forest land, she came upon an Indian army patrol, which at the time maintained a post in the area. Eyewitnesses say they saw her body being brought into the post on horseback, “not properly covered.” The villagers said they had earlier heard the sound of a gunshot in the forest above the village, and the dying cry of a woman, and had stayed alert. When villagers demanded that the body of the woman to be handed over to them, the soldiers refused. When it became clear that the army personnel intended to take the body away by vehicle, the women of the village rushed the camp with sticks and stones. A scuffle followed and many women sustained injuries, including broken arms, from gun

butts. The soldiers also resorted to firing in the air. But the women of the village managed to wrest away the body of the woman. Soon the police from the nearest police station, three to four kilometers away, arrived on the scene, accompanied by a medical doctor. They had been informed of the trouble by village “runners,” who had dashed all the way to the police station after being instructed to call the police. The medical examination stated the woman was shot through the mouth at point-blank range. Semen was found over her lower abdomen and on her clothes. The doctor concluded that gang-rape had taken place.

- On December 27, 1994, there was a major firing incident in Mokokchung town, the headquarters of a district with the same name. It was reported that a paramilitary Assam Rifles patrol was first fired upon by “underground” elements. One soldier was killed. The army retaliated, killing two members of the underground. But in the ensuing battle, the commandant of the battalion, Lieutenant-Colonel K. B. Ponnacha, was also killed. Thereafter, it appeared the army went “berserk,” according to a commission of inquiry. Altogether twelve people died—two from the army, two militants, and eight civilians, including several non-Naga businessmen from the Indian “mainland.” There also were several alleged cases of arson and rape.
- The Mokokchung incident of December 27, 1994, along with two others, at Akuluto on January 23, 1995, and at Kohima on March 5, 1995, are the only cases for which a retired Justice of a High Court was appointed to inquire into human rights abuses in Nagaland. There was extraordinary official insensitivity to public concerns and basic rights. In the last event, seven persons were killed when a convoy of the paramilitary Rashtriya Rifles, mistaking a tire burst for a guerrilla ambush, opened indiscriminate fire and even shot off mortars into the heart of the state capital.

### **III. Impacts of Conflict**

What are the consequences of conflict on the civilian population, especially women and children?

A survey in 2002, “Children Affected by Armed Conflict in Nagaland,” found that 50 percent of those surveyed believed that psycho-social trauma is the biggest consequence of conflict/violence; 40 percent had witnessed the exchange of fire, and 43 percent had witnessed torture and physical assaults. Approximately 51 percent said they lived in fear and insecurity; 60 percent said that classes were not held regularly, and 71 percent could not concentrate on their studies because of the conflict. Nearly half of those surveyed said that their exams were often disrupted and two-thirds had no role model.

### **IV: Excerpts from Sanjoy Hazarika’s note in the Reddy Committee’s Report**

*At the end of a long night, there is a dawn...*

When introducing the Armed Forces Special Powers bill (1958) in the Lok Sabha, the then Home Minister Shri Govind Ballabh Pant declared that “certain misguided sections” of the Nagas were involved in “arson, murder, loot[ing], dacoity, etc.” He added, “So it has become necessary to adopt effective measures for the protection of the people in those areas. In order to enable the armed forces to handle the situation effectively whenever such problem arises hereafter, it has been considered necessary to introduce this bill.

Some members of Parliament, especially from Manipur, and elsewhere, opposed the Act; one of them, L. Achaw Singh of Manipur, described the proposal as “unnecessary...an anti-democratic measure...a lawless law.”

AFSPA in the North-East has continued for 47 years. The Committee’s essential recommendation, as laid out in both its conclusions and the proposed changes to the Unlawful Activities (Prevention) Act, 1967 (as amended in 2004), is that AFSPA must be repealed forthwith; the gains of the law are extremely moot, its negative impacts have been overwhelming.

Many of the security problems of the region can be tackled by local police and commando forces, with the assistance of the armed forces where essential. But the dependence of the states on the army must be reduced to the minimum and armed forces should be deployed only as a last resort.

Numerous representations from the public as well as from the army, paramilitary and police have informed the Committee that political problems must be addressed politically and not militarily.

This is a long and difficult task and the pressures are enormous. The Committee does not underestimate the scale of the challenges. But there is no option for the Indian State or the states of the Union. Faltering and even failing, at times, the states of the Union, and especially the North-east, must strengthen their own systems of governance, restoring the confidence of the people and providing the basics of governance.

It is my view that the army must be deployed in the rarest of rare cases—not as a knee-jerk reaction of governments at the Central and state levels. The army and security forces have, despite obvious shortcomings as are documented and well-known, tried to do their best and uphold their country's honour and integrity.

We have been encouraged by the openness with which people approached the committee and spoke their views without fear or favour, despite many pressures. We also are encouraged by the fact that many of the armed groups in the North-east are in the process of negotiation or seeking conversations which can bring armed confrontations to an end and restore dignity to civil society and the rule of justice and law.

We hope that the report of the Committee will help in the process of reconciliation and democratization in the North-east, create a space for dialogue and discussion, reducing conflicts and helping the region write a new chapter of peace, change and happiness in its troubled history...

At the end of every dark night, there is a dawn, however delayed. And for every day, there is a dawn, whether we see it or not.

Sanjoy Hazarika  
New Delhi  
May 30, 2005

# Internal Conflicts and State-Building Challenges in Asia

## Project Information



## Project Rationale, Purpose, and Outline

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### *Rationale*

*Internal Conflicts and State-Building Challenges in Asia* is part of a larger East-West Center project on state building and governance in Asia that investigates political legitimacy of governments, the relationship of the military to the state, the development of political and civil societies and their roles in democratic development, the role of military force in state formation, and the dynamics and management of internal conflicts arising from nation- and state-building processes. An earlier project investigating internal conflicts arising from nation- and state-building processes focused on conflicts arising from the political consciousness of minority communities in China (Tibet and Xinjiang), Indonesia (Aceh and Papua), and southern Philippines (the Moro Muslims). Funded by the Carnegie Corporation of New York, that highly successful project was completed in March 2005. The present project, which began in July 2005, investigates the causes and consequences of internal conflicts arising from state- and nation-building processes in Burma/Myanmar, southern Thailand, Nepal, northeast India, and Sri Lanka, and explores strategies and solutions for their peaceful management and eventual settlement.

Internal conflicts have been a prominent feature of the Asian political landscape since 1945. Asia has witnessed numerous civil wars, armed insurgencies, coups d'état, regional rebellions, and revolutions. Many have been protracted; several have far-reaching domestic and international consequences. The civil war in Pakistan led to the break up of that country in 1971; separatist struggles challenge the political and territorial integrity of China, India, Indonesia, Burma, the Philippines, Thailand, and Sri Lanka; political uprisings in Thailand (1973 and 1991), the Philippines (1986), South Korea (1986), Taiwan (1991) Bangladesh (1991), and Indonesia (1998) resulted in dramatic political change in those countries. Although the political uprisings in Burma (1988) and China (1989) were suppressed, the political systems

in those countries, as well as in Vietnam, continue to confront problems of legitimacy that could become acute; and radical Islam poses serious challenges to stability in Pakistan, Bangladesh, and Indonesia. The Thai military ousted the democratically-elected government of Thaksin Shinawatra in 2006. In all, millions of people have been killed in the internal conflicts, and tens of millions have been displaced. Moreover, the involvement of external powers in a competitive manner (especially during the Cold War) in several of these conflicts had negative consequences for domestic and regional security.

Internal conflicts in Asia can be traced to contestations over political legitimacy (the title to rule), national identity, state building, and distributive justice—that are often interconnected. With the bankruptcy of the socialist model and transitions to democracy in several countries, the number of internal conflicts over political legitimacy has declined in Asia. However, the legitimacy of certain governments continues to be contested from time to time, and the remaining communist and authoritarian systems are likely to confront challenges to their legitimacy in due course. Internal conflicts also arise from the process of constructing modern nation-states, and the unequal distribution of material and status benefits. Although many Asian states have made considerable progress in constructing national communities and viable states, several countries, including some major ones, still confront serious problems that have degenerated into violent conflict. By affecting the political and territorial integrity of the state as well as the physical, cultural, economic, and political security of individuals and groups, these conflicts have great potential to affect domestic and international stability.

### *Purpose*

*Internal Conflicts and State-Building Challenges in Asia* examines internal conflicts arising from the political consciousness of minority communities in Burma/Myanmar, southern Thailand, northeast India, Nepal, and Sri Lanka. Except for Nepal, these states are not in danger of collapse. However, they do face serious challenges at the regional and local levels which, if not addressed, can negatively affect the vitality of the national state in these countries. Specifically, the project has a three-fold purpose: (1) to develop an in-depth understanding of the domestic, transnational, and international dynamics of internal conflicts in these countries in the context of nation- and state-building strategies; (2) to examine how such conflicts have affected the vitality of the state;

and (3) to explore strategies and solutions for the peaceful management and eventual settlement of these conflicts.

### *Design*

A study group has been organized for each of the five conflicts investigated in the study. With a principal researcher for each, the study groups comprise practitioners and scholars from the respective Asian countries, including the region or province that is the focus of the conflict, as well as from Australia, Britain, Belgium, Sweden, and the United States. The participants list that follows shows the composition of the study groups.

All five study groups met jointly for the first time in Washington, D.C., on October 30–November 3, 2005. Over a period of five days, participants engaged in intensive discussion of a wide range of issues pertaining to the conflicts investigated in the project. In addition to identifying key issues for research and publication, the meeting facilitated the development of cross-country perspectives and interaction among scholars who had not previously worked together. Based on discussion at the meeting, twenty-five policy papers were commissioned.

The study groups met separately in the summer of 2006 for the second set of meetings, which were organized in collaboration with respected policy-oriented think tanks in each host country. The Burma and southern Thailand study group meetings were held in Bangkok, July 10–11 and July 12–13, respectively. These meetings were cosponsored by The Institute of Security and International Studies, Chulalongkorn University. The Nepal study group was held in Kathmandu, Nepal, July 17–19, and was cosponsored by the Social Science Baha. The northeast India study group met in New Delhi, India, August 9–10. This meeting was cosponsored by the Centre for Policy Research. The Sri Lanka meeting was held in Colombo, Sri Lanka, August 14–16, and was cosponsored by the Centre for Policy Alternatives. In each of these meetings, scholars, and practitioners reviewed and critiqued papers produced for the meetings and made suggestions for revision.

### *Publications*

This project will result in twenty to twenty-five policy papers providing a detailed examination of particular aspects of each conflict. Subject to satisfactory peer review, these 18,000- to 24,000-word essays will be published in the East-West Center Washington *Policy*

*Studies* series, and will be circulated widely to key personnel and institutions in the policy and intellectual communities and the media in the respective Asian countries, the United States, and other relevant countries. Some studies will be published in the East-West Center Washington *Working Papers* series.

#### *Public Forums*

To engage the informed public and to disseminate the findings of the project to a wide audience, public forums have been organized in conjunction with study group meetings.

Five public forums were organized in Washington, D.C., in conjunction with the first study group meeting. The first forum, cosponsored by The Johns Hopkins University's School of Advanced International Studies, discussed the conflict in southern Thailand. The second, cosponsored by The Sigur Center for Asian Studies of The George Washington University, discussed the conflict in Burma. The conflicts in Nepal were the focus of the third forum, which was cosponsored by the Asia Program at The Woodrow Wilson International Center for Scholars. The fourth public meeting, cosponsored by the Foreign Policy Studies program at The Brookings Institution, discussed the conflicts in northeast India. The fifth forum, cosponsored by the South Asia Program of the Center for Strategic and International Studies, focused on the conflict in Sri Lanka.

#### *Funding Support*

The Carnegie Corporation of New York is once again providing generous funding support for the project.

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## Background of the Conflicts in Northeast India

Northeast India owes its geographical distinctiveness in relation to the Indian “mainland” to the partition of the subcontinent in 1947. But as an official Indian category it dates from 1971 following a radical reorganization of internal boundaries and creation of new states. The region is connected with the rest of India through a narrow corridor, which is approximate thirty-three kilometers wide on the eastern side and twenty-one kilometers wide on the western side. This constitutes barely one percent of the boundaries of the region, while the remaining 99 percent of its boundaries are international—with China’s Tibet region to the north, Bangladesh to the southwest, Bhutan to the northwest, and Burma/Myanmar to the east.

The region comprises the seven Indian states of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura—also known as “Seven Sisters.” Since 2003, Sikkim has been included as the eighth member of the regional North Eastern Council. With the exception of Nagaland, which became a state in 1963, most of the states in the region were reorganized between 1971 and 1987. These cover a total area of over 254,645 square kilometers (about 8.7 percent of India’s territory) and, according to the 2001 Census of India, have a combined population of 38,495,089 people—roughly 3.73 percent of the country’s population. The region accounts for one of the largest concentrations of “tribal” people in the country—constituting about 30 percent of the total population—though with a skewed distribution of over 60 percent in Arunachal Pradesh, Manipur, Meghalaya, Mizoram, and Nagaland together. Three states—Nagaland, Mizoram, and Meghalaya—contain an overwhelming majority of Christians (90, 87, and 70 percent, respectively). The region is characterized by extraordinary ethnic, cultural, religious, and linguistic diversity, with more than 160 Scheduled Tribes and over 400 distinct tribal and subtribal groupings, and a large and diverse nontribal population concentrated mainly in Assam, Manipur, and Tripura. An estimated 220 languages belonging to the Indo-Aryan, Sino-Tibetan, and Austric language families are spoken in the region—the largest concentration of languages in the subcontinent.

Although the Ahoms were successful in gradually consolidating the greater part of the region under a single political unit in the course of

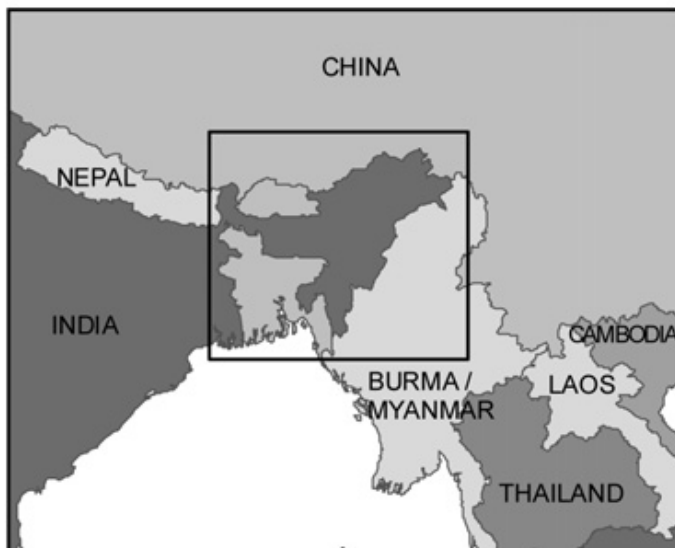
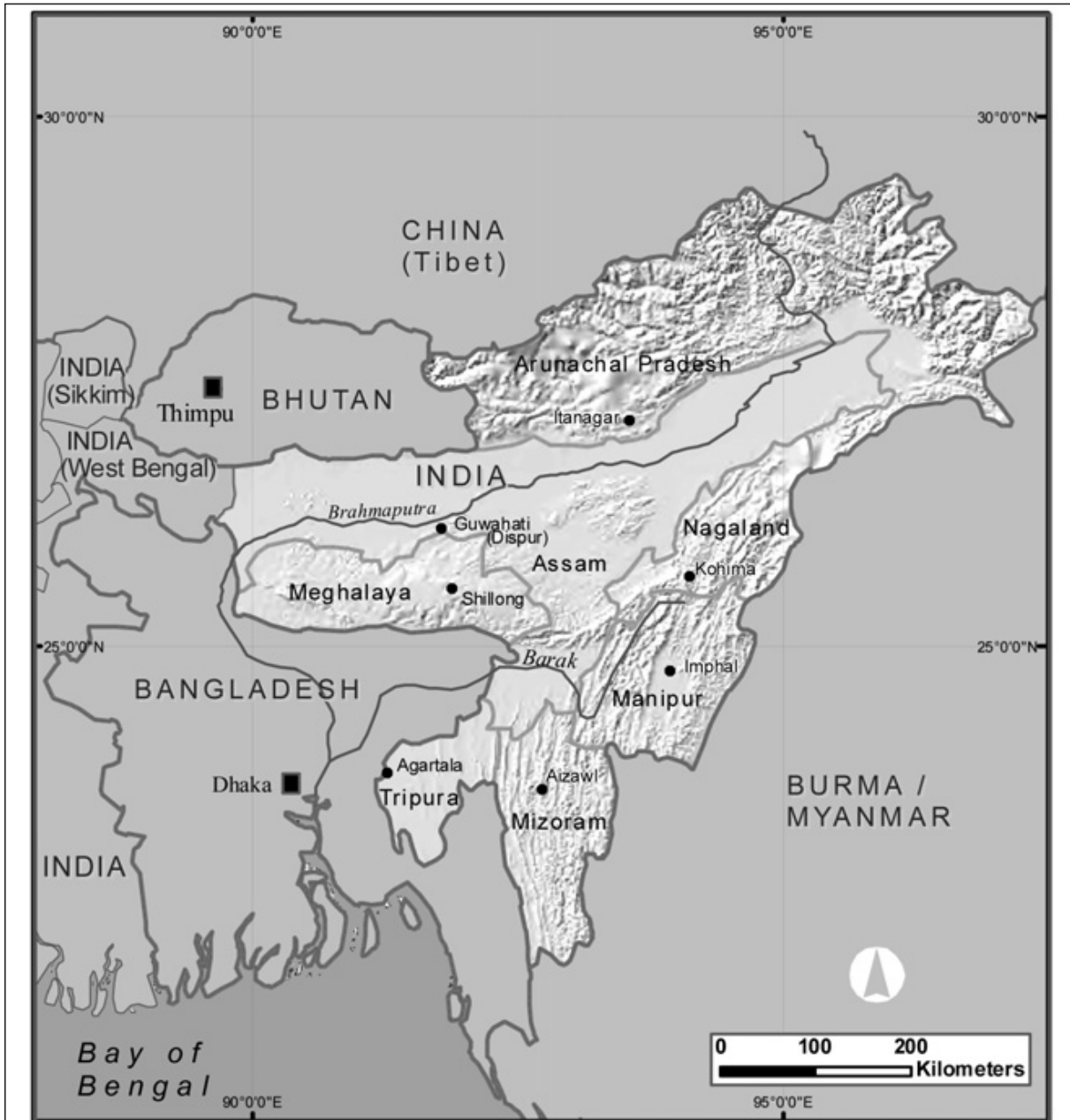
their rule (1228–1826), court chronicles of the Kacharis (1515–1818), the Jaintias (1500–1835), the Manipur Kings (1714–1949), and other local groups point out how they had historically retained varying degrees of independence into the nineteenth century, when the British took over the region. Colonial rulers took nearly a century to finally annex the entire region and exercised their control over the hills primarily as a loosely administered “frontier” area, thereby separating it from the “subjects” of the thickly populated plains.

Northeast India has been the theater of the earliest and longest-lasting insurgency in the country—in the Naga Hills—where violence centering on independentist demands commenced in 1952, followed by the Mizo rebellion in 1966 and a multiplicity of more recent conflicts that have proliferated especially since the late 1970s. Every state in the region excepting Sikkim is currently affected by some form of insurgent violence, and four of these (Assam, Manipur, Nagaland, and Tripura) have witnessed scales of conflict that could—at least between 1990 and 2000, be characterized as low intensity conflicts. The Government of India has entered into ceasefire agreements—renewed from time to time until today—with two of the leading factions of the National Socialist Council of Nagaland in 1997 and 2001. The Government of India and one of these factions, the National Socialist Council of Nagaland (Isak-Muivah), are now reportedly involved in discussing “substantive issues” while trying to reach a “permanent and honorable” solution to the long-standing problem. The Mizo National Front and the Government of India signed a Memorandum of Understanding in 1986 and their rebel leader, Laldenga, subsequently formed his own political party and became chief minister of Mizoram State. The United National Liberation Front (UNLF)—the armed opposition group active in the valley of Manipur, contests the “Merger Agreement” that the king of Manipur signed with the Government of India in 1949 on the grounds that the king signed it under duress. The United Liberation Front of Assam (ULFA) too questions Assam’s inclusion in the Indian Union. Attempts have been made to bring UNLF and ULFA to the negotiating table. The Government’s response to independentist demands so far has included enacting extraordinary legislation like the Armed Forces (Special Powers) Act of 1958, utilizing security forces to suppress rebellion, promoting economic development, and negotiating peace agreements with the insurgent organizations.

Although landlocked on all sides, migration, whether from across the international borders or from other parts of India, continues unabated. A significant part of the immigration into the region is thought to be cross-border and illegal—especially of foreigners from Bangladesh. The region has frequently been rocked by violent tremors of anti-immigrant sentiments. Although a major problem, the Government often finds it difficult to detect and disenfranchise—let alone deport the foreigners.

Conflicts in Northeast India have not only focused on the Indian state, but also manifest intergroup and intragroup dimensions. Intergroup conflicts based on mutually rivaling “homeland” demands (say, between the Bodos and the non-Bodos, the Karbis and the Dimasas in Assam, the Nagas and the Kukis/Paites in the hills of Manipur, the Mizos and the Brus/Reangs in Mizoram, etc.) and struggle for power among competing groups have sparked conflicts and internal displacements. The multiple forms of resistance in the exceptionally diverse ethnic landscape have produced politics and struggles with multiple competing agendas.

# Map of Northeast India



- Capital Cities
- State Capitals
- Provincial Boundaries
- Country Boundaries

*Note: Map boundaries and locations are approximate. Geographic features and their names do not imply official endorsement or recognition by the UN.*

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# *Policy Studies series*

A publication of the East-West Center

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## *Description*

*Policy Studies* presents policy relevant analysis of key Asia Pacific issues.

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## About this Issue

In the first decade after declaring independence in 1947, the Indian state faced numerous challenges to its very existence and legitimacy. These ranged from a war with Pakistan over the state of Jammu and Kashmir immediately after independence to the first armed uprising in the country in Telengana led by Communists in what is today the state of Andhra Pradesh.

When an armed revolt against the very idea of India erupted in the distant Naga Hills of Assam state in the 1950s, the Indian government was quick to act by using the full force of the army and, in some cases, the air force, as well as its paramilitary and local police. It enacted special parliamentary legislation such as the Armed Forces Special Powers Act (AFSPA) to give security forces even more powers and protect them from criminal prosecution for any “normal” violation of the law since these were regarded as extraordinary conditions requiring extraordinary responses.

This monograph addresses the tackling of nationalist aspirations through the use of the AFSPA, with a focus on Nagaland; it analyzes the approach and its impact on Naga society, as well as the fallout for the Indian state.

## About the Authors

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