

CHRI News, Summer 2004

The India-Naga Conflict: A Long-Standing War with Few Prospects of Imminent Solution

Katherine Phillips

Intern, Commonwealth Policy Studies Unit, London

The recent Gulf War notwithstanding, modern conflict occurs more frequently within countries than between them. The hills of the China-India-Myanmar border region have seen a fifty-six year conflict described - according to one's standpoint - as terrorism or a fight for independence. In this region the Government of India (GoI) is in conflict with the indigenous Naga Peoples who have inhabited the region for thousands of years. Estimates of the numbers killed in this civil war / struggle for independence vary - some claim it may be as high as 200,000. Precise figures are hard to calculate since the very conservative statistics on the South Asian Terrorism Portal's website only go back to 1990 and calculations are likely to vary greatly depending upon whether they include indirect deaths which commonly result from the social upheaval of modern warfare and associated problems of drugs and arms trafficking.

This combination of statistics - of duration and possible high numbers of fatalities - is unusual for a relatively unreported conflict. Most civil wars are bloody but rarely last for such prolonged periods of time; most indigenous peoples are in dispute - occasionally armed - with the governments under whose rule they find themselves in the post-colonial era, yet rarely with such effective long-term organisational capacity.

The Origins of the Conflict

The India-Naga conflict is considered by India to be an internal civil war and by the Nagas to be the self-defence of an independent people against an external aggressor. Historically the Nagas were head-hunters which may have contributed to their independence throughout the waves of colonialism.

The present conflict has its origins - as much as any historical event can be said to originate at one point or as a consequence of one specific event alone - in the post-colonial settlement between Britain and India. The Nagas were handed from one power (by whom they claimed never to have been fully conquered) to another, which until that point they had had limited contact. Understanding conflict is essential to any peace process. This conflict may be seen as a clash between nations where both sides see the claims of their opponents as a threat to their continued existence. The Nagas fear that acceptance of Indian sovereignty might lead to assimilation and the destruction of their identity - being swallowed up by their monolithic neighbour. The Nagas argue that they have a separate history and identity from the rest of India. Previously animist, most are now Christian and the region has been isolated historically and presently, not only by its geography, but also psychologically from the administration in New Delhi - overshadowed as it is by the India- Pakistan dispute. Two World Wars and participation with British and Japanese forces, both in Europe and Asia,

generated a political consciousness and identity which the Nagas have proved willing and capable of defending, by military as much as by conventional political means.

Past support of Naga militants by both China and Pakistan has given the conflict elements of proxy war between India and these neighbours. The equally longstanding dispute with Pakistan over the Kashmir region is the better known challenge to Indian sovereignty. Both China and Pakistan are countries with which India is either presently or has been in the past in direct conflict, which from India's perspective places the Naga conflict close to the heart of the most serious threat to its security. There are also many armed insurgent groups within India, some of which have secessionist ambitions, both in the Northeast and elsewhere in the country. The Naga conflict is therefore only one of the internal and external

Peace Process & Pacification

The pacification policies of the GoI in the Northeast have caused as many problems as they have solved and have further complicated possible peaceful resolution. The creation of Nagaland for example, in 1963, failed to meet Naga demands for self-determination not only because statehood is a far cry from autonomy but also because Nagas inhabit a much wider geographical area – including in Myanmar – than that encompassed by the boundaries of the state. It would not be too fanciful to describe this step as a further partition of the Nagas. The signing of the Shillong Accord in 1975 with individuals who were not only said to be unrepresentative of Naga interests but to have limited freedom of action - some were at the time in detention - was a cause of further conflict rather than a step forward in the peace process.

More recently a ceasefire and peace talks have got underway between the GoI and the National Socialist Council of Nagaland. As yet they have failed to produce concrete results. Parodied by one anonymous analyst as 'low intensity discussions,' their longevity matches that of the conflict. They have proved to be yet another area for conflict between the parties partly due to divisions among Naga leaders and accusations by both sides of contravening the ceasefire.

The peace talks have so far lacked outside mediation, which has been essential in other peace negotiations. This is an area where the Commonwealth can provide expertise. More external involvement will throw greater light on alleged human rights abuses such as those that took place during Operation Bluebird carried out in 1987 by the Indian army, and the impunity with which the Indian military operate in this troubled region, due to the Armed Forces (Special Powers) Act 1958 and other repressive government legislation.

Progress also requires Naga acceptance of the legitimacy of India's security concerns in an unstable region, and steps which meet the demands of nationhood for the Naga people will not bring peace unless they take account of the rights of other ethnic groups in the region.

Given the enduring nature of the conflict generated by the colonial experience it is impossible to use the term post-colonial without a tinge of irony. A legacy of conflict was generated by the colonial process, many states being left with divided communities. Governments also often seem unable to escape from a cycle of policies that divide communities in order to control them better.

Diversity has sadly often been perceived to threaten national security rather than enrich society.

Further information see:

http://www.cpsu.org.uk/downloads/Dr_R_Vas.pdf – paper on the Naga-India issue presented at a CPSU Indigenous Rights in the Commonwealth Project conference Delhi March 2002.

<http://www.nagaland.nic.in> – the Government of Nagaland official website

<http://www.nscnonline.org> – official website of the National Socialist Council of Nagaland

<http://www.unpo.org> – Unrepresented Nations and Peoples Organisation challenges to India's sovereignty and security – a complicating link between issues of foreign and domestic policy, which may partly explain the duration of the conflict.

CHRI News, Summer 2004

Needed: More Effective Human Rights Commissions in India

Mandeep Tiwana

Access to Justice Program, CHRI

The establishment of India's National Human Rights Commission in 1993 resulted from the culmination of a number of national and international factors. Internal conflicts in Punjab, Jammu & Kashmir and the North- Eastern states escalated in the 1980s and early 1990s and were dealt with by the government with a heavy hand. The media, civil society organisations and the general public increasingly expressed concern about police and security forces' actions in tackling insurgency and the culture of impunity within the government - basic human rights were being ignored in the name of national security. The international community also continued to remind the government to fulfil its international obligations to establish mechanisms for protecting human rights.

In this context, the Protection of Human Rights Act, 1993 was enacted, which enabled the establishment of the National Human Rights Commission in Delhi and 14 state human rights commissions around the country. The Act lays down a broad mandate for human rights commissions, which includes: inquiries into instances of human rights violations by public servants; research; supporting efforts to increase awareness about human rights; and inspecting police lock-ups, prisons and juvenile homes where people are interred. While human rights commissions have contributed greatly to human rights in India, it is debatable whether they can currently do more, considering the structural and practical limitations that are faced.

Structural limitations

The structural limitations largely relate to the Protection of Human Rights Act, 1993 and include: Recommendations only: Commissions make recommendations to government, which include: payment of compensation to the victim or to her/his family; disciplinary proceedings against delinquent officials; the registration of criminal cases against those responsible; instructions to take particular action to protect human rights and/or to refrain from actions that violate human rights.

However, they can only make recommendations, without the power to enforce decisions. This lack of authority to ensure compliance has unfortunate consequences:

Outright rejection of a recommendation:

Governments often ignore the recommendation completely or furnish a long bureaucratic discourse on how compliance with the recommendation is not in the public interest (read governmental interest).

Partial compliance:

An example of this is a failure to release the full amount of compensation. Another example is to take action on only one recommendation when there were actually dual recommendations, such as to pay compensation and take disciplinary action.

Delayed compliance:

While recommendations usually obligate governments to take action within 46 weeks, compliance is rare within the stipulated time and sometimes action is so delayed that it becomes meaningless.

Composition Criteria: The Act requires that three of the five members of a human rights commission must be former judges but does not specify whether these judges should have a proven record of human rights activism or expertise or qualifications in the area. Regarding the other two members, the Act is vague, saying simply: "persons having knowledge and experience of human rights." Commissions therefore sometimes become post-retirement destinations for judges, police officers and bureaucrats with political clout.

Time - bar: Under the Act, human rights commissions cannot investigate an event if the complaint was made more than one year after the incident. Therefore, a large number of genuine grievances go unaddressed.

Bar on violations by Armed Forces: State human rights commissions cannot call for information from the national government, which means that they are implicitly denied the power to investigate armed forces under national control. Even the powers of the National Human Rights Commission relating to violations of human rights by the armed forces have been restricted to simply seeking a report from the Government, (without being allowed to summons witnesses), and then issuing recommendations.

Practical limitations

Structural limitations apart, the work of human rights commission is also being hampered by cultures that exist within governmental spheres. Some of the practical difficulties faced by human rights commissions include:

Non-filling of vacancies: Most human rights commissions are functioning with less than the prescribed five Members. This limits the capacity of commissions to deal promptly with complaints, especially as all are facing successive increases in the number of complaints.

Non-availability of funds: Scarcity of resources - or rather, resources not being used for human rights related functions - is another big problem.

Large chunks of the budget of commissions go in office expenses and in maintaining their members¹, leaving disproportionately small amounts for other crucial areas such as research and rights awareness programmes.

1. Members of the National Human Rights Commission receive the same conditions as Supreme Court Judges. Conditions of state commission members are commensurate with that of High Court Judges.

2. This followed a report prepared by a high level Advisory Committee headed by a former Chief Justice of India regarding amendments to the Protection of Human Rights Act.

Too many complaints: A common problem faced by most human rights commissions is that they are deluged with complaints. In the year 2000-2001, the National Human Rights Commission received over 70,000 complaints. State human rights commissions too, are finding it difficult to address the increasing number of complaints.

Bureaucratic style of functioning: As human rights commissions primarily draw their staff from government departments - either on deputation or reemployment after retirement - the internal atmosphere is usually just like any other government office. Strict hierarchies are maintained, which often makes it difficult for complainants to obtain documents or information about the status of their case. The presence of security guards, armies of peons and office attendants creates barriers for ordinary people to personally meet officials in regard to their complaint.

Areas Requiring Intervention Advocacy

There is an urgent need for civil society and defenders of human rights to immediately advocate for changes in the structure and functioning of human rights commissions to improve their functional efficiency as protectors and promoters of human rights. The National Human Rights Commission in fact submitted to the national Government in March 2002 a set of proposed amendments and has reiterated these in successive annual reports. Sadly, as yet no action has been taken to bring about this reform.

Suggested proposals

If human rights commissions are to truly protect and promote human rights in India, changes must be made to enable them to become more effective institutions. Some suggested proposals are:

More teeth: The effectiveness of human rights commissions will be greatly enhanced if their decisions are immediately made enforceable by the government. This will save considerable time and energy as commissions will no longer need to either send reminders to government departments to implement the recommendations or alternatively to approach High Courts through a cumbersome judicial process to make the government take action.

Commissions must also have clear and well-defined powers to proceed against government departments furnishing false reports. This will assist in preventing the many instances where the departmental version of events is more often than not a white-wash, particularly in those cases where the police has been accused of violations.

Including armed forces in their ambit: A large number of human rights violations occur in areas where there is insurgency and internal conflict. Not allowing commissions to independently investigate complaints against the military and security forces only compounds the problems and furthers cultures of impunity. It is essential that commissions

are able to summons witnesses and documents, rather than the present situation where the National Commission is restricted to seeking reports from the national Government.

Commissions' membership: As non-judicial member positions are increasingly being filled by ex-bureaucrats, credence is given to the contention that commissions are more an extension of the government, rather than independent agencies exercising oversight. If commissions are to play a meaningful role in society, they must include civil society human rights activists as members. Many activists have the knowledge and on-the-ground experience of contemporary trends in the human rights movement to be an asset to the Commission.

Independent recruitment of staff: Human rights commissions need to develop an independent cadre of staff with appropriate experience. The present arrangement of having to rely on those on deputation from different government departments is not satisfactory as experience has shown that most have little knowledge and understanding of human rights issues. Employing specially recruited and qualified staff to help clear the heavy inflow of complaints can rectify this problem.

Separate agency to investigate police-related complaints: Complaints regarding police excesses and misbehaviour take up most of the time of human rights commissions. It is perhaps time to think about an alternative agency, dedicated solely to civilian oversight of the police. Here we can learn from international experience: the UK, for instance, has an Independent Police Complaints Commission; South Africa has an Independent Complaints Directorate; and Brazil has Police Ombudsmen offices in some provinces to deal exclusively with police complaints.

While it may be an accepted fact that these proposals would help bring about qualitative improvement, the challenge lies in moving the government to accept these and other progressive ideas. Governments across the world are only too keen on maintaining the status quo. Governments often put in place inadequate accountability mechanisms as their presence helps to silence public demands, without overly diluting government power.

Civil society groups therefore need to mobilize people across the nation through targeted advocacy strategies. Reform initiatives can only bear fruit when ordinary citizens take an active interest in good governance and human rights.