

Oting Massacre and the case for repeal of the APSEFA



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1. Cold blooded murder of civilians in Mon district

A total of 14 civilians and one Indian Army jawan were killed since the botched up ambush of the Indian Army’s 21st Para Special Forces on the alleged insurgents, who turned out to be innocent coal miners, on 4 December 2021 at Oting village in Mon district of Nagaland.

On 4 December 2021 at about 6.30 pm, Indian Army’s 21st Para Special Forces with its headquarters based at Jorhat, Assam ambushed a ferry van carrying eight coal miners at Oting village in Mon district of Nagaland, killing six miners on the spot while two survived. The security forces had claimed that they had specific inputs on the movement of the insurgents whom they had ambushed.¹ About 30 soldiers and officers of the 21st Para Special Forces were part of the operation.²

At about 7.30 pm, several villagers, carrying machetes, arrived at the spot hearing the gunshots, punctured the vehicles of the soldiers and further clashes took place between the civilians and the Indian Army. Seven more civilians and a soldier died. Several civilians and soldiers were also injured in the clashes.³ At about 10:00 pm on 4 December, the Army personnel involved in the ambush were reportedly taken to Mon town.⁴

On 5 December, one more civilian was killed in firing by the Assam Rifles when a large crowd of angry villagers gathered in Mon town and marched to the Assam Rifles camp, engaging in vandalism.⁵

There were only two survivors of the ambush i.e. 23-year-old Sheiwang and 30-year-old Yeihwang. They were admitted at the Assam Medical College Hospital (AMCH) in Assam’s Dibrugarh district.

A doctor at AMCH, who did not want to be named, told Indian Express that the two were “left” at hospital early 5th December morning. “No one knew who they were, where they came from”. Another doctor told The Indian Express that there was a rumour/ suspicion that they could be “insurgents”. However, as news emerged about the killings, the hospital staff decided to upload their pictures on social media. “That is how they established touch with the village. Otherwise, no one would have known who they were”.⁶

AMCH Superintendent Prasanta Dihingia said the victims were dropped to the AMCH after midnight on Sunday (December 5). “ *They were first admitted in Sonari Civil Hospital and later referred here. When they came, we did not know how they got hurt or who they were, but for us they were injured, so we started treatment immediately,*” he said.⁷

Sheiwang (23 years), who sustained bullet injuries on his elbow and chest, said that the security forces did not signalled their vehicle to stop, they shot right at them. “ *We were not signalled to stop. Direct marise... they shot right at us. We were not trying to flee... we were just in the vehicle,*” reported the Indian Express quoting him. “ *Suddenly, on the way, we were fired upon. I do not remember how long it lasted, but it was for a while. It sounded like bombs were exploding. It was not even dark, they still shot us.*” - he further stated.⁸



Yeihwang at the Assam Medical College and Hospital in Dibrugarh (Courtesy Indian Express)



Nyemkhah, a relative of Sheiwang, who is his attendant in the hospital, said Sheiwang and Yeihwang recounted the incident to him in greater detail. Speaking to the Indian Express he said, “ *On their way back, they had crossed the Tiru bridge, after which the vehicle descended towards a drain (a large depression in the road). It is here that the vehicle, while moving, was suddenly fired upon. The bullets came from the front as well from the back and continued for about 2-3 minutes*”⁹

When asked by Indian Express if they were carrying anything, he said they had “ *nothing in their hands. I worked in the mine for one week... we left on Saturday around 3 pm*”. The mine is in Tiru valley, about 6 km from the Oting village.¹⁰

Within a few hours of the only interview of Sheiwang and Yeishang being published in Indian Express, all media conversations with the two survivors and their family members present at the hospital were barred. No journalist is being allowed to speak to them and no one is allowed to meet the injured men, apart from the medical staff.¹¹

2. The response of the Government

2.1. The response of the Government of India

Union Home Minister Amit Shah addressed the Lok Sabha on 6 December over the killing of civilians by the 21st para-commandoes of the Indian Army in ambush on Tiru-Oting road in Mon district of Nagaland incident and the ensuing violence, which left 14 civilians and a soldier dead. In a statement, he pointed out that the vehicle, carrying the six civilians who were gunned down in an area between Tiru and Oting village in Nagaland’s Mon district on the evening of 4 December, was signalled to stop but it tried to flee. Following this, it was fired upon by the security forces, who had mistaken the civilians as extremists. Subsequently the killings of the coal mine workers triggered violence in the area in which eight more civilians were killed after security forces allegedly opened fire.¹²

Part of the statement that Amit Shah made in Parliament on 6 December is verbatim reproduced as under:

“ 1. Based on inputs received by the Indian Army about movement of the insurgents near Tiru village in Tizit area of Mon district, a team of 21 para-commandos of Indian Army laid an ambush in the evening of 04.12.2021. During the ambush, a vehicle approached the location and it was signalled to stop. However, the vehicle tried to flee, following which the vehicle, suspected of carrying insurgents, was fired upon resulting in killing of 6 out of 8 persons travelling in the vehicle. However, it turned out to be a case of mistaken identity. The two persons who sustained injuries were evacuated to the medical facilities by the Army personnel.

2. Upon receiving the news, local villagers surrounded the Army team, burnt two vehicles and assaulted them resulting in death of one Security Force (SF) personnel and injuries to several others. To disperse the crowd, SFs opened fire which resulted in killing of 7 more civilians and injuring some others. The local administration and Police have tried to diffuse the situation, which remains tense but under control.”

A. Court of Inquiry by the Indian Army

On 5 December, the Indian Army expressed deep regret and ordered a Court of Inquiry. The HQ 3 Corps, Army in a press statement issued said, “ *The incident and its aftermath are deeply regretted. The cause of the unfortunate loss of lives is being investigated by a Court of Inquiry at the highest level and appropriate action will be taken as per the course of law* ”¹³

The Army inquiry is headed by a Major General.¹⁴ Amid growing demands for repealing the AFSPA in Nagaland and Central government’s decision to institute a committee to look into its demand of repealing AFSPA, the Army in a statement on 26 December said, “ *The inquiry ordered by Army is progressing expeditiously and all efforts are being made to conclude it at the earliest.*” The statement mentioned that it has taken out notices “ *for people to come forward & assist us in the inquiry by providing any information including videos, photos or any other material from original sources and will be grateful for the same.*”¹⁵

The statement of 26 December further added, “ *The Indian Army is also fully cooperating with the Special Investigation Team (SIT) inquiry ordered by State Govt & required details are being shared in timely manner.*”¹⁶

On 29 December, an Army team headed by an officer of the Major-General rank visited the site of the botched encounter at Mon district of Nagaland as part of the Commission of Inquiry. In a statement, the Army said its team inspected the site at Oting village to understand the circumstances under which the incident could have happened. It said, “ *The team took along the witnesses for better understanding of the situation and how events would have unfolded. Subsequently, the team was also present at Tizit Police Station, Mon district, between 1330 to 1500 hours on Wednesday to meet a cross-section of society to obtain valuable information pertaining to the incident.*”¹⁷

B. Constitution of the Committee to Review the AFSPA in Nagaland and extension of the AFSPA in Nagaland on 30 December

On 26 December, the Ministry of Home Affairs (MHA) formed a seven-member committee to review the AFSPA in Nagaland and submit its report within three months. The Northeast India Division in the MHA, in an office order on 26 December, stated that “ *In order to review AFSPA in Nagaland a committee is constituted.*” The panel is headed by Registrar General and Census



Commissioner of India Dr Vivek Joshi as chairman while other members include Nagaland Chief Secretary J. Alam, Director-General of Assam Rifles Lt Gen PC Nair, Director General of Police Nagaland T John Longkumer, Joint Director of Intelligence Bureau Dr MS Tuli. Additional Secretary in the MHA Piyush Goyal is member secretary while Director General of Military Operations (DGMO) Lt Gen BS Raju is a special invitee to the committee. As per the MHA order, the “terms of the reference of the committee shall be to review the application of AFSPA in Nagaland and make suitable recommendations within a period of three months.”¹⁸

The decision to constitute the Committee was taken after Union Home Minister Amit Shah chaired a meeting at his residence on 23 December to discuss the scenario in Nagaland in the aftermath of the civilian killings at Oting in Mon district on 4 and 5 December. The meeting was attended by the Chief Minister of Nagaland Neiphiu Rio and his Assam counterpart Himanta Biswa Sarma.¹⁹

On 30 December, the Government of India extended the AFSPA in Nagaland for a period of six months. A gazette notification issued by the Union Ministry of Home Affairs read, “ *Whereas the Central Government is of the opinion that the area comprising the whole of the State of Nagaland is in such a disturbed and dangerous condition that the use of armed forces in aid of the civil power is necessary. Now, therefore, in exercise of the powers conferred by Section 3 of the Armed Forces (Special Powers) Act, 1958 (No.28 of 1958) the Central Government hereby declares that whole of the State of Nagaland to be ‘disturbed area’ for a period of six months with effect from 30th December, 2021 for the purpose of the said Act.*”²⁰

2.2 Response of the State government of Nagaland

Nagaland Chief Minister Neiphiu Rio described the incident as “highly condemnable.” In a tweet on 5 December, he said, “ *The unfortunate incident leading to killing of civilians at Oting, Mon is highly condemnable. Condolences to*



the bereaved families & speedy recovery of those injured. High level SIT will investigate & justice delivered as per the law of the land.”²¹

A. Demand for repeal of the AFSPA

On 6 December, Chief Minister Neiphiu Rio called the Armed Forces Special Powers Act draconian. Speaking at the funeral service of the civilians killed in the ambush by the 21st Para Special Force of the Army in Mon district, Rio

said the law should be repealed.²² He said that the excesses committed by security forces do not go down well with the people and the Act should be repealed from the entire northeast.²³

On 20 December, the Nagaland Legislative Assembly unanimously passed a resolution demanding the central government to repeal the AFSPA from the North East specifically from Nagaland. One day special session of the Nagaland Assembly was called following widespread protests and demands by various organisations, tribal groups, students’ bodies to repeal the AFSPA in the wake of the killing of 14 civilians on 4 December in indiscriminate firing by the 21st Para Special Forces of the Indian Army. The house also called for an apology from the appropriate authority, along with an assurance that justice will be delivered under the laws of the land.²⁴

B. FIR filed and SIT constituted to conduct the inquiry

Nagaland police registered a *suo motu* First Information Report (FIR) against the 21st Para Special Forces for killing of the civilians. As per the first information report registered at Tizit police station, “ *on reaching at Langkhao between Upper Tiru and Oting village, security forces fired at the vehicle without any provocation, resulting to the killing of many Oting villagers and seriously injured many others.*” It mentioned that at the time of the incident, there was no police guide for the security forces, nor did they make any requisition to the police station to provide a guide for their operation. In the FIR it was stated that “ *... it is obvious that the intention of the security forces is to murder and injure civilians.*”²⁵



Chenwang Konyak, the father of Shomwang Konyak, holds up a picture of his son (Courtesy, Scroll.in)



On 6 December, Nagaland DGP T. John Longkumer and Commissioner Rovilatuo Mor visited the site of ambush and submitted a spot report on the sequence of events to the state government. The report said that on 4 December evening, eight villagers were returning home from coal mining work at Tiru in an open pickup truck, when they were killed by security forces (21st Para Special Force based in Jorhat, Assam), without any attempt at identification. Six of them were killed on the spot, leaving two critically injured. Quoting the report, The Hindustan Times stated that “ *On hearing the gunshots, the villagers went to the spot being apprehensive that the individuals did not return home from work. On reaching the spot, they found the pickup truck and the Special Forces Personnel trying to hide the dead bodies of the six villagers by wrapping and loading them in another pickup truck (Tata Mobile) apparently with the intention of taking the dead bodies to their base camp*” .²⁶

The ground report further added that the Special Forces “ *fired on the coal miners at random, apparently without any attempt for identification*” .²⁷

On 5 December, Nagaland government constituted a special investigation team (SIT) comprising Limasunup Jamir, IPG(R), CIO; Roopa M, DIG (CID), Monoj Kumar, SP (Crime); Kilang Walling, SP and Relo Aye, Deputy Commandent, 15 NAP IR to investigate cold blooded massacre and the responsibility of supervision of the investigation was given to Sandep M Tamgadge, ADGP, Law and Order. The FIR registered at Tizit police station under Sections 302, 307 and 34 IPC was transferred to the SIT.²⁸

On 30th December, the Army authorities stated that Special Investigations Team set up by the Nagaland government to probe the Army operation at Oting village in Mon on 4th December would have access to the 21st Special forces starting from 4 January 2022 to “whosoever they want”. It is not clear how many or who all be called for questioning. The soldiers involved will be called to depose at the Rainforest Research Institute in Jorhat, Assam. About 30 soldiers and officers of the 21 Para Special Forces were part of the operation, of which around a dozen were injured and one was killed as an angry mob attacked them.²⁹

2.3 Response of the National Human Rights Commission

On 7 December, the National Human Rights Commission issued notice to the Defence Secretary and Union Home Secretary, Union of India and the Chief Secretary and Director General of Police of Nagaland, seeking a detailed report in the killings of civilians in an army operation, within six weeks. Issuing the notice, the NHRC has observed that it is incumbent upon the security forces ensuring proper precaution with a humane approach even if it involved the militants.³⁰

2.4. Response of the Civil Society Organisations in the region

On 7 December, Konyak Union (KU), the apex body of the Konyak civil societies in Mon district, imposed a day-long bandh in the district to protest the killing of 14 civilians by security forces, and announced seven-day mourning from the next day.³¹ In a letter addressed to President Ram Nath Kovind the KU demanded to immediately repeal AFSPA from the entire North Eastern region. The other demands included an independent inquiry into the civilian massacre under a competent investigating agency, the Assam Rifles to vacate Mon district and identification of all military forces or army personnel involved in the civilian killings and their trial before the civilian court.³²

26th December, 2021


PRESS RELEASE


The Honourable Union Home Minister Shri Amit Shah chaired a meeting to discuss the present scenario in Nagaland on 23rd December, 2021 in New Delhi. The meeting was attended by the following -


- i. Shri Neiphu Rio, Hon'ble Chief Minister Nagaland
- ii. Shri Himanta Biswa Sarma, Hon'ble Chief Minister Assam
- iii. Shri Y. Patton, Hon'ble Deputy Chief Minister, Nagaland
- iv. Shri. T.R. Zeliang, Leader of NPFLP

The following matters were deliberated and decided during the meeting: -

1. A committee to look into the withdrawal of the Armed Forces Special Powers Act (AFSPA) in Nagaland will be instituted. It will be Chaired by the Additional Secretary-NE, MHA, and will include the Chief Secretary and Director General of Police of Nagaland. Other Members that will be included in the committee are IGAR (N) and representative of the CRPF. The Committee will submit its report within 45 days and withdrawal of Disturbed Area and AFSPA from Nagaland will be based on the recommendations of the committee.
2. A Court of Enquiry will initiate disciplinary proceedings against the army unit and army personnel, who are directly involved in the Oting incident and action will be taken immediately on the basis of fair enquiry. The identified persons who will face the enquiry will be placed under suspension with immediate effect.
3. The State Government will provide government jobs to the next of kin of the deceased. To initiate this process, the Deputy Commissioner and the Superintendent of Police of Mon district, will carry out necessary procedures in consultation with the concerned village councils and government jobs will be given on compassionate grounds on the basis of eligibility. The Nagaland delegation impressed upon the UHM to replace the Assam Rifles unit in Mon with immediate effect.
4. The undersigned is grateful to the UHM Shri. Amit Shah for taking the matter with utmost seriousness and appreciates the Government of India for taking the required steps to ensure justice and also for positively responding to the voice of the people.
5. The State Government appeals to all sections to remain calm and to continue to maintain a peaceful atmosphere. The democratic and peaceful nature of the civil society groups, tribal hohos and mass based organisations in our collective quest for justice and truth has been well received and has created a positive image of the Naga people to the rest of the global community.


 (T.R. Zeliang)
 Leader, NPFLP


 (Y. Patton)
 Deputy Chief Minister


 (Neiphu Rio)
 Chief Minister

On 13 December, the Konyak Civil Societies declared their 'non-cooperation' with the Indian security forces. The KU, in a statement, announced "*total restriction of Indian military force convoy and patrolling*" within Konyak soil until justice is delivered to the 14 innocent civilians, who were killed by 21st Para Special Commando in Oting village of Mon district. The statement declared "*No Military Recruitment rally within Mon District and no Konyak youth should participate in any recruitment rally.*" The KU directed "*all customary land owners to immediately denounce the past land agreement allotted for setting up Military Base camps (operating points)*" within its respective jurisdiction of Naginimora, Tizit, Lampong Sheanghah, Wakching Town, Mon Town, Longshen Town, Sheanghah Wamsa, Longwa, Chenmoho, Chenloishu, Wangti, Aboi, Angjangyang, Tobu and Monyakshu and asked them to "*cut off all forms of public relation with the Indian military forces and*



no Konyak Villages councils/students or any society must accept any forms of developmental packages/soups from the Indian military forces". The KU also demanded from the Nagaland government to make the Tiru Police Station functional within five days.³³

On 16 December, normal life was badly affected in five districts of Nagaland as tribal bodies observed bandh over the recent killing of 14 civilians at Oting in Mon district. Government and private offices and business establishments remained closed during the shutdown and vehicular traffic was paralysed as members of the Eastern Nagaland Peoples' Organisation (ENPO), the apex tribal body, staged demonstrations in Tuensang, Longleng, Kiphire and Noklak districts, and the Konyak Union, the organisation representing Konyak Naga tribe, to which the slain civilians belonged, held protest rallies in Mon.³⁴

On 17 December, thousands of protesters took to the streets to participate in a 'Peoples' Rally' in Kohima to demand justice for the 14 civilians killed by security forces at Oting village. The rally organised by the Naga Students' Federation (NSF), the apex Naga students body, saw the participation of the umbrella student organisation of the Northeast, the North East Students' Organisation (NESO) as well as the All Assam Students' Union (AASU) and other civil society and tribal organisations of Nagaland. In neighbouring Manipur, the All Naga Manipur Students' Association, along with the NSF, also held rallies in Ukhrul district. The protesters main demand is to scrap of the AFSPA.³⁵

On 23 December, the Eastern Naga Students' Federation (ENSF) reiterated that it would continue with its non-cooperation with Indian security forces till its demands were met and warned that the Centre would be held fully responsible for any untoward law and order situation that might arise in this connection. Among others, the demands of ENSF included withdrawal of the AFSPA, 1958 from all the North-eastern States.³⁶



2.5 The response of the armed opposition groups engaged in peace process with the GoI

India has been facing insurgency in Nagaland over the demands of secession since India's independence. The government has been engaged in the longest peace processes in India after it signed ceasefire agreement with the National Socialist Council of Nagaland (NSCN-IM) in July 1995. Ceasefire agreements have also been signed with National Socialist Council of Nagaland (Neopao Konyak) [NSCN/NK] and NSCN (Reformation). Ceasefire agreement with newly formed NSCN/K-Khango group has been signed on 15 April 2019.³⁷

A framework agreement was signed with NSCN (I/M) on 3 August 2015. However, no substantive progress has been made.

On 5 December, the NSCN-IM strongly condemned the killing of 13 civilians at the hands of the 21 Para-Commandoes calling 4 December a 'Black day for the Nagas.' In a press statement NSCN stated: *"The fact that the ubiquitous Indian security forces (have) brought about (a) toxic storm of bloody dust in Nagalim is not a new thing but a repeat of the past to suppress the legitimate Naga political movement. The Indian security forces will never be able to wash its hands off, smeared with the blood of innocent Nagas no matter how it come(s) out with a nonsensical statement which is linked to credible intelligence reports of movement of insurgents."*³⁸

*"The killing was the work of the trigger-happy 21st Para Commandos/Assam Rifles. The Nagas had in the past faced a trigger-happy Indian security force, acting with impunity under the Government of India's Armed Forces (Special Powers) Act/AFSPA which is mainly used against the Naga political movement. Notwithstanding the ongoing Indo-Naga political dialogue that has seen much fruition during the period running more than two decades, the violence against the Nagas continues unabated. This is one of the most unfortunate incidents of the Indo-Naga ceasefire signed in 1997." - the statement added.*³⁹

In another statement on 6 December, the NSCN-IM stated said that it had, so far, restrained itself from conducting operations against *"the sadistic occupiers in the Indian Military, keeping in mind the wishes of our people who are in the quest for peaceful atmosphere"*. The statement added, *"But what have our people received from the shameless occupiers for trying to achieve our goal peacefully? Nothing. Only tortured rapes, manslaughter and untold miseries unleashed from time to time."*⁴⁰



3. The case for removal of the AFSPA in Nagaland and elsewhere

The draconian Armed Forces Special Powers Act was enacted on 11 September 1958 to deal with the Naga insurgency. Sixty three years after its imposition, the AFSPA has failed to tackle the Naga insurgency and it is only political peace processes that have curtailed the insurgency.

The major insurgent groups operating in the State of Nagaland are the factions of National Socialist Council of Nagaland (NSCN) which came into being in 1980, following the failure of the 1975 Shillong Accord. These insurgent groups are NSCN (IM) led by Th. Muivah, NSCN (K), NSCN/NK led by Neopao Konyak-Kitovi and NSCN/R led by Y. Wangtin Konyak. The split faction of the NSCN/K (i.e. NSCN/K-Khango faction) under the leadership of Khango joined peace talks with the Government of India and signed a ceasefire agreement on 15 April 2019 for one year. None of these groups are banned under the Unlawful Activities (Prevention) Act, 1967.⁴¹

The Ministry of Home Affairs in its 2019-2020 Annual Report states that “ *There were 42 insurgency related incidents reported in the State of Nagaland in 2019. Counter-Insurgency Operations by SFs resulted in killing of 1 cadre/militant, arrest of 217 cadres and recovery of 74 weapons in the State. NSCN/IM accounted for about 50% of the insurgency incidents in the State during 2019. The number of civilians and SFs deaths has come down by 50% (2018:6, 2019:3) and kidnapping/abduction cases declined by 22% (2018: 63, 2019: 49)* ”⁴²

If the NSCN/IM i.e. the organisation responsible for about 50% of the insurgency incidents in the State during 2019 is not banned under the UAPA and its members are therefore not arrested under the UAPA, it implies that the AFSPA acts is not required.

As per the MHA during 2019-2020, Meitei insurgency accounted for about 60% of insurgency incidents in Manipur⁴³ but the AFSPA had been withdrawn from seven assembly segments of Imphal municipal areas, inhabited by the Meiteis in August 2004.⁴⁴ If the AFSPA has been withdrawn from Imphal municipal areas, it can be withdrawn from Nagaland too.

Over the years, the AFSPA has been withdrawn from most of the areas. It was totally withdrawn from Tripura in 2015 after being in force for 18 years and Meghalaya in 2018 after being in force for 27 years. As on date, only three districts of Tirap, Changlang and Longding and two police stations of Namsai district in Arunachal, the entire state of Assam, Nagaland and Manipur (except Imphal municipal area) remain under the AFSPA.⁴⁵

The AFSPA has become the symbol of repression in the North East and the trust deficit with respect to the law enforcement personnel as well as the rule of law is all pervasive. Militarisation of the region has led to the absolute erosion of the rule of the law. The AFSPA needs to be repealed.

There are two specific ways India can deal with insurgency by taking the following measures:

First, the State government should be empowered to deal with insurgency including by raising additional State security forces. As the government of India states, “ *The Government of India is assisting the State Governments in augmenting and upgrading their police forces to deal with insurgency /militancy. Towards this end, 61 India Reserve Battalions (IR Bns) have been sanctioned for the NE States, including Sikkim. These include 11 Battalions each for Assam, Manipur and Tripura, 7 each for Arunachal Pradesh and Nagaland, 6 for Meghalaya, 5 for Mizoram and 3 for Sikkim.*”⁴⁶

Second, if a situation arises in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the deployment of the security forces have to be dealt with through public proclamation as provided under Article 356 of the Constitution of India. The imposition of public emergency through the backdoor under the AFSPA needs to be repealed.



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