Report of the Visit

25th September 2010

1. morning visit to village Jayanti, Buxa Tiger Reserve, Distt Jalpaiguri
2. Public Consultation at Rajabhatkhawa, Distt Jalpaiguri
3. meeting with officials

26th September 2010

1. visit to village Samsing, Kalimpong Division, Distt Darjeeling
2. visit to forest village 10 Miles, Sevoke, Jalpaiguri
3. Public Consultation of Darjeeling and Jalpaiguri forest villages at 10 Miles, Distt Jalpaiguri
4. Consultations with officials.

Representation from all sections of society was made in front of the Central Committee. Thousands of people participated in the public consultation ranging from villagers, civil society groups, Trade Union like North Bengal Forest Workers Union and professors from university and colleges and people’s organization, political parties such as RSP and officials from Forest Department(FD), Backward Class and Welfare Department, Revenue Department.
General Background of Implementation of the Act in West Bengal – Information Received from the State Government.

Dr RL Meena visited some districts of the South WB e.g. Burdwan and South 24 Paragana (where Sunder Ban Tiger Reserve is situated) from 29.6.10 to 2.7.10. During his visit the status of implementation of FRA in the state was reported as below

1: The state of West Bengal has 8, 01, 76,197 population out of which 44, 06,794 (5.50%) are Scheduled Tribes, and 1, 84, 52, 555 (23.02%) are scheduled castes. Only 2819 Gram Sabhas are constituted so far where estimated FRA eligible claimant are 1,37,117. The consultation at various level including with state officials was held in the state level meeting dated 30.6.10 in the Chamber of Shri Nurul Haque Principal Secretary Backward class Welfare Department, at Writer’s Building where the following officers were present

i. Shri N Haque Principal Secretary Backward Class Welfare Department, GoWB
ii. Shri Niraj Singhal, IFS Special Chief Conservator of forests Central Circle WB,
iii. Shri Amit Choudhary IFS, PS to Hon Minister in Charge Welfare Class Welfare,
iv. Shri Vinod Kumar Yadhav, IFS, Conservator of Forests, Western Circle, WB and others forest officials.
v. Director Tribal Welfare, GoWB

2. Like other states implementation of the Act in West Bengal was initiated in the Month of February 2008. Officials claimed that the Act and Rules were translated into regional languages and its wide publicity was done through daily news papers. Further, the awareness camps for the claimants and staffs while explaining the provisions and procedure given in the Acts and Rules were organized at District, Subdivision, Block and Gram Panchayat levels. Different Meetings were organized at Gram Sabha level (Gram Sansads) in order to explain the provisions of the Act and Rules. Necessary Government Orders were issued to simplify the process of implementation of Acts and Rules. The SLMC was set up on 07.03.2008 which had met 4 times by then to monitor the implementation of FRA through conversation with District Magistrates as well as the Chairman of DLCs. The Government issued circulars to that effect on 07.03.2008, 10.03.2008, 24.07.2008; 30.12.2008 and 27.8.2009. In totality three pilot programmes were arranged by the State Nodal Agency in three Divisions of Presidency Burdwan and Jalpaiguri Division on 17.03.08 and 19.03.2008 respectively for training of PRI officials, SLDCs, and DLCs Members.

3. As per State Government’s view no staggered process is used in implementation of FRA, however practically it has been staggered and predominantly focused on individual land rights, and relatively less on community rights but the state officials claimed that equal focus has been given on individual as well as community rights. Officials stated that Claims were judged on the basis of merit but in fact there was considerable
subjectivity in the overall process. According to them special measures have been taken by the state agencies to facilitate the claims of the underprivileged, marginal, or otherwise special groups such as nomadic communities, shifting cultivators, hunting tribes, and primitive tribal groups. Some camps were organized to facilitate filing of claims including filling of the forms of the claims. However, no special measures have been taken to facilitate the claims of women. Following the Government of India (MOTA) deadline the State Government announced to complete the process by 31.03.2009. But due to Maoist activities and other problems, the State Government did not complete the process till date. Even though there is no report of any action on the implementation of FRA in the Sunder Van Tiger Sanctuary area but the State Government had shown keen interest to complete the process as early as possible. It is reported that 1, 37,117 cases have so far been filed against the forest people under IFA 1927 in the state particularly after the enactment of the Act which indicates an unprecedented harsh actions taken by authorities against the communities who are dependent on forests for their livelihood.

Note: The state level data of implementation of the Act is given in Annexure – I in the Report of Dr. R.L Meena.

General observations by the Committee in North Bengal

1. The implementation of FRA is quite weak in north Bengal region. There were serious complaints from the residents of the forest villages. The officials especially the nodal agency Dept of Backward Class and Welfare Department (BCWD) have not read the Act neither they have done any effort to bring awareness among people regarding the Act. The copy of the Act and rules has not yet been distributed. The committee did not find even a single copy of the Act given to the forest dwelling people. The awareness building and the distribution of the copy of the Act has been done by the trade unions, North Bengal Forest Workers Unions, RSP, civil society groups, people's organization like National Forum of Forest People and Forest Workers and Nagarik Mancha, Kolkata.

2. Forest dwelling people are well aware about the act but officials are not. The nodal agency, SDLC and DLC are not at all monitoring the implementation of the Act that is giving space to Forest Department (FD) to continue imposing the previous schemes that is contradicting the Act. FD is playing no role in spreading the awareness of the Act rather it is still behaving very badly with the local people and inflicting atrocities on them while defeating the very purpose of the FRA. This is leading further to repeat of historical injustices as enshrined in the Preamble of the Act.

3. There is serious illegality in formation of FRC in North Bengal region that is creating problem in identifying and filing both individual and community rights claims.

4. The FRC are being formed at Gram Sansad (Gram Panchayat) level that may comprise 2-15 villages or may be more. Due to such formation of FRC at Gram Sansad level the FRC’s are being dominated and influenced by the political persons who are working under the influence of the vested interests. In many
FRC’s the post of President and Secretary are held by the elected representative of the Gram Sansad, e.g villages like Jayanti.

5. These FRCs too have not been constituted according to the rules of the Act, the FRC’s were formed without an open, free and fair process. Some names were given on paper and officials approved those FRC/

6. There is very strong movement led by NFFPFW in this region who had given repeated memorandums regarding the constitution of FRA at village level at all the levels starting from SDLC to DLC but they were not given any hearing. Rather the leaders and members of the organization and villagers received a very cold and rude behavior from officials. The representations were made from villages of Darjeeling and Jalpaiguri Districts like Rajabhatkhawa, Garo basti, Kodal basty forest village, Sipchu FV, Paraurosh Basti, Chillapata Andu FV, Poro basti, Sukhia Pokhri etc.

7. The FRCs formed at Gram Sabha Level in the various forest villages were rejected and villagers were told that the FRC will be formed at the gram sansad level.

8. In those fallaciously constituted FRCs in the region the portfolio holders of Gram Unyan Samiti (Committee formed at the Gram Sansad level for the development work of the village) were chose to be the president and secretary of FRC. The president and secretary have not been elected in the open meeting also with requisite quorum as per the rules of the Act.

9. There are still various forest villages where the claim forms have not been distributed yet. Some of those villages are Samsing (Kalimpong division), Sukhia Pokhri (Darjeeling range), Noam FV and Maure FV, (Kalimpong Division), 29 miles (Jalpaiguri Division).

10. Among the villages where even the claim forms were distributed are only individual claim forms but not the community claim forms.

11. Some villages claimed for Community rights by their own initiatives like Chillapata Andu FV, (Coochbehar Division) Khuklung (Jalpaiguri Division) but they were not entertained by the administration.

12. The community rights are devoid of any attention by the civil and forest administration and no community rights have been granted so far.

13. In various FV’s (Forest Villages) the forms were not distributed due to non formation of FRC at the level of Gram Sansad. The officials said that first the Gram Sansad has to be formed than only the forms will be distributed.

14. Forest villages : Conversion of Forest Villages into Revenue Villages

1. There are around 171 villages according to the records of FD but the organization working with forest village’s alleged that there area around 250 FV which are not recorded in FD documents in the Jalpaiguri and Darjeeling districts. The status of claims both individual and community levels shows serious lacking on the part of administration. There are many villages whose claims are pending more than a
year. The examples include the villages like Kalkot FV, Parapurosh basti FV, Andu FV, kodal Basti etc

2. The is no move as yet to convert these forest villages into revenue villages, no survey and demarcation has been started by the state authorities. There is no notification by the State Government on this issue. The data regarding the forest villages are also not compiled by the BCWD and even by the Forest Department. The project coordinator, Darjeeling, said that there are only recorded villages whose records are found in FD’s record and there are some unrecorded villages also where this Act was not applicable. The Committee had to apprise the officers that they have to identify the recorded, unrecorded or any kind of forest village that do not exists in the FD’s record because according to the Act villagers can form their own FRC even in those villages and can claim their rights. The project coordinator said that he has not received any kind of such instruction from his department.

3. It must be the reason precisely that many villages have still not received the claim forms and when they approached the district authorities to form their FRC’s they were told that they have to form Gram sansad first and than only they will be provided claim forms.

4. In many villages where the claim forms have been submitted, only tribals got title for their lands where as the other forest dwellers have been left out. In many villages the tribals did not accept these titles and took a decision that if whole of the village does not get the title they will not accept these titles also. They have returned the titles to the authorities.

15. Community Rights under sec 3(1)

1. There is no awareness among the official about the community rights rather the village communities are more aware of these rights and aware that according to the Act they are entitled for community rights. On the contrary FD is imposing the FPC (Forest Protection Committees) on the villages that is formed under Joint Forest Management programme.

2. The community rights under sec 3(2) of the Act have also not given any attention in this area. The development rights are the most important rights that are needed by the forest villages. The forest villages are still not allowed to repair their houses which are in a very bad shape. There are often instances where elephants have broken their houses but FD doesn’t allow them to construct the houses. The construction of roads, schools, community centers etc are the need of the hour, but since the FRC’s are not formed properly these rights are again being denied to the forest villages. Due to formation of FRC at Gram Sansad level the FRC’s are not able to take any resolution. None of the FRC’s have taken any single resolution, they said the FRC’s are told to submit their claims at Block level and no functions of FRC’s have been discussed by the authorities.
16. FRA vs FPC

Due to lack of active intervention of State Government and District authorities in effectively implementing the Act in the region, the FD is imposing its own projects and JFM’s policies to mislead people. Instead of formation of FRC, FD is insisting forest villages to continue working with FPC (Forest Protection Committee). Whereas villagers are not interested in FPC programme as it is entirely in the control of FD and the JFM policies doesn’t ensure the rights of the forest dwellers. FD officials declared that they don’t have any role in implementing the Act. According to the villagers and civil society organizations FD is the biggest impediment in implementation of the Act and misleading people regarding this Act.

17. Title certificate – Land user certificate and not the titles

1. The title distribution certificate that has been distributed to the forest dwellers contains serious flaws. The titles which are incomplete and have been distributed only to tribals. The certified copy of the land certificate was given to the committee. On this issue there was commotion in the public consultation. As the families and the organizations present in the consultations questioned the validity of the titles paper so far have been distributed by the State Government. After examining the titles paper of Sri Biddhiram Subba, Rajabhatkhawa, (Buxa Division, Jalapaiguri) we found that no date was mentioned in the certificate, there was no signature, and the land mentioned had no map and boundaries demarcated. The claimants are rejecting it and saying that it was a fake certificate. (Annexure – II)

2. The claimants said that they want ownership titles to the land and not the land use certificate. They said,” If this arrangement continues than FD will always keep interfering in our land and forest rights. The land and forest rights should be clearly demarcated mapped and should find its entry in the land records.”

3. In many forest villages, where the title has granted to tribals, they have either returned or refused to accept the titles on the ground that they will accept the titles only if it is granted to whole of the village.

4. In many forest villages the FRC’s were not formed, the officials rejected their application also to form the FRC and said that the FRC will be only formed at Gram Sansad level. To which the forest villagers have not agreed and said that they will not accept the formation of FRC at Gram Sansad level.

5. The surveys of the forest villages have not been conducted so far by the BCWD, no proper identification of these villages have been done so far. The district authorities are only depending upon the information provided by the FD, whereas they are not providing the entire information. The Backward Class Project Officer, Darjeeling said that the forest villages are not entitled to get rights under FRA since they don’t have any Panchayat. The officials of the nodal department have not even read the act and not aware of the provision of the sec 2(p) which gives the definition of the village.
18. 75 yrs Provision

People have strongly objected to the 75 yrs provision for other forest dwellers who have been asked to submit Voter I-card, electricity bills as a proof. The fact is that all the forest villages, fixed demand holdings and taungya villages are still not declared as revenue villages hence they were devoid of electricity and other facilities until very recently. They don’t have any proof as they were used as bonded laborers by FD to plant forest from early 1920 to 70’s.

19. Jaiyanti case (Buxa Tiger Reserve), forest rights register maintained by the villagers.

1. The committee members visited Jayanti forest village in the core zone of Buxa Tiger Reserve. This forest village has a very old history even before the declaration of the tiger reserve. This type of forest villages are known as ‘Fixed Demand Holding ‘villages which were settled by FD for supply of the timber and other goods during the era of industrial-production forestry. The village had very critical issues that were spelled out by the residents of this village. The implementation of FRA is very slow and weak and the residents are totally confused whether this Act is applicable to their village or not. Till now none of the officials who are responsible to implement the Act has visited the village and neither played an important role in bringing the awareness regarding the Act. The villagers came to know about the Act from the activists of civil society groups and Forest workers union. Due to the efforts of some of the activists of this organization the villagers were able to file their claims. Initially they opposed the formation of the FRC at Gram Sansad level but they were not given a proper hearing by the Sub Divisional Magistrate and ultimately FRC was formed at Gram Sansad level. On the other hand FD is doing this propaganda that FRA is not applicable in Tiger reserve and in order to stop the process of implementation of the Act the mobility of the villagers were totally restricted by the FD. The installation of gate before the entry of the village has brought wrath of the villagers. Shekhar Bhattacharjee Secretary FRC reported that there are two gates one at Rajabhatkhawa and other at the entry of village, that have been put up to stop unwanted entry into the tiger reserve from 7 Pm to 6 Am in the morning. The restriction has been imposed on the residents of the villages which is the utter violation of their fundamental rights. They reported that how in the case of emergency they have to depend upon mercy of Forest Ranger who gives them permit to enter into their own village. Despite the fact that Gram sabha consent is necessary for declaring any critical habitat or wild life sanctuary no such procedure is adopted. Forest Department even does not allow people to go out or come in between 7.00 PM to 6.00 AM. Incidents were reported that even a son came to meet his ailing mother he was not allowed entry for three and half hours

2. The main employment of the villagers of Jayanti was ecotourism for which they posses certificate from West Bengal Forest Department. Since last 17 yrs the
youths and men were organizing eco tourism for the tourist in the seasons for which the permits were granted by the FD. But this year the permit was abruptly cancelled by FD without giving any notice to them in advance. The villagers also submitted the reasons for not allowing the eco tourism this year, the reasons mentioned were not on legal grounds. The villagers were very angry as they said if they don’t earn anything they will die and why would not they take up arms against such tyrant rule of FD? It is to be mentioned here that this is the region where historic forest villagers movement took place against taungya system during late 60’s and early 70’s and Orange Orchard resistance took place during 90’s. Their matter was strongly taken up by MLA of the region Mr. Wilson Chapramari, who made representation to the committee that if the families are not able to resume what they have been doing then it will be a violation of their fundamental rights.

3. Villagers said that they have filed their claims under FRA, total number of claims filed was 235, and they have also maintained a register of claims filed. No community claims have been filed in this village.

4. Regarding the Committee’s visit only handful of villagers were asked to meet by FD but Committee members felt there was no presence of women and asked the villagers the reason for this. They informed that there was directive from FD officials that only few members are allowed to meet Committee members so the whole village was not invited. Committee members informed the villagers that the important TOR of the Committee is to hold public consultation with villagers to study the implementation process of FRA and asked the members to invite more people. Within half an hour hundreds of villagers joined the consultation and expressed their views and registered their annoyance with FD who is impinging on all their fundamental rights granted through Constitution.

5. The forest officials Dy Field Director, Buxa Tiger Reserve said that they didn’t have any role to implement the Act, it is the Gram Sabha that will implement the Act. The forest officials too have not read the Act properly but more than that there appeared a deliberate attempt to ignore the Act and continue with the previous Act which is contradictory to FRA. This is creating lot of confusion among the villagers.

6. There is no interdepartmental coordination among the officials, the nodal department was very much submissive and was not aware of their role. The villagers said that for the first time they saw the project officer of Backward Class and Welfare Department and they were not aware that this department was the implementing agency. They were told all matter related to forest rights will be dealt by FD.

7. Some one and half years ago the option of 10 lakh was given to villagers to move out from the present place. To which the villagers objected and asked for a proper rehabilitation with all their rights. But after that no discussion took place and the rights of the villagers have been further curtailed.
20. Critical Wild Life Habitat
Till now FD has not started the process of identification of CWH according to provisions of the Act. Rather Tiger Authority has brought the notification regarding the formation of the CWH according to FRA. But no process of consultation has been started with the gram sabha. The notification mentions about the options for the local people in which the option of 10 lakh is also there. The FD has given more emphasis on the 10 lakh option without discussing how this option came into existence, without telling the people to participate in identifying the CWH. More confusion are prevailing in the area where on one side the FRA implementation is talked about but on the other hand the 10 lakh option and restriction in mobility of the villages are taking place according to the Tiger Authority notification.

21. PTG Toto tribe
The Committee members also met the representative of PTG group Toto tribe shri Sanjit Toto. He is serving as Inspector in BCW department and was with Committee members. Mr. Sanjit apprised committee members that only 1246 members of tribe are there whose survival is becoming a major problem. Most of the tribe members are suffering from thalssemia but there is no medical treatment available to them. According to Sanjit Toto, the tribe had a vast area that they used for grazing and other purposes but that was acquired by FD in year 1960. They are left only with their homes now and they have filed individual claims. Being an officer he was not aware of the process of implementation of the Act. The Committee members apprized him that the tribes now can file community rights under FRA. But he informed that he was told by FD that the Toto tribes are not eligible for the community rights. The Committee members had a long discussion on this issue with the BCWD and FD officials and requested the officials to help the PTG group to file the community claims.

22. Violence by FD
The cases of violences by FD were brought to the notice of the Committee. Shree. Satyen Rabha, a tribal youth, r/o Rajabhatkhawa, was shot at by Beat Officer, Damanpur Range, of Buxa Tiger Reserve West division, in Jan 2010. Satyen Rabha had gone to forest in search of his lost bullocks that were missing since 3 days. The villagers protested against this killing but instead of punishing the culprits 36 villagers were arrested and were booked under theft and Rs 8000 were fined against each villager. It was after the intervention of local MLA Shree Wilson, that the Commissioner visited the area and ordered magisterial enquiry. But till now no relief has been given to the tribal youth. No FIR has been lodged against the Beat officer who shot Satyen Rabha. The human rights organization APDR in their representation said that their have been at least 11-12 cases of murder in which staff of FD has been involved but till now not even a single official has been booked u/s 302 and terminated.

After the visit of Committee one another tribal youth 17 year old boy Shyam Oraon, village Khuklung FV, PO Khuttimari, PS Dhupguri, Distt Jalpaiguri was killed by beat officer Kislaya in Jalpaiguri Division. The application of the father Manger Orao has been submitted to the Committee member DR. R.L Meena. The application is attached in Annexure – II

Despite the fact that FRA ensures mitigating historical injustices on the forest people the forest people are still subjected to violence and are being denied of their Constitutional rights.

The situation in North Bengal (Jalpaiguri) and in South 24 South Paragana Districts is worse. The role of the Forest Department is very negative. In Jalapaiguri where we kept consultations in Buxa Tiger Reserve the cases of public harassment were serious. The Forest Department resorted to firing on people in a routine manner. Two incidents were reported of serious violations of Human Rights where people were made disabled and no credible inquiry was done. Some Magisterial inquiries were done with which people were not satisfied and asked for action against the guilty forest officials.
Satyen Rabha, tribal boy was shot at by Beat officer, Buxa Tiger Reserve

23. killing of elephants in north Bengal

A day before the visit of the Committee, 7 elephants were killed by speeding train in Jalpaiguri Division. The measures of the wild life conservation need to be evaluated in this region. Villagers reported that every year around 3-4 elephants are killed by the speeding train. No effective measures have been adopted by the FD and the state authorities despite the fact that heavy funding is released for the Elephant Project. In this matter the Report of the Task Force – Gajah needs to be consulted.

Dead Elephant on railway track in Jalpaiguri division

24. Tiger in Buxa Tiger Reserve

FD claims there are 11-15 tigers according to the DNA report whereas the villagers especially village like Jaiyanti reported that there are no tigers in the forest. The leopards are counted as Tigers. One of the resident of Rajabhatkhawa Lalsingh said “our village cows go to forest for grazing and we leave them for three-three months, not even a single cow or calf goes missing. This indicates that there is no tiger in the forest otherwise atleast some of this domestic animals must have been lifted. I have not seen Royal Bengal Tiger since last 17 years.”

SDM and Dy Field Director Buxa in Public Consultation
Details of the claim distribution

1. **Sipsu FV**: 51 claims were filed by both ST and OTFD, they received 4 title deeds but the claimants refused to take and returned it to the authorities. They said first their village should be converted to revenue. There are 5 FV in this area no titles were accepted by villagers.

2. **Garo Basti, Rajabhatkhawa**: 300 claims were filed. 62 tribals received the land use certificate rest have not received. Other are lying at DLC, this was informed by SDM. The claims were filed in September 2009. There are 37 FV and 5 Fixed Demand holding village in Buxa Tiger Reserve.

3. **Kalkot FV**: Total 117 claims were filed, 115 ST and 2 OTFD. 10 titles have been granted to tribal in a big meeting by State Tribal Minister. The titles are pending since one year. SDM said that another 44 claims are ready to be distributed.

4. **Parapurosh Basti FV**: 62 individual and community claims were filed in April 2009. The forms are lost, villagers accused the officials of misplacing the forms. Officials denied but later on due to the intervention of the Committee the officials said they will locate and finalize the claims of the village.

5. **Chillapata, Angdu FV**: 94 claims were filed that belonged to ST in July 2009. One community claim filed. No one has got the title deed as yet but villagers complained of violence by FD, false cases were filed on the villagers and were even branded as Maoist by FD.

6. **Kodal Basti FV**: 202 claims were filed the forms were deposited in Kalchini block in December 2009. Here another matter came up, 202 claims were filed by FRC and 84 claims were filed under the influence of FD. The forms of FRC were not accepted, the villages questioned SDO why the forms were not accepted. After long protest the forms of FRC were accepted. The FRC of this village installed a board saying that “Forest is ours” (Jungle hamara hai), but the sign board was taken off by the ranger and many false cases were filed on the villagers in 2009.

7. **Maure FV**: No forms have been distributed

8. **Noam FV**: No forms have been distributed. They require 60 forms, Committee members requested the Project Officer, Kalimpong division to make these forms available to the villagers.

9. **Phagu FV**: only 90 individual forms were distributed, no community forms have been given.

10. **Neuro Range Basti**: No FRC formed rather FPC’s are being formed by FD to confuse people. There are 10 basti in this range.

11. **Sukia Pokhri Range(Darjeeling Division)**: No forms have been distributed. People had gheraoed SDO who said that the forms are being printed. One month has passed away still the people have not received any forms.

12. **Pandijotna FC (Jalpaiguri division)**: 400 individual and community claims have been filed. The villagers said the certificate we received is duplicate, it is land use certificate and not ownership title deed.
13. **Gulma FV (Kurseong Divi)**: 60 claims were submitted two years before. Only 3 tribal got the title but they refused as they claim it is fake certificate.

14. **10 Mile FV (Jalpaiguri division)**: 70 claims have been filed two years before but still no claims has been finalized.

15. **Khairi FV (Darjeeling divi)**: Still not received forms.

16. **29 Miles**: No forms distributed, the villagers reported that if they construct house the FD ask for NOC.

17. **Santiyal Phai Basti**: no forms distributed.

25. **Protection of Forest, Wildlife and Biodiversity under Section (5)**

Sourish Jha, a researcher on forest governance in North Bengal alleged that while replacing the Gram Sabha with the Gram Sansad the State authorities are practically disregarding the rights of the forest dwelling communities to protect their forest, wildlife and bio-diversity under Section (5) of the Act. In the context of utter failure of the so called joint exercise to protect forest and wildlife under the JFM mechanism in the region there is an urgent need to institutionalize the role of the community to protect their own resources in a sustainable manner. But the State agencies like Forest Department has failed to understand the compelling need while relying heavily upon a few forest guards and armed personnel to protect resources in the vast forest tract and retaining their age old practices of monocultural plantation and regenerating exotic species simultaneously ignoring the deteriorating conditions of soil fertility, foods for wildlife, firewood requirements and multi-species texture of this particular landscape.

**Recommendation**

The Committee recommends that:

- The Backward Class and Welfare Department, the nodal agency to implement the Act is not at all active in the implementation process. The officials have not read the Act. There is tremendous need to do the training and making the officials aware of this Act.

- The atrocities and violence is still being continued by FD, repeating the historical injustice again. There is need to define the ‘historical injustice ‘in the Act. The resident’s fundamental and Constitutional rights should be respected.

- The FRC should be formed at a village unit level rather than Gram Sansad level. A clarification on this provision should be issued by MoTA to the State Government.

- A fresh notification of formation of FRC should be issued by the State government and the existing one should be dismantled to form the new ones and...
the members should be elected in an open meeting. The president and secretary should be elected as per the rules of the Act.

A notification from State Government should be issued immediately regarding conversion of Forest villages into revenue villages as per sec 3(h) of the Act. The process according to sec3 (2) should also be started simultaneously.

The Joint Forest Management programme should be completely halted till FRA is completely implemented and a proper FRC’s are formed. Any project or scheme in the forest area should be implemented in consultation with Gram Sabha, where FD could be in consultative position.

In the case where forest villages that have not been identified and not recorded in the forest records needs to be immediately surveyed and recorded so that the process of implementation of the Act should start very soon.

A proper mechanism of titles deed should be adopted by the authorities, with full details in the title deed indicating boundaries and providing the map with the title deed.

75 yrs limit for other forest dwellers needs to be curtailed.

JFM policies and formation of FPC should be suspended till the FRA implementation process is complete. All such programme now should be under the FRA process.

The case of Jainty, FRC should be formed at village level.

In the matter of Jainty the provision of sec 3(2) is pertinent. There section mentions that all development activities will take in the village including road construction, school and other facilities. But on the contrary their movement and development of Jainty FV is being halted by FD by giving reference to tiger project notification.

The team recommends that every incident of violation of human rights be reported to the National Human Rights Commission and FIR is to be registered as in case of custodial injuries done for police excesses, such independent agency monitoring can only bring some control over the frequent harassment of poor tribals in these areas.

The success of the implementation of the Act lies in interdepartmental coordination. Till now the forest areas were in the eminent domain of FD where the basic fundamental rights enshrined in Constitution esp Art 21, right to liberty and life of the forest people were denied. A real democratic situation in these areas could only be established if proper interdepartmental coordination takes place.

It is to be noted that TOTO or any PTGs or particularly Vulnerable Group are the people who are diminishing in number and not very well conversant with the system hence all their traditional rights get restored under this Act. Government should confer suo moto community rights of TOTOS.

The 10 lakh provision is contrary to FRA, no such schemes should be implemented before the implementation process of FRA is complete.

The violence inflicted on tribals are the issues of human rights, the cognizance of these atrocities should taken under SC/ST act and such incidents should be
investigated by a National Human Rights Commission and State Human Rights Commission.

A proper evaluation of Tiger and Elephant project are needed in North Bengal region.

The Ngo’s and other Civil society groups which are working in the area should be treated respectfully and their support should be needed in implementing this Act. The representation of the organization working in the area should also be there in DLC and SLMC level for the effective implementation of the Act.

Report written by Ms Roma, Dr.R.L Meena and Sh. M.L Markam

Anexure-I

State Level Consultation of FRA –Committee :
Member, Dr RL Meena IAS (Retd)

Implementation of Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights, Act, 2006 and Rules 2008 in the District of Burdwan and South 24 Pargana dated 29-30-6-10.

Note : The information has been provided by BCWD, West Bengal

The WB state visit was undertaken from 29.6.10 to 2.7.10

1: Basic information on the state

Name of state or district: West Bengal
Total population: 8,01,76,197
Total tribal population (and % of ST amongst these): 4406794 (5.50%)
Total SC population: 1,84,52,555 (23.02%)
Estimated number of FRA-eligible gram sabhas: 2819
Estimated number of FRA-eligible claimants: 1,37,117

2. Consultation with officials

in the state level Meeting dated 30.6.10 the following officers remained present in the Chamber of Shri Nurul Haque PS Backward class Welfare Department

1. Shri N Haque Principal Secretary Backward Class Welfare Department.
2. S/ Shri Niraj Singhal, IFS Special Chief Conservator of forests Central Circle WB,
3. Amit Choudhary IFS,PS to Hon Minister in Charge Welfare Class Welfare,
3: Overview of implementation

1. When was the FRA process started?
   Ans: February 2008

2. Have the provisions of the FRA been adequately publicized, i.e. through the entire state/district, and covering all the provisions? What methods have been used for this?
   Ans: Translated Act and Rules and its wide publication was done through daily News papers, awareness camps regarding awareness of the provisions of the Acts and Rules were organized at District, Subdivision, Block and Gram Panchayat level. Different Meetings were organized in Gram Sabhas explaining the provisions of the Act and Rules. Necessary Government orders were issued to simplify the process of implementation of Acts and Rules.

3. When was the SLMC set up, and how many times has it met to date? What methods does it use to monitor the implementation of the FRA?
   Ans: The SLMC was set up on 07.03.2008. The Committee met 4 times to monitor the implementation of FRA through conversation with District Magistrates, the Chairman of DLCs.

4. Have any circulars been issued to clarify provisions of the FRA, or otherwise aid in its implementation? (Pl. include a full set of such circulars)

5. Have any special training programmes been organised for government staff involved in implementation? How many and for whom? Has the FRA been incorporated into training manuals for state govt employees?
   Ans: 3 nos. pilot programmes were organized by the State Nodal Agency in three Divisions presidency Burdwan decision on 17.03.2008 Jalpaigudi Division on 19.03.2008 for training of PRI officials, SLDCs, DLCs Members.

6. Has a staggered process been used to implement the FRA, i.e. some provisions before others, or some regions before others, or some kinds of claimants before others? If so, details of such a process, and reasons for the same?
   Ans: No staggered process is used in implementation of FRA.
7. Has there been a predominant focus on individual land rights, and relatively less (or none at all) on community rights? If so, why?
Ans Equal focus has been given on individual as well as community rights

8. Has the predominant trend been to accept claims or to reject them? What are the factors for this?
Ans Claims were judged on merit

9. Have any special measures been taken to facilitate the claims of disprivileged, marginal, or otherwise special groups such as nomadic communities, shifting cultivators, hunting tribes, and Primitive Tribal Groups? What has been the experience of these groups in relation to FRA’s implementation?
Ans: Special measures have been taken to facilitate the claims of the claims of disprivileged, marginal, or otherwise special groups such as nomadic communities, shifting cultivators, hunting tribes, and Primitive Tribal Groups. Camps were organized to facilitate filing of claims including filling of the forms of the claims

10. Have any special measures been taken to facilitate the claims of women?
Ans: No special measures have been taken to facilitate the claims of women

11. Has any deadline been announced, for completion of FRA procedures?
Ans: The Government of India deadline was 31.03.2009. Accordingly State Government announced to complete the process by 31.03.2009. But due to Maoist activities and other problems, the State Government did not complete the process still now. the State Government is keen to complete the process of implementation of the Act as early as possible.

12. How many cases have been filed in the state after the enactment of this act under IFA 1927 on forest people?
Ans; 1,37,117

13. What measures are taken to coordinate the Tribal Welfare, Revenue, and Forest Departments (or other relevant departments of the state)?
Ans The Land & Land Reforms Department was requested to involve their Departmental officers at District level and Sub Divisional level Committees for which they issued circulars. They were also been requested to issue guidelines for reflection of Forests Rights in ROR for which Government Orders are yet to be issued. Panchayat and Rural Development Department was also requested to issue directions to DP and RDOs for arranging Meetings of GPs for formation of FRCs at Gram sansad level and holding such Meetings. Forest Department was requested to help measurement of land and preparation of maps through GPS

14. What has been the general attitude of the FD and other agencies towards the FRA and its implementation? Is there any evidence of deliberate obstruction or delaying?
Ans. The general attitude of Forest department is positive. Initially some NGOs in Jalpaigudi District were misleading the people about the Act. But at present there is no such problem. 203 cases for conferring forest rights are pending due to High Court cases.

15. What measures has the state taken to enter details of the rights granted, into the relevant Record of Rights?
Ans. Land and land Reforms Department is doing it. Present status is not very clear.

16. Is there a forest rights movement, or very active civil society activism and work, relating to the FRA?
Ans. No.

17. Any special measures to ensure transparency in the implementation process?
Ans. The District authorities were instructed to confer rights to each eligible case.

18. Has the state allocated any special budget, and/or obtained one from the central government, to implement the FRA?
Ans. The state Government obtained an amount of Rs 192.91 lakhs GOI in Ministry of Tribal Affairs to implement the FRA.

4: Status of implementation of rights

1. How many gram sabhas have initiated the process?
   Ans. **2819 Gram Sabhas** have initiated the process.

2. How many gram sabhas have completed the claims process?
   Ans. Reports are to be collected from the Districts Authorities.

3. Have SDLCs been set up in each sub-division? If not, how many are left?
   Ans. SLDCs have been set up where there is Forest Areas.

4. Have DLCs been set up in each district? If not, how many are left?
   Ans. DLCs have been set up where there are Forests Areas.

5. If a number of SDLCs and/or DLCs have not been set up, pl. indicate the reasons.
   Ans. The SLDC and DLCs have not set up where there is no Forests areas.

6. How many gram sabhas have set up forest protection committees?
   Have any special problems or hurdles come up in vesting rights, and if so, what has been.
   Ans. FPC have been set up by the Forest Department. Details will be furnished on receipt of information from the concerned Department.
7. Have any special problems or hurdles come up in vesting rights, if so what attempted to resolve them?

Ans. There were some local resistance in some Forest Villages in Jalpaigudi. The problem was sorted out through negotiations with the concerned people. The work of vesting rights in the Hill Sub-Divisions of the Darjling District could not be done as the Panchayat system was not functioning there and Forest Rights Committees could not be formed. However recently 97 FRCs have been formed there.

8. In the case of CFRs (in particular Sec. 3(1)i), what is the average, minimum and maximum size of the claims (i.e. over what area, in hectares)?

Ans. The Minimum size of claims : 0.008 Hectares. Maximum size of the claim is : 0.084 hectares. Average size of claim is : 0.008 to 0.84 hectares.

9. Give full details of the status of implementation as per the tables below

**Table 1: Status of implementation of rights at state level**

<table>
<thead>
<tr>
<th>FRA provision</th>
<th>Sections of claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>3(1)a, 3(1)b, 3(1)c, 3(1)d, 3(1)e, 3(1)f, 3(1)g, 3(1)h, 3(1)i, 3(1)j, 3(1)k, 3(1)l, 3(1)m</td>
<td>Total individual rights</td>
</tr>
<tr>
<td>Ans; No of FRC Claims 129293</td>
<td></td>
</tr>
<tr>
<td>No sent by Gram sabha 42867; passed by SLDC 32219; No Pending with SLDCs 2360; No rejected by SLDCs 9200; No Approved by DLCs 27942; No pending with DLCs 1696; No Rejected by DLCs 2053; No of deeds issued 24871</td>
<td></td>
</tr>
</tbody>
</table>

**Districts visited**

- 2 Blocks visited
- 4 Village visited
- 8 Meetings conducted 16

A. Burdwan District
B. Sabhapati was there Subdivision Durgapur

1. Kanksa village Dhabaru Chamrail

**Sub Division Burdwan North Block Ausgram II**

- Villages 1. Jijira, 2. Labhander
- Tilakchandpur GP 10.15 am

Bukhura range elephants also come from there. The district has more rice mills.
Surveyed all 177 community claims 124 held up for clarification 403 are disputed court cases by the individual HC gave status quo order. They are over the old coal mines claims

**FRA started in July 2008**
Yes, adequate published,
SLMC Implemented circulars issued in July 2008
State government circular for training programmes organized by Forest and land reforms Department people are also involved
Yes founded on individual lands
Predominantly accepted
Dis privileged people still in training
Forest map land affected
Women some given some are joint pattas
Deadline given is over but district committee has entained after relaxation of date
IFA 1927 cases not files
Coordination is very poor
And Burdwan supply jira to whole Orissa
Value of land is very high three types costing 5000 per katha
Very fertile and valuable land 750 sq feet
10088 metres general attitude of the Forest department is very positive

To Burwan Model officer Durgapur Division
Separate patta not given recorded in Record of Rights
Budget given for training was Rs 5 to 6.0 lakhs
Gram sabha met 89 times all completed claims

**The District Burdwan was visited on 29-30.6.10**
The following consultation sessions were held: District Level Committee
The District level committee consultation was done with all important officials and non officials such as DM, DFO, SWO and Non officials and went to field visits with them on both days.
Name/designation of informant(s): The main informants were
1. Shri Onkar Meena District Magistrate, Burdwan
2. Shri Nurul Haque: District Forest officer
Place information was obtained: Burdwan District Headquarters Chamber of District magistrate and while traveling to the field visit

**Part 1: Basic information on the state or district**

Name of state or district: Burdwan  
Total population: About 69 lakhs (2001)  
Total tribal population About 5.0 lakhs (7% )  
Total SC population: 21 lakhs 30%  
Estimated number of FRA-eligible gram sabhas:  
Estimated number of FRA-eligible claimants:

**Part 2: Overview of implementation**

1. When was the FRA process started?  
   Ans: In the year 2008 July

2. Have the provisions of the FRA been adequately publicized, i.e. through the entire state/district, and covering all the provisions? What methods have been used for this?  
   Ans: Yes by circulars, newspapers and meetings adequately publicised

3. Have any special training programmes been organised for government staff involved in implementation? How many and for whom? Has the FRA been incorporated into training manuals for state govt employees?  
   Ans: Yes forest and land Reforms Departments jointly organised

**Eligible gram sabha 89, claims 3456,- 177 community clamis granted 3165 to individual cases**

Ans: yes training programmes organised

1. Has a staggered process been used to implement the FRA, i.e. some provisions before others, or some regions before others, or some kinds of claimants before others? If so, details of such a process, and reasons for the same?  

2. Has there been a predominant focus on individual land rights, and relatively less (or none at all) on community rights? If so, why?  
   Ans: yes on individual rights focus was there but CFRs were also attended

3. Has the predominant trend been to accept claims or to reject them? What are the factors for this?  
   Ans: Very fair predominantly accepted

4. Have any special measures been taken to facilitate the claims of disprivileged, marginal, or otherwise special groups such as nomadic communities, shifting cultivators, hunting tribes, and Primitive Tribal Groups? What has been the experience of these groups in relation to FRA’s implementation?
Ans; Yes disprivileged people are being attended sympathetically applications were still entertained

5. Have any special measures been taken to facilitate the claims of women?

Ans; yes their names are included in the pattas

6. Has any deadline been announced, for completion of FRA procedures?
   Ans; Deadlines given but District Committee is entertaining by relaxing where Claimants issues referred to them

7. How many cases have been filed in the state after the enactment of this act under IFA 1927 on forest people?
   Ans; Indian Forests Act cases were not filed

8. What measures are taken to coordinate the Tribal Welfare, Revenue, and Forest Departments (or other relevant departments of the state)?
   Ans; there is very good coordination among all the Departments on this issue

9. What has been the general attitude of the FD and other agencies towards the FRA and its implementation? Is there any evidence of deliberate obstruction or delaying?
   Ans; General attitude of the Forest Department is very positive

10. What measures has the state taken to enter details of the rights granted, into the relevant Record of Rights?
    Ans; separate patta is given and that has been entered into records of Rights also

11. Is there a forest rights movement, or very active civil society activism and work, relating to the FRA?
    Ans; No specific but general awareness is good

12. Any special measures to ensure transparency in the implementation process?
    Ans; Totally transparency maintained

13. Has the state allocated any special budget, and/or obtained one from the central government, to implement the FRA?
    Ans; Yes budget of Rs 5 to 6.00 lakhs was given

**Part 3: Status of implementation of rights**

1. How many gram sabhas have initiated the process?
   Ans; 89 gram sabhas all have completed th decide their claims

2. How many gram sabhas have completed the claims process?
   Ans; Almost all claims

2. Have SDLCs been set up in each sub-division? If not, how many are left?
Ans: Yes SDLCs are formed where Forest dwellers and tribal population is there

3. Have DLCs been set up in each district? If not, how many are left?
Ans: Yes set up in this district

4. If a number of SDLCs and/or DLCs have not been set up, pl. indicate the reasons
Ans: Where there is no tribal or forest dwellers are not there they have not formed

5. How many Gram Sabhas have set up forest protection committees?
Ans: 89

6. Have any special problems or hurdles come up investing rights, and if so, what has been attempted to resolve them?
Ans: yes, there is a High Court case filed by the Mines owners clarification sought references given to the state authorities attached in the Annexure below

7. In the case of CFRs (in particular Sec. 3(1)i), what is the average, minimum and maximum size of the claims (i.e. over what area, in hectares)?
Ans: To be worked out

8. Give full details of the status of implementation as per the tables below

Table 1: Status of implementation of rights section wise information is not kept

Ans: FRA provision 3(1)a,3(1)b,3(1)c,3(1)d, 3(1)e, 3(1)f, 3(1)g, 3(1)h, 3(1)i, 3(1)j, 3(1)k, 3(1) 3(1)l and 3(1)m provisionwise information not maintained

Consultation with the NGO ABAVP, WB Branch

The ABAVP meets weekly at 6.00 PM every Wednesday. On 30.6.10 the ABAVP, WB met at BB Ganguly street Dalhousie park, representatives of all districts were present. On FRA 2006 implementation, the following issues were raised
1. In all District implementation is not the same. It is better where officers are sympathetic to the Tribal and Forest dwellers cause and where local political support is there.
2. Tribals are almost all are BPL hence all these benefits be extended without any exception
3. There was serious allegation that Birsa Munda basti in PS Mall subdivision district jalpaigudi where tribal huts are burnt by the Forests Department on 13 December 2008 on 17th January 2009 the Forest Department has taken steps to evict the victims. The national Scheduled Tribes Commission president Mrs Urmila Singh visited the place on 14th February, 2009. Rather than taking action against the concerned mischief monger they have started filing false cases against the victim.
4. There is International Boundary poles and wire fencing is done in such a way that fixed up their fruits.
Dr RL Meena  
Member National FRA Committee

Annexure of references made to Government for clarifications

Government of West Bengal
Office of the Project Officer-cum-District Welfare Officer,  
Backward Classes Welfare, Burdwan.
Phone & Fax No. – 0342 – 2663178

Memo No: - 1729(2)/BCW/BDN Dated: - Burdwan, 5th December'2008

To
1. The Divisional Forest Officer, Durgapur.
2. The Divisional Forest Officer, Burdwan.

Sub: - Community Rights on Play Ground, Club etc. in the Forest Land.

Sir,

I am to inform you that the Additional Chief Secretary, to the Govt. of West Bengal, Deptt. of Forest convened a meeting on 27/11/2008 at 11.00 A.M. at ‘Rotunda’ Writers’ Buildings, Kolkata to discuss issues relating to implementation of the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers Act’2006. ADM(L.A) and I attend the meeting. In that meeting ADM(L.A.), Burdwan raised the issue as to whether the Play Ground, Club etc will come under the purview of community Rights as per provision of the present Act.

The ADDL, Chief Secretary and other Dignitaries, present in the meeting, confirmed that Playground, Club etc on the Forest Land which are used by the community would certainly come under the purview of the Community Rights as per provisions of the present Act and Rule’08.

If any confusion arises in this regard you may kindly contact the Additional Chief Secretary, Deptt. of Forest. Govt. of West Bengal for confirmation and clarification as well.

This is for your kind information and taking necessary action.

Yours faithfully,

Member Secretary,
Forest Rights Committee (Dist. Level), Burdwan.
&
Project Officer-cum-District Welfare Officer,
Backward Classes Welfare, Burdwan.
Memo No: - 1729/1(11)BCW/BDN. Dated: - Burdwan, 5th December’2008

Copy for kind information to : -

1) The Sabhadhipati, Burdwan Zilla Parishad, Burdwan.
2) The Commissioner, BCWD, 8, Lyons Range, Kolkata-1.
3) The District Magistrate, Burdwan.
4) The Additional District Magistrate (L.A), Burdwan.
5) The Additional District Magistrate (L.R) & District Land & Land Reform Officer, Burdwan.
6) The Sub-Divisional Officer, Durgapur / Sadar (North), Burdwan
7) The District Panchayat & Rural Development Officer, Burdwan.
8) The Block Development Officer, Ausgram – I / Ausgram – II / Kanksa / Durgapur – Faridpur Dev. Block, Burdwan
9) Sri. Kabilal Maddi, 2 Parcus Road, Burdwan.
10) Sri. Suren Hembram, 2 Parcus Road, Burdwan.
11) Sri. Bireswar Mondal, 2 Parcus Road, Burdwan.

Member Secretary,
Forest Rights Committee (Dist. Level), Burdwan.
&
Project Officer-cum-District Welfare Officer,
Backward Classes Welfare, Burdwan.

Government of West Bengal
Office of the Project Officer-cum-District Welfare Officer,
Backward Classes Welfare, Burdwan.
Phone & Fax No. – 0342 – 2663178

Memo No: - 1806/BCW/BDN Dated: - Burdwan, 17th December’2008

To
The Joint Commissioner for Reservation & Ex – Officio
Joint Secretary to the Govt. of West Bengal,
Backward Classes Welfare Department,
Writers’ Buildings, Kolkata-1.

Sub: - Question raised by the D.F.O., Burdwan as to conferring Community Rights on Play Ground, Club etc., used by Tribal Forest Dwellers.

Sir,

In reference to the subject indicated above, I am to enclose a copy of letter received from the Divisional Forest Officer, Burdwan Division vide his no. 4833-37/28-48 dated 12/12/2008 for favour of your kind perusal and taking necessary action.
A detailed discussion regarding conferring community rights on Playground, Club etc. was held at Rotunda, Writers’ Buildings on 27/11/2008. The Additional Chief Secretary, Deptt. of Forest and Other Dignitaries present confirmed that Playground, Club etc. on forest land for community use would certainly come under the purview of the community rights as per provision of the present Act. The issue as discussed in the meeting was communicated to the D.F.O., Burdwan Division and the D.F.O., Durgapur Division vide this office no. 1729(2)/BCW/BDN dated 05/12/2008. In spite of that, the D.F.O., Burdwan has expressed a different opinion regarding the issue and he returned back 2 (two) such Pattas without signature.

Where as a decision has been taken in the meeting held on 27/11/2008 towards community rights on Playground, Club etc. in the forest land, a clear instruction may kindly be communicated to this end to remove the ambiguity while conferring forest rights on Playground, Club etc. for Community use at your earliest convenience.

Enclo: As stated.

Yours faithfully,

Project Officer-cum-District Welfare Officer,
Backward Classes Welfare, Burdwan.

Memo No: - 1806/1(6)/BCW/BDN. Dated: - Burdwan, 17th December’2008

Copy forwarded for information and taking necessary action to:-

1. The Sabhadhipati, Burdwan Zilla Parishad, Burdwan.
2. The Addl. Chief Secretary to the Govt. of West Bengal, Deptt. of Forest, Writers’ Buildings, Kol-1.
3. The Secretary to the Govt. of West Bengal, Backward Classes Welfare Department, Writers’ Buildings, Kolkata - 1.
4. The District Magistrate, Burdwan.
5. The D.F.O., Burdwan.
6. The Additional District Magistrate (L.A), Burdwan.
Anexure-II

List of Submission

Letter of Mangra orao whose 17 year old song Shankar orao was killed by Beat officer in Jalpaiguri Division
Copy of the title deed
Anexure-III

Article by Sh Sourish Jha Teacher Fellow, Department of Political Science, North Bengal University, Darjeeling. The article was written when first Review committee was formed under Moef.

Process Betrays the Spirit: Forest Rights Act in Bengal

SOURISH JHA

The implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 has created controversy in West Bengal. The gram sabha, the basic unit in the process of forest rights recognition, has been replaced by the gram sansad, denoting the village level constituency under the panchayati raj system. This has been followed by contiguous arrangements as well as initiatives which are inconsistent with the Act. All these factors have led to undermining the spirit of the Act to promote community governance of forests, which has invoked stiff opposition from forest dwellers in the region.

More than two years after the notification of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, the Ministry of Environment and Forests (MoEF) has constituted a committee to study the implementation of the Forest Rights Act (FRA) by its notification of 11 February 2010. The composition of the committee, dominated by the representatives from MoEF, has evoked harsh criticism from different corners. Many organisations and activists working for the forest dwellers have expressed their doubts over the impartial functioning of the committee, while accusing the ongoing violation of forest rights by the state forest departments (SDs). However, the raison d'être behind such a committee cannot be brushed aside, particularly in the context of a perceived sabotage or destabilisation of community rights as enshrined in the act by the governments. Besides, even after a long delay and several anomalies in the distribution process of title deeds of the land at the individual level, most of the state governments still have neither framed a clear procedure nor encouraged claims to be filed and recognised for community rights. This is amply evident from the recent statements of the implementation status of the FRA, 2006 by the Ministry of Tribal Affairs (MoTA) as on 28 February 2010. The statement shows that except for 41 titles out of 4,343 community claims in Assam and 58 titles out of 1,895 community claims in Odisha, none of the 27 states are either ready or have distributed community title deeds so far. Meanwhile, the GoI initiative to promote joint forest management (JFM) under the National Afforestation Programme continues to undermine the Section-46 of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007, which clearly states that Gram Sabha shall constitute Committees for the protection of wildlife, forest and biodiversity, from amongst its members, in order to carry out the provisions of section (5A) of the Act. The Spirit and Its Betrayal

The significance and fundamental contribution of the act lies in its community orientation, going beyond the paradigm of individual rights not only in respect to the community claims over its resources but also in the overall procedure for recognising forest rights even at the individual level. The act is qualified with the construction of a political community at least at the village level, where sole ‘responsibility and authority’ has been given to the gram sabha to settle people’s livelihood rights, ensure food security, sustainable use of resources as well as to process forests and biodiversity to maintain an ecological balance for strengthening the conservation regime of the forests. But, unfortunately, the whole process of community building and community control has been subverted through the process of its implementation throughout the country. Its implication has been reduced to a mere “para” giving process under the ongoing colonial regime of hegemonic control of the RD. The classic example of the gross violation of its spirit can be drawn from West Bengal’s forest villages, where even the procedural part of the act has been denied by the Government of West Bengal (GoWB) and bureaucratisation of implementation leads to the negation of its substantive character.

Major Inconsistencies

Following the notification of the FRA, 2006 on 1 January 2008, the GoWB started the implementation of the act in March 2008. The initial Memo/Order was issued by the Backward Classes Welfare Department and the Panchayat and Rural Development (PARD) Department on 10 and 17 March, respectively, and subsequently, followed by the district level orders. However, both the memo and the order remained inconsistent with the act and violated in letter and spirit. Major inconsistencies in that Memo/Order are as follows: (1) According to the Department of Backward Classes Welfare, Memo No 67 (18)-BCW/GM (MC)-5/2006 (dated 10 March 2008),...
Since the village level unit of the panchayati raj institution (PRI) in West Bengal is known as "gram sansad", the term "gram sabha" shall be replaced by "gram sansad" for the purposes of this act and rules made thereunder (approval of the M.O.T.A., government of India has been sought for). Forest Rights Committee (FRC) may be formed by the gram sansad... In the FRC, representatives from the local forest and land revenue (LA) offices should be made permanent invitees.

According to the P&RDO department Order No 1220/PR/01/1A-2/07 dated 17 March 2008,

- Since Gram Unnayan Samiti has been constituted at the level of gram sansad, the FRC shall act as a functional committee under the Gram Unnayan Samiti.
- The chairperson and the secretary of Gram Unnayan Samiti shall act as the chairperson and the secretary of the FRC.
- The district panchayats and rural development officer of the district shall be included as a permanent invitee in the FRC.

This Memo and Order, however, create a great confusion among activists and intellectuals working for forest dwellers as it violates the first principle of the process of recognition of forest rights through gram sabhas, replacing it with the gram sansad.

**Gram Sabha vs Gram Sansad**

Insofar as the FRA, 2006 is concerned, the "gram sabha" has been considered the basic unit for recognition of forest rights. The act defines a gram sabha as the village assembly comprising all adult members of the village and the definition of the village includes the forest villages either as has been recorded or defined by the state via.

On the contrary, the gram sansad, under the West Bengal Panchayat Act, 1973, has been defined as a body constituted with all the voters in a constituency of the gram panchayat. The constituency, however, may comprise several villages, depending upon the size of the voting population, even if they reside at a considerable distance from each other. As for example, in an extreme case, 11 remote and distant forest villages having a small population in the Buxa Tiger Reserve (East) divisions of Jalpaiguri district come under a single gram sansad, namely, the Buxa Road under the Rajabhatkhowa gram panchayat. Moreover, each gram sansad elects a member in the panchayat and that member in practice is concerned mostly about his own village, whereas the other villages have been neglected. Again in some cases when a candidate has been selected from outside the villages under the sansad on the basis of loyalty to a political party, the development of the villages is often ignored at the cost of promoting the party agenda on a priority basis. Hence, the role of the gram sansad, in practice, has never been to form or nurture a collective like village commons, rather to operate as a mechanism of a panchayat to identify people and discharge benefits to them under different developmental or poverty alleviation schemes of the government.

Therefore, the gram sansad under the West Bengal Panchayat Act, 1973 cannot be equated with the gram sabha as defined under the FRA, 2006. The purpose and objective of both the units differ considerably from each other. Under the act, the gram sabha or village assembly has been given the authority to initiate the process for determining the nature and extent of individual and community forest rights as well as the responsibility to "constitute committees for the protection of wildlife, forests and biodiversity". Putting this concept of gram sabha or village assembly into practice would inspire them to form a political community duly aware of its rights and responsibilities at least at the village level, while cutting across the ethnic and religious boundaries. But the replacement of the gram sabha by the gram sansad as was envisaged merely under the formal process of functioning of FRA, thereby, impeding the process of community formation.

**FRC and Gram Unnayan Samiti**

Besides, the Forest Rights Rules, 2007 states that a committee, namely, the FRC shall be constituted by an election of the gram sabha in its first meeting and the committee will decide a chairperson and a secretary among its members. But both the Memo and the Order (gown) cited earlier are unequivocal in violating the same as they prescribe formation of the FRC at the gram sansad level and the committee has been placed under the purview of the Gram Unnayan Samiti (GUS). It is stipulated in the order that the members of the GUS will select the members of the FRC and the chairperson and the secretary of the GUS shall act as the chairperson and the secretary of the FRC. Accordingly, an elected member of the gram sansad will become the chairperson of the FRC by virtue of his/her position in the GUS, no matter whether he/she has any relationship with the forests or not.

Meanwhile, according to the same rule under the FRA, 2006, no government officials are allowed to be incorporated into the FRC, but both the Memo and the Order have been left with the provision for including government officials from the forest and land revenue offices along with the district panchayat and rural development officer in the name of being "permanent invitee" to the committee. All these provisions have not only reduced a full-fledged committee like the FRC into a subcommittee under the GUS, but also transformed its basic nature from a people's committee to a partisan-bureaucracy-dominated, quasi-representative committee, working under the pulls and pressures of village level electoral politics.

**JFM vs FRA**

The negation of the act becomes obvious once again with the resolution by the State Panchayat (FRA) on 9 October 2006. The resolution reiterates the JFM programmes by renaming all Forest Protection Committees (FPCs) into FRC committees (FPC-FRCs). The resolution takes into account the FRA, 2006 which recognises the role of community and authority of tribals in conservation of biodiversity and maintenance of ecological balance.
and states that “Joint Forest Management Committees shall be constituted for the purpose of development of degraded forests and forests prone to forces of degradation” in the districts of north Bengal (excluding Darjeeling, Gorkha Hill Council Area) along with Murshidabad, Nadia and Hooghly. The resolution is nothing but a bit of modification of the earlier JFM Resolution of 1994 as it has added 15% share of net sale proceeds of timber harvested at the time of final felling for its member, which was absent in the earlier resolution. The resolution, however, directly violates the act while authorising an extra-statutory body, namely, the JFM, for protecting forests, whereas Section 3 of the act provides the gram sabha and the communities a clear and precise power to conserve, protect and regenerate forests.

It is also contradicting the provision for various forest rights stipulated in Section 3 of the JFA, 2006, such as the ownership rights for minor forest produce in all forests including the protected areas like wildlife sanctuaries or national parks.14 It has been reported from the Cooch Behar forest division (Wild Life m) that to counter JFA, 2006, the JFM keeps on intimidating the villagers about the withdrawal of the money allotted for development purposes unless new JFM committees are formed according to the department’s dictate. Actually after the introduction of the act, there is no legality of JFM as a mechanism of collaborative governance to protect the forests because the act does not leave any provision for collaboration between the JFM and the forest villagers, instead it empowers the gram sabha to control and manage their own forests and the role of JFM and other state authorities are expected to assist the gram sabha in that process.15

The Resistance
This faulty and biased implementation of JFA, 2006 has faced stiff opposition from the National Forum of Forest People and Forest Workers (NFFFW), a platform organizing a movement for ensuring the rights of the forest dwellers in north Bengal along with the rest of the country, since 2006.16 Further, it played a positive role in lobbying at the national level to amend the Scheduled Tribes and Other Traditional Forest Rights (Recognition of Forest Rights) Bill, 2005 as well as to enact the JFA, 2006 in line with the major recommendation from the Joint Parliamentary Committee.

Hence, after the notification of the order dated 17 March 2008 by the principal secretary, PARD, and the West Bengal government, the regional committee of NFFFW placed a memorandum before the chief minister of the state on 26 March 2008, demanding an immediate withdrawal of the order violating the letter and spirit of the act. Consequently, it organised several demonstrations including simultaneous gherao of block offices throughout the region to suspend the illegal process of FRC formation by the state authorities. In April 2008, it closed 10 government timber depots across north Bengal for more than one month. Since then a number of movements have been taken up by NFFFW to arrest the faulty implementation as well as to organise forest villagers at par with the provisions within the act. The programmes include mass petitions by the forest villagers at the block level, forest beewise campaign to establish people’s control over the forest resources, and most importantly, the dissolving of gram sansad based FRCs and replacing them by gram sabha based FRCs. In this process, the movement formed almost 50 FRCs at the gram sabha level, while replacing corresponding FRCs at the gram sansad level till the end of 2009.

During this period the struggle was characterised by opposing initiatives between the JFM and NFFFW to implement the act. One after another gram sabha areas of the forest communities while empowered by their newly formed awareness of the people’s act, continued proclaiming their legitimate control over the forest resources across forest divisions in north Bengal. The process, however, found its greatest ever manifestation in January 2010, when The Telegraph reported on 7 January 2010 that more than 500 forest dwellers took control of a 240-hectare forest tract on the outskirts of Jalpaiguri Wildlife Sanctuary by putting up a board on the Kodal Bari area under Coochbehar (Wildlife m) Division while announcing that no one would be allowed to conduct any activity in the area without the permission of a Gram Sabha they had formed. The villagers celebrated the “take over” of the forest land by bursting crackers, smearing each other with gulal and cracking open coconut.17 However, after a long struggle, the sub-divisional officer of Jalpaiguri and the district magistrate of Jalpaiguri have admitted the legality of the FRCs formed at the gram sabha level under the leadership of the NFFFW. Moreover, in a few specific cases they admit the role of the gram sabha practically.

However, these are exceptions and unless the order is revised the gap between the JFA, 2006 and the Order/Memo still remains. Taking this fact into account, almost 40 gram sabhas in the forest villages of Bengal under the leadership of NFFFW along with Nagrik Maanch (Citizen’s Forum), Kolkata filed a writ petition against the state government in the High Court of Kolkata in June 2009. The case as well as the struggle is still going on. It is very early to predict the fate of the act in the state, but undoubtedly, it can be asserted that a new ideology and practice of forest governance by the communities is under the process of crystallisation in the region, which may in the long run replace the hegemonic claim of the JFM over the forests.

Notes
1. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 came into force on 31 December 2000, followed by the notification of rules on 1 January 2008.

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K C Enterprises
13-138A, Street No 17
Himayathanagar
Hyderabad 500 029
Andhra Pradesh
Ph: 66465549
Annexure - IV
List of Participants

1. MLA – Welson Chapramari
2. Shekhar Bhattacharjee – Vill jaiyanti
3. Ajay Bhattacharjee
4. Maite Lama
5. Kamal Bandopadhaya
6. Ashish Dey
7. Himal Kshetri
8. Raity
9. Shiva Sonuwar
10. Lalsingh Bhujbel- Garo bast, Rajabhatkahwa
11. Shiva
12. Kishore – Samsing
13. Shanker
14. Leela
15. Gorangu
16. Nipen kayi
17. shyam maiti
18. Govind Rukka
19. Prem bhadur Khshetri
20. Savitri Thapa
21. Meena Sherpa
22. Krishna Thapa
23. Shekhar shatri
24. Surya kr Shetri
25. Chandrababu pradhan
26. Kurba Sherpa
27. Satyen Rabha
28. Shayamal Rabha
29.
30. Ravi saymani – Kalkot FV
31. Neeru Lama – Parupurosh FV
32. Ravi Rabha – Chillapata, Angdu FV
33. Kodal Basti – shyamal Rabha
34. Ramkumar Lama
35.
36. Sourish Jha, Teacher Fellow, Department of Political Science, North Bengal University, Darjeeling
37. Rajeeb Chatterjee, Senior Research Fellow, Center for Himalayan Studies, North Bengal University, Darjeeling
38. Amlan Lahiri, Assistant Professor, Kalimpong Cluni Women's College, Darjeeling.
39. Sushovan Dhar, Independent researcher and activist, Kolkata
40. Pratip Nag, Activist Kolkata
41. Sirsendu Dutta, Journalist, Kolkata
42. Bodhisatva Roy, ActivistKolkata
43.
Note: Thousands of people gathered in the public consultations, we don’t have their names with us. The photos are attached.

Officials

44. Ranger – Buxa Tiger Reserve (BTR)
45. DFD (BTR)
46. DFO(BTR)
47. Project Officer (BCWD)
48. SDO Alipur Duar
49. Project officer (BCWD Darjeeling)
50. Inspector (Darjeeling BCWD)