

# MoEF/MoTA Committee on Forest Rights Act

**Report of visit to Sikkim State Consultation on FRA,  
22-24 September, 2010**

14<sup>th</sup> November, 2010

## **Introduction**

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Justice (Retd) ML Markam  
Field Visit of the state on 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> September, 2010**

***Note: This report is written for the purposes of the Committee's ongoing work; any views contained in this are not necessarily those of the entire Committee and are not to be taken as final views or recommendations by the Committee***

## **1. The programme**

Four members of the Committee, Jarjum Ete, Roma, Dr RL Meena IAS(Retd) and Justice (Retd) M.L. Markam, visited Gangtok and surrounding areas on 23<sup>rd</sup> September 2010, for consultations and field visits relating to the implementation of the FRA in the hills of Sikkim. :

23<sup>rd</sup> July Public consultation at Gram Panchayat Iror Pass, District Centre East Sikkim and with Senior officers

### **i.Public consultation**

Organised from 11 am to 1.00 pm at the Gram Panchayat Iror Pass, the public consultation had been publicized through relevant Village FRC Committee some NGOs, community representatives, and officials. About 30 people participated, mostly from Van Panchayat villages, villages, Bhutia settlements, and other communities; NGOs; scientists and academics; forest and social welfare officials; and media. Representation was also made by political parties such as Congress, BJP and CPI (ML), and various social movements.

The district level consultation was organized at the city Hall which was represented by all District Magistrate and other officials at district level , Panchayat representatives

### **ii.Field visits**



## **The Sikkim State**

### **2. General Introduction**

**Sikkim is one of the small category states of India joined in Indian Union in 1974. It is one of the most progressive states. Sikkim is declared as the best among all the 12 Eastern states , as per the ‘State of States Conclave’ organized by ‘India Today ‘ conclusions .** National Tourism Award for the best tourism related programmes for the year 2007-08., Sikkim was awarded the best in Preserving National Resources and maintaining State’s environment., Four India Today Awards in the small state category namely; the Best State in Education, Bharat Nirman Award in E-Governance, Bharat Nirman Award in Rural Electrification and Bharat Nirman Award in Rural Roads. State got Leadership Award 2009 in horticulture. Adjust as the best State for Adventure Tourism for the year 2009. The state bagged the IBN7 Diamond State Award for Sikkim in ‘Water and Sanitation’ category’ The state is located approximate 27 Degree North latitude and 88 Degree East longitude. State has total area of 7096 sq KM. Gangtok is its capital

There are 440 villages, eight towns and four districts in Sikkim. The state has three major ethnic groups, namely Lepchas ,Bhutias and Nepalis The climate of the state varies from cold temperate and alpine in northeast to subtropical in the south. Climate is Tropical, temperate and alpine . Ithe West it has mountain Khangchendzonga at the peak height is 28156 ft, the second highest peak of Himalayas and Mt Kabru at 24215 ft . Agro-climatically, the state is divided into four zones, viz.,

- \* Subtropical zone (below 1,000 metres);
- \* Humid zone (1,000-1,600 metres);
- \* Mid-hill dry zone (again in altitude ranging from 1,000-1,600 meters); and
- \* High hill temperate zone (with an altitude of above 1,600 meters).

The genetic diversity, of both forest vegetation and agricultural crops, is enormous. The state has about 600 plant species and more than 4,000 species of flowering plants.

The Government of Sikkim has issued a notification dated 28.1.2008 regarding constitution of an Expert Committee for identification of Critical Wildlife habitats in Protected Areas (PAs).

### **3.FRA Committee Visits to Sikkim**

A three day state visit was conducted in September 2010 by the National Forest Rights Act Committee to review the implementation process of the Forest Rights Act, 2006 and Rules 2008 there under. This report summarizes the discussion enquiries and observations recorded during field visits, along with public consultations and meetings with state officials.

#### **4.The team carried out the following:**

1. Discussions with the Chief secretary and state officials District level Committee consultation Trip to East Sikkim nce of their claims to the forest land.
2. District Collector and senior officials of various departments.
3. Discussions with villagers Linchan Lepcha President , Vache Singh Rao Panchayat Secretary,V.K.Tiwari Conservator of Forest , Demo Lepcha United Democratic Party, Kalyan Lepcha Member and others

#### **i. State Level Chief Secretary Meeting**

The meeting with Sikkim Chief Secretary was scheduled on 23<sup>rd</sup> September. The meeting was attended by Chief Secretary, Principal Secretary, Tribal Welfare; PCCF; Principal Secretary, Revenue; Commissioner, Tribal Welfare and Principal Secretary, Forest. The meeting lasted for 2 hours in a very cordial and receptive atmosphere. The Committee brief the Secretaries of the provisions of the Act and wanted state to take steps to implement the Act. The Committee explained the provisions of the Act, and insisted that it should be implemented. They follow the customary laws but committees were notified. The administrative orders are enforced. The Chief Secretary admitted that there is no much study of the Act has bee done and they will go through its provisions and take decision to implement in the state.was of the general opinion that if the Act is to be implemented there will be no forest coverage to be left with. He admitted that district magistrates understand the Act variously from district to district. He informed that the Act could not be implemented , which would require an amendment to its rule. The Government of Sikkim has accordingly written to Government of India to amend rules and is still awaiting a response. The Chief Secretary also carefully articulated the Government of Sikkim's views on the nature of claimants and categorically reiterated, There is no concept of villages in Sikkim The Survey was done by Survey of India .1952 proper land survey was done.Next survey was in 1978-79, there were irregularities in recording, 4 types of Forests I Reserve Forest,ii Khasmal Forest meets local timber needs and iii. Gaucharan Forests Grass lands or grazings areas, iv Private Monestry Forests every village has such forest for monestry.

Notifications was done in 1905 and in 1909 Forest Department was established when forest was declared . Before that it was under the control of thekadars. they have rights to mortgage the land or not is not clear. 1909 Declaration of Forests that all forest is under the state. 1945 Abolished the Thekadars 1955 IFA Established.

In 1988 Forest Act was enacted .1980 Survey was done. Bio Diversity Act 2002

Forest Survey of India was done in the year 1952 , after merger in 1974 survey was done in the year 1979-80 when boundaries were demarcated. About 100 surveyors were deployed.84% of the area is covered by the Forests. There is one National park of Kanchen Junga at the height covering 1784 sq KM in the North, Bordering Nepal and China .As er their under standing no tribal is living in the forest area.Khasmal is

community forests. In 1952 the population was small every one has got land as per their requirements . There no zoom cultivation here but it is mostly terraced cultivation There were many notifications before Indian Constitution was applied .After 1978 there is no fluctuations in the boundary..They notified to protect the forest and and banned grazing

165 grams,891 woods in 5-6 wards devided evry village.There are BDO s and 27 Assistant Conservators of forests. Old laws are protected under the notification of merger under article 371

The infrastructure is on private land

They have 3.00 acres to 1000 areas

For recovery purpose they have special law Public demands Recovery Act in 1950.

## **ii. District level Consultation at 12.30 PM:**

District level Meeting: Initially the Members gave account of the FRA AcT .Dr Ganga Khujur participated, Rvenue officer was Mr GP Sharma, land Department. People from all districts came and participated. DLCs have been formed, Sikkim has 4 districts East, West, North and South. Three categories of people Bhutia, Lepchas, Nepalis , Sherpas and Tawang. There are Echo Development Committees (EDC) in a 10-15 hactares area one Amin is there. There are village echo Committees.(EDCs) . There are collections of firewood, using mushroom and Bumboo shoots from the Forest. There is no shortage but forest does not allow daily collection of MNPs. They eat cane shoots .but do not exploit the forest for commercial purpose .They are working through EDCs plantation in every grazing centres. There is no much actions under the Indian Forest Act in Sikkim, people are not harassed. This Act came into force after presidential order of Merger. Record was done in 1950 when their rights were given during Chogyal time and land management was introduced. In 1945 Thekadari system was abolished .1950 Govt of Sikkim notification was done for survey which was completed in 1955. .The Panchayats are 20 years old after Supreme Court order for Sikkim implemented. After 2005 irrigation in terrace cultivation is used .As Traditional rights Collection of Bumboos, Medicines and Minor Forest products is done by local tribals.

**iii. Village Visit:** The team visited one village where it met residents, that they may proceed with extending the time frame of their FRCs and carry through the process of filing claims. District officials who were with the team, including the Social Welfare officer was there

## **5.Conclusion**

Given the above, the team has arrived at the following:

The team's findings were reported to the district administration on 23<sup>RD</sup> September, 2010 and the state Chief Secretary (along with secretaries of all relevant departments). It appears from news reports, however, that the district administration is proceeding with land acquisition and demolition of the *paan* cultivation of people on forest land.

Reportedly this is of families who have consented to such acquisition; however this does not alter the fact that such work is illegal.

i. The team concludes that:

**The implementation of FRA 2006 has not been up in the state, requiring FRA implementation by organizing Gram Sabha, SDLC and DLCs for forest claims.** The fact that completion of the FRA procedures in the area is required as per rest of the country

ii. MoEF is therefore urged to take the following steps:

1.84% of the area is forest hence there are tribals and ***Other Traditional Forest Dwellers (OTFDs) in the area***, contrary to what the state administration is saying that they are not there. Both documentary and oral evidence exists to this effect.

iii. The FRA process has not been started, in fact it has not proceeded beyond the initial stages, for various reasons. ***It is therefore incorrect and misleading for the district administration to conclude that there are no OTFDs "in cultivating possession of the land since 3 generations" in the area.*** Firstly, this cannot be concluded without having gone through the process of claims; secondly, the FRA provides for dependence on forest land also as a criteria for eligibility, not only "cultivation possession of land".

iv. There are various development needs of the area which need land resources and can be given as per this Act for which there is no need to approach Central Government but the authorities given in the Act are competent to finalise.

### **Key Findings:**

The committee has the following findings for the state of Assam.

1. No Claims have been made though this Act so far. All the eligible areas and people seem to be not aware of the Act. Therefore, the claims have not filed under the FRA under IFR.
2. There has been lack of awareness about the implications of the CFRs. The community rights under the FRA are largely understood under section 3(2) of the Act. There is no, applications with an aim of claiming community rights have been submitted under this provision. The Sikkim government admitted that almost no action has been taken under sections 3(1) (b to m).
3. It seems that the Forest Department has mis understanding on the issue advising Government for need of its implementation. Under the Act the nodal Department is Social Welfare Department. The Social Welfare Department need to study and convince its Government of the benefits of the poor people. A large number of genuine claimants could not file their claims. This is mostly due to the fact that the state government is not entertaining any claims. It is important that the state government issues regular clarification on this point, and permits the district officials to submit their applications.

4. All the deserving claimants appear to be left out of the process entirely. This is mostly due to both lack of awareness and information about the Act. This has happened mostly in the whole state.
5. The state has not engaged any formal or informal research institutes to carry out independent assessment of the FRA im Splementation.
6. Importantly, the Committee could not see the gender sensitivity as embodied in the Act as there is no implementation. However it was found that wives' names have been put in most cases and titles distributed are also entered in the name of both husband and wives names in land titles hence this provision will be followed Committee does not have doubt.
7. The process of entering the awarded titles in the record-of-rights of revenue department is entirely different as there is no land Revenue law applicable as in rest of the country but that is not coming in their way of administration .
8. The real implementation of the Act is poor and misdirected. The Social Welfare department is also understaffed. The lack of understanding of CFR provisions is strongly visible even amongst the senior officials whether they belonged to Forest or other Departments. Also, in the state, the SLCC's ways of handling of the FRA implementation is largely in the line of any normal activity of the state bureaucracy. The primary focus of the SLCC seems to be building up is mere disposal of 'cases'. It has failed to formulate principles and social indicators for monitoring the process of recognition and vesting of forest rights.
9. Another primary reason for the poor performance of the Act in the state is the role of the state forest officials. The people from the Forest Department have misinterpreted the provisions of the Act. The Forest Department continues to argue that Joint Forest Management (JFM) is a superior mechanism participatory forest management. In no case, it has shown interest in de-centralization of forest governance under the Community Forest Rights provision of the FRA.
10. The scope and nature of the definition of 'forests' is grossly misinterpreted by the state government officials. This had led to non-implementation of the FRA in areas where the definitions of 'forests' has strong implication. This is particularly true in those areas where the state has shared boundaries with the state of Arunachal Pradesh.
11. A more crucial issue which has emerged in Assam is about those lands that have forest on them, but are legally categorized as revenue lands. Claims to these have been turned down as this is not legally forest land. An illustrative example of this is the lands where 'tauzi' fines are being regularly given. Claims to these have been turned down as this is not legally forest land.
12. Though the Social Welfare Department is the nodal agency for implementation of the FRA, the structure and presence of the department at the field level is very weak. The Committee understood that the department has not been able to provide sufficient inputs and supports, facilitating filing of form etc. Primary task

is being carried out by the revenue officials and sometimes supported by the lower staffs of the forest department. S

13. Since the state joined the Union late, there were many laws remained unimplemented. Historically, the state underwent through different stages of evolution of modern legal meaning of 'forests'. Accordingly, the word 'forests' has been complex social and ecological underpinnings.

#### **Key Recommendations -**

- The Committee suggested that due procedure as laid down under the rules and provisions of the Act be followed while implementing the FRA.
- The Committee also recommended that the State government must chalk out proper strategy in understanding the broader scope and definition of the term 'forests'.
- The committee was of the view that customary community rights like traditional fishing rights be recognised
- The Committee realised the need of serious cooperation in providing bureaucratic support to and need for providing evidences for the OTFD.
- The state government has not initiated implementation both for tribal and OTFD to addressing their this must be taken up seriously and urgently.
- The Committee submitted that the Government of Sikkim should urgently take up the matter of implementation of the Act.
- Notification of conversion of Forest Villages into Revenue Villages needs to be undertaken urgently. The state government's lack of willingness to comprehensively address the issue of this conversion is a matter of serious concern.
- The need for Community Forest Rights needs to be highlighted amongst the deserving populations and effective implementation of these rights and privileges need to be ensured.
- The Committee also suggested that cadastral survey of the forest land for which titles are distributed may be undertaken.
- Details of each claim (whether accepted, rejected or in process) should be put up on a public website so that each claimant can find out the status of claims.
- There is no much grassroots activists and organisations working for a long time in FRA process in the state .The FRA implementation process is critical to the

success of the implementation. These groups need to be brought into the process at all levels . The State-level Monitoring Committee needs to include key persons from such groups and have to be effective.

- The need to organize a workshop at the state level under the leadership of Chief Secretary, inviting SLMC members, FRC representatives, Deputy Commissioner's, Forest Department representatives, Conservationist, NGO's, People's Organisation and other interested groups.
- The State Level Monitoring Committee should take a pro-active role so that FRA can be implemented in efficient , fair and effective manner.

***Report written by:***

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**Acronyms:**

**CS: Chief Secretary**

DM- District Magistrate

CFR- Community Forest Rights

CWH-Critical Wildlife Habitat

DFO- Divisional Forest Officer

FRA-Forest Rights Act

FRC-Forest Rights Committee

FV-Forest Village

GPS-Global Positioning System

IFR-Individual Forest Rights

OTFD-Other Traditional Forest Dwellers

PA- Protected Area

PCCF-Principal Chief Conservator of Forest

RV-Revenue Village

SDLC-Sub-Divisional Level Committee

WS-Wildlife Sanctuary