



Obstructed Access to Forest Justice in West Bengal

State Violations in the Mis-Implementation of the Forest Rights Act 2006

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ABBREVIATIONS

CFC	Clear Felling Coupe: <i>Forest areas that are clear-felled to harvest the standing resources and then replanted</i>
DFO	Divisional Forest Officer
DLC	District level Committee formed under FRA
EDC	Eco-Development Committee (Eco-Development Project
FD	Forest Department
FPC	Forest Protection Committee (of JFM)
FRA	The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act2006
FRC	Forest Rights Committee (at the Gram Sabha Level for the FRA)
FSI	Forest Survey of India located in Dehradun, India
GoI	Government of India
GS	Gram Sabha
IFA	Indian Forest Act 1927
NFFFW	National Forum of Forest People and Forest Workers
NTFP	Non-timber Forest Produces
OBC	Other Backward Castes
OTFD	Other Traditional Forest Dweller
PRA	Participatory Rural Appraisal
PTG	Primitive Tribal Groups
SDLC	Sub-divisional Level Committee formed under FRA
SDO	Sub Divisional Officer (<i>Administrative officer of a sub division, which is a part of a District</i>)
ST&OTFD	Scheduled Tribes and Other Traditional Forest Dwellers

Local Terms

<i>Patta</i>	A government tenure document, recognising the stated rights of the holder, in a specified area
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SUMMARY AND KEY FINDINGS

This paper assesses the extent to which the Forest Rights Act 2006¹, the most significant institutional reform of rights in forested landscapes since Independence, is being implemented across West Bengal, and whether it is contributing to the alleviation of the chronic and acute poverty prevalent in these areas of the state.

The passing of the Act appeared to presage a fundamental reversal of a major 'historical injustice' in which the composition of the colonial forest estate deprived rural people of their customary rights. We assess the extent to which an apparently pro-poor *de jure* reform is actually achieved *de facto* on the ground, particularly in relation to the entrenched power of the *status quo* forestry institutions and related commercial interests. This paper presents findings from field research conducted throughout 2008 to 2009 across 9 villages in the South West and the North of the state. Ongoing revisits have been conducted in the Northern villages, but not in the South West as violent political conflict has engulfed the region and prohibited it.

West Bengal covers only 2.7% of India's land area but supports 7.81% of its population (2001 census), leading to a population density of 903 persons / km², the highest of any Indian state (GoWB 2008). Of the state's 80.22 million population, 5.48% are Scheduled Tribes (mainly *Santals*) most of whom reside in forest areas, and there are many more households who are rural based and depend on forests for their livelihoods.

As the state gradually annexed forest lands to create the forest estate from the mid 19th century on (and currently 13.52% of the state), they deprived local people of a wide range of customary rights, and these deprivations have largely continued to the present. Deprivations include: extinguishment of customary collective management, control and use rights; restrictions on cultivation in forest areas, de-recognition of established villages and eviction of families without rehabilitation; creation of bonded labour 'forest villages'.

This erosion of rights precipitated resistance and often violent conflict during the colonial period, which was generally brutally suppressed. There was surprisingly little change post Independence, and indeed the FD enclosed even more forests. Between the 1950s to 1970s, whilst state revenues from timber grew, the relationship between the Forest Department (FD) and local people deteriorated into outright hostilities in which many people lost their lives, both villagers and FD staff, whilst the forests rapidly deteriorated.

The situation varied across the different regions of the state. In the southwest conflict became to some extent ameliorated after the 1970s, as the celebrated 'Arabari experiment' of West Midnapore facilitated by Dr Ajit Banerjee (one of the co-authors of this paper) demonstrated that Forest Officers could collaborate with local people over forest management. It gradually became adopted as the 'Joint Forest Management' (JFM) model both in West Bengal and across India; from the late 1980s JFM was extensively adopted: States issued administrative orders under which local people's livelihood use of village forests was tolerated in return for their protecting forests or plantations forests. Although this led to improved forest conditions, no rights or control whatsoever were devolved.

In the forested landscapes in North Bengal the situation has been quite different: the Forest Department created so called 'forest villages' across the region from the late 19th century on to conscript tribal forest peoples into a bonded labour relationship. These persisted after independence, and it was only after intense

¹The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

mobilisations in the 1960s that the FD even conceded to pay wages. However the forest villagers remained without revenue village status and so have not been able to receive any development service provision such as education and health provision. As protected areas spread many now find their struggle for rights further compounded.

The households we studied reflected the acute poverty and insecurity that has been precipitated by rights deprivations. The vast majority of households in our study are very poor and have very limited food security.

Inevitably there has been much conflict over rights. Although this was mitigated in the SouthWest by JFM, rights were not accorded. In the North conflict has continued as the forest villages have not been converted into normal village status, and the civil society movement in the North has been instrumental in the overall campaign for the FRA, which was finally passed into law at the end of 2006, and came into force with the issuing of the Rules at the beginning of 2008. The provisions of the Forest Rights Act 2006 do facilitate redress of the major rights deprivations in West Bengal. Foresters and some urban-based conservationists severely contested the passage of the Forest Rights Act 2006, and although these challenges did not stop the passing of the Act, the antipathy, particularly on the part of the Forest Department has persisted into the implementation phase.

Our study has found that the implementation of the Act shows extreme disparity with what is prescribed in the Act and Rules.

The Act came into force on January 1st 2008. In March the Government of West Bengal responded, by issuing two simultaneous Government Orders for implementation in the state. However these made some fundamental re-interpretations of the Act:

- * The *gram sabha* (hamlet level village assembly) is instead to be the *gram sansad*, a pre-existing body formed under the State Panchayat Act as a cluster of hamlets. The clear provision in the FRA for hamlet-level *gram sabhas* at forest villages was violated, making it more difficult for individuals to seek their rights in these larger and more heterogeneous groups.
- * The Forest Rights Committees to be formed at *gram sabha / sansad* level would be subservient to pre-existing *Gram Unnayan Samitees* (GUS), bodies typically politically controlled. Again this is a deviation from the Act and Rules, and so a violation of national law.
- * The orders also changed the mandated composition of the FRCs: stipulating that GUS members should be in the FRCs, and providing for inclusion of 4 Government-nominated invitees to the 15-member FRC. One order specifically mentioned 14-member committees, the 15th being the forest beat officer as an invitee. Instead of 15-member FRCs, 19 member committees were formed in many places.

These are amongst the most blatant violations of the FRA found in any state, indicating an attempt on the part of the GoWB to control the process through both the political apparatus (dominated by the Communist Party) and providing direct formal involvement of the Forest Department field staff who have an interest in proceedings.

We can observe two distinctly different processes across the State:

In **North Bengal** there has been intense conflict over implementation of the Act. In the plains area of sub-Himalayan North Bengal, civil society organisations who had been involved in the drafting of the Act the began mobilising communities in the forest villages immediately the Act was passed, at the end of 2006, to assert their

rights. After the delay with issuing the Rules, and the slow response of the West Bengal government, state implementation only began in June 2008. This was according to the WB Government Orders which distorted the national FRA provisions, and so led to friction in villages, who already understood the proper process, and were resistant to shortcuts and degraded and politicised processes. The officials responded by threatening that development support would be withdrawn if they did not concede to form *sansad* level FRCs, with officials on them. In some places the villagers were compelled to capitulate and many *sansad* level FRCs were formed,

But in many areas villagers have continued to resist, despite several visits by the officials to villages which refused to form committees since 30th March 2008 (mainly in Coochbehar, Kurseong and Jalpiguri Forest Divisions), no new FRCs through the Government initiative have been formed since then.

By August 2008, with a deteriorating relationship with the FD, many forest villages who had forcibly formed FRCs decided to dissolve them and re-form their own *gram sabha* level FRCs. Furthermore many forest villages started asserting their rights to control 'their' forests, and obstruct the Forest Department's normal felling operations, and even blockaded timber depots, as the FD did not have the permission of the *gram sabha* for such operations, required under the FRA.

But the GoWB refused to withdraw its Government Orders in violation of the FRA, and instead advanced an individual claims process, whilst ignoring the issue of conversion of forest villages. In acts of apparent largesse prior to elections in December 2009 the GoWB began to distribute some private land titles to villagers, apparently selected along lines of political affiliation. The *patta* distribution process does not appear to properly articulated with a proper FRA claims verification process though, as gram sabhas have not met to approve the claims.

Further, in December 2008 a new circular was issued legitimating JFM in the post FRA situation, a blatant travesty of the FRA which seeks to transfer control of village forests under Forest Department control to communities.

The government's abuses of the FRA implementation process have fuelled a 3 year movement of forest villages, which continues, and the government has been blaming 'maoists' for civil societies dissatisfaction.

In the **SouthWest** of the state the process never took off properly. FRCs were formed hastily at the *sansad* rather than gram sabha level, typically in poorly publicised meetings in which officials selected members. It remains unclear how many eligible villages have had FRCs formed, and how many have been excluded

Awareness-raising meetings and trainings have failed to impart popular understanding of the provision of the Act, eligibility criteria or the claims process and necessary evidence. Individual claim forms were circulated, however collective claim forms have not been widely circulated.

The verification process appears to have been the most problematic stage, with direct interference of forest department officials in processing claims, completely against the mandate of the FRA, whose objections to a large number of claims are accepted.

However by early 2009 the West Bengal government and CPI(M) party's forceful land appropriations on behalf of corporate interests had ignited general rural unrest in the region. Furthermore extremist groups had intensified their operation from forest areas. The conflict meant that the FRA process became stalled in the South West, (and research visits had to be abandoned).

Up until the end of June 2010 the West Bengal government's data suggests only 20% of claims have been approved, 29,061 of the 137,117 claims submitted, amounting to 15,313 acres (6,380 ha) or 0.53% of the total forest estate of West

Bengal. Virtually all of these are individual claims (25,972 giving a mean of 0.58 acres each claim). 99% of community claims have been rejected, and only 89 approved, amounting to as little as 42 acres. The livelihood impacts of such nominal change are likely to be negligible.

The state government, instead of empowering the Tribal welfare department to control implementation of the FRA, it has permitted the forest department to retain illegal control over the process. The FD which has the maximum stake in holding on to the forest land has taken over as the nodal implementing department, despite the Act prescribing only a consultative role. With no political oversight foresters have been able to exert decisive influence, almost completely obstructing the issue of community rights (avoiding conversion of forest villages altogether in the North) and also minimizing individual rights grants by interference at the verification stage for in the south west.

Ultimately a radical *de jure* paradigm shift in village forest governance has been reduced so far to a tokenistic 'patta-distribution' exercise, at the cost of its all other provisions. But eh contest for access to forest justice continues.

Having recognised that the *de facto* power structures remain able to divert reform there is little reason for optimism that a string of recommendations directed to the West Bengal state government would be worthwhile to rehearse, over and above repeating the provisions of the Act itself, and that it is a legal obligation on the part of state governments to follow it. Rather our domain of recommendations are to the Central government:

1. Cases of Indian states ignoring National laws is a not new phenomenon, but nevertheless represents a grave disrespect to the Indian Constitution and India's democratic process. If the Government of India is as committed to poverty reduction as it claims, it should manifest this by strengthening enforcement of pro-poor national laws and mandates such as the FRA to state governments.
2. We note that MoTA is improving its monitoring system. However MoTA remains dependent on the state governments for its data. An independent body should be constituted to monitor the progress of FRA implementation in respect of acceptance or otherwise of claims.
3. Rural people are vulnerable to abuse and are accustomed to injustice at the hands of Forest Departments, (as we have seen again in the case of the mis-implementation of the FRA in West Bengal), but they lack ability to seek redress through the courts. If the Government of India wishes to reduce the 'push' factors leading to political extremism it must make access to justice for the poor a priority.

1. UNDERSTANDING RIGHTS DEPRIVATIONS AND THE RIGHTS REFORM PROCESS IN WEST BENGAL'S FORESTED LANDSCAPES

1.1 The Problem

The Forest Rights Act² was passed by India's Parliament in 2006. In it the Government of India recognises for the first time, (and sixty years after Independence), that across almost one quarter of India's land 'historical injustice' has been perpetrated by the state forestry bureaucracy against rural populations:

'... forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice ...' (FRA p.1)

The Act provides the legislative basis to redress this injustice, and the associated Rules provide the process for state governments to so. Thus it has major implications for justice and the livelihoods of people living in forested landscapes, including in West Bengal. But can the new *de jure* rights actually secured, especially as the incumbent Forest Department has shown so much hostility to the reform, and has so much to lose in terms of assets and revenue streams? In this paper we seem to answer the question: *is implementation of the FRA actually resulting in meaningful and pro-poor institutional reform at the local level?*

1.2 Our Research Approach

To conduct our investigation our principle unit of analysis for this study has been settlement at hamlet level. We have embedded this within a 'nested' research approach, working from the state level, down to sub-regions and districts and then specific village settlements, households and individuals. At each level we have used a complementary range of qualitative and quantitative data collection methods to triangulate and build up a composite understanding.

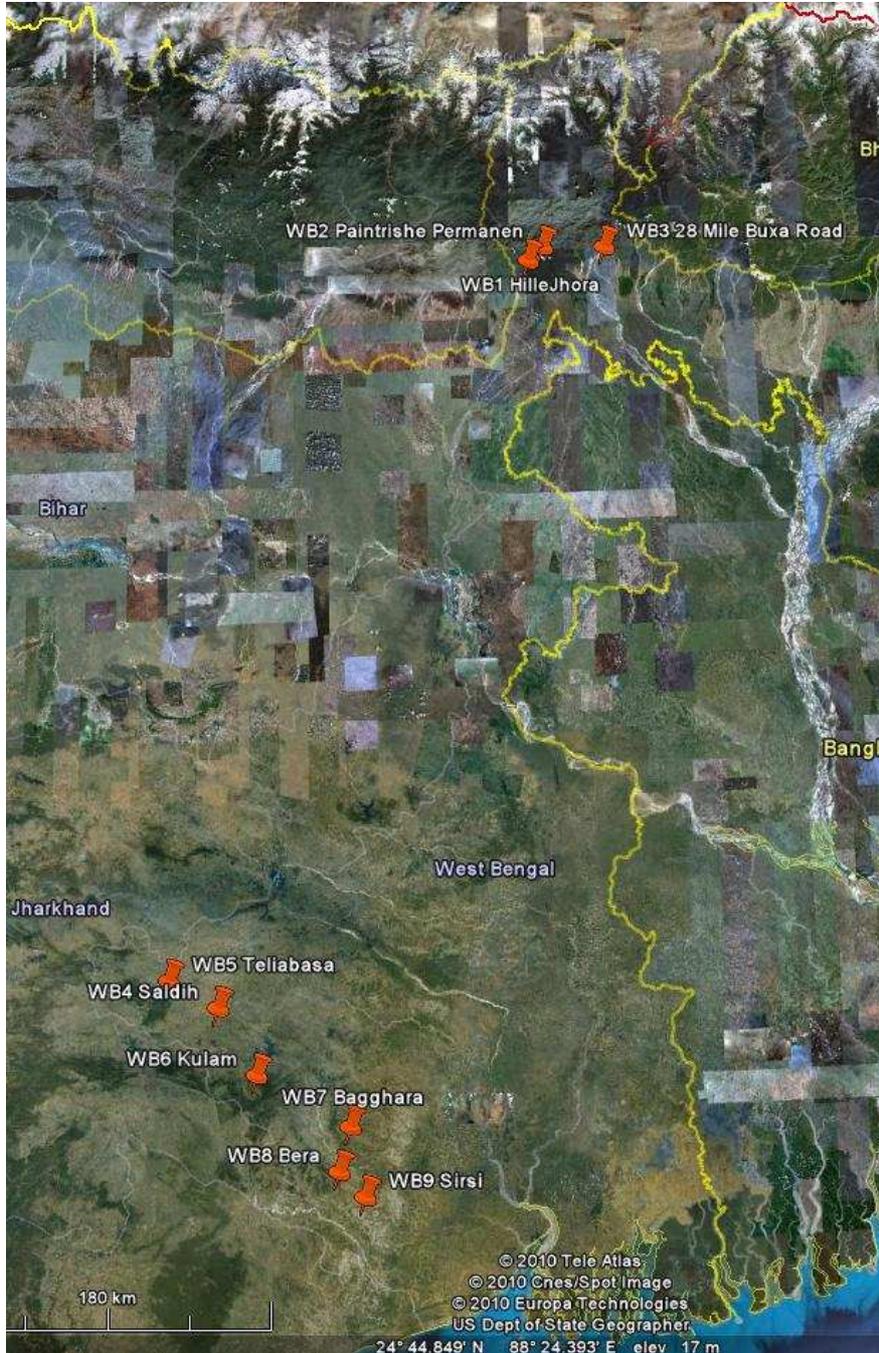
Districts were selected purposively to reflect the major forest areas in West Bengal where forest people have experienced rights deprivations. The West Bengal forests where the implementation of the FRA 2006 is relevant are in three main areas; the North, The SouthWest and the Southern Sunderbans:

- 1 *North Bengal*: 98% of forests here are found in Darjeeling and Jalpaiguri districts so we selected these for study. There are also lesser forest areas in Coochbehar.
- 2 *South West Bengal*: more than 90% of the forests here are spread across West Midnapore, Purulia and Bankura districts, so we selected these. The forest area extends into the edges of the adjacent Burdwan and Birbhum districts but the extent is low so they were not selected.
- 3 *South Bengal Sunderbans mangroves*: we excluded this area from our study as the population is low and the forest terrain and the villages on its borders are very difficult to access.

Villages: We decided to select nine villages from these 5 districts in order to cover the main variations of the implementation process whilst dealing with each site in some depth. We sought to choose six villages in South West Bengal and three in North Bengal through a stratification process to represent the range of main rights deprivations: . First we listed the full range of villages close to the forest, the sorts of rights deprivations present, and the administrative blocks they were in. From the list

² The text of the FRA 2006 and the associated Rules, are available here: <http://tribal.gov.in/>

of main blocks several were randomly selected, and we then randomly selected 9 villages within them. The village details are shown in Table 1 below and their location in Map 1.



Map 1: Location of study sites in West Bengal
(googleearth 2009)

Households we sought a sample of 15-20% of households for interview, which were selected in a random process after stratifying village households by (subjective) wealth rank. In an initial village PRA meeting, families were first wealth ranked into

rich, medium, poor and poor and landless, based on the family landholding and the income. Note that the rank qualifications are relative to each other and each rank in all the villages are only approximately comparable.

Our primary field study involved the collection of a range of data: the characteristics of the village, settlement history and its demographics, wealth ranks of individual families in the village, facilities and/or nature of deprivations, the present status of rights, initiation and progress of FRA 2006. Then household survey interviews were conducted with representative families of different wealth ranks.

Field research was conducted throughout 2008 to 2009 across 9 villages in the South West and the North of the state. Ongoing revisits have been conducted in the Northern villages, but not in the South West as violent political conflict has engulfed the region and prohibited it.

2. FOREST RIGHTS DEPRIVATIONS AND THEIR LIVELIHOOD IMPACTS

West Bengal covers only 2.7% of India's land area but supports 7.81% of its population (2001 census), leading to a population density of 903 persons / km², the highest of any Indian state (GoWB 2008).

Forest rights are a major issue in West Bengal. Although at 12,343km² the forest area is small compared to many states (covering 13.52% of the state), the absolute number of forest dependent people is high, estimated to be 8.3 million, about 10% of the total population of the state (GoWB, 2002), and the majority of the forest dependent people are poor, belonging to either Scheduled Tribes or the 'Other Traditional Forest Dwellers' category in the FRA. 5.48% of the state's population are Scheduled Tribes (mainly *Santals*) most of whom reside in forest areas, and there are many more households who are rural based and depend on forests for their livelihoods. The Forest Department estimates that over 21% of rural villages have forests as a land use.

2.1 Forest rights deprivation processes

Whilst rural people in forested areas depend for their livelihood security to a significant degree on the use of forest resources, control access and use rights were taken away by the state in a series of legal actions over the colonial and post independence period. Forests in the north and south were appropriated by the state in the late nineteenth and early twentieth century and all customary rights were extinguished. The Southwest forests belonged to feudal landowners (*zamindars*) and were not appropriated at that time, continuing to be used by local people under customary rights. But these rights were also extinguished when these forests were acquired by the state after Independence in 1953.

Some relief was provided from the 1980s onwards through the implementation of Joint Forest Management. JFM involves administrative agreements between the forest department and local villages – that villagers will assume protection responsibility for forests and in return they will get the 'privilege' of livelihood forest use and possibly also some labour opportunities and cash payment from forest harvesting proceeds. Whilst JFM agreements have spread across West Bengal and have generally led to improved relations between Forest Department staff and local forest users they are unenforceable administrative agreements

The major rights deprivations present in the study villages, as identified in an earlier paper (Banerjee et al. 2010) are as follows:

1. *Rights deprived through the 'normal' settlement process.* Extinguishing of customary rights of the ST and OTFD families during forest reservation in the colonial and the post colonial periods
2. *Post Independence Estate acquisition.* In 1953 the Forest Department took over *zamindari* feudal estates, but extinguished the rights of peasants using the forests therein.
3. *'Encroachment' and Eviction.* Due to a lack of legal tenure, eviction without appropriate rehabilitation has been perpetrated against Schedule Tribe and Other Traditional Forest Dweller families residing on what became categorised as forest land, and in extreme cases the removal of entire villages from forest lands has occurred
4. *'Forest Villages'.* Collective bonded labour units were created by the Forest Department from the beginning of the 20th Century. The decline in need for such labour has led to the discontinuance of annual individual leases of forest villagers, making them virtual encroachers
5. *National Parks and Sanctuaries.* The creation of these has led to the threat of or actual eviction, and curtailed access to the forests.
6. *Joint Forest Management.* the 'privilege' of forest use is not a durable right, and the Forest Department continue to control the village forest management regime, all the more effectively with village cooption.
7. *Arbitrary punitive state coercion.* Involving the harassment and punishment of the ST and OTFD users of community forest resources that include NTFP and firewood. This has sometimes led to grievous injury and deaths of forest adjacent populations.
8. *State monopolization of forest product marketing.* All timber and almost all commercially valued non-timber forest products are monopolies of the Forest Department / Forest Corporation

There are a number of additional rights deprivations which are prevalent in West Bengal but not apparent in the study villages:

9. *Destruction of Sacred Groves*
10. *Land acquisition for industry and 'development'*
11. *Afforestation of Degraded Land in SW Bengal*

2.2 Forest Rights Deprivations and Poverty

These rights deprivations have severely compromised the livelihoods of the forest-adjacent peoples pushing them into an underclass status by, variously, reducing their private assets (agricultural land and residence), reducing their control of and access to village common property resources (CPRs), reducing their income opportunities and levels, and their livelihood and food security. When we consider the contemporary forest-adjacent settlements we are looking at the remaining households only; many families have been previously either evicted or their restricted livelihood have forced them to move away.

The patterns differ between North and South West Bengal. Our study villages in North Bengal (WB1, WB2 and WB3) are all situated within government owned forests, where families have no legal ownership rights, and instead have only been granted annual leases for residence, cultivation and the 'privilege' of some NTFPs collection for own use, in return for free labour 'begar'. The Forest Department constructed one room wooden homes for each family and provided limited infrastructure such as drinking water supply, primary school and limited health facilities by a visiting doctor.

Table 1: Summary Table of Selected Village Parameters

Village District Region	Social composition of village households ST: Scheduled Tribe SC: Scheduled Caste OTFD: Other Traditional Forest Dweller	Households	Rights deprivations								Major rights issues
			1. Normal forest settlement	2. Estate acquisition	3. Forest villages	4. Encroachment	5. National parks / sanctuaries	6. JFM	7. punitive coercion	8. NTFP market monopoly	
WB1 Hillejhora Darjeeling North	4 ST (Magar, Subba, Tamang) 16 SC	20	x		x				x	x	- A 'temporary' <i>taungya</i> forest village, forest land on annual lease to village: now expired. Development support, service provision and other facilities withheld. FD 'allowed' each household to cultivate 0.67 acre, but no formal documentation. - JFM started in 2008 led to Forest Village Development Fund support, but JFM now stagnated though villagers still protect
WB2 Paintrise P. Darjeeling North	18 ST (Tamang, Sherpa) 3 SC 33 OTFD	54	x		x				x	x	- A hitherto 'temporary' <i>taungya</i> forest village made permanent in 1984. Forest land on annual lease to village: now expired - JFM started in 2007, and some development activities began under FDA, stagnated though villagers still protect
WB3 Buxa Road Jalpaiguri North	66% ST (mixed) 33% OTFD	105	x		x	x	x	x	x	x	- Forest village: no rights. Concession to cultivate and access forest for NTFPs withdrawn by FD in 1984. rights and other facilities withheld. Forest land on annual lease to village: now expired. JFM initiated in 1993 now non-functioning, though villagers still protect. Buxa forests declared tiger reserve in 1983 & eviction is threatened
WB4 Saldih Purulia South West	14 ST (Santal)	14	x	x		x			x	x	- Forest occupiers considered encroachers and liable to eviction – though FD does not currently harass them - JFM but village cannot stop neighbouring villagers from overharvesting fuelwood without FDs support
WB5 Teliabhasa Purulia South West	70 ST (Santal)	70	x	x		x			x	x	- Forest occupiers considered encroachers and liable to eviction – though FD does not currently harass them - JFM present, but village struggle to protect forest from use by neighbouring villages without FDs support
WB6 Kulam Bankura South West	182 ST (Santal, Sabar) 70 SC (Napit, Kumor, Karmakar)	296	x	x		x			x	x	- Forest occupiers considered encroachers and liable to eviction although FD does not currently harass them - JFM in village - Political conflict due to two parties struggling for dominance
WB7 Bagghora West Midnapore South West	30 ST (Santal) 39 SC (Karmakar, Mahato)	69	x	x		x			x	x	- Cultivation in and around forests without title. Some families evicted about 20 years ago without compensation (land since occupied by members of another village). Also NTFP collection - JFM.
WB8 Bera West Midnapore South West	42 ST (Santal)	42	x	x	x			x	x	x	- Living and cultivating in and around forest without title. - JFM: Some families were evicted from forest areas under the Bera FPC without compensation
WB9 Sirshi West Midnapore South West	105 SC/OBC (Kamakar, Napits, Mahatos)	105	x	x	x			x	x	x	- Villagers living and cultivating in and around forests without title. - JFM. Some villagers have occupied forest associated with another village and are in conflict with that village. - One families' house inside the forest was destroyed by the FD in 2004.

The Buxa Road village (WB3) was established in 1927, the others within the last 25 years as families were moved from other sites. At present leases have been withdrawn or not renewed and the people have thus lost all rights. The residents continue to occupy the village land but lack any legal residence or collection rights.

Of the 178 families in the three villages, 8% were subjectively classified in the wealth rank exercise as landless and poor, 77% are poor, 12% are middle, and 3 are relatively rich. Most households had very few private assets: some families had buffaloes and cows but most had only goats and chicken.

Major sources of income include boulder lifting in Buxa Road, although this too has been recently banned, and in all villages wage labour, farming, animal husbandry and forest product collection. Most families collect firewood to use and sell, and some families collect some miscellaneous other forest products: a few gather bamboos to sell, 4 households gather medicinal plants to sell, 35 families collect mushrooms and seasonally, and 2 households gather kawla (*Machilus edulis*) fruits. Their monthly incomes vary between Rs. 635-2165 and expenditure between Rs. 628-2114, which is extremely low even by North Bengal standards.

The South West Bengal study villages (WB4 – WB9) although located close to the forest are disconnected from it in terms of ownership, as it is owned by the government. The villages are 50-100 years old, and most families are indigenous to the area.

Of 596 families in the selected villages, in village subjective wealth ranking exercises 18% were classified as very poor (having nothing but a thatched hut), 73% were poor, 9% were medium and 0.2% (only one household) was considered rich. The majority of families has only a small cultivated area and were considered 'poor' in wealth ranking.

In all the study villages people are cultivating their land and collecting NTFPs and fuel wood but without clear rights. A majority of the interviewee families are primarily occupied with cultivation of agricultural crop (without irrigation) and secondarily with collection; consumption or local sale of forest products and wage labour when available. In Teliabhasa and Saldih villages firewood selling is a major occupation. A very few households are engaged in business, trading and as office employees.

Among the cultivators, most own only a small area of land which provides food security for no more than 3-6 months, and so they also typically cultivate up small areas on the forest boundary to augment food security. When these people are evicted or harassed, the family suffers substantially due to reduced food intake and nutrition. When deprived of the land, the families try to engage themselves in share cropping, as wage labourers and finally as migrant labour. Migration fractures families and evicting poor families also sometimes pushes peace loving farmers into supporting militancy.

With JFM, collection of many of the NTFPs for own use now been allowed but it has not made local people less poor, it has only assured that the portion of their livelihood previously gathered illegally became authorized. Of 596 families in the sampled villages 596 gather firewood, 409 collect wood, 30 take bamboos, 333 carry fodder for stall feeding, 25 gather fruits and 124 collect other edibles. In spite of the involvement of so many families in taking benefits from the forest, the income on an average per family is poor: around Rs. 1500 / month, and expenses only slightly less indicating low indebtedness for families' routine needs. Debts are high in some families however due to emergency needs including health matters, marriage etc.

The monthly family income in south West Bengal of different wealth ranks have been found to vary from Rs.935 –Rs 3500. The monthly household expenditure is 900 -3300. Most of the families are indebted to private lenders, total debt per

family varying from 100 to Rs 6000. The collection and cash earning from the forests occupy about 30-50% of the cash income.

Table 2: Summary Data from Study Villages

Village	No. of families	Wealth Rank* (%)				Occupations				Food security from own production (months)	Families occupying forest land: (%)	Forest land occupied (acres per household)	Mean Monthly Income per family (Rupees)	Mean Monthly Expenditure/ family
		Rich	Medium	Poor	Poor & landless	Agriculture	NTFP collection	Wage labour	Business / Service					
WB1 Hillejhora	20	0	10	90	0	✓	✓	✓	6 - 8	0	0.0	635	628	
WB2 Paintrishe	53	0	15	74	11	✓	✓	✓	1 - 5	0	0.0	2,165	2,114	
WB3 Buxa Road	105	4	11	74	10	✓	✓	✓	3 - 7	0	0.0	1,472	1,392	
WB4 Saldih	14	0	0	100	0	✓	✓	✓	3 - 6	100	4.8	1,125	915	
WB5 Teliabhasa	70	0	0	93	7	✓	✓		6	100	27.0	1,064	969	
WB6 Kulam	296	0	9	64	27	✓	✓		3 - 7	30	14.5	1,202	974	
WB7 Bagghora	69	0	0	87	13	✓	✓		3 - 12	85	9.0	1,264	1,244	
WB8 Bera	42	2	14	83	0	✓	✓		3 - 12	0	7.3	1,565	1,311	
WB9 Sirshi	105	0	20	66	14	✓	✓		3 - 12	40	7.3	2,411	2,203	
MEAN	86	1	9	81	9				-	40	7.8	1,434	1,306	

Source: survey interview data obtained during the of the selected villages

Table 3: Study Village Forest Livelihood Data

Village	Fuelwood			Other NTFPs	Annual Forest product sales Rs. / month / family	Currently saved per month (Rs per month average)	Livestock owned (Cows or buffaloes - mean/ family)
	collection (kg / month / family)	Home use (kg / month)	Sale (kg / month)	Types			
WB1 Hillejhora	2 stacks*	2	-	Fodder	-	0	1.7
WB2 Paintrishe	-	-	-	amla (fruit) medicinal plants		4 persons 100-253 per month	2.0
WB3 Buxa Rd	4.8 stacks*	4.8 stacks*	-	-		0	5.3
WB4 Saldih	1,114	167	947	-		0	4.5
WB5 Teliabhasa	775	134	640	-		2 families save a little	2.8
WB6 Kulam	721	102	619	-	Rs.53,200	Rs. 30-100 per month in 5 families only	1.7
WB7 Bagghora	779	135	643	Sal leaves- Beedi leaves :	Rs.14,200 Rs. 4,500	For 3 families: save 30-70% of income	0
WB8 Bera	919	129	789	Beedi leaves	Rs.1,275 Rs 1,950	2 families save 10-50%	2.1
WB9 Sirsi	614	142	471	-	Rs. 1,063	Rs. 1200, in four families	3.0

* A 5 feet high by 5 feet wide stack of firewood is called locally a 'peel' (stack). The weight of a stack varies widely depending on the type of wood being used. Mean estimated at around 30KG

Overall the villages are generally remote, of small size, with poor infrastructural facilities (e.g. lacking metal roads, banks, secondary schools), relatively low literacy (around 60% in North Bengal and 25-70% in South West) with high tribal and scheduled caste population. Most families are poor with low land holdings, and are occupied mainly in small scale agriculture (much of it on small plots of forest land), labouring, and collection of forest produce, for which they have some privileges but no rights. . Some families have built their mud-brick houses inside the forest boundary.

The forest associated with the villages is mainly Reserved Forests in North Bengal and Protected Forest in south West Bengal. Villagers have no rights of use of the government forests but have privileges of collection of some NTFPs due to village families joining Joint Forest Management (JFM) or EDC (Eco development committee). The NTFPs collected include fuelwood in Paitrishe, fodder and other NTFPs such as medicinal plants, fodder, fruits, leaves and some edibles. These are generally for family use but FD does not object if these are sold in the local market.

3. THE EMERGENCE OF THE FOREST RIGHTS ACT

Forest rights are thus an extremely important and contentious issue for local people in forested landscapes, and not surprisingly there have been significant mobilisations in pursuit of access to forest rights, particularly in North Bengal, in recent decades, including direct civil society involvement in the drafting of the FRA.

3.1 Mobilisation for forest rights

Resistance in the 1970s against the feudal institution of '*begar*' (mandatory free labour) in forestry led to commencement of payment in forest villages, but the Forest Department's counter-action was to stop renewing villagers' agreements of stay in the forest, and the villagers thus have felt vulnerable to eviction.

Again in 1999 a consistent movement emerged when a local NGO initiated an organisation-building process and eventually the '*Uttarbanga BanaBasi Samittee*' was formed, mainly with JFM-related demands but also demanding conversion of forest villages to revenue villages. In 2000, the UBBS merged with the Himalayan Forest Villagers Union, once active in the Hills, forming the North Bengal Regional Committee (NBRC) of the National Forum of Forest People and Forest Workers (NFFPFW) in 2001. In December 2001 the NFFPFW organised a huge rally in the Siliguri town demanding complete rights over forest land and produce, followed up by a march from the Darjeeling Hills to Dooars in April 2002.

The Ministry of Environment and Forests' 2002 eviction order escalated the conflict and stimulated the North Bengal forest movement to concerted action, and involvement in the wider national campaign for forest rights reform. The North Bengal Regional Committee was actively involved with the process of drafting the bill and the nation-wide campaign for its enactment, both on behalf of NFFPFW and as a part of Campaign for Survival and Dignity. The forest villages issue was included in detail in the 2005 Draft FRA and the final Act of 2006 through the efforts of the Committee.

In 2005 and 2006 the NFFPFW NBRC and NESPON organised, in collaboration with *Nagarik Mancha* and *Disha* (both reputed environmental NGOs), successful meetings in Kolkata on the FRA, which were attended by leading civil society groups and representatives. As a result of these meetings, FRA-related letters and memorandums were submitted to various MPs from West Bengal as well as the Prime Minister and the Central Forest Minister.

Finally the Forest Rights Act was passed at the end of 2006, coming into force with the passing of the Rules on the 1st January 2008.

3.2 Is the FRA Adequate to Redress Rights Deprivations of West Bengal?

The FRA addresses a wide range of rights deprivations. At its core are two rights – private cultivation and collective management of forests. Most of the people's

demands (as reflected through the movement and the civil society meetings in Kolkata) were included in the final Act:

- The inclusion of 'Other Traditional Forest Dwellers' so that the Act applies not only to Schedule Tribes,
- Ownership rights over NTFP, grazing and fishing rights
- conversion of forest villages to normal revenue village status, and to include all forms of forest settlements

In light of the severe negative livelihood impact of rights deprivations, it is reasonable to anticipate that most of the forest inhabiting fringe people would be particularly benefited the likely nature of benefits - For each of the villages securing the rights provided by the FRA would have a massive positive impact.

1. Occupied or used Forest Land having histories fulfilling the conditions laid down by the Act and the rules there-under will be transferred to the individual families in its possession These families will enjoy inalienable rights on the land. They will also use the rights to manage the land and use its produce. Those people who live in small houses constructed within the forest boundary would get the rights of the land to inhabit perpetually.
2. Evicted persons who have not been rehabilitated elsewhere satisfactorily or compensated will return to the area from where they have been evicted and enjoy its rights as indicated above or provided alternative land.
3. Regularization of individual and community customary rights of fishing and grazing .
4. Ownership rights over NTFPs, in the case of PTGs, rights over habitat and also recognition of rights in PAs.
5. Customary rights that the JFM villagers are enjoying under JFM rules will now be able to enjoy the privileges (once granted, the claimants will get rights and not privileges) legally. This means that the privileges provided by the JFM administrative order will have legal backings, or will get converted into legal rights - but it need not be just JFM forests but customary forests, including in the North where JFM is not so extensive
6. The forest villages in north Bengal, which are now deprived of all rights and privileges, will be converted to revenue villagers and the occupants will have entitlements on the land on which their homes are erected and which they were cultivating. If the forest villages of North Bengal are converted into revenue villages envisaged in the Act, the villages will then be entitled to investment of rural development funds by the state. This will bring the forest village people, now without an ostensible way of living, somewhat at par with the standard of living of the people of the revenue villages. They will be entitled to better schools, better health facilities and also incentives such as ' Sarba Siksha Abhijan' ' Indira Gandhi Abasan, 100 days of employment to adults etc. now available in the states. In some of the other states like Gujarat and M.P., there is no restriction on residents of forest villages benefiting from social welfare programmes like Sarba Siksha Abhijan. The main constraint is on any construction activity due to the land being forest land.
7. Bank loans and alternatively grant aids by NGOs or even by government to develop their newly transferred lands for forest tree management and sustained harvesting, cash tree crop planting, cultivation of new cash crops by underplanting, irrigation and organic fertilization to improve productivity of the agricultural crops.
8. Management Rights to the people of the forest trees and the NTFPs (The management rights will be over the community forest as a whole and not only for

trees and NTFPs) consistent with biodiversity protection, forest conservation and forest protection, to improve their economic and cash income

9. Promotion of eco tourism in areas that the collective or the individual have acquired the rights of management.

For the Forest villages secure rights of tenure to private and collective forest land, and the right to collect and market NTFPs would provide secure and regular incomes.

However there remain many significant gaps in the FRA's specific provisions. For instance, the procedure for conversion of forest villages was not laid down in the FRA Rules, and the stipulation that the GS will be convened by the Panchayat is allowing for completely unwanted interference by the State Government into the FRA implementation process. Also, the issue of transporting the NTFP (obstructed by transit rules still in force) was not resolved in a proper manner.

There is a discrimination in the Act between Scheduled Tribes and Other Traditional Forest Dwellers, who have to prove two pieces of evidence of their occupation of the forest area for 75 years, which even the urban educated citizens would be very hard. one can be a statement by an old village person which is not difficult to obtain, but the second has to be some documentation of rights. The latter is not available with even a small percentage of the occupants or users.

Further, the Act's concept of 'critical wildlife habitat' is liable to be used to create 'no claim' areas to keep the people away from protection areas, and as such, a very large number of people living within the protection areas become vulnerable to be served with eviction.

4. THE STATE LEVEL FRA IMPLEMENTATION PROCESS

This section considers the state level initiation of the FRA implementation. Subsequent sections consider the distinctly different processes in the North and Southwest.

After the Ministry of Tribal Affairs directed the State level Tribal Welfare departments to lead implementation on 1st January 2008 there was a period of 3 months when there seems to have been little official response.

Eventually, in March 2008 the State Government responded by issuing two simultaneous Government Orders for implementation in the state, one through the Backward Classes Department, and then another through the Panchayat & Rural Development Department. These advised District Magistrates in all districts with recorded forest cover to initiate proceedings for formation of Forest Rights Committees (FRCs).

Box 1: The Prescribed FRA Implementation Process

The FRA and its Rules prescribe a specific implementation process, detailed in the Box below. This consists of a number of sequential undertakings, some by the *panchayat* units and state administration offices and others by the individual or community claimants for forest rights

1. At the outset, the *gram panchayat* convenes a meeting of the *gram sabha* which elects members to form a Forest Rights Committee (FRC) composed of ten to fifteen persons
2. The FRC accepts claim forms from individuals and communities of the *Gram Sabha*. The claim forms are to be entered by the individual or community claimants as the case may be with at least two evidences (listed out in the Act) authenticating their claims. The FRC verifies claims and prepares a map outlining the area of each claim. The FRC must get its recommendations approved by the *gram sabha* and then passes them to the SDLC.

3. The SDLC is composed of SDO, Forest Range Officer, Tehsil level Panchayat member and an officer of the Tribal Welfare Department among a few others. The SDLC must examine the veracity of the claims but that need not imply field verification in every case. SDLC forwards the claim with their comments to the District Level Committee (DLC)
4. The DLC is headed by the District Magistrate and composed of Divisional Forest Officer, District level Tribal Welfare officer and three elected representatives in each committee). The DLC finally decide on the received claims and provides the individual and community non-alienable forest rights title.

Sources: FRA and Rules

However the West Bengal FRA Government Orders made some fundamental re-interpretations of the Act:

The clear provision in the FRA is for hamlet-level *gram sabhas* to lead the local implementation process and form FRCs. But the government orders mandated *Gram Sansads* to play this role; a pre-existing body formed under the State Panchayat Act as a cluster of hamlets at the panchayat constituency level, not at hamlet-level. This is a fundamental violation of the Act, which both increases likelihood of politicisation of the process and makes it more difficult for individuals to seek their rights in these larger and more heterogeneous groups.

Secondly the Forest Rights Committees to be formed at *gram sansad* level would be subservient to pre-existing *Gram Unnayan Samitees* (GUS), bodies typically politically controlled. Again this is a deviation from the Act and Rules, and so a violation of Section 2(P) of the national law. The Rules clearly state that the *Gram Sabha* shall elect a FRC from among its members. By limiting FRC membership to existing *Gram Unnayan Samiti* (GUS) members, and by putting GUS office-bearers into the FRC as ex-officio office-bearers, the Government Orders step beyond the State Government's legal jurisdiction.

Third, the orders also recast the mandated composition of the FRCs: stipulating the inclusion of 4 Government-nominated invitees including the forest beat officer as well as GUS members to the FRC. Consequently, instead of 15-member FRCs, 19 member committees were formed in many places.

The revision to the national FRA implicit in the Government Orders are amongst the most blatant violations of the FRA found in any state. The deviations seem to indicate an attempt on the part of the GoWB to exert control over the implementation process through both the political apparatus (dominated by the 'Communist Party of Indian - Marxist') and providing direct formal involvement of the Forest Department field staff who have an interest in proceedings.

Civil society organisations, including the NFFPFW and other groups, pointed out that the West Bengal Government orders clearly violate the letter and spirit of the FRA. However to date there has been no revision of these orders. The West Bengal government's implementation plan, based on these orders, is shown in figure 1 below.

After the Government Orders were issued the process abruptly stopped for over two months due to the announcement of *panchayat* elections (called for May 2008). After the election results were declared, the new Gram Panchayats began the process of implementation of the Act, and implementation activities only restarted again in June 2008. The implementation processes developed quite differently in North and South West areas of the state, as discussed in the next sections.

The FRA 2006 and rules provide a departure from the way that all forest lands and its resources had been managed in India in the last more than one hundred and fifty years. All foresters belonging to the government forest department were trained to be forest managers. Because such management was based on an assumption of all rights in forests other than the Government's being 'adverse' or non-existent, the foresters considered it to be their duty to keep all people away from the forests, even if through coercion.

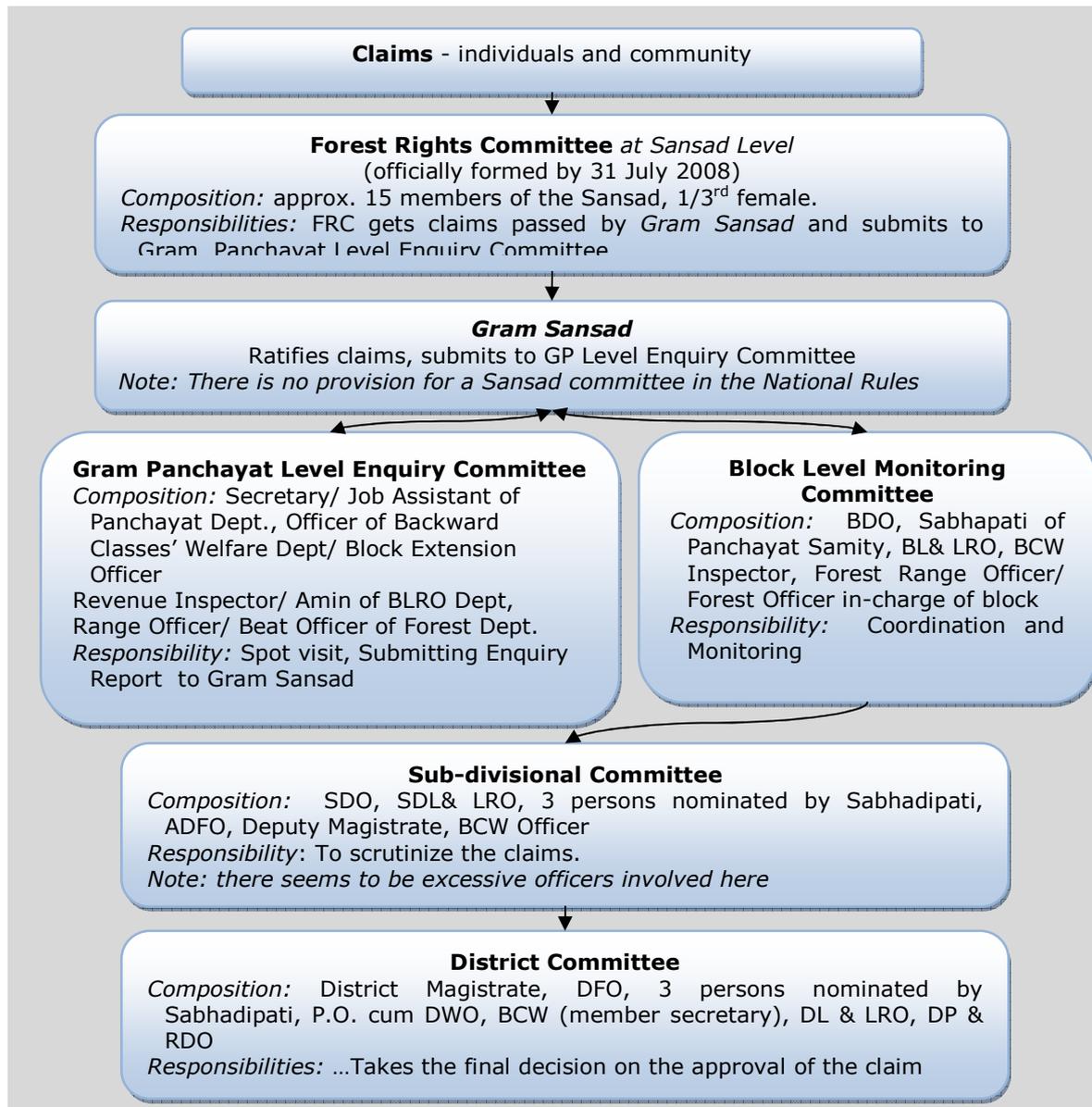


Figure 1: Process of Claiming, Verifying and According Rights in West Bengal

They were supported in this concept by many of the administrators, by the judiciary and also by the environmentalists who became an important force in the later part of the 20th century. It was perceived by most that the forests are vulnerable to decimation once the government loses its hold on them, and so implementing the

FRA would precipitate degradation, deforestation, and disordered management. This view also legitimated the FD retaining its control of the forest, forest land, and the derived benefits thereof.

The FD officials among others are likely to be the most resistive to the Act. This is the reason why the Act, even though involved with forest land and its resources, did not assign the forestry personnel in the tasks of the Act at the ground level. They are included as members only at the subdivision and the district level where the officials of other departments including the district chief are members.

However, in West Bengal the FD, has been pro-active at the ground level including in the Forest Rights Committee (FRC). The FD officials think that the small area of forest land that they believe to be encroachments in the forestry statistics will only be claimed for transfer. The reason why the other departments particularly the tribal department (supposed to be the nodal department) want the FD to be involved at the local level is that their own department have comparatively less knowledge about the forest areas and how and where the people are directly dependent on its resources.

In October 2008, further, the West Bengal government issued a new JFM circular which attempted to reduce community forest management powers provided in the FRA to Joint Forest Management, while imposing the same earlier conditions on the types and quantities of minor forest produce that can be collected, bans on grazing, etc., all of which are now illegal as per the Act.

A deadline for submission of claims by November 30th, 2008, was fixed by the State government. Protests took place at the end of November to get this extended, as in most areas *gram sabhas* never took place properly and hence could not have invited claims as per the Rules.

Some pattas were issued prior to the *Lok Sabha* elections in December 2009, but it appears these "pattas" have been identified by the Forest Department as no proper *gram sabhas* have taken place in almost all areas and no FRC verification has been undertaken either.

5. FRA IMPLEMENTATION IN NORTH BENGAL

[Soumitra Ghosh & Oliver Springate-Baginski]

5.1 Initial civil society mobilisation

Despite the slow government response to the FRA, there was rapid mobilisation on the NGO side, particularly for those who had been involved in the campaign and the FRA drafting process. As soon as the FRA was passed on December 31, 2006, the NFFPFW Regional Committee started forming *Gram Sabhas* in across the forest villages of North Bengal and local people began to assert their rights over forest areas, leading in some cases to sporadic conflicts with the forest department staff.

5.2 Initial state activities – violations of the Act's provisions begin

After the Government Orders of March 2008, Government officials began to enter forest villages to implement the FRA, beginning in Jalpiguri district.

Box 2: State facilitation of local FRA Implementation – support provision

Proper state facilitation of FRA implementation would involve five stages:

1. Initial explanation of the FRA provisions, help facilitating the initial *Gram Sabha* meeting and formation of Forest Rights Committee.

2. Capacity building for FRC awareness-raising and training, and community education regarding eligibility and the claims process.
3. Distribution of claim forms and receipt of submitted claims
4. Verification of claims process
5. Final issuing of titles

In North Bengal we see major deviations from the sort of implementation facilitation needed, right from the beginning.

No proper *gram sabha* meetings were convened. Villagers were not informed in advance, and were pressured to form FRCs arbitrarily and without explanation. No quorum was sought in any of the emergent '*gram sansad*' meetings, and the attendance register was circulated among the villagers for add-on signatures. When villagers protested they were threatened with withdrawal of development funds (which of course the Forest Department control in forest villages) if they did not comply. Thus FRCs were formed in a haphazard and non-democratic manner in many forest villages despite resistance.

Local people had very little idea about what was happening other than the fact the Government Officials have entered their villages, and telling them that they would get individual land titles (*pattas*) only when they form the FRCs according to the Government prescription.

Across Buxa, Jalpiguri and Coochbehar forest divisions villagers protested vehemently about the slipshod and hasty implementation process, on the grounds that people need to understand the FRA before they form the FRC and that the Government officials should have no role in formation of these committees, which is a prerogative of the *Gram Sabha* itself. They also objected to the '*Sansad*' level committees, because this would render the FRCs ineffective by putting members from culturally and spatially separated villagers together, and would also lead to politicization of the FRA process (*Gram Sansad* elections in West Bengal being fought along political lines).

But the forest villagers in all the districts were pressurised by the administrative officials in unambiguous terms to follow orders, under menacing threats, such as:

"you will never get pattas if you do not form FRCs ..."

and

"all development projects will be stopped otherwise"

In Buxa and parts of Jalpiguri forest divisions people were confused, and the officials statements proved overwhelming. Thus, many FRCs which could not properly function were formed by the Government officials:

- In the Buxa hills 11 remote and spatially separated forest villages were bundled into one single committee.
- Residents of tea gardens or forest fringe villages were inducted into an FRC on the grounds that they shared a common *Gram Sansad*.
- In the Chalsa Range of Jalpiguri division, five villages have been clubbed together into one FRC without even a *Gram Sansad* meeting.

In Jalpaiguri district, in November 2008, the government was insisting on Forest and Revenue officials being members of the Forest Rights Committees in direct violation of the FRA, and accusing protesters in the area of encouraging "encroachment."

The process of choice of villages for implementing FRA has evidently been guided by the Forest Department. A memo of the District Magistrate, Jalpaiguri, mentions that a list of forest villages will be supplied by the forest department. However the departmental list is incomplete and does not take into consideration

unsurveyed villages / temporary *taungya* villages on forest land. Thus many villages are left out, including several in the Darjeeling Hills. Such villages have been treated as villages in the FRA but that option has been denied in the WB GOs, by making the *Gram Sansad* as the only form of village.

It also seems clear that the Government has interpreted the 'primarily residing on forest land' literally while defining potential right holders, even though the Ministry of Tribal Affairs has clarified that 'primarily residing' on forest land includes those cultivating forest land without necessarily living on it.

5.3 Government violations resisted—people's implementation begins (mid – late 2008)

Many villages in Jalpiguri Forest Division and Coochbehar Forest Division did not comply with the official pressure, but instead demanded implementation strictly according to the law. In the face of opposition the Governmental effort to form FRCs was short-lived, and despite several visits to villages which refused to form committees (mainly in Coochbehar, Kurseong and Jalpiguri Forest Divisions) the officials could not prevail.

On 11th July, 2008, the Subdivisional Officer of Siliguri conceded that the FRCs should indeed be constituted at *gram sabha* level, and that no outsiders should be in the committees. In other areas, and particularly in Buxa, however, the concerned SDOs and other Government officials tried to force the recalcitrant villagers to include Government officials in the FRCs, leading to strong protests from the villagers.

By August 2008, most of the forest villages in Jalpiguri district decided to dissolve the forcibly-formed FRCs and form their own hamlet-level *gram sabhas*. There had been *Sansad*-level FRCs everywhere in Buxa Tiger Reserve, and in 10 forest villages in Jalpiguri forest division. Of these, 15 villages in Buxa submitted a mass petition to the Sub Divisional Officer, Alipurduar, on 25th August, 2008, dissolving their FRCs and demanding new FRCs at the Gram Sabha level. Since then, most of the villages in Buxa, Coochbehar and Jalpiguri had formed their 'hamlet' or forest-village level FRCs, involving the concerned *Panchayats*.

From mid 2008 local people also started exercising governance control over forests in many forest villages throughout North Bengal. In Coochbehar and Kurseong Forest Divisions, the *Gram sabhas* jointly put a stop to the Forest Department's felling activities (obstructing their 'Clear Felling Coupe' programme).

In May and June 2008 the villagers at Chilapata forest area of Coochbehar Forest Division, and the lower villages of Kurseong Forest Division went as far as blockading departmental timber depots at various places, demanding proper implementation of the FRA, invoking the section 5 of the FRA. They also stopped all forestry activities by the forest department without permission from the *gram sabha*.

5.4 Official retaliation - claims process without Gram Sabhas

Despite repeated representations by people's organisations, the GoWB refused to withdraw its government orders in violation of the FRA; from mid-August 2008, officials started distributing individual claim forms in many villages and inviting applications. Conducting an individual claims process without a parallel community claims process in such a collective 'forest village' situation would be likely to complicate the subsequent community claim process.

Government officers (mainly forest department and local Block Development Officers) and political leaders went from village to village, and reportedly pressurised people to submit individual claims, whilst not addressing the community claims. For

instance, in an FRC training meeting of the Buxa/Coochbehar area in September 2008, the BDO of Kalchini said that the forest villagers will only get rights over agricultural and homestead land, and all other land in the village including playgrounds, roads, schools etc will remain with the forest department.

In many areas, the forest department demanded the inclusion of their representative in the FRC explaining that they are eligible under the Act. Officials misleadingly said that only the agreement-holders or registered families in a forest village can claim rights under the FRA.

Because the 10th March 2008 GO by the Backward Classes Department provides for a FD representative as a permanent invitee in the FRC, the FD have continued to influence proceedings in the FRC thus formed.

Hearings for the consideration of claims, were generally not conducted at the FRC level, nor were *Gram Sabha* meetings held to consider the claims. Indeed often the local forest officers have been directly receiving the claims.

Partly due to the contest over access to rights, in many forest areas the relationship between the local people and the forest department has been deteriorating, and repression against forest people increasing. In Buxa Tiger Reserve, two tribal people were killed in firing by Forest Department staff in 2008, and a completely illegal effort was initiated to relocate 10 villages from the so-called 'core' in May 2008, without settling people's rights first and without Gram Sabha consent, both of which are requirements in the FRA.

5.5 JFM used as a tool of coercion

In December 2008 the GoWB issued a new circular legitimizing JFM in the post-FRA situation. The circular violates the major provisions and principles of the FRA (particularly section 5, and all forest rights other than land including community rights), the order restricts forest rights to 'usufructs' provided by the FD, and states that even those 'usufructs' cannot be collected from the Protected Areas.

Since the new JFM GO, the FD has been using JFM as a tool for subjugating disaffected villagers seeking to secure their rights under the FRA. It is now being used to organise non-forest village populations against the forest village *gram sabhas*. The Forest Department has been withholding the Ministry of Tribal Affairs funds for forest villages development projects until the time JFM FPCs are formed and gram sabha ban are revoked). "*No development money for the village unless JFMCs are formed*", has been stated by many forest officials. In Coochbehar Division, the FD suspended developments funds under the Forest Village Development Scheme until the villagers withdrew the timber-felling ban in the contested forests.

5.6 Late 2009 and Early 2010: Govt patta-giving spree

The Government of West Bengal started the "end-phase" of their implementation of the FRA before the Parliamentary Elections in December 2009. Impatient to press ahead with implementation the Forest Department and the Backward Classes Welfare Department began to distribute individual land *pattas* to some Scheduled Tribe households in selected forest villages, even without Gram Sabha approval, and still without rectifying the violations in the March 2008 Orders.

Pattas were disbursed to some selected villagers in Jalpiguri District before the December 2009 Parliament Elections. Only those villages were selected in the initial stage where the ruling party had a footing. This amounted to a definite political bias that is contrary to the spirit of the FR Act. As far as could be ascertained, since March 2009, *pattas* have been issued to the villagers in Lataguri area near the

Gorumara National Park, and then, to a handful of villagers in the Moraghat Range of the Jalpiguri Forest Division. In August 2009, again, *pattas* were given to 62 families in the Rajabhatkhawa Forest Village of Buxa and 140 families from Rasikbill area of Coochbehar. Since then *Pattas* have also been sporadically distributed in various other villages. The Chief Minister himself also gave away bicycles as additional gifts with *pattas* in February 2010.

The *patta* distribution process seems to be extremely poor, emerging from a top down approach blatantly contradictory to the FRA. Villagers have not been informed about the community claims, or, for that matter the role of GS in processing those or the individual claims. Individual claims that have been submitted to the Block Office/Forest RO/Panchayat so far have not been endorsed by the concerned gram sabha (even if we take the Gram Sabha to be synonymous with the Gram Sansad, no meetings of the Gram Sansads were held to discuss the FRA). The gram sabha did not meet to process or endorse those claims. There is therefore no legal basis of the '*patta*'. Apparently, the Gram sabha has met 'in camera' and forwarded the proposal in a clandestine manner, or, so the SDLC/DLCs have declared. Otherwise, how could they have entertained those claims which resulted in *pattas*?

Most of the forest villagers in North Bengal have so far braved a planned and concerted attack by the Forest Department, the district administration and the vested political interests to assert their rights over the forests. They clearly conveyed, in writing, that they consider West Bengal Government's way of implementation wrong, and they want complete rights, and not just *pattas*. In an agitation that has now been continuing for nearly three years, the forest villagers of North Bengal, especially, the Rava community, the indigenous forest community of the area, has effectively challenged the authority of the forest bureaucracy.

In many areas, community conservation efforts have started spontaneously, and the commercial forestry operations were brought to a complete halt by the gram sabhas in Coochbehar and Kurseong Forest Divisions, where the gram sabhas invoked Section 5 of The FRA to stop CFCs (Clear Felling Coupes) and other commercial operations. The CFCs have since resumed because of the FD illegally withholding the village development funds in areas where the ban was effective.

This naturally led to a stalemate situation which the forest department disliked intensely. So did the political parties, as the new-found sense of being empowered by the FRA helped the villagers to challenge their political hegemony, and their design with the FRA have been exposed for what it was from the very beginning-- a politically motivated electoral exercise. Expectedly, in sort of a counter-offensive, the administration and political parties started blaming 'Maoists', foreign-funded NGOs and a certain organisation in Siliguri (meaning NESPON) for the FRA impasse. This blame-game became more ominous and intimidating when the State Backward Classes Welfare (WB version of Tribal Welfare) Minister Jogesh Burman, and his colleague Ananta Roy started naming NESPON and its Secretary personally in public as the 'bad', 'designing' NGO and force who are misleading the 'innocent, simple-minded Rava villagers', and charged this 'agency' with the crime of playing 'vile and dirty games'. Jogesh Burman promised 'drastic action' against this agency. In December 2009, the FD called a press briefing to hold NFFPFW and NESPON responsible for the delay in implementing the FRA; it was said that the FD could have given *pattas* to all eligible claimants had the 'conspiring' organisations not intervened.

5.7 Experience in study villages

That there has been virtually no progress in the FRA implementation process in North Bengal since February, 2009 is illustrated in our 3 study villages:

In **Hillejhora** Forest village of lower Kurseong Forest Division, the concerned Block and Panchayat Department had initiated the process of formation of a Gram Samsad-based FRC. But the villagers told the block and panchayat representatives that they were ready to form the *Gram Sabha* instead of *Gram Sansad*, and the process came to a halt as the Government personnel withdrew. The villagers have to date not yet received the individual / community claim forms to claim their forest rights.

In **35 E Permanent** forest village of Darjeeling Forest Division the villagers themselves formed their *Gram Sabha* and elected 15 members among the villagers including female and tribal members to form a Forest Rights Committee. But they have not yet received the individual and community claim forms in order to claim their rights.

In **28th Mile Forest Village** of Buxa in Jalpaiguri Division the concerned Block and Panchayat department formed a *Gram Samsad* based FRC in March 2008, which includes 3 villages. Five members from the 28th Mile Forest Village were included in this Forest Right Committee, but no *Gram Sansad* meeting has been held to discuss forest issues since the FRC was formed. Individual claim forms were distributed among the villagers, and the villagers submitted 94 individual claim forms for forest rights to the secretary of the *Gram Unnayan Committee*. The Secretary has not submitted those claims on to the SDO. The villagers did not receive or submit any community level forest rights claims. This village has since been identified as a village to be relocated under a scheme sponsored by the National Tiger Conservation Authority.

5.8 Outcomes

The implementation process in North Bengal is unique because, due to the civil society organisation mobilisation, in conjunction with severe Forest Department hostility there has been an intense conflict over implementation. The West Bengal report to MoTA's FRA implementation monitoring for June 2010 made the following admission:

The State Government has informed that formation of 7 FRCs in Jalpaiguri District and all FRCs in 3 Sub-Divisions of Darjeeling District is held up due to grave political disturbances;³

The outcome has been stalemate, despite conversion of forest villages to normal 'revenue villages' status being a clear right in the FRA, not one forest village has been converted, and villagers remain under what they characterise as the quasi-feudal '*zamindari rule*' of the FD. A few pattas have been granted so far on a piecemeal basis to individual landholders only, and forest staff have attempted to grant pattas to people selected by them while denying the others even an opportunity to file their claims. This makes the process directly violative of the Act.

The result of the no-conversion scenario means that development in the forest villages is still dependent upon the concerned forest officers' whims; the FD has to permit each new case of land-based development. In revenue villages villagers could get secure tenural rights over their lands; instead, they have only insecure possession certificates.

³MoTA FRA monitoring report June 2010:
<http://tribal.gov.in/writereaddata/mainlinkFile/File1248.pdf>

It is not only that the situational of Forest Villages has not changed: no community claims or rights whatsoever have been granted. Indeed the Govt. officials in charge of implementation have talked only of private 'pattas', there has been no mention of community rights anywhere. Therefore, the submitted claims were mostly for land. The only community claims were submitted in villages where forest rights movement was active. However, nothing has yet resulted. Community rights have been totally ignored, and in areas where people have themselves attempted to exercise their community forest management powers and rights, as in Jalpaiguri District, these have been sought to be repressed by the government.

The FD has treated the FRA as an unwelcome reform, and repression against citizens seeking to secure their rights has intensified, with the FD locked in a battle against the villagers in many areas to obstruct access to rights. vBuxa has been a particularly conflict-prone area. In the Buxa Tiger Reserve efforts were made for several weeks in June and July 2008 to relocate people by the offer of the Rs.10 *lakh* per family proposed compensation package. Though the process was subsequently halted after protests and intervention by political leaders it has started afresh and 10 villages have been identified for relocation without settling the villagers' rights through the FRA.

There were four separate cases of firing by FD personnel in the Buxa area in 2009, in which two tribals were killed and several others grievously injured. No investigation, compensation or criminal proceedings against the perpetrators has been initiated, despite widespread agitations and unrest. Furthermore, the Buxa Tiger Reserve management has put up large Billboards on the Highway displaying a list of forest offences, but with no mention of the FRA. All existing rights under the Act have been shown as offences. Campaign leaflets with similar contents are also being distributed.

In the Coochbehar Forest Area tribal leaders of the forest rights movement put up *Gram Sabha* signboards on the highway proclaiming control of forests under section 5 of the FRA in November 2009. However the FD and local Police started apparently false criminal cases against them. An FIR has also been filed in response against the Forest Department by the people's movement.

Conflicts over control of forests can only escalate in future in North Bengal, as the forest villagers prepare for more entrenched resistance and a unified declaration of governance control throughout North Bengal. In August 2009 a writ petition was filed in the Kolkata High Court by 39 FRCs in North Bengal and a Kolkata NGO *Nagarik Manch* against these illegalities of the GoWB 2008 March FRA government orders and the December JFM Order. The Litigation is still pending.

However, efforts to resist these illegalities have been met with accusations that the concerned organisations are "misleading" people and are Maoist affiliates.

6. FRA FIELD IMPLEMENTATION IN SOUTHWEST BENGAL

[Ajit Banerjee and Oliver Springate-Baginski]

By contrast with the well organised civil society movement in North Bengal, there has been minimal civil society mobilisation in South West Bengal. However half hearted implementation of the same distorting Government Orders has run into problems as the areas has become engulfed in extremist conflict.

6.1 Gram Sabha formation of Forest Rights Committee

After prolonged initial delays, officially blamed on the *panchayat* election of May 2008, finally implementation started in June 2008, it followed the Government

Orders in formation of Forest Rights Committees, which as discussed above, led to major violations of the FRA.

The first FRA-mandated implementation step at local level is to hold *gram sabha* (hamlet assembly) meetings to elect Forest Rights Committees. But instead, they were again formed in the South West at the *Sansad* level, and many such *sansad* FRCs were hastily formed. On enquiry with involved administrators, they said they believed the *sansad* level formation was better (despite being in violation of the FRA), as there would be too many FRCs if formed at *gram sabha* level and so the process would be 'unmanageable' for them.

It is unclear how many of the eligible villages had FRCs formed. It seems that many villages have not been covered *at all*, although because it is the most remote villages of all which are most liable to be left out, (as with the faulty forest settlements the FRA is supposed to correct).

Prior notice for the FRC formation meetings were generally only given a few days before, if that, quite inadequate to allow the affected local people to make arrangements to attend. Therefore attendance was typically low, and so often there was no quorum in the meetings.

Villagers in our study villages reported that the selection of FRC members at the meetings was done in an *ad-hoc* manner. Committees were generally not elected but rather the officials hurriedly *selected* them in poorly attended meetings. In some cases the *Panchayat* facilitated the election of a Forest Rights Committee (FRC), although this was done hastily without following proper democratic principles. Because the *Panchayats* in West Bengal are highly politicised and partisan, the process was controlled by the political group holding sway in the respective area.

The initial FRC formation process was thus very unsatisfactory across most villages in the South West of the state.

6.2 Awareness-raising and training

In the southern districts the FRA implementation process appears to have taken place with virtually no public awareness and complete official control of the *sansad* FRCs.

After the FRCs were created, From time to time, some instructions came from the secretarial offices of the panchayat, Tribal and Forest departments to carry out such a campaign. The local government *Gram Panchayats* arranged a number of awareness meetings at the *sansad* level. Here some of the FRC members attended to hear tribal or forest department officials, sometimes along with local NGO staff, explain the provisions of the Act and how the claims must be submitted.

General community awareness raising meetings were few and not sufficiently informative as became clear from our family interviews. However the general feedback from villages was that the awareness raising campaign and FRC training was brief and very insufficient, leading to confusion in the claims process. The villagers had a general vague impression that individual families especially of the tribal people would be entitled to the ownership of the forest area they occupied. They had no concrete knowledge how this would be implemented.

Most families did not understand the way individual claims forms were to be filled out or about the nature of evidences they have to provide to establish claims. It is particularly the case for the OTFDs who have to prove 75 years of land occupation and use of customary rights.

6.3 Claims submission

Individual claim forms were issued at this stage (or later) from the *gram panchayat* office. However, because of poor understanding on the part of claimants, claim forms were generally very poorly completed. The claims were typically completed by a local politician, an *amin* (private surveyor) or any available educated person of the village. Completed individual claim forms are submitted to the FRC.

There has clearly been complete marginalisation of the community rights issue in implementation. During publicity the issue was virtually not mentioned and very few community claim forms were even distributed. It seems some more community claims forms gradually became distributed although probably too late.

6.4 Claims verification

Systemic problems have been encountered in this study at the stage of verification. This has largely been due to the pro-active interference of Forest Department officials at the *gram panchayat* level. The Act indicates that the nodal implementing department is the Tribal Welfare Department, however the Tribal Department lacks funding for an extensive field presence and capacity at *panchayat* level. Additionally, tribal officials are not cognizant of forest land tenure systems nor do they have required the data and maps. The Forest Department on the other hand has extensive field staff, familiarity with forest tenure systems and maps. (Forest department maps are however on a landscape level only (scale of 1:50,000) and therefore not useful for claimants of one to two acres of forest land). Nevertheless the Forest Department has become closely involved in the implementation processes, and sought through its involvement to protect its own interests in retaining control of the major part of the forest.

At the stage of FRC verification, normally, the veracity of individual claims is likely to be known to the committee members, and they have typically also used a local *amin* to check and verify claims. Local private *amins*, (surveyors) were often also employed by the *gram Panchayats* and the SDLC also verified claims by employing local *amins*. However there are few *amins* and even the DLC members in Bankura complained:

There is a lack of Amins at the Gram Panchayat level to do the ground level mapping. In some areas, one Amin has to do the mapping in two or three Gram Panchayats. [pers. interview 2009]

Problems with FD interference have manifested after the *gram sansad* has dealt with claims. They should have sent the claims to the SDLC, but instead forwarded them to the local forest office, directly involving them in the approval process, in a complete violation of the Act. The District magistrate of West Midnapure indicate the sort of problems this is leading to:

A problem has arisen in the case of claimants who have land inside the forest as well as outside the forest. In the case of these claimants, the Forest Department is objecting to granting them land inside the forest. [pers. interview 2009]

Such an objection is of course clearly not valid in relation to the FRA and Rules.

Overall, it became apparent in our study that claim forms were not being properly verified by the FRC and mapping of the claimed area was in most cases not properly done or verified where maps has been submitted. It has proved difficult to say whether the recommendation or otherwise on claims is free of bias or nepotism, although due to the lack of transparency, and direct interference and influencing by

forest department staff, it is undoubtedly the case that claims have been selectively reduced.

6.5 Overall

Implementation is proving difficult in the South West partly due to its low priority on the government's agenda, and it seems each of the responsible bodies is grumbling that others are not playing their role effectively. The district level committee (DLC) members of Bankura District for instance expressed the difficulties they are facing in deciding on the claims as follows:

The coordination between the various Departments involved in the process, is posing a problem. .. The claim process is being directed through the Block Development Officers (BDOs), who are busy with National Rural Employment Programme work and election work ... [and so] the FRA claim process is being allotted a low priority. ... The monitoring process is being done by the District Magistrate, through the BDOs, who are not giving this work a high priority.

In turn the district the District Magistrate for Bankura district commented:

Progress with regard to the implementation of FRA has not been satisfactory in the district. One of the reasons for this is that it is a low priority with the block administration. ...

However since early 2009 the south west forest area have gradually become engulfed in a virtual civil-war between the government and Maoist extremist groups The MoTA FRA implementation monitoring report for June 2010 (ibid.) contained the following:

Political disturbance in West Midnapur, Bankura, Purulia and Darjeeling affected pace of implementation of Forest Rights Act in these districts considerably.

Whatever the limited FRA implementation process had achieved it has become stalled there, and revisit has been impossible to date.

7. AGGREGATE OUTCOMES AND LIVELIHOOD IMPACTS

The FRA clearly has the potential to significantly improve the livelihoods of poor households in forested landscapes, by variously strengthening tenure to their productive land and forest assets and improving income streams and their security. But as we have seen in the discussion above, accessing those rights has so far proved elusive. The main developments in FRA implementation are summarised in Table 4 below.

Table 4: Time line of the developments of FRA as on March, 2009

Period	Activity	Remarks
March 2008- March 2009	- Formation of SDLCs and Divisional Committees	✓ Completed as per rules except in Darjeeling,
March 2008- March 2009	- Village awareness campaign by Government (Panchayat, Forest Departments (FD), Tribal Departments and NGOs)	✗ Unsatisfactory Campaign so far: relevant facts about the Act remain unknown to most villagers.
March 2008- March 2009	- Formation of <i>Gram Sabha</i> Forest Rights Committee	<ul style="list-style-type: none"> ✗ Completed in <i>gram sansads</i> rather than in <i>gram sabha</i>, in all districts except in Darjeeling District where it was objected to. FRC formation process is incomplete in North Bengal region. ✗ FRC formation generally hastily completed. ✗ Members often selected rather than elected. ✓ In some cases, Sansad FRCs were withdrawn and reconstituted in <i>gram sabhas</i>.
March 2008- March 2009	- Distribution of individual and community claim forms.	<ul style="list-style-type: none"> ✓ Individual forms distribution satisfactory ✗ Community claim forms insufficiently distributed.
March 2009 onwards	- Submission of claim forms	✗ Many individual claims submitted incomplete; indicating that is the claimants don't understand the requirements
March 2009, onwards	- Verification:	✗ Severe interference from FD leading to numerous rejections and generally slow progress

When we consider the outcomes of this process the aggregate data for the state a whole, shown in table 4 presents a very disturbing picture of obstructed implementation emerged.

Table 5: West Bengal Aggregate FRA implementation data (June 2010)

item	individual	community	total
Constitution of Forest Rights Committees by the Gram Sabhas			2,819
No. of claims filed at Gram Sabha level	1,29,293 (88,430 ST + 40,863 OTFDs)	7,824 (4,763 ST + 3,061 OTFDs)	137,117
No. of claims recommended by Gram Sabha to SDLC	-	-	44,629
No. of claims recommended by SDLC to DLC	-	-	32,861
No. of claims approved by DLC for title	-	-	29,009
Number of titles distributed	25,972	89	26,061 2940 ready
No. of claims rejected	-	-	73,592
Extent of forest land for which title deeds issued (in acres)	15,271	42	15,313
Projected date for distribution of title deeds	State Govt. requires more time for completion of the process.		

Source: Ministry of Tribal Affairs GoI website *MoTA is presenting information supplied by the state governments.

The GoWB data states that 2,819 FRCs have been formed across the state. It is not clear how many eligible hamlets there are, nor how many villages or areas were left out, especially due to the *ad hoc* clubbing together of hamlets, although this is likely to represent a fraction of the total villages.

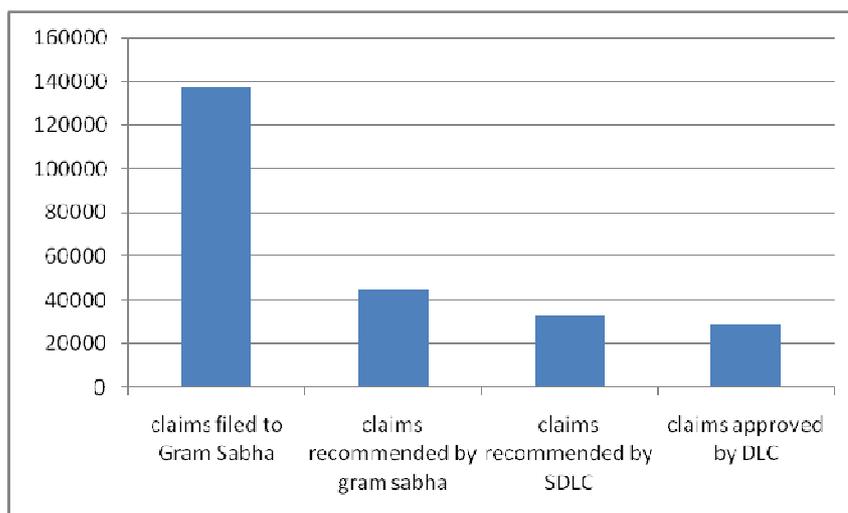


Figure 2: Claim filed and approved in West Bengal

Source: MoTA June 2010

These formed FRCs submitted a total of 137,117 claims according to the figures, each submitting a mean of 49 claims (46 individual and 3 community). Considering the extent of rights deprivations and the fact that hamlets have been clubbed together into FRCs covering what are probably over 200 households or more this seems surprising low.

Of these total claims, 68% were rejected at the *gram sansad* level, a further 9% were rejected by the SDLC and the DLC rejected a further 3%. The grounds for rejection are not stated, and due to the opacity of the process we may never know. However as we have seen the Forest Department has interfered at the verification stage in violation of the Act and, having shown hostility to the Act itself is likely to have been hostile to any claims. Further likely issues are problems of finding the correct documentation to support claims, and completing the claim form correctly.

Ultimately only 20% of claims were approved, about 10 individual claims per FRC, amounting to just over half an acre each (0.58 acre or 0.24 hectares).

Only 89 community claims were approved, of almost 8,000 submitted: a remarkable 99% of community claims were rejected. Further, the nature of these is not stated, and as their mean coverage is 0.2 hectares it is likely that most are not land related.

The government figures seem to be anomalous: they state 73,592 claims have been rejected (only 54%), yet only 20% have been finally approved indicating that 80% would be the correct figure for rejections.

Considering the West Bengal forest estate is 12,00,343 hectares, so far the FRA implementation has led to the 'handover' of titles to as little as 6,380ha, or 0.53% of the total.

7.1 Livelihood impacts

There can be little doubt that FRA 2006 is an instrument that on appropriate implementation will bring about substantial social and emotional relief to a large number of forest dependent individual tribal and OTFD families in West Bengal. However this is contingent on rights being secured.

The FRA has given many in our study villages the hope of retrieving what they lost by deprivation of rights, and when we began this study we had anticipated that an important aspect would be understanding how local people's livelihoods are

improved through securing titles. The government figures indicate some individual titles have been granted, and no doubt for the household receiving them benefits have accrued. But the mean plot size is almost meaninglessly small.

Although no titles have been transferred as yet in any of our study villages we could not study whatever livelihood impacts there may be. However it is clear that generally livelihoods of the poorest have NOT been positively affected by the FRA so far, and this is primarily due to the deviations in the obstruction in implementation committed by the WB Forest Department staff.

If anything local peoples conditions may have deteriorated particularly in the North where conflict has exacerbated over forest rights. Further, the hand over of token individual titles in forest villages will undoubtedly complicate collective rights.

8. CONCLUSIONS AND RECOMMENDATIONS

Why has implementation of a *de jure* pro-poor reform not led to *de facto* pro-poor outcomes? The explanation must be found in the ability of the incumbent *de facto* powerholders, primarily the Forest Department and political parties, to retain their own control of the resources, though influencing and interfering with implementation.

Generally the government agencies have more or less accepted the FRA as a routine project and function that need to be completed in due course; the Tribal and the Panchayat departments and their field offices and the Panchayat elected bodies are generally sympathetic to the spirit of the Act, although most do not seem to have imbibed the 'paradigm shift' that the Act represents. Yet most of the FD officials are predictably hostile to the reform.

The state government, instead of empowering the Tribal welfare department to control implementation of the FRA, it has permitted the forest department to retain illegal control over the process. The FD which has the maximum stake in holding on to the forest land has taken over as the nodal implementing department, despite the Act prescribing only a consultative role. With no political oversight foresters have been able to exert decisive influence,

Democratic methods have not been adopted in formation of FRCs which is likely to make recommendation of claims biased. Additionally, FRCs has been formed in Sansad level rather than in gram sabha level. The former is a larger unit than the later which implies that representation of people of each in FRCs has been arbitrarily reduced.

The issue of community rights has been almost completely obstructed (avoiding conversion of forest villages altogether in the North) and also minimizing individual rights grants by interference at the verification stage for in the south west. Ambiguity in the Acts provisions are being used as leverage for rejecting claims. The claims not rejected at the local Rights Committee are then contested at the sub divisional and district level.

In West Bengal, the political hegemony enjoyed by the Communist Party for more than 30 years through repeated re-election has undoubtedly led to political bias in the implementation and post-implementation management of the land and use rights in the transferred land.

Ultimately a radical *de jure* paradigm shift in village forest governance has been reduced so far to a tokenistic 'patta-distribution' exercise, at the cost of its all other provisions.

Key Policy Recommendations

Having recognised that the *de facto* power structures remain able to divert reform there is little reason for optimism that a string of recommendations directed to the West Bengal state government would be worthwhile to rehearse, over and above repeating the provisions of the Act itself, and that it is a legal obligation on the part of state governments to follow it. Rather our domain of recommendations are to the Central government:

1. Cases of Indian states ignoring National laws is a not new phenomenon, but nevertheless represents a grave disrespect to the Indian Constitution and India's democratic process. If the Government of India is as committed to poverty reduction as it claims, it should manifest this by strengthening enforcement of pro-poor national laws and mandates such as the FRA to state governments.
2. We note that MoTA is improving its monitoring system. However MoTA remains dependent on the state governments for its data. An independent body should be constituted to monitor the progress of FRA implementation in respect of acceptance or otherwise of claims.
3. Rural people are vulnerable to abuse and are accustomed to injustice at the hands of Forest Departments, (as we have seen again in the case of the mis-implementation of the FRA in West Bengal), but they lack ability to seek redress through the courts. If the Government of India wishes to reduce the 'push' factors leading to political extremism it must make access to justice for the poor a priority.

REFERENCES

- Banerjee Ajit (2007): Joint Forest Management in West Bengal in 'Forests, People and Power' Ed. by Springate- Baginski and Blaikie Piers; (London, Earthscan)
- Bhengra Ratnakar (2007): PESA: Contradictions and Dilemmas in 'This is our homeland'; (Bangalore, Equations)
- Bosu Mullick Sanjoy (2007): *Hul to Raj in 'This is our homeland'*; Equations, Bangalore
- Chatterjee Prof. CD (1964): Forestry in Ancient India in 'West Bengal Forests'; Government of West Bengal, Calcutta
- Chakrabarti Ranabir (2009) (In Press): The Other of Civilization: Portrayals of the Forest in Early India; in 'Footprints in the Forest' (ed) by Banerjee, Ajit Kumar; Nataraj Publishers, New Delhi
- Deb Debal (2007): Sacred Groves of West Bengal; The ODG, University of East Anglia, UK
- Forest Survey Of India (FSI) (2003): State of Forest Report 2003; Dehradun
- Forest Survey Of India (FSI) (2005): State of Forest Report 2005; Dehradun
- Ghosh Soumitra (2007): Extinguishing forest rights in south-west Bengal; Box 7.1 in 'Joint Forest Management in West Bengal by Banerjee Ajit in 'Forests, People and Power' (ed) Springate- Baginski and Blaikie Piers; (London, Earthscan)
- Government of West Bengal (2002): Biodiversity Strategy and Action Plan for West Bengal; Department of Environment, Calcutta
- Government of West Bengal (GOWB) (2008): Economic Review; BAES, Calcutta
- Government of West Bengal (GOWB) (2002): State Forest Report 2001-2002: Forest Department; Kolkata
- Government of West Bengal (GOWB) (2004): State Forest Report 2003-2004: Forest Department; Kolkata
- Government of West Bengal (GOWB) (2008): Economic Review 2007-2008 Statistical Appendix (Sarasawati Press, Kolkata)
- Ministry of Law and Justice (2007): The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006; The Gazette of India, No. 2 of 2007; New Delhi.
- NESPON (2005): Plight of the Forest People: Buxa Tiger Reserve: Report of the Public Hearing, April 2005: DISHA, Kolkata
- Poffenberger Mark (1996): The Struggle for Forest Control in the Jungle Mahals of West Bengal, 1750-1990 in 'Village Voices, Forest Choices'; Ed. by Poffenberger Mark and McGean Betsy; Oxford University Press, Calcutta
- GOWB (2003) State Forest Report, West Bengal 2003-2004; Director of Forest, Kolkata
- Sivaramakrishnan K. (1999): Modern Forests: State-making and Environmental Change in Colonial Eastern India ; Oxford University Press, New Delhi
- SPWD (1998): JFM Update; New Delhi